

Recodified from 7:26-14A.16 and amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Former section recodified to N.J.A.C. 7:26-14A.9.

7:26-14A.13 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer loans, acquire property, award contracts and subcontracts pursuant to the loan agreement from bribery, graft, and other corrupt practices. The borrower bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State may also pursue administrative or other legally available remedies.

(b) The borrower 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 borrower shall immediately notify in writing the Division of Solid and Hazardous Waste when such allegation or evidence comes to its attention, and shall periodically advise the Division of the status and ultimate disposition of any related matter.

Recodified from 7:26-14A.17 and amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Section was "State share of the project cost".

7:26-14A.14 Administration and performance of loan

The borrower bears primary responsibility for the administration and use of loan proceeds. Although borrowers 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 borrower to the Department. The primary concern of the Department is that loan funds awarded be used in conformance with this subchapter and the loan agreements to achieve loan objective and to insure that the purposes set forth in the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985 are fully executed.

Recodified from 7:26-14A.18 and amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Former section recodified to N.J.A.C. 7:26-14A.10.

7:26-14A.15 Access

(a) The borrower and its contractors and subcontractors shall provide to Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the use of loan funds. The borrower shall submit to the Department such documents and information as requested by the Department. The borrower, and all contractors and subcontractors which contract directly with the borrower or receive a portion of the State funds under the Acts, may be subject to a financial audit as to the use of the State funds. Records shall be retained and be made available to the Department for a

minimum of three years after submission of the final requests for payment.

(b) The loan agreement shall contain provisions which set forth the access requirements of (a) above.

Recodified from 7:26-14A.19 and amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Former section recodified to N.J.A.C. 7:26-14A.11.

7:26-14A.16 Assignment

The rights and obligations of the parties to the loan agreement shall not be assigned.

Recodified from 7:26-14A.20 by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Former section recodified to N.J.A.C. 7:26-14A.12.

7:26-14A.17 Publicity and signs

(a) Press releases and other public dissemination of information by the borrower concerning the project work shall acknowledge State loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the New Jersey Department of Environmental Protection shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

Recodified from 7:26-14A.21 by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Former section recodified to N.J.A.C. 7:26-14A.13.

7:26-14A.18 Debarment

(a) No borrower shall enter into a contract related to the development of a project for work with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.1 et seq.

(b) Borrowers shall insert in every contract related to the development of a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting on any project financially assisted by the State or the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) The borrower, prior to acceptance of State 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 other than the Department.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the borrower may take into account the loss of Department loan funds under these rules which result from

awarding a contract to such bidder, in determining whether such bidder is the lowest responsible bidder pursuant to law; and the borrower may advise prospective bidders that these procedures will be followed.

(e) Any person included on the Treasurer's List of Debarred, Suspended or Disqualified Bidders as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a loan under this subchapter, may present information to the Department on why this section should not apply to such person. The Commissioner, pursuant to N.J.A.C. 7:1-5, may grant an exception from the application of this section with respect to a particular contract. The Commissioner may only take this action following a determination that such an exception is essential to the public interest and after filing a finding thereof with the Attorney General. In the alternative, the Department, pursuant to N.J.A.C. 7:1-5, may suspend or debar any such person, or take such action as may be appropriate.

Recodified from 7:26-14A.22 by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Former section recodified to N.J.A.C. 7:26-14A.14.

7:26-14A.19 Termination of loans

(a) Termination of loans by the Department shall be as follows:

1. The Department may terminate a Fund loan in whole or in part for events of default which shall include but not be limited to:

- i. Failure to comply with any of the terms and conditions of the loan agreement;
- ii. A determination that the loan was obtained by fraudulent practices;
- iii. Gross abuse or corrupt practices in the administration of the project have occurred;
- iv. Funds have been expended for non-allowable costs; and/or
- v. Failure to comply with a corrective action/correction schedule entered into pursuant to (a)4 below.

2. The Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to terminate the loan in whole or in part. Such notice shall be given to the borrower at least 30 days prior to the intended date of termination.

3. The Department shall afford the borrower an opportunity for consultation prior to any termination. After such opportunity for consultation the Department may, in writing, terminate the loan in whole or in part. Upon termination, the full amount of the outstanding balance of the loan shall be immediately repaid in full.

4. Where the Department deems it appropriate, the following procedures may be used following an event of non-performance pursuant to (a)1 above:

i. The Department shall notify the borrower of the event of non-performance pursuant to (a)1 above. Within 30 days of receipt of such notification of non-performance, the borrower shall submit to the Department a compliance schedule which schedule shall require approval by the Department. The schedule shall identify how and when the borrower will remedy the non-compliance identified by the Department.

ii. If the borrower fails to remedy the non-performance in accordance with the approved schedule or fails to submit the compliance schedule pursuant to (a)4i above, the Department shall notify the borrower (certified mail, return receipt requested) of such failure, which failure shall itself be considered an event of non-performance pursuant to (a)1 above and shall then trigger the termination procedure in (a)2 and 3 above.

5. The Department shall maintain sole discretion to determine the appropriate remedy for non-performance. Within that discretion the Department may invoke remedies which include, but are not limited to, the following:

- i. Withholding of loan disbursement;
- ii. Acceleration of loan agreement;
- iii. Conversion to an interest-bearing loan; and
- iv. Immediate loan repayment in accordance with procedures outlined in (a)2 and 3 above.

(b) Project termination by the borrower shall be conducted in accordance with the following provisions:

1. The borrower shall not unilaterally terminate the project work for which a loan has been awarded. Where the borrower terminates the project, the loan shall be repaid in accordance with a schedule approved by the Department.

2. The borrower shall promptly give written notice to the Department of its intent to wholly or partially terminate the project work.

3. The Department, upon receipt of the borrower's written notice of intent to wholly or partially terminate the project, may enter into a repayment agreement with the borrower, which agreement shall establish the effective date of termination of the project work and the schedule for repayment of the entire loan. If the Department determines that a borrower has ceased to work on a project and has not complied with the notification and repayment provisions outlined in (b)1 and 2 above, or has failed to take all available steps to ensure project completion consistent with all agreements entered into, the Department may unilaterally terminate the loan pursuant to this section.

(g) Applicants receiving either Planning and Program Grants or Education Grants shall file annual progress reports with the Department during the grant year and for two years following receipt of the grant. Applicants who receive a Recycling Tonnage Grant pursuant to N.J.A.C. 7:26-15.5 shall be deemed to have satisfied this requirement.

As amended, R.1984 d.75, effective March 19, 1984.

See: 16 N.J.R. 6(a), 16 N.J.R. 535(b).

Jointly adopted with the Department of Energy substantially amended.

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Added (b)1 and (b)2.

7:26-15.8 Application and award procedure for Supplementary Projects

(a) The Department may, in its discretion, make available any or all of the monies in the Program and Planning Fund and in the Education Fund which are not used for the grants specified in N.J.A.C. 7:26-15.7 for Supplementary Projects involving recycling research, program development, program implementation and other related activities. Supplementary Projects may be developed by the Department on its own initiative or in response to proposals submitted by public or private entities.

(b) Awards for Supplementary Projects shall be made giving due consideration to the qualifications of the applicants in view of the nature of the projects. Awards may be made by the Department as grants, contracts, or other forms of disbursement as appropriate for the particular Supplementary Project.

R.1983 d.119, eff. April 18, 1983.

See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), amended N.J.A.C. reference.

7:26-15.9 Execution of award documents

(a) As concerns Recycling Tonnage Grants, the Department shall prepare and transmit an original and three copies of the award document to the applicant. The applicant shall execute the award document and return it to the Department with an ordinance or resolution of the appropriate governing body, authorizing the signing of the document, naming the person authorized to sign the document and committing the applicant to use the funding in accordance with the terms and conditions of the award document, this subchapter and the Act.

(b) As concerns Planning and Program Grants and Education Grants, the applicant shall submit the spending plan with an ordinance or resolution of the appropriate governing body, authorizing the signing of the spending plan, naming the person authorized to sign the spending plan and committing the applicant to use the funding in accordance with the terms and conditions of the spending plan, this subchapter and the Act.

(c) As concerns loans or loan guarantees made pursuant to the Act, the applicant shall execute the award document. The award document shall be executed by the person(s) having authority to commit the entity receiving the monies to the terms and conditions of the loans or loan guarantees.

(d) The award document shall be deemed to incorporate all requirements, provisions, and information in this subchapter, the Act and all documents and papers submitted to the Department in the application process.

(e) At the time of execution of the award document by the Department and the applicant, the grant, loans or loan guarantees shall become effective and shall constitute an obligation on the Recycling Fund in the amount and for the purposes stated in the award document.

As amended, R.1983 d.119, effective April 18, 1983.

See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

Formerly codified as 7:26-15.8.

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

Inserted new (b), recodified former (b) through (d) as (c) through (e).

7:26-15.10 Unused monies

(a) All monies which remain unused or unexpended by the Department at the close of the calendar year or which have been withheld or rescinded by the Department shall remain with or be returned to the Fund.

1. Unused monies derived or allocated from the Recycling Grant Fund, Recycling Business Fund or Education Fund shall be added to their respective Funds.

2. Unused monies derived or allocated from the State Program Fund and Planning and Program Fund may be added to their respective funds or to any of the funds in (a)1 above, as the Department in its discretion deems appropriate.

As amended, R.1983 d.119, effective April 18, 1983.

See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

Formerly codified as 7:26-15.9.

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-15.11 Debarment

(a) Any person or corporation who is debarred, suspended or disqualified from State contracting pursuant to N.J.A.C. 7:1-5 shall be ineligible to receive State grants, loans or loan guarantees under this subchapter, whether directly or through a contract with a recipient of the State Fund monies.

(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 recipient if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) Bid specifications prepared by the recipient shall require submission of a sworn statement by the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders as a result of action by a State agency other than the Department.

(d) Any person included on the Treasurer's List as a result of action by a State agency other than the Department, who is or may become a bidder, or any contractor who is or will be funded by a grant or loan under this subchapter may present information to the Department, indicating why this section should not apply to such person. If the Commissioner determines that an exception is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may grant such exception in keeping with the provisions of N.J.A.C. 7:1-5.9.

(e) The Department may suspend or debar any such person, or take such other action as may be appropriate pursuant to N.J.A.C. 7:1-5.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

Formerly codified as 7:26-15.10.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-15.12 Discriminatory practices

The applicant shall certify that its contractors and their subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 to 10:2-4 and the rules and regulations promulgated pursuant thereto.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
Formerly codified as 7:26-15.11.

7:26-15.13 Procedure for withholding or rescission of grants

(a) The Department may, in addition to any other rights or remedies available pursuant to law, withhold a grant or any portion thereof, for good cause which shall include, but not be limited to, the following:

1. Failure to comply with the provisions of this subchapter, the Act or other applicable State laws or regulations;
2. Failure to meet any condition or specification of the grant;
3. Submission of false or misleading information to the Department.

(b) The Department shall give written notice to the recipient of its intent to withhold or rescind the grant in whole or in part.

(c) The Department shall afford the recipient an opportunity for consultation prior to withholding or rescission of the grant.

(d) The Department, may, after affording the recipient opportunity for consultation, withhold or rescind the grant in whole or in part. The withhold or rescission shall be in writing and effective on the date such action is taken.

(e) The determination to withhold or rescind a grant shall be solely within the discretion of the Department.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

Formerly codified as 7:26-15.12.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-15.14 Return of grants

(a) The recipient of a grant which has been withheld or rescinded by the Department shall refund or credit to the Department the amount of grant monies withheld or rescinded.

(b) The Department shall, upon receipt of the monies, return same to the appropriate Fund in accordance with the provisions of N.J.A.C. 7:26-15.10.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

Formerly codified as 7:26-15.13.

Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-15.15 Procedure for termination of loans and loan guarantees

(a) Loans and loan guarantees authorized or created by the Act may be terminated by the EDA according to the procedures and guidelines established by that agency in the event of default by the holder of the loan. The term default shall include, but not be limited to:

1. Non-payment or failure to make timely repayment of the loan;
2. Bankruptcy by the holder of the loan;
3. Use of loan or items financed by the loan for purposes other than those stated in the application;
4. Failure to comply with the provisions of this subchapter, the Act or other applicable State laws or regulations; or
5. Submission of false or misleading information to the Department or EDA.

(b) In the event that a loan or loan guarantee is terminated the monies shall be returned to the Recycling Business Loan Fund.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).

Formerly codified as 7:26-15.14.
Amended by R.1996 d.578, effective December 16, 1996.
See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

7:26-15.16 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

As amended, R.1983 d.119, effective April 18, 1983.
See: 14 N.J.R. 1346(a), 15 N.J.R. 622(d).
Formerly codified as 7:26-15.15.

SUBCHAPTER 16. SOLID AND HAZARDOUS WASTE LICENSING AND REVOCATION— DISCLOSURE STATEMENTS AND INTEGRITY REVIEW

7:26-16.1 Scope and authority

(a) This subchapter 16 implements P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.), and the public policy declared therein to preclude from participation in the solid and hazardous waste industries persons with known criminal records, habits, or associations, and to exclude or remove from positions of authority or responsibility in those industries any person known to be so deficient in reliability, expertise or competence that his or her participation would create or enhance the danger of unsound, unfair or illegal practices, methods or activities in the business of those industries.

(b) This subchapter applies to any proceeding involving the issuance, approval, termination or revocation of any approved registration or equivalent authorization to operate a solid or hazardous waste business in New Jersey, including any temporary operating authorization, hazardous waste hauler license, or hazardous waste facility permit.

7:26-16.2 Definitions

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

“Applicant” means any person seeking a license.

“Application” means the forms and accompanying documents filed in connection with the applicant’s request for a license.

“Broker” means any person, not registered with the Department, who for compensation (e.g., a commission or fee) arranges for the transportation or disposal of solid waste or hazardous waste, other than waste generated by that person.

“Business concern” means any corporation, association, firm, partnership, trust or other form of commercial organization.

“Disclosure statement” means a statement containing information about an applicant or licensee as set forth in N.J.A.C. 7:26-16.4.

“Exempt transporter” shall mean a transporter which is exempt from the requirement to file a disclosure statement, pursuant to N.J.A.C. 7:26-16.3(d).

“Key employee” means any person employed by an applicant or licensee in a supervisory capacity with respect to the solid or hazardous waste operations of the business concern in New Jersey or empowered to make discretionary decisions with respect to those operations, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage or disposal of solid or hazardous waste.

“License” means the initial approval and first renewal of any registration statement or engineering design pursuant to N.J.S.A. 13:1E-1 et seq. and/or N.J.S.A. 13:1E-49 et seq. for the collection, transportation, treatment, storage or disposal of solid waste including hazardous waste in this State, except that “license” shall not include any registration statement or engineering design approved for any of the persons listed in N.J.A.C. 7:26-16.3(d). “License” includes any authorization equivalent to an approved registration, including any temporary operating authorization, hazardous waste transporter license, or hazardous waste facility permit.

“Licensee” shall be defined as set forth in N.J.S.A. 13:1E-127i.

“Permittee” shall be defined as set forth in N.J.S.A. 13:1E-127i.

Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Substituted “transporter” for “hauler” in the definition for “license”.
Amended by R.2000 d.75, effective February 22, 2000.
See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).

Inserted “Exempt transporter”; rewrote “Licensee”; and added “Permittee”.

7:26-16.3 Filing of disclosure statement

(a) Every applicant shall file a disclosure statement with the Department and the Attorney General at the time the application is filed, unless exempted under (d) below. Applicants for siting under the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq., shall file a disclosure statement at the time specified in N.J.A.C. 7:26-13A.6.

(b) Disclosure statements shall be filed by submitting an original and one conformed copy of all papers, including Personal History Disclosure Forms, to the Department at the following address:

Department of Environmental Protection
Division of Solid Waste Management
Bureau of Registration and Permits Administration
PO Box 414
Trenton, New Jersey 08625-0414

1. The Department will transmit copies to the Attorney General for purposes of the investigative report.

2. Additional conformed copies of disclosure statements, or any portions thereof, shall be supplied upon the request of the Department or the Attorney General.

3. Within 30 days of receipt of a disclosure statement from an applicant, the Department shall advise the applicant if the disclosure statement is incomplete on its face, and shall specify what additional information is required. Otherwise the Department shall transmit the disclosure statement to the Attorney General, and shall notify the applicant of the date the transmittal is made.

(c) Any person required to be listed in the disclosure statement, other than a nonsupervisory employee required to be listed under N.J.A.C. 7:26-16.4(a)9, shall be fingerprinted for identification and investigation purposes in accordance with procedures established by the Attorney General.

1. Completed fingerprint cards shall be supplied by the applicant with the filed disclosure statement. The applicant shall arrange for the taking of fingerprints.

2. Fingerprints shall be supplied on fingerprint cards specified for the purpose by the Attorney General and made available by the Department. Fingerprints must be taken and verified by an employee of a police agency authorized to take fingerprints. (Most local police departments will provide this service. Some charge a fee).

(d) Exemptions: The following persons are exempted from the requirement to submit a disclosure statement:

1. Any department, division, agency, commission or authority of the Federal government or any State, or any county, municipality or agency thereof;

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made may open any envelope which is marked "CONFIDENTIAL."

(c) The Department shall store any records containing confidential information only in locked cabinets in secure rooms; provided, however, that if such records are in a form which is not amenable to such storage, the Department shall store such records in a manner which similarly restricts access by persons to whom disclosure of the confidential information in question is restricted.

(d) Any records made, possessed, or controlled by the Department or its contractors, and containing confidential information, shall contain indicators identifying the confidential information.

(e) 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.

7:26-17.25 Confidentiality agreements

The provisions of this chapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Department or any employee, contractor or agent thereof. Such provisions imposing confidentiality or nondisclosure duties upon the Department or any employee, contractor or agent thereof shall be of no force or effect.

7:26-17.26 Wrongful access or disclosure; penalties

(a) No person shall disclose, obtain or have possession of any confidential information, except as authorized by this chapter.

(b) Except in accordance with this chapter, no Department employee, representative, or contractor shall disclose any confidential 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. No such person shall use any such information for his or her private gain or advantage, except as permitted by a contract between such person and the Department. If a contractor discloses confidential information in violation of this chapter or of contractual provisions restricting disclosure, such disclosure shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5, Debarment, Suspension and Disqualification from Department Contracting.

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

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

(d) 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.

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