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See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 17, 1989

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **March 23, 1989.** 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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- **Adoptions ..... March 10**

April 17 issue:
- **Proposals ..... March 17**
- **Adoptions ..... March 27**

May 1 issue:
- **Proposals ..... April 3**
- **Adoptions ..... April 10**

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

BANKING

(a)

DIVISION OF BANKING

Investments

Proposed Readoption with Amendments: N.J.A.C. 3:11

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

Authority: N.J.S.A. 17:2-10; 17:9A-24.13, 25(12), 25.2, 25.3, 26(7), 60, 62H, 182.1 through 182.3.

Proposal Number: PRN 1989-102.

Submit comments by March 23, 1989 to:
Roger F. Wagner, Deputy Commissioner
Division of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 3:11 expires on March 19, 1989. The Department of Banking has reviewed these rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt these rules without change. In addition, subchapter 2 expired prior to March 3, 1986 when all subchapter expiration dates were superceded by chapter level expiration dates. The Department proposes to adopt this subchapter as it existed prior to its expiration date. A summary of each section follows:

N.J.A.C. 3:11-1 grants approval to exceed the 10 percent limitation of N.J.S.A. 17:9A-62 with regards to total liabilities of any one person to a bank or obligations in which a bank may invest in an unlimited amount subject to the exercise of prudent banking judgment.

N.J.A.C. 3:11-2 provides for the exclusion of subsidiaries from the total liabilities to a bank of the corporation which holds the controlling interest in such corporation.

N.J.A.C. 3:11-3 provides for the organization and operation of small business investment companies.

N.J.A.C. 3:11-4 authorizes the investment by a bank in the capital stock of a bank principally engaged in international or foreign banking.

N.J.A.C. 3:11-5 provides for the investment by a bank in the capital stock of domestic operating subsidiaries. Such subsidiaries are allowed to engage in activities which are a part of the business of banking or incidental thereto.

N.J.A.C. 3:11-6 grants approval of limited investment in the Minbanc Capital Corporation and in the Student Loan Marketing Association.

N.J.A.C. 3:11-7 pertains to the limitations on liability to a bank.

N.J.A.C. 3:11-8 authorizes other investment securities that can be made by savings banks.

N.J.A.C. 3:11-9 pertains to "standby letters of credit".

N.J.A.C. 3:11-10 authorizes credit card operations for savings banks.

N.J.A.C. 3:11-11 pertains to restrictions on leeway investments.

N.J.A.C. 3:11-12 authorizes commercial loans by savings banks.

Social Impact

Once readopted, the rules will continue to provide reasonable standards to regulate the banking industry in New Jersey. These rules should allow State chartered banks to maintain substantial parity with Federally chartered institutions. The Department further recognizes the merit for allowing certain types of lending and investments which will allow State banks to better serve their customers.

Economic Impact

By maintaining a competitive parity among institutions, State chartered banks will be able to compete on an equal plane encouraging their growth and permitting an expansion of services to the communities and customers they serve.

Regulatory Flexibility Analysis

The proposed readoption with amendments of these rules will impose minimal reporting, recording or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:16B-16 et seq. Many of the institutions affected have more than 100 employees and do not, therefore, qualify as small businesses. Further, the rules proposed for readoption and the amendments merely expand upon the content of statutorily-mandated limitations on the investments that institutions may make. These rules should not necessitate capital or professional assistance costs to be incurred. To the extent that compliance requirements are imposed, the proposed readoption with amendments is necessary to provide for the safety and soundness of State-chartered institutions through prudent lending and investment decisions. For that reason, no exemptions or requirement differentiation may be made based upon business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:11.

Full text of the proposed amendments to the readoption follows (additions indicated in boldface **thus**).

SUBCHAPTER 2. APPROVED SUBSIDIARIES

3:11-2.1 Exclusion from liabilities of controlling corporation

(a) A list of subsidiaries which have capital, surplus and undivided profits aggregating $5,000,000 or more, and are approved as subsidiaries whose total liabilities to a bank shall be excluded from the total liabilities to the bank of the corporation which owns or controls a majority of the outstanding capital stock entitled to vote for the election of directors of such subsidiaries, shall be kept on file in the office of the Commissioner of Banking. The total liabilities of such controlling corporation may also be excluded from the total liabilities of such subsidiaries when considering limitations on liability to the bank.

(b) A list of subsidiaries approved under the above subsection follows:

1. Bell Telephone Company of Pennsylvania, The;
2. Chesapeake & Potomac Telephone Company of Maryland;
3. C.I.T. Financial Corporation;
4. Creole Petroleum Corporation;
5. Duluth, Missabe & Iron Range Railroad Company;
6. General Motors Acceptance Corporation;
7. ILC Industries, Inc. (Subsidiary of Rapid American Corp.);
8. Illinois Bell Telephone Company;
9. Motors Insurance Corporation;
10. New England Telephone & Telegraph Company;
11. New Jersey Bell Telephone Company;
12. New York Telephone Company;
13. Pennsylvania Company;
14. Remington Arms Company, Inc.;
15. Sears Roebuck Acceptance Corporation;
16. Union Railroad Company;
17. Wagner Electric Corporation; and
18. Western Electric Company, Inc.

COMMUNITY AFFAIRS

(b)

DIVISION OF COMMUNITY RESOURCES

Administration of Funds Received Under the Higher Education Act of 1965

Proposed Repeal: N.J.A.C. 5:50

Authorized by: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-3.

Proposal Number: PRN 1989-83.

Submit comments by March 23, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The rules at N.J.A.C. 5:50 which are now proposed for repeal were adopted in order to implement Title I of the Federal Higher Education Act of 1965. The Department of Community Affairs had been designated as the State agency responsible for the development, submission, administration and supervision of the State plan for utilization of Title I funds in New Jersey. Rules were adopted concerning the composition of the Title I State Advisory Council and standards for the awarding of grants.

These rules were necessary only so long as the Department was receiving Title I funding. Since that is no longer the case, they are being proposed for repeal.

Social Impact

Since there is no longer any Title I funding, the repeal of these rules will have no social impact.

Economic Impact

Since there is no longer any Title I funding, the economic impact will not exceed the social impact.

Regulatory Flexibility Statement

These rules involve grants to colleges and universities from a fund that no longer exists and their repeal will clearly have no effect on small businesses.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:50.

(a)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Ombudsman Practice and Procedure and Public Notice Requirements

Proposed Readoption: N.J.A.C. 5:100

Authorized by: Hector M. Rodriguez, Ombudsman for the Institutionalized Elderly.

Authority: N.J.S.A. 52:27G-5d

Proposal Number: PRN 1989-97.

Submit comments by March 23, 1989 to:

Steele R. Chadwell, General Counsel
Office of the Ombudsman for the Institutionalized Elderly
28 West State Street, Room 305
CN 808
Trenton, New Jersey 08625-0808

Summary

N.J.A.C. 5:100 will expire on May 7, 1989, pursuant to Executive Order No. 66(1978). The Office of the Ombudsman for the Institutionalized Elderly (the "Ombudsman Office") has reviewed the rules and determined that the rules are necessary, reasonable and proper for the purposes for which the rules were originally promulgated as required by Executive Order No. 66.

The Ombudsman Office has been in existence since shortly after September 29, 1977, the effective date of its enabling legislation, N.J.S.A. 52:27G-1 et seq. The Ombudsman Office was established to receive, investigate and resolve complaints concerning certain health care facilities serving the elderly, and to initiate actions to secure, preserve and promote the health, safety and welfare and civil and human rights of the elderly patients, residents and clients of such health care facilities. The rules' predecessor regulations originally became effective on May 1, 1979; initial amendments thereto were filed and became effective on September 28, 1979.

Additionally, on January 27, 1983, the Ombudsman Office was charged with the responsibility of administering N.J.S.A. 52:27G-7.1 et seq., which requires persons employed as health care providers in facilities within the Ombudsman Office's jurisdiction to report abuse and exploitation of elderly patients, residents and clients of such facilities to the Ombudsman Office. Accordingly, the rules were adopted, became effective on June 20, 1983 and then were finally amended to their current form, becoming effective on May 7, 1984.

The rules as currently constituted have been adequate and remain so. The proposed readoption will adequately serve the public and the Ombudsman Office's immediate needs, based upon the Ombudsman Office's experience in dealing with its statutory mandates since the rules' adoption. Eventual amendment of the rules is desirable to clarify the legal requirement for reporting abuse and exploitation of elderly patients, residents and clients of facilities within the Ombudsman Office's jurisdiction, to better describe the Ombudsman Office's investigative procedures and limitations and volunteer activities, and to specifically set forth how and when individuals required to report abuse and exploitation who fail to do so will be penalized and how such penalties are to be appealed. However, such modifications of the rules are not required at the present time. Amendment of the rules will be effected at a later date.

Social Impact

The State of New Jersey has recognized that institutionalized elderly persons are peculiarly vulnerable, have special needs and problems and are generally isolated from other, non-institutionalized members of the community, sometimes including even institutionalized elderly persons' own families. The Ombudsman Office was created in response to such needs and problems, as an advocate for the State's institutionalized elderly patients, residents and clients. The Legislature declared as the public policy of the State that the Ombudsman Office shall act to secure, preserve and promote the health, safety and welfare of the State's vulnerable institutionalized elderly and to ensure that its institutionalized elderly are able to enjoy the same civil and human rights guaranteed to all New Jerseyans.

The rules are designed to assist the Ombudsman Office in fulfilling its above-mentioned legal mandate. The rules do so by elucidating means of contacting the Ombudsman Office, its investigative procedures and methods of taking action, its hearings and its availability for community service.

The rules also accomplish this goal by specifying the legal reporting requirement imposed on health care providers. The Ombudsman Office puts first and foremost the protection of the most vulnerable of New Jersey's elderly, but also recognizes that unnecessarily burdensome reporting requirements may act to limit the time available for providing an adequate level of high quality health care to the State's institutionalized elderly. The rules, based on the Office's expertise and experience, have adequately enabled the Office to protect New Jersey's institutionalized elderly without being unduly burdensome.

The rules affect all institutionalized elderly persons living in the State of New Jersey, that is, persons 60 years of age or older who are patients, residents or clients of any facility or institution, whether public or private, offering health or health-related services, which is subject to regulation, visitation, inspection or supervision by any government agency. The rules also affect anyone in New Jersey who is employed to provide health or health-related care or services to such patients, residents or clients.

The rules place no new requirements upon the individuals whom the rules affect.

Economic Impact

Any costs derived from the operation of the procedures described in the rules were already in place as a result of the Ombudsman Office's enabling legislation.

Affected health care facilities may have an administrative cost in establishing procedures for reporting as mandated by statute. Additionally, costs may be incurred in obtaining medical information and legal advice regarding such reporting. None of such costs, however, are new or are created by the rules.

Regulatory Flexibility Analysis

The rules will continue to affect every facility or institution, whether public or private, offering health or health-related services for the institutionalized elderly, and which are subject to regulation, visitation, inspection or supervision by any government agency, including such of those health care facilities which would qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules will continue to require the affected health care facilities to prepare, maintain and communicate the same types of reports that are required by the Ombudsman Office's mandatory abuse and exploitation reporting statute, N.J.S.A. 52:27G-7.1 et seq. That is, health care providers such as nurses, physicians, nurses' aides, social workers and facility administrators are required to report incidents of abuse or exploitation of the institutionalized elderly, as described by statute and case law construing the mandatory abuse and exploitation reporting statute.

Affected health care facilities will also continue to be required to provide to their patients, residents and clients, as well as the public served

by such health care facilities, information on the reporting of elder abuse and exploitation to the Ombudsman Office.

No additional initial capital costs will be incurred as a result of the rules' readoption. The annual costs of compliance should continue to be minimal, since the accumulation of such information would already be part of the efficient operation of any affected health care facility.

Again, the rules do not alter elder abuse and exploitation reporting requirements already in place; therefore, readoption will not impact upon small businesses.

There is no available means of altering existing statutory elder abuse reporting requirements, which, by law, apply to all persons rendering health or health-related services or care who are employed in New Jersey health care facilities serving the institutionalized elderly, so it is impossible to establish differing compliance or reporting requirements that take into account the resources available to small businesses.

No exemptions from coverage by the rules, in part or in whole, can be provided without endangering the public health, safety and general welfare, because the legal requirements for reporting elder abuse and exploitation to the Ombudsman Office were established for the sole purpose of preserving and promoting the health, safety and welfare (as well as the civil and human rights) of the elderly members of New Jersey's population residing in the health care facilities within the Ombudsman Office's jurisdiction. That is, in enacting into law elder abuse and exploitation reporting mandates, the Legislature concluded that such reporting was strictly necessary in all such cases, not optional, to ensure adequate protection of all the State's institutionalized elderly.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:100.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program Rules

Proposed Readoption: N.J.A.C. 7:7

Authorized By: Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 12:5-3, 13:1D-1 et seq., 13:9A-1 et seq., particularly 13:9A-2, and 13:19-1 et seq., particularly 13:19-17.

DEP Docket Number: 005-89-01.

Proposal Number: PRN 1989-103.

A **public hearing** concerning this proposal will be held on:

Wednesday, March 15, 1989
2:00 P.M.
New Jersey Department of Environmental Protection
501 E. State Street
2nd floor, Conference Room A
Trenton, New Jersey

Submit written comments by March 23, 1989 to:

Judeth A. Piccinini, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66 (1978), N.J.A.C. 7:7 expires on May 7, 1989. As required by the Executive Order, the Department of Environmental Protection (Department) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt this chapter without change.

The coastal area of the State has been the subject of comprehensive land use management for a number of reasons. Foremost, the coastal ecosystem is a fragile and unique network of beaches and the ocean, tidal and inland wetlands, flood plains, estuarine areas, bays, streams and stream corridors, vegetation communities, and wildlife habitats. Approximately 35 percent of the State's population presently inhabits areas in or immediately surrounding the coastal area. During the summer months millions of people visit the New Jersey shore contributing an estimated $4 billion annually to the State's economy. The commercial fish/shellfish industry which depends on the coastal waters contributes an estimated retail value exceeding $100 million per year. Both the commercial fisheries and the recreational use of the State coastal zone require good water quality and an aesthetically pleasing environment. The coastal permit program is the mechanism for balancing the competing requirements of human activities and for protecting and enhancing natural features of the coastal area, thereby maximizing its social, economic, and environmental value.

The coastal permit program rules in N.J.A.C. 7:7 establish the procedures by which the Department reviews permit applications and appeals from permit decisions (including appeals to the Coastal Area Review Board) under the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act (N.J.S.A. 13:9A-1 et seq.), and the Waterfront Development Law (N.J.S.A. 12:5-3.) In 1984, the Department promulgated the coastal permit program rules by consolidating the procedural rules governing the permit review process for the coastal permit programs authorized by the above three statutes. The existing rules are based on the CAFRA rules formerly found at N.J.A.C. 7:7D and elements of the repealed Waterfront Development Permit rules (N.J.A.C. 7:7-2) and Wetlands Management Rules (N.J.A.C. 7:7A-1). In 1987, N.J.A.C. 7:7 was substantially amended to clarify the standards and requirements of the coastal permit program and to rectify problems which had arisen with the consolidated permit rules. In 1988, the Department amended N.J.A.C. 7:7-2.3 (Waterfront Development Rules) to expand the area of the Department's jurisdiction under the Waterfront Development Act in the CAFRA waterfront area. In response to comments raised during the amendment process, additional amendments to N.J.A.C. 7:7-2.3 were recently proposed (see 21 N.J.R. 4(a)).

As authorized by the three underlying statutes, the coastal permit program rules govern the following types of activities: (1) CAFRA: the construction of any facility listed in Section 3 of CAFRA (N.J.S.A. 13:19-3) or in N.J.A.C. 7:7-2.1, within the coastal area described in Section 4 of CAFRA (N.J.S.A. 13:19-4); (2) Wetlands Act: the draining, dredging, excavation, or deposition of material, and the erection of structures, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act, (a list of these maps and a full list of regulated activities appears in N.J.A.C. 7:7-2.2; and (3) Waterfront Development Law: the filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways (see N.J.A.C. 7:7-2.3).

The existing rules in N.J.A.C. 7:7 are administered by the Division of Coastal Resources (Division) in coordination with the rules in N.J.A.C. 7:7E, Coastal Resource and Development Policies. The rules in N.J.A.C. 7:7E contain the Department's substantive policies regarding the use and development of coastal resources, which the Division applies as part of the N.J.A.C. 7:7 procedural process when making coastal permit application decisions (see N.J.A.C. 7:7-1.4). As such, the procedural rules in N.J.A.C. 7:7 are the mechanism for the Department's implementation of the substantive intent of the three underlying statutes.

A summary of the text of each subchapter and the significant sections in N.J.A.C. 7:7 follows:

Subchapter 1, General Provisions, contains definitions of terms and describes permits, permit conditions, permit fees, provisional permits, and the procedure to follow where more than one coastal permit is required.

Subchapter 2, Activities For Which a Permit Is Required, lists categories of activities requiring permits under CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law.

Subchapter 3, Pre-Application Conferences, describes the use of a pre-application conference and sets forth the procedure for requesting a conference, information requirements, and the preparation of a memorandum of record of the conference.

Subchapter 4, Permit Review Procedures, outlines the contents of the permit application, public notification requirements for permit applications, Departmental application review procedures, and the timetable for permit applications.

Subchapter 5, Appeals, governs the timetable and format for appealing permit denial, identifies where appeals are to be filed, and contains the Department's obligations and procedures for appeals.

Subchapter 6, Environmental Impact Statements, describes when an environmental impact statement is required, the required format and content of the statement, and to whom the statement is to be distributed.

Social Impact

The existing rules have had a positive social impact on the people of the State by providing comprehensive, efficient, and integrated procedures for regulating the delicately balanced coastal area of the State. Without the rules in this chapter, the resulting uncoordinated development would seriously erode the social, aesthetic, and ecological values associated with the coastal area. The coastal permit program rules provide a mechanism for coordinating land use in the coastal area in a manner which considers the regional nature of the area and which addresses problems beyond the boundaries and control of individual coastal communities. Upon readoption, the coastal permit program rules will continue to provide reasonable procedures for governing the regulated community's compliance with and the Department of Environmental Protection's administration of CAFRA, the Wetlands Act, and the Waterfront Development Law.

Failure to readopt these rules would adversely affect permit applicants and property owners in coastal areas by eliminating the guidelines on what coastal development is regulated, what and how to submit permit applications, and how and when the Department administers the coastal regulatory program. Readopting these rules will also allow the Department to continue the public notice and information aspects of administering the coastal permit program, which keep the public informed about coastal permit requirements for development.

The readopted chapter will have the further social benefit of providing the Department with the mechanism to implement the Coastal Resource and Development Policies contained in N.J.A.C. 7:7E (although the rules at N.J.A.C. 7:7E are beyond the scope of this proposal). The Department's Coastal Resource and Development Policies are subdivided into location policies, use policies, and resource policies, as well as policies affecting special areas, general water areas, and general land areas. Through integration of these policies with the procedures contained in N.J.A.C. 7:7, the Department has made progress in achieving the following policy objectives: (1) protecting and enhancing the coastal ecosystem; (2) concentrating rather than dispersing the pattern of coastal residential, commercial, industrial, and resort development and encouraging the preservation of open space; (3) employing a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development; (4) protecting the health, safety and welfare of people who work, reside and visit in the coastal zone; (5) promoting public access to the waterfront through linear walkways and at least one waterfront park in each municipality; (6) maintaining active port and industrial facilities, and providing for necessary expansion in adjacent sites; (7) maintaining and upgrading existing energy facilities, and siting additional energy facilities; and (8) encouraging residential, commercial, and recreational mixed-use redevelopment of the developed waterfront. In general, the coastal permit program rules have allowed the Department to give more weight to social, aesthetic, and ecological considerations in development decisions than had previously been the case.

These positive social impacts have been realized by both the general public and by those property owners whose property values might otherwise have been reduced by haphazard development in the coastal area. While the requirements of the coastal permit program rules may prevent some property owners from maximizing the immediate development value of their land, losses in development value will continue to be offset by the social, economic and environmental benefits of preserving the basic integrity of the coastal area.

Economic Impact

The coastal permit procedures in N.J.A.C. 7:7 provide an orderly and efficient method for preparing, reviewing, issuing and enforcing coastal permit applications and coastal permit decisions. However, implementing the coastal permit program has imposed administrative costs on the Department's Division of Coastal Resources. The regulated community has contributed a portion of the administrative costs of this program through the permit application fees mandated by the 90-day rules (see N.J.A.C. 7:1C; these rules are not affected by this proposal.) Under the 90-day rules, coastal permit application fees range as follows: (1) CAFRA residential permit, $1000.00 plus $10.00 per dwelling unit; (2) CAFRA nonresidential and mixed use, $1500 plus $10.00 per dwelling unit; (3) waterfront development repairs landward of mean high water line, $250.00; (4) waterfront development projects landward of mean high water line, same as CAFRA permits; (5) waterfront development projects waterward of mean high water line, one percent of construction costs, $100.00 minimum to $10,000 maximum; (6) wetlands Type A, one-half percent of construction costs, $100.00 minimum; (7) wetlands Type B, one-half percent of construction costs, $300.00 minimum. In the near future, the Department will propose amendments to the 90-day rules in order to adjust the fees for waterfront development permits in light of the proposed expansion of the Department's jurisdiction in the CAFRA waterfront area (see proposed amendments to N.J.A.C. 7:7-2.3, 21 N.J.R. 4(a)).

The readopted chapter will have several other types of economic impact on prospective coastal permit applicants. Property owners within the coastal area will continue to be subject to regulation and/or prohibition of certain types of land use, which may continue to adversely affect the development value of their property. For those projects requiring approval from the Department, applicants may incur engineering, consulting and legal fees in addition to the application fees outlined above. These application preparation fees will vary widely depending on the complexity of the project, but in the past the total permit-associated fees have had an average range of $100.00 to $5000 per project. In addition, construction costs on certain projects may increase as a result of modifying structures or whole projects to comply with the readopted coastal permit program rules and policies.

Despite these costs, the coastal area has enjoyed a healthy construction economy during the time period that the coastal permit program rules have been in effect. The long term effect of these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. Losses in specific property value and the compliance costs associated with the coastal permit program rules have been offset by the economic loss avoided as a result of regulating uses of the coastal area.

Environmental Impact

Through integration of the Coastal Policies in N.J.A.C. 7:7E with the coastal permit program rules, the Department has implemented a number of provisions designed to mitigate the adverse environmental impacts that would otherwise be caused by development activities in the coastal area. Readopting this chapter will continue to minimize the adverse environmental impacts of activities in the coastal area. The primary environmental mitigation mechanism used by the coastal permit program rules is the environmental impact statement (EIS). N.J.A.C. 7:7-6.1 requires the preparation of an EIS for all CAFRA permit applications, as well as for all major wetlands and waterfront development permits. The preparation of an EIS assists the applicant and the Division in assessing the probable effects of the proposal on the natural resources and human activities at the project site and surrounding region, and documents the potential environmental impacts of a project as part of the permit decision-making process.

In addition, several provisions of the N.J.A.C. 7:7E Coastal Policies implemented by this chapter operate to minimize the impacts of coastal area projects on the environment. Areas identified by the coastal policies as deserving special protection include: shellfish beds, surf clam areas, finfish migratory pathways, areas of submerged vegetation, beaches, dunes, wetlands, stream corridors, critical or endangered species habitat, the Pinelands, and the Hackensack Meadowlands District. Among the factors considered by the coastal resource policies are impacts of projects on marine fish and fisheries, shellfisheries, water quality, wildlife, vegetation, air quality, and floodplains. In general land areas upland of special water's edge areas, projects receive an environmental sensitivity rating indicating the general suitability of a land area for development based on vegetation and soils.

In general, the coastal permit program rules have operated to preserve the most ecologically sensitive and fragile areas along the coast from inappropriate development and to provide adequate environmental safeguards for construction that does occur in the coastal area. Coastal wetlands have benefited particularly from prohibitions on filling and mitigation measures taken under these rules; the Department estimates that there has been no net loss of coastal wetlands during the implementation of the coastal permit program.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a significant portion of builders and property owners affected by the proposed readoption will be "small businesses" as defined in the Act. To comply with the readopted rules, affected small businesses may have to submit an application for a coastal permit, which may require engineering support work, legal assistance, and assistance in evaluating the environmental impact of the project. These application preparation costs will vary widely

depending on the complexity of the project. As per the 90-day rules, N.J.A.C. 7:1C, application fees for coastal permits start at $100.00 for certain types of projects; for other project types application fees are calculated as a percentage of construction costs or on the number of dwelling units proposed and may be quite significant. To the extent that small business builders are likely to propose smaller-scale projects, application fees will be less for small businesses than for larger builders. During the time period that the existing rules have been in effect, the average total fees for coastal permit projects have ranged from $100.00 to $5000. The Department anticipates that most small businesses will not incur additional capital costs in complying with the readopted rules.

In developing the existing rules, the Department has balanced the need to protect the public and the environment from the adverse impacts of unregulated development in the coastal area against the economic impact of the rules. The Department has determined that to minimize the impact of the coastal permit program rules on small businesses would endanger public health, public safety and the environment by undermining the coordination of coastal development to such a degree as to make the coastal policy goals impossible to meet. Therefore, no exemption from coverage was provided in the existing rules, and there is no basis for exempting small businesses in the proposed readoption.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:7.

(a)

DIVISION OF COASTAL RESOURCES

Flood Hazard Area Control

Proposed Readoption: N.J.A.C. 7:13

Authorized By: Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-1 et seq., 58:10A-1 et seq., and 58:16A-50 et seq.

DEP Docket Number: 003-89-01.

Proposal Number: PRN 1989-82.

A **public hearing** concerning this proposal will be held on:

Wednesday, March 15, 1989
7:00 P.M.
War Memorial Building
W. Lafayette Street
Trenton, New Jersey 08625

Submit written comments by March 23, 1989 to:

Judeth A. Piccinini, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66 (1978), N.J.A.C. 7:13 expires on May 4, 1989. As required by the Executive Order, the Department of Environmental Protection (Department) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

At this time, the Department proposes to readopt the chapter with no changes to ensure continuity of the program. Although the Department expects in the near future to propose modifications to the chapter, the amendments will not make major changes in the structure of the permit program. Among the changes the Department is contemplating are: elimination of inconsistencies within the rules as well as between the rules and other Departmental programs; clarification of the applicability of the rules where other permit programs may apply; greater emphasis on pre-review and initial project review for permit application acceptance; clarification of the scope and substance of N.J.A.C. 7:13-5, Projects of Special Concern; and strengthened stream corridor protection. The Department has determined that in order to protect public property, public health, and the environment, the rules on flood hazard area control should not be allowed to lapse pending the detailed process of amending the rules. Interested persons may contact Steve Jacobus, Section Chief, Stream Encroachment Section, Division of Coastal Resources, (609) 292-2402, for further information.

The flood hazard area rules were adopted effective May 21, 1984, as part of an extensive amendment and recodification of existing rules governing delineated floodways. The stream encroachment permit program authorized by the flood hazard area rules is administered by the Stream Encroachment Section within the Division of Coastal Resources. Not all stream encroachments require approval of the Stream Encroachment Section; for stream locations with a drainage area less than 320 acres and for general stream cleaning and maintenance projects, the rules vest certain approval authority in local or county authorities. Also, the rules allow local Soil Conservation Districts to review certain farming practices which would otherwise constitute stream encroachments. Last, the rules allow the Department to delegate regulatory authority over the flood fringe areas of delineated streams to municipal governments.

A summary of the text of each subchapter and the significant sections in N.J.A.C. 7:13 follows:

Subchapter 1, General Provisions, describes the purpose, scope, construction, and applicability of the chapter, defines terms used in the chapter, and states where to find information on the permit process.

Subchapter 2, General Procedures for the Stream Encroachment Permitting Process, describes the stream encroachment permit process as follows:

N.J.A.C. 7:13-2.1 lists the information required on all stream encroachment applications submitted to the Department.

N.J.A.C. 7:13-2.2 states when and to whom notice of a stream encroachment permit application is due.

N.J.A.C. 7:13-2.3 describes the pre-application conference.

N.J.A.C. 7:13-2.4 describes over-the-counter permit processing.

N.J.A.C. 7:13-2.5 addresses optional approval by local municipal or county engineers for projects in small drainage areas.

N.J.A.C. 7:13-2.6 addresses approval by Soil Conservation Districts for certain agricultural projects.

N.J.A.C. 7:13-2.7 contains the procedure for obtaining an emergency permit waiver.

N.J.A.C. 7:13-2.8 describes the Department's permit review procedures.

N.J.A.C. 7:13-2.9 outlines the procedure for applying for a hardship waiver for exemption from the permit process.

N.J.A.C. 7:13-2.10 addresses extensions of time or modifications in detail for stream encroachment permits which have already been issued.

N.J.A.C. 7:13-2.11 describes the procedure for requesting a hearing to appeal an adverse decision on a permit application.

N.J.A.C. 7:13-2.12 addresses the extent of the Department's authority in the event that permit authority is delegated to other agencies.

Subchapter 3, General Standards for Permitting Stream Encroachment Within the Floodways of Delineated Streams and Within Encroachment Lines of Non-Delineated Streams, sets forth prohibited uses and restrictions on regulated activities within these zones.

N.J.A.C. 7:13-3.1 lists prohibited uses in the floodway of delineated streams or within encroachment lines of non-delineated streams.

N.J.A.C. 7:13-3.2 lists nonregulated uses within the floodway of delineated streams or within encroachment lines of non-delineated streams.

N.J.A.C. 7:13-3.3 states that uses not covered by N.J.A.C. 7:13-3.1 and 3.2 are regulated uses.

N.J.A.C. 7:13-3.4 outlines when and what type of soil erosion and sediment control measures are required on projects coming within the jurisdiction of this chapter.

N.J.A.C. 7:13-3.5 prohibits the unnecessary removal of vegetation within 25 feet of the bank of the stream, and the disposal of vegetative waste within the floodway.

N.J.A.C. 7:13-3.6 contains guidelines for stream cleaning projects within the flood hazard area.

N.J.A.C. 7:13-3.7 governs excavation projects within the flood hazard area.

N.J.A.C. 7:13-3.8 restricts disposal of spoils within the flood hazard area.

N.J.A.C. 7:13-3.9 prohibits off-stream retention and detention basins in the floodway, and requires that basins be designed in accordance with the Stormwater Management Rules, N.J.A.C. 7:8.

N.J.A.C. 7:13-3.10 contains guidelines on channel modification of streams.

N.J.A.C. 7:13-3.11 sets forth requirements for underground utility crossings under streams.

N.J.A.C. 7:13-3.12 governs aboveground utility crossings which cross streams.

N.J.A.C. 7:13-3.13 sets stability criteria for structures constructed in floodways.

N.J.A.C. 7:13-3.14 requires that fish passage be maintained whenever channel modifications are proposed as part of the stream encroachment project.

N.J.A.C. 7:13-3.15 governs dams under the jurisdiction of this chapter.

Subchapter 4, Regulation of Stream Encroachments in the Flood Fringe Area of Delineated Streams and Between the Encroachment Lines and the Boundaries of the 100-year Flood Plain of Non-Delineated Streams, contains the procedure for delegating the Department's permit authority to municipalities and describes prohibited uses and restrictions on regulated activities within the above zones.

N.J.A.C. 7:13-4.1 contains general guidelines for projects in the flood fringe area of delineated streams and outside the encroachment lines but within the 100-year flood plain of non-delineated streams.

N.J.A.C. 7:13-4.2 allows municipalities to assume regulatory authority over the flood fringe area by adopting a flood fringe area ordinance complying with the minimum standards of this chapter, the National Flood Insurance Program, and the Federal "Criteria for Land Management and Use", 44 C.F.R. 60.3(a) through (d).

N.J.A.C. 7:13-4.3 sets forth the application procedures for obtaining permits from municipalities which have adopted a compliant flood fringe ordinance.

N.J.A.C. 7:13-4.4 requires delegated municipalities to establish appeal procedures for applications in flood fringe areas.

N.J.A.C. 7:13-4.5 lists prohibited uses in the flood fringe area of delineated streams and outside the encroachment line but within the 100-year flood plain of non-delineated streams.

N.J.A.C. 7:13-4.6 lists nonregulated uses in the flood fringe area of delineated streams and outside the encroachment line but within the 100-year flood plain of non-delineated streams.

N.J.A.C. 7:13-4.7 regulates all uses not specifically prohibited or nonregulated by N.J.A.C. 7:13-4.5 and 4.6. This section lists specific requirements for structures, fill, soil erosion and sediment control, excavation, disposal of spoils, retention and detention basins, manholes, minimization of environmental damage and sewage disposal. This section also contains the 20 percent "net fill" requirements, the zero "net fill" requirement for the Central Passaic Basin, access requirements for the Central Passaic Basin, access requirements for certain types of structures, and the requirement that retention and detention basins be designed in accordance with the Stormwater Management Rules, N.J.A.C. 7:8.

Subchapter 5, Special Cases, governs Projects of Special Concern, which are certain stream encroachment projects with potentially serious adverse effects.

N.J.A.C. 7:13-5.1 contains general provisions for Projects of Special Concern.

N.J.A.C. 7:13-5.2 lists criteria for Projects of Special Concern.

N.J.A.C. 7:13-5.3 sets forth procedural requirements for Projects of Special Concern.

N.J.A.C. 7:13-5.4 lists conditions that must be met before a Project of Special Concern can be approved.

N.J.A.C. 7:13-5.5 states that low dams are subject to the requirements of N.J.A.C. 7:13-5.3(d) and (e) whether or not the project is classified as a Project of Special Concern.

N.J.A.C. 7:13-5.6 governs projects along trout streams.

N.J.A.C. 7:13-5.7 requires stream encroachment projects to comply with the provisions for protection of coastal fish resources in the Department's Coastal Resource Development Policies, N.J.A.C. 7:7E.

N.J.A.C. 7:13-5.8 requires stream encroachment projects to comply with the shellfish protection provisions of the Department's Coastal Resource Development Policies, N.J.A.C. 7:7E.

N.J.A.C. 7:13-5.9 states that bridge approaches are considered part of the permit application for bridge projects.

N.J.A.C. 7:13-5.10 governs projects which may expose acid-producing deposits.

Subchapter 6, Implementation, contains general procedures for the stream encroachment permit program.

N.J.A.C. 7:13-6.1 requires consistency between stream encroachment projects and other applicable rules, and states that stream encroachment permits are not valid until all other applicable approvals are obtained.

N.J.A.C. 7:13-6.2 allows counties to create a county water resources association to oversee flood control and water resources programs.

N.J.A.C. 7:13-6.3 contains procedures for delegation of stream encroachment permit authority by the Department to a county.

N.J.A.C. 7:13-6.4 contains penalty provisions for violations of this chapter.

Subchapter 7, Delineated Floodways, lists delineated floodways by type.

Social Impact

The readopted chapter will have a positive effect on the people of the State by continuing the State's regulation of construction and other activities in flood prone areas. The existing rules have provided positive social benefits in the following ways: minimizing loss of and damage to public and private property which would otherwise have been caused by land uses which increase flood water heights and/or velocities; safeguarding the public from damage caused by materials being swept onto nearby or downstream lands; protecting the public health by minimizing stream water quality degradation during flooding incidents; and preserving wetlands and wetlands-associated natural values (for those projects not coming under the jurisdiction of the freshwater wetlands rules, N.J.A.C. 7:7A, effective July 1, 1988). These positive social impacts have been realized by both the general public and those property owners who might otherwise have been subject to flood-related damages.

Economic Impact

Readopting the existing flood hazard control rules will provide economic beneifits for some property owners and the public in general, while continuing to impose costs on prospective builders within the flood hazard area. By reducing damages to persons and public and private property in the event of a flood, the flood hazard area rules have had a positive economic impact on property owners within the flood hazard area and on the general public. Without the flood hazard area rules, property owners within the flood hazard area would be subject to potential financial loss as the result of the increased flooding caused by unregulated development. In the event of severe flooding, it is likely that a substantial portion of this financial burden would be passed on to local municipalities, counties and the State.

The readopted chapter will have several types of economic impact on applicants for stream encroachment projects. Property owners within the flood hazard area will be subject to regulation and/or prohibition of certain types of land use, which may reduce the development value of their property. For those projects requiring approval from the Department, applicants will incur application fees (see N.J.A.C. 7:1C-1.5(a)4) and the engineering fees associated with preparing the application. Application fees for stream encroachment permits range from no fee to $150.00 to $1500 per project element; engineering fees for a single-family dwelling project may reach $4000 to $5000. Construction costs on certain projects may increase as a result of modifying structures or whole projects to comply with the flood hazard area rules. Also, the rules require additional public notice of projects of special concern at the applicant's expense. Losses in property value and the compliance costs associated with the flood hazard area rules may be offset by the economic loss avoided as a result of regulating inappropriate uses of the flood hazard area.

Environmental Impact

The existing flood hazard area rules contain a number of provisions designed to mitigate adverse environmental impacts that would otherwise be caused by stream encroachment activities; readopting this chapter will continue to minimize the environmental impact of activities in the flood hazard area. Depending on the nature and/or location of a proposed activity, the existing rules require some applicants for stream encroachment projects to submit an Environmental Report describing and analyzing the possible short and long term impacts of proposed activities. The Department estimates that Environmental Reports have been required for 30 percent of current project applications.

In a similar fashion, the existing rules designate certain projects of potential substantial environmental impact as Projects of Special Concern. Projects of Special Concern are subject to special public notice provisions, and permit approval authority for these projects is not delegable by the Department. Because of their potentially serious adverse effects, Projects of Special Concern are not approved unless denial of the application would damage the public interest, cause hardship to the applicant, or produce costs disproportionately large relative to the adverse effects of the project.

In addition, all projects within the flood fringe area or corresponding area of a nondelineated stream are subject to a 20 percent net fill limitation during construction (see N.J.A.C. 7:13-4.7). This provision minimizes the artificial increases in flood heights which result when valley storage is eliminated by unrestricted filling of flood fringe areas, thereby minimizing environmental degradation of the flood hazard area.

Several provisions of the existing flood hazard area rules were promulgated specifically to minimize the environmental impacts of stream encroachment activities on fish and wildlife. First, the flood hazard area rules establish construction criteria and seasonal restrictions for stream encroachment in various types of trout-related streams. Second, the Department requires applicants to maintain fish passage in all streams where channel modifications occur. Third, the existing rules impose special restrictions in areas where construction in the flood hazard area may expose acid-producing geologic deposits; these restrictions act to minimize fish kill and environmental damage from acidic releases. Fourth, the existing rules address soil erosion and sediment control, protection of near-stream vegetation, and stream cleaning; these provisions ensure stream channel integrity and provide habitat protection for fish and wildlife. Fifth, the stream encroachment permit process has focused attention on wetlands preservation, thereby preserving valuable fish and wildlife habitat, plant species, and other ecological values. Sixth, stream encroachment projects are required to comply with the Department's coastal fish protection and shellfish protection policies (see N.J.A.C. 7:13-5.7 and 5.8; 7:7E).

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that approximately 55 percent of builders and property owners affected by the proposed readoption will be "small businesses" employing fewer than 100 full-time employees. To comply with the readopted rules, affected small businesses may have to submit an application for a stream encroachment permit, which may require engineering support work, legal assistance, and assistance in evaluating the environmental impact of the project. As per the 90-day rules, N.J.A.C. 7:1C-1.5(a)4, application fees for stream encroachment permits range from no fee to $150.00 to $1500 per project element. Engineering fees for a single family dwelling project may reach $4000 to $5000; legal fees and consulting fees will vary widely depending on the complexity of the project. The Department anticipates that small businesses will not incur additional capital costs in complying with the readopted rules.

In developing the existing rules, the Department has balanced the need to protect the public and the environment from the adverse impacts of unregulated development in the flood hazard area against the economic impact of the rules. The Department has determined that to minimize the impact of the flood hazard area rules on small businesses would endanger public health, public safety, and the environment. Given the purpose of these rules to abate increased flood hazard due to development, a reduction/differentiation in requirements based upon business size alone may well result in diminution of the rules' effectiveness, leading to a greater flood hazard as development progresses. Therefore, no exemption from coverage was provided in the existing rules, and there is no basis for exempting small businesses in the proposed readoption.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:13.

(a)

DIVISION OF WATER RESOURCES

Water Pollution Control

Proposed Readoption with Amendments: N.J.A.C. 7:14

Authorized By: Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq., 58:10A-21 et seq., 58:11-49 et seq., 58:11-64 et seq., 58:1A-1 et seq., P.L. 1988, c. 56, 57, and 63.

DEP Docket Number: 006-89-01.

Proposal Number: PRN 1989-105.

A **public hearing** concerning this proposal will be held on:

Wednesday, March 8, 1989 at 9:30 A.M.
East Brunswick Public Library
Two Jean Walling Civic Center Drive (off Ryders Lane)
East Brunswick, New Jersey
(201) 390-6950

Submit written comments by March 23, 1989 to:

Thomas A. Borden, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order NO. 66(1978), N.J.A.C. 7:14, entitled "Water Pollution Control Act", expires on April 27, 1989. As required by Executive Order No. 66, the Department of Environmental Protection ("Department") has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, with the exception of N.J.A.C. 7:14-7 which is no longer necessary. The Department proposes to readopt N.J.A.C. 7:14 with amendments to N.J.A.C. 7:14-4 and 7:14-8; repeal and reserve 7:14-7; repeal Appendices A, B and C and propose new Appendices A, B and C.

N.J.A.C. 7:14-2, entitled "Construction of Wastewater Treatment Facilities", was adopted pursuant to the authority of N.J.S.A. 58:10A-1 et seq. (see 14 N.J.R. 1155(b)) and became effective on October 18, 1982. The rules standardize certain procedures in the construction of wastewater treatment facilities. N.J.A.C. 7:14-2 sets forth requirements for construction procedures, drawings for sewer lines, easements, field layouts, engineering designs, overhead and profit factors, contractor payments, mobilization in contracts, bid items, unit prices, roadway paving, excavation material, construction equipment and contractor's guarantees. The Department proposes to readopt these rules without change.

N.J.A.C. 7:14-4, entitled "Sludge Quality Assurance", was adopted pursuant to the authority of N.J.S.A. 13:1D-9(c), 58:10A-1 and 58:11-51 (see 11 N.J.R. 544(e)) and became effective on October 18, 1979. The rules require routine analysis and reporting on all sludge produced by domestic and industrial treatment works.

The Department is presently responsible for administering a regulatory program that ensures the safe use and management of sludge generated by all treatment works in order to protect public health and the environment. The New Jersey Legislature, with the passage of P.L. 1988, c. 57, has declared that municipal treatment works are prohibited from disposing sludge in ocean waters after March 17, 1991. In conjunction with this prohibition, P.L. 1988, c. 56 requires that sludge generated by municipal treatment works conform with land-based sludge management criteria. The land-based sludge management criteria are to be established either by the Department in the Statewide Sludge Management Plan adopted pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., or by Federal regulations adopted pursuant to the Clean Water Act, 33 U.S.C.A. §§ 1251 et seq. Section 406 of the Water Quality Act of 1987 which amended section 405 of the Clean Water Act requires the development of a program to protect human health and the environment from improper sludge use and disposal and requires the development and implementation of technical standards for sludge. The United States Environmental Protection Agency ("EPA") is in the process of developing rules concerning state sludge management programs (to be codified at 40 CFR 122, 123, 124 and 501) and technical standards for sludge management criteria (to be codified at 40 CFR 503).

In order to accomplish the Federal and State goals, the proposed readoption and amendments to N.J.A.C. 7:14-4 continue to require all domestic and industrial treatment works to perform routine sampling, analysis and reporting. The Department has increased the number of constituents to be analyzed in order to determine the degree to which there is chemical contamination in the sludge produced by treatment works. A tracking system of the sludge analyses will be established by the Department which will enable treatment works to develop environmentally sound sludge management alternatives. The Department is proposing to repeal the existing Appendices A, B and C, and is proposing new appendices in order to incorporate new sludge laboratory methods, new sludge reports and the list of priority pollutants to be analyzed.

N.J.A.C. 7:14-7, entitled "Ocean Dumping Alternative Development", was adopted pursuant to the authority of N.J.S.A. 58:10A-1 (see 10 N.J.R. 10(b)) and became effective December 2, 1977. The Legislature's prohibition on the ocean dumping of sludge after March 17, 1991 supersedes N.J.A.C. 7:14-7. Therefore, the Department is proposing the repeal of N.J.A.C. 7:14-7.

N.J.A.C. 7:14-8, entitled "Civil Administrative Penalties and Requests for Adjudicatory Hearings", was adopted pursuant to the authority of

N.J.S.A. 58:10A-10, 58:11-71, 58:1A-16 and 58:10A-32 (see 20 N.J.R. 1884(a)) and became effective August 1, 1988. These rules implement P.L. 1986, c. 170, which increased the maximum civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. N.J.A.C. 7:14-8 sets forth the procedures for the assessment, payment and settlement of civil administrative penalties, the procedures to request and conduct an adjudicatory hearing and the procedures to determine civil administrative penalties.

The proposed amendments to N.J.A.C. 7:14-8 are necessary to clarify the recently adopted civil administrative penalty rules. The proposed amendments include the clarification of rules concerning unpermitted discharge violations and the basis used to determine the seriousness of violations. The Department's amendments make it clear that each day during which a violation continues will uniformly be treated as a separate and distinct violation, and a refusal to allow the Department to enter and inspect a building is only a violation if the Department's entry is lawful. In the existing rules, the Department determines penalties for unapproved activities in conjunction with treatment works based on a percentage of the capital costs of the facility; the amendments allow the Department to determine the penalty either on the percentage basis or on the seriousness of the violation and the violator's conduct. The Department proposes to discontinue the use of civil administrative penalties for a violator's failure to pay a civil administrative penalty when due. The amendments additionally discontinue the use of classifying violation at first, second and third violations when assessing penalties for violations of laboratory certification, the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act. The amendments also establish terms and conditions upon which the Department may settle civil administrative penalties. The Department proposes to include a new section, N.J.A.C. 7:14-8.14, which provides for the severability of the provisions in N.J.A.C. 7:14-8.

The following is a section by section summary of the amendments to N.J.A.C. 7:14:

In Subchapter 4:

N.J.A.C. 7:14-4.1 is being deleted because the authority for this subchapter is in the heading of the subchapter.

N.J.A.C. 7:14-4.2 has been recodified at N.J.A.C. 7:14-4.1 and an amendment is being proposed to clarify the Department's policy to include the pretreatment works of significant industrial users ("SIU") in the category of industrial treatment works.

N.J.A.C. 7:14-4.3 has been recodified at N.J.A.C. 7:14-4.2 and an amendment is being proposed to make it more clear that the purpose of the subchapter is to provide the Department with sludge analyses in order to establish a sludge quality data system. A treatment works will then be able to use that data to develop environmentally sound sludge management alternatives.

N.J.A.C. 7:14-4.4 has been recodified at N.J.A.C. 7:14-4.3 and an amendment is being proposed to include the definitions of "BOD (biochemical oxygen demand)", "COD (chemical oxygen demand)", "domestic pollutant", "domestic wastewater sludge", "effluent", "permit-by-rule discharger", "permitted flow", "process wastewater", "process wastewater sludge", "SIU", "sludge quality criteria" and "ultimate management". Various other definitions have been deleted or amended in order to resolve the conflict between the definitions in N.J.A.C. 7:14-4.4 and those in N.J.A.C. 7:14A. The Department has included a reference to the New Jersey Pollutant Discharge Elimination System definitions which should be used in addition to the definitions in N.J.A.C. 7:14-4.4.

N.J.A.C. 7:14-4.4 will now contain the analytical methods which are to be utilized for sludge samples. The amendments incorporate the new methods developed by the State Sludge Methods Task Force. These methods are set forth in Appendix A. It is anticipated that methods developed by the Task Force will also be included in N.J.A.C. 7:18 when that rule is updated. Where a laboratory method for sludge analyses is not provided for in N.J.A.C. 7:18 or Appendix A, the analyses are being conducted either in accordance with "Test Methods for Evaluating Solid Waste" or "POTW Sludge Sampling and Analysis Guidance Document". Only under a standardized analytical program, utilizing the best methods available for sludge analyses, can the analytical requirements be equitably imposed upon all sludge generators and can reliable sludge quality information be obtained to fulfill the purpose of these rules.

N.J.A.C. 7:14-4.5 is being deleted because the sludge report and the reporting requirements have been updated. N.J.A.C. 7:14-4.5 will now contain the reporting categories for permit-by-rule dischargers and domestic and industrial treatment works. The reporting categories for domestic treatment works incorporate those treatment works which use agricultural or distribution and marketing based sludge management options. This makes this rule consistent with current regulatory permitting requirements under N.J.A.C. 7:14A. The reporting categories for domestic treatment works will be determined by the permitted daily flow rather than the average daily flow. The Department is also proposing reporting categories for industrial treatment works and permit-by-rule dischargers.

N.J.A.C. 7:14-4.6, which authorizes the Commissioner to amend the various reporting requirements, is being deleted because rule amendments are governed by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. N.J.A.C. 7:14-4.6 will now contain locations and procedures for sludge sampling. The proposed amendments are necessary in order to obtain sludge samples for analyses which will represent the quality of the sludge to be used for ultimate management. The Department has reduced the time period for compositing samples in order to obtain reliable sludge samples. Given the fact that certain treatment works will effectively composite the sludge samples themselves, the Department may allow those plants to reduce their sampling frequency. Use of reliable and consistent methods of sludge sampling will reduce the occurrence of analytical errors or inconsistencies.

N.J.A.C. 7:14-4.7, which establishes testing methods for sludge analysis, is being deleted in order to incorporate updated methods for sludge analysis developed by the State Sludge Methods Task Force. N.J.A.C. 7:14-4.7 will now contain the reporting requirements for domestic and industrial treatment works. The frequency with which domestic treatment works must submit reports is based upon permitted daily flow. Therefore, reporting frequency increases with increased levels of the permitted daily flow. Industrial and domestic treatment works are required to submit priority pollutant scans for the pollutants listed in Appendix C. Information about the toxic pollutants which occur in an individual treatment works' sludge is important in determining acceptable sludge management alternatives as well as providing a regulatory tool for determining compliance with sludge management criteria. Permit-by-rule dischargers are not required to report to the Department itself, but are required to comply with the requirements imposed on industrial treatment works: to perform analyses, sample sludge and maintain records for five years.

N.J.A.C. 7:14-4.8 is being amended to clarify the Department's ability to have access to the premises and records of a domestic or industrial treatment works.

N.J.A.C. 7:14-4.9 is being amended to specify the civil administrative penalty sections associated with violating the requirements of N.J.A.C. 7:14-4.

N.J.A.C. 7:14-4.10 is being amended to establish an implementation schedule for the reporting requirements in N.J.A.C. 7:14-4.7. Domestic and industrial treatment works and permit-by-rule dischargers are required to begin their reporting periods on June 1, 1989. New domestic and industrial treatment works are required to submit a report within 90 days of the start of their operations. New permit-by-rule dischargers are required to begin their reporting periods within 90 days of the start of their operations.

N.J.A.C. 7:14-4.11, which establishes a procedure for the Department to publish sludge publications, is being deleted. Rather than publishing sludge reports, the Department is proposing to establish a data system to trace sludge quality. The Department is proposing, in N.J.A.C. 7:14-4.11, a procedure for exemptions and reductions in the reporting requirements. No exemptions or reductions are being allowed for domestic treatment works in submitting the Domestic Wastewater Sludge Report (T-VWX-007), the Metals and Selected Chemical Parameters Report (T-VWX-008) and the Toxic Organic Compounds Report (T-VWX-009). The Department, in order to comply with the requirements of P.L. 1988, c. 56, must have sufficient sludge quality information available for all treatment works in order to determine compliance with land-based sludge management criteria. However, the Department is proposing to allow reductions in the reporting frequency of the priority pollutant scan for domestic treatment works which can justify a reduction based on the nature of the discharges in their system, their sludge quality or their sludge management practices.

The currently permitted exemptions and reductions for permit-by-rule and industrial treatment works have been maintained to encourage waste minimization or recycling alternatives. The Department is proposing to allow reporting reductions for those industrial treatment works which produce smaller quantities of sludge or recycle their sludge.

N.J.A.C. 7:14-4.12 is being amended to clarify the severability of the various provisions of N.J.A.C. 7:14-4.

N.J.A.C. 7:14-4.13, which sets forth reporting categories for domestic treatment works, is being deleted. Similar updated reporting categories are being proposed in N.J.A.C. 7:14-4.5.

N.J.A.C. 7:14-4.14, which covered the Sludge Report, is being deleted. The new Domestic Wastewater Sludge Report (T-VWX-007) is set forth in Appendix B and new reporting requirements are being proposed in N.J.A.C. 7:14-4.7.

N.J.A.C. 7:14-4.15, which covered the Heavy Metals and Selected Chemical Parameters Report, is being deleted. An updated Metals and Selected Chemical Parameters Report (T-VWX-008) is set forth in Appendix B and new reporting requirements are being proposed in N.J.A.C. 7:14-4.7.

N.J.A.C. 7:14-4.16, which covered the Toxic Organic Compounds Report, is being deleted. An updated Toxic Organic Compounds Report (T-VWX-009) is set forth in Appendix B and new reporting requirements are being proposed in N.J.A.C. 7:14-4.7.

N.J.A.C. 7:14-4.17, which establishes a procedure for the resumption of former reporting requirements, is being deleted. The proposed amendments in N.J.A.C. 7:14-4.11 include similar provisions for the resumption of former reporting requirements.

N.J.A.C. 7:14-4.18, which provided an exemption for various reporting requirements, is being deleted. An updated procedure for exemptions and reductions in reporting requirements is being proposed in N.J.A.C. 7:14-4.11.

N.J.A.C. 7:14-4.19, which sets forth the sludge sampling procedures, is being deleted. A new sludge sampling procedure is being proposed in N.J.A.C. 7:14-4.6. The adoption of these procedures will result in more accurate sludge samples.

N.J.A.C. 7:14-4.20, which sets forth reporting requirements for industrial treatment works and SIU pretreatment works, is being deleted. Similar reporting requirements are being proposed in N.J.A.C. 7:14-4.7.

N.J.A.C. 7:14-4.21, which sets forth procedures for composite samples, is being deleted. New sampling procedures are being proposed in N.J.A.C. 7:14-4.6. These procedures will produce samples that are more representative of the sludge being produced.

In Subchapter 8:

N.J.A.C. 7:14-8.1 sets forth the statutory language that "each day during which such violation continues shall constitute an additional, separate, and distinct violation" N.J.S.A. 58:10A-10. The Department has additionally included similar language clarifying the treatment of a continuing violation as an additional daily violation in N.J.A.C. 7:14-8.5, 8.8, 8.9, and 8.11.

The Department is proposing, in N.J.A.C. 7:14-8.3, a provision authorizing the Department to settle civil administrative penalties under certain terms and conditions. The Water Pollution Control Act, N.J.S.A. 58:10A-10d, states that "[a]ny civil penalty assessed under this section may be compromised by the commissioner . . . upon such terms and conditions as the commissioner may establish by regulation." Although the Department included very similar settlement conditions in a prior version of N.J.A.C. 7:14-8, the August 1, 1988 adoption repealed the prior rules and inadvertently failed to include any rules establishing the terms and conditions for the Department's settlement of civil administrative penalties.

The proposed amendments to N.J.A.C. 7:14-8.5 clarify that an unpermitted discharge of each separate pollutant shall be treated as an additional, separate and distinct violation. A violation of the Water Pollution Control Act presently includes, but is not limited to, a violation of a provision of any rule, water quality standard, effluent limitation, administrative order or permit. An unpermitted discharge of any pollutant is a clear violation of the central provision of the Water Pollution Control Act. N.J.S.A. 58:10A-6a provides that it is "unlawful for any person to discharge any pollutant, except in conformity with a valid New Jersey Pollutant Discharge Elimination System permit." The existing rule makes it clear that where there is a permitted discharge for which effluent limitations have been established, each violation of an effluent limitation shall constitute an additional, separate and distinct violation, but the existing rule does not make it clear that each pollutant in an unpermitted discharge constitutes an additional, separate and distinct violation. Any other interpretation of the existing rule would result in a situation where an unpermitted discharge violation would be treated more favorably than a violation of a permitted discharge, which is clearly not the Department's policy.

The Department, in N.J.A.C. 7:14-8.5, additionally proposes to clarify the basis used to determine the seriousness of violations (the Department determines the seriousness of the violation as major, moderate or minor and thus has removed the word "factor"). The seriousness of the violation will either be based on the degree the violation has caused harm to human health or the environment or based on the degree the violation has the potential to cause harm to human health or the environment. The Department is not always able to immediately judge, and in some cases may never be able to judge, the seriousness of a violation's actual harm because the effects of many discharges are not readily discernible. For example, in the case of a discharge of a pollutant to surface water, the discharge may not be immediately known. By the time the discharge becomes known and the surface water is investigated, any evidence of harm to the environment, such as a fish kill, is no longer apparent. However, based upon the nature and amount of the discharge pollutant, the Department has the ability to determine the potential harm to the environment.

The proposed amendment to N.J.A.C. 7:14-8.7 clarifies that the Department may only assess civil administrative penalties against violators who refuse, inhibit or prohibit the Department's immediate entry of any building, where the entry is lawful.

N.J.A.C. 7:14-8.8 presently uses various percentages of the capital costs of a facility or treatment works to determine the amount of the civil administrative penalties for conducting unapproved activities. Because information regarding the capital costs of a facility or treatment works is not always obtainable by the Department, the proposed amendment includes a provision allowing the Department to assess a civil administrative penalty either on the existing percentage basis or on the seriousness of the violation and the violator's conduct pursuant to N.J.A.C. 7:14-8.5. The Department had the ability, in prior rules, to choose between an assessment based on a percentage of the capital costs or the seriousness of the violation and conduct. The August 1, 1988 adoption inadvertently failed to include this option.

The proposed amendment to N.J.A.C. 7:14-8.9 includes an additional factor which the Department may consider when adjusting the civil administrative penalties assessed in this section. The penalties may be adjusted based on the circumstances of the violator or the violations. The same factor has been included in a similar provision in N.J.A.C. 7:14-8.5.

N.J.A.C. 7:14-8.10 proposes to discontinue the Department's use of civil administrative penalties for a violator's failure to pay a civil administrative penalty when due. The Department will pursue violators who fail to pay civil administrative penalties when due in a civil action in Superior Court pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-10e.

The proposed amendment to N.J.A.C. 7:14-8.11 modifies the procedure for assessing civil administrative penalties for violations of rules governing laboratory certification and standards of performance. The Department's proposal omits the restrictive use of defining first, second and third violations based on the receipt of written notice or the time between violations. In implementing this rule, the Department found the definitions of first, second and third violations to be overly restrictive and difficult to implement. The Department considers the existing matrix to be sufficient to determine the amount of the violation because the second, third or subsequent violation of the same provision clearly establishes the appropriate penalty.

The proposed amendment to N.J.A.C. 7:14-8.13 also discontinues the use of defining first, second and third violations when assessing civil administrative penalties for violations of the Water Supply Management Act and the Water Supply and Wastewater Operators' Licensing Act. In addition, the Department is clarifying that the second, third and subsequent violations must be violations of the same provision initially violated in order for the Department to assess those penalties. The Department is also clarifying its policy to only assess civil administrative penalties against violators who refuse, inhibit or prohibit the Department's immediate entry of any building, where the entry is lawful.

The Department is proposing in N.J.A.C. 7:14-8.14 a new provision which makes the provisions in N.J.A.C. 7:14-8 severable.

Social Impact

The readoption of N.J.A.C. 7:14-2, concerning the construction of wastewater treatment facilities, will continue to affect local governments, sewerage and utilities authorities, engineering consultants and construction contractors. These rules will have a positive impact on those affected because the standardization of certain procedures in the construction of wastewater treatment facilities will facilitate compliance with the regulatory provisions and the construction grant requirements.

The proposal to readopt and amend N.J.A.C. 7:14-4 will provide a positive social impact by satisfying the public's insistence on closely regulated wastewater sludge management and provide environmentally sound alternatives to the ocean dumping of sludge. The proposed amendments will ensure that the necessary sludge quality information is avail-

able to all affected treatment works for the evaluation and selection of environmentally sound sludge management alternatives.

The Department's proposal to readopt and amend N.J.A.C. 7:14-8 will have a positive social impact by discouraging noncompliance with the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act. The proposed amendments will allow potential violators to more adequately understand the penalties involved with noncompliance.

Economic Impact

The readoption of N.J.A.C. 7:14-2 will continue the cost reductions to governmental agencies, grantees, engineering consultants and construction contractors provided by the original adoption of the subchapter. Standardizing the procedures in the construction of wastewater treatment facilities will provide a uniform and efficient system for design and construction.

The economic impact of the readoption and amendments to N.J.A.C. 7:14-4 will be borne by all domestic, industrial and permit-by-rule treatment works required to comply with the requirements in a proportional relationship to the potential to cause harm to human health or the environment. In other words, larger domestic treatment works or those with a large percentage of industrial contributors are required to report more frequently. Similarly, the industrial treatment works that utilize or process a wider range of toxic pollutants must analyze a greater number of constituents. The estimated cost required to perform the various analyses are summarized below:

Priority Pollutant Organics	Cost Range ($/sample)
Methods 1634, 1635	$2,200-400†
Methods 624-S, 625-S	$1,800-2,200†
Priority Pollutant Metals	
By ICAP or AAS	$25-200.00††
Conventional Pollutants	
Oil and Grease	$15-25.00
Nitrates	$10-20.00
Ammonia, as Nitrogen	$10-20.00
Total Nitrogen	$10-20.00
Total Suspended Solids	$10-20.00
Total Phosphorus	$10-20.00
Other	
Cyanide	$20-30.00
Phenols	$20-30.00
Potassium	$20-30.00
Toal PCBs	$60-150.00

†Costs are for complete priority pollutant analysis

††Cost is per metal and will vary depending on the number of metals analyzed per sample

The economic impact of N.J.A.C. 7:14-4 upon the laboratories hired to perform such analyses will be beneficial due to the increased number of constituents that the treatment works are required to analyze. The economic effect on individuals paying sewer bills will be insignificant because the costs associated with the required analyses are a very small percentage of the total costs involved in the operation of a domestic treatment works.

The economic impact of N.J.A.C. 7:14-8 will be confined to the violators of the following statutes: the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act. The extent of the economic impact on violators will depend on the conduct of the violator, the seriousness of the environmental damage and the particular provisions violated.

Environmental Impact

The Department expects positive environmental impacts from the proposed readoption of N.J.A.C. 7:14-2. The standardization of the construction of wastewater treatment facilities will continue to ensure that the environmental protection requirements in the construction standards are met. Efficient construction of these treatment facilities will result in more environmentally sound wastewater treatment.

The readoption and amendments to N.J.A.C. 7:14-4 will place new emphasis on identifying and limiting those toxic pollutants in sludge that may pose an adverse effect on public health or the environment. The sludge quality information obtained through these rules will be utilized by the Department and the various treatment works to develop acceptable sludge management plans which will address the improvement of sludge quality for selected sludge management options. In addition, the proposed readoption reflects the Department's policy to manage the program as effectively and efficiently as possible. The readoption and amendments, effect on the gathering of more accurate, reliable and useful sludge quality information will have a positive environmental impact.

With the readoption and amendments to N.J.A.C. 7:14-8, the Department expects a positive environmental impact because the rules serve as a strong deterrent to those who would violate New Jersey's environmental statutes. The clarification of the Department's procedure in assessing these extensive civil administrative penalties will provide the regulated community with an incentive to conduct their activities in conformance with the Department's rules. The amendment to N.J.A.C. 7:14-8.3 authorizing the Department to settle civil administrative penalties under certain terms and conditions will encourage violators to implement pollution prevention measures or remedial measures thus preventing or abating the violation's adverse effects on human's health and the environment.

Regulatory Flexibility Analysis

The readoption of N.J.A.C. 7:14-2 would apply to sewerage and utilities authorities, engineering consultants and construction contractors, many of which are considered to be "small business" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these rules, the small businesses must design and construct the wastewater treatment facilities in accordance with standardized procedures. The costs of compliance with these rules is anticipated to decrease the costs associated with the construction of wastewater treatment facilities because the standardized procedures will eliminate redundant and unnecessary procedures. Due to the standardization of the construction procedures, the compliance requirements of the rules are uniform in their application to those regulated. The Department has determined, in order to protect human health and the environment from the pollutants in wastewater, that it would not be appropriate to take into consideration the size of a business involved in the construction of wastewater treatment facilities. In developing the rules, the Department has balanced the need to protect the environment against the economic impact of the rules and has determined that to minimize the impact of the rule would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

This readoption, specifically considering the amendments to N.J.A.C. 7:14-4, would apply to those places of business which operate a domestic or industrial treatment works. The Department currently has an inventory of approximately 515 domestic treatment works and is developing an inventory of industrial treatment works. The Department estimates that there are 800 industrial treatment works. Of the 515 domestic treatment works, approximately 100 are privately owned and of the 800 industrial treatment works, approximately 160 have fewer than 100 employees. Thus it is estimated that of the total number of treatment works (approximately 1315) that would be impacted by these rules each year, approximately 260 are "small business" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these rules, the small businesses will have to sample their sludge, perform analyses, submit reports and maintain records of those reports. The costs of compliance will vary, depending on the number of constituents required to be analyzed. The estimated costs of analysis can be calculated using the figures in the economic impact statement above. In developing the rules, the Department has balanced the need to protect the environment against the economic impact of the proposal and has provided differing reporting requirements and exemptions based on the size of the facility for domestic treatment works (see N.J.A.C. 7:14-4.5, 4.7 and 4.11) and has provided a procedure for exemptions and for reducing the reporting requirements for industrial treatment works (see N.J.A.C. 7:14-4.7 and 4.11) which have lower sludge production.

This readoption, specifically considering the amendments to N.J.A.C. 7:14-8, will not impose reporting, recordkeeping or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. The purpose of N.J.A.C. 7:14-8 is to set forth the procedures used by the Department to assess civil administrative penalties against violators of various environmental statutes. Businesses, be they large or small, will not be required to comply with the requirements of these rules as long as they do not violate the various environmental statutes and accompanying rules. The Department, in accordance with its mandate to protect human health and the environment, has determined that in assessing a penalty it would not be appropriate to take into

consideration the size of the business. It has been the Department's experience that the statutory violations and the threat to human health and the environment caused thereby have no correlation to business size.

Full text of the proposed readoption, and the text of N.J.A.C. 7:14-7 and the appendices proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:14.

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

SUBCHAPTER 4. SLUDGE QUALITY ASSURANCE

[7:14-4.1 Authority

These regulations are promulgated pursuant to the authority of "Pretreatment Standards for Sewerage," P.L. 1972 c. 42: N.J.S.A. 58:11-9 et seq. and the "Water Pollution Control Act," N.J.S.A. 58:10A-1 et seq. and N.J.S.A. 13:1D-9(c).]

7:14-[4.2]**4.1** Scope

The following shall constitute the [regulations] **rules** for sludge quality assurance reporting required of all domestic and industrial treatment works [and pretreatment works]. The [regulations] **rules** prescribe the method and frequency for reporting on the quantity, quality[,] and **management** method of [disposal and/or utilization of] sludge generated by such [facilities] **treatment works**.

7:14-[4.3]**4.2** Purpose

(a) The [regulations] **rules in this subchapter** are promulgated for the following purposes:

1. To determine the degree of chemical contamination, including metals and organic compounds present in sludge produced by domestic and industrial treatment works [and pretreatment works for industrial users.];

2. To establish a data system providing information for a program to reduce the discharge of toxic levels of pollutants into **the** waters of the [s]State[.]; **and**

3. To establish a data system providing information for [programs encouraging] environmentally sound [alternatives for] sludge [utilization and disposal] **management**.

7:14-[4.4]**4.3** Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. **Unless otherwise specified below, all words and terms shall be as defined in "The New Jersey Pollutant Discharge Elimination System", N.J.A.C. 7:14A.**

["Average daily flow" means the monthly moving average of the last 2 consecutive average monthly flows where the average monthly flow is the total flow for the month divided by the number of days in the month.]

"BOD" (biochemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter) required during stabilization of decomposable organic matter by aerobic biochemical action as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes", USEPA, Office of Technology Transfer, Washington, D.C., March 1983.

"COD" (chemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter) required to oxidize the organic matter in a waste sample under specific conditions of oxidizing agent, temperature and time as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes", USEPA, Office of Technology Transfer, Washington, D.C., March 1983.

. . .

"Domestic pollutant" means a pollutant which results from the discharge of household, commercial or other wastes from bathrooms, toilet facilities, home laundries and kitchens which are predominantly the result of natural human waste elimination associated with bodily function and food preparation.

"Domestic treatment works" (**DTW**) means [a treatment works not serving exclusively or primarily a user or users identified in subsection (h) of this section, and treating primarily domestic wastewater] **all publicly owned treatment works as well as any privately owned treatment works processing primarily domestic wastewater and pollutants together with any ground water, surface water, storm water or process wastewater that may be present.**

"Domestic wastewater" means the liquid waste or liquid borne wastes [resulting from the non-commercial preparation, cooking and handling of food and/or consisting of human excrement and similar wastes from sanitary conveniences, which, together with any ground water, surface water, and storm water that may be present, whether treated or untreated, is] discharged into a **domestic** treatment works.

"Domestic wastewater sludge" means the solid residue and associated liquids resulting from the physical, chemical or biological treatment of domestic wastewaters by a domestic treatment works.

"Effluent" means the treated liquids which are discharged by a domestic or industrial treatment works.

["Grab sample" means a single sample collected at a particular time and place.

"Industrial process wastewater" means the liquid waste or liquid borne waste resulting from the processes employed by any user or users identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions and which, together with any ground water, surface water, and storm water that may be present, whether treated or untreated, is discharged into a treatment works:

1. Division A. Agriculture, Forestry, and Fishing;
2. Division B. Mining;
3. Division D. Manufacturing;
4. Division E. Transportation, Communications, Electric, Gas, and Sanitary Services;
5. Division I. Services.

"Industrial process wastewater sludge" means the sludge which results from the application of treatment to industrial process wastewater in a treatment works.]

"Industrial treatment works" means [any] **a** treatment works [serving exclusively or primarily any user or users of treatment works identified in this section, and treating the industrial process wastewater, or a combination of the industrial process wastewater and the domestic wastewater of said user or users] **which treats primarily process wastewater and/or industrial pollutants as determined by the percentage of process wastewater, or mass loading of BOD, COD or suspended solids in the wastewater flow. Industrial treatment works shall also include any treatment works whether publicly or privately owned which treats primarily wastewater or leachate from a municipal solid waste facility or a potable water treatment plant. This definition shall also encompass SIU pretreatment works.**

["Inhibitory pollutant" means any pollutant which, when entering a domestic treatment works, in sufficient quantity, will interfere with the treatment works physical, chemical and/or biological processes.

"SIU pretreatment works" means, solely for the purposes of these regulations governing sludge quality assurance, any treatment works serving exclusively an SIU facility and treating the facility's industrial process wastewater, or a combination of its industrial process wastewater and its domestic wastewater, prior to the discharge thereof into a domestic treatment works.

"Liquid phase" means the liquid portion which passes through a fiber filter disc after the sludge is centrifuged and the supernatant liquid is applied to the surface of the disc. (See Appendix C.)]

"MGD" means million gallons per day.

["Monthly moving average" is calculated by adding the average flow for the most recent month the sum of the average monthly flows of the prior 11 months, then dividing by 12.]

"Permit-by-rule discharger" means an indirect discharger regulated pursuant to N.J.A.C. 7:14A-13.5.

"Permitted flow" means a treatment work's maximum allowable flow (in MGD) as stated in the facility's NJPDES Permit.

"Pretreatment" means applications of physical, chemical and/or biological processes to reduce the amount of pollutants in, or alter the nature of the polluting properties of [, an industrial] **a** process wastewater prior to discharging such wastewater into the domestic treatment works.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the pro-

duction or use of any raw material, intermediate product, finished product, byproduct, or waste product.

"Process wastewater sludge" means the solid residue and associated liquid resulting from the physical, chemical and/or biological treatment of process wastewaters by an industrial treatment works.

["SIU" (Significant Industrial User) means, solely for the purposes of this subchapter governing sludge quality assurance, any user who discharges, into a domestic treatment works, industrial process wastewater which either exceeds 25,000 gallons per day, or exceeds the mass equivalent of 25,000 gallons per day, of the domestic waste of that particular treatment works based on a design value as filed with the Department for any one of the following parameters—Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), Suspended Solids, or exceeds five percent of the average daily flow of the treatment works, or contributes five percent or more of the daily mass loading of any of the pollutants listed in Appendix B-2 and B-3 which are entering the treatment works.

1. BOD, COD, and suspended Solids are defined in Manual of Methods for Chemical Analysis of Water and Wastes (see N.J.A.C. 7:14-4.7(a)3).

2. Where the design values for BOD, COD, or Suspended Solids have not been filed with the Department, the domestic treatment works may use the influential BOD, COD or Suspended Solids for the purpose of these calculations.]

"Significant indirect user" ("SIU") means, solely for the purposes of this subchapter, any user, excluding municipal collection systems, who discharges on any one day wastewater into a domestic treatment works where:

1. The volume of process wastewater exceeds 25,000 gallons per day;

2. The amount of BOD, COD or suspended solids in the process wastewater discharge exceeds the mass equivalent of 25,000 gallons per day of the domestic waste of the affected domestic treatment works;

3. The volume of process wastewater in the discharge exceeds five percent or more of the average daily flow of the domestic treatment works;

4. The discharge of process wastewater contributes, prior to any pretreatment, five percent or more of the daily mass loading of any of the pollutants listed in N.J.A.C. 7:14A, Appendix B Tables II-IV;

5. The user of a domestic treatment works is determined to be a hazardous waste facility under N.J.A.C. 7:26-12 and meets the requirements of N.J.A.C. 7:14A-4.2(b)1;

6. The user is determined to be an industrial waste management facility under N.J.A.C. 7:14A-4;

7. The user has been found by the Department to be in violation of State laws or rules, or local ordinances concerning environmental issues;

8. The discharge consists of landfill leachate, either pure or diluted by groundwater or surface runoff;

9. The discharge consists of significant quantities of polluted groundwater which is pumped from the ground in order to decontaminate an aquifer; or

10. The Department determines it would be consistent with the intent of the "Pretreatment Standards for Sewage", N.J.S.A. 58:11-49 et seq., or the "Water Pollution Control Act", N.J.S.A. 58:10A-1 et seq., to require a permit for the indirect discharger.

"SIU pretreatment works" means any treatment works serving exclusively a SIU facility and treating the facility's process wastewater, or a combination of its process wastewater and its domestic wastewater, prior to the discharge thereof into a domestic treatment works.

"Sludge" means the solid residue and associated liquid resulting from physical, chemical, and/or biological treatment of domestic or [industrial] **process** wastewaters.

"Sludge quality criteria" means any restriction on quantities, quality, discharge rates, concentration of chemical, physical, thermal, biological, or other constituents of a pollutant in sludge based upon the method for ultimate management.

["Solid phase" means the nonfilterable residue remaining on the surface of a fiber filter disc after the sludge is centrifuged, the liquid portion decanted, the solid portion applied to the surface of the fiber filter disc and a vacuum applied to the apparatus to remove the remaining liquid portion. (See Appendix C.)]

"Suspended solids" means total nonfilterable residue **as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes", USEPA, Office of Technology Transfer, Washington, D.C., March 1983.**

["Toxic pollutant" means those pollutants, or combinations of pollutants, including disease causing agents, which after discharge into the environment in sufficient quantities and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, will, on the basis of information available to the commissioner, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation in such organisms or their offspring.]

"Treatment works" means any device or system[s], whether [publicly or privately owned or operated] **public or private**, used in the storage, treatment, recycling, or reclamation of domestic, municipal or industrial waste of a liquid nature **and residuals associated with treatment of said liquid wastes,** including, **but not limited to,** intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment and their appurtenances; **and digesters, dewatering equipment, stabilization equipment, and conveyors;** extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other works [including sites] for the treatment process or for ultimate disposal of residues resulting from such treatment. Additionally, "treatment works" means any other method or system for preventing, abating, reducing, storing, [treatment] **treating**, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems.

"Ultimate management" means final management of sludge at a facility or operation such that no additional permit or approval actions are required for further processing or movement.

["User" means any individual, firm, company, partnership, corporation, association, group or society, and includes the State of New Jersey, and agencies, districts, commissions and political subdivisions created by or pursuant to State law and Federal agencies, departments or instrumentalities thereof which discharge industrial process wastewater into a treatment works.]

[7:14-4.5 Preparation and submission of sludge reports

(a) All sludge reports required by these regulations shall be submitted on computer forms provided at the end of this subchapter as Appendix A for duplication and addressed to: Program Director, Office of Sludge Management and Industrial Pretreatment (OSMIP), Division of Water Resources, P.O. Box CN-029, Trenton, New Jersey, 08625.

(b) Appendix A-1 sludge reports shall be postmarked no later than 15 calendar days after the end of the required reporting period. Appendix A-2, A-3 and A-4 sludge reports shall be postmarked no later than 60 calendar days after the end of the required reporting period.]

[7:14-4.6 Action of the Commissioner

The Commissioner may rescind, amend or expand the reporting requirements as necessary in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.]

7:14-[4.7]**4.4** [Testing]**Analytical** procedures

[(a) Where applicable, testing shall be conducted in accordance with procedures established in the following documents, including amendments and revisions: (Modifications of referenced analytical techniques are acceptable where necessary to effect separation and quantification of the organic components of the sludge. Testing for other sludge components shall follow the procedures given in the referenced documents without modification.)

1. Guidelines Establishing Test Procedures for the Analyses of Pollutants, Federal Register, 41 FR 52780, December, 1976;

2. Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, USEPA, Health Effects Research Laboratory, Environmental Toxicology Division, Research Triangle Park, N.C., June 1977;

3. Manual of Methods for Chemical Analysis of Water and Wastes, USEPA, Office of Technology Transfer, Washington, D.C. March, 1979;

4. Sampling and Analysis Procedures for Screening Priority Pollutants, USEPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio, April 1977;

5. Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1975, Water Pollution Control Federation;

6. Annual Book of ASTM Standards, Part 31, Water, 1977, American Society for Testing and Materials;

7. "Test Procedures for Priority Pollutants in Municipal Wastewater and Sludges", USEPA 1978 (Copies available from this Department's Bureau of Geology.).

(b) All sludge analyses required by these regulations shall be performed by laboratories to be certified by the Department, using analytical procedures which are acceptable to the Department.

1. The Appendix A-1 Sludge Report need not be performed by a certified laboratory.

(c) A laboratory may receive certification based upon a site inspection and a performance evaluation in conformance with the Division of Water Resources' quality assurance program by applying to the Quality Assurance Coordinator, Division of Water Resources, P.O. Box CN-029, Trenton, New Jersey, 08625.]

(a) Analyses shall be performed on the total sludge sample and shall be expressed on a bulk dry weight basis (mg/kg) except as specifically provided in the sludge reports in Appendix B.

(b) Analyses shall be conducted in accordance with methods for sludge analyses promulgated under N.J.A.C. 7:18.

(c) Where a laboratory method for sludge analysis is not provided for in N.J.A.C. 7:18 for a parameter required by N.J.A.C. 7:14-4.7, the analysis shall be conducted in accordance with the appropriate laboratory method specified in Appendix A which is incorporated into this subchapter.

(d) Where a laboratory method for sludge analyses is not provided for in N.J.A.C. 7:18 or Appendix A, the analysis shall be conducted in accordance with the test procedures or recommendations as established in the following documents, including amendments and revisions (laboratories may only use alternative test procedures upon specific written permission from the Bureau of Pretreatment and Residuals, Division of Water Resources, CN-029, Trenton, New Jersey 08625):

1. "Test Methods For Evaluating Solid Waste", SW-846, USEPA, Office of Solid Waste and Emergency Response, Washington, D.C., 1986b.

2. "POTW Sludge Sampling and Analysis Guidance Document", USEPA, Office of Water Enforcement and Permits, Washington, D.C., June 1988.

(e) Analyses conducted for the purpose of determining the hazardous or nonhazardous nature of sludge shall be performed in accordance with the requirements specified in N.J.A.C. 7:26-8 and/or pursuant to requirements and guidance of the Bureau of Hazardous Waste Regulation and Classification, Division of Hazardous Waste Management, CN-028, Trenton, New Jersey 08625.

(f) All laboratories performing analyses under these rules shall perform and maintain all quality control data and records as required by N.J.A.C. 7:18. Laboratories shall follow the entire test procedure for sludge analyses specified in (b), (c) and (d) above to completion without any modification. All quality control procedures as cited in the referenced analytical techniques shall be performed and documented. Said documentation shall be provided by the certified laboratory performing the sludge analyses to the authority requesting the analyses. All domestic and industrial treatment works are required to maintain on file the entire analysis and quality control data package for a period of five years from the date of the sludge sample. All laboratories shall follow the general reporting format as specified under the "NJDEP Contract Data Report", which can be obtained from the Office of Quality Assurance, Division of Environmental Quality, CN-027, Trenton, New Jersey 08625.

(g) All sludge analyses required for the completion of form T-VWX-008, form F-VWX-009 and form T-VWX-010B set forth in Appendix B shall be performed by laboratories certified by the Department pursuant to N.J.A.C. 7:18. The laboratories shall use the analytical procedures specified in (b), (c) and (d) above.

(h) Analyses required for completion of form T-VWX-007 and form T-VWX-010A set forth in Appendix B need not be performed by a certified laboratory, except as specifically provided by (i) below. Analytical procedures as specified in (b), (c) and (d) above shall be used.

(i) The analyses required for completion of items B(6), B(7) and D on form T-VWX-010A shall be performed by laboratories certified by the Department, pursuant to N.J.A.C. 7:18. The laboratories shall use the analytical procedures as specified in (b), (c) and (d) above.

7:14-4.5 Reporting categories

(a) For the purposes of determining the frequencey of sampling and analysis for submission of all required sludge reports and for determining proper sampling procedures, domestic treatment works shall be divided into categories on the basis of permitted daily flow as follows:

1. Category 1: domestic treatment works with a permitted daily flow of 0.099 MGD or less.

2. Category 2: domestic treatment works with a permitted daily flow from 0.1 to 0.999 MGD.

3. Category 3: domestic treatment works with a permitted daily flow from 1.0 to 4.999 MGD. Category 3 shall additionally include any category 1 or 2 domestic treatment works which has obtained the Department's written determination of residual quality suitability where the determination of residual quality suitability is required in order to utilize agricultural land application or distribution and marketing of a sludge derived product as a fertilizer or soil amendment, either directly or indirectly.

4. Category 4: domestic treatment works with a permitted daily flow equal to or greater than 5.0 MGD.

5. Category 5: domestic treatment works with a flow to which more than 10 percent of the permitted daily flow or the permitted daily mass loading of BOD, COD or Suspended Solids is contributed by SIUs.

(b) All industrial treatment works shall be included in the industrial treatment works category for reporting frequency except as provided by N.J.A.C. 7:14-4.11.

(c) All permit-by-rule dischargers which are regulated pursuant to N.J.A.C. 7:14A-13.5 shall be included in the permit-by-rule category, except as provided by N.J.A.C. 7:14-4.11.

7:14-4.6 Sampling procedures

(a) All sludge samples shall be representative of the chemical and physical characteristics of the sludge removed from the treatment unit process immediately preceding ultimate management. For example, if a treatment works discharges dewatered filter cake for land application, then sampling activity must focus on the output sludge stream from the dewatering device (that is, vacuum filter, belt filter press, etc.).

(b) Sampling locations shall be as follows unless an alternative sampling location is approved in writing by the Department:

1. Sampling points for liquid sludge samples shall be at taps on the discharge side of sludge pumps.

2. For treatment works utilizing drying beds, one-quarter cup sludge samples should be taken at five foot intervals across the bed surface. Neither the weathered surface nor sand should be included in the sample.

3. For treatment works producing a dewatered sludge cake, samples of the sludge should be taken from the point of sludge cake discharge.

4. For treatment works with heat treated sludge, samples shall be taken from taps on the discharge side of positive displacement pumps after decanting from the heat treatment unit.

5. Where a treatment works generates several different types of sludges (for example, primary, secondary or advanced wastewater treatment sludges) each of which is removed separately for ultimate management, separate composite samples shall be analyzed and reported pursuant to N.J.A.C. 7:14-4.7. All reports shall be clearly marked as to the origin of the sludge sample.

(c) Samples shall be prepared in accordance with the following:

1. The sample collection, handling and preservation techniques set out in Table 1 below shall be followed for all sludge analyses required to be performed pursuant to this subchapter.

TABLE 1. CONTAINERS, PRESERVATION, HOLDING TIMES, AND MINIMUM SAMPLE VOLUMES

Parameter	Container	Preservative	Maximum Holding Time	Minimum Sample Volume[a]
Metals				
Chromium VI	P, G	Cool, 4°C	48 hours	300 mL
Mercury	P, G	HNO_3 to pH<2	28 days	500 mL
Metals except above	P, G	HNO_3 to pH<2	6 months	1000 mL
Organic Compounds				
Extractables (including phthalates, nitrosamines organochlorine pesticides, PCBs, nitroaromatics, isophorone, polynuclear aromatic hydrocarbons, haloethers, chlorinated hydrocarbons and TCDD)	G, teflon-lined cap	Cool, 4°C 0.008% $Na_2S_2O_3$	7 days (until extraction) 30 days (after extraction)	1000 mL
Extractable (phenols)	G, teflon-lined cap	Cool, 4°C H_2SO_4 to pH<2 0.008% $Na_2S_2O_3$	7 days (until extraction) 30 days (after extraction)	1000 mL
Purgeables (Halocarbons and Aromatics)	G, teflon-lined septum	Cool 4°C 0.008% $Na_2S_2O_3$ HCL to pH<2	14 days	50 mL
Purgeables (Acrolein and Acrylonitrile)	G, teflon-lined septum	Cool 4°C 0.008% $Na_2S_2O_3$	14 days	50 mL
Pesticides	G, teflon-lined septum	Cool 4°C 0.008% $Na_2S_2O_3$	7 days (until extraction) 30 days (after extraction)	1000 mL

[a]Varies with analytical method. Consult 40 CFR Part 136.
P = Plastic
G = Glass

2. Samples requiring preservation shall be preserved at the time of collection. A certified laboratory or a laboratory that has interim approval or certification shall accept only samples which are properly labeled and for which there is reasonable assurance that they have been collected, preserved, processed, stored and transported in a manner which assures the stability of the sample with respect to the requested tests or analyses. If the stability of the sample has not been assured, the laboratory report shall clearly state that the result may be invalid due to an unsatisfactory sample. If a preservative cannot be utilized at the time of collection (that is, incompatible preservation requirements), it is acceptable to initially preserve by icing the entire sample during compositing and immediately ship it to the laboratory at the end of the sampling period. Upon receipt in the laboratory, the sample shall be properly preserved.

3. All samples shall be chilled at four degrees Celsius during compositing and holding.

4. For dewatered or dried sludge samples preservation shall consist of chilling to four degrees Celsius. Use of a chemical preservative is generally not useful due to failure of the preservative to penetrate the sludge matrix.

5. Samples for reporting on form T-VWX-007 shall be obtained in accordance with the following:

i. Domestic treatment works in category 1 or 2 shall report the average of the values obtained from analyses performed on four samples of equal volume of sludge generated by said treatment works spaced one week apart during the reporting period; and

ii. Domestic treatment works in category 3, 4 or 5, shall report the average of the values obtained from analyses performed on equal volume samples of sludge generated by said treatment works collected every working day during the reporting period.

6. Composite samples for reporting on form T-VWX-008 and form T-VWX-009 shall be obtained in accordance with the following:

i. Domestic treatment works in category 1 or 2 shall form a composite using five samples of equal volumes collected one day apart during the reporting period; and

ii. Domestic treatment works in category 3, 4 or 5 shall form a composite using seven samples of equal volumes collected one day apart during the reporting period. Each daily sample shall consist of six or more samples collected over the 24 hour period.

7. Industrial treatment works shall form a composite sample for form T-VWX-010A and form T-VWX-010B using five samples of equal volumes collected one day apart during the reporting period.

8. Composite samples for hazardous determinations and priority pollutant scans for domestic and industrial treatment works shall be obtained by forming a composite using five samples of equal volumes collected one day apart during the reporting period.

9. As either sludge detention time or mixing increases within a treatment plant, the sampling frequencies required by this section may be reduced, upon written approval from the Department, since certain treatment works' processes (for example, digestion, storage/blending facilities, etc.) will effectively composite sludge to a greater degree.

(d) Procedures for sampling or compositing may be modified upon written approval of the Department based upon site specific operational requirements. Requests for reductions or modifications shall be sent to the Bureau of Pretreatment and Residuals, Division of Water Resources, CN-029, Trenton, New Jersey 08625.

7:14-4.7 Reporting requirements

(a) Sludge reports required by these rules shall be submitted on the computer forms reproduced in Appendix B which is incorporated into this subchapter. These computer forms may be obtained by contacting the Bureau of Pretreatment and Residuals, Division of Water Resources, CN-029, Trenton, New Jersey 08625. Each domestic and industrial treatment works may duplicate blank copies of said forms and shall maintain necessary supplies.

(b) Analyses for the priority pollutants which are listed in Appendix C and incorporated into this subchapter, required under (d) and (e) below, may be submitted on forms provided by a New Jersey certified laboratory.

(c) All reports shall be addressed to the Bureau of Information Systems, Management Services Element, Division of Water Resources, CN-029, Trenton, New Jersey 08625.

(d) The following are the reporting requirements for domestic treatment works:

1. All owners or operators of a domestic treatment works shall prepare a Domestic Wastewater Sludge Report (T-VWX-007) for every calendar month. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period. Reporting periods for form T-VWX-007 shall begin on the first day of each month and end on the last day of each month.

2. The owner or operator of a domestic treatment works shall prepare a Metals and Selected Chemical Parameters Report (T-VWX-008) and a Toxic Organic Compounds Report (T-VWX-009) for each reporting period. The reports shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period. The reporting periods for each category shall be as follows:

i. The reporting period for category 1 shall be the month of January;

ii. Category 2 reporting periods shall be the months of January and July;

iii. Category 3 reporting periods shall be the months of January, April, July and October; and

iv. Categories 4 and 5 shall prepare a form T-VWX-008 and a form T-VWX-009 report for each calendar month.

3. The owner or operator of a domestic treatment works shall submit a full priority pollutant scan on the domestic wastewater sludge produced at the domestic treatment works for the priority pollutants listed in Appendix C. In addition, the largest 15 purgeable volatile organic peaks, 10 acid extractable peaks and 10 base/neutral extractable peaks shall be identified and reported. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period. The reporting periods for each category shall be as follows:

i. The reporting period for categories 1 and 2 shall be the month of February during years ending in five or zero (that is, 1990, 1995, 2000, etc.);

ii. The reporting period for categories 3, 4 and 5 shall be the month of August, annually; and

iii. The Department may, after the receipt of a priority pollutant scan, require a domestic treatment works to increase the schedule of reporting for any or all constituents which are detected on a priority pollutant scan.

4. The Department may require hazardous determinations to be made, pursuant to the requirements of N.J.A.C. 7:14-4.6(e), on a case-by-case basis. The Department may specify a frequency for performing the required determination based on available sludge quality data or knowledge of industrial discharges into the system.

5. A domestic treatment works shall comply with the sludge quality criteria applicable to the ultimate management alternative utilized by the domestic treatment works as specified in:

i. The Statewide Sludge Management Plan;

ii. Criteria established under 33 U.S.C.A. Section 1251 et seq.;

iii. 40 CFR 257; or

iv. NJPDES permit conditions pursuant to N.J.A.C. 7:14A.

6. A domestic treatment works shall report any noncompliance with the sludge quality criteria to the Department. The noncompliance with the sludge quality criteria shall be orally reported within 24 hours to the Bureau of Pretreatment and Residuals at (609) 633-3823 and to the ultimate sludge management site. A written submission shall be made within five days thereafter to: Chief, Bureau of Pretreatment and Residuals, Division of Water Resources, CN-029, Trenton, New Jersey 08625 and shall include the following information:

i. Dates of occurrence;

ii. A description of the noncompliance with the sludge quality criteria;

iii. The cause of the noncompliance; and

iv. Steps being taken to reduce, eliminate and prevent reoccurrence of the noncompliance.

(e) The following are the reporting requirements for the industrial treatment works category:

1. The owner or operator of an industrial treatment works that produces process wastewater sludge shall prepare an Industrial Process Wastewater Sludge Report (T-VWX-010A) for every calendar month. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period;

2. The owner or operator of an industrial treatment works shall prepare an Industrial Process Wastewater Sludge Report (T-VWX-010B) for every calendar month. The report shall include an analysis of the sludge for all those toxic pollutants listed in N.J.A.C. 7:14A, Appendix B, Table II, III, IV, V and VI that are currently manufactured, processed, formed, repackaged, handled, used, disposed or stored in the facility served by the industrial treatment works and as required to be reported on the Discharge Monitoring Report pursuant to N.J.A.C. 7:14A-2.5. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period;

3. The owner or operator of an industrial treatment works shall submit a full priority pollutant scan on each process wastewater sludge produced for the priority pollutants listed in Appendix C. In addition, the largest 15 purgeable volatile organic peaks, 10 acid extractable peaks and 10 base/neutral extractable peaks shall be identified and reported. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period;

4. The reporting period for all industrial treatment works shall be annually in the month of November. If the nature of the process wastewater or sludge produced by an industrial treatment works should change at any time due to an increase or change in process wastewater contributions, a change in treatment processes at the industrial treatment works or a change in its process, handling, manufacturing, packaging, storage or disposal practices, a new priority pollutant scan shall be submitted within ninety days; and

5. The Department may require an industrial treatment works to increase the schedule of reporting for any or all constituents which are detected on a priority pollutant scan.

6. The Department may require hazardous determinations to be made, pursuant to the requirements of N.J.A.C. 7:14-4.6(e), on a case-by-case basis. The Department may specify a frequency for performing the required determination based on available sludge quality data or knowledge of process wastewater contributions.

7. Any noncompliance with the sludge quality criteria shall be immediately reported pursuant to the procedure outlined in (d)6 above.

(f) The permit-by-rule category shall be required to sample, perform analyses and maintain records on file for a period of five years in accordance with the reporting requirements for industrial treatment works in (e) above.

7:14-4.8 Access

The owner or operator of a domestic or industrial treatment works [or a SIU pretreatment works] shall provide access to the **treatment** works' premises and related records to representatives of the Department upon presentation of identification or credentials during normal working hours. The Department may take samples of sludge to verify the reported analytical data and to determine if the **treatment** works is in compliance with the reporting requirements of this subchapter.

7:14-4.9 Non-compliance [with regulations]

A failure to submit the required sludge reports in the manner prescribed by this subchapter or any willful falsification of information contained in these reports shall constitute a violation of the New Jersey Water Pollution Control Act, [P.L. 1977, c.74:] N.J.S.A. 58:10A-1 et seq. and shall be subject to the penalties contained [therein] **in N.J.A.C. 7:14-8 and 7:19-6.14.**

7:14-4.10 Implementation

[(a) These regulations shall be implemented by all domestic and industrial treatment works and pretreatment works on January 1, 1980, which shall mark the beginning of the first reporting cycle.

1. All domestic treatment works shall submit their first report no later than March 31, 1980. Thereafter all domestic treatment works shall assume their reporting cycle as set out in N.J.A.C. 7:14-4.13 through 4.16.

2. All industrial treatment works and SIU pretreatment works shall submit their first monthly report no later than March 31, 1980.

(b) All new domestic treatment works and new industrial treatment works and SIU pretreatment works shall submit their first report within 90 days on the start of operations.

(c) SIU pretreatment work shall submit a fact profile (Appendix A-5) to the OSMIP Program Director containing the following information:

1. Name and address of the user operating the SIU pretreatment facility;
2. Name, address and phone number of the authorized representative;
3. Mailing address of the pretreatment facility;
4. Location of the physical facility;
5. Standard Industrial Code classification number;
6. Name, address and the NPDES permit number of the domestic treatment works into which the SIU pretreatment facility discharges.

(d) Existing SIU pretreatment works shall submit their fact profile within 90 days of the final promulgation of these regulations. New SIU pretreatment facilities shall submit their fact profile within 90 days of their commencing operation.]

(a) All domestic and industrial treatment works and permit-by-rule dischargers shall commence reporting under these rules on June 1, 1989.

(b) All new domestic and industrial treatment works shall submit their first report within 90 days after their start of operations. Thereafter, they shall follow the reporting schedule prescribed by N.J.A.C. 7:14-4.7. All new permit-by-rule dischargers shall commence reporting under these rules within 90 days after their start of operations.

[7:14-4.11 Reports to be published by the Department

(a) The Department, through the Office of Sludge Management and Industrial Pretreatment (OSMIP) shall publish on a yearly basis a "Catalog of Domestic and Industrial Treatment Works" within 90 days of the final promulgation of these regulations. A "Catalog of SIU Pretreatment Works" shall be published one year after the promulgation date of this subchapter.

(b) Within 18 months of the final promulgation of this subchapter the Department through OSMIP shall publish a report that will present an evaluation of the partitioning of the sludge constituents between the liquid and solid phases. Based on this evaluation, the Commissioner shall determine whether testing for the sludge constituents in the liquid phase shall be retained.]

7:14-4.11 Exemptions and reductions in reporting requirements

(a) The following exemptions and reductions in reporting requirements are applicable to domestic treatment works:

1. There shall be no exemptions or reductions for domestic treatment works in the reporting frequency or requirements for completing form T-VWX-007, form T-VWX-008 or form T-VWX-009.

2. The Department may reduce the requirement to perform an annual priority pollutant scan to years ending in five or zero for domestic treatment works in categories 3, 4 or 5, based on current sludge quality, present or anticipated sludge management practices or knowledge of industrial discharges into the system. The request for a reduction shall be submitted in writing. The domestic treatment works may request a reduction at any time after submission of the first required report. Any domestic treatment works granted a reduction shall comply with the following:

i. The domestic treatment works shall submit to the Department, on an annual basis, an affidavit affirming that there have been no changes to the nature of the service area in a manner such that the analysis of the sludge generated by the domestic treatment works may also change. The affidavit shall be submitted by May 1, of each calendar year; and

ii. If the nature of the sludge produced by a domestic treatment works on a reduced reporting schedule should change at any time due to an increase or change in process wastewater contributions or a change in treatment processes at the domestic treatment works, the owner or operator shall, within 30 days, notify the Department of the nature of the change. Based upon this information, the Department may require additional analyses to be performed and require that the domestic treatment works return to the reporting schedule required under N.J.A.C. 7:14-4.7.

(b) The following exemptions and reductions in reporting requirements are applicable to industrial treatment works and permit-by-rule treatment works:

1. The following industrial and permit-by-rule treatment works shall be exempt from all reporting requirements:

i. Noncontact cooling water treatment works;

ii. Treatment works for the discharge of untreated storm water; and

iii. Treatment works which are not regulated pursuant to N.J.A.C. 7:14A.

2. The Department may reduce the reporting requirements for submission of the Industrial Process Wastewater Sludge Reports (form T-VWX-010A and form T-VWX-010B) for the following treatment works:

i. Treatment works regulated by permits under N.J.A.C. 7:14A which are not required to remove contaminants and are only required to submit monitoring reports;

ii. If an industrial treatment works has a process wastewater permitted flow of 10,000 gallons per day or less, the Department may reduce the frequency of reporting after submission of the first Industrial Process Wastewater Sludge Reports (from T-VWX-010A and form T-VWX-010B);

iii. If an industrial treatment works produces a process wastewater sludge which is recycled, the industrial treatment works may apply for a change in the frequency of reporting after submission of the first required Industrial Process Wastewater Sludge Reports (form T-VWX-010A and form T-VWX-010B); and

iv. Where an industrial treatment works can demonstrate to the Department's satisfaction, based on the criteria in (b)5 below, that removal schedules or historical sludge quality justify a reduction, the Department may reduce the reporting frequency at any time after submission of the first required Industrial Process Wastewater Sludge Reports (form T-VWX-010A and form T-VWX-010B).

3. The following treatment works shall be exempt from the reporting requirements for submission of a priority pollutant scan:

i. Industrial treatment works which treat only process wastewater contributed from the processing of food for human consumption; and

ii. Industrial treatment works which treat only process wastewater contributed from the treatment of surface water or groundwater for human consumption.

4. The industrial treatment works identified in (b)2 above may apply to the Department for a reduction in the frequency of reporting for the priority pollutant scan.

5. The Department's determination of reductions or exemptions in reporting requirements for industrial treatment works will be based on the following criteria:

i. All requests for a reduction in the reporting frequency shall be accompanied by a complete analysis for those substances required to be reported under these rules. The request for a reduction shall also be accompanied by a flow diagram which documents each and every manufacturing or production campaign, a detailed description of the individual treatment processes and a list of those substances for which the reduction is requested;

ii. In considering requests for reduced reporting, the Department will consider the quantity and quality of the sludge produced, removal frequency, storage provisions, ultimate management mode, the quantities and toxicities of the substances for which the reduction is requested and the likelihood for soil, water or air pollution associated with management of the sludge;

iii. The Department will review all requests and may grant a reduction, or may require additional analytical testing for any or all of the pollutants required to be reported in N.J.A.C. 7:14-4.7. The Department may also require that the applicant for a reduction demonstrate that the use of best management practices justifies the request;

iv. Any industrial treatment works granted a reduction shall submit to the Department, on an annual basis, an affidavit affirming that there have been no changes to the nature of the process wastewater, in a manner such that the sludge generated by the industrial treatment works may also change. The affidavit shall be submitted by May 1, of each calendar year; and

v. If the nature of the process wastewater or sludge produced by an industrial treatment works on a reduced reporting schedule should change at any time due to an increase or change in process wastewater contributions, a change in treatment processes at the industrial treatment works or a change in its process, handling, manufacturing, packaging, storage or disposal practices, the owner or operator shall, within 30 days, notify the Department of the nature of the change. Based upon this information, the Department may require analyses to be performed

and require that the industrial treatment works return to the reporting schedule required by N.J.A.C. 7:14-4.7.

(c) All treatment works shall continue to submit reports as required in N.J.A.C. 7:14-4.7 until written Department approval has been provided which exempts or reduces reporting requirements.

[7:14-4.13 Reporting categories for domestic treatment works

(a) For the purposes of determining the frequency of submitting all required sludge reports and sampling procedures, domestic treatment works shall be divided into categories on the basis of average daily flow as follows:

1. Category 1: domestic treatment works with an average daily flow of 0.099 MGD or less;

2. Category 2: domestic treatment works with an average daily flow from 0.1 to 0.999 MGD;

3. Category 3: domestic treatment works with an average daily flow from 1.0 to 4.999 MGD;

4. Category 4: domestic treatment works with an average daily flow equal to or greater than 5.0 MGD;

5. Category 5: domestic treatment works with a flow to which more than 10% of the average daily flow or the average daily mass loading of BOD, COD or Suspended Solids is contributed by SIU's.

(b) When the average daily flow of a domestic treatment works increases or decreases so as to change a treatment works reporting category, the Department shall notify the works of its new reporting category and when its new reporting cycle shall become effective.]

[7:14-4.14 Sludge Report

The owner or operator of a domestic treatment works shall submit for review to the Department a Sludge Report (Appendix A-1) on a monthly basis.]

[7:14-4.15 Heavy Metals and Selected Chemical Parameters Report

(a) The owner or operator of a domestic treatment works shall submit for review to the Department a Heavy Metals and Selected Chemical Parameters Report (Appendix A-2).

(b) The frequency for submitting this Report, based on the average daily flow, shall be as follows:

1. Category 1 shall submit one report annually on the solid phase only;

2. Category 2 shall submit semi-annual reports on the solid phase only;

3. Category 3 shall submit quarterly reports on the solid phase only;

4. Categories 4 and 5 shall submit monthly reports on both solid and liquid phases; except no report on the liquid phase is required if the sludge is to be incinerated.

(c) Domestic treatment works that operate an incinerator for the disposal of their own sludge alone or in combination with sludges from other works, shall analyze the ash procedure for the heavy metals listed in Appendix A-2 and shall submit reports on these analyses at the same frequency as required in subsection (b) of this section.

(d) A reduction in reporting frequency requirement is available for domestic treatment works in Categories 2, 3, 4, and 5 as follows:

1. Categories 2 and 3 may reduce the frequency of reporting whenever two consecutive reports submitted indicate that the concentrations of all heavy metals present in the sludge are at or below the Contamination Indicators as shown on the Heavy Metals and Toxic Organic Compounds table (Appendix B-1.) The new requirements shall be:

i. Category 2, annual report;

ii. Category 3, semi-annual reports.

2. Category 4 and 5 may reduce the frequency of reporting from monthly to bi-monthly when:

i. The last six consecutive reports indicate that the concentrations of all heavy metals present in the sludge are at or below the Contamination Indicators as shown on the Heavy Metals and Toxic Organic Compounds table (Appendix B-1), or;

ii. Based upon at least the last twelve consecutive reports the treatment works can demonstrate that the probability of the occurrence of concentrations or heavy metals exceeding the Contamination Indicators is 10 percent or less.]

[7:14-4.16 Toxic Organic Compounds Report

(a) The owner or operator of a domestic treatment works shall submit for review to the Department a Toxic Organic Compounds Report (Appendix A-3).

(b) The frequency of reporting toxic organic compounds for specified categories of domestic treatment works shall be as follows:

1. Categories 1 and 2 shall submit one report annually on the solid phase only;

2. Category 3 shall submit semi-annual reports on the solid phase only;

3. Categories 4 and 5 shall submit monthly reports on both the liquid and solid phases.

(c) Domestic treatment works in Category 3, 4, or 5 may reduce the frequency of its reporting requirements as follows:

1. A domestic treatment works in Category 3 may reduce the frequency of reporting from semi-annually to annually when two consecutive reports submitted indicate that all toxic organic compound concentrations are at or below the Contamination Indicators as shown on the Heavy Metals and Toxic Organic Compounds table (Appendix B-1).

2. A domestic treatment works in Category 4 or 5 may reduce the frequency of reporting from monthly to bi-monthly when:

i. The last six consecutive reports indicate that all toxic organic compound concentrations are at or below the Contamination Indicators as shown on the Heavy Metals and Toxic Organic Compounds table (Appendix B-1), or;

ii. Based upon at least the last twelve consecutive reports, the domestic treatment works can demonstrate that the probability of the occurrence of concentrations exceeding the Contamination Indicators for every toxic organic compound shown on Appendix B-1 will be 10 percent or less.]

[7:14-4.17 Loss of reduction in reporting requirement

Whenever a domestic treatment works in Category 2, 3, 4, or 5 reporting on a reduced schedule submits a Heavy Metals Report and/or a Toxic Organic Compounds Report indicating any concentration exceeding the Contamination Indicators, the treatment works shall resume its former, more frequent reporting schedule.]

[7:14-4.18 Exemption from Heavy Metals and Toxic Organic Compounds reporting cycles

(a) Domestic treatment works in Category 1 which serve educational, health, or penal institutions, are not required to submit a Toxic Organic Compounds Report (Appendix A-3) as required by N.J.A.C. 7:14-4.16. A Heavy Metals Report as required by 7:14-4.15 may not be required after the submission of the first annual report, if the Department determines that the concentrations do not exceed the Contamination Indicators as shown in Appendix B-1.

(b) The owner or operator of other domestic treatment works in Category 1 which treats domestic wastes only, or produces less than 35 tons (dry basis) of sludge per year, may apply to the Department for a three year exemption from the reporting requirements for Heavy Metals as required by N.J.A.C. 7:14-4.15 and Toxic Organic Compounds as required by N.J.A.C. 7:14-4.16.

1. An applicant shall submit an affidavit affirming the daily flow or tons of sludge (dry basis) produced, the type of institution or structure(s) served and the domestic nature of its flow.

2. If the domestic nature of the flow should change at any time during the three year exemption period because of the introduction of industrial process wastewater or the amount of sludge produced should increase, the owner or operator must notify the Department within 30 days of the nature of the change. Based upon this information, the Department within its discretion may require either or both sludge reports as necessary to provide the appropriate information as to sludge composition.]

[7:14-4.19 Sampling procedures; Sludge Report

(a) For the Sludge Report, (Appendix A-1) samples shall be taken at locations to best represent the required parameters and shall consist of a proportional mixture of primary, secondary or advanced wastewater treatment sludges generated by the facility.

1. Domestic treatment works in Category 1 or 2 shall take the average of the values obtained from analyses of four samples of sludge spaced approximately one week apart.

2. Domestic treatment works in Category 3, 4, or 5 shall take the average of the values obtained from analyses performed on samples collected every working day.

(b) For the Heavy Metals and Selected Chemical Parameters Report and for the Toxic Organic Compounds Report samples taken shall be representative, to the extent practicable, of the sludge being produced under normal operating conditions.

1. Domestic treatment works in Category 1 or 2 shall form a composite using the four samples obtained as specified in subsection (a) of this section, over the 30-day period preceding the reporting date.

2. Domestic treatment works in Category 3, 4, or 5 shall form a composite using seven grab samples spaced approximately four days apart over the 30-day period preceding the reporting date.]

[7:14-4.20 Reporting requirements for industrial treatment works and SIU pretreatment works

(a) If an industrial treatment works or a SIU pretreatment works has an industrial process wastewater average daily flow of 10,000 gallons or less, the Department may grant an exemption from the reporting requirements, or a change in the frequency of reporting after the submission of the first Industrial Process Wastewater Sludge Report (Appendix A-4). The exemption will be based on an analysis of the flow diagram and a detailed description of the individual treatment units. The Department will make its determination within 180 days of receipt of approvable engineering documentation and full chemical analysis of the industrial process wastewater and the sludge produced, during which time the works shall continue to submit monthly reports.

(b) Where an industrial treatment works or a SIU pretreatment works serves a research and development laboratory and/or an analytical laboratory, or serves an industrial facility which includes research and development laboratory(ies) and/or an analytical laboratory(ies), the industrial treatment works or SIU pretreatment works may request an exemption from the reporting requirement for those substances listed in Appendices B-2 and B-3 which are handled, used, stored, or disposed of only in the course of its analytical or research and development activities. The request for an exemption will be submitted in writing annually and will include a list of those substances in Appendices B-2 and B-3 and the quantities it expects to handle, store, use or dispose of for the current reporting year. The Department will review the exemption request and may grant an exemption or may require analytical testing for any or all of the listed pollutants. This determination will be based on the quantities and toxicities of the substances for which the exemption is requested. The Department may also, in some cases, require that the applicant for an exemption submit a report documenting that the use of best management practices justifies the applicant's eligibility for exemption. The list and exemption request should be included in the facility's initial report.

(c) If an industrial treatment works or a SIU pretreatment works produces an industrial process wastewater sludge which is recycled, the user need not submit an Industrial Process Wastewater Sludge Report (Appendix A-4).

(d) Chemical substances listed in Appendices B-2 and B-3 that may be present as contaminants in products and materials such as non-commercial soaps, detergents and lubricants which are neither used in manufacturing, processing, repackaging or forming nor used in the maintenance and operation of these processes, need not be analyzed. The same shall be true for any contaminants already present in the water supply used in manufacturing, processing, repackaging or forming.

(e) An industrial treatment works or a SIU pretreatment works that operates an incinerator for the disposal of sludge shall analyze the ash produced for heavy metals content.

(f) Reporting requirements for industrial treatment works are:

1. The owner or operator of an industrial treatment works that produces industrial wastewater sludge shall submit to the Department on a monthly basis an Industrial Process Wastewater Sludge Report (Appendix A-4).

2. The Report shall contain an analysis of the listed parameters 1-11 (Appendix A-4) plus an analysis of the sludge for any of those toxic pollutants listed on Appendix B-2 that are currently manufactured, processed, formed, repackaged, handled, used, disposed or stored in the facility served by the industrial treatment works.

(g) Reporting requirements for SIU pretreatment works are:

1. A SIU facility which applies a pretreatment process to its wastewater prior to discharging the treated wastewater into a domestic treatment works shall submit to the Department on a monthly basis an Industrial Process Wastewater Sludge Report (Appendix A-4).

2. The report shall contain an analysis of the listed parameters 1-11 (Appendix A-4) plus an analysis of the sludge for any of those toxic pollutants listed on Appendix B-2 and inhibitory pollutants listed on Appendix B-3 that are currently manufactured, processed, formed, repackaged, handled, used, disposed or stored in the facility served by the industrial pretreatment works.]

[7:14-4.21 Sampling procedures; composite sample

Samples taken shall be representative of the sludge being produced. A composite sample shall be formed by using seven grab samples spaced approximately four days apart over the monthly report period.]

AGENCY NOTE: The Department is proposing to repeal N.J.A.C. 7:14-7. The text of the proposed repeal may be found at N.J.A.C. 7:14-7.

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.1 Authority and purpose

(a) (No change.)

(b) The Department may assess a civil administrative penalty of not more than $50,000 for each violation of each provision of either the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or not more than $100,000 for a violation of both statutes. [Each day during which such violation continues shall constitute an additional, separate, and distinct violation.]

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

[(c)] **(d)** (No change in text.)

7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties

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

(c) The Department may settle any civil administrative penalty assessed pursuant to this subchapter on the following terms and conditions:

1. On the basis of mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. Upon implementation by the violator of pollution prevention and/or abatement measures in addition to those minimally required by applicable statute or rule;

3. Upon implementation by the violator of measurers to clean up, reverse or repair environmental damage previously caused by the violation;

4. Upon full payment by the violator of a specified part of the civil administrative penalty asesssed if made within a time period established by the Department in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

5. Upon any other terms or conditions acceptable to the Department.

7:14-8.5 Civil administrative penalty determination

(a) (No change.)

(b) Each violation of any provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or any rule, water quality standard, effluent limi-

tation, administrative order or permit issued pursuant thereto, shall constitute an additional, separate and distinct violation. **In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation.**

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

[(c) Except for those violations set forth in N.J.A.C. 7:14-8.6 through 8.11, the] **(d) Unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:14-8.6 through N.J.A.C. 7:14-8.11, the** Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges unless adjusted pursuant to [(f)]**(g)** below:

SERIOUSNESS

		Major	Moderate	Minor
CONDUCT	Major	$40,000-$50,000	$30,000-$40,000	$15,000-$25,000
	Moderate	$30,000-$40,000	$10,000-$20,000	$ 3,000-$ 6,000
	Minor	$15,000-$25,000	$ 3,000-$ 6,000	$ 1,000-$ 2,500

[(d)]**(e)** The seriousness [factor] of the violation shall be determined as major, moderate or minor as follows:

1. Major shall include:

i. Any violation which has caused **or has the potential to cause** serious harm to human health or the environment; or

ii. (No change.)

2. Moderate shall include:

i. Any violation which has caused **or has the potential to cause** substantial harm to human health or the environment; or

ii. (No change.)

3. Minor shall include:

i. Any violation not included in [(d)]**(e)**1 or 2 above[, or (d)3ii below]; or

ii. (No change.)

[(e)]**(f)** The conduct [factor] of the violator shall be determined as major, moderate or minor as follows:

1.-2. (No change.)

3. Minor shall include any other conduct not [identified] **included** in [(e)]**(f)**1 or 2 above.

[(f)]**(g)** The Department may, in its discretion, adjust the amount determined pursuant to [(c)]**(d)** above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1.-2. (No change.)

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations; [and/or]

4. The deterrent effect of the penalty[.]; **or**

5. Other specific circumstances of the violator or violation.

7:14-8.7 Civil administrative penalty for failure to allow **lawful** entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate **lawful** entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day, from the initial day of failure by the violator to allow immediate **lawful** entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate **lawful** entry and inspection, shall be an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section as follows:

1. For refusing, inhibiting or prohibiting immediate **lawful** entry and inspection of any premises, building or place for which an administrative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, the civil administrative penalty shall be in an amount of not more than $30,000 nor less than $20,000; and

2. For any other refusal, inhibition[,] or prohibition of immediate **lawful** entry and inspection, the civil administrative penalty shall be in an amount of not more than $5,000 nor less than $3,000.

7:14-8.8 Civil administrative penalty for conducting unapproved activities

(a) (No change.)

(b) The Department shall determine the amount of the civil administrative penalty for violations described in this section **based on the seriousness of the violation and the conduct of violator in accordance with N.J.A.C. 7:14-8.5 or** based on the following:

1.-3. (No change.)

7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act

(a) (No change.)

(b) Each violation, including each parameter that is required to be monitored, sampled and reported and that is not monitored, sampled and reported, is an additional, separate and distinct violation. **Each day during which a violation continues shall constitute an additional, separate and distinct violation.**

(c) (No change.)

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1.-2. (No change.)

3. The measures taken by the violator to mitigate the [efforts] **effects** of the current violation or to prevent future violations; [and/or]

4. The deterrent effect of the penalty [.]; **or**

5. Other specific circumstances of the violator or violation.

7:14-8.10 Civil administrative penalty for failure to pay a permit fee [or civil administrative penalty]

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a permit fee [or fails to pay a civil administrative penalty] when due pursuant to the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act.

(b) Each day a permit fee [or a civil administrative penalty] is not paid after it is due shall constitute an additional, separate and distinct violation.

[(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section as follows:

1. In an amount equal to the unpaid permit fee, up to a maximum of $50,000 per violation.

2. In amount equal to the unpaid civil administrative penalty up to a maximum of $50,000 per violation.]

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on an amount equal to the unpaid permit fee, up to a *maximum* of $50,000 per violation.

7:14-8.11 Civil administrative penalty for violation of the rules governing laboratory certification and standards of performance

(a) (No change.)

(b) Each violation of each provision of each rule shall be an additional, separate and distinct violation. **Each day during which a violation continues shall constitute an additional, separate and distinct violation.**

(c) (No change.)

[(d) The Department shall classify a violation as first, second, and third and subsequent, as follows:

1. A first violation shall include a violation of any provision of N.J.A.C. 7:18 where the violator has not received written notice from the Department, as provided for in (e) below, of any prior violation of the same section within the past four years;

2. A second violation shall include a violation of any provision of N.J.A.C. 7:18 where the violator has received one written notice from the Department, as provided for in (e) below, of any prior violation of the same section within the past two years; and

3. A third and subsequent violation shall include a violation of any provision of N.J.A.C. 7:18 where the violator has received more than one written notice from the Department, as provided for in (e) below, of any prior violation of the same section within the past three years;

(e) Notice, for the purposes of (d) above, shall mean receipt by the violator of any one of the following documents from the Department:

1. Notice of Violation;

ii. Administrative Order;

iii. Notice of Civil Administrative Penalty Assessment;

iv. Notice of Intent to Suspend;

v. Notice of Decertification; and/or

vi. Notice of Intent to Revoke.]

7:14-8.13 Water Supply and Wastewater Operators' Licensing Act and Water Supply Management Act civil administrative penalties

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

(c) [Except as provided in (d) and (e) below, the] **The** Department shall assess a civil administrative penalty for each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act and each violation of each provision of any rule, administrative order, permit or license as follows:

1. For the first violation **of a provision**, not more than $1,000;

2. For the second violation **of the same provision**, not more than $2,500; and

3. For the third and subsequent violations **of the same provision**, not more than $5,000.

[(d) The Department shall classify a violation as first, second, and third and subsequent as follows:

1. A first violation shall include a violation where, within the four years prior to such violation, the violator has received written notice from the Department, as provided for in (f) below, for violation of the same provision;

2. A second violation shall include a violation where, within the two years prior to such violation, the violator has received one written notice from the Department, as provided for in (f) below, for violation of the same provision; and

3. A third and subsequent violation shall include a violation where, within the three years prior to such violation, the violator has received more than one written notice from the Department, as provided for in (f) below, for violation of the same provision.

(e) Notice, for the purposes of (d) above, shall mean receipt by the violator of any one of the following documents from the Department:

i. Notice of Violation;

ii. Administrative Order;

iii. Notice of Civil Administrative Penalty Assessment;

iv. Notice of Intent to Suspend;

v. Notice of Decertification; and

vi. Notice of Intent to Revoke.]

[(f)] **(d)** The Department shall assess a civil admnistrative penalty of $5,000 for refusing, inhibiting or prohibiting immediate **lawful** entry and inspection of any premises, building[,] or place by any authorized Department personnel. Each day, from the initial day of failure by the violator to allow immediate **lawful** entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit[,] or prohibit immediate **lawful** entry and inspection, shall [be] **constitute** an additional, separate and distinct violation.

[(g)] **(e)** The Department shall assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation[,] or certification in any application, record[,] or other document required to be submitted or maintained under the Water Supply and Wastewater Operators' Licensing Act or the Water Supply Management Act [and each violation of each provision of any rule, administrative order, permit or license], or who fails to submit or maintain any application, record[,] or other document required to be submitted or maintained under the Water Supply and Wastewater Operators' Licensing Act or the Water Supply Management Act [and each violation of each provision of any rule, administrative order, permit or license], or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained by the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act. Each day, from the day of submittal of the false or inaccurate information to the Department to the day of receipt by the Department of a written correction of the inaccurate information or falsified statement, shall [be] **constitute** an additional, separate and distinct violation. The Department shall determine the amount of the civil administrative penalty based on the conduct of the violator as follows:

1.-3. (No change.)

7:14-8.14 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of the subchapter are declared to be severable.

Full text of the proposed new appendices follows.

APPENDIX A
DEP LABORATORY METHODS

Method No. 010: pH (Electrometric)
Method No. 012: Total Residue
Method No. 013: Volatile and Ash Content of Total Residue
Method No. 032: Phenols
Method No. 036: Oil and grease
Method No. 100: Metals

pH (ELECTROMETRIC)
N.J. SLUDGE METHOD NO. DEP 010

1.0 Scope and Application

1.1 This method is applicable to the determination of pH in municipal and industrial sludges.

2.0 Summary of Method

2.1 A representative sample of sludge is thoroughly mixed and analyzed for pH electrometrically using either a glass electrode in combination with a reference electrode or a combination electrode.

2.2 The calibration of the pH electrode meter system is adjusted and checked with buffer solutions.

3.0 Sample Handling and Preservation

3.1 Upon collection, samples shall be refrigerated or iced at 4°C.

4.0 Limitations

4.1 Sodium error at pH levels greater than 10 can be reduced or eliminated by using a "low sodium error" electrode or applying a correction factor from a table or graph provided by the pH meter manufacturer.

4.2 Coatings of oil material or particulate matter can impair electrode response. These coatings can usually be removed by gentle wiping or detergent washing, followed by distilled water rinsing. An additional treatment with dilute hydrochloric acid (1 ml concentrated hydrochloric acid diluted to 10 ml with water) may be necessary to remove any remaining film.

NOTE 1: It may be necessary to centrifuge an oily sludge to obtain an aqueous phase for true pH determination.

4.3 Temperature effects on the electrometric measurement of pH arise from two sources. The first is caused by the change in electrode

output at various temperatures. This interference can be controlled with instruments having temperature compensation or by calibrating the electrode-instrument system at the temperature of the samples. The second source is the change of pH inherent in the sample at various temperatures. This error is sample dependent and cannot be controlled; it should therefore be noted by reporting both the pH and temperature at the time of analysis.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely defined; however, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory should maintain a current awareness file of OSHA rules regarding the safe handling of the chemicals specified in this method. A reference file of Material Safety Data Sheets should be made available to all personnel involved in the chemical analysis.

6.0 Apparatus

6.1 pH Meter, laboratory or field model, with an accuracy of ± 0.05 unit. A wide variety of instruments are commercially available with various specifications and optional equipment.

6.2 Glass pH electrode.

6.3 Reference electrode- a fiber junction, calomel, silver-silver chloride or other electrode of constant potential may be used. (Do not use gel filled electrodes).

6.4 Glass combination electrode.

6.5 Magnetic stirrer and TFE coated stirring bar.

6.6 Thermometer with at least one degree calibrations or less.

NOTE 2: Temperature compensator may be used instead of a thermometer.

6.7 Dispersion Device, homogenizer, blender, or other apparatus capable of disintegrating large particles.

7.0 Reagents

7.1 Secondary standard buffers may be prepared from NBS salts or purchased as a solution from commercial venders. Use of these commercially available solutions, that have been validated by comparison to NBS standards, are recommended for routine use.

8.0 Calibration

8.1 At a minimum, each instrument must be calibrated at pH 7.0 before each use and after each set of 10 samples. The accuracy of the system must be checked and recorded daily at approximately pH 4 and 9 or 10 with appropriate certified buffers. The three values must agree within 0.05 pH units of the assigned values.

8.1.1 If the values do not agree within 0.05 pH units, correct the problem before proceeding.

9.0 Procedure

9.1 Dilute, if required, with distilled water to achieve fluidity and/or to dissolve any inorganic buffer salts that may be present.

9.2 Disperse sample, if necessary, with a homogenizer or blender to disintegrate large particles.

9.3 Calibrate the meter and electrode system as described in Section 8.

9.4 Bring the sample temperature within 2°C of the buffer solution.

9.5 Rinse or gently wipe the electrodes with distilled or deionized water after each sample or buffer and gently blot them with a clean dry tissue. Immerse them into the sample beaker and stir gently at a constant rate to provide homogeneity and suspension of solids. Note and record sample pH to the nearest 0.1 unit and temperature to the nearest degree.

10.0 Precisio and Accuracy—No data are available.

11.0 References

11.1 Methods for Chemical Analysis of Water and Wastes, U.S. Environmental Protection Agency, EPA 600/4-79-020, March, 1979.

TOTAL RESIDUE
N.J. SLUDGE METHOD NO. DEP 012

1.0 Scope and Application

1.1 This method is designed to measure the residue content of municipal and industrial sludges over a range of 1-75% W/W.

2.0 Summary of the Method

2.1 A representative portion of the sample is weighed and dried to constant weight in an oven at 104 ± 1°C. The remaining solids are weighed and calculated as % W/W total residue of the original sample.

3.0 Sample Handling and Preservation

3.1 Upon collection, samples shall be placed in a wide mouth, air tight, polyethylene or glass container and refrigerated or iced to 4°C.

4.0 Limitations

4.1 Rapid weighing of the sample, before and after drying, is essential to obtain accurate results.

5.0 Safety

5.1 The drying oven should be placed in a hood or supplied with a vent to remove noxious odors.

6.0 Apparatus

6.1 Pan balance, electronic, capable of weighing to ± 0.01 gram.

6.2 Weighing dishes, aluminum pan, porcelain dish or equivalent.

Note 1: Use a porcelain dish if proceeding to N.J. Sludge Method No. DEP 013 or for highly alkaline samples.

6.3 Oven, mechanical or gravity convection capable of being regulated at 104 ± 1°C, or equivalent.

6.4 Steam bath (optional).

6.5 Desiccator, with indicating desiccant.

7.0 Reagents—none.

8.0 Procedure

8.1 Tare the weighing dish, using a pan balance, to the nearest 0.01 gram and record as W1.

Note 2: If used, two aluminum pans should be seated together to provide a more rigid support for the sample.

8.2 Shake the covered sample container vigorously, disperse sample, if necessary, with a homogenizer or blender to disintegrate large particles.

8.3 Immediately, transfer a mixed sample aliquot to the dish such that the final residue weight is at least 1 gram and will provide adequate drying in 16-24 hours.

8.4 Reweigh the dish to the nearest 0.01 gram and record the weight as W2.

Note 3: Rapid transfer and weighing is essential to prevent loss of moisture during this step.

8.5 Transfer the dish containing the sample to a convection oven, operating at 104 ± 1°C and dry the contents to constant weight.

Note 4: A steam bath may be used to reduce the sample volume provided the sample is subsequently dried in the convection oven at 104°C for at least an hour and then brought to constant weight as specified above.

8.6 Remove the dish from the oven and place in a desiccator until cool. Reweigh to the nearest 0.01 gram and record weight as W3.

Note 5: Rapid weighing is essential to prevent the adsorption of moisture from the air.

Note 6: If volatile residue or ash residue analysis is to be performed on the sample, place the weighed sample in a desiccator and proceed directly with N.J. Sludge Method No. DEP 013.

9.0 Calculations

9.1 To determine the percent total residue by weight in the sample, use the following equation:

$$\% \text{ W/W total residue} = \frac{W3-W1}{W2-W1} \times 100$$

Where:

W1= weight of the original empty dish, in grams (see 8.1);

W2= weight of the original dish plus the sample, in grams (see 8.4); and,

W3= weight of the original dish plus the sample residue, in grams (see 8.6).

10.0 Precision and Accuracy—No data are available.

11.0 References

11.1 Methods for Chemical Analysis of Water and Wastes, U.S. Environmental Protection Agency, EPA 600/4-79-020, March 1979.

VOLATILE AND ASH CONTENT OF TOTAL RESIDUE N.J. SLUDGE METHOD NO. DEP 013

1.0 Scope and Application

1.1 This method is applicable to sludge and provides an approximation of the organic material contained in municipal and industrial sludge over a range of 1-75% W/W. It is used in conjunction with the procedure for the determination of Total Residue, N.J. Sludge Method No. DEP 012.

2.0 Summary of the Method

2.1 The residue from N.J. Sludge Method No. DEP 012, is ignited at 550°C in a muffle furnace. The loss in weight on ignition is reported as volatiles and the resulting solids are reported as ash.

3.0 Sample Handling and Preservation—See N.J. Sludge Method No. DEP 012.

4.0 Limitations

4.1 The method is empirical and approximates the organic content of the sludge due to the volatilization of organic matter. Mineral salts may decompose and give high results for organic volatiles.

5.0 Safety

5.1 The muffle furnace and drying ovens should be placed in a hood or supplied with a vent to remove noxious odors.

Note 1: Sludges containing relatively large amounts of nonvolatile hydrocarbons may present a potential hazard when placed in a muffle furnace at 550°C. These samples may be placed in a cold muffle furnace and brought up to 550°C slowly to avoid spontaneous ignition.

6.0 Apparatus

6.1 Muffle furnace, capable of being regulated at 550 ± 50°C.

7.0 Reagents—none.

8.0 Procedure

8.1 Place the weighed residue and dish from N.J. Sludge Method No. DEP 012, in a muffle furnace preheated to 550 ± 50°C.

Note 2: Do not use an aluminum pan for this procedure.

8.2 Ignite the sample for 60 minutes ± 5 minutes at 550 ± 50°C.

8.3 Remove the sample from the furance with crucible tongs and after allowing the pan to cool partially in the air, place in a desiccator for at least one hour.

8.4 Reweigh the dish to ± 0.01 gram and record the weight as W4.

Note 3: If subsequent analyses are to be performed on the resultant residue, store the residue in a desiccator.

9.0 Calculations

9.1 To determine the volatile content of the residue, use the following equation:

$$\%\ W/W\ \text{Volatile residue} = \frac{(W3-W4)}{W3-W1} \times 100$$

Where:

W1= weight of the original dish, in grams (determined in DEP 012, 8.1);

W3= weight of the original dish plus the sample residue, in grams (determined in DEP 012, 8.6); and,

W4= weight of the original dish plus the ignited sample, in grams (determined in DEP 013, 8.4).

9.2 To determine the ash content of the residue, use the following equation:

$$\%\ W/W\ \text{Ash residue} = \frac{W4-W1}{W3-W1} \times 100$$

Where:

W1= weight of the original dish, in grams (determined in DEP 012, 8.1);

W3= weight of the original dish plus the sample residue, in grams (determined in DEP 012, 8.6); and,

W4= weight of the original dish plus the ignited sample, in grams (see DEP 013, 8.4).

10.0 Precision and Accuracy—No data are available.

11.0 References

11.1 Standard Methods for the Examination of Water and Wastewater, American Public Health Association, 14th ed., New York, 1975.

PHENOLS N.J. SLUDGE METHOD NO. DEP 032

1.1 Scope and Application

1.1 This method is designed to determine the amount of phenolic compounds in municipal and industrial sludges.

1.1.1 The range of the method can be increased, if necessary, either by taking a smaller sample in step 9.2.3 or by taking a smaller aliquot in step 9.5.1.

1.1.2 The range of the method can be lowered, if necessary, by increasing the sample size taken in step 9.2.3.

2.0 Summary of Method

2.1 A representative portion of the sludge sample is mechanically dispersed in water to aid in solubilizing the phenolics, the pH is adjusted to pH 12.0-12.5 with sodium hydroxide. The alkaline sample is made to a known volume with water. A portion of the sample is filtered to remove insolubles. The filtrate is extracted with "Freon"† 113 to remove interferences. The extracted sample is heated to remove the extractant, cooled to room temperature and then adjusted to pH 3 with phosphoric acid. A known portion of the acidic solution, after treatment with copper sulfate solution, is distilled to remove steam-distillable phenolics from the sample matrix. The steam-distillate is reacted with 4-aminoantipyrine at pH 10.0 ± 0.2 in the presence of potassium ferricyanide to form a reddish-brown colored antipyrine dye. The absorbance of the aqueous dye solution is measured directly at 510 nm. The concentration of phenolic compounds, as phenol (C_6H_5OH), in the sample is expressed in terms of mg/kg on the "dry weight" basis.

†Registered U.S. Patent Office

3.0 Sample Handling and Preservation

3.1 Upon collection, samples shall be placed in a wide mouth polyethylene or glass container and refrigerated or iced to 4°C.

4.0 Limitations

4.1 Addition of sodium hydroxide to the sample causes heavy metals to precipitate. If this precipitate is not removed, an emulsion forms during the "Freon" 113 extraction step which causes an inefficient separation of the two phases. Filtration prior to extraction removes the precipitate and the extraction step proceeds without difficulty as little or no emulsion is formed.

4.2 The "Freon" 113 extraction step is necessary to eliminate substances which steam distill over with the phenolics and cause turbidity which interferes with the photometric determination. The "Freon" 113 extraction step normally eliminates the need for redistillation to remove turbid materials as required in the referenced methods (12.1, 12.2 and 12.3).

4.3 Phosphoric acid and copper sulfate are added after extraction and prior to distillation to eliminate interference due to hydrogen sulfide and sulfur dioxide. The use of $CuSO_4$ during the distillation of an acidic sample permits the formation of cupric sulfide without subsequent decomposition to H_2S. The acid solution also prevents the precipitation of cupric hydroxide which acts an an oxidizing agent toward phenols.

4.4 The phenols are distilled at a nearly constant rate from the non-volatile impurities. The rate of volatilization of the phenols is gradual, so that the volume of the distillate must equal that of the sample being distilled. It is for the above reason that the distillation is carried out in two steps.

4.5 The term "phenolics" as used in this method includes those hydroxy derivatives of benzene and its condensed nuclei which can be determined by the specified conditions of this method. Certain para-substituted phenols are excluded from the determination as they do not react with the colorimetric reagent. Other phenols may also be excluded if they (1) do not form water soluble phenolates at pH 12 and are extractable by "Freon" 113 and (2) do not steam distill during the distillation step.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely defined; however, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA rule regarding the safe handling of the chemicals specified in this method. A reference file of Material Data Handling Sheets should be made available to all personnel involved in the chemical analysis.

6.0 Apparatus

6.1 Pan balance, capable of weighing to ± 0.1 gram.

6.2 Tekmar Tissumizer homogenizer, or equivalent, consisting of:

Tissumizer motor	#SDT-1810
Tissumizer shaft and generator	#SDT-182EN
Thyristor regulator	#TR-5T
Stand	#R-1821

NOTE 1: Blenders may not be an equivalent substitute.

6.3 Magnetic stirrer and TFE coated stirring bar.

6.4 pH Meter, laboratory or field model, with an accuracy of ± 0.05 unit. A wide variety of instruments are commercially available with various specifications and optional equipment.

6.5 Glass pH electrode.

6.6 Reference electrode—a fiber junction, calomel, silver-silver chloride or other electrode of constant potential may be used. (Do not use gel filled electrodes).

6.7 Glass combination electrode.

6.8 Filter, funnel, Buchner.

6.9 Filter discs, glass fiber, 7.0 cm, Whatman 943AH grade, or equivalent.

6.10 Separatory funnel, 1-liter capacity with TFE stopcock, Lab-Glass Co., Cat. No, LG-8371T-110, or equivalent.

6.11 Hotplate.

6.12 Ice-water bath.

6.13 1-liter distillation apparatus as shown in figure 1. Fisher Scientific Co., Cat. No. 9-126B, or equivalent.

6.14 Heating mantle, 1000 mL size, Glass-Col, or equivalent.

6.15 Retaining pan, stainless-steel mixing bowl, 3 qt. capacity.

6.16 Cenco-Lerner Lab-Jack, or equivalent.

6.17 500-mL volumetric flask, Class A, MCA type, marked at the 450 mL level.

6.18 Spectrophotometer, with 1.0 cm absorption cells.

7.0 Reagents

7.1 Sodium hydroxide (NaOH), 50% solution, reagent. Fisher Scientific Co., Cat. No. So-S-254, or equivalent.

7.2 "Freon" 113 ("F-113"; 1,1,2-trichloro-1,2,2-trifluoro- ethane).

NOTE 2: 250 mL of the solvent should leave no measureable residue on evaporation; distill if necessary.

7.3 Phosphoric acid (H_3PO_4), concentrated, reagent grade.

7.4 Copper sulfate ($CuSO_4$) solution.

Dissolve 100 g of reagent grade copper sulfate ($CuSO_4.5H_20$) in reagent water and dilute to 1 liter volume. Store in glass container.

7.5 Ammonium chloride (NH_4Cl) solution, 2%.

Dissolve 20 g of reagent grade ammonium chloride in reagent water and dilute to 1 liter volume. Store in glass container.

7.6 Ammonium hydroxide (NH_4OH) solution, concentrated, reagent grade.

7.7 4-Aminoantipyrine solution, 2%. Prepare fresh daily.

Dissolve 2.0 g of 4-aminoantipyrine crystals in reagent water and dilute to 100 ml volume. Store in glass container.

7.8 Potassium ferricyanide ($K_3Fe(CN)_6$) solution, 8%. Prepare fresh weekly.

Dissolve 8.0 g of reagent grade potassium ferricyanide in reagent water and dilute to 100 ml volume. Store in glass container.

7.9 Phenol (C_6H_5OH), reagent grade.

7.10 Phenol Stock Solution. Prepare fresh monthly and store at 4°C in a low actinic bottle. (1.0 mL = 1.0 mg).

Weigh out 1.000 g (± 0.001 g) of reagent grade phenol crystals and transfer quantitatively to a clean 1-liter volumetric flask which contains about 800 mL of reagent water using reagent water to aid in the transfer. Make the flask to volume with reagent water and mix the contents thoroughly. May be kept for 3 days in 4°C refrigerator.

NOTE 3: CAUTION—Use extreme caution in handling reagent grade (100%) phenol as it is very caustic. Wash off spills with copious amounts of cold water. Wear appropriate gloves and eye protection when handling the crystals.

7.11 Phenol Standard Solution. Prepare fresh on day of use (1.0 mL = 0.10 mg).

Transfer a 25.0 mL (pipet) aliquot of the Phenol Stock Solution (1.0 mL = 1.0 mg) to a clean 250-mL volumetric flask which contains about 100 mL of reagent water. Make the flask to volume with reagent water and mix the contents thoroughly. Use within 2 hours after preparation.

7.12 Reagent water, distilled or deionized.

7.13 Boiling stones, Hengar granule.

7.14 "Chromerge", or equivalent—chromic acid dissolved in concentrated H_2SO_4.

NOTE 4: CAUTION—Use care in preparation and handling. Wear appropriate gloves and eye protection.

8.0 Calibration

8.1 Spectrophotometer Calibration

8.1.1 Prepare a series of 100 mL phenol standards in clean, dry 150-mL beakers according to the following schedule:

Phenol Standard Solution (1.0 mL = 0.10 mg phenol)	Reagent Water mL	Phenol mg
0.0	100.0	0.00
1.0	99.0	0.10
2.0	98.0	0.20
3.0	97.0	0.30
4.0	96.0	0.40
5.0	95.0	0.50
7.0	93.0	0.70
10.0	90.0	1.00

NOTE 5: All solutions must be at room temperature.

NOTE 6: Use an automatic laboratory grade 100-mL buret to add the water to the beaker and a 10-mL buret to add the phenol standard to the water.

8.1.2 Develop and measure the color, immediately and without delay, in the series of standards according to the procedure given in steps 9.5.2-9.5.8.

8.1.3 Calculate the factor (F) according to the following directions.

8.1.3.1 Determine the individual factor (f) for each standard in the series to the nearest 0.1 unit using 1.0 cm cells according to the following formula:

$$\frac{C}{A} \times 1000 = f$$

Where: C = mg of phenol present in the standard solution.
A = absorbance of standard solution in a 1.0 cm cell at 510 nm.

8.1.3.2 Determine the average factor for the seven individual standard solutions and record it as the factor (F) to the nearest whole number for the 1.0 cm cell.

8.1.3.3 A plot of absorbance vs. mg phenol (per 100 mL volume) on rectilinear coordinate graph paper should yield a straight line which passes through the origin.

9.0 Procedure

9.1 Determine % W/W total residue, NJ Sludge Method No. DEP 012.

9.2 Sample Preparation

9.2.1 Shake the covered sample container vigorously several times to ensure mixing.

9.2.1.1 Break up large particles with a spatula and remix.

9.2.2 Tare a clean, dry 250-mL beaker on a pan balance to the nearest 0.1 gram, record as W1.

9.2.3 Transfer, with a metal spatula 18-22 g of the well-mixed sample, (be sure to pick up the sample from at least two different spots within the sample container), weighed to the nearest 0.1 g, to the beaker, record as W2.

9.2.4 Add about 150 mL of reagent water to the beaker.

9.2.5 Use the Tekmar homogenizer to disperse the sludge sample into the water. Homogenize for 1-minute, first at a low speed setting, with the bottom of the probe just off the beaker bottom. The speed setting may be increased to increase the efficiency of the dispersion as long as no sample spills from the beaker.

9.2.6 Turn off homogenizer and let any large undispersed particles settle for 1 minute.

9.2.7 Decant slowly the dispersed sample into a clean 1-liter beaker. Retain all large particles in the 250-mL beaker for further dispersion.

9.2.8 Repeat steps 9.2.4-9.2.7 as needed, to completely disperse the sample. Normally, this step will be repeated 4-5 times.

9.2.9 Quantitatively rinse all residue from the homogenizer probe into the beaker using several reagent water rinses. The homogenizer may be turned "on" for a fraction of a second several times to remove water from the probe. Do this while the probe is inserted in the empty beaker.

9.2.10 Add a magnetic stirring bar to the dispersed sample in the liter beaker, stir the contents and measure the sample pH (meter standardized with pH 7 buffer; use temperature compensation).

9.2.11 Add dropwise 50% NaOH solution to bring solution to pH 12.2-12.5. Heavy metal ions will form a precipitate.

9.2.12 Transfer the alkaline solution quantitatively to a 1-liter volumetric flask using reagent water to aid in the transfer and to make the flask to volume. Mix the contents thoroughly.

9.2.13 Let the solids formed settle for 5-10 minutes and then filter about 600 mL of the supernatent solution through a 7.0 cm glass fiber filter (on a 7.0 cm Buchner funnel) into a 1-liter suction flask. Do not wash the filter cake. Use a dry funnel and suction flask for this step. Discard the filter residue.

9.3 Sample Extraction

9.3.1 Transfer the filtrate to a dry 1-liter separatory funnel.

9.3.2 Add 50 mL (graduated cylinder) of "Freon" 113, stopper the funnel and shake the contents vigorously for 1 minute to extract interferences into the "Freon" 113. Carry out extractions in front of well-ventilated laboratory hood. The separatory funnel stem must be dry before use. Vent the funnel, after the extraction, through the top stopper, not through the stopcock. Keep the emulsion in the funnel.

9.3.3 Swirl the funnel contents gently, let the "Freon" 113 settle for about 1-2 minutes and then drain the bottom "Freon" 113 layer to a waste solvent jar.

9.3.4 Repeat steps 9.3.2 and 9.3.3 three times more to extract the solution with a total of 200 mL of "Freon" 113.

9.3.5 Drain the extracted alkaline water layer back to a clean, dry 800-mL beaker.

9.3.6 Heat the solution (in a hood) to 60°C (thermometer) with occasional stirring to remove residual "Freon" 113. Stir the hot solution on magnetic stirrer at moderate rate for 1 minute to completely remove all of the "Freon" 113.

9.3.7 Cool the solution to room temperature (thermometer in an ice-water bath).

9.3.8 Measure out 500 mL (graduated cylinder) of the above solution to an 800-mL beaker and adjust the solution to pH 3.0-3.1 by the dropwise addition of concentrated phosphoric (H_3PO_4) acid while stirring the solution with a magnetic stirrer.

9.3.9 Proceed now directly to step 9.4, without delay.

9.4 Sample Distillation

NOTE 7: IMPORTANT, if a white residue (probably a copper salt) remains on the interior of the distillation flask after the normal cleaning treatment, it can be removed by rinsing the flask with warm 1+1 nitric acid (caution) followed by rinsing with reagent water to remove the residue and the acid.

9.4.1 Transfer, without rinsing the beaker, the extracted, acidified solution to a clean phenol distillation apparatus (see Figure 1).

9.4.2 Add 5 mL pipet of copper sulfate ($CuSo_4$) solution, add 12-15 boiling stones and then stopper the retort flask.

NOTE 8: Do not use glass beads as they cause excessive bumping.

9.4.3 Place a clean, dry 500-mL special volumetric flask under the condenser and turn on the positioned heating mantle. Be sure cooling water is flowing through the condenser.

9.4.4 Let the solution come to a full boil, distill 450 mL of the sample into the volumetric flask and then stop the distillation at this point by turning off the heating mantle and lowering it from the distillation flask. Use the 450 mL graduation mark on the special volumetric flask to determine the distillate volume. The heating mantle is connected directly into a 110 volt line, not into a Variac, in order to reduce the time of distillation.

9.4.5 Remove carefully, when boiling ceases, the stopper from the retort flask and add 50 mL (graduated cylinder) of reagent water to the flask.

9.4.6 Restopper the apparatus, reposition the heating mantle and reheat the solution to a boil again. Continue the distillation until a total of 500 mL of distillate has been collected in the volumetric flask.

9.4.7 Just as 500 mL volume is collected, turn off the heating mantle and lower it from the retort flask to stop the distillation. The distillate should be clear (no turbidity or oil droplets), essentially odorless and essentially colorless.

9.4.8 Mix thoroughly the contents of the stoppered volumetric flask by shaking and then proceed directly to step 9.5 without delay.

9.5 Colorimetric Procedure-Direct Photometric

9.5.1 Transfer 100 mL (pipet) of the mixed distillate (from step 9.4.8) to a clean dry 150-mL beaker. Prepare a blank from 100 mL (pipet) of reagent water and carry it through the same steps as the sample. If necessary, a smaller aliquot (pipet) of the sample distillate plus enough reagent water (pipet) to make a total volume of 100 mL is transferred to a 150-mL beaker.

9.5.2 Add 5.0 mL (pipet) of ammonium chloride (NH_4C1) solution and mix with a clean glass stirring rod.

9.5.3 Calibrate the pH meter (combination electrode) with pH 7 buffer. Be sure to wash off buffer from the electrode with reagent water.

9.5.4 Measure pH of sample solution and adjust it to pH 10.0 ± 0.2 by dropwise addition of concentrated ammonium hydroxide (NH_4OH) solution (in a hood) from a medicine dropper while mixing the solution with the glass rod.

9.5.5 Remove pH electrode from the solution. Rinse off the electrode into a waste beaker, not into the sample solution.

9.5.6 Add 2.0 mL (pipet) of 4-aminoantipyrine solution (4-AAP) to the sample and mix promptly; followed immediately by 2.0 mL (pipet) of potassium ferricyanide solution ($K_3Fe(CN)_6$) and again mixed immediately. Treat each sample (and BLANK) in the series with the two reagents, as above, before proceeding to the next in the series.

9.5.7 Let the solution stand for 15 minutes, after mixing, to develop the color completely.

9.5.8 Measure the absorbance (A) of the sample solution (vs. the BLANK set at 0.000 absorbance) in a 1.0 cm absorption cell with the spectrophotometer set at 510 nm wavelength. Rinse the cell 2 times with reagent water and 2 times with acetone between samples. Use vacuum to aspirate the sample, water and acetone from the cell.

10.0 Calculations

10.1 Determine the amount (mg/kg) of phenolics in the sample on a dry weight basis, use the following equation:

$$\text{mg/kg phenolics} = \frac{A(F)(100000)}{V(W2-W1)(\%S)}$$

Where:

A = absorbance of sample solution (see 9.5.8) in 1.0 cm cell;
F = factor as determined (see 8.1.3.2);
V = mL volume of distillate (see 9.5.1), usually 100 mL;

W1 = weight of the original empty beaker, in grams (see 9.2.2);
W2 = weight of the original empty beaker plus the sample, in grams (see 9.2.3); and
%S = percent W/W total residue of sample (see 9.1) as determined by N.J. Sludge Method No. DEP 012.

Report all results to nearest mg/kg.

10.1.1 If the absorbance in the 1.0 cm cell in step 9.5.8 is less than 0.010A, then report the mg/kg value as "less than" the calculated value using 0.010A.

10.1.2 If the absorbance in the 1.0 cm cell in step 9.5.8 is greater than 1.000A, repeat steps 9.5.1-9.5.8 using a smaller aliquot of the distillate.

11.0 Precision and Accuracy—No data are available.

12.0 References

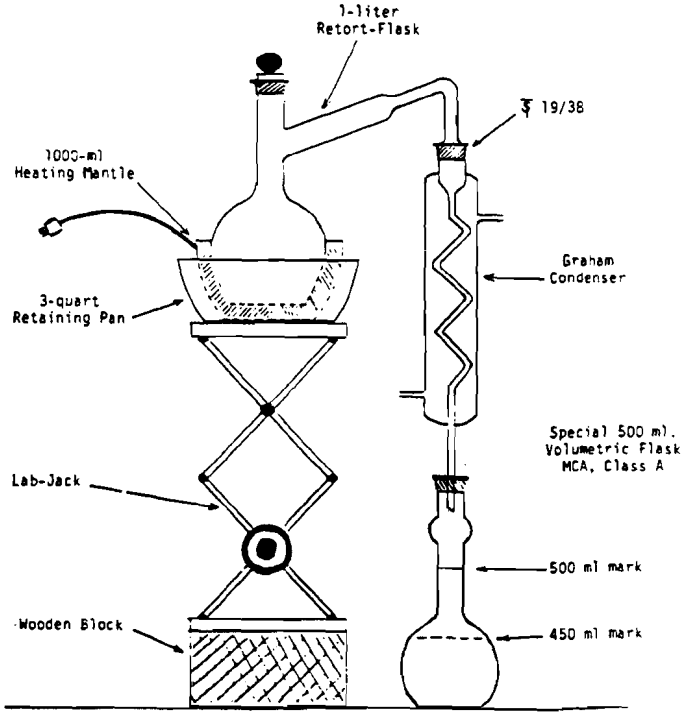
12.1 Methods for Chemical Analysis of Water and Wastes, U.S. Environmental Protection Agency, Cincinnati, 1974, pp. 241-242.

12.2 1974 Annual Book of ASTM Standards (Part 31), American Society for Testing and Materials, Philadelphia, 1974, Method D 1783-70 (Reapproved 1974).

12.3 Standard Methods for the Examination of Water and Wastewater, American Public Health Association, 14th ed., New York, 1975, Method 510.

Figure 1

Distillation Apparatus



OIL AND GREASE
N.J. SLUDGE METHOD DEP 036

1.0 Scope and Application

1.1 This method is designed to determine the amount of oil and grease in municipal and industrial sludges in the range of 0=10% W/W oil and grease.

2.0 Summary of Method

2.1 This method defines two extraction procedures, one applicable to all sludges and one which may be used for sludge samples with a low percent total residue.

2.1.1 For all sludge samples, provided the detection limit of 0.5% can be achieved, a representative portion of the sludge sample is manually dispersed in a limited volume of water and then acidified with concentrated hydrochloric acid. The acidified sample slurry is dehydrated with the addition of magnesium sulfate monohydrate. After solidification, the dry sample is ground to a powder. Oil and grease is extracted from the powdered sample in a soxhlet extraction apparatus, using "Freon"† 113 as the extractant.

2.1.2 For sludge samples containing less than ten percent W/W total residue, the sample may be manually dispersed and acidified with concentrated hydrochloric acid. The oil and grease is extracted from the sample in a separatory funnel using "Freon" 113 as the extractant.

2.2 The "Freon" 113 is removed by distillation and the amount of residual extracted oil and grease, after drying, is determined gravimetrically. Results are reported as % W/W oil and grease on the dry 100% solids basis.

†Registered U.S. Patent Office.

3.0 Sample Handling and Preservation

3.1 Upon collection, samples shall be refrigerated or iced at 4°C.

4.0 Limitations

4.1 Any filterable "Freon" 113 soluble substances, such as elemental sulfur and certain organic dyes and nitrobodies, will be extracted and calculated as oil and grease.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely defined; however, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA rule regarding the safe handling of the chemicals specified in this method. A reference file of Material Safety Data Sheets should be made available to all personnel involved in the chemical analysis.

6.0 Apparatus

6.1 Pan balance, capable of weighing to ± 0.1 gram.

6.2 Glass stirring rod, heavy duty.

6.3 Boiling stones, Hengar granule.

6.4 Desiccator, with indicating silica-gel or calcium sulfate desiccant.

6.5 Finger cots, rubber, large, Fisher Scientific Co., Cat. No. 10-001C, or equivalent.

6.6 Balance, analytical, capable of weighing to ± 0.1 mg.

6.7 Hot water/steam bath.

6.8 Connecting tube, condenser, and solvent receiver.

6.9 For soxhlet extraction only (see 8.2).

6.9.1 Mortar and pestle, glass, 16 oz. capacity. Do not use porcelain as it is difficult to clean.

6.9.2 Soxhlet extraction assembly, consisting of:

Flask, 250 ml capacity, flat-bottom, with 24/40 joint; Fisher Scientific Co., Cat. No. 09-559B, or equivalent;

Extraction tube, with 55/50 joint, Fisher Scientific Co., Cat. No. 09-558C, or equivalent;

Condenser, Allihn-type with 55/50 joint, Fisher Scientific Co., Cat. No. 09-557C, or equivalent; and

Soxhlet cellulose extraction thimble, 43 mm diameter x 123 mm long, mfged. by Whatman, or equivalent.

6.9.3 Glasswool, washed with "Freon" 113.

6.9.4 Heating mantle, designed for flat bottom flask, 250-ml size.

6.9.5 Variable autotransformer, 120V output with 0-100 scale.

6.9.6 Forceps, metal, approx. 10 inch length.

6.10 For separatory funnel extraction only (see 8.3).

6.10.1 Separatory funnel, 50 ml with TFE stopcock.

6.10.2 Drying column-Chromatographic column, 19 mm ID, coarse frit filter disc.

6.10.3 Flask, 250 ml capacity, flat-bottom, with 24/40 joint; Fisher Scientific Co., Cat. No. 09-559B, or equivalent.

7.0 Reagents

7.1 Hydrochloric acid (HCl), concentrated.

7.2 Indicating pH paper for low pH measurement.

7.3 "Freon" 113 ("F-113"; 1,1,2-trichloro-1,2,2-trifluoro-ethane).

NOTE 1: 250 ml of the solvent should leave no measurable residue on evaporation; distill if necessary.

7.4 For soxhlet extraction only (see 8.2).

7.4.1 Magnesium sulfate monohydrate ($MgSO_4H_2O$).

Dry a thin layer of laboratory grade magnesium sulfate heptahydrate ($MgSO_47H_2O$), crystal, in an oven at 105-110°C for 48 hours.

NOTE 2: Stir and break up lumps frequently during the drying process.

NOTE 3: Caution, do not attempt to substitute magnesium sulfate, anhydrous, powder for the monohydrate as too much heat will be generated during the procedure and the resulting mass will be difficult to pulverize.

7.4.2 Reagent Water, distilled or deionized.

7.5 For separatory funnel extraction only (see 8.3).

7.5.1 Sodium sulfate-(ACS) Granular, anhydrous. Purify by heating at 400°C for 4 hours in a shallow tray.

8.0 Procedure

8.1 Determine % W/W total residue, N.J. Sludge Method No. DEP 012, if necessary.

8.2 Soxhlet extraction-applicable to all sludge samples, provided the required detection limit can be achieved.

8.2.1 Shake the covered sample container vigorously, disperse sample, if necessary, with a homogenizer or blender to disintegrate large particles.

8.2.2 Tare a clean, dry 250 ml beaker on a pan balance to the nearest 0.1 mg, record as W1.

8.2.3 Transfer, with a metal spatula 18-22 grams of the well-mixed sludge sample, (be sure to pick up the sample from at least two different spots within the sample container), weighed to the nearest 0.1 mg, to the beaker, record as W2.

8.2.4 Add 20 ml (graduated cylinder) of reagent water to the sample, if necessary, to fluidize.

8.2.5 Disperse the sample manually into the water, using the flat end of a clean, heavy glass stirring rod, with stirring and mixing to yield a uniform, lump-free slurry (do not homogenize). This step may require several minutes of effort to achieve the uniform finely divided slurry; do not use any additional water in this step.

8.2.6 Add concentrated hydrochloric acid (HCl), approximately one ml at a time, to the dispersed sample while stirring with the glass rod until the slurry is strongly acidic (pH 2 or less) as indicated by the pH paper. Stir the sample 10-15 seconds before testing for acidity.

8.2.7 Wait 10 minutes after the last HCl addition and recheck for acidity using the pH paper. If the sample is strongly acidic (pH 2 or less) proceed to step 8.2.8. If the sample is not strongly acidic, continue the HCl addition as in step 8.2.6 and repeat step 8.2.7 until the acidity holds for at least 10 minutes.

8.2.8 Reweigh the beaker (no stirring rod present) to the nearest 0.1 gram, record as M, determine the amount of total acidic slurry (TAS) that is present by difference from the tare weight (W1) of step 8.2.2 (TAS = M-W1).

8.2.9 Weigh out the magnesium sulfate monohydrate ($MgSO_4H_2O$) that is at least equal to 1.3 times the total acid slurry weight found in step 8.2.8, (grams $MgSO_4H_2O$ = TAS x 1.3).

8.2.10 Add slowly while stirring with the glass rod the $MgSO_4H_2O$ to the acid slurry. The $MgSO_4H_2O$ will dehydrate the sample slurry to form a solid sample that can be ground to a powder. The oil and grease will be dispersed in the solid sample and heat will be generated by the reaction.

8.2.11 Stir the sample with the glass rod to a smooth paste and, before the paste sets up, spread the paste evenly over the entire inside of the beaker surface to facilitate its subsequent removal after it solidifies. Keep the paste off the bottom of the beaker as much as possible to ease the removal of the solidified sample in step 8.2.13.

8.2.12 Let the sample stand for about 1/2 hour so it may solidify and cool.

8.2.13 Transfer the solidified sample, using a metal spatula, to a clean glass mortar and grind to a uniform, free-flowing powder. Do not attempt to grind the entire sample at one time.

8.2.14 Transfer the entire powdered sample to a soxhlet cellulose extraction thimble (43 mm diameter X 123 mm long). Tap the thimble gently as it is filled to prevent the presence of voids in the powder. At this point, the thimble and sample can be placed in a clean labeled pint screw-cap jar to hold overnight, if necessary.

8.2.15 Transfer one small boiling stone to a clean, dry 250 ml flat bottom extraction flask (24/40 joint) and place in a desiccator to condition for at least 1/2 hour.

8.2.16 Remove the flask from the desiccator, using finger cots, and rapidly weigh to the nearest 0.1 mg; record as W3, and set the flask aside.

8.2.17 Fill the remaining space in the sample-filled thimble with a loosely-packed wad of glasswool (washed with "Freon" 113) to prevent particles from flushing out of the thimble during extraction.

8.2.18 Gently slide the extraction thimble down the inside of the clean, dry extractor tube and assemble it to the condenser and to the tared extraction flask. Be sure good seal is obtained for the ungreased ground glass joint.

8.2.19 Seat the extraction flask in the heating mantle that is controlled by a variable transformer.

8.2.20 Turn on the water flow to the condenser; check for an adequate flow during the extraction procedure.

8.2.21 Slowly transfer about 225 ml (graduated cylinder) of "Freon" 113 to the apparatus by pouring it through the condenser top.

8.2.22 Turn on the heating mantle with the transformer (120 V output) to obtain a reflux rate of 1 cycle/3 mintues ± 15 seconds, maintain reflux for 4 hours.

Note 4: The transformer setting should be noted for future use.

Note 5: The rate and time of extraction in the soxhlet apparatus must be exactly as directed because of the varying solubilities of different greases.

8.2.23 Turn off and remove the hot mantle from the extraction flask at the end of the 4 hour extraction period.

8.2.24 Remove the extraction flask from the apparatus and set aside; remove the thimble from the tube, using a clean, long metal forceps, and let the "Freon" 113 drain back into the tube; transfer the residual "Freon" 113 from the tube to the flask. Discard the thimble and extracted sample. Proceed to step 8.4.

8.3 Separatory funnel extraction-recommended for sludge samples with less than ten percent W/W total residue as determined in N.J. Sludge Method No. DEP 012.

8.3.1 Shake the covered sample container vigorously, disperse sample, if necessary, with a homogenizer or blender to disintegrate large particles.

8.3.2 Tare a clean, dry 250 ml beaker on a pan balance to the nearest 0.1 mg, record as W1.

8.3.3 Transfer approximately 100 grams of the well-mixed sludge sample to the 250 ml beaker, weigh to the nearest 0.1 mg, record as W2.

8.3.4 Add concentrated hydrochloric acid (HCl), approximately one ml at a time, to the dispersed sample while stirring with the glass rod until the slurry is strongly acidic (pH 2 or less) as indicated by the pH paper. Stir the sample 10-15 seconds before testing for acidity.

8.3.5 Wait 10 minutes after the last HCl addition and recheck for acidity using the pH paper. If the sample is strongly acidic (pH 2 or less) proceed to step 8.3.6. If the sample is not strongly acidic, continue the HCl addition as in step 8.3.4 and repeat step 8.3.5 until the acidity holds for at least 10 minutes.

8.3.6 Place a clean, dry 250 ml flat bottom extraction flask in a desiccator to condition for at least on hour.

8.3.7 Remove the flask from the desiccator, using finger cots, and rapidly weigh to the nearest 0.1 mg; record as W3, and set the flask aside.

8.3.8 Quantitatively transfer the acidified sample to a 500 ml separatory funnel with a TFE stopcock.

8.3.9 Add 50 ml of "Freon" 113 to the separatory funnel and extract the sample by shaking the funnel for two minutes with per-

iodic venting to release excess pressure. Allow the organic layer to separate from the water phase for a minimum of ten minutes. If the emulsion interface between layers is more than one third the volume of the solvent layer, the analyst must employ mechanical techniques to complete the phase separation. The optimum technique depends upon the sample, but may include stirring, centrifugation, or other physical methods. Transfer the extract to an Erlenmeyer flask.

8.3.10 Add a second 50 ml volume of "Freon" 113 and repeat the extraction procedure a second time combining the extracts in the Erlenmeyer flask. Perform a third extraction in the same manner.

8.3.11 Pour the combined extract through a solvent-rinsed drying column containing about 10 cm of anhydrous sodium sulfate, and collect the extract in the tared 250 ml flat bottom extraction flask. Rinse the Erlenmeyer flask and column with 20 to 30 ml of "Freon" 113 to complete the quantitative transfer. Proceed to step 8.4.

8.4 Distill the "Freon" 113 from the flat bottom extraction flask in a 70 ± 5°C hot water bath. Clamp the extraction flask at a 45 degree angle and distill the "Freon" 113 into the solvent recycling apparatus.

Note 6: Carry out the distillation in a hood.

8.5 Place the extraction flask, free of "Freon" 113, on a boiling water/steam bath for 15 minutes. Again, clamping the flask at a 45 degree angle in a hood.

8.6 During the final 1 minute on the steam bath, draw air gently through the flask by means of applied vacuum, using 1/4" OD polyethylene tube which reaches to within 1" from the bottom of the extraction flask. The vacuum removes any heavy "Freon" 113 vapors which could cause high results to be reported if they were not drawn off and removed.

8.7 Wipe off the entire outside of the extraction flask with clean, dry paper towels to remove all traces of water.

8.8 Place the flask in a desiccator and let it cool for exactly 30 minutes.

Note 7: The length of time required for drying and cooling the extracted material cannot be varied. There may be a gradual increase in weight, presumably due to the absorption of oxygen or a gradual loss in weight due to volatilization, if the times are varied.

8.9 Remove from the desiccator, using finger cots, and rapidly weigh to the nearest 0.1 mg, record as W4.

9.0 Calculations

9.1 To determine the percent W/W oil and grease in the sample on a dry weight basis, use the following equation:

$$\% \text{ W/W oil and grease} = \frac{W4-W3}{W2-W1\ (\%S)} \times 10{,}000$$

Where

W1= weight of the original empty beaker, in grams (see 8.2.2 or 8.3.2);

W2= weight of the original empty beaker plus the sample, in grams (see 8.2.3 or 8.3.3.);

W3= weight of the empty flask, in grams (see 8.2.16 or 8.3.7);

W4= weight of the empty flask plus the oil and grease extract, in grams (see 8.9); and

%S= percent W/W total residue of sample (see 8.1) as determined by N.J. Sludge Method No. DEP 012.

Report all results to the nearest 0.1%

10.0 Precision and Accuracy

10.1 The following data were obtained during the development of this method.

A composite sample (43.7% solids) was analyzed four times according to the soxhlet extraction procedure contained in this method. The following results were obtained:

Run	1	2	3	4	Avg.	STD. Dev.
% of oil and grease	1.0	1.0	0.8	1.1	1.0	0.13

10.2 The above data indicates that the method, as written, is reasonably precise when a large enough representative sample is taken for analysis. The relative standard deviation of the determination is ± 13%, for a single laboratory.

11.0 References

11.1 Standard Methods for the Examination of Water and Wastewater, American Public Health Association, 14th ed., New York, 1975, Method 502D.

METALS
N.J. SLUDGE METHOD NO. DEP 100

1.0 Scope and Application

1.1 This procedure is applicable to the preparation of sludge samples prior to the determination of metals by atomic absorption spectrometry. This procedure is applicable to both direct aspiration and furnace atomization of the following elemental priority pollutants: arsenic (As), cadmium (Cd), calcium (Ca), chromium (Cr), copper (Cu), lead (Pb), magnesium (Mg), nickel (Ni), potassium (K), and zinc (Zn).

2.0 Summary of Method

2.1 This method defines two digestion procedures, one applicable to all sludges and one which may be used for sludge samples with a low percentage total residue.

2.1.1 For all sludge samples, the sample is digested with nitric acid and hydrogen peroxide and analyzed using atomic absorption methods.

2.1.2 For sludge samples containing less than ten percent W/W total residue, the sample may be treated as an aqueous sample and analyzed using the U.S. EPA procedure for the determination of total metals by atomic absorption found in the Methods for Chemical Analysis of Water and Wastes U.S. EPA (EPA-900/4-79-020).

3.0 Sample Handling and Preservation

3.1 Samples should be maintained at 4°C.

4.0 Limitations

4.1 See Section 5.0 of the Metals-Atomic Absorption Method in the Methods for Chemical Analysis of Water and Wastes, U.S. EPA (EPA 600/4-79-020).

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely defined; however, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA rules regarding the safe handling of the chemicals specified in this method. A reference file of Material Data Handling Sheets should be made available to all personnel involved in the chemical analysis.

6.0 Apparatus

6.1 See Section 6.0 of the Metals-Atomic Absorption Method in the Methods for Chemical Analysis of Water and Wastes, U.S. EPA (EPA 600/4-79-020).

7.0 Reagents

7.1 See Section 7.0 of the Metals-Atomic Absorption Method in the Methods for Chemical Analysis of Water and Wastes, U.S. EPA (EPA 600/4-79-020).

7.2 Hydrogen Peroxide (30%).

8.0 Procedure

8.1 Sludge Digestion—applicable to all sludge samples.

8.1.1 Weigh and transfer to a 125-mL conical beaker a representative, 1.0 gram aliquot of a pulverized sample that has been dried in accordance with N.J. Sludge Method No. DEP 012. Record the weight of the sample to the nearest mg and record as D.

8.1.2 Add 5 mL of 1:1 nitric acid to the beaker, and cover it with a watch glass. Heat the contents of the beaker gently so that a reflex action occurs. Continue heating until the volume of the contents is reduced to approximately 2 mL.

8.1.3 Allow the contents to cool, add 4 mL of concentrated HNO_3 and again heat at a gentle reflux until the volume is reduced to approximately 2 mL.

8.1.4 After the second reflux has been completed and the sample has cooled, add 2 mL of concentrated nitric acid, 2 mL of deionized distilled water, and 2 mL of 30% hydrogen peroxide.

8.1.5 Return the beaker to the hot plate for warming to start the peroxide reaction. The reaction is vigorous. Care must be taken to avoid losses with the start of effervescence.

8.1.6 Heat until the volume is reduced to approximately 3 mL.

8.1.7 Continue the addition of 30% hydrogen peroxide in 3 mL increments (do not add more than 3 increments) with warming until the effervescence is minimal or the general sample appearance is unchanged.

8.1.8 Wash any residue from the underside of the watch glass and walls of the beaker into the sample solution and dilute the contents of the beaker to approximately 10.0 mL with deionized distilled water. Filter the contents of the beaker into a 50-mL volumetric flask through Whatman No. 42 paper (or the equivalent). Wash the insoluble residues in the beakers three times with 5 mL portions of 1% nitric acid, and add the washings to the volumetric flasks through the filters.

8.1.9 Dilute the contents of the volumetric flasks to 50 mL with deionized distilled water and analyze by atomic absorption spectrometry as specified in the Section 9.0 of the Metals-Atomic Absorption Method in the Methods for Chemical Analysis of Water and Wastes, U.S. EPA (EPA-600/4-79-020). Record the metal concentration in ug/ml.

8.2 Aqueous Sludge Digestion—if the percent W/W total residue as determined in N.J. Sludge Method No. DEP 012 is less than ten, the following procedure may be used.

8.2.2 Determine percent W/W total residue, N.J. Sludge Method No. DEP 012, if necessary.

8.2.3 Digest an amount of sludge that will give the equivalent of one (1) gram on a dry weight basis and analyze the sample using the method specified in Section 4.1.3 of the Metals-Atomic Absorption Method in the Methods for the Chemical Analysis of Water and Wastes, U.S. EPA (EPA 600/4-79-020).

NOTE 1: The appropriate conversion must be made to report the final result on a dry weight (W/W) basis.

9.0 Calculations

9.1 To determine the amount of metal present in the sample on a dry weight basis when using the procedure in section 8.1 of this method, use the following equation:

$$\text{mg metal/kg sample} = \frac{(A)(V)}{(D)}$$

Where: A = ug/mL of metal in digested sample (see 8.1.9);
V = final volume of processed sample in mL (see 8.1.8); and
D = Weight of dry sample in grams (see 8.1.1).

10.0 Precision and Accuracy

10.1 In an interlaboratory study, Reference 11.4, using a U.S. EPA reference sludge sample, the following data were obtained:

		INTERLABORATORY STUDY		
DETERMINATION	EPA REFERENCE VALUE	# OF PARTICIPANTS	LABORATORY AVERAGE	LABORATORY STANDARD DEVIATION
1. ARSENIC	16.97	6	6.57	12.8
2. CADMIUM	20.77	13	18.5	2.95
3. CALCIUM	—	10	15300	5800
4. CHROMIUM	204	15	183	38
5. COPPER	1095	14	941	125
6. LEAD	519	14	516	83
7. MAGNESIUM	—	9	3620	2200
8. NICKEL	198	15	165	27
9. POTASSIUM	—	7	775	262
10. ZINC	1323	14	1190	185

11.0 REFERENCES

11.1 Methods for the Chemical Analysis of Water and Wastes, U.S. EPA (EPA-600/4-79-020), March 1979.

11.2 Test Methods for the Evaluation of Solid Waste, Method 3050, USEPA SW-846, April 1984.

11.3 "Interim Methods for the Analysis of Elemental Priority Pollutants in Sludge", U.S. EPA, Cincinnati, 1978.

11.4 Adelman, H., Jenniss, S.W., and Katz, S.A., "Interlaboratory Analysis of Sewage Sludge", American Laboratory, December 1981.

FORM T-VWX-007 (FRONT) APPENDIX B

New Jersey Department of Environmental Protection
Division of Water Resources

DOMESTIC WASTEWATER SLUDGE REPORT

DISCHARGE PERMIT NO.	REPORTING PERIOD MO.	REPORTING PERIOD YR.	REPORTING CATEGORY		
I__1__1__1__1__1__1__1__1__1	I__1__I	I__1__1__1__1	I__I	III	Page I_I of I_I

FACILITY NAME: _____

A. REPORTING CATEGORY INFORMATION:

1. Permitted Wastewater Flow	(MGD)	A1:	I__1__1__.__I
2. Industrial Contribution	(% of influent)	A2:	I__1__I.
3. Average Daily Septage Treated	(Gallons/Day)	A3:	I__1__1__1__1__1__1__I.

B. INFORMATION ON SLUDGE PRODUCED IN TREATMENT PROCESSES:

1. Average Total Solids of Sludge	(% by weight)	B1:	I__1__.__I
2. Average Daily Sludge Production	(Gallons/Day)	B2:	I__1__1__1__1__1__1__I.
3. Average Daily Sludge Production	*(Dry Tons/Day)	B3:	*I__1__1__.__1__1

**C. INFORMATION ON SLUDGE REMOVED FOR ULTIMATE MANAGEMENT:

1. Complete ONLY If Liquid Sludge Is Removed:			
a. Total Solids of Liquid Sludge	(% by weight)	C1:	I__1__.__I
b. Average Daily Sludge Removal	(Gallons/Day)	C2:	I__1__1__1__1__1__1.
2. Complete ONLY If Dewatered Sludge Is Removed:			
a. Total Solids of Dewatered Sludge	(% by weight)	C3:	I__1__.__I
b. Complete ONE of the Following:			
i. Average Daily Sludge Removal	(Gallons/Day)	C4:	I__1__1__1__1__1__1.
Total Solids of 2.b.i.	(% by weight)	C5:	I__1__.__I
ii. Average Daily Sludge Removal	(Wet Cu. Yds./Day)	C6:	I__1__1__1__.__I
iii. Average Daily Sludge Removal	(Wet Tons/Day)	C7:	I__1__1__1__.__I
3. Total Average Daily Sludge Removal	*(Dry Tons/Day)	C8:	*I__1__1__.__1__I
4. pH of Sludge Removed	(Standard units)	C9:	I__1__.__I

D. ULTIMATE SLUDGE MANAGEMENT SITE (see codes on reverse):

METHOD CODE	HAULER REGISTRY	FACILITY/OPERATION	RECEIVING PLANT
I__I	1_1_1_1_1_I	1_1_1_1_I_I_I_1_1_1_1_I_I_1_1_1_1_I	I_1_1_1_1_1_1_I
I__I	1_1_1_1_1_1	1_1_1_1_I_I_I_1_1_1_1_I_I_1_1_1_1_I	I_1_1_1_1_1_1_I
I__I	1_1_1_1_1_1	1_1_1_1_I_I_I_1_1_1_1_I_I_1_1_1_1_I	I_1_1_1_1_1_1_I

E. PATHOGEN REDUCTION INFORMATION (see codes and complete reverse):

METHOD CODE	FACILITY/OPERATION	PERMIT NO.	FOR DEPT. USE ONLY PSRP	PFRP
I__I	I_1_1_1_1_1_1_1_1_1_1_1_1_1_1_1_1	I_1_1_1_1_1_1_1	I_I	I_I
I__I	I_1_1_1_1_1_1_1_1_1_1_1_1_1_1_1_1	I_1_1_1_1_1_1_1	I_I	I_I
I__I	I_1_1_1_1_1_1_1_1_1_1_1_1_1_1_1_1	I_1_1_1_1_1_1_1	I_I	I_I

CERTIFICATION OF AUTHENTICITY:

Name of Authorized Agent (print):_____

Signature of Authorized Agent:_____ Date:_____

Title of Authorized Agent:_____

Laboratory Name:_____ Cert. #:_____

NOTES: *Equations for calculation of Dry Tons is on back of form.
**To be reported only if sludge is removed from Treatment Works site during the reporting period. If none removed, so state in Section D.

FORM T-VWX-007
(back)

PATHOGEN REDUCTION METHOD CODE (appropriate sections must be completed)

A. Anaerobic Digestion; or
B. Aerobic Digestion; complete the following:

		UNIT 1	UNIT 2	UNIT 3
1. Percent Volatile Solids:				
a. Before Stabilization	(as weight % of TS)	I__1__.__I	I__1__.__I	I__1__.__I
b. After Stabilization	(as weight % of TS)	I__1__.__I	I__1__.__I	I__1__.__I
c. Percent Reduction	(see equation)	I__1__.__I	I__1__.__I	I__1__.__I
2. Detention Time	(Days)	I__1__1__I	I__1__1__I	I__1__1__I
3. Average Temperature	(Degrees C)	I__1__.__I	I__1__.__I	I__1__.__I

C. Air Drying (report on any beds emptied for the report period):

BED	DATE SLUDGE LOADED MONTH	DAY	YEAR	DEPTH POURED INCHES	DATE SLUDGE REMOVED MONTH	DAY	YEAR
1.	I__I__I	I__I__I	I__I__I__I__I	I__I__I	I__I__I	I__I__I	I__I__I__I__I
2.	I__I__I	I__I__I	I__I__I__I__I	I__I__I	I__I__I	I__I__I	I__I__I__I__I
3.	I__I__I	I__I__I	I__I__I__I__I	I__I__I	I__I__I	I__I__I	I__I__I__I__I
4.	I__I__I	I__I__I	I__I__I__I__I	I__I__I	I__I__I	I__I__I	I__I__I__I__I
5.	I__I__I	I__I__I	I__I__I__I__I	I__I__I	I__I__I	I__I__I	I__I__I__I__I

D. State Approved Lime Stabilization
E. Thermal Treatment/Drying
F. Phragmites
G. Composting
H. Other (specify here: _____)
I. None

ULTIMATE SLUDGE MANAGEMENT METHOD CODE:

1. Land Application at a NJPDES Permitted Site
2. State Approved Distribution Permit
3. Incineration
4. Ocean Disposal
5. Out of State
6. Residual Not Classified as Sludge, Managed by Hazardous or Waste Flow Regs.
7. Other (specify here: _____)
8. None Removed

EQUATIONS:

A. Dry tons= $\frac{\text{Gallons (wet) X Solid Content (of the gallons)}}{240}$

B. Dry Tons= $\frac{\text{Cubic Yards (wet) X Solid Content (of the cubic yards)}}{(y)}$

y= 1.185 where solid content is less than 15%
= 1.265 where solid content is 16% to 23%
= 1.58 where solid content is 24% to 29%
= 1.9 where solid content is greater than 30%

C. Dry Tons= Tons (wet) X Solid Content (of the wet tons)

D. Volatile Solids Reduction= $\frac{\text{VS before- VS after}}{\text{vs before- (vs before X vs after)}}$ x 100

NOTE: The total and volatile solid contents in the above equations must be expressed as a decimal, for example:

1% Total solids= .01
20% Total solids= .20

Alternative equations may be utlized if approved in writing by NJDEP

FORM T-VWX-008

New Jersey Department of Environmental Protection
Division of Water Resources

METALS AND SELECTED CHEMICAL PARAMETERS REPORT

DISCHARGE PERMIT NO.	REPORTING PERIOD MO.	REPORTING PERIOD YR.	REPORTING CATEGORY
I__1__1__1__1__1__1__I	I__1__I	I__1__1__1__I	I__I 121

FACILITY NAME: _____

SLUDGE SAMPLING LOCATION: _____

PARAMETER	STORET CODE	TOTAL PHASE (dry weight basis, mg/kg)	NONE DETECTED
METALS:			
Arsenic	01002	I__1__1__1__1__1__.__1__I	I__I
Beryllium	01012	I__1__1__1__1__1__.__1__I	I__I
Cadmium	61527	I__1__1__1__1__1__.__1__I	I__I
Chromium	61512	I__1__1__1__1__1__.__1__I	I__I
Copper	61506	I__1__1__1__1__1__.__1__I	I__I
Iron	01045	I__1__1__1__1__1__.__1__I	I__I
Lead	61503	I__1__1__1__1__1__.__1__I	I__I
Mercury	01260	I__1__1__1__1__1__.__1__I	I__I
Molybdenum	01062	I__1__1__1__1__1__.__1__I	I__I
Nickel	61515	I__1__1__1__1__1__.__1__I	I__I
Selenium	61518	I__1__1__1__1__1__.__1__I	I__I
Zinc	61509	I__1__1__1__1__1__.__1__I	I__I
SELECTED CHEMICAL PARAMETERS:			
Total Nitrogen	00625	I__1__1__1__1__1__.__1__I	I__I
Ammonia Nitrogen	71845	I__1__1__1__1__1__.__1__I	I__I
Nitrate Nitrogen	71850	I__1__1__1__1__1__.__1__I	I__I
Oil and Grease	00550	I__1__1__1__1__1__.__1__I	I__I
Phenols	46000	I__1__1__1__1__1__.__1__I	I__I
Phosphorus	00665	I__1__1__1__1__1__.__1__I	I__I
Calcium	00916	I__1__1__1__1__1__.__1__I	I__I
Magnesium	00927	I__1__1__1__1__1__.__1__I	I__I
Potassium	00937	I__1__1__1__1__1__.__1__I	I__I
Cyanide	00720	I__1__1__1__1__1__.__1__I	I__I
Fluoride	00951	I__1__1__1__1__1__.__1__I	I__I
Chloride	00940	I__1__1__1__1__1__.__1__I	I__I

CERTIFICATION OF AUTHENTICITY:

Name of Authorized Agent(print):_____

Signature of Authorized Agent:_____Date:_____

Title of Authorized Agent:_____

Laboratory Name:_____Cert #:_____

FORM T-VWX-009

New Jersey Department of Environmental Protection
Division of Water Resources

TOXIC ORGANIC COMPOUNDS REPORT

DISCHARGE PERMIT NO.	REPORTING PERIOD MO.	REPORTING PERIOD YR.	REPORTING CATEGORY	
I__1__1__1__1__1__1__1__I	I__1__I	I__1__1__1__I	I__I	131

FACILITY NAME:_____

SLUDGE SAMPLING LOCATION:_____

PARAMETER	STORET CODE	TOTAL PHASE (dry weight basis, mg/kg)	NONE DETECTED
PESTICIDES AND PCB'S:			
Aldrin	39330	I__1__1__1__1__1__1__.__1__1__I	I__I
Chlordane	39350	I__1__1__1__1__1__1__.__1__1__I	I__I
Dieldrin	39380	I__1__1__1__1__1__1__.__1__1__I	I__I
DDT	39370	I__1__1__1__1__1__1__.__1__1__I	I__I
Heptachlor	39410	I__1__1__1__1__1__1__.__1__1__I	I__I
Lindane	39782	I__1__1__1__1__1__1__.__1__1__I	I__I
PCB's	39516	I__1__1__1__1__1__1__.__1__1__I	I__I
Toxaphene	39400	I__1__1__1__1__1__1__.__1__1__I	I__I
PURGEABLES:			
Benzene	34030	I__1__1__1__1__1__1__.__1__1__I	I__I
Carbon tetrachloride	32102	I__1__1__1__1__1__1__.__1__1__I	I__I
Chloroform	32106	I__1__1__1__1__1__1__.__1__1__I	I__I
Methylene Chloride	34423	I__1__1__1__1__1__1__.__1__1__I	I__I
Tetrachloroethylene	34475	I__1__1__1__1__1__1__.__1__1__I	I__I
Trichloroethylene	39180	I__1__1__1__1__1__1__.__1__1__I	I__I
Vinyl chloride	39175	I__1__1__1__1__1__1__.__1__1__I	I__I

BASE/NEUTRALS AND ACIDS:

Benzidine	39102	I__1__1__1__1__1__.__1__1__I	I__I
Benzo(a)pyrene	34247	I__1__1__1__1__1__.__1__1__I	I__I
Bis (2-ethylhexyl) phthalate	39100	I__1__1__1__1__1__.__1__1__I	I__I
Hexachlorobenzene	39700	I__1__1__1__1__1__.__1__1__I	I__I
Hexachlorobutadiene	39702	I__1__1__1__1__1__.__1__1__I	I__I
N-nitrosodimethylamine	34438	I__1__1__1__1__1__.__1__1__I	I__I
_____	_____	I__1__1__1__1__1__.__1__1__I	I__I
_____	_____	I__1__1__1__1__1__.__1__1__I	I__I

CERTIFICATION OF AUTHENTICITY:

Name of Authorized Agent(print):_____

Signature of Authorized Agent:_____ Date:_____

Title of Authorized Agent:_____

Laboratory Name:_____ Cert #:_____

FORM T-VWX-010A

New Jersey Department of Environmental Protection
Division of Water Resources

INDUSTRIAL PROCESS WASTEWATER SLUDGE REPORT

DISCHARGE PERMIT NO.	REPORTING PERIOD MO.	REPORTING PERIOD YR.		
I__1__1__1__1__1__1__I	I__1__I	I__1__1__1__I	I4I	Page I1I of I_I

FACILITY NAME:_____

A. Information On Sludge Produced In Treatment Processes:

1. Average Daily Sludge Production	(Dry Tons/Day)	I__1__1__.__1__1__I
2. Average Daily Sludge Production	(Gallons/Day)	I__1__1__1__1__1__1__1__1__I.
3. Average Total Solids of Sludge	(% by weight)	I__1__.__I

*B. Information On Sludge Removed For Ultimate Management:

1. Average Daily Sludge Removal	(Dry Tons/Day)	I__1__1__.__1__1__I
2. Average Daily Sludge Removal	(Gallons/Day)	I__1__1__1__1__1__1__1__1__I
3. Total Solids Before Dewatering	(% by weight)	I__1__.__I
4. Total Solids After Dewatering	(% by weight)	I__1__.__I
5. pH	(Standard units)	I__1__.__I
6. COD (Chemical Oxygen Demand)	(mg/l)	I__1__1__1__1__1__1__I.
7. Total Oil and Grease	(% by weight)	I__1__.__I

C. Disposal Method(s):

METHOD CODE	DESCRIPTION	LANDFILL REGISTRY	HAULER REGISTRY	RECEIVING PLANT
I__I	I_1_1_1_1_1_1_1_1_1_1_1_1_1_1_1_I	I_1_1_1_1_1_I	I_1_1_1_1_1_I	I_1_1_1_1_1_1_1_I
I__I	I_1_1_1_1_1_1_1_1_1_1_1_1_1_1_1_I	I_1_1_1_1_1_I	I_1_1_1_1_1_I	I_1_1_1_1_1_1_1_I
I__I	I_1_1_1_1_1_1_1_1_1_1_1_1_1_1_1_I	I_1_1_1_1_1_I	I_1_1_1_1_1_I	I_1_1_1_1_1_1_1_I

**D. A. Total Nitrogen	mg/kg	I__1__1__1__1__1__1__I.
B. Ammonia Nitrogen	mg/kg	I__1__1__1__1__1__1__I.
C. Nitrate Nitrogen	mg/kg	I__1__1__1__1__1__1__I.
D. Phosphorus	mg/kg	I__1__1__1__1__1__1__I.
E. Solid Waste Classification ID Number		I__1__I

*Must be reported only if sludge is removed from Treatment Works site during the reporting period.
**Must be reported only if sludge is applied to land for soil improvement.

CERTIFICATION OF AUTHENTICITY:

Name of Authorized Agent (print):_____

Signature of Authorized Agent:_____ Date:_____

Title of Authorized Agent:_____

Laboratory Name:_____ Cert. #:_____

FORM T-VWX-010B

New Jersey Department of Environmental Protection
Division of Water Resources

INDUSTRIAL PROCESS WASTEWATER SLUDGE REPORT (Continued)

DISCHARGE PERMIT NO.	REPORTING PERIOD MO.	REPORTING PERIOD YR.		
I__1__1__1__1__1__1__I	I__1__I	I__1__I	141	Page 1_1 of 1_1

FACILITY NAME:_____

SLUDGE SAMPLING LOCATION:_____

STORET CODE	PARAMETER	TOTAL PHASE (dry weight basis, mg/kg)	NONE DETECTED
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I
I__1__1__1__1__I	_____	I__1__1__1__1__1__._1__1__I	I__I

I__1__1__1__1__1__I	_____	I__1__1__1__1__1__.__1__1__I	I__I
I__1__1__1__1__1__I	_____	I__1__1__1__1__1__.__1__1__I	I__I
I__1__1__1__1__1__I	_____	I__1__1__1__1__1__.__1__1__I	I__I
I__1__1__1__1__1__I	_____	I__1__1__1__1__1__.__1__1__I	I__I
I__1__1__1__1__1__I	_____	I__1__1__1__1__1__.__1__1__I	I__I
I__1__1__1__1__1__I	_____	I__1__1__1__1__1__.__1__1__I	I__I

CERTIFICATION OF AUTHENTICITY:

Name of Authorized Agent (print):_____

Signature of Authorized Agent:_____ DATE:_____

Title of Authorized Agent:_____

Laboratory Name:_____ CERT #:_____

APPENDIX C:
PRIORITY POLLUTANTS

PURGEABLE ORGANIC PRIORITY POLLUTANTS:

1. Acrolein
2. Acrylonitrile
3. Benzene
4. Bromodichloromethane
5. Bromoform
6. Carbon Tetrachloride
7. Chlorobenzene
8. Chloroethane
9. 2-Chloroethylvinyl ether
10. Chloroform
11. Dibromochloromethane
12. 1,1-Dichloroethane
13. 1,2-Dichloroethane
14. 1,1-Dichloroethylene
15. 1,2-Dichloropropane
16. trans-1,3-Dichloropropene
17. Ethylbenzene
18. Methyl Bromide
19. Methyl Chloride
20. Methylene Chloride
21. 1,1,2,2-Tetrachloroethane
22. Tetrachloroethylene
23. Toluene
24. trans-1,2-Dichloroethylene
25. 1,1,1-Trichloroethane
26. 1,1,2-Trichloroethane
27. Trichloroethylene
28. Vinyl Chloride

ACID EXTRACTABLE PRIORITY POLLUTANTS:

29. 2-Chlorophenol
30. 2,4-Dichlorophenol
31. 2,4-Dimethylphenol
32. 4,6-Dinitro-o-cresol
33. 2,4-Dinitrophenol
34. 2-Nitrophenol
35. 4-Nitrophenol
36. p-Chloro-m-cresol
37. Pentachlorophenol
38. Phenol
39. 2,4,6-Trichlorophenol

BASE/NEUTRAL EXTRACTABLE PRIORITY POLLUTANTS:

40. Acenaphthene
41. Acenaphthylene
42. Anthracene
43. Benzidine
44. Benzo(a)anthracene
45. Benzo(a)pyrene
46. 3,4-Benzofluoranthene
47. Benzo(k)fluoranthene
48. Benzo(g,h,i)perylene
49. bis(2-Chloroethoxy)methane
50. bis(2-Chloroethyl)ether
51. bis(2-Chloroisopropyl)ether
52. bis(2-Ethylhexyl)phthalate
53. 4-Bromophenyl phenyl ether
54. Butyl benzyl phthalate
55. 2-Chloronaphthalene
56. 4-Chlorophenyl phenyl ether
57. Chrysene
58. Dibenzo(a,h)anthracene
59. 1,2-Dichlorobenzene
60. 1,3-Dichlorobenzene
61. 1,4-Dichlorobenzene
62. 3,3'-Dichlorobenzidine
63. Diethyl phthalate
64. Dimethyl phthalate
65. Di-n-butyl phthalate
66. 2,4-Dinitrotoluene
67. 2,6-Dinitrotoluene
68. Di-n-octyl phthalate
69. 1,2-Diphenylhydrazine
70. Fluoranthene
71. Fluorene
72. Hexachlorobenzene
73. Hexachlorobutadiene
74. Hexachlorocyclopentadiene
75. Hexachloroethane
76. Indeno(1,2, 3-c,d)pyrene
77. Isophorone
78. Naphthalene
79. Nitrobenzene
80. N-Nitrosodimethylamine
81. N-Nitrosodi-n-propylamine
82. N-Nitrosodiphenylamine
83. Phenanthrene
84. Pyrene
85. 1,2,4-Trichlorobenzene

PESTICIDE EXTRACTABLE PRIORITY POLLUTANTS:

86. Aldrin
87. alpha-BHC
88. beta-BHC
89. gamma-BHC (Lindane)
90. delta-BHC
91. Chlordane
92. 4,4'-DDT
93. 4,4'-DDE
94. 4,4'-DDE
95. Dieldrin
96. alpha-Endosulfan
97. beta-Endosulfan
98. Endosulfan sulfate
99. Endrin
100. Endrin aldehyde
101. Heptachlor
102. Heptachlor Epoxide
103. PCB-1242
104. PCB-1254
105. PCB-1221
106. PCB-1232
107. PCB-1248
108. PCB-1260
109. PCB-1016
110. Toxaphene

PRIORITY POLLUTANT METALS AND OTHER TOXIC POLLUTANTS:

111. Antimony
112. Arsenic
113. Beryllium
114. Cadmium
115. Chromium
116. Copper
117. Lead
118. Mercury
119. Nickel
120. Selenium
121. Silver
122. Thallium
123. Zinc
124. Cyanide
125. 2,3,7,8-Tetrachloro-dibenzo-p-dioxin

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Environmental Cleanup Responsibility Act Rules

Proposed Amendments: N.J.A.C. 7:26B-1.3, 1.5 through 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, and 13.1

Authorized By: Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 13:1K-6 et seq., particularly N.J.S.A. 13:1K-10, and N.J.S.A. 58:10-23.11 et seq.

DEP Docket Number: 004-89-01.

Proposal Number: PRN 1989-104.

Public hearings concerning this proposal will be held on:

March 14, 1989 at 9:00 A.M.
Mercer County Community College
West Windsor Campus
Administration Building
Conference Room A
1200 Old Trenton Road
West Windsor, New Jersey

March 16, 1989 at 9:00 A.M.
Rutgers, the State University-Newark
Robeson Campus
Multi-Purpose Room West
Room 231
350 Dr. Martin Luther King Blvd.
Newark, New Jersey

Submit written comments by March 23, 1989 to:

Jane Engel, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On November 30, 1987, the Department of Environmental Protection ("Department") adopted rules implementing the Environmental Cleanup Responsibility Act ("ECRA" or "Act"), N.J.S.A. 13:1K-6 et seq., published on December 21, 1987 at 19 N.J.R. 2435(a), which became operative on January 1, 1988. Various parties appealed from these rules including the Society for Environmental, Economic Development, the Chemical Industry Council of New Jersey, Ashland Chemical Company and Cooper Industries, Inc. ("industry appellants"), as well as the Public Interest Research Group of New Jersey, the New Jersey Environmental Lobby and Keith Onsdorff ("environmental appellants"). All appeals were consolidated by order of the Appellate Division of Superior Court on June 1, 1988, *In Re Adoption of N.J.A.C. 7:26B,* Docket Nos. A-2403-87T1, A-2521-87T1, A-2522-87T1, A-2523-87T1, A-2524-87T1. The industry appellants filed one joint brief and the environmental appellants filed one joint brief.

The Department has reviewed the entire matter and determined to reconsider the rules and to adopt revised ECRA rules. On September 21, 1988, the Department filed a Motion for Remand of the matter pending completion of the rulemaking process. On October 18, 1988 the Court granted the Department's Motion for Remand and ordered that the proceeding on remand be concluded by March 1, 1989.

On remand, the Department reconsidered the ECRA rules, particularly as they relate to corporate, partnership and general business law and has proceeded with new rulemaking. The Department is also proposing revisions to certain provisions of the disputed ECRA rules where necessary in order to assure their maximum clarity. In addition, it is the Department's intention to propose additional modifications to the ECRA rules within one year.

The Department has republished certain portions of the rule text adopted on November 30, 1987 in order to solicit additional public comment. In order to promote maximum public participation in the rulemaking process, the following provisions are printed in full and comment is invited on the entire provisions as if they were proposed for readoption:

Definition of industrial establishment at N.J.A.C. 7:26B-1.3
N.J.A.C. 7:26B-1.5(b)10
N.J.A.C. 7:26B-3.3
N.J.A.C. 7:26B-7.5(b)

A summary of the proposed changes follows:

A definition of "cessation of all or substantially all the operations" was added at N.J.A.C. 7:26B-1.3 in order to clarify that phrase as it is used in N.J.A.C. 7:26B.

Paragraph 3 under the definition of "closing, terminating or transferring operations" at N.J.A.C. 7:26B-1.3, has been deleted, and language has been added to paragraph 1 to clarify that ECRA applies to cessations of industrial establishments when the cessation is for a period of not less than two years. In addition, paragraph 4 has been modified for reasons discussed below in connection with changes to N.J.A.C. 7:26B-1.5(b)14. The term "majority" was deleted from this definition and replaced by "controlling" to be consistent with other changes made at N.J.A.C. 7:26B-1.3, and the term "financial" was added to be consistent with the language of the Act.

A definition of "controlling interest" was added at N.J.A.C. 7:26B-1.3 in order to eliminate any confusion that may have been caused by the phrase "majority interest". The Department has determined to use the term "controlling interest" as defined herein as an index of ownership. The definition of "majority interest" has been deleted.

The definition of "corporate reorganization not substantially affecting ownership" at N.J.A.C. 7:26-1.3 was modified in recognition that there are reorganizations which, on their face, appear to substantially affect ownership but, in effect, do not. The definition clarifies that the Department will look at the effect of the reorganization on the availability of assets for any environmental cleanup, the Department's ability to reach the assets, or whether the reorganization otherwise hinders the owner's or operator's ability to clean up the industrial establishment in determining whether a reorganization substantially affects ownership.

The word "activity" was deleted in three places from the definition of "industrial establishment" at N.J.A.C. 7:26B-1.3 to remove any confusion created by the different use of the same term in the SIC Manual. The Department is satisfied that retention of the term "place of business or real property at which such business is conducted", in conjunction with the remainder of this definition, will provide for effective implementation of the Act. In addition, the Department added the phrase "that are vacant land, or that are used in conjunction with such business" to better define the contiguous block(s) and lot(s) which are part of the industrial establishment. This additional language clarifies that unless the contiguous block(s) and lot(s) are used for some purpose related to the business having the applicable primary SIC major group number, such as parking or warehousing or is vacant land, the contiguous block(s) and lot(s) will not be considered part of the industrial establishment.

Several modifications have been made to the definition of "sale or transfer of the controlling share of the assets" including the addition of the phrase "by value" to clarify that 50 percent measures the fair market value of the assets, not simply the quantity of assets. The definition exempts certain types of sales, specifically sales in order to replace, modify or retool equipment.

The Department has deleted the phrase "no matter how remote in the chain of corporate ownership" and has added the phrases "any of" and "unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9." These modifications were made in recognition that there may be some transactions which are so remote in the chain of corporate ownership that they are not appropriate ECRA triggers. These modifications expressly allow the owner or operator to demonstrate to the Department, pursuant to the applicability determination procedure at N.J.A.C. 7:26B-1.9, that a particular transaction remote in the chain of corporate ownership is not an appropriate ECRA trigger. In addition, the phrase "person or persons holding the majority" was deleted from N.J.A.C. 7:26B-1.5(b)2 in order to be consistent with the new definition of controlling interest at N.J.A.C. 7:26B-1.3.

The phrase "at the same or different times, to one person or to different persons" was added to N.J.A.C. 7:26B-1.5(b)3 to clarify that this provision applies to one or more sales or transfers, at the same or different times, to one or more persons. In addition, the phrase "unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9" was added to expressly allow the owner or operator of an industrial establishment to demonstrate to the Department, pursuant to the applicability determination procedure set forth at N.J.A.C. 7:26B-1.9, that, in a particular case, the sale of transfer of a controlling share of the assets as defined by the Act and this chapter, is not an appropriate ECRA trigger.

The phrase "incident or event, or series of incidents or events" was deleted from N.J.A.C. 7:26B-1.5(b)14 and this provision was modified to clarify that the Department did not intend ECRA to be triggered in situations such as when an industrial establishment undergoes a two hour voluntary shutdown due to an accident involving a worker. The modifications made to this provision make it clear that ECRA shall be triggered if there is a transaction or proceeding such as an explosion or fire that results in an industrial establishment becoming non-operational for health or safety reasons and the Department makes a determination that a significant discharge or release has or may have occurred.

The phrase "or substantially all the" was added to and language was deleted from N.J.A.C. 7:26B-1.5(b)15 to clarify that ECRA is also applicable to cessations for two years or longer of all or substantially all the operations at the industrial establishment even when the owner or operator of the industrial establishment asserts that such cessation is temporary. In addition, a reference to N.J.A.C. 7:26B-1.8(a)7 was made to alert the regulated community of the need to comply with that provision. In addition, the phrase "unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9" was added to expressly allow the owner or operator of an industrial establishment to demonstrate to the Department, pursuant to the applicability determination procedure set forth at N.J.A.C. 7:26B-1.9, that in a particular case, cessation of substantially all the operations as defined by the Act and this chapter is not an appropriate ECRA trigger.

N.J.A.C. 7:26B-1.5(b)16 was deleted. "Cessation of all or substantially all" is now defined at N.J.A.C. 7:26B-1.3 and the applicability of a cessation of substantially all operations is now addressed at N.J.A.C. 7:26B-1.5(b)15.

N.J.A.C. 7:26B-1.5(b)18 addressing a change in SIC number, was modified to make it consistent with the definition of "closing, terminating or transferring operations" at N.J.A.C. 7:26B-1.3.

The phrase "which ceased operations prior to December 31, 1983 and" was deleted from N.J.A.C. 7:26B-1.5(c) to make it clear that an industrial establishment that continues to store hazardous substances and wastes after December 31, 1983 has not ceased operations because it is still engaged in operations which involve storage. In such circumstances ECRA would, therefore, be applicable upon an owner's or operator's subsequent closing, terminating or transferring operations.

N.J.A.C. 7:26B-1.6(a)3 was deleted. The closure of all or substantially all operations or the public release of the decision to close all or substantially all operations are events which are now addressed at N.J.A.C. 7:26B-1.6(a)11.

N.J.A.C. 7:26B-1.6(a)5, addressing a change in SIC number, was modified to make it consistent with the definition of "closing, terminating or transferring operations" at N.J.A.C. 7:26B-1.3.

N.J.A.C. 7:26B-1.6(a)7, addressing the initial notice trigger for tendering stock, was modified to make it consistent with changes made at N.J.A.C. 7:26B-1.5(b)2.

N.J.A.C. 7:26B-1.6(a)8, addressing the initial notice trigger for a merger or consolidation, was modified to make it consistent with changes made at 7:26B-1.5(b)1.

The term "majority" was replaced with the term "controlling" at N.J.A.C. 7:26B-1.6(a)9 to be consistent with changes made at N.J.A.C. 7:26B-1.3. In addition, this provision was restructured for clarity.

N.J.A.C. 7:26B-1.6(a)11, addressing closure for health or safety reasons, was modified to make it consistent with changes made at N.J.A.C. 7:26B-1.3 and 1.5(b)14.

N.J.A.C. 7:26B-1.6(a)12, addressing the duration of a cessation of operations, was modified to make it consistent with changes made at N.J.A.C. 7:26B-1.3 and 1.5(b)15 and the deletion of N.J.A.C. 7:26B-1.5(b)16.

N.J.A.C. 7:26B-1.6(a)15 was added to expressly provide that when an owner or operator receives a determination that ECRA is applicable in accordance with N.J.A.C. 7:26B-1.8(a)7, the owner or operator shall submit an Initial Notice to the Department.

The phrase "jointly and severally" was deleted from N.J.A.C. 7:26B-1.7(a), 3.3(a), and 9.2(b) to better reflect the statutory language of ECRA. The Department is satisfied that liability under ECRA would be found to be joint and several, consistent with liability under other New Jersey environmental laws.

N.J.A.C. 7:26B-1.7(b) has been deleted, as it is unnecessary to expressly assign responsibility in these rules for ECRA compliance to the party initiating the hostile takeover.

The term "majority" was deleted from N.J.A.C. 7:26B-1.8(a)5 and replaced by "controlling" to be consistent with changes made at N.J.A.C. 7:26B-1.3. In addition, the term "any of" was added and the phrase "no matter how remote in the change of corporate ownership" was deleted to be consistent with changes made at N.J.A.C. 7:26B-1.5(b)1, 2 and 6.

N.J.A.C. 7:26B-1.8(a)7 has been modified to require that an owner or operator of an industrial establishment request an applicability determination from the Department when all or substantially all the operations have ceased for a period greater than three months but less than two years. Such a requirement is necessary in order for the Department to have knowledge of and effectively monitor temporary cessations that may last for a period of two years or longer. The Department will consider cessations of all or substantially all operations for a period of three months or more to be permanent cessations (that is, for two years or more), unless the procedures set forth in this provision are followed and the Department determines that the cessation is for less than two years. In order to lessen the impact of this requirement, the Department has established a three month threshold. This provision also sets forth notification requirements which, among other requirements, place an obligation on the owner or operator who has received a letter of non-applicability to inform the Department when the information it originally submitted regarding the temporary nature of the cessation has changed.

N.J.A.C. 7:26B-1.9 has been modified in order to clarify the procedure by which an owner or operator can obtain a letter of non-applicability.

N.J.A.C. 7:26B-5.2(a) was modified to require the seller or transferor of an industrial establishment to notify the purchaser or transferee that hazardous substances and wastes are at the site, and to provide evidence to the Department that such notification has been given. The Department is satisfied that this requirement on the seller or transferor will provide adequate notice to the purchaser or transferee that hazardous substances or wastes remain at the site and that the buyer or transferee may become liable for those substances at some future date. This new language removes the burden of executing a letter of consignment from the purchaser or transferee.

N.J.A.C. 7:26B-7.5(b) was modified in recognition that persons, other than owners or operators, may be signatories to an Administrative Consent Order (ACO).

N.J.A.C. 7:26B-10.1(b) was modified to include subsection (d) as a requirement for the granting of the de minimus quantity exemption, and to expressly provide that a de minimus quantity exemption will only be granted subject to the requirements set forth in subsection (e).

N.J.A.C. 7:26B-10.1(d) was modified to expressly provide that discharges at the site will be considered in the Department's determination on whether to grant a de minimus quantity exemption, and to expressly provide that a de minimus quantity exemption will only be granted subject to the requirements set forth in the new subsection (e).

N.J.A.C. 7:26B-10.1(e) was added to expressly provide that the Department may, when it suspects contamination at the industrial establishment, require compliance with additional requirements of the Act and this chapter upon closing, terminating or transferring operations.

Various editorial corrections have been made to the rule text.

Social Impact

The proposed amendments are expected to clarify the procedures to be followed and result in more efficient implementation of the Act. Thus, the amendments will continue the important and innovative program pursuant to the Act 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

The proposed amendments will pose additional costs to the owner or operator of those industrial establishments required to obtain an applicability determination pursuant to N.J.A.C. 7:26B-1.8(a)7 where a cessation of all or substantially all the operations at the industrial establishment is anticipated to exceed three months. In these cases the $200.00 fee specified at N.J.A.C. 7:26B-1.10 for Departmental services must be paid. The Department does not anticipate any other economic impacts as a result of these amendments.

Environmental Impact

The proposed amendments will have a positive environmental impact by continuing without interruption the regulatory framework necessary to implement the Act. The amendments add clarity to the existing rules. Since the amendments clarify the existing program, no further direct environmental impact is expected.

Regulatory Flexibility Analysis

The proposed amendments will 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 the approximately 1200 places of business impacted by these amendments per year, approximately 700 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and will be impacted. The amendments will impose an additional requirement on small businesses undergoing a temporary cessation for more than three months but less than two years. It is unlikely that small businesses will need professional services such as accountants or consultants, or will incur additional capital costs to comply with this additional requirement.

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

SUBCHAPTER 1. GENERAL [INFORMATION] **PROVISIONS**

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.

. . .

"Cessation of all or substantially all the operations" means the cessation of operations that involve the generation, manufacturing, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes resulting in at least a 90 percent reduction at the industrial establishment in any one of the following:

1. Number of employees;

2. Area of operations; or

3. Units of product output.

. . .

"Closing, terminating or transferring operations" means any one of the following:

[(1) the]**1. The** cessation of all or substantially all the operations of an industrial establishment**, for a period of not less than two years,** which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes;

[(2) any]**2. Any** changes in operations sufficient to change the primary [Standard Industrial Classification] **SIC** number of the industrial establishment from an SIC number that is subject to the Act to one that is not subject to the Act;

[(3) any temporary cessation of all or substantially all the operations at an industrial establishment for a period of not less than two years;]

[(4) any incident,]**3. Any** transaction or proceeding**, including but not limited to explosions, fires or other similar events,** through which an industrial establishment becomes non-operational for health or safety reasons;

[(5) termination]**4. Termination** of a leasehold interest at an industrial establishment by the owner or operator of the industrial establishment unless the lease is renewed by the same tenant without a disruption in operations;

[(6)]**5. Except for any corporate reorganization not substantially affecting ownership,** 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] **controlling** 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, **financial** 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 and N.J.A.C. 7:26B-1.8.

. . .

"Controlling interest" means the person or persons who own 50 percent or more of the issued and outstanding stock of a corporation; it also means the person or persons who own less than 50 percent of the issued and outstanding stock of a corporation and possess, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation.

"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, change in the majority interest, termination of the corporate business, or liquidation and distribution of corporate assets] **which does not diminish the availability of assets for any environmental cleanup, diminish the Department's ability to reach the assets, or otherwise hinder the owner's or operator's ability to cleanup the industrial establishment**, and where the purpose is merely [to:] **as set forth in 1. to 3. below.**

[(1)]**1. To** correct illegalities or defects in the original [in corporation] **incorporation**[,];

[(2) to]**2. To** broaden the scope of the powers of the organization including the amendment as well as extension or revival of charters[,] or;

[(3) to place the corporation on a sound management and financial basis that enables it to take care of its obligations]**3. To reorganize for any other reason related to financial, administrative, or managerial convenience, or for any other legitimate business purpose.**

. . .

"Industrial establishment" means any [activity,] place of business[,] or real property at which such [activity or] business is conducted, 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 on or after December 31, 1983, which [involves] **involve** the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-1.8. Except as provided below for leased properties, the industrial establishment includes all of the block(s) and lot(s) upon which the [activity or] business is conducted and [any] **those** contiguous block(s) and lot(s) controlled by the same owner or operator **that are vacant land, or that are used in conjunction with such business**. For leased properties, the industrial establishment includes the leasehold and any external tanks, surface impoundments, septic systems, or any other [structure] **structures**, vessels, [contrivance] **contrivances**, or [unit] **units** that [provides] **provide**, or [is] **are** utilized for, hazardous substances and wastes to or from the leasehold.

. . .

["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.]

. . .

"Sale or transfer of the controlling share of the assets" means a transfer or sale not in the ordinary course of business**, by the owner or operator of the industrial establishment,** of more than 50 percent **of the fair market value** of the assets[,] **of the industrial establishment** excluding real property [held by a corporation or partnership or other business entity.] **The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery.**

. . .

7:26B-1.5 Applicability

(a) (No change.)

(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 **any of** 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, **unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9**;

2. Sale or transfer of stock in a corporation which results in a change in the [person or persons holding the majority] **controlling** interest of a corporation which directly owns or operates, or indirectly through **any of** its subsidiaries, [no matter how remote in the chain of corporate ownership,] owns or operates an industrial establishment, **unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9**;

3. Sale or transfer of the controlling share of the assets of an industrial establishment, whether in one or several independent transactions, **at the same or different times, to one person or to different persons, unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9**;

4.-5. (No change.)

6. Dissolution of a corporation which directly owns or operates, or indirectly through **any of** its subsidiaries, [no matter how remote in the chain of corporate ownership,] owns or operates an industrial establishment, **unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9**;

7.-9. (No change.)

10. Sale or transfer of the entire interest of any partner in a general partnership, the entire interest of a general partner in a limited partnership, or the entire interest of a limited partner in a limited partnership liable for the obligations of a limited partnership as provided at N.J.S.A. 42:2-9, 42:2-11, and 42:2A-27, such partnership or limited partnership owning or operating an industrial establishment;

11.-13. (No change.)

14. Any [incident or event, or series of incidents or events,] **transaction or proceeding, including but not limited to explosions, fires or other similar 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] **there has been** a significant [discharges] **discharge** or [releases] **release** of hazardous substances and wastes;

15. Cessation of all **or substantially all the** operations at an industrial establishment that [are] **is for a period of two years or longer (see N.J.A.C. 7:26B-1.8(a)7), unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9;**[:

i. Permanent; or

ii. For a period of two years or longer.

16. Cessation of substantially all operations so as to result in at least a 90 percent reduction in any of the following:

i. Number of employees;

ii. Area of operations; or

iii. Quantity of output;]

[17.-18.]**16.-17.** (No change in text.)

[19.]**18.** [A]**Any changes in operations sufficient to** change [in] the primary SIC number of an industrial establishment [to a primary SIC number] **from an SIC number that is subject to the Act or this chapter to one** 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, 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 of an industrial establishment 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.-2. (No change.)

[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.]**3.** (No change in text.)

[5.]**4.** [A]**The change in operations sufficient to** change [in] the primary SIC number of an industrial establishment [to] **from** a primary SIC number **that is subject to the Act or this chapter to one** that is not subject to the Act or this chapter.

[6.]**5.** (No change in text.)

[7.]**6.** The tendering of the majority of stock of a corporation which directly owns or operates, or indirectly through **any of** its subsidiaries, [no matter how remote in the chain of corporate ownership,] owns or operates, an industrial establishment;

[8.]**7.** 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 **any of** its subsidiaries, [no matter how remote in the chain of corporate ownership,] owns or operates, an industrial establishment pursuant to a tender offer;

[9.]**8.** The [conveyance] **sale or transfer**, or [the] execution of an agreement [conveying] **selling or transferring**, whichever occurs first, of:

i. [the majority]**Stock resulting in a change in the controlling** interest of [a corporation, or a controlling interest of any non-corporate business entity, or sale of] **the industrial establishment**;

ii. [the]**The** controlling share of assets of an industrial establishment; **or**

iii. The entire interest of any partner in a general partnership, or the entire interest of a limited partner in a limited partnership liable for the obligations of a limited partnership as provided at N.J.S.A. 42:2-9, 42:2-11 and 42:2A-27.

[10.]**9.** (No change in text.)

[11.]**10.** Receipt **by the owner or operator** of the determination by the Department that the [incident or event, or series of incidents or events] **transaction or proceeding, including but not limited to explosions, fires or other similar events,** rendering the industrial establishment non-operational for health and safety reasons as described at N.J.A.C. 7:26B-1.5(b)14 has caused **a** significant [discharges] **discharge** or [releases] **release** of hazardous substances and wastes;

[12.]**11.** The [permanent of temporary] **public release of the decision to cease all or substantially all operations or upon the** cessation of all **or substantially all the** operations at the industrial establishment, **whichever occurs first,** [under the circumstances set forth at N.J.A.C. 7:26B-1.5(b)15 and 16] **except as otherwise provided at N.J.A.C. 7:26B-1.5(b)14**;

[13.-14.]**12.-13.** (No change in text.)

14. Receipt by the owner or operator of the determination by the Department, that the Act is applicable to an industrial establishment pursuant to N.J.A.C. 7:26B-1.9, when the applicability determination is requested by the owner or operator in accordance with N.J.A.C. 7:26B-1.8(a)7.

(b) (No change.)

7:26B-1.7 Liability for ECRA compliance

(a) Notwithstanding the provisions of N.J.A.C. 7:26B-3.3 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.-4. (No change.)

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

6. (No change.)

7. A cessation, except as provided at N.J.A.C. 7:26B-1.5(b)14, for a period of less than two years of **all or substantially all the** operations at an industrial establishment; **provided, however that if such cessation will exceed three months, the owner or operator of the industrial establishment shall, within five days of the public release of the decision to cease all or substantially all the operations, or upon the cessation, whichever occurs first, request an applicability determination from the Department pursuant to N.J.A.C. 7:26B-1.9.**

i. In order to receive a letter of non-applicability, the owner or operator shall demonstrate to the satisfaction of the Department that such cessation will be for a period of less than two years.

ii. If the owner or operator fails to demonstrate, to the Department's satisfaction, that the cessation will be for a period of less than two years, the Department may deny the letter of non-applicability, and deem the cessation to be a cessation pursuant to N.J.A.C. 7:26B-1.6(a)12.

iii. If the owner or operator receives a letter of non-applicability in accordance with this subsection, and thereafter, if the conditions in the affidavit supporting such letter of non-applicability change, the owner or operator shall notify the Department in writing of such changes. If the conditions change so as to render the cessation a cessation for more than two years, the owner or operator shall comply with N.J.A.C. 7:26B-1.6(a) and obtain a negative declaration or a cleanup plan approval. [that results in a continuation of at least 10 percent of each of the following:

i. Number of employees;

ii. Area of operations; and

iii. Quantity of output;]

8.-26. (No change.)

(b) (No change.)

7:26B-1.9 Applicability determinations

(a) [A person may request]**In order to obtain** a determination from the Department concerning the applicability of the Act or this chapter to a specific site [by] **an owner or operator shall**:

1. [Submission of]**Submit** 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]**Execute** the applicability determination form [by the owner or operator];

3. [Submission of]**Submit** the fee set forth at N.J.A.C. 7:26B-1.10 required for applicability determinations; [and]

4. [Granting]**Grant** 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[.]; **and**

5. Demonstrate, to the Department's satisfaction that the Act or this chapter is not applicable.

7:26B-3.3 Landlord-tenant responsibility for Initial Notice compliance

(a) Where the owner of an industrial establishment is a landlord and the operator of an industrial establishment is a tenant, both parties shall be strictly liable, without regard to fault, [jointly and severally,] for compliance with the Act and this chapter. Notwithstanding retention by the Department of the right to compel any liable party to comply with the Act and this chapter, as between the landlord and tenant, the Department shall require compliance with the Initial Notice provisions in accordance with the following:

1. Except as provided below at **(a)**2, the landlord shall be responsible for the submittal of Initial Notice, provided the tenant shall be responsible for providing all information, to the extent available from diligent inquiry by the tenant, that is requested by the landlord, but not available from diligent inquiry by the landlord, or all information requested by the Department for the purpose of satisfying the Initial Notice requirements.

2. Where the tenant plans to close, terminate or transfer its operations at an industrial establishment, gives written notice of termination of a lease agreement, files a petition in bankruptcy or brings a receivership action, or if a bankruptcy petition or receivership action is filed against the tenant, the tenant shall be responsible for the submittal of the Initial Notice, provided the landlord shall be responsible for providing all information, to the extent available from diligent inquiry by the landlord, that is requested by the tenant, but not available from diligent inquiry by the tenant, or all information requested by the Department for the purpose of satisfying the Initial Notice requirements.

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

(a) A proposed negative declaration shall be an affidavit executed and certified in accordance with the provisions at N.J.A.C. 7:26B-1.13 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 in any containers, tanks, surface impoundments, or any other structures, vessels, contrivances, or units, [the purchaser or transferee shall provide the Department with a letter accepting ownership of, and liability for, these hazardous substances and wastes] **the seller or transferor of the industrial establishment shall provide documentation to the Department which evidences that the purchaser or transferee has been notified that these hazardous substances and wastes are to remain at the site.**

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

7:26B-7.5 ACO signatories and liability

(a) (No change.)

(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. If the operator signs an ACO and the owner does not, **or if the owner signs an ACO and the operator does not,** the owner **and the operator** [remains] **remain** strictly liable, jointly and severally, **with the signatories to the ACO**, for compliance with ECRA and this chapter[, and vice versa].

(c) (No change.)

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

(a) (No change.)

(b) Failure to comply with any provisions of the Act or this chapter shall render the owner and 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-10.1 De minimus quantity exemption

(a) (No change.)

(b) The de minimus quantity exemption shall be granted by the Department **subject to (e) below** only if (c) **and (d)** below and all of the following criteria of this subsection are met:

1.-6. (No change.)

(c) (No change.)

(d) To apply for a de minimus quantity exemption, the owner or operator **of the industrial establishment** 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.] **the following to the Department:**

i. An affidavit stating that there has been no discharge(s) of hazardous substances and wastes on site or that any discharge(s) of hazardous substances and wastes on or from the industrial establishment has been cleaned up to the current satisfaction of the Department; and

ii. The appropriate fee specified in N.J.A.C. 7:26B-1.10.

(e) The Department may require the owner or operator to submit a sampling plan for the industrial establishment when it has reason to believe that contamination may exist. In cases where a sampling plan has been required, the Department may issue a de minimus quantity exemption only where the owner or operator has complied with all applicable provisions of this section and where the results of an approved sampling plan indicate that there is no contamination from hazardous

substances and wastes or where the Department has made a determination that no sampling plan is necessary.

7:26B-13.1 Certificate of Limited Conveyance

(a) (No change.)

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

1. The sale price of the real property to be conveyed, together with the [dimunition] **diminution** in value to the remaining property, is not more than 20 percent of the total appraised value of the real property of the industrial establishment;

2.-3. (No change.)

(c)-(e) (No change.)

HEALTH

(a)

PUBLIC HEALTH COUNCIL

State Sanitary Code

Collection, Processing, Storage and Distribution of Blood

Proposed Readoption with Amendments: N.J.A.C. 8:8

Authorized By: Public Health Council, Milton Prystowski, M.D., Chairperson.

Authority: N.J.S.A. 26:1A-7 and 26:2A-7.

Proposal Number: PRN 1989-90.

A **public hearing** concerning this proposal will be held on March 13, 1989, at 1:00 P.M., at:

Health and Agriculture Building
Commissioner's Conference Room, 8th Floor
John Fitch Plaza
Trenton, New Jersey 08625

Submit written comments by March 23, 1989 to:

Samuel D. Thompson, Ph.D.
Director
Clinical Laboratory Improvement Services
Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:8 expires on May 21, 1989. The Clinical Laboratory Improvement Service 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.

Prior to 1963, there was no agency that controlled blood banking. It was determined that the use of human blood and its derivatives had increased to such proportions that there was a need to establish minimum standards under which blood banks would operate to protect the public health. In 1963, legislation designed specifically to license, inspect, and evaluate all blood banks was passed. Rules have been in effect since they were originally adopted on July 10, 1963. At that time, the Health Department was given the authority to license and regulate blood banks. Since 1975, the Health Department's Clinical Laboratory Improvement Program, now known as the Clinical Laboratory Improvement Service (CLIS), has been responsible for this function.

In 1983, it was determined that Acquired Immune Deficiency Syndrome (AIDS) could be transmitted from blood and blood products. Since then many changes have occurred in the services that blood banks provide. The Department recommended all blood banks follow the guidelines released April 1983 by the Office of Biologics, Food and Drug Administration regarding decreasing the risk of transmitting AIDS from blood and plasma donors. In June 1985, after Human Immunodeficiency Virus (HIV) antibody testing was licensed, the Department sent interim recommendations and policy guidelines regarding HIV, the virus related to AIDS transmission, antibody testing to all blood banks. These guidelines recommended that blood banks test each unit of blood for HIV by an FDA licensed procedure and all negative units be labeled regarding the results of the test. Definition and disposition of reactive units were also outlined. In February 1987, the Department considered it appropriate to incorporate these guidelines and some additional criteria into existing blood bank rules. N.J.A.C. 8:8 was revised to include N.J.A.C. 8:8-5.5, AIDS screening requirements, and N.J.A.C. 8:8-6.2(b) 3, Human Immunodeficiency Virus.

As a result of AIDS, collection of blood and blood components has become more complicated. In addition, pressure from the public required blood banks to offer services such as autologous and directed donation programs. To account for new services offered by blood banks, CLIS blood bank license applications were revised beginning calendar year 1988. Blood banks are required to list the services and testing they perform and notify the Department whenever changes occur. In February 1988, the Department advised blood banks to institute a documented review procedure to prevent the release of unacceptable blood and blood components into the blood supply.

The proposed readoption has been developed as a result of CLIS's experience in regulating blood banks throughout this time-frame. The proposed amendments place a strong emphasis on blood bank management, adherence to established protocols and new services by creating N.J.A.C. 8:4, Management and N.J.A.C. 8:12, Home Collection and Transfusion, and expanding N.J.A.C. 8:1, Definitions and N.J.A.C. 8:8, Collection of Blood. In addition, existing rules have been revised for clarity and recodified. Although most blood banks are already complying with these criteria on a voluntary basis, rules would prevent ambiguity and standardize industry practices, thereby, providing a more complete and timely assurance of the continued safety of the state's blood supply.

Highlights of each of the revised and new subchapters of this chapter follow:

N.J.A.C. 8:8-1 provides clarity and needed guidance to the regulated community with an expanded definitions section at N.J.A.C. 8:8-1.1. An expanded licensure section at N.J.A.C. 8:8-1.3 increases the Department's control over blood bank activities by decreasing from 30 to 14 days the amount of time blood banks have to obtain a license renewal and/or notify the Department of changes to the license. In addition, blood banks will only be allowed to perform services for which they specifically request and receive licensure or in the case of new services receive written approval from the Department.

N.J.A.C. 8:8-2 continue to specify the requirements for blood bank personnel. It has been expanded to require that blood banks have one or more supervisors who supervise all functions related to the collection of blood and blood components.

N.J.A.C. 8:8-3 was not amended. It requires that blood bank equipment and facilities provide safe and acceptable standards for the handling of human blood and blood components and contaminated material is disposed in a manner consistent with current standards of the New Jersey Departments of Health and Environmental Protection.

N.J.A.C. 8:8-4 is a new subchapter. It places a strong emphasis on blood bank management, documented review, quality control and adherence to developed protocols. In addition, required responses to blood bank errors and accidents are outlined.

N.J.A.C. 8:8-5, previously N.J.A.C. 8:8-4, continues to specify record and reporting requirements. It has been expanded to include maintenance of workrecords, validation of computer programs, biannual HIV statistical summary reports; reporting of known or presumed cases of transfusion associated AIDS; and reporting of errors or accidents that result in shipment of unsuitable blood and blood components.

N.J.A.C. 8:8-6, previously N.J.A.C. 8:8-5, outlines requirements for donor selection. It was modified to include review of donor permanent deferral records before blood is released for homologous transfusion.

N.J.A.C. 8:8-7, previously N.J.A.C. 8:8-6, specifies procedures for the collection, processing, storage, and distribution of blood and blood components. It has been amended to require "surrogate" testing for non-A, non-B Hepatitis.

N.J.A.C. 8:8-8, previously N.J.A.C. 8:8-7, states criteria required for the collection of blood. It has been expanded to require that blood banks obtain approval from the Department before they initiate collection of blood. Sections on labeling and autologous donations have been expanded and a section on directed donations has been added.

N.J.A.C. 8:8-9, previously N.J.A.C. 8:8-8, outlines the requirements for recipient blood testing. Modifications stress verification of sample identity and replace crossmatching with compatibility testing requirements.

N.J.A.C. 8:8-10, previously N.J.A.C. 8:8-9, specifies requirements for issue and administration of blood and blood components for transfusion.

N.J.A.C. 8:8-11, previously N.J.A.C. 8:8-10, refers to blood storage requirements. It has been expanded to include blood components stored at room temperature and below freezing.

N.J.A.C. 8:8-12 is a new subchapter. It requires that, prior to the initiation of home collection and transfusion services, blood banks file their protocols and receive written approval from the Department. Emphasis is placed on donor and recipient safety.

Social Impact

Human blood and blood components are used as a frequent and necessary therapeutic procedure in medical practice. Since blood is a biological fluid, the improper transfusion of this substance can lead to the spread of diseases such as AIDS and hepatitis. The potential for blood and blood components to transmit these diseases, especially AIDS, has caused great concern within the Department, the blood bank community and among users and recipients of these components.

The purpose of these rules is to assure that both donors and recipients are provided with safe conditions and that all blood and blood components are safe for human use. Institution of the requirements proposed in these rules should decrease the risk of transmitting transfusion-related diseases by standardizing the procedures blood banks use. A beneficial effect of the rules should be to reassure and restore the public's confidence in the blood supply.

Economic Impact

All 133 licensed blood banks will be affected by this rule; however, the greatest impact will be on blood banks that collect blood and blood components. Although the majority of blood banks are already meeting these requirements on a voluntary basis, some establishments may have to hire additional personnel to assure that the management requirements are followed as specified in the rules.

The major direct cost element, the cost of conducting "surrogate" testing for non-A, non-B Hepatitis (NANB) is expected to be about $3.00 to $5.00 per unit. It should be noted, however, that these costs vary widely depending on the organization's size and operational overhead. Current indications suggest higher test costs for small volume testing centers. The State estimates that the proposed rule would require about 301,000 "surrogate" tests per year. Other direct costs of the testing program include the cost of retesting blood that has ambiguous or reactive test results, and the cost of disposing of and replacing discarded blood. Costs associated with blood replacement may be significant because blood loss due to this testing averages to be three to five percent of the total blood supply.

Indirect costs resulting from these tests may be substantial. Although indirect costs cannot be quantified at this time, they include the costs of additional testing that may occur as part of the medical evaluation, notifying persons with positive test results, and the increased medical costs for follow-up of persons with positive test results.

These medical costs will be offset by the reduction in major medical costs and morbidity for those who are spared from hepatitis as a result of the testing program. This figure could be significant because data released by CDC indicate that 16 to 24 percent of all reported NANB is transfusion-related. In addition, the incidence of NANB is increasing and represents 20 to 40 percent of all acute viral hepatitis. It is estimated that annually two percent of transfusion survivors develop acute NANB post-transfusion hepatitis and of these cases over half develop chronic disease.

Regulatory Flexibility Analysis

Approximately six of the blood banks affected by this proposed readoption with amendments are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules and amendments do impose reporting, recordkeeping and compliance requirements on such small businesses, which probably will need additional personnel or incur other costs (for example, revising recordkeeping systems) to comply with these rules. However, it is unlikely that increased capital costs or a need for outside professional services will arise from these rules. No exemptions from these rules or lesser requirements can be provided to small businesses due to the need for the establishment of minimum standards under which blood banks must operate to protect the safety of the State's blood supply.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:8.

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

8:8-1.2 Definitions

For the purpose of this chapter, the terms listed below shall be defined and interepreted as follows:

. . .

"Autologous **donation**/transfusion" means the [removal and storage of blood and blood components from a donor] **collection of blood and blood components from a donor/receipient** for subsequent reinfusion into the same individual.

. . .

"Crossing over" means the transfusion of a donation of blood and/or blood components, originally collected for autologous transfusion, to a recipient other than the original donor/recipient.

. . .

"Designated donor" means a donor that is selected by a recipient for transfusion to this recipient at a later date.

"Directed donation" means the collection of blood or blood components from a designated donor.

. . .

"Homologous donation" means the collection of blood or blood components for subsequent transfusion to a recipient other than the donor.

"Key person" means individuals designated by the blood bank director.

"Mobile unit" means a moveable unit that is used to collect blood from donors not at the blood bank site.

. . .

"Preparation" means the method used to manufacture blood and blood components.

. . .

"Service" means any of the functions outlined in the Blood Bank License Application form supplied by the Department.

"Stationary collection site" means a site for a blood bank that is permanently located at another facility and performs no function other than collection.

. . .

"Subsidiary blood bank" means a blood bank that is owned or controlled by a parent blood bank.

"Surrogate testing" means the use of alanine-amino transferase (ALT) and Hepatitis B Core Antibody tests to determine the possible presence of non-A, non-B hepatitis.

8:8-1.3 Licensure

(a) Application for an initial license to conduct a blood bank, as required under the provisions of N.J.S.A. 26:[1A-7] **2A-1 et seq.** commonly known as the Blood Bank Licensing Act **and this chapter**, shall be made on forms provided for that purpose by the State of New Jersey.

(b) A blood bank license shall be obtained for each subsidiary blood bank.

[(b)] **(c)** (No change in text.)

[(c)] **(d)** Amendments to the license shall be as follows:

1. A license renewal shall be obtained within [30] **14** days whenever the name or the location of a blood bank is changed.

2. The Department shall be notified in writing within [30] **14** days whenever the ownership, corporate structure, [or] director, **and/or services** of a blood bank [is changed] **change.**

(e) The blood bank shall perform only those services, related to this chapter, for which they specifically request and receive licensure. In the case of new services, written approval shall be received from the Department.

[8:8-1.6 Quality control

All blood banks and transfusion services shall have a written quality control program which is sufficiently comprehensive to ensure that reagents and equipment perform as is expected and that there is compliance with these Regulations, and shall be acceptable to the Department.]

8:8-[1.7] **1.6** Brokers

Brokers shall maintain records, **acceptable to the Department,** of all applicable standards and procedures set forth in [these regulations] **this chapter**.

8:8-[1.8 and 1.9] **1.7 and 1.8** (No change in text.)

8:8-2.2 Donor related personnel

(a) **The blood bank shall have one or more supervisors who under the general direction of the blood bank director supervise all functions related to the collection of blood and blood components, and in the absence of the blood bank director are responsible for the proper performance of these procedures.**

[(a)] (b) General provisions for donor related personnel are:

1. Each blood bank during the collection of blood shall have a responsible individual on the premises who, **according to N.J.A.C. 8:8-2.2 (c)**, is qualified to provide emergency care.

2.-3. (No change.)

[(b)] (c) Donor emergency care personnel **qualifications** [shall be available] **are** as follows:

1. [If a physician is not present, a person available to administer donor emergency care shall be] **A physician licensed in the State or** a registered nurse (R.N.) holding a current certificate of registration who has fulfilled the following requirements:

i.-ii. (No change.)

[(c)-(d)] (d)-(e) (No change in text.)

SUBCHAPTER 4. MANAGEMENT

8:8-4.1 Quality control

(a) All blood banks shall have a quality control program which is acceptable to the Department, assures compliance with these rules, and is sufficiently comprehensive to ensure that blood and blood components, reagents and equipment perform as expected.

(b) The quality control program shall include at least the following:

1. Written quality control policies;

2. Evidence of validation of methods;

3. Periodic evaluation of reagents and equipment including the date of performance;

4. Periodic evaluation of blood and blood components in accordance with, whichever is more stringent, the current Code of Federal Regulations and/or the current Standards of the American Association of Blood Banks;

5. Evidence of appropriate corrective action; and

6. Review by the supervisor or the director.

8:8-4.2 Procedures

(a) All policies and procedures developed for use in the blood bank and required by this chapter shall be detailed in a written procedure manual.

(b) Each procedure shall have a current pertinent literature reference.

(c) The actual test procedures used shall coincide with the manufacturers' product insert unless data to support modifications or written documentation from the manufacturer are available.

(d) The procedure manual shall be reviewed by the blood bank director annually and this review shall be documented by date and the blood bank director's signature.

(e) All significant changes to procedures shall be reviewed, dated and signed by the blood bank director.

8:8-4.3 Documented review

(a) When blood or blood components are collected and/or prepared, a key person in the operation of the blood bank shall conduct a documented review prior to the release and final labelling of blood and blood components to ensure that blood from unsuitable donors will not be distributed for transfusion or further manufacture. If this function is performed by computer, validation of the computer program, as outlined in N.J.A.C. 8:8-5.1(d), shall be performed. This review procedure shall be in writing and the procedure shall include tracking of all collected and/or prepared blood and blood components, to asssure that:

1. The sequence of the numbers of the blood and blood components drawn are verified and donor numbers for which no donations are available are accounted for;

2. All required testing, as outlined in N.J.A.C. 8:8-7.2, Testing, is performed on all blood and blood components, with specimens drawn from the donor at the time of collection, before release for transfusion;

3. Blood or blood components with positive or questionable test results are not released for homologous or directed transfusion;

4. Blood or blood components collected from donors that shall be deferred are not released for homologous or directed transfusion or for further manufacture;

5. If required tests are performed by the blood bank, the testing is performed correctly and properly interpreted as determined by at least the following criteria:

i. Personnel are following the blood bank's established procedures for the test;

ii. Equipment is correctly set-up for test method specific adjustments;

iii. Test results on the machine printout can be traced to the work-record;

iv. Test runs, that are unacceptable by the criteria specified in the manufacturers' product insert, are repeated;

v. Appropriate repeat testing is performed; and

vi. Review of the interpretation of all final test results to assure that the interpretation complies with state requirements, when applicable, or the manufacturers' product insert;

6. If required tests are performed by personnel outside the blood bank, the criteria used to determine a final reactive or nonreactive result coincides with the blood bank's own policy of interpreting results used to discard blood and blood components for transfusion;

7. That all blood and blood components from donations that have positive or questionable test results are quarantined until their final disposition is determined or they are destroyed; and

8. Autologous donations that are "crossed over" meet all criteria of a homologous donation before they are released into the general blood supply.

(b) Final disposition/destruction records shall be completed at the time of disposition/destruction and documented review shall verify that records accurately reflect that disposition/destruction.

8:8-4.4 Errors and accidents

(a) If any component prepared from a unit improperly tested, not tested, or tested properly but improperly interpreted for ABO or infectious diseases is accidentally labeled and released for transfusion, fractionation, reagent production, research or other use, immediate effort shall be made to locate and quarantine all components until satisfactory resolution occurs.

(b) If a whole blood unit or any blood component has been transfused prior to recognition of the error, the medical director of the blood collection facility shall be immediately notified and shall take immediate appropriate action to resolve the problem. If the error has resulted in the transfusion of blood or blood components that could result in infectious disease or other harmful consequences, appropriate medical staff from the collection facility shall notify the patient/recipient's hospital blood bank director who shall document that the patient/recipient's physician is notified of the error and advised that it is his or her responsibility to notify the patient/recipient of the error. Thorough and complete documentation shall be made as to these actions.

SUBCHAPTER [4.] 5. RECORDS AND REPORTING REQUIREMENTS

8:8-[4.1] **5.1** Records

(a) Suitable legible records prepared with indelible material shall be maintained for a period of not less than five years. **Records needed to trace a unit of blood or blood component from its source to final disposition shall be kept for at least 10 years after transfusion.**

[(b) If records are maintained on computer systems, adequate provisions must be made to safeguard against the eventuality of unexpected electronic loss of data from the computer storage medium.]

(b) All corrections to errors made in the records shall:

1. Not conceal the original entry;

2. Document the reason for the correction; and

3. Include the date the change was made and the initials of the person making the change.

(c) Workrecords of tests shall be maintained and these records shall indicate final results together with all corresponding instrument readings and calculations. Where instrumentation produces tracings or

printouts of results, these tracings or printouts shall be retained in a readily traceable manner and may serve as the workrecord.

(d) If records are maintained on computer systems, the following apply:

1. Prior to use or when modifications are made to the program, validation of all computer programs, including, but not limited to, those dealing with processing, labeling, and distribution of blood and blood components, shall be required as follows:

i. To determine if software consistently performs as required and within pre-established limits; and

ii. To include review of confidentiality of donor information, security of data and system documentation.

2. Adequate provisions shall be made to safeguard against the eventuality of unexpected electronic loss of data from the computer storage medium.

[(c)]**3.** A system shall be in existence which maintains duplicate records on electronic storage media, updates these duplicates continuously and/or transfers electronically stored data periodically to hard copy such as prints or microfiche.

4. Written procedures shall be available for describing each of the blood bank's methods for performing requirements in (d) 1 through 3 above.

[(d)] **(e)** The records shall:

1. (No change.)

2. Make it possible to trace a unit of any blood or blood component from source[;] (for example, donor or shipping facility) to final disposition (for example, transfused, shipped, [discarded] **autoclaved**)[.];

3. Be **readily** available for review;

4. Be made available [annually by January 31, of each year] on forms provided by the Department for the purpose of preparing the State's Statistical Summary of Blood Use report **annually by January 31, of each year, and biannually for the State's HIV Statistical Summary; and**

5. (No change.)

[(e)] **(f)** Before blood is issued for transfusion, test results for each recipient sample shall be compared with the following:

1. Past records of previous ABO and Rh typing results for the [current admission] **past 12 months[.]; and**

2. (No change.)

[(f)] **(g)** If computers are used, hard copies of [these]**the test** results [must] **shall** be available **and used in the case of computer failure.**

[(g)] **(h)** Records [must] **shall** include at least the following:

1. Donor records:

i. An annual record of each unit of blood [or] **and blood** component**, listed by donor unit number,** as to its source bank and destination (this may be final disposition);

ii.-xi. (No change.)

2.-3. (No change.)

4. Detailed procedure manual including all policies and procedures developed for use in the blood bank **and required by this chapter;**

5.-6. (No change.)

7. Quality control records, including but not limited to: periodic evaluation of personnel, **blood and blood components,** reagents, equipment, including dates of performance; test performed; observed results; interpretations; identification of personnel performing the test; any appropriate corrective action taken[,]; **and** review by supervisor and/or director.

8.-10. (No change.)

(i) There shall be a means to identify persons performing each significant step in collecting, processing, compatibility testing and distributing blood or blood components.

8:8-[4.2] **5.2** Reporting requirements

(a) (No change.)

(b) Transfusion associated hepatitis **and AIDS** shall be reported as follows:

1. Any known or presumed case of transfusion associated hepatitis **or AIDS** brought to the attention of a blood bank shall be reported to the Department within 10 days on forms provided for this purpose.

2. (No change.)

(c) Errors and/or accidents, that result in shipment of unsuitable blood and blood components, shall be reported to the Department within 10 days of recognition of the error.

SUBCHAPTER [5] **6.** CRITERIA FOR DONOR SELECTION

8:8-[5.1] **6.1** (No change in text.)

8:8-[5.2] **6.2** Medical history; physical examinations; bleeding limitations

[(a)] Medical history[:], physical examinations[:], **and** bleeding limitations of the donor shall be consistent with**, whichever is more stringent,** the **most recent** [code] **Code** of Federal Regulations [and] **or Standards of** the American Association of Blood Banks. If necessary, these documents may be reviewed at the Department of Health Clinical Laboratory Improvement Services, [CN 360, Trenton, NJ 08625] **Princess South, Princess Road, Bldg. 17F, Lawrenceville, New Jersey**.

8:8-[5.3] **6.3** Donor selection

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

(c) Before blood [is] **or blood components are** issued for [transfusion] **distribution, permanent deferral records, which include donor past medical history and** test results shall be [compared with past records] **reviewed to determine if the blood and blood components meet all the requirements for homologous use. Blood and blood components which do not meet these requirements can not be used for homologous transfusion.**

8:8-[5.4] **6.4** (No change in text.)

8:8-[5.5] **6.5** AIDS screening requirements

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

(d) The collecting agency [must] **shall** ensure that all blood and blood components collected in New Jersey, including those obtained from hemapheresis, be screened for HIV as specified in N.J.A.C. 8:8-[7.2] **8.3** (b)3. Laboratory tests not performed by the collecting facility [must] **shall** be referred to a blood bank or laboratory approved to perform HIV testing by the Department or which possesses a Federal interstate license to perform HIV testing. It shall be the responsibility of the receiving blood bank to assure **that** any blood brought in from out-of-[state] **State** sources is tested for HIV. [Autologous blood need not be tested if the blood is only used for that purpose.] If the blood is used for homologous transfusion, it must be tested as all other blood and blood components.

(e) (No change.)

[(f) All blood and blood components including those obtained from hemapheresis shall be labelled relative to HIV testing.]

[(g)] **(f)** (No change in text.)

[(h)] **(g)** A blood bank [or a plasma center shall incorporate a confidential voluntary means of self deferral for donors] **shall use a self deferral system that allows the donation to be drawn and documents that:**

1. Each donor has been given the opportunity to confidentially and voluntarily defer their blood donation for use in homologous transfusion before they leave the donation site;

2. The donor has been informed that their blood will be tested for HIV antibody even if they defer their blood for transfusion use; and

3. Blood and blood components from donors that defer their blood for transfusion use shall not be used.

[(i)-(l)] **(h)-(k)** (No change in text.)

(l) Statistical summaries of HIV test results, which do not include the identity of the donor, shall be made available on forms provided by the Department for the purpose of preparing a statistical summary report.

SUBCHAPTER [6] 7. BLOOD AND BLOOD COMPONENTS

8:8-[6.1] **7.1** General criteria

(a) The procedure for the collection, processing, storage, and distribution of blood and blood components shall meet the requirements of this [subchapter] **chapter**. [Based upon compliance the Department will grant approval.]

(b) [All units of blood or blood components found to have positive tests for HBsAg shall not be issued for transfusion or for the prep-

aration of components or fractions.] **Blood banks shall establish criteria for collection, processing, storage, and distribution, according to current standards, acceptable to the Department.**

(c) Sale or exchange of [such material] **blood and/or blood products** positive for **HIV and/or** HBsAg shall not be made without the express permission, in writing, of the Department.

(d) Blood banks distributing blood and blood components shall:

1. Have available an information circular with each product explaining its proper indications and usage (thawing, dosage, stability, side effects, adverse reactions, hazards, etc.)[.];

2. Provide accurate expiration dates and hours on the container label for all blood and blood components[.]; **and**

[3. Establish criteria, according to current standards acceptable to the Department, for the blood bank including but not limited to the following:

i. The container closure has not been disturbed;

ii. The product has been transported and stored within appropriate containers for the products, especially frozen or labile components;

iii. Records indicate that the product has been reissued;

iv. Pilot samples have remained attached to the container if the product has left the issuing facility;]

[v.] **3.** Meet[s] licensed expiration dates for product.

(e) At the time of collection of the blood or blood component the label shall have a unique numeric or alphanumeric identification.

8:8-[6.2] **7.2** [Processing] **Testing**

(a) The [processing] **preparation** of all blood and blood components shall be [in accordance with the Code of Federal Regulations] **consistent with, whichever is more stringent, the most recent Code of Federal Regulations or Standards of the American Association of Blood Banks. If necessary these documents may be reviewed at the Department of Health, Clinical Laboratory Improvement Services, Princess South, Princess Road, Bldg. 17F, Lawrenceville, New Jersey.**

(b) All laboratory tests shall be made on specimens of blood taken from the donor at the time of phlebotomy in properly identified tubes.

1.-3. (No change.)

4. Surrogate testing for non-A, non-B Hepatitis:

i. Each donation of blood or blood components shall be tested for alanine-amino transferase (ALT) and Hepatitis B Core Antibody testing by test procedures that are acceptable to the Department.

ii. The blood or blood components shall not be used for transfusion purposes unless results of test(s) are considered normal except where delay occasioned by testing may result in a serious threat to the health and well-being of the recipient.

iii. In instances where untested blood and blood components are transfused, the attending physician shall attest in writing to the existence of the emergency and if the test is subsequently considered to be abnormal the recipient's physician shall be notified.

[4.7] 5.-8. (No change in text.)

(c) [Any] **Performance of any** additional testing for product quality and patient safety [may be performed] **is permitted** under this chapter. **This testing shall comply with all applicable requirements of this chapter.**

SUBCHAPTER [7] 8. COLLECTION OF BLOOD

8:8-8.1 General criteria

(a) Blood banks wishing to employ the techniques set forth in this subchapter shall file their protocol and a request in writing to the Department.

(b) The techniques set forth in this subchapter can be employed upon receipt of written approval from the Department.

8:8-[7.1-7.3] **8.2-8.4** (No change in text.)

8:8-[7.4] **8.5** Method of [routine whole] blood **and blood component** collection

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

(c) A closed system must be used **except for blood cell separation instruments that use an open system.**

(d)-(h) (No change.)

8.8-[7.5 and 7.6] **8.6 and 8.7** (No change in text.)

8:8-[7.7] **8.8** Labeling

(a) Labeling shall be consistent with the **most recent** Code of Federal Regulations.

(b) Blood and blood components shall be labelled to include conspicuous notation of incomplete testing and when applicable positive or abnormal test results.

8:8-8.9 Sterility testing

(a) Sterility testing shall be performed at regular intervals and not less than once monthly, where blood is collected or prepared in an open system. Such tests shall not be done on blood intended for transfusion.

(b) Culture techniques shall be in accordance with the most recent Code of Federal Regulations.

(c) Permanent records of sterility tests, with evidence that the tests have been performed according to the most recent Code of Federal Regulations, and the results shall be kept.

8:8-[7.8] **8.10** [Collection of blood for autologous] **Autologous collection**/transfusion

(a) Blood banks wishing to employ the techniques set forth in this section shall file their protocol and a request in writing to the Department.

(b) The techniques set forth in this section can be employed upon receipt of written approval from the Department.

(c) Autologous collection/transfusion shall be done only at the written request of the donor-recipient's physician. A telephone request shall be followed by written confirmation within seven calendar days.

(d) Testing and labelling requirements for autologous donations shall be consistent with, whichever is more stringent, this chapter or the Code of Federal Regulations.

[(a)] **(e)** Donor processing for autologous transfusion shall be as follows:

1.-2. (No change.)

3. If "crossing over" is allowed, at the time of collection each donation shall be tested as required in N.J.A.C. 8:8-7.2.

4. Blood and blood components that test positive or abnormal and are transfused to the donor/recipient shall be labelled to warn personnel handling the blood that positive test results were obtained.

[(b)] **(f)** (No change in text.)

[(c)] **(g)** Pretransfusion testing of [units] **blood and blood components** for autologous transfusion **that are not "crossed over"** shall be subject to the following:

1.-3. (No change.)

(h) A documented review procedure shall be performed to "crossover" autologous donations for homologous transfusion use. The procedure used shall insure that blood that is not acceptable for homologous use by donor medical history, required testing and permanent deferral status is not transfused or made into components for further manufacture.

8:8-8.11 Directed donation

(a) Blood banks wishing to employ the techniques set forth in this section shall file their protocol and a request in writing to the Department.

(b) Such techniques can not be employed until written approval is received from the Department.

(c) All requirements of this chapter related to homologous donations shall be followed.

(d) Directed donations shall be initiated only at the written request of the intended recipient's physician or a transfusion facility. A telephone request shall be followed by written confirmation within seven calendar days.

8:8-[7.9] **8.12** (No change in text.)

8:8-[7.10] **8.13** Therapeutic phlebotomy

(a) General criteria for therapeutic phlebotomy **are as** follows:

1. Therapeutic phlebotomy shall be done only at the written request of the patient's physician.

[1.-4.] **2.-5.** (No change in text.)

(b) (No change.)

(c) Records shall be maintained which include patient identification, diagnosis, therapeutic procedure, volume of plasma and cells

removed, volume replaced, nature of replacement fluids, **any adverse reactions,** and a record of the administered medications.

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

8:8-[7.11] **8.14** (No change in text.)

8:8-[7.12] **8.15** Cytapheresis

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

(c) The procedures used shall meet with the approval of the Department and shall include as a minimum the following requirements[;]:

1. (No change.)

2. A licensed physician on the premises shall supervise the performance of these procedures including the reinfusion procedure. **This requirement may be waived for cytapheresis procedures using a closed system subject to the following conditions:**

i. A request for a waiver shall be submitted in writing and approved by the Department;

ii. N.J.A.C. 8:8-8.2, Donor's emergency care, shall be strictly followed;

iii. Donor emergency care personnel, as required under N.J.A.C. 8:8-2.2 (c), shall be on the premises; and

iv. A contingency plan to assure that a physician is available for emergency purposes during the procedure. The physician response time is to be no longer than 15 minutes.

3.-5. (No change.)

6. Donors may receive drugs before or during leukapheresis.

i. (No change.)

ii. The blood bank director is responsible for setting appropriate **written** guidelines in such circumstances.

8:8-[7.13] **8.16** (No change in text.)

[8:8-7.14 Sterility testing

(a) Sterility testing shall be performed at regular intervals and not less than once monthly, where blood is collected in an open system. Such tests shall not be done on blood intended for transfusion.

(b) Culture techniques shall be in accordance with the Code of Federal Regulations.

(c) Permanent records of the sterility tests and the results shall be kept.]

SUBCHAPTER [8.] 9. RECIPIENT BLOOD TESTING

8:8-[8.1] **9.1** General provisions

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

(e) The sample for compatibility testing shall be:

1. Identified by a label [containing at least the intended recipient's first and last names and identification number,] firmly attached to the sample before leaving the side of the recipient[.];

2. [Identified as to the person who drew the recipient's blood sample.] **Labeled with at least the recipient's first and last names, identification number, the identity of the person drawing the sample and the date the sample was drawn;**

3. [Less than 48 hours old] **Obtained within three days of the scheduled transfusion** when [a] **the** recipient has been transfused or pregnant in the preceding three months or this information is not known[.]; **and**

4. Examined by a qualified person, before a specimen is used for typing or compatibility testing, to confirm that all information on the request form is in agreement with that on the specimen label. In the case of a discrepancy or doubt, another specimen shall be obtained and used for these procedures.

(f) Testing of the recipient's blood shall include at least the following:

1. (No change.)

2. D typing;

i.-iii. (No change.)

iv. [A] **To avoid incorrect designation of a D-negative recipient as D-positive, a** control system appropriate to the [typing system used] **D reagent in use** is required.

3. Detection of unexpected antibodies;

i. Each blood sample submited with a request for transfusion shall be tested prior to, or concurrently with the performance of [the crossmatch] **compatibility testing.**

ii. (No change.)

4. Compatibility testing:

i. Compatibility testing requirements shall be consistent with the **most recent** Code of Federal Regulations [but must include at least an immediate spin crossmatch of donor cells and patient serum] **and shall include a method to verify the ABO group of the donor unit and the recipient.**

5. A control system using red blood cells sensitized with IgG must be used with each antiglobulin test.

8:8-[8.2 and 8.3] **9.2 and 9.3** (No change in text.)

SUBCHAPTER [9.] 10. ISSUE AND ADMINISTRATION OF BLOOD AND BLOOD COMPONENTS FOR TRANSFUSION

8:8-[9.1] **10.1** Issue of blood

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

(c) At the time the blood or blood component is released from the blood bank for transfusion, the person receiving the blood shall present a written request with sufficient information for the positive identification of the recipient. At a minimum the recipient's first and last names, identification number and the date of transfusion are required.

[(c)-(d)] **(d)-(e)** (No change in text.)

8:8-[9.2] **10.2** Administration of blood and **blood** components

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

8:8-10.3 Reissue of blood

(a) Blood or blood components which have been returned to the blood bank shall not be reissued for use unless the following conditions have been met:

1. The container closure or seal has not been punctured or tampered with;

2. The blood has been continuously stored and shipped under controlled conditions, which maintain acceptable temperatures for the product, or it is returned to the blood bank within a pre-determined time, set by the blood bank, which is acceptable to the Department;

3. Original identification labels and tags are attached and unaltered;

4. The original pilot sample has not been removed or tampered with;

5. If applicable, the blood has been allowed to settle long enough to permit reinspection of the plasma; and

6. The records indicate the blood was reissued with documentation of the time it was returned and reissued.

SUBCHAPTER [10] 11. STORAGE OF BLOOD

8:8-11.1 General provisions

(a) The equipment used for the storage of blood shall be kept clean and individual compartments used only for the storage of blood and blood components, blood banking sera, pilot and patient samples.

(b) No food or potentially contaminated material shall be stored in the refrigeration equipment.

(c) Written procedures shall be readily available containing directions on how to maintain blood and blood components within permissible temperatures and including instructions to be followed in the event of power failure or other disruption of refrigeration.

8:8-[10.1 to 10.3] **11.2 to 11.4** (No change in text.)

8:8-[10.4] **11.5** Temperature monitoring systems

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

[(e) The equipment shall be kept clean and used only for the storage of blood and blood components, blood banking sera, pilot and patient samples.

(f) No food or potentially contaminated material shall be stored in the refrigeration equipment.]

8:8-[10.5 and 10.6] **11.6 and 11.7** (No change in text.)

8:8-[10.7] **11.8** Packaging and transportation

[(a) During periods of transportation the blood shall be maintained at temperatures between 1-10°C in insulated or wet ice con-

tainers shown to be capable of maintaining this temperature for a suitable period of time.]

(a) Processed whole blood, modified whole blood and all liquid red blood cell components shall be transported in a manner that will maintain temperatures of one to 10 degrees Centigrade.

(b) Components ordinarily stored at 20 to 24 degrees Centigrade shall be transported at this temperature.

(c) Components ordinarily stored frozen shall be transported in a manner designed to keep them frozen.

[(b)] **(d)** Immediately upon arrival, the receiving facility shall transfer the blood to [a] temperature controlled [refrigerator] **equipment** [as in N.J.A.C. 8:8-10.1] for further storage.

SUBCHAPTER 12. HOME COLLECTION AND TRANSFUSION

8:8-12.1 General provisions

(a) Blood banks wishing to employ the techniques set forth in this subchapter shall file their protocol and a request in writing with the Department.

(b) Such techniques may be employed upon receipt of written approval from the Department.

(c) The procedures used shall be acceptable to the Department and ensure that there is compliance with this Chapter.

8:8-12.2 Home collection

(a) The home collection procedure shall be performed as part of the services of a blood bank licensed to collect blood and blood components.

(b) Donor safety shall be assured by at least the following:

1. If a physician is not present, the phlebotomist shall be a person able to administer emergency care and shall be a registered nurse (R.N.) holding a current certificate of registration who has fulfilled the following requirements:

i. Has demonstrated his or her familiarity with donor eligibility standards to the satisfaction of the director of the blood bank; and

ii. Has taken an eight hour course in cardiopulmonary resuscitation within three years and successfully passed a practical and written exam on the subject matter.

2. A second responsible person shall be available on the premises to help with emergency situations.

3. Adherence to N.J.A.C. 8:8-8.3, Medical contingency plan.

(c) Procedures used shall comply with N.J.A.C. 4, Management, N.J.A.C. 8:8-5, Records and Reporting Requirements, N.J.A.C. 6, Criteria For Donor Selection, and N.J.A.C. 8:8-8.2 through 8.7, Collection of Blood.

8:8-12.3 Home transfusion

(a) Home transfusion shall be done under medical supervison, and the patient shall be observed during the transfusion and for an appropriate time thereafter for suspected adverse reactions. Specific instructions concerning possible adverse reactions shall be provided for the patient.

(b) Blood or blood components for transfusion shall be prescribed by a physician.

(c) The home transfusion procedure shall be performed as part of the services of a blood bank licensed to transfuse blood and blood components.

(d) Recipient safety shall be assured by at least the following:

1. If a physician is not present, the transfusionist shall be a person able to administer emergency care and shall be a registered nurse (R.N.) holding a current certificate of registration who has fulfilled the following requirements:

i. Has taken an eight hour course in cardiopulmonary resuscitation within three years and successfully passed a practical and written exam on the subject matter.

2. A second responsible person shall be available on the premises to help with emergency situations and to provide the second check required in N.J.A.C. 8:8-10.2.

3. Adherence to N.J.A.C. 8:8-8.3, Medical contingency plan.

(e) The procedures used shall comply with N.J.A.C. 4, Management, N.J.A.C. 5, Records and reporting requirements, N.J.A.C. 8:8-10.2, Administration of blood and blood components, and N.J.A.C. 8:8-11.1 and 11.8, Storage of blood.

(f) Blood banks functioning only as home transfusion services shall also comply with N.J.A.C. 8:8-2, Personnel, N.J.A.C. 8:8-3.2, Contaminated material, N.J.A.C. 8:8-7.1(a), (b) and (d), Blood and blood components, and N.J.A.C. 8:8-9.1(d) and (e), Recipient blood testing.

(a)

HOSPITAL REIMBURSEMENT

Notice of Correction to Proposal Summary Procedural and Methodological Regulations

Proposed Amendments: N.J.A.C. 8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73 and Appendix II.

Take notice that, upon review, the Department found an error in the Summary statement, paragraph four, of the proposed amendments referenced above, published in the January 17, 1989 New Jersey Register at 21 N.J.R. 135(a). The paragraph should read as follows:

4. For 1989 rate setting the labor proxy used to increase base-year costs will be changed from the Bureau of Labor Statistics National index of Average Hourly Earnings for Nonsupervisory Hospital Workers to the Northeast Regional component of the same index, and a New Jersey-specific index devised to account for increases in contracted labor.

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) Services

Proposed Repeals: N.J.A.C. 8:33J-1.1 through 1.5
Proposed New Rules: N.J.A.C. 8:33J-1.1 through 1.12

Authorized By: Christine Grant, J.D., M.B.A., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1989-99.

Submit comments by March 23, 1989 to:

John A. Calabria, Chief
Health Systems Services
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Health, with the approval of the Health Care Administration Board (HCAB), is proposing new rules for Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) services which will replace the existing NMR/MRI rules that are scheduled to expire on May 17, 1989 in accordance with Executive Order No. 66 (1978). The Department has reviewed the existing rules and has determined that significant amendments are necessary in order to properly review additional MRI services in the State. The Department therefore is proposing entirely new MRI rules which will replace the existing rules.

The existing NMR/MRI rules permitted the approval of a maximum of eight NMR/MRI demonstration sites throughout the State and established a demonstration period of a maximum of two years for the evaluation of this imaging modality. A recent amendment to these rules extended the demonstration period an additional six months to permit the development of additional MRI criteria and standards that are contained in these proposed new rules.

The new rules being proposed at this time are intended to permit the Department to consider additional MRI services in the State based on newly developed need methodologies and the results of clinical developments that have expanded the applications for MRI imaging.

The new rules being proposed establish the following minimum standards and criteria for the provision of MRI services:

1. Minimum need criteria for the establishment of new or replacement MRI equipment at N.J.A.C. 8:33J-1.3.

2. Minimum population base for the establishment of a new MRI service at N.J.A.C. 8:33J-1.2.

3. Minimum personnel requirements for the safe and effective provision of MRI services at N.J.A.C. 8:33J-1.5.

4. Criteria for competitive review of potential new MRI providers at N.J.A.C. 8:33J-1.6.

5. Minimum criteria for quality assurance at each proposed MRI service at N.J.A.C. 8:33J-1.7.

6. Documentation of appropriate site preparation requirements at N.J.A.C. 8:33J-1.8.

7. Minimum criteria for capital and operating costs associated with the initiation or replacement of MRI equipment and services at N.J.A.C. 8:33J-1.9.

8. Minimum MRI data submission requirements at N.J.A.C. 8:33J-1.10.

9. Minimum standards regarding non-discriminatory practices for MRI providers at N.J.A.C. 8:33J-1.11.

10. A compliance section at N.J.A.C. 8:33J-1.12 that specifies possible reimbursement or licensing sanctions for non-compliance with the minimum requirements specified in the rules.

Social Impact

Nuclear Magnetic Resonance or Magnetic Resonance Imaging (NMR/MRI) represents a unique imaging modality that is based on the reaction of atomic nuclei to magnetic fields and radiofrequency signals. By detecting signals from resonating nuclei, images of an anatomical area are constructed for diagnostic purposes. Since various tissues produce signals of differing intensity, MRI equipment is able to differentiate between normal and abnormal tissue. As is the case with any imaging modality, however, the quality and reliability of the images being produced are largely dependent on the skill and expertise of the operator of the equipment. At this stage of MRI technology MRI imaging is predominantly an outpatient service, with approximately 75 percent of patients scanned at the State's demonstration sites undergoing their procedures on an outpatient basis.

NMR/MRI has demonstrated its ability to supply diagnostic information that is unavailable from other existing imaging modalities (for example, CT, ultrasound). MRI equipment does not use ionizing radiation and gives every indication of being safe at the magnetic field strengths currently approved for diagnostic imaging by the Federal Drug Administration (FDA). There are contraindications for MRI use because of the attraction of ferromagnetic objects both outside the body (that is, projectile effect) and inside the body (for example, pacemakers, aneurysm clips) to the relatively large magnetic field that surrounds the MRI unit.

Several recent clinical studies, including the completion of the New York State MRI demonstration project, have concluded that MRI can significantly reduce the demand for CT scanning of the brain, brain stem, and spine. Several other applications of MRI technology, including cardiac studies and spectroscopy, remain in the development stage. In many instances, MRI is used to supplement information previously gathered by ultrasound or CT scanning.

The Department recognizes the profound impact this technology may have on the health care delivery system. Therefore, it is looking to have this service develop through an orderly and rational process that is responsive to the real needs (in terms of quality, cost, and access) of the State's population. The proposed MRI criteria contained in these proposed new rules will permit the NMR/MRI planning process to proceed with the evaluation of additional community need for MRI imaging services that is consistent with clinical applications of this modality that have been demonstrated both in New Jersey and throughout the nation.

Economic Impact

The economic impact of NMR/MRI services is largely dependent on the ability of the imaging modality to provide clinically useful information compared to other existing imaging modalities. To a large extent, the clinical utility of NMR/MRI has yet to be fully determined. The average annual operating cost of an MRI facility, according to data compiled by the New York demonstration project, was $950,000.

NMR/MRI has the potential to replace a number of standard diagnostic procedures, including those that are invasive and require brief hospital stays (for example, myelograms). The New York MRI demonstration project estimated a cost saving of from $568.00 to $763.00 per patient (currently undergoing myelogram procedures) should MRI replace myelograms and contrast-enhanced CT as the procedure of choice in the diagnosis of disc disease.

The NMR/MRI unit is estimated to cost from $975,000 to $2.3 million, depending on the type of magnet (that is, permanent, resistive, superconducting) and its field strength (for example, .15-2.0 tesla). Appropriate site selection and facility renovation can cost a facility an additional $200,000 to $500,000 or more depending on the capabilities desired. The productive life of the NMR/MRI unit is estimated to be approximately five years.

The proposed new rules are intended to evaluate the need for additional MRI services in New Jersey based on demonstrated need, while at the same time minimizing duplicative services that would jeopardize the cost effectiveness of both new and existing MRI providers.

Regulatory Flexibility Statement

The proposed new rules will for the most part be applicable to hospitals which employ well over 100 employees. It is possible, however, that smaller entities that are not specifically affiliated with hospitals will be considered as MRI providers under these rules: The new rules merely reinforce the original MRI rules which were enacted to establish the demonstration projects for NMR/MRI. The requirements contained in these rules do require personnel to perform a number of functions at an MRI facility in order to provide a safe and effective MRI service. An ability to perform some degree of recordkeeping, reporting or other compliance requirements are being proposed by these rules. Such recordkeeping and data reporting will not require dedicated staff and should not be considered overly burdensome to the applicants that may be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In proposing these rules, which include recordkeeping and data reporting, the Department has had to balance the economic impact of added personnel costs with the need to provide a safe and effective health care service. The Department has determined that to minimize the economic impact of this proposed rule would endanger public health and safety and, therefore, no exemption from coverage is provided.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 8:33J-1.1 through 1.5.

Full text of the proposed new rules follows:

CHAPTER 33J
MAGNETIC RESONANCE IMAGING (MRI) SERVICES

8:33J-1.1 Introduction

(a) Magnetic Resonance Imaging (MRI) is a diagnostic modality which produces pictures that are based on the responses of atomic nuclei in a magnetic field. By depicting the concentration, chemical form and spatial distribution of certain nuclei, MRI can serve to define body constituents and chemistry, directly and non-invasively. Its potential to offer new insights into the chemistry of physiology and for detecting and diagnosing disease states in clinical medicine is becoming increasingly significant.

(b) Given the limited use of MRI's in clinical settings to date; the need for further research to achieve a better understanding of the range of MRI's clinical applications; the diagnostic categories for which MRI is most suited; the type of MRI systems most appropriate for given clinical settings and applications; the costs and cost impacts of MRI service delivery; and the extent to which costs can be expected to be outweighed by improvements in medical diagnoses and medical outcomes, and incremental and regionalized approach to the initiation of MRI's services in the State continues to be warranted.

(c) This chapter identifies Department of Health policy to guide the introduction of additional MRI services in New Jersey over and above the eight approved MRI demonstration sites previously gaining certificate of need approval under the former MRI demonstration rules at N.J.A.C. 8:33J. This chapter is intended to guide future planning and review activities for MRI services in New Jersey on a case-by-case basis.

8:33J-1.2 Minimum population base

The minimum population base for each magnetic resonance imaging (MRI) service will be one MRI unit for each 420,000 population within a health service area.

8:33J-1.3 Minimum utilization standards

(a) Each applicant for magnetic resonance imaging (MRI) services shall provide written documentation that a projected minimum volume of 2500 patient procedures per unit, per year shall be achieved within two years of initiation of the service. Projected utilization shall be based on the applicant's documentation of CT exams of the central nervous system (CNS), since MRI has been shown to be a valuable diagnostic tool for studies of the CNS. Projected MRI utilization will be calculated as follows:

A = Projected MRI studies of CNS patients =
(CT exams of CNS x .55) - (.10 CT exams of CNS)
B = Projected MRI studies of non-CNS patients = (.10 x A)
Total Projected MRI exams = A + B

(b) Any MRI applicant that is an existing MRI provider shall document all existing utilization data, the source(s) of that existing utilization and in the case of a joint applicant, any additional projected MRI utilization based on the above need methodology.

(c) Each applicant shall demonstrate that the proposed MRI service will function as an integrated component of a comprehensive diagnostic imaging service by providing written documentation that it has access, either on-site or through formal written arrangements, to equipment and qualified personnel for the provision of conventional radiology, computed tomography, ultrasound, angiography and nuclear medicine.

(d) Each applicant seeking the replacement or upgrading of its magnetic resonance imaging (MRI) unit shall document an actual minimum utilization of 2500 patient procedures per unit per year.

(e) Any applicant seeking to provide mobile MRI services shall meet all minimum requirements contained in this subchapter.

8:33J-1.4 Regional provision of MRI services

(a) Each applicant shall document that the proposed MRI service will serve as a regional resource for area physicians and health care facilities. Such documentation shall include, but not be limited to:

1. An established mechanism for the transmission of patient information to the referring physician and facility;

2. An established mechanism to maintain current listings of appropriate clinical applications of MRI for staff, referring physicians, and facilities;

3. A written plan for continuing education and training programs to include the education of physicians and the public of specific indications and contraindications of MRI use; and

4. A written policy regarding patient prioritization that is based on patient need rather than referral source.

8:33J-1.5 Minimum personnel standards

(a) Each applicant for a certificate of need for a magnetic resonance imaging (MRI) unit shall provide the Department with written documentation that the following minimal staff complement will be available within the facility to each MRI unit:

1. One or more licensed physicians who have attained a thorough knowledge of the methods and principles of MRI through continuing medical education (CME) credits, experience or post-graduate education which qualified them to interpret MRI scans in the specialty field appropriate to each physician; and

2. Two full-time equivalent technicians who have documented training and experience in MRI service delivery.

(b) In addition, sufficient supportive personnel consistent with the efficient delivery of quality MRI services should be assigned to the MRI unit (for example, aides, secretary, clerk).

(c) A radiologist or neuroradiologist who may also serve as director of MRI services and who is a board-certified radiologist or neuroradiologist whose primary responsibility over the last three years has been in the interpretation of cross-sectional imaging for all body areas and who has at least 60 hours of instruction in the methods and principles of MRI at a facility with an operational MRI device shall be available.

(d) A bio-medical physicist/engineer who is certified by the American Board of Radiology and has a thorough knowledge of MRI techniques shall be available.

8:33J-1.6 Competitive areawide criteria

(a) Competing applicants seeking to initiate MRI services within the same health service area (as defined in P.L. 93-641 as amended) shall meet the minimum MRI standards and criteria contained herein. Priority will be given to applicants who demonstrate:

1. The lowest capital and operating costs and patient charges consistent with meeting all minimum standards of operation and construction contained in this subchapter;

2. The extent to which hospital inpatients will be provided with improved access to MRI services (the greater the number of inpatients receiving improved access to MRI services, the greater the priority consideration);

3. The greatest proportion of care to the medically indigent in the service area to which the applicant will provide equal access to MRI services;

4. The greatest degree of continuity of care evidenced by the establishment of a system of referral agreements and linkages and joint hospital sponsorship of the proposed MRI service;

5. The extent to which the applicant has historically provided sizeable volumes of diagnostic procedures, in its existing radiology service programs where applicable, in the clinical categories for which MRI has been demonstrated to have the most effective clinical applications;

6. The extent to which a proposed service is to be located in close proximity to approved MRI services as well as the existing utilization and unused capacity of these existing approved MRI providers;

7. Evidence that the existing approved MRI services are operating above minimum utilization levels and that the capacity of these existing MRI services are insufficient to meet projected demand for these services in the health service area; and

8. Proposed charges and physician fees for the proposed MRI services and the extent that they are consistent with alternative providers in the area.

8:33J-1.7 Quality assurance

(a) Each applicant shall provide written documentation of an ongoing quality assurance program for MRI which includes at a minimum:

1. Protocols that ensure that all MRI procedures are medically necessary and will not duplicate other imaging service;

2. A safety manual governing the equipment and its location and security measures that include metal and other hazard detection; and

3. Document evidence of appropriate training of personnel.

8:33J-1.8 MRI site preparation

Each applicant shall provide written documentation that the area housing the MRI unit, including necessary arrangements for mobile MRI equipment, will be constructed in accordance with standards established by the U.S. Food and Drug Administration (FDA), the equipment manufacturer, the National Electrical Manufacturers Association (NEMA), and applicable Federal and State standards.

8:33J-1.9 Capital and operating costs

The applicant shall provide full written documentation of the purchase and operational costs of the proposed MRI service. The applicant shall identify both direct and indirect cost savings resulting from the introduction of MRI equipment in their specific setting. In addition, the choice of buying or leasing equipment should be justified and include provision for early obsolescence resulting from rapid technological advancement. The cost of remodeling or renovation necessary to accommodate the unit and its operation shall also be identified. Projections of anticipated revenues during the first two years of operation should be supplied within the certificate of need application.

8:33J-1.10 Data reporting

All MRI services gaining certificate of need approval will be required to provide specific MRI data relating to the number of patients receiving these services, operating costs, patient origin, and any additional information deemed necessary by the Department to determine compliance with this section. This information shall be provided in a format developed by the Department and will be

submitted by each approved MRI provider no more than twice each year.

8:33J-1.11 Non-discriminatory agreement

Each applicant shall provide written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices to the effect that no patient shall be refused treatment on the basis of race, religion, sex, age, patient diagnosis or ability to pay.

8:33J-1.12 Compliance

(a) Existing MRI providers shall meet the minimum utilization requirements contained in this subchapter within one year of the effective date of this subchapter and each year thereafter or be subject to reimbursement or licensing sanctions, N.J.S.A. 26:2H-7 and 14, respectively.

(b) All certificate of need applications for new MRI equipment shall document the ability to achieve minimum utilization standards and criteria contained in this subchapter within two years from the initiation of the service. Failure to achieve minimum utilization level during the second year of operation or thereafter will result in reimbursement or licensing sanctions.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Nuclear Magnetic Resonance (NMR) Services

Proposed Readoption: N.J.A.C. 8:33J

Authorized By: Christine Grant, J.D., M.B.A., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1989-100.

Submit comments by March 23, 1989 to:

John A. Calabria, Chief
Health Systems Review Program
New Jersey Department of Health
CN 360, Room 604
Trenton, NJ 08625

The agency proposal follows:

Summary

The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq., as amended) requires the Department to assure that New Jersey's hospital and related health care services are of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost. To implement this public policy, Chapter 136 gave the Department of Health broad responsibilities in regulating the health care system through authorization of the Certificate of Need Program.

The Department initially adopted Nuclear Magnetic Resonance (NMR) or Magnetic Resonance Imaging (MRI) Standards (N.J.A.C. 8:33J) effective May 7, 1984. The intent of these rules was to identify standards and criteria to be used by the Department of Health, the Statewide Health Coordinating Council, and the local health planning agencies to effectively judge applications for a maximum of eight NMR/MRI demonstration sites throughout the State. The demonstration period was to extend for a maximum of two years from the date of operation of the first approved NMR/MRI demonstration site. Pursuant to Executive Order No. 66 (1978), N.J.A.C. 8:33J expires on May 7, 1989.

Many changes have occurred in health care within the past five years. The Department has reviewed the present rules and determined that major revisions are necessary to reflect changes in the availability of beds and treatment settings. The Department is therefore developing proposed new rules for NMR/MRI service delivery. The Department recognizes, however, that the effective date of the new rules and the concurrent repeal of N.J.A.C. 8:33J-1.1 through 1.5, both proposed elsewhere in this issue of the New Jersey Register, cannot occur prior to expiration of N.J.A.C. 8:33J on May 7, 1989. In order to avoid expiration of these rules pursuant to Executive Order No. 66 (1978) and to maintain continuity in the certificate of need process for NMR/MRI services, the readoption of this rule without change is now being proposed.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health ... shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs ..."

The New Jersey State Health Plan recognizes the underutilization of specialty services as an important factor contributing to the rapidly escalating cost of health care. Regionalization of specialty services is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the solvency of facilities offering these services, and by containing the rising costs of health care services.

The rules are intended to promote the provision of NMR/MRI services in a cost-effective manner at a level appropriate to the needs of the patient. However, the current rules do not permit the acceptance of certificate of need applications for new NMR/MRI demonstration sites nor do they contain a need methodology for the evaluation of additional NMR/MRI services.

Economic Impact

The economic impact of NMR/MRI services is largely dependent on the ability of the imaging modality to provide clinically useful information compared to other existing imaging modalities. To a large extent, the clinical utility of NMR/MRI has not as yet been fully determined. The average annual operating cost of an NMR/MRI facility, according to data compiled by the New York State demonstration project, was $950,000.

NMR/MRI has the potential to replace a number of standard diagnostic procedures, including those that are invasive and require brief hospital stays (for example, myelograms). The New York State MRI demonstration project estimated a cost saving of from $568.00 to $763.00 per patient (currently undergoing myelogram procedures) should MRI replace myelograms and contrast enhanced CT as the procedure of choice in the diagnosis of disc disease.

The NMR/MRI unit is estimated to cost from $975,000 to $2.3 million, depending on the type of magnet (that is, permanent, resistive, superconducting) and its field strength (for example, .15-2.0 tesla). Appropriate site selection and facility renovation can cost a facility an additional $200,000 to $500,000 or more depending on the capabilities desired. The productive life of the NMR/MRI unit is estimated to be approximately five years.

Extension of existing rules for a brief period while new rules are promulgated will have little or no economic impact.

Regulatory Flexibility Analysis

The Department has determined that these rules affect only the eight facilities providing certificate of need approved NMR/MRI services. Three of these eight, while hospital sponsored, may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The requirements contained in these rules do require personnel to perform a number of functions at an MRI facility in order to provide a safe and effective MRI service. An ability to perform some degree of recordkeeping, reporting or other compliance requirements are being proposed by these rules. Such recordkeeping and data reporting will not require dedicated staff and should not be considered overly burdensome to the applicants that may be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In proposing these rules, which include recordkeeping and data reporting, the Department has had to balance the economic impact of added personnel costs with the need to provide a safe and effective health care service. The Department has determined that to minimize the economic impact of this proposed rule would endanger public health and safety and, therefore, no exemption from coverage is provided.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:33J.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Long Term Care Licensing Standards
Hot Water Temperature
Proposed Amendment: N.J.A.C. 8:39-19.7

Authorized By: Christine Grant, J.D., M.B.A., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1, specifically 26:2H-5.
Proposal Number: PRN 1989-101.

Submit comments by March 23, 1989, to:
Neil Wiesfeld, Director
Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department proposes to amend N.J.A.C. 8:39-19.7(e) by adding a sentence making it very clear that nursing homes may not expose patients to running water that exceeds 110 degrees Fahrenheit in temperature.

Currently, the rule requires nursing homes to provide "[h]ot (90 to 110 degrees Fahrenheit) and cold running water" to patients. The proposed addition would expressly prohibit facilities from providing, in patient care areas, running water of a temperature that exceeds the upper limit of this range.

Social Impact

The sole intended impact of this change is to preclude any facility, after being cited by the Department for excessively high water temperatures, from asserting a defense based on a claim that the rule does not expressly prohibit water temperatures higher than 110 degrees.

The 110-degree limit (43.3 degrees Celsius) is universally accepted by the nursing home industry in New Jersey and elsewhere. Higher temperatures can cause scalding in frail elderly people. Serious injuries and even death can result. Occasional violations do occur, despite aggressive efforts by inspection personnel of the Department of Health and other agencies, but there is no indication of any pattern of violation by any facility at present.

Economic Impact

Because this amendment does not constitute a substantive change in regulatory requirements, or involve any change in current practices, no economic impact will result.

Regulatory Flexibility Statement

Approximately one-half of the long term care facilities in New Jersey are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This proposed amendment imposes no reporting or recordkeeping requirements on those facilities. The compliance requirement imposed, setting a maximum hot water temperature, will impose no new or capital costs on such facilities, and should be able to be met through present maintenance procedures.

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

8:39-19.7 Mandatory space and environment for water supply

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

(e) Hot (90 to 110 degrees Fahrenheit) and cold running water shall be provided. **At no time shall the temperature of running water in patient care areas exceed 110 degrees Fahrenheit.**

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual
Proposed New Rule: N.J.A.C. 10:49-1.24
Proposed Amendments: N.J.A.C. 10:49-1.1, 1.7, 1.8, 1.9, 1.10, 1.14, 1.17, 1.19, 1.20, 1.22, and 1.26

Authorized by: Drew Altman, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4D-3h, i, j; 30:4D-7a, b, c; 30:4D-12; 42 CFR 431.305; 42 CFR 440.270.
Proposal Number: PRN 1989-61.

Submit comments by March 23, 1989 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments affect certain sections of N.J.A.C. 10:49, the Administration Manual, which is the first chapter of all provider manuals. The amendments contain both substantive and technical changes, as follows:

Physical Examination: Medicaid patients will be required to undergo a physical examination to establish eligibility based on disability or blindness. This requirement is based on amendments to Federal regulations (42 CFR 440.270). This may affect persons who need to prove they are blind or disabled in order to obtain Medicaid coverage under the categorical assistance programs formerly known as Disability Assistance or Assistance to the Blind. These programs are now part of the Supplemental Security Income (SSI) Program. Persons who apply for SSI and are under 65 years of age have to establish disability or blindness, as well as financial eligibility, to qualify for SSI. Persons who are age 65 or older who apply for SSI do not require a physical examination. Persons who qualify for SSI will be covered by Medicaid. The proposed amendment appears at N.J.A.C. 10:49-1.19.

Confidentiality of Records: Two additional items have been added to the list of information at N.J.A.C. 10:49-1.22 that must be safeguarded. These items are income information received from the SSA (Social Security Administration) and/or the Internal Revenue Service, and information received in connection with resources of legally liable third parties. This amendment was added to conform with recent amendments to Federal regulations (42 CFR 431.305).

IMP Number: Medicaid practitioners are required to have an IMP (Individual Medicaid Practitioner) Number which is a unique nine digit number and which must be entered on all Medicaid claim forms as a condition of payment. This has been a long-standing Medicaid policy and is now being added to the Medicaid rules as proposed new rule N.J.A.C. 10:49-1.24.

The following changes are listed in codification order for discussion purposes.

Foreword: The foreword has been amended to include new programs, including the Optional Categorically assistance Programs, known as New Jersey Care . . . Special Medicaid Programs and HealthStart. The format of the manuals is also explained. N.J.A.C. 10:49 is really the first chapter of all provider manuals and contains general program requirements. The specific program requirements appear in individual chapters. For example, the specific program requirements governing pharmaceutical providers appear in N.J.A.C. 10:51.

N.J.A.C. 10:49-1.1(d)2: Form FD-74 is now being described as an application for payment of unpaid medical bills, rather than an application for Retroactive Medicaid Eligibility. However, this form has been used for many years by the Division and is still being processed by the Retroactive Eligibility Unit within the Division of Medical Assistance and Health Services.

N.J.A.C. 10:49-1.1(e): Language has been added to indicate the MDO (Medicaid District Office) can assist persons in determining the appropriate agency that is responsible for determining eligibility.

N.J.A.C. 10:49-1.7: This section alerts Medicaid providers that persons with a third digit in their Medicaid number of 1, 2, 5, or 7 could have Medicare coverage.

N.J.A.C. 10:49-1.8: Amendatory language indicates that prior authorization is no guarantee of Medicaid eligibility and that providers are responsible for verifying eligibility when a service is rendered. This has been a long-standing Medicaid program requirement.

N.J.A.C. 10:49-1.10: This section has been amended to indicate that the Bureau of Claims and Accounts, within the Division of Medical Assistance and Health Services, has been and continues to be responsible for processing claims submitted by long term care facilities.

N.J.A.C. 10:49-1.14 and 1.17: These sections contain grammatical changes.

Social Impact

The proposed amendments and new rule impact on Medicaid applicants and/or recipients who need to establish eligibility based on disability or blindness. Persons applying for assistance in these categories will have to undergo a physical examination pursuant to Federal regulations. The amendments also indicate that income and resource information will be considered confidential.

The amendments and new rule also impacts on Medicaid providers, who are required to have an IMP number in order to submit a claim for reimbursement. The amendments and new rules require providers to verify eligibility whenever they render a service to a Medicaid patient. These are long-standing requirements that are being codified.

Economic Impact

There is no economic impact associated with these amendments and new rule. The administrative mechanisms for determining disability and blindness are already in place.

There is no cost to the Medicaid patient for services provided under the New Jersey Medicaid Program. There is no cost to the Medicaid patient for medical examinations to establish disability or blindness.

There is no economic impact on providers. IMP numbers are assigned by the Medicaid program. Vertification of patient eligibility is a precautionary measure.

Regulatory Flexibility Analysis

The proposed amendments and new rule will impact on Medicaid providers, some of whom could be considered small businesses. However, the amendments and new rule do not impose any additional recordkeeping, reporting or other compliance requirements. The amendments and new rule only require providers to verify patient eligibility and to use an IMP number when submitting a claim for reimbursement. The Division believes these requirements are a necessary component of the statutory provision that requires providers to maintain sufficient records to document the name of the recipient to whom the service was rendered, date of service, nature of the service, etc. (see N.J.S.A. 30:4D-12).

There are no capital costs associated with these amendments and new rule.

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

FOREWORD

The New Jersey Medical Assistance and Health Services Act [chapter 413, Laws of 1968] **(P.L. 1968, c.413, which is codified as N.J.S.A. 30:4D-1 et seq.)** established a program of **medical** assistance and **health** services for defined groups of persons to enable them to secure quality medical care. **The Act was recently amended:**

(1) To extend coverage to individuals who qualify under the Medically Needy provisions (P.L. 1985, c.371, approved November 25, 1985 and amended by P.L. 1985, c.510, approved January 21, 1986).

(2) To extend coverage to include those pregnant women and dependent children (up to age two as of October 1, 1987) whose income is less than the Federal poverty level (P.L. 1987, c.115, approved May 4, 1987). These individuals are determined by the county welfare or board of special services agency to be eligible for the Optional Categorically Needy Program (New Jersey Care ... Special Medicaid Programs).

(3) To extend coverage to include those individuals 65 years of age and older, or individuals who are blind or disabled (pursuant to Federal regulations either 42 CFR 435.530 et seq. or 42 CFR 435.540 et seq.) whose income cannot exceed 100 percent of the Federal poverty level adjusted for family size. These individuals are determined by the county welfare or board of social services agency to be eligible for the Optional Categorically Needy Program (New Jersey Care ... Special Medicaid Programs).

This [program] **Act,** commonly known as "Medicaid" or "Title XIX" will be referred to as the New Jersey Medicaid Program or the [p] Program. **The Division of Medical Assistance and Health Services, under the Department of Human Services, administers the** New Jersey Medicaid Program [is administered by the Division Medical Assistance and Health Services] through its Central Office and through Medicaid [d]District [o] Offices located throughout the State of New Jersey.

Each New Jersey Medicaid services manual is designed for use by a specific type provider who is providing services to a Medicaid recipient. It is written in accordance with Federal and State laws, rules, and regulations with the intent to ensure that such laws, rules, and regulations are uniformly applied. The procedures were developed to achieve the goals of the Program with due consideration both to the needs of the Medicaid recipient and to the promotion of effective relationships with the provider. It contains informational and procedural material needed to assist the provider to understand the rules and regulations of participation in the Program and to ensure prompt and efficient payment of claims. Reimbursement for services provided under the [p]Program is accomplished in conformity with **Federal** Title XIX regulations **and State law.** [Payments are obtained] **A provider is reimbursed** through the Division's Bureau of Claims and Accounts or through either of its two Fiscal Agents, Blue Cross and Blue Shield of New Jersey, Inc. and The Prudential Insurance Company of America, depending upon the type of service being reimbursed.

[Each New Jersey Medicaid manual consists of two chapters, each chapter divided into smaller subchapters. The first chapter concerns general administrative policies of the New Jersey Medicaid Program. The second chapter is specific to the type of service provided; for example, physician services, hospital services, etc. This manual is designed for use by a provider who is billing for services furnished under the program. It contains informational and procedural material needed to assist the provider to understand the rules and regulations of participation in the program and to insure prompt and efficient payment of claims. The procedures described in this manual were developed to achieve the goals of the program with due consideration both to the needs of the covered persons, and promotion of effective relationships with providers.]

[This manual was written in accordance with Federal and State laws, rules and regulations and with the intent to assure that such laws, rules and regulations are uniformly applied.]

Each manual consists of two chapters. The first chapter, always codified as Chapter 49, contains general administrative policies of the New Jersey Medicaid Program and a section describing Special Programs. The second chapter contains information specific to the type of service provided, such as, physician services, hospital services, etc. The arrangement/codification follows the New Jersey Administrative Code (N.J.A.C.).

As a supplement to this manual, a newsletter system is utilized for the prompt dissemination of information concerning **new** policy, clarification and/or changes to the New Jersey Medicaid Program. Additionally, manual page revisions are updated as administrative changes occur. Periodically, therefore, revised sections, entire pages and entire chapters are issued accordingly. It is recommended that these newsletters[,] **and** manual page revisions[, and so forth,] be filed with your manual, **in accordance with the instructions given** at the time of receipt of such documents.

10:49-1.1 Who is eligible for Medicaid

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

(c) **Eligibility limited to certain services: A** Medically Needy individual[s are] **is** eligible for medical and health services covered under the New Jersey Medicaid Program with limitations as listed in N.J.A.C. 10:49-1.4. The services must be provided in conjunction with [p]Program requirements specifically outlined in the second chapter of each service manual.

1. [Individuals are] **An individual is** determined Medically Needy **eligible** by the county welfare agency/**board of social services.** [They] **He or she** must meet the categorical eligibility requirements, have income and/or resources in excess of the categorical standards, and may have insufficient funds to meet [their] **his or her** medical expenses. **A** Medically Needy individual[s] must be in one of the following groups:

i. Pregnant women[,];

ii. Needy children (under 21 years of age)[,];

iii. The aged (65 years of age or older), the blind or the disabled.

2. There are special income and resource levels established for the Medically Needy. If an individual meets one of the above categories,

and has income and/or resources above categorical program levels but less than or equal to the Medically Needy income and resource levels, he[/] **or** she is eligible as Medically Needy. However, if an individual meets one of the above categories and meets the Medically Needy resource level, eligibility may be established through the "spend-down" process. "Spend-down" is the process whereby an individual may apply incurred medical expenses to offset income above the Medically Needy income level, and thereby adjust [their] **his or her** income to meet the Medically Needy income limit. Medically Needy eligibility for all groups including the aged, blind and disabled will be determined by the county welfare agency [or]/ board of social services for both the retroactive and prospective period.

3. **A** Medically Needy applicant[s]/recipient[s] must reapply for benefits every six months. Eligibility may be established the first day of that six-month period or on any date during the six-month period that spend-down is met.

i. Eligibility should be verified by providers on each visit by reviewing the "Medicaid Eligibility Identification Card" (**MEI**) (FD-73/178) ([S] see N.J.A.C. 10:49-1.2(b)[2.]). For those cards issued for the month within the six month period in which the spend-down is met, the card will reflect the date that eligibility begins after the spend-down is met.

4. Claims for Medically Needy covered services provided during an eligible period may be submitted to the [p]**P**rogram for reimbursement using standard Medicaid procedures. Services provided prior to the effective date of eligibility are the client's liability, except for certain "special" claims.

i. (No change.)

ii. The county welfare agency [or]/board of social services will identify "special" claims which may be reimbursed under the [p] Program and will provide a [claim transmittal form (FD-311)] **Medically Needy Claim Transmittal (FD-311 Form)**. Such claims must be submitted hard copy with the FD-311 attached.

(d) Exceptions to eligibility: The following are exceptions to the eligibility process:

1.-2. (No change.)

3. Medicaid Retroactive Eligibility: Persons applying for Medicaid benefits will be asked if they have unpaid medical bills incurred within the three month period immediately prior to the month of application for Medicaid. Except for Medically Needy applicants (see (d)3ii below), persons indicating that they do have such bills may complete an Application for Payment of Unpaid Medical Bills (FD-74) and forward the application with all outstanding unpaid bills to the Medicaid Retroactive Eligibility Unit. An application for retroactive eligibility may be obtained by the applicant or his or her authorized agent from the county welfare agency board of social services, the Medicaid District Office, the Social Security Administration District Office, or the Retroactive Eligibility Unit (Division of Medical Assistance and Health Services, CN 712-10, Trenton, New Jersey 08625). The application must be submitted within six months from the date of application for public assistance.

i. If the New Jersey Medicaid Program determines that the person was eligible for Medicaid at the time the service was rendered or item supplied, providers will be notified directly that the unpaid bills for any service/item covered by the New Jersey Medicaid Program may be reimbursable in accordance with standard Medicaid reimbursement procedures. The provider will then complete the appropriate Medicaid claim form and submit it to the Retroactive Eligibility Unit for consideration and authorization of payment.

ii. For Medically Needy persons, retroactive eligibility determinations will be completed by the county welfare agency/board of social services (see (c)4 above).

(e) To apply for benefits: If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient, or his [/]**o**r her representative, to apply for benefits through the county welfare agency/board of social services for programs such as Aid to Families with Dependent Children, Medicaid Only, Optional Categorically Needy (**New Jersey Care—Special Medicaid Programs**) for pregnant women and children up to the age of two, or for Medically Needy; to the Social Security Administration for Supplemental Security Income benefits for the aged and disabled; or, in certain cases, to the New Jersey Division of Youth and Family Services. The agency will process the application and notify the patient of the resulting determination. If it is not known which agency is responsible for determining eligibility or which program might be applicable, the Medicaid District Office can be of assistance (See Appendix A).

1. A patient receiving services prior to the notification of eligibility should be informed that he[/]**o**r she is considered responsible for all charges incurred until proof of eligibility is verified. Once eligibility is verified, the provider may not bill the patient for any portion of the costs of allowable services rendered on or after the effective date of eligibility.

2. (No change.)

[(f) Medicaid Retroactive Eligibility: Persons applying for Medicaid benefits will be asked if they have unpaid medical bills incurred within the three month period immediately prior to the month of application for Medicaid. Except for Medically Needy applicants, persons indicating that they do have such bills may complete an "Application for Retroactive Medicaid Eligibility" (FD-74) and forward the application with all outstanding unpaid bills to the Medicaid Retroactive Eligibility Unit. An application for retroactive eligibility may be obtained by the applicant or his/her authorized agent from the county welfare agency, the Medicaid district office, the Social Security Administration district office or the Retroactive Eligibility Unit (Division of Medical Assistance and Health Services, CN 712-10, Trenton, New Jersey 08625). The application must be submitted within six months from the date of application for public assistance.

1. If the New Jersey Medicaid Program determines that the person was eligible for Medicaid at the time the service was rendered or item supplied, providers will be notified directly that the unpaid bills for any service/item covered by the New Jersey Medicaid Program may be reimbursable in accordance with standard Medicaid reimbursement procedures. The provider will then complete the appropriate Medicaid claim form and must submit it to the Retroactive Eligibility Unit for consideration and authorization of payment.

2. For Medically Needy persons, retroactive eligibility determinations will be completed by the county welfare agency or board of social services (see (c)4 above).

(g) It is in the best interest of the provider to review on each visit the eligibility of patients receiving continuing services. It is especially important to review the validation form on each visit when an extended plan of treatment has been authorized. There is no reimbursement for services performed after termination of eligibility other than by exceptional circumstances.]

10:49-1.7 Utilization of insurance benefits

(a) Medicaid benefits are last-payment benefits. All health and accident insurance benefits, including Medicare, [w]Worker's [c]Compensation and no-fault auto insurance, shall be used first and to the fullest extent in meeting the medical needs of the covered person. [Since] Medicare covers aged and certain disabled persons. **When rendering Medicare covered services to a Medicaid recipient,** providers should inquire about Medicare eligibility [when rendering Medicare covered services to a person with program code 10, 20, 50] **if the third digit of the HSP (Medicaid) Case Number is a 1, 2, 5, or 7.** Supplementation of available benefits shall be as follows:

1. Title XVIII (Medicare): For those individuals who are covered under Medicare, responsibility for payment by the New Jersey Medicaid Program will be limited to the unsatisfied deductible to the extent that the [combined] total [of] **Medicare and Medicaid** payments do not exceed the maximum allowable under the [p]Program in the absence of other coverage. (Exception: Co-insurance is reimbursable for hospital billings, long-term care facility billings, durable medical equipment and supplies, and prosthetic and orthotic devices to the extent that the [combined] total [of] **Medicare and Medicaid** payments do not exceed the maximum allowable under the [p] Program in the absence of other coverage.)

2. Worker's [c]Compensation: No program payments shall be made for a patient covered by [w]Worker's [c]Compensation.

3. Other health insurance: When a covered person has other health insurance, the [p]Program requires that such benefits be used first and to the fullest extent. Supplementation may be made by the [p]Program, but the combined total paid shall not exceed the amount payable under the [p]Program in the absence of other coverage. The [p]Program will not supplement covered services rendered by a participating or contracting practitioner with any private health coverage program where the private plan calls for the practitioner to accept said plan's payment as payment in full. When other health insurance is involved, supplementation claims shall not be filed with the [p]Program unless accompanied by a statement of payment or denial from the other carrier. Attachment of such information will expedite Medicaid claim processing. For exceptions, see [paragraph] (a)1 [of this subsection] **above.**

4. Claims collectible under New Jersey [n]No-[f]Fault [l]Law: No [p]Program payments will be made for services that are payable under the New Jersey Automobile Reparation Reform Act., P.L. 1972, c.70 or the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984, P.L. 1983, c.362. This includes claims payable under the Unsatisfied Claim and Judgment Fund where no private automobile insurance policy exists.

5. When a covered person has benefits available to him[/] **or** her, such as those described in (a)1 through 3 above, or from any other liable third-party, an approved Medicaid provider is authorized to sign an insurance claim form for the Commissioner, based on the third-party assignment of rights, in order to receive direct payment from the insurer. This is done pursuant to N.J.S.A. 30:4D-7.1(c). The following language is to be used by the provider when completing insurance claim forms: "(signature of authorized provider), Assignee for the Commissioner, New Jersey Department of Human Services".

6. When recovery of benefits is sought by the New Jersey Medicaid [p]Program from a liable third-party, the Commissioner authorizes the Director or his **or her** designee(s) to sign the recovery demand.

10:49-1.8 Prior and retroactive authorization (general)

(a) Under the [p]Program, payment for certain services will require prior authorization except in an emergency. It is the responsibility of the provider to obtain prior authorization before furnishing or rendering service. Specific instructions are detailed in the appropriate provider manual sections.

1. Prior authorization is no guarantee that an individual is eligible for the New Jersey Medicaid Program. The Division does not verify patient eligibility when authorizing a service/item.

[1.]**2.** (No change in text.)

(b) Retroactive authorization may be granted under certain circumstances provided that the service is a part of continuing patient care and, on the basis of medical judgment, would have been authorized at the time the service was rendered. Each case is considered on its own merits. Retroactive authorization is to be an exceptional measure granted only under the following unusual circumstances:

1. "Other coverage" (Medicare, Third-Party liability, other insurance [and so on], **etc.**) has denied or made only partial payment of a claim for services or items requiring prior authorization and it would have been unreasonable to expect the provider to have requested authorization prior to rendering the service.

2. An "administrative emergency" existed because communication between the provider **and** [the] New Jersey Medicaid Program staff could not be established (for example, during a weekend, holiday or evening) and provision of the service should not have been delayed. This differs from a medical emergency in that the recipient's condition would not be impaired if the service was not provided (see example). In such instances, the request for retroactive authorization including an explanation of the circumstances as well as the medical documentation supporting the services must be submitted to the Medicaid District Office or Central Office, as appropriate, within five calendar days after the service was provided or initiated. If verbal authorization was obtained, confirming written documentation must follow.

Example: A patient is to be transferred from a hospital to a skilled nursing facility on a weekend but an invalid coach is required to move the patient. The invalid coach provider is unable to contact the Medicaid District Office to obtain prior authorization. It is advantageous to the Medicaid Program, the hospital and the patient to transfer on Saturday and not wait until authorization can be obtained on Monday.

3. In situations not covered by (b)1 and 2 [(above)] **above,** the New Jersey Medicaid Program [is to] follows the doctrine of reasonableness which asks, "Is it reasonable to conclude that the situation presented warrants waiver of procedural rules?"

(c) Retroactive authorization will not be granted under the following circumstances:

1. Services the provider identified as medically emergent are determined, following the medical review by the [f]Fiscal [a]Agent, to be non-emergent.

2.-3. (No change.)

10:49-1.9 Policy on out-of-State medical care and services

(a) Prior authorization is required for all inpatient and outpatient hospital services provided outside the State of New Jersey except in the following situations:

1.-2. (No change.)

3. Care provided to Medicaid recipients residing out-of-[state] **State** at the discretion of the New Jersey Department of Human Services.

(b) Any covered service that requires prior authorization as a prerequisite for reimbursement to New Jersey **Medicaid** providers also requires prior authorization if it is to be provided in any other state.

1. (No change.)

10:49-1.10 **Bureau of Claims and Accounts;** Fiscal Agents

(a) The [New Jersey Medicaid Program] **Bureau of Claims and Accounts, Division of Medical Assistance and Health Services** directly processes and makes payment of claims for services **provided** by long-term care facilities (**skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, and residential treatment facilities**) and eligible State and county [mental and tuberculosis] **governmental psychiatric** hospitals.

(b) Contracts have been negotiated on behalf of the State of New Jersey with [Hospital Services Plan] **Blue Cross and Blue Shield** of New Jersey, [(Blue Cross of New Jersey)] **Inc.** and The Prudential Insurance Company of America to function as [its] **New Jersey Medicaid** [f]Fiscal [a]Agents.

[(c)]**1.** Blue Cross **and Blue Shield** of New Jersey, **Inc.** is responsible for the processing and payment of hospital inpatient, hospital outpatient and hospital-based home health agency claims for those providers who have selected Blue Cross **and Blue Shield of New Jersey, Inc.** as their intermediary under Title XVIII (Medicare). In addition, Blue Cross **and Blue Shield of New Jersey, Inc.** processes pharmaceutical services claims [and], claims for out-of-State hospitals and out-of-State hospital-based home health agencies.

Hospitals who have not participated in Title XVIII are assigned to Blue Cross **and Blue Shield of New Jersey, Inc.**

Telephone Numbers

Hospital Providers Services—1-201-456-2534
Recipient Eligibility—1-800-242-0861
Pharmacy Inquiry—1-800-242-0809

[(d)]**2.** The Prudential Insurance Company of America handles the processing and payment of hospital inpatient, outpatient and certain hospital-based home health agency claims for those providers who have selected Prudential as their [i]Intermediary under Title XVIII (Medicare), and **all** freestanding home health agency claims (**In-State and Out-of-State**). In addition, The Prudential Insurance Company of America processes claims for all other health services covered by the [p]Program, with the exception of pharmaceutical services, SNFs, ICFs, ICFs/MR, State and some [c]County **Governmental** [p]Psychiatric [h]Hospitals.

Telephone Numbers

General Inquiry—1-800-582-7052
Out-of-State Providers—1-609-293-2000

10:49-1.14 Use of service bureau and/or management agency

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

(e) Standard Medicaid hard-copy claim forms[, available from the Medicaid fiscal agents,] must be used unless the provider has been authorized to submit claims via an automated data exchange billing system for all instances except where hard-copy claims are required as detailed in the appropriate provider manual.

1. If standard Medicaid claim forms are not utilized, the provider/agent must obtain prior authorization from the New Jersey Medicaid Program.

2. In order to obtain prior authorization, the provider/agent must submit a printer's prototype of an exact replica of the Medicaid claim form and the programming instructions for completion of the form to the appropriate [f]Fiscal [a]Agent, The Prudential Insurance Company (P.O. Box 1900, Millville, New Jersey 08332) or Blue Cross **and Blue Shield of New Jersey, Inc.** (33 Washington St., Newark, New Jersey 07102).

3. The provider/agent must assume the entire cost of printing duplicate forms at all times.

(f) The New Jersey Medicaid Program, in authorizing/approving any provider/agent agreement, assumes no responsibility for the performance of the provider or agent. In the event that any error of the provider/agent requires special programming to be made by the Medicaid [f]Fiscal [a]Agent in order to have claims paid correctly, the provider/agent must assume the entire cost of the special programming.

10:49-1.17 Program participation

(a) These [regulations] **provisions of this section** are adopted and issued pursuant to Executive Order No. 34 [of Governor Brendon T. Byrne] dated March 29, 1976, and the authority vested in the Division of Medical Assistance and Health Services to implement the [m]Medical [a]Assistance [p]Program by rules and regulations set forth in N.J.S.A. 30:4D-5.

(b) [Debarment, suspension]**Suspension, debarment,** and disqualification are measures which shall be invoked by the Division of Medical Assistance and Health Services to exclude or render ineligible certain persons from participation in contracts and subcontracts with the [d]Division, or in projects or contracts performed with the assistance of and subject to the approval of the [d]Division, on the basis of a lack of responsibility. These measures shall be used for the purpose of protecting the interests of the [d]Division and not for punishment. To assure the [d]Division the benefits to be derived from the full and free competition between and among such persons and to maximize the opportunity for honest competition and performance, these measures shall not be invoked for any time longer than deemed necessary to protect the interests of the [d]Division.

1. Any individuals, including but not limited to owners, officers, administrators, assistant administrators, employees, accountants, attorneys, and management services who have been suspended, debarred or disqualified from Medicaid Program participation for any reason shall not be involved in any activity relating to the **New Jersey** Medicaid Program.

2. Providers reimbursed on a cost-related basis may not claim as allowable costs any amounts paid or credited to such individuals, and such amounts shall not be reimbursed by the **New Jersey** Medicaid Program.

3. Providers reimbursed on a fee-[of]**for**-service basis may not submit claims and shall not be reimbursed for any goods supplied or services rendered by such individuals.

4. (No change.)

(c) Definitions, as used in [these regulations] **this section**, include the following:

[1. "Debarment" means an exclusion from State contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.]

[2.] 1. "Suspension" means an exclusion from State contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

2. "Debarment" means an exclusion from State contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performace.

3.-8. (No change.)

9. "Fiscal Agents" means [the Hospital Service Plan] **Blue Cross and Blue Shield** of New Jersey [(Blue Cross of New Jersey)]**, Inc.** and The Prudential Insurance Company of America, or their successors.

10. (No change.)

(d) Any of the following, among other things, shall constitute a good cause for **suspension,** debarment [suspension] or disqualification of a person engaged in State contracting, as defined herein, by the Division of Medical Assistance and Health Services:

1.-4. (No change.)

5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, [C.] **N.J.S.A.** 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment ([C.] **N.J.S.A.** 10:2-1 et seq.) or of the "Act prohibiting discrimination by industries engaged in defense work in the employment of persons therein" (C.114, P.L. 1942, [C.] **N.J.S.A.** 10:1-10 et seq.);

6.-16. (No change.)

17. Breach of the terms of the Medicaid provider agreement entered into with the [d]Division or failure to comply with the terms of the provider certification on the Medicaid claim form;

18.-21. (No change.)

22. Submission of a false or fraudulent application for provider status to the [d]Division or to its [f]Fiscal [a]Agents;

23. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the [d]Division to warrant debarment, including such conduct as may be proscribed by the laws or contracts enumerated in this subsection, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

24.-26. (No change.)

(e) Conditions for debarment are **as follows**:

1. Debarment shall be made only upon approval of the [d] Director of the [d]Division, except as otherwise provided by law.

2. The existence of any of the causes set forth in [subsection] (d) [of this section] **above** shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the [d]Director of the [d]Division unless otherwise required by law, and shall be rendered in the best interests of the [d]Division.

3. (No change.)

4. The existence of a cause set forth in [paragraphs 1 through 7 of subsection] (d) [of this section] **1 through 7 above** shall be established upon the rendering of a final judgment or conviction by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in [paragraphs 8, 9, 10 and 23 of subsection] (d) [of this section] **8, 9, 10 and 23 above** shall be established by evidence which the [d]Division or agency determines to be clear and convincing in nature.

6. The existence of a cause set forth in [paragraphs 1 through 7, 11 through 22, and 24 of subsection] (d) [of this section] **1 through 7, 11 through 22, and 24 above** shall be established by a preponderance of the believable evidence.

7. Debarment for the cause set forth in [paragraph 24 of subsection] (d) [of this section] **24 above** shall be proper, provided that one of the causes set forth in [paragraphs 1 through 23 of subsection] (d) **1 through 23 above** was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

(f) If the [d]Division seeks to debar a person or his **or her** affiliates, the [d]Division shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment and indicating that such party will be accorded

an opportunity for a hearing if he **or she** so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act. However, where one department or agency has imposed debarment upon a party, a second department or agency may also impose a similar debarment without according an opportunity for a hearing, provided that the second agency furnishes notice of the proposed similar debarment to that party and accords that party an opportunity to present information in his **or her** behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(g) Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is accorded an opportunity to present information in his **or her** behalf to explain why the additional period of debarment should not be imposed.

(h) Scope of debarment rules are **as follows**:

1. (No change.)

2. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he **or she** is affiliated, where such conduct was accomplished within the course of his **or her** official duty or was effected by him **or her** with the knowledge or approval of such person.

3. Debarment, by the [d]**D**irector of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Division of Medical Assistance and Health Servcies or its [f]**F**iscal [a]**A**gents for any services or supplies he **or she** has provided under the New Jersey Medicaid Program, except for services or supplies provided prior to the debarment. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the [d]**D**ivision or its [f]**F**iscal [a]**A**gents for any services or supplies provided by a person within such organization who has been debarred by the [d]**D**irector, except for services or supplies provided prior to the debarment.

4. When the provisions of this section are violated by a provider of service which is a clinic, group, corporation or other association, the [d]**D**irector may debar such organization and/or any individual person within said organization who is responsible for such violation.

(i) The [d]**D**ivision may suspend a person in the public interest for any cause specified in [subsection] (d) [of this section], **above** or upon a reasonable suspicion that such cause exists, or when, in the opinion of the [d]**D**irector, such action is necessary to protect the public welfare and the interests of the medical assistance program.

(j) Conditions for suspension are **as follows**:

1. Suspension shall be imposed only upon approval of the [d]**D**irector of the [d]**D**ivision and upon approval of the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the [d]**D**irector of the [d]**D**ivision and of the Attorney General, and shall be rendered in the best interests of the [d]**D**ivision.

3.-4. (No change.)

5. Reasonable suspicion of the existence of a cause described in [subsection] (d) [of this section] **above** may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdictrion, by grand jury indictment, by arrest, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by the [d]**D**ivision for any of the causes described in [subsection] (d) [of this section] **above** may be the basis for the imposition of a concurrent suspension by another agency, which may impose such suspension without the approval of the Attorney General.

(k) The [d]**D**ivision may suspend a person or his **or her** affiliates provided that within [ten] **10** days after the effective date of that suspension, the [d]**D**ivision provides such party with a written notice stating that a suspension has been imposed and its effective date, setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed, stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue, and indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing, if he **or she** so requests, or a statement declining to give such reasons and setting forth the agency's position regarding the continuation of the suspension. Where a suspension by the [d]**D**ivision has been the basis for suspension by another agency, the latter shall note that fact as a reason for its suspension.

(l) (No change.)

(m) Scope of suspension rules are **as follows**:

1. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he **or she** is affiliated, where such conduct was accomplished within the course of his **or her** official duty or was effectuated by him **or her** with the knowledge or approval of such person.

2. Suspension, by the [d]**D**irector, of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Division of Medical Assistance and Health Services or its [f]**F**iscal [a]**A**gents for any services or supplies he **or she** has provided under the New Jersey Medicaid Program, except for services or supplies provided prior to the suspension. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the [d]**D**ivision or its [f]**F**iscal [a]**A**gents for any services or supplies provided by a person within such organization who has been suspended by the [d]**D**irector, except for services or supplies provided prior to the suspension.

3. When the provisions of this section are violated by a provider of service which is a clinic, group, corporation or other association, the [d]**D**irector may suspend such organization and/or any individual person within said organization who is responsible for such violation.

(n) Exclusion from State contracting by virtue of suspension, debarment or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the [d]**D**ivision. However, when it is determined essential to the public interest by the [d]**D**irector of the [d]**D**ivision, and upon filing of a finding thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular State contract.

(o) (No change.)

(p) The [d]**D**ivision shall provide the State Treasurer with the names of all persons suspended or debarred and the effective date and term thereof, if any.

(q) [The rules herein] This section shall be applicable to all persons, providers, [contractors,] **Fiscal Agents,** and their affiliates who engage in State contracting with the [d]**D**ivision as defined [herein] **in this section.**

10:49-1.19 Observance of religious belief

(**a**) Nothing in the [p]**P**rogram shall be construed to require any person to undergo any medical screening, examination, diagnosis or treatment or to accept any other health care or service provided under the [p]Program for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health) if such person or his **or her** parent or guardian objects thereto on religious grounds[.], **except as specified in (b) below.**

(b) If a physical examination is necessary to establish eligibility based on disability or blindness, the Program may not find an individual eligible for Medicaid unless he or she undergoes the examination.

10:49-1.20 Free choice by [covered person] **recipient** and by provider

(No change in text of rule.)

10:49-1.22 Confidentiality of records

(a) All information concerning applicants and recipients acquired under this [p]Program shall be confidential and shall not be released without the written consent of the individual or his **or her** authorized representative. If, because of an emergency situation, time does not permit obtaining consent before release, the [p]Program shall notify the individual, his **or her** family or authorized representative immediately after releasing the information. The restriction on the disclosure of information shall not preclude the release of statistical or summary data or information in which applicants or recipients are not, and cannot, be identified; nor shall it preclude the exchange of information between providers furnishing services, [f]Fiscal [a]Agents of the [p]Program and State or local government agencies for purposes directly connected with administration of the [p]Program. Disclosure without the consent of the applicant or recipient shall be limited to purposes directly connected with the administration of the [p]Program in accordance with Federal and State law and regulations.

(b) The type of information about applicants and recipients that will be safeguarded by the [p]Program includes but is not limited to:

1.-3. (No change.)

4. Program evaluations of personal information; [and]

5. Medical data, including diagnosis and past history of disease or disability[.];

6. Any information received for verifying income eligibility and amount of medical assistance payments. Income information received from SSA or the Internal Revenue Service will be safeguarded according to the requirements of the agency that furnished the data; and

7. Any information received in connection with the identification of legally liable third party resources as required under applicable Federal regulations (42 C.F.R. 431.305).

(c) Purposes directly connected with the administration of the [p]Program include[s] but are not limited to:

1.-3. (No change.)

4. Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the [p]Program.

10:49-1.24 [Reserved] **Individual Medicaid Practitioner (IMP) number**

(a) Each Medicaid participating practitioner (that is, physician, dentist, podiatrist, optometrist, psychologist, or chiropractor) is assigned an IMP Number. The IMP Number is a unique nine position practitioner identifier which is required on all Medicaid claim forms as a condition of payment.

(b) Each practitioner should routinely supply his or her IMP Number to other providers when referring a Medicaid patient for services.

(c) Providers who need an IMP Number for billing purposes should contact the practitioner to determine if an IMP Number has been assigned to the practitioner. (Note that a practitioner who does not participate in the Medicaid Program will not have an IMP Number). If, after contacting the practitioner there is still uncertainty about the IMP Number, providers calling from New Jersey may call 1-800-582-7052 toll free for assistance. If calling from outside New Jersey call 1-609-293-2000.

10:49-1.26 Patient certification

(a) A patient certification, authorization to release information and payment request, must, under ordinary circumstances, be signed before a claim for payment from a provider is processed for payment. The patient is certifying that:

1. (No change.)

2. Requesting payment for those services made on his[/] **or** her behalf; and

3. (No change.)

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

(e) When the patient's signature is unobtainable, the following procedures may be used:

1. An illiterate patient may sign mark (x), and the signature must be witnessed by another person who signs his[/] **or** her name and address on the Medicaid Patient Certification Form **or on the Medicaid hard-copy claim form.**

2. If a patient is physically or mentally incapable of signing, or is now deceased, the forms may be signed on his **or her** behalf by:

i. A parent[, or];

ii. A legal guardian[, or];

iii. A relation[, or];

iv. A friend[, or];

v. An individual provider[, or];

vi. A representative of an institution providing care or support[, or]; **or**

vii. A representative of a governmental agency providing assistance.

3. (No change.)

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Child Support and Paternity; Direct Support Payments

Proposed Amendment: N.J.A.C. 10:81-11.4

Authorized By: Drew Altman, Commissioner, Department of Human Services.

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

Proposal Number: PRN 1989-94.

Submit comments by March 23, 1989 to:

Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Child Support Enforcement Amendments of 1984, P.L. 98-378, were developed to make critical improvements in the child support system. The proposed amendment at N.J.A.C. 10:81-11.4(d) is needed to conform with the State plan requirement for recovery of direct support payments (45 CFR 302.31(a)(3)(i)).

The State plan provides that assigned support payments retained by Aid to Families with Dependent Children (AFDC) recipients must be treated as income in the months retained in determining continuing eligibility for future assistance payments. To comply with the State Plan, therefore, the proposed amendment states that the county welfare agency (CWA)/IV-D unit shall notify the CWA/IV-A Unit in writing whenever it discovers that directly received support payments are being, or have been, retained by AFDC clients. Language concerning budgeting and overpayment procedures specified at N.J.A.C. 10:90-4.3(c)2ii and 10:82-2.19(a)5 has been, for clarification purposes, included in the proposal.

Technical amendments have been made throughout the text to incorporate the preferred usage "IV-D Unit" instead of "CSP Unit". Additionally, a technical amendment has been made to replace the term "applicant/recipient" with the generic term "client".

Social Impact

The proposed amendment will have a positive impact on CWA administrative practices since an accurate delineation of operational procedures is necessary for effective program operation. The proposed amendment may encourage AFDC client compliance with reporting requirements and will not adversely affect that population. There will be no appreciable effect upon the public.

Economic Impact

Generally, significant economic impact is not expected. The proposed amendment merely conforms to the requirements of the State plan by indicating proper procedures at N.J.A.C. 10:81-11.4(d) for intra-agency notification and recovery of direct support payments retained by AFDC clients.

Many CWAs currently have notification procedures in place and the proposed amendment will serve to enhance those practices. As a result of the proposed amendment, CWAs currently having no formal mechanisms for intra-agency notification may experience reductions in error rates and consequent increases in overpayment recovery actions without significantly increasing administrative costs.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required.

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

10:81-11.4 Assignment of support rights

(a) (No change.)

(b) Purpose: Upon application for AFDC benefits, each [applicant/recipient] **client** assigns to the county welfare agency all rights to support from the absent parent of the AFDC children and any other legally responsibile relative to which the eligible unit may be entitled and includes any support obligation which has accrued at the time such application is executed.

(c) (No change.)

(d) IM worker's responsibility: The IM worker shall advise the AFDC [applicant/recipient] **client** that upon signing an application (PA-1J) for AFDC he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC [applicant/recipient] **client** shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to [CSP] **CWA/IV-D** Unit: The IM worker, at the time of application for AFDC-C, shall complete the appropriate parts of the [CSP] **IV-D** referral document and route this form to the [CWA/CSP] **CWA/IV-D** Unit within two working days of issuance of an assistance check.

i. Relationship to application process: The fact that eligibility is not immediately established shall not delay routing of the [CSP] **IV-D** referral document to the [CSP] **IV-D** Unit. However, when a case is determined ineligible the IM worker shall notify the [CSP] **IV-D** Unit promptly.

ii. (No change.)

iii. Overpayment resulting from direct support payments: When a full grant has been issued, any support payments received directly by the [applicant/recipient] **client** shall, upon receipt, be forwarded to the [CWA/CSP] **CWA/IV-D** Unit. [If the support payment is retained, it must be collected by the agency's Income Maintenance Unit, upon termination of the client from AFDC if not sooner.] **If the IV-D Unit discovers that directly received support payments are being, or have been retained by the client, it shall immediately notify the IV-A Unit in writing.**

(1) The client shall be requested to remit the support payment to the CWA. If the client fails to comply, the amount of the direct support, less the $50.00 disregarded child support payment, shall be counted as unearned income received in the budget month and used to determine the amount of the assistance payment to be issued for the corresponding payment month as set forth at N.J.A.C. 10:90-4.3(c)2ii.

(2) If, due to lack of timely notification, the grant cannot be adjusted, the assistance payment issued for the payment month corresponding to the budget month in which the direct support was received shall be considered an overpayment. The CWA's Income Maintenance Unit shall recover the overpayment, less the $50.00 disregarded child support payment amount, upon termination of assistance or in subsequent payment months as set forth at N.J.A.C. 10:82-2.19(a)5.

iv. Termination or suspension of assistance: In the case of termination or suspension of assistance, the IM worker shall concurrently send a copy of the adverse action notice to the AFDC [recipient] **client** and the [CWA/CSP] **IV-D** Unit (see N.J.A.C. 10:81-11.12). The [CSP] **IV-D** Unit shall be notified immediately if assistance is continued pending or following a fair hearing.

v.-vii. (No change.)

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Rules Governing the Vending Facility Program of the New Jersey Commission for the Blind and Visually Impaired Designated as the State Licensing Agency

Proposed Readoption with Amendments: N.J.A.C. 10:97

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12, 30:6-15.1 and 15.2, P.L. 74-732, as amended by P.L. 83-565 and P.L. 93-516; 34 CFR 395.

Proposal Number: PRN 1989-93.

Submit comments by March 23, 1989 to:

Norma F. Krajczar, Executive Director
Commission for the Blind and Visually Impaired
1100 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

The New Jersey Administrative Code at N.J.A.C. 10:97 sets forth the Rules Governing the Vending Facility Program of the New Jersey Commission for the Blind and Visually Impaired, designated as the State Licensing Agency by the United States Department of Education, Rehabilitation Services Administration. The Commission was so designated by the Federal government as provided for at 34 CFR 395 and is required to promulgate rules for the operation of the Vending Facility Program under 34 CFR 395.4.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:97 expires April 16, 1989. The Commission has reviewed the rules set out in N.J.A.C. 10:97 and has determined that they continue to be reasonable, proper and necessary for the purposes for which they were originally promulgated.

The Commission proposes to readopt N.J.A.C. 10:97 with certain amendments excluding references to a set-aside levy. Proposed amendments deleting set-aside levy references are being made at N.J.A.C. 10:97-1.3, Definitions, 10:97-6.1 Federal Set-Aside Funds and at 10:97-6.2 Set-aside levy, the last-noted being proposed for repeal in its entirety.

With incorporation of these proposed changes, the rules governing the Vending Facility Program will reflect a recent opinion by the Office of the Attorney General of the State of New Jersey stating that imposition of such a levy would be in conflict with State statute (N.J.S.A. 30:6-15.2). While N.J.A.C. 10:97-6.2 allowed for imposition of a set-aside levy, no levy had ever been imposed by the Commission.

Subchapter 1 contains general provisions, including definitions. Subchapter 2 sets forth the program entry requirements. The licensing of operators and the operations rules are in subchapters 3 and 4, respectively. Subchapter 5 contains the records and monitoring requirements. The fiscal requirements for the program are in subchapter 6. Transfer of a facility from one operator to another is regulated under subchapter 7. Rules governing suspensions and grievance procedures are in subchapter 8. Subchapter 9 contains provisions concerning the Committee of Blind Vendors.

Social Impact

The proposed readoption will permit the continuance of existing guidelines for the benefit of those operating under the Program and ensures continuing compliance with Federal regulations.

The 66 currently licensed vendors, in addition to those who may be eligible for licensure, will benefit from the availability of rules setting forth their rights and responsibilities. The proposed readoption will also ensure the availability of career guidance services to licensees operating in the program.

Economic Impact

The rules proposed for readoption govern a program which provides employment and income opportunities for clients of the Commission. The Program also furnishes assistance and continuing management services to vendors, in addition to making it possible for New Jersey to receive Federal monies.

Regulatory Flexibility Statement

All businesses licensed under the Program are small businesses, as that term is defined in N.J.S.A. 52:14B-1 et seq. Currently, the Program consists of 66 businesses including cafeterias, snack bars, and newsstands located on Federal, State, county, municipal and private property, throughout all areas of the State.

Weekly sales reports to be submitted to the Commission are required by these rules. In addition, it is recommended to all vendors that they engage the services of accountants to help them comply with Federal and State record-keeping requirements.

Under the proposed rules, management services are provided to the vendors by the Commission. These services include supervision, inspection, quality control, consultation and other related services to assist the licensee in a profitable operation of his or her business.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:97.

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

CHAPTER 97
[RULES GOVERNING] THE VENDING FACILITY PROGRAM OF THE NEW JERSEY COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED [DESIGNATED AS THE STATE LICENSING AGENCY]

10:97-1.3 Definitions

The following words and terms shall have the indicated meanings, unless the context clearly indicates otherwise.

"Blind person"[—] **means** a person who, after examination by an ophthalmologist or by an optometrist, whichever such person shall select, has been determined to have:

1. Not more than 20/200 central vision acuity in the better eye with corrective lenses, or

2. An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Committee"[—] means Committee of Blind Vendors.

"Federal Set-Aside Funds"[—] **means** funds which accrue to the Commission from [an assessment against the net proceeds of each vending facility in the Vending Facility Program and] any income from vending machines on Federal property [which accrue to the Commission].

"Full Evidentiary Hearing"[—] : for purposes of this code Full Evidentiary Hearing and Administrative Hearing are synonymous.

"License"[—] **means** a written certificate issued by the Commission to a qualified legally blind person permitting the operation of a vending facility.

"Licensee"[—] **means** a blind operator who has been duly licensed by the Commission.

"Management services"[—] **means** supervision, inspection, quality control, consultations, bookkeeping services, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors.

"Net profit or net proceeds"[—] **means** the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses. [Any set-aside levy shall not be included in calculating net profit.]

"Operator"[—] **means a** qualified blind person assigned by the Commission to operate a vending facility on Federal or other property. An operator is not an employee of the State of New Jersey.

"Operating agreement"[—] **means** the agreement which shall be entered into between the Commission and each operator, covering the basic terms and conditions required of each party for the operation of a specific vending facility.

"Permit"[—] **means** the agreement between the Commission and a department or agency in the control of the maintenance, operation and protection of Federal and non-Federal property whereby the Commission is authorized to establish a vending facility.

"Property manager"[—] **means the** official responsible for the property where the vending facility is located.

"Ready for employment list"[—] **means** a roster of blind persons who have successfully completed training for the vending facility operations and are certified by the Commission.

"Revocation of license"[—] **means a** termination of license for cause after a Full Evidentiary Hearing.

"Secretary"[—] **means** the Secretary of the United States Department of Education.

["Set aside levy"—the extent to which funds are to be set aside from the net proceeds of the operation of the vending facilities and applicable vending machine income, in an amount determined by the Commissioner of the Rehabilitation Services Administration (U.S. Department of Education) to be reasonable.]

"State licensing agency"[—] **means the** New Jersey Commission for the Blind and Visually Impaired.

"Suspension"[—] **means** a temporary discontinuation of the Operating Agreement resulting in the halting of operations. The Operating Agreement will be restored when the reason for suspension has been remedied. If the reason for suspension is not or cannot be remedied, the operating agreement will be revoked, after a full evidentiary hearing.

"Vending facility"[—] means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of a State.

"Vending Facility Program fund-non-Federal"[—] **means** funds which accrue to the Vending Facility Program from all non-Federal sources.

10:97-6.1 Federal Set Aside Fund

(a) The Federal Set Aside Fund consists of those funds accruing to the program from unassigned vending machine income from Federal locations [and any set aside levy].

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

10:97-6.2 [Set aside levy] (**Reserved**)

[(a) The Commission may exercise the option of assessing a set aside levy from the net proceeds of the operation of the vending facilities whenever the Federal Set Aside Fund balance drops below $150,000. Funds may be set aside only for the purposes stated in N.J.A.C. 10:97-6.1(b) above.

(b) The Commission shall set out the method of determining the charge for each of the allowable purposes and this will be done with the active participation of the Committee of Blind Vendors.

1. This levy will be designed to prevent a greater charge for any purpose than is reasonably required for that purpose.

2. The Commission shall maintain and provide to the Committee of Blind Vendors adequate records to support the need for a set aside levy.

(c) The Commission will provide to the Committee of Blind Vendors, by the first of each calender year, figures on the actual cost of the Vending Facility Program for the previous Federal fiscal year.

(d) The rate of levy must be submitted to, and approved by, the Commissioner of the Rehabilitation Services Administration prior to implementation.]

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Admission Requirements for Foreign and Alien Property and Casualty Insurers

Reproposed New Rules: N.J.A.C. 11:1-10

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e) and (i), 17:1-8 and 8.1, 17:17-1 et seq., 17:23-1 et seq., 17:32-1 et seq. and 17:32-15.

Proposal Number: PRN 1989-96.

Submit comments by March 23, 1989 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
12th Floor
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Rules concerning admission requirements for foreign and alien property and casualty insurers were initially proposed on September 6, 1988 at 20 N.J.R. 2130(a). As a result of several public comments and its own review of the proposed new rules, the Department has decided to make several substantive changes to the rules as first proposed. The major changes include:

1. Changes in the requirements for waiving or reducing the seasoning requirement (see proposed N.J.A.C. 11:1-10.4(a)5iii);

2. The inclusion of a "grandfather" provision to enable an applicant who has already filed with the Department a letter of intent prior to the operative date of this subchapter to opt for review under the new rules if it so desires (see proposed N.J.A.C. 11:1-10.9); and

3. The requirement that applicants who do not seek a waiver or reduction in the seasoning requirement but who satisfy the five year seasoning requirement, must secure a satisfactory financial rating (see proposed N.J.A.C. 11:1-10.4(a)5ii(3)).

The proposed new rules contain the procedures to be followed by foreign and alien property and casualty insurers in making application for a Certificate of Authority to transact the business of insurance in the State of New Jersey. New Jersey is one of only a handful of states that have attempted to implement its legislation with formal administrative rules.

The application process is essentially a two-step procedure. Initially, general requirements must be satisfied. These requirements are summarized below. If an applicant believes that it satisfies the general requirements, it must file with the Department a "letter of intent". After the receipt of a fully completed letter of intent, which is essentially a preliminary application, the second step requires a "final application" to be completed and filed with the Department of Insurance for analysis and evaluation.

The proposed new rules generally codify existing Departmental guidelines, with the following significant exceptions:

1. The inclusion of additional means by which a foreign or alien insurer can reduce or waive the five year seasoning requirement;

2. The requirement that an application fee of $1,000 be paid;

3. The delineation of the specific requirements concerning the term "hazardous financial condition" (see proposed N.J.A.C. 11:1-10.4(a)1);

4. The additional information required concerning the plan of operation of the applicant (see proposed N.J.A.C. 11:1-10.6);

5. An expanded appeal and review procedure (see proposed N.J.A.C. 11:1-10.7); and

6. The requirement that applicants seeking admission by fulfilling the five year seasoning requirement secure a favorable financial rating (see proposed N.J.A.C. 11:1-10.4(a)5ii(3)).

These new requirements are the result of the Department's belief that, based upon its experience with and its review of the present guidelines, some modifications to the present procedures are necessary. A non-refundable application fee is imposed for the first time, payable upon filing the "final application". This is intended to cover the projected costs of reviewing an application and is similar to that charged in other states.

A summary of the various provisions of the proposed new rules follows:

Proposed N.J.A.C. 11:1-10.1 and 10.2 establish the purpose and scope of the proposed subchapter. Proposed N.J.A.C. 11:1-10.3 is a definitions section.

The substantive provisions of the proposed new rules include N.J.A.C. 11:1-10.4 through 10.8. Proposed N.J.A.C. 11:1-10.4 establishes the general eligibility requirements which must be met by a foreign or alien property/casualty company to be admitted to transact the business of insurance in New Jersey. These requirements are in addition to, or in implementation of, existing statutory requirements, and include, generally, the following:

1. Proof that the company's financial condition is not hazardous;

2. Proof that an applicant's methods of operation are not hazardous;

3. Proof that the applicant possesses minimum amounts of capital and surplus;

4. Proof that an application satisfies the NAIC financial and annual statement filings;

5. Proof that an applicant satisfies the seasoning requirement or can qualify for a reduction in or a waiver of the requirement; and

6. Procurance of a New Jersey Certificate of Authority.

Proposed N.J.A.C. 11:1-10.5 requires all applicants to submit a "letter of intent" prior to the Department's acceptance of a final application for a Certificate of Authority. This section also establishes the requirements for completing the "letter of intent".

Proposed N.J.A.C. 11:1-10.6 requires all applicants who have previously filed a complete and satisfactory letter of intent (proposed N.J.A.C. 11:1-10.5) to file with the Department of Insurance a "final application". This section also establishes the requirements for completing the "final application".

Proposed N.J.A.C. 11:1-10.7 establishes the Departmental procedures by which a "final application" is to be reviewed and accepted or rejected. In cases of rejection, this section establishes an appeals procedure.

Proposed N.J.A.C. 11:1-10.8 establishes and imposes requirements upon admission for applicants who request authority to write auto liability and/or automobile physical damage, who contemplate the writing of homeowners' or comprehensive personal liability policies, or who wish to limit their activity in New Jersey to reinsurance.

Proposed N.J.A.C. 11:1-10.9 enables the applicants who have filed with the Department a letter of intent prior to the operative date of this subchapter to opt for a review of their applications under the new rules.

A summary of the public comments received by the Department upon publication of the original proposal and the Department's responses are noted below.

COMMENT: The American Insurance Association (AIA) comments that the rules do not clarify whether they will apply to applications now pending with the Department. AIA suggests that a provision be added to "grandfather in" all companies with applications pending, or at least those with applications that have been substantially reviewed by the Department (for example, on file with the Department for at least six months prior to the effective date of these rules.)

RESPONSE: The Department's original intent was to make the rules applicable to all applications filed with the Department after their operative date. This will still be the case. However, the Department will allow those applicants with letters of intent pending before it to opt for review under the new rules (see proposed N.J.A.C. 11:1-10.9).

COMMENT: AIA also believes that proposed N.J.A.C. 11:1-10.6(a)16i(3) should be amended to require reporting of only the more significant legal or administrative proceedings concerning the applicant, its affiliates, or any of its directors or principal officers alleging violations of any law governing insurance operations during the preceding 10 years. AIA suggests a $1,000 threshold.

RESPONSE: The Department notes that not all violations result in fines, such as those cases where cease and desist orders were issued or where injunctive relief was granted. Further, the Department is interested in the number of violations as well as their nature and type. The public interest is best served when the Department has access to all information relative to violations and then makes the appropriate assessment thereof.

COMMENT: Richard A. Stout, President of Protectogon, Inc., suggests that the proposed new rules should enable the Commissioner of Insurance to exercise "discretionary power to approve worthy applicants on the same merit-basis that the New Jersey domestics are approved."

RESPONSE: The suggested approach to regulatory review is unacceptable since it apparently completely subjectivizes the application process. In the Department's opinion, objective criteria and standards, in the form

of duly promulgated administrative rules, more appropriately fulfill the statutory mandate and authority of the Department under N.J.S.A. 17:32-1 et seq. Publishing objective standards, as opposed to employing total discretion, also protects the public interest and provides reviewable and meaningful guidelines for applicants seeking admission in this State. Although unbounded discretion may be inappropriate, discretion within identifiable limits must be exercised in certain circumstances. The proposed rules recognize this distinction.

COMMENT: Mr. Stout also comments that the $25 million surety bond in the rule as originally proposed, allowing waiver of the five-year seasoning requirement, is unobtainable and unreasonable.

RESPONSE: This was the subject of several comments and the Department's response herein will serve as a response to other commenters. The Department initially proposed that a seasoning waiver could be secured if the applicant obtained a surety bond in the minimum amount of $25 million. After departmental research and review, this was considered to be both obtainable and a reasonable requirement to ensure that a non-seasoned company was an acceptable risk. The Department still believes that a $25 million bond, or a bond in a higher amount, may be appropriate in certain circumstances—such as, for example, where a company intends to write a very high volume of business or particularly high-loss-potential risks. However, upon further review, the Department acknowledges that there may be applicants who do not intend to write such a volume or such risks as noted. In these cases, and in other cases, the acquisition of a surety bond in a smaller amount will provide satisfactory protection to the public in those cases where a waiver cannot be obtained in another manner. Accordingly, the Department has changed the original proposal to enable certain applicants to secure a waiver upon obtaining a surety bond in an amount less than $25 million, but in no event less than $5 million, where the particular circumstances (particularly underwriting and financial) may allow.

COMMENT: Elmer M. Matthews, Esq., on behalf of his client, Capital Guaranty Insurance Company, comments that the seasoning rule is too burdensome and suggests two alternatives. The first would obviate the necessity of a surety bond where the applicant has a policyholder's surplus in excess of $75 million. In cases where the surplus was in excess of $50 million, the surety bond would be reduced on a dollar for dollar basis between $50 million and $75 million. A second alternative would obviate the necessity of a bond where the applicant has a policyholder's surplus of at least $50 million and maintains that surplus on a quarterly basis for the seasoning period.

RESPONSE: As noted in the previous response, the Department has amended the proposed rule concerning the acquisition of a $25 million surety bond. The approach suggested by Mr. Matthews is unacceptable because it does not allow for consideration of the type of risk or intended volume, or other relevant and less objective factors. Rather, it proposes a wholly mathematical and entirely objective formula where less objective criteria need to be considered.

COMMENT: Carter, Ledyard and Milburn, Esq., on behalf of their client, a Connecticut-domiciled reinsurance company, has several comments, as follows.

1. That the five year seasoning requirement is discriminatory. There should be no seasoning requirement for applicants already licensed in one or more jurisdictions in the United States. Alternatively, a three-year requirement should be employed which should be reduced to one year if the applicant demonstrates, in addition to the other requirements, that its operation has been profitable. Instead, the Department should require the senior management of the ultimate parent of the foreign or alien insurer be comprised of "seasoned" insurance executives engaged in the business of insurance for not less than 10 years.

2. That proposed N.J.A.C. 11:1-10.4(a)5iii(4)(B), which provides that the ultimate parent of the foreign or alien insurer must be a United States corporation as one of the requirements to reduce the seasoning requirement to three years, discriminates against foreign and alien insurers owned by alien corporations without reasonable justification. Moreover, it is contrary to this country's foreign and trade policies.

3. That proposed N.J.A.C. 11:1-10.4(a)5iii(5), providing for a waiver of the seasoning requirements upon obtaining a $25 million surety bond, is unreasonable insofar as it bears no relationship to liabilities on New Jersey risks. It would also be difficult to obtain a surety bond for such a large sum. The amount of the surety bond should be reduced to $10 million. Further, in addition to the surety bond, a seasoning waiver should also be granted if a foreign or alien insurer obtains a letter of credit in the amount of $10 million.

RESPONSE: 1. The Department disagrees that the five year seasoning requirement is discriminatory. It is a reasonable exercise of its regulatory power and the general State police power to protect the public interest. Employing the "seasoned executives" criteria would not allow for sufficient objective criteria necessary to make a reasonable decision. In effect, the Department would be reduced to evaluating resumes and, even then, the owners may ultimately override management's decision at any time and without the requisite experience and insurance knowledge. The company's record, rather than the record of its management, is the better test of admissibility.

2. The Department disagrees with the comment that proposed N.J.A.C. 11:1-10.4(a)5iii(4)(B) unfairly discriminates against foreign and alien insurers owned by alien corporations. Since the five year requirement is being reduced to three years in this method of admission (by reducing but not waiving the seasoning requirement), the ability to interpret and rely on the validity of the ultimate parent company's financial statements is necessary. Alien corporations file financial statements with different financial reporting criteria which are often insufficient by departmental standards. Additionally, the records of alien corporations may not be as easily secured as those of non-alien corporations. Accordingly, the Department's concerns are not protectionist, but, rather, rationally-based.

3. The Department has answered this comment in an earlier response. Moreover, a letter of credit does not provide the same security as a surety bond since it is generally issued without regard to the subjective and non-financial factor considered by a surety company.

COMMENT: Irwin I. Kimmelman, Esq., on behalf of his client, Vanlines Insurance Company, comments as follows:

1. That proposed N.J.A.C. 11:1-10.4(a)5iii(3) is subject to conflicting interpretations and should be clarified. The event of a corporate merger or consolidation should include "reorganization". Likewise, there should be added to the phrase "continuing corporation" the wording "successor" corporation. The following amendments are suggested (suggested language is in boldface).

Whether the applicant is (1) the continuing or successor corporation resulting from a reorganization, merger or consolidation (de facto or de jure) of insurers (hereafter collectively referred to as 'no-applicant insurer(s)'), at least one of which has been authorized in its state or country of domicile to transact the kind(s) of insurance business for (2) which the applicant seeks a New Jersey Certificate of Authority and the applicant and one of the non-applicant insurer(s) has been actively engaged in such insurance business for at least five years in the aggregate, and (3) the non-applicant insurer(s) is currently in good standing in its state or country of domicile.

2. That the requirement for an ultimate parent corporation to have a net worth of not less than $100 million is arbitrary and unreasonable and effectively exclusionary. A $25 million net worth is suggested.

3. That the $25 million surety bond requirement as a means of obtaining a waiver of the seasoning requirements is arbitrary and unreasonable. Like the $100 million net worth proposal, it is greatly in excess of the minimum capitalization and paid-in net worth required for a domestic carrier. It is also difficult to obtain. A reduction of this requirement to $5 million is suggested.

RESPONSE 1. The Department will not at this time incorporate the changes suggested in this comment. No definition of "reorganization" or "successor" corporation is provided. Further, the ramifications of this requested change will need to be more fully reviewed by the Department before they can be accepted. The commenter is invited to pursue this matter with the Department as a possible amendment to the rules.

2. The Department accepts the comment that the $100 million net worth requirement in proposed N.J.A.C. 11:10-10.4(a)5iii(4)(D) may be too high in some cases and could be lowered in some cases. This requirement is one of the requirements necessary to secure a reduction of the five year seasoning requirement to three years. Upon further consideration, the Department will amend the rule as originally proposed to require a net worth of as low as $25 million in cases where circumstances may allow. These circumstances would include, but not be limited to, consideration of the overall financial condition of the applicant and its underwriting proposals (for example, volume; type of risk). This change will make it easier for applicants to secure a reduction in the seasoning requirement without, in the Department's opinion, endangering the public interest.

3. The Department has provided an answer to this comment in an earlier response.

COMMENT: LeBoeuf, Lamb, Leiby and MacRae, Esqs., on behalf of their client, Connie Lee Insurance Company, contends that the seasoning requirement should be modified to allow for waiver in the following circumstances:

1. Where there is a public need for the kind of insurance the applicant proposes which is not presently served;
2. Where the applicant has capital and surplus substantially in excess of minimum statutory requirements; and
3. Where the applicant satisfies the Commissioner that its management is comprised of persons with demonstrable knowledge and experience respecting the kind of insurance being offered.

RESPONSE: The Department notes that the concerns of this commenter are addressed by its reduction of the surety bond and net worth requirements under appropriate circumstances. Circumstances 1 and 2 may be factors for consideration in lowering the surety bond and net worth requirements. Circumstance 3 is already a requirement of the rules.

Social Impact

The requirements and guidelines established by the proposed new rules will clarify the application procedure for the admission of foreign and alien property/casualty insurers to transact the business of insurance in the State of New Jersey. Applicants will be fully apprised of the types of information sought by the Department of Insurance in its review of their applications for a Certificate of Authority. The publication of administrative rules will greatly streamline the entire application process. The expanded and clarified review procedure will fully apprise applicants of their rights and obligations upon the initial rejection of an application and affords them an opportunity to appeal to the Department for an informal review of their rejection prior to filing a formal appeal under the Administrative Procedure Act.

The clarified and generally more thorough review procedures established by the proposed new rules will provide the public with more protection against the possibility of failure of an admitted foreign or alien property/casualty insurer. This will in turn provide a more stable business environment.

Economic Impact

The proposed new rules impose a $1,000 application fee in addition to the present licensing fees which are charged successful applicants by the Department.

If an applicant attempts to secure a waiver of the seasoning requirement by the purchase of a surety bond, pursuant to proposed N.J.A.C. 11:1-10.4(a)5iii(5), additional costs of application will be incurred by the insurer. Additional costs of application will also be incurred by applicants who attempt to waive or reduce the seasoning requirements by methods requiring satisfactory financial ratings from the rating services specified in the rule. Such a requirement and potential financial obligation is also imposed upon applicants seeking admission without a waiver or reduction in the seasoning requirement. To the extent that the published administrative rules clarify the application procedures, the time and effort previously expended by an applicant in securing and following guidelines concerning application procedures should be reduced.

The Department of Insurance will experience an increase in its workload as a result of an increase in applications due to both the publication and increased availability of its procedures, and the existence of additional conditions by which the five year seasoning requirement can be waived or reduced. This may prompt more companies to apply for admission. Any projected increases in workload should be absorbed by the present staff and budget. Therefore, it is anticipated that no new staff will be needed by the Department.

The proposed new rules will inure to the benefit of the general public by further insuring against the possibility of the failure and insolvency of an admitted foreign or alien property/casualty insurer.

Regulatory Flexibility Analysis

The proposed new rules will likely not apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. By its very nature, this subchapter applies to foreign and alien corporations which, most probably, are not resident in New Jersey and almost certainly have 100 or more employees. Since it is impossible to anticipate whether any particular entity may apply for admission, it is impossible to preclude the possibility that these rules do not apply to "small businesses" and, likewise, to estimate the number of "small businesses" to which the proposed new rules may apply.

The proposed application process applies uniformly to all applicants, whether or not they are "small businesses", since the public interest in admitting only financially sound insurers can only be served by requiring the same thorough review of all applicants, regardless of their size. However, the inclusion of additional means to waive the five year seasoning requirement, and of a method to reduce the requirement to three years, may incidentally enable "small businesses" to gain admission more easily than under the present requirements.

The reporting, recordkeeping and other compliance requirements imposed upon an applicant, including a "small business", are clearly described in the proposed new rules. As under the current guidelines, the services of both financial and legal professionals will likely be required for all applicants.

The initial capital cost of compliance with the proposed new rules is essentially the application fee. Given the requirements necessary to secure admission, including the minimum capital and surplus requirement, the application fee is reasonable and non-discriminatory and will not inhibit "small businesses" from making application. It is believed that no insurer which is able to meet the admission requirements of this rule will be unable to pay this fee. The fee is meant to cover the cost of review which will proceed, for all applicants, according to the requirements of the proposed new rules. Accordingly, the application fee is a fixed fee, calculated to offset generally fixed costs.

Additional expenditures may be incurred where a satisfactory financial rating has to be secured for admission pursuant to the regular five year seasoning requirement, and, where applicable to secure a reduction in or waiver of the seasoning requirement, costs must be incurred to secure a favorable financial rating. It is believed, however, that many companies seeking admission will already have secured the requisite rating.

Annual compliance costs are not a factor in this proposed rule since its requirements address the initial admission process only.

The rules do not exempt small businesses, nor does it establish differing compliance requirements or utilize other methods to minimize any adverse economic impact on small businesses, since the public interest will not so allow. The statutory bases for the proposed rules do not permit a double standard based on business size and, indeed, mandate that the Commissioner act only and fully in furtherance of the public interest.

Full text of the proposed new rules follows:

SUBCHAPTER 10. ADMISSION REQUIREMENTS FOR FOREIGN AND ALIEN PROPERTY AND CASUALTY INSURERS

11:1-10.1 Purpose

This subchapter establishes the procedures, requirements and standards which govern the application of foreign and alien companies engaged in the business of property and casualty insurance for a Certificate of Authority to transact the business of insurance in the State of New Jersey.

11:1-10.2 Scope

This subchapter applies to any foreign and alien company engaged in the business of property and casualty insurance that applies for a Certificate of Authority to transact the business of insurance in the State of New Jersey. The filing requirements contained in this subchapter shall not apply to the continuation, renewal or timely reinstatement of existing Certificates of Authority except where the Commissioner, pursuant to law, shall otherwise so require.

11:1-10.3 Definitions

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

"Affiliate" of, or person "affiliated" with, a specific person, means a person who or which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Alien insurer" means an insurer formed under the laws of any country other than the United States of America, its states, districts, territories, commonwealths, or possessions.

"Authorized insurer" means a domestic, foreign or alien insurer, duly authorized by a Certificate of Authority issued by the Commissioner of the Department of Insurance of the State of New Jersey to transact the business of insurance in the State of New Jersey.

"Certificate of authority" means a certificate issued by the Commissioner of the Department of Insurance of the State of New Jersey evidencing the authority of an insurer to transact the business of insurance in the State of New Jersey.

"Commissioner of Insurance" or "Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey, or his or her designee as may be permitted by law.

"Committee on Admissions" of the Department of Insurance of he State of New Jersey means the advisory committee appointed by he Commissioner to aid in the review of applications for admission o transact the business of insurance in the State of New Jersey and o render to the Commissioner's recommendations as to the disposiion of such applications.

"Control" (including the terms "controlling", "controlled by" and 'under common control with") means the possession, direct or inlirect, of the power to direct or cause the direction of the manageient and policies of a person, whether through the ownership of 'oting securities, by contract other than a commercial contract for ;oods or nonmanagement services, or otherwise; unless the power s the result of an official position with or corporate office held by he person. Control shall be presumed to exist if any person, directly ›r indirectly, owns, controls, holds with the power to vote, or holds ›roxies representing, 10 percent or more of the voting securities of ıny other person, provided that no such presumption of control shall ›f itself relieve any person so presumed to have control from any equirement of this subchapter. This presumption may be rebutted ›y a showing made in the manner provided by N.J.S.A. 17:27A-3(i) hat control does not exist in fact. The Commissioner may determine, ıfter furnishing all interested persons with notice and an opportunity o be heard and after making specific findings of fact to support such letermination, that control exists in fact, notwithstanding the ıbsence of a presumption to that effect.

"Department" means the Department of Insurance of the State ›f New Jersey.

"Domestic insurer" means an insurer formed under the laws of he State of New Jersey.

"Domicile" means:

1. As to alien insurers, the country under the laws of which the nsurer was formed;

2. As to all other insurers, including United States branches of ılien insurers, the state, districts, territories, commonwealths or pos-ıessions under the laws of which the insurer was formed;

"Foreign insurer" means an insurer formed under the laws of a ıurisdiction of the United States of America, other than the State ›f New Jersey.

"Hazardous financial condition" means a financial condition leemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)1 indicate, either singly or in combination of two or more, :hat the financial condition of any insurer which has applied to :ransact, or is already transacting the business of insurance in any ıurisdiction, is considered by the Commissioner to be precarious to :he policyholders, claimants, creditors, or the public.

"Hazardous operations" means operations deemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)2 indicate, either ıingly or in combination of two or more, that the operations of any ınsurer transacting the business of insurance in any jurisdiction is ›onsidered by the Commissioner to be precarious to the pol-ıcyholders, claimants, creditors or the general public. "Insurance holding company system" means two or more affiliated persons, one ›r more of whom or which is an insurer.

"Insurer" means any person or persons, corporation, partnership or company authorized by the laws of this State to transact the business of insurance in this State; except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"NAIC" means the National Association of Insurance Commissioners.

"Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

"Subsidiary" of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

11:1-10.4 General eligibility requirements

(a) In order for a foreign or alien company engaged in the business of property and casualty insurance to be admitted to transact the business of insurance in the State of New Jersey, the requirements in this section shall be satisifed in addition to any other requirements in this subchapter or any other provision of law.

1. The insurer shall satisfy the Commissioner that it is not in a hazardous financial condition. A hazardous financial condition shall exist when the following factors indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, stockholders or the public:

i. The existence of adverse findings reported in financial condition and market conduct examination reports;

ii. The NAIC Insurance Regulatory Information System ratios and or its related reports have been deemed adverse;

iii. The ratios of commission expense, general insurance expense, policy benefits and reserve increases to annual premium and net investment income could lead to an impairment of capital and surplus;

iv. That the asset portfolio of the insurer, when viewed in light of current economic conditions, is determined by the Commissioner to be of insufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

v. The ability of an assuming reinsurer to meet the obligations being assumed and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

vi. That the insurer's operating loss in the last 12 month period, or any shorter period of time as the Commissioner may determine, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to stockholders, is greater than 50 percent of such insurer's remaining surplus for policyholders in excess of the minimum required;

vii. Whether any affiliate of an insurer, subsidiary or reinsurer of such insurer, is insolvent, or, in the opinion of the Commissioner, threatened with insolvency, or delinquent in the payment of its monetary or other obligations;

viii. Whether contingent liabilities, pledges or guarantees which, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer;

ix. Whether any person controlling an insurer is delinquent in making payments of net premiums to such insurer;

x. The age and collectibility of receivables;

xi. Whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, has failed to demonstrate the level of competence and fitness deemed necessary by the Commissioner;

xii. Whether management of an insurer has filed any false or misleading financial statement, or has released any false or misleading financial statement to lending institutions or to the public, or has made a false or misleading entry, or has omitted an entry of a material amount in the books of the insurer;

xiii. Whether, in the opinion of the Commissioner, the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and

xiv. Whether, in the opinion of the Commissioner, the insurer has experienced, or is likely to experience in the foreseeable future, cash flow and/or liquidity problems.

2. The insurer shall satisfy the Commissioner that its financial condition is not such as would render its operations hazardous to the policyholders, stockholders or the general public. Such operations shall be deemed hazardous when the following standards indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be precarious to the policyholder, stockholders or the general public.

i. That the insurer has refused to maintain, or to submit for examination, books, records, accounts, or any other information about the company's affairs deemed relevant by the Commissioner;

ii. That the insurer has concealed or removed records or altered any valuable information from such records, or removed or altered any assets in violation of any applicable state law;

iii. That the insurer has willfully violated its charter or bylaws; and/or

iv. That the insurer has an officer, director or manager who has unlawfully refused to be examined under oath concerning the affairs of the insurer.

3. The insurer shall satisfy the following capital and surplus licensure requirements:

i. An applicant shall satisfy, at a minimum, the statutorily-prescribed minimum capital and surplus requirements for all lines of insurance that is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile, whether or not the applicant desires to transact any of those lines of insurance in the State of New Jersey. The Department shall make an adjustment of surplus regarding all applicant companies as follows:

(1) There shall be deducted from unassigned funds special deposits not held for the protection of all policyholders; and

(2) All applicants shall include in their Annual Statement a provision for unauthorized reinsurance for unearned premiums and losses in connection with the reinsurance in all companies not authorized to transact business in New Jersey. An amount in these items slightly larger than that required for New Jersey shall be acceptable where the liability is based on the calculation for some other state. These penalties may be adjusted for subsequent legal action on license status in the State of New Jersey or in other jurisdictions.

ii. Requirements for an application to meet the minimum capital and surplus amounts for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile may be modified by the Commissioner if the applicant:

(1) Does not transact one or more of the kinds of insurance contained in the Certificate of Authority issued by its state or county of domicile; and

(2) Submits a resolution by its board of directors stating that it will refrain from transacting the kind(s) of insurance permitted by the Certificate of Authority issued by its state, districts, territories, commonwealth, possessions or country of domicile.

4. The applicant shall be deemed ineligible if any one of the following conditions exist:

i. An applicant company which has received from the NAIC an "immediate regulatory attention" designation for the calendar year next preceding its application date shall not be considered for admission until such designation has been removed by the NAIC;

ii. An applicant company which is a member of an insurance holding company system, where its parent or subsidiary has received from the NAIC an "immediate regulatory attention" designation, shall not be considered for admission until such designation has been removed by the NAIC from the parent or subsidiary;

iii. An applicant company which has been identified as targeted and/or has failed four or more Insurance Regulatory Information System (IRIS) tests shall have its application deferred until it has demonstrated to the Commissioner and its state, districts, territories, commonwealth, possessions or country of domicile that these IRIS test results are not indicative of a financial condition that may be hazardous to the general public, policyholders and stockholders; and

iv. An applicant company which has failed to file with the NAIC an Annual Statement for the prior year shall have its application deferred until it has filed with the NAIC such Annual Statement.

5. The insurer shall satisfy the following seasoning requirements:

i. Subject to the provisions of this subchapter, no applicant shall be considered for a Certificate of Authority to transact the business of insurance in the State of New Jersey unless the Commissioner has been furnished with evidence that the applicant, under its present control, has been authorized by its/their state(s), district(s), territory(ies), commonwealth(s), possession(s) or country(ies) of domicile, to engage in the kind(s) of insurance business for which the applicant seeks a Certificate of Authority, and has in fact been actively engaged in such business for a period of at least five years prior to the date of the application for the New Jersey Certificate of Authority.

ii. An applicant insurer qualified under (a)5i above shall demonstrate that:

(1) During any three of the last five years, including therein either of the two most current years of business operations, it generated a net income from operations, after Federal taxes, as reported in the Underwriting and Investment Exhibit in the Annual Statement;

(2) Surplus has not decreased due to operations over the five year period in question; and

(3) It has received one of the top three ratings from at least two of the following rating services: Standard and Poor's; Dun and Bradstreet; Moody's; and A.M. Best. If the applicant has received a rating of less than one of the top three ratings, the Department shall be so notified even if one of the top three ratings is received as required herein.

iii. The Commissioner may, upon the request of an applicant, on a case by case basis, waive, in the case of (a)5iii(1), (2), (3) and (5) below, or reduce, in the case of (a)5iii(4) below, the five year seasoning requirement required by (a)5i above. In determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisifed, and, in addition, whether any one of the applicable requirements provided in (a)5iii(1) through (5) below have been satisfied. These requirements include:

(1) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least five years. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer who shall effectively guaranty by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State; or

(2) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least one year, and secured admission into New Jersey by having been in operation for at least five years pursuant to (a)5i above. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer, which shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State. The insurer parent shall also be required to have one of the top two ratings from at least two of the following rating services: Standard and Poor's; Dun and Bradstreet Moody's and A.M. Best; or

(3) Whether the applicant is the continuing corporation resulting from a merger or consolidation of insurers, at least one of which has been authorized in its state or country of domicile to transact the kind(s) of insurance business for which the applicant seeks a New Jersey Certificate of Authority and has been actively engaged in such insurance business for at least five years and is currently in good standing; or

(4) Whether the applicant, being an insurance company with a non-insurance company parent, has completed three full years of operation, and, subsequent to its first two years of operation, has available a filed examination report conducted by its state of domicile, which report is in accordance with the New Jersey Department of Insurance standards for examinations. The first two full years of operations covered by the examination report shall be of sufficient magnitude (net premiums written to surplus as regards policyholders of 1:1 or greater) to make the report useful and meaningful to the Department. The applicant shall also be required to have experienced profitable operations in two of the three years, including the most current year of business. Additionally, the applicant shall obtain or satisfy all of the following:

(A) A financial guaranty from its ultimate parent that the applicant will meet the minimum required capital and surplus requirements on a quarterly basis, for a period of five years from the date of admission;

(B) The ultimate parent must be a United States corporation actively engaged in business for a period of not less than five years prior to the date of application for the New Jersey Certificate of Authority;

(C) The ultimate parent shall have one of the top two ratings from at least two of the following rating services for at least three years prior to application and shall maintain said rating for at least three years after admission: Standard and Poor's; Dun and Bradstreet; and Moody's. The Commissioner may initiate proceedings to revoke authorization for non-compliance with this requirement; and

(D) The ultimate parent shall have a net worth of at least $25,000,000, which amount shall be set by the Commissioner upon his or her consideration of the general financial condition of the parent and relevant underwriting factors such as, but not limited to, the volume to be written and the type of risk, and any other factors which the Commissioner, in his or her discretion, shall consider to be appropriate; or

(5) Whether the applicant obtains a surety bond or bonds issued by an insurance company or insurance companies approved by the Commissioner and authorized in the State of New Jersey, in an amount to be determined by the Commissioner, with a minimum requirement of $5,000,000 and issued for a period of time as shall be determined by the Commissioner. The Commissioner shall exercise his or her discretion in setting an amount for a surety bond upon consideration of the factors noted in (a)5iii(4)(D) above. This bond shall be prepared in such a way as to meet the requirements of the Department concerning the protection of New Jersey policyholders, claimants and creditors of the applicant insurance company.

6. The insurer shall procure a New Jersey Certificate of Authority by establishing compliance with the applicable requirements of N.J.S.A. 17:17-1 et seq. and shall successfully complete an admissions process which shall include a detailed review by the Commissioner of business affairs and financial condition of the applicant as provided by this subchapter.

(b) An applicant company intending to make a formal application for admission shall first submit a letter of intent which shall consist of the preliminary information set forth in N.J.A.C. 11:1-10.5.

11:1-10.5 Letter of intent

(a) Prior to the acceptance of a final application for a Certificate of Authority in the State of New Jersey, all foreign and alien insurers engaged in the business of property and casualty insurance who desire to transact the business of insurance in the State of New Jersey shall submit, as a preliminary application, a letter of intent, which shall include the information required in (a)1 through 8 below.

1. The name of the applicant;

2. Where applicable, the name of any person, as defined in this subchapter, or other entity, by whom the applicant is controlled;

3. The applicant's current insurance holding company systems chart;

4. Where applicable, the name of any insurer(s) currently licensed in the State of New Jersey with whom the applicant is affiliated;

5. The type(s) of insurance proposed to be written by the applicant in the State of New Jersey;

6. A certified copy of the applicant's most recent Annual Statement, prepared on the NAIC annual and quarterly statements forms used by New Jersey domestic insurers;

7. A certified copy of the applicant's current Certificate of Authority from its state, district, commonwealth, territory, possession or country of domicile; and

8. The results of the most recent NAIC Insurance Regulatory Information System (IRIS) tests and related communications concerning the applicant, which shall satisfy the requirements of N.J.A.C. 11:1-10.4(a)4i-ii.

11:1-10.6 Final application

(a) After the submission of the letter of intent as required by N.J.A.C. 11:1-10.5, the applicant shall be instructed by the Department to file the following items:

1. A copy of its charter as currently in force, certified by the lawful custodian of the original document;

2. A copy of its bylaws as currently in force, certified by a senior officer of the company;

3. A statement of the company's financial condition as of December 31 of the preceding calendar year, in the NAIC format, signed and sworn to by the president of the company, its corporate secretary and its treasurer;

4. A Certificate of Compliance under the official seal of the commissioner of insurance of the company's domiciliary state or country;

5. A certified copy of a report of the most recent examination of the company's affairs by the department of insurance or its equivalent, of the state or country in which the company is domiciled;

6. An appointment, by the company, of the Commissioner as attorney for service of process;

7. An application for admission, on a form to be prescribed and provided by the Department, including the payment of a non-refundable application fee of $1,000;

8. A "statement of opinion" by a qualified actuary relating to loss and loss adjustment expense reserves, pursuant to N.J.A.C. 11:1-21;

9. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as shall be required by the Commissioner;

10. Where applicable, a certified copy of the filing made pursuant to the Holding Company Act of the state, district, territory, commonwealth, possessions or country of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

11. A statement of ownership of the applicant. This statement shall include all shareholders of record who control five percent or more of the outstanding shares of the applicant, directly or indirectly;

12. A copy of any agreements by which the right to conduct or influence any of the affairs of the applicant is transferred to others;

13. Any employment or deferred compensation agreements in which any officer, director or shareholder who controls five percent or more of the outstanding shares of the applicant, directly or indirectly, participates;

14. Any tender offer materials (advertisements, invitations, etc.) if any tender offer has been made by the company or its parent to acquire another company within the three years preceding;

15. Modified NAIC biographical affidavits, to be completed by all directors and senior officers on a form prescribed and provided by the Department;

16. A corporate plan of operation consisting of:

i. A schedule listing the following:

(1) All jurisdictions in which the applicant has applied for authorization to transact the business of insurance during the preceding 10 years and the dates and results of such applications;

(2) All jurisdictions from which the applicant has withdrawn during the preceding 10 years, and the reasons for withdrawal; and

(3) All administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, or its affiliates, or any of its directors or principal officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent in a jurisdiction which does not use this designation of a crime, such actions, orders, proceedings and determinations shall include violations not related to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings, and determinations related thereto.

ii. A description of the applicant's present business plan or plan(s) for conducting an insurance business, including, but not limited to:

(1) Geographical areas in which business is being written;

(2) The types of insurance to be written;

(3) Marketing methods;

(4) A summary of the methods for establishing premium rates; and

(5) A description of agency systems, including any managing general agency contracts.

iii. A proposed plan for conducting an insurance business in the State of New Jersey, including, but not limited to:

(1) The geographical area in which business is intended to be done;

(2) The types of insurance intended to be written;
(3) Proposed marketing methods;
(4) Proposed methods for the establishment of premium rates; and
(5) A three year forecast of anticipated premiums in this State by line of business.

iv. A summary of the applicant's reinsurance program on assumed and ceded business, indicating the name of the reinsurers, retentions, maximum risks, types of contract (such as pro rata), excess of loss, and any other information which may be relevant to this part of the applicant's operation. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant;

v. A summary of the applicant's reinsurance assumed program, with retentions, maximum risks, types of business, types of contracts to be issued, and other factors which may, in the opinion of the Department, be relevant to this part of the applicant's operations;

vi. The number and ratio of complaints as defined by the state or country of domicile to the premium volume in the state or country of domicile, for those lines of business in which the state, districts, territories, commonwealth, possessions or country of domicile makes such determinations; and

vii. Copies of all management, exclusive agency, administrative services, or any other operating contracts with affiliates or non-affiliates, where applicable, signed by the parties and certified to by the company secretary and chief operating officer.

17. If a United States Branch, the applicant shall provide the Department with:

i. A certificate of deposit from its insurance commissioner showing the amount in trust for policyholders;

ii. A certified copy of power of attorney in favor of its United States manager; and

iii. A certified copy of a deed of trust to the trustee of the funds of the company.

18. If the applicant is an alien insurer, a statement of trusteed surplus in the United States.

(b) The Department shall evaluate the difference between the admitted value and the actual market value of all bonds held by the company.

(c) Applicants who wish to write or have the authority to write health insurance in the State of New Jersey shall complete and submit a consumer suitability study on a form prescribed and provided by the Department. This study shall be reviewed and approved by the Department.

(d) Applicants who desire authority to write workers' compensation and employers' liability insurance shall, prior to admission, become members of the Compensation, Rating and Inspection Bureau, located at 60 Park Place, Newark, New Jersey 07102. The Bureau shall be consulted for membership at the point in time when all requirements for admission have been satisfied and the application for admission is actually submitted. The Bureau shall be advised by the Department that the applicant is in the process of filing for admission in the State of New Jersey.

11:1-10.7 Review procedures; appeals

(a) Upon receipt of a final application, the Commissioner shall conduct a thorough background investigation and review which shall include the information contained in N.J.A.C. 11:1-10.4, 10.5 and 10.6, inquiries regarding claims settlement practices and any other information which, in the opinion of the Commissioner, may be necessary to make an appropriate decision on an application.

(b) Applicant companies shall ensure that all filings submitted to the Department are current. Any amendments, changes or replacements to constituent documents on file shall be timely updated.

(c) Applications accepted after the 1st day of December of each year shall have their review deferred until the Annual Statement for the current year is available and received for review. The review of the filings of the prior year shall begin as of the 1st day of April of each year, after the receipt of Annual Statements, which shall be submitted not later than the 1st day of March of each year.

(d) Before a decision on an application is made, the Department may request from an applicant, in writing, any additional information it may require. Failure by an applicant to respond to written inquiries by the Department within 45 days may be considered grounds for rejection of the application.

(e) Application reviews shall be conducted by the Department on a monthly basis. The Committee on Admissions shall make a recommendation to the Commissioner concerning each application which has been reviewed. The Commissioner shall consider the recommendation and make his or her decision on the application within 10 working days from receipt of the recommendation. Written notice of the decision shall be mailed to the applicant by registered mail within 10 working days of the date of the Commissioner's decision.

(f) When the Commissioner rejects an application, the notice of rejection shall include a statement specifying the reasons for the rejection.

1. Such notice shall further inform the applicant of the right to request an informal Departmental review of the rejection within 20 days of receipt of the notice of rejection.

2. Such notice shall further inform the applicant of the right to provide to the Department a written statement, with supporting documentation, if any, disputing with specificity the reasons for rejection within 30 days of the receipt of the notice of rejection.

3. Upon the timely receipt of the request for Departmental review and the written statement of the company, if any, the Department shall promptly review the application, attached documents, department records and the written statement. In appropriate circumstances, the Commissioner may provide the applicant with an opportunity to present its position in person.

4. If, after reviewing the record, the Commissioner determines that the applicant has failed to qualify, the Commissioner shall promptly so inform the applicant and advise the applicant of its right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:1-10.8 Requirements upon admission

(a) Applicants who request authority to write automobile liability and/or automobile physical damage coverage in the State of New Jersey shall, upon admission, automatically become members of and shall be subject to the requirements of the statutes and rules concerning the New Jersey Automobile Full Insurance Underwriting Association ("NJAFIUA"). Any questions concerning this organization shall be directed to the General Manager, NJAFIUA, 293 Eisenhower Parkway, Livingston, New Jersey 07039.

(b) Applicants contemplating the writing of homeowners or comprehensive personal liability polices in the State of New Jersey shall be required to afford coverage against liability for the payment of any obligation which the policyholder may incur to an injured domestic servant, or household employee, or the dependents thereof, pursuant to the provisions of the Workers' Compensation Law of the State of New Jersey. The Compensation, Rating and Inspection Bureau shall be informed by the Department accordingly.

(c) Applicants who wish to have their Certificate of Authority limited to "reinsurance" only, may disregard the requirement of N.J.A.C. 11:1-10.8(a) pertaining to the New Jersey Automobile Full Insurance Underwriting Association ("NJAFIUA") and those regulatory requirements concerning membership in the Compensation, Rating and Inspection Bureau and the completion of a consumer suitability study for health insurance identified in 11:1-10.6(c) and (d).

11:1-10.9 Compliance

This subchapter shall apply to all applicants submitting a letter of intent on or after the operative date of this subchapter. Applicants whose letters of intent have been received by the Department prior to the operative date of this subchapter may elect to proceed under this subchapter if they so notify the Department no later than the operative date of this subchapter. Applicants whose letters of intent have been received by the Department prior to the operative date of this subchapter and who do not timely notify the Department that they wish to proceed under this subchapter shall have their applications reviewed under the procedures pre-existing this subchapter.

11:1-10.10 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY COMMISSION ON SCIENCE AND TECHNOLOGY

Eligibility; Royalty Policy

Proposed Amendments: N.J.A.C. 12A:100-1.2, 1.3 and 1.4

Authorized By: New Jersey Commission on Science and Technology, James F. Mathis, Chairman.
Authority: N.J.S.A. 52:9X-1 et seq., specifically 52:9X-9m.
Proposal Number: PRN 1989-86.

Submit written comments by March 23, 1989 to:

Edward Cohen
Executive Director
New Jersey Commission on Science and Technology
CN 832
122 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These rules are being amended for two purposes. The first reason is for the expansion of institutional eligibility requirements beyond the current five graduate research university participants in New Jersey, to additionally include the four-year independent and public colleges and universities of the State. The second reason is for the adoption of a royalty policy to permit the Commission to recover its original investment from the proceeds of commercial sales above agreed to thresholds.

Social Impact

The social impact of these amended rules should be positive in that more educational facilities in the State will be eligible for the program. In addition, the Innovation Partnership program should be able to expend greater amounts of funds by use of the recovered funds generated through the royalty policy.

Economic Impact

The economic impact of these amended rules should be positive because the Commission will in some cases be able to recapture allotted funds from the program through the provisions of the royalty policy, herein contained in these amendments. The State or Commission should not incur any additional administrative cost for this program above that which is incurred by current program requirements.

Regulatory Flexibility Analysis

The proposed amendments regulate a grant program open to, "regionally accredited four year academic institutions of higher education in New Jersey, offering accredited baccalaureate degrees in science and/or engineering in fields pertinent to the Commission's sponsorship." None of these institutions qualify as small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as they are either public institutions or employ more than 100 people.

However, entities serving as industry sponsors under the program, providing matching funds, may be small businesses. The rules impose no reporting or recordkeeping requirements on such sponsors, although the sponsored institution is required to provide the Commission with a copy of the sponsor's letter confirmation of financial commitment. While there are no compliance requirements dictating what form institutional assistance from sponsor's must take, N.J.A.C. 12A:100-1.8 does specify what types of assistance will be considered matching funds for the purpose of an institution's eligibility for the program.

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

12A:100-1.2 Definitions

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

"Commission" means the New Jersey Commission on Science and Technology as established by N.J.S.A. 52:9X-1 et seq.

"Innovation partnership" means a specifically directed research project undertaken as a cooperative venture between an academic researcher and an industrial sponsor. The objective of these partnerships is to explore new areas of research in a given technology for the purpose of producing new concepts, materials, devices, processes or knowledge that will:

1. Enhance the research program and overall reputation of the academic institution;
2. Assist and advance the activities of the industries involved in the technology;
3. Permit the commercialization of cooperative research.

"Qualifying academic institution" means a regionally accredited [research] **four year academic** institution of higher education in New Jersey, offering [doctoral] **accredited baccalaureate** degrees in science and/or engineering in fields pertinent to the Commission's sponsorship.

12A:100-1.3 Program description

(a) Innovation partnership grants will provide support for academic researchers conducting basic, applied or generic research in specified fields, and will be matched by funds provided by a New Jersey-based industry or business. The investment of the Commission will be used to support the cost of equipment, supplies and the faculty and graduate students assigned each research project. It is expected that the facilities required for the project will be provided by the academic institutions or industry sponsor and that indirect costs equal to no more than 10 percent of all direct costs, exclusive of equipment, will be charged to the Commission.

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

(d) In the event that revenues from the annual gross royalties, exclusive only of the inventor's share, received by the grantee, during the fiscal year (July 1 to June 30), as a result of any individual copyright or patent produced in whole or in part with the assistance of an innovation partnership grant award shall exceed an amount equal to 10 times the Commission's award, an amount equal to five percent of the annual gross royalties from that copyright or patent, exclusive of the inventor's share, shall be remitted to the Commission by the sponsoring institution within 90 days. The total royalties recovered by the Commission shall not exceed the Commission's original award.

12A:100-1.4 Submission of grant proposal

(a) The Commission will receive proposals for innovation partnership grants in specified fields from **four year academic** institutions of higher education in New Jersey [with graduate research programs in related fields] **offering accredited baccalaureate degrees in science and/or engineering in fields pertinent to the Commission's sponsorship.** Three copies of the proposal must be submitted.

(b) (No change.)

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ARCHITECTS

Single Family Exemption; Title Block; Sealing Documents; Impersonal Names; Restrictions in Titles

Proposed New Rules: N.J.A.C. 13:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12 and 4.13

Authorized By: New Jersey State Board of Architects, George Waters, R.A., President.
Authority: N.J.S.A. 45:3-3.
Proposal Number: PRN 1989-98.

Submit comments by March 23, 1989 to:
Barbara Hall, Executive Director
State Board of Architects, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Architects ("Board") is proposing new rules N.J.A.C. 13:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12 and 4.13.

Proposed N.J.A.C. 13:27-4.5, 4.6, 4.7, 4.8 and 4.10, among numerous other rules, were originally published in the New Jersey Register on December 1, 1985 at 17 N.J.R. 2851(b). Because of extensive comments received, particularly from licensed professional engineers with regard to rules identified as "subchapters 3 and 4", the Board agreed pursuant to a written request dated March 5, 1986 from Attorney General Cary Edwards, to reserve final adoption of these rules pending further interdisciplinary review (see 19 N.J.R. 131(a) (1987)). The Board fully expected that the matter would be resolved within a few months. Indeed, in an effort to maintain those rules, the Board reproposed N.J.A.C. 13:27-3 and 4 in the New Jersey Register on October 5, 1987 at 19 N.J.R. 1783(b). Proposed rules N.J.A.C. 13:27-4.12 and 4.13 were added at that time. Despite the Board's determination to adopt the rules on November 12, 1987, they were again held in abeyance at the request of the Attorney General for purposes of continuing negotiations with the Board of Professional Engineers and Land Surveyors ("PELS Board"). Inasmuch as the negotiations between the two Boards are still ongoing, and after agreement that the presently-proposed rules are not objectionable to the PELS Board, but are necessary in the daily administration of the Board's office, the proposed rules have been excised for immediate processing. A brief description of each rule follows:

The Board is proposing N.J.A.C. 13:27-4.5, which was formerly N.J.A.C. 13:27-7.1, repealed effective January 5, 1987 at 19 N.J.R. 131(a). This rule explains the exemption contained in N.J.S.A. 45:3-10 which permits a person to design a single family residence to be constructed by that person solely as a residence for him or her or an immediate family member.

N.J.A.C. 13:27-4.6 and 4.7 describe the requirements for title blocks to be used by licensed architects on drawings, plans and specifications, replacing repealed rules N.J.A.C. 13:27-4.5, 4.6, 4.7 and 4.9. Requirements for form, lettering and reproducibility remain effectively unchanged. Formats to be used by architects practicing as individuals, partnerships, or professional service corporations are set forth in proposed N.J.A.C. 13:27-4.7.

The Board has omitted as unnecessary the provisions of former N.J.A.C. 13:27-4.10 referring to information to be included with license renewals, but N.J.A.C. 13:27-4.8, which permits architects to submit title blocks to the Board for approval, remains unchanged from the former rule. N.J.A.C. 13:27-4.10 now provides that all original drawings and specifications shall be signed when prepared and that all copies shall be dated and sealed when submitted to a client or public agency.

N.J.A.C. 13:27-4.12 prohibits the use of impersonal names. This is an amended version of former rule N.J.A.C. 13:27-4.6.

N.J.A.C. 13:27-4.13 imposes additional restrictions regarding titles for practicing architects. Although these restrictions have been enforced as Board policy for many years, the Board intends to clarify its position to licensees by incorporating it as a rule.

Social Impact

There is no anticipated social impact regarding the reinstitution of the former rule on single family residence exemptions pursuant to N.J.S.A. 45:3-10.

With reference to the title block rules, a positive social impact is anticipated in that the rules are informational and clearly set out the Board's requirements. Furthermore, by amending the Board's rules concerning title blocks to make the requirements for firm names consistent with the Professional Service Corporation Act, clarification of title block requirements is provided for those licensees practicing as professional corporations. Similarly, N.J.A.C. 13:27-4.12 and 4.13 are informational insofar as they communicate to licensees the Board's restrictions regarding titles of architectural practices. Consumers will benefit by these restrictions, which mandate clear identification of the licensed professional in an architectural organization.

Economic Impact

It is anticipated that the proposed rules will have no economic impact on the Board, licensees or consumers.

Regulatory Flexibility Statement

The proposed new rules will apply to virtually all licensees of the State Board of Architects and thus to businesses both large and small. None of these rules, however, require any reporting or recordkeeping practices.

The terms of N.J.A.C. 13:27-4.5 are directed specifically to individuals who are not licensees of the Board and who wish to design their own residence for personal use. The rule also sets forth the requirements that any pre-prepared plans bear the certification of an architect licensed in any United States jurisdiction and that said plan be reviewed, signed, sealed and adapted to the specific site by a New Jersey licensed architect.

N.J.A.C. 13:27-4.6, 4.7, 4.8, and 4.10 specifically delineate the required title block contents as well as explain when and how these title blocks must be used; N.J.A.C. 13:27-4.12 and 4.13 clarify restrictions in the use of titles by architectural practices. None of these proposed new rules will necessitate the retention of any professional services by licensees and/or small businesses in order to comply with the requirements.

Full text of the proposal follows.

SUBCHAPTER 4. ARCHITECTURAL PRACTICE AND RESPONSIBILITY; EXEMPTIONS; TITLE BLOCKS

13:27-4.1 to 4.4 (Reserved)

13:27-4.5 Single family exemption

(a) In accord with N.J.S.A. 45:3-10, any person in this State may act as a designer of a detached dwelling and appurtenances thereto to be constructed by that person solely as a residence for that person or member of that person's immediate family.

(b) A person may design the dwelling and all appurtenances thereto, prepare the plans and file the plans with an affidavit indicating that that person drew the plans.

(c) In lieu of personally preparing the plans, a person may utilize pre-prepared (commercially published, available to the public) plans which bear a certification that they were originally drawn by an architect licensed in any United States' jurisdiction, provided these plans are reviewed, signed, sealed and adapted to the specific site by a New Jersey licensed architect. By signing and sealing these plans, the New Jersey licensed architect assumes full responsibility for said plans, just as if the plans were prepared under the architect's direct supervision.

(d) A person, in lieu of personally constructing the residence, may engage others to perform the work.

13:27-4.6 Title block on drawings; form; removal

(a) Every architect shall provide a title block on all drawings (except renderings) and similar information on the title page of all specifications which are prepared and sealed by the architect.

(b) Such title block shall be in such form as the Board may adopt or approve.

(c) Such title block shall be distinct and separate from any other title block, box, plaque or any similar device of illustration or lettering.

(d) The title block shall be lettered on the drawing in such a manner as to reproduce clearly on all prints and reproductions thereof.

(e) No person shall remove a title block from any print or reproduction.

(f) No non-licensed person's name, other than the owner or lessee, shall be within the title block.

13:27-4.7 Title block contents

(a) When the architect practices as an individual, the title block shall contain:

1. The name and location of the project;
2. The full name of the architect;
3. The title "architect";
4. The certificate number and handwritten signature of the architect; and
5. The date when signed.

(b) When two or more licensed architects practice architecture as a firm or partnership, the title block shall contain:

1. The name and location of the project;
2. The firm name;

3. The title "architects";
4. The full name and certificate number of each partner named in the title block;
5. The handwritten signature of at least one of the partners; and
6. The date when signed.

(c) When professionals practice architecture as a professional service corporation organized under N.J.S.A. 14A:17-1 et seq., the title block shall contain:
1. The name and location of the project;
2. The professional service corporation name;
3. The full name and certificate number of the architect of record;
4. The handwritten signature of the architect of record; and
5. The date when signed.

(d) A similar title block shall be provided on a site plan which shall be included in any set of drawings of a building project.

(e) The title block may contain the initials of the draftsmen or checker, and dates, drawing numbers, revision numbers and such similar incidental items as is customary in architects' offices; provided, however, the name of the architect, whether for an individual firm, partnership or corporation, shall be the major size lettering within the heavy borderline of the title block.

13:27-4.8 Submission of title block form for approval

Any architect may submit a proposed form of title block to the State Board of Architects for approval.

13:27-4.9 (Reserved)

13:27-4.10 Sealing documents

All working drawings and specifications prepared by the architect or under his or her supervision shall be signed on the original with the personal signature of the architect. Thereafter, all copies of such drawings and specifications shall be dated and sealed prior to submission to the client or filing with a public agency.

13:27-4.11 (Reserved)

13:27-4.12 Impersonal names

Names such as "Design Associates", "Technical Group", "The ABC Company" or any other impersonal name shall not be used by individuals, firms, partnerships, associations or any other entities unless they have formed a professional service corporation as set out in N.J.S.A. 14A:17-1 et seq.

13:27-4.13 Restrictions in titles

(a) The term "Associates" when used officially in a title must refer only to existing individuals, licensed in this State as architects, or in a related licensed profession.

(b) A sole proprietorship shall not be conducted under a title which designates or suggests the existence of more than a single principal.

(c) When any partner, shareholder, associate or other licensed professional whose name is used in the title ceases to be a member of a corporation, firm, partnership or association for any reason including death or disability, then the title shall be changed within two years of this disassociation.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Speed Limits

Routes U.S. 206 in Atlantic and Burlington Counties and N.J. 36 in Monmouth County

Proposed Amendments: N.J.A.C. 16:28-1.72 and 1.75

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
Proposal Number: PRN 1989-91.

Submit comments by March 23, 1989 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 speed limit zones along Routes U.S. 206 in Hammonton Township, Atlantic County, and in the Townships of Shamong, Tabernacle, Southampton, Eastampton, Pemberton, Springfield, Mansfield, Bordentown, and the City of Bordentown, Burlington County, and N.J. 36 in the Boroughs of Eatontown and West Long Branch, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safey and the well-being of the populace. Additionally, the proposed amendments clarify the specific location to which the speed limits are applicable along Route U.S. 206 and N.J. 36, reduce the speed limit along Route N.J. 36 in West Long Branch Borough from 55 to 50 miles per hour, and add a new speed limit in zone two, Eatontown Borough.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of speed limits along Route N.J. 36 in West Long Branch and Eatontown Boroughs, Monmouth County, and the clarification of the specific location of speed limits along Route U.S. 206 in Atlantic and Burlington Counties were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.72 and 1.75 based upon the requests from the local government and the traffic investigations.

Social Impact

The proposed amendments will establish speed limit zones along Routes N.J. 36 in West Long Branch and Eatontown Boroughs, Monmouth county, and clarifies the specific locations to which the speed limits are applicable along Route U.S. 206 in Hammonton Township, Atlantic County, and the Townships of Shamong, Tabernacle, Southampton, Eastampton, Pemberton, Springfield, Mansfield, Bordentown and the City of Bordentown, Burlington County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The amendments primarily affect the motoring public.

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

16:28-1.72 Route U.S. 206 including U.S. 206 and U.S. 130

(a) The rate of speed designated for the certain parts of State highway Route US 206 described in this **sub**section, shall be established and adopted as the maximum legal rate of speed [thereat for both directions of traffic:].

[1. Zone one: 50 mph within corporate limits of Town of Hammonton, Shamong Township, Tabernacle Township, Southampton Township, Eastampton Township, and Pemberton Township, and thence to Route 537 in Springfield Township (milepost 0.0 to 26.8).

2. Zone two: 55 mph from Route 537 in Springfield Township through Mansfield Township to Farnsworth Avenue (Route 545) in Bordentown Township (milepost 26.8 to 35.1).

3. Zone three: 40 mph speed limit between Cemetary Lane (milepost 35.5) in the City of Bordentown and Bordentown Township, Burlington County, to the northernmost intersection of Route US 130 (milepost 36.4 which includes the part coincident with Route US 130).]

1. For both directions of traffic:

i. In Atlantic County:

(1) Hammonton Township: 50 miles per hour between Route U.S. 30 and the Town of Hammonton-Shamong Township line (mileposts 0.0 to 6.27); thence

ii. In Burlington County:

(1) Shamong Township: 50 miles per hour between the Shamong Township-Town of Hammonton line and the Shamong Township-Tabernacle Township line (mileposts 6.27 to 12.75); thence

(2) Tabernacle Township: 50 miles per hour between the Tabernacle Township-Shamong Township line and the Tabernacle Township-Southampton Township line (mileposts 12.75 to 16.28); thence

(3) The Townships of Southampton, Eastampton, and Pemberton: 50 miles per hour within all the corporate limits (mileposts 16.28 to 26.22); thence

(4) Springfield Township:

(A) Zone one: 50 miles per hour between the Springfield Township-Eastampton; Pemberton Township line and County Road 537 (mileposts 26.22 to 26.80); thence

(B) Zone two: 55 miles per hour between County Road 537 and the Mansfield Township-Springfield Township line (mileposts 26.80 to 29.54);

(5) Mansfield Township: 55 miles per hour between the Mansfield Township-Springfield Township line and the Mansfield Township-Bordentown Township line (mileposts 29.54 to 33.80); thence

(6) Township and City of Bordentown:

(A) Zone one: 55 miles per hour between the Bordentown Township-Mansfield Township line and Cemetery Lane (mileposts 33.80 to 35.47); thence

(B) Zone two: 40 miles per hour between Cemetery Lane and the northernmost intersection of Route U.S. 130-Route U.S. 206 (which includes the part coincident with Route U.S. 130) (mileposts 35.47 to 36.40); thence

(C) Zone three: 50 miles per hour between the northernmost intersection of Route U.S. 130-Route U.S. 206 and the northerly end of the bridge over Crosswicks Creek (Burlington County-Mercer County line) (mileposts 36.40 to 38.45).

(b) The rate of speed designated for the certain parts of State highway [route number] **Route** U.S. 206 described in this **subsection** shall be [and hereby is] established and adopted as the maximum legal rate [thereat] **of speed**:

1. (No change.)

(c)-(e) (No change.)

16:28-1.75 Route 36

(a) The rate of speed designated for the certain parts of State highway Route 36 described in this **subsection** shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic in Monmouth County:

i. Zone 1:

(1) Eatontown Borough: 55 miles per hour between Hope Road and [the northernmost Eatontown Borough-southernmost West Long Branch Borough line] **1,000 feet south of Wycoff Road** (mileposts 0.00 to [2.40] **1.08**):

[(2) West Long Branch Borough: 55 miles per hour between the northernmost Eatontown Borough-southernmost West Long Branch Borough line and County Route 537 (milepost 2.40 to 3.28);]

ii. Zone 2:

(1) Eatontown Borough: 50 miles per hour between 1,000 feet south of Wycoff Road and the Eatontown Borough-West Long Branch Borough line (mileposts 1.08 to 2.39);

[(1)]**(2)** West Long Branch Borough: [45 miles per hour between County Route 537 and Ocean Port Avenue (milepost 3.28 to 3.74);] **50 miles per hour between the Eatontown Borough-West Long Branch line and County Road 537 (mileposts 2.39 to 3.27);**

iii.-x. (No change.)

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Route U.S. 202 in Somerset County

Proposed Amendment: N.J.A.C. 16:28A-1.55

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138(g) and 39:4-199.

Proposal Number: PRN 1989-92.

Submit comments by March 23, 1989 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 amendment will establish "Time Limit Parking" zones along Route U.S. 202 in Bernardsville Borough, Somerset County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "Time Limit Parking" zones in the Borough of Bernardsville, Somerset County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.55 based upon the request from local government and the traffic investigation.

Social Impact

The proposed amendment will establish "Time Limit Parking" zones along Route U.S. 202 in Bernardsville Borough, Somerset County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for "Time Limit Parking" zones signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment does not place bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public.

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

16:28A-1.55 Route U.S. 202

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

(d) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "Time Limit Parking" zones. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Time Limit Parking zones.

1. Time Limit Parking zones in Bernardsville Borough, Somerset County:

i. Along the west side:

(1) Two-hour time limit parking, between 7:00 A.M. to 6:00 P.M.:

(A) From 35 feet south of the southerly curbline of Anderson Hill Road to a point 240 feet southerly therefrom.

(B) From 35 feet south of Quimby Lane to a point 400 feet south of the southerly curbline of Claremont Road.

(2) One half-hour time limit parking, between 7:00 A.M. to 6:00 P.M., from a point 275 feet south of the southerly curbline of Anderson Hill Road to a point 90 feet southerly therefrom.

ii. Along the east side:

(1) One half-hour time limit parking, between 7:00 A.M. to 6:00 P.M., beginning 85 feet south of the southerly curbline of Mt. Airy Road extending 50 feet southerly therefrom.

(2) Two-hour time limit parking, between 7:00 A.M. to 6:00 P.M., from a point 135 feet south of the southerly curbline of Mt. Airy Road to the northerly curbline of Depot Square.

(a)

TRANSPORTATION OPERATIONS

Drawbridge Usage
Route N.J. 35 in Ocean County
Proposed Amendment: N.J.A.C. 16:30-9.1

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-17, and 39:4-198.
Proposal Number: PRN 1989-81.

Submit comments by March 23, 1989 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 amendment will establish restrictions along the bridge on Route N.J. 35 in Point Pleasant and Brielle Boroughs, Ocean County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of restrictions along the bridge over the Manasquan River on Route N.J. 35 in Point Pleasant and Brielle Boroughs, Ocean County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:30-9.1 based upon the request from local governments and the traffic investigation.

Social Impact

The proposed amendment will establish restrictions on the bridge over the Manasquan River along Route N.J. 35 in Point Pleasant and Brielle Boroughs, Ocean County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements, and will bear the costs for "no jumping, diving, crabbing, fishing or loitering" signs. Those persons who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment primarily affects the general public.

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

16:30-9.1 Route 35

(a) The certain parts of State highway Route 35 described in this subsection shall not be used for purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of bridges and waterways listed:

i.-ii. (No change.)

iii. Ocean County:

(1) The bridge over the Manasquan River in Point Pleasant and Brielle Boroughs.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Public Employees' Retirement System Enrollment
Proposed Amendment: N.J.A.C. 17:2-2.3

Authorized By: Public Employees' Retirement System, Janice Nelson, Secretary.
Authority: N.J.S.A. 45:15A-17.
Proposal Number: PRN 1989-85.

Submit comments by March 23, 1989 to:
Peter J. Gorman
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, N.J. 08625

The agency proposal follows:

Summary

The purpose of this proposed amendment is to clarify the eligibility of certain employees to enroll in the retirement system. Prior to 1985, temporary employees were not eligible to enroll in the system. By Chapter 121 of the Laws of 1985, temporary employees with at least one year of continuous service were included in the membership of the system. This law was designed to deal with provisional employees in civil service positions. In many cases, employees remained in provisional status for many years. However, the law applied to all temporary employees and has raised questions about enrollment eligibility for other categories of employees who had previously been considered temporary.

A particularly troublesome category of employees has been those who work irregularly on an on-call basis, such as substitute teachers. Substitute teachers are not eligible for enrollment in the Teachers' Pension and Annuity Fund. They are not regular employees, and the amount of time they will work and the duration of their employment is not known.

The purpose of this proposed amendment is to define "continuous service" for employment which is temporary and irregular to provide a workable standard for determining whether employees in this category should be approved or denied enrollment eligibility. The amendment provides that an employee who is not in a civil service position, or a regularly budgeted position, and who is employed on an on-call basis and works on average less than 10 days per month throughout the regular work year of the employer, is not eligible for enrollment in the retirement system.

The proposed amendment makes a technical change to provide that employees in provisional civil service positions are eligible for enrollment. This change brings this rule in line with the law.

Social Impact

This amendment would affect public employees who work on an on-call basis on average less than 10 days a month. Most employees in this situation would probably not want to be in the retirement system. Some employees might want to be in the system or to be able to receive credit for the service if they did go on to careers in public employment. The Division believes that this latter group would be a small minority.

Economic Impact

No significant economic impact on the retirement system is anticipated from the adoption of this proposed amendment. The economic benefit of enrollment in the retirement system will accrue to those employees eligible for enrollment under the amended rule.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules of the Public Employees' Retirement System affect only public employers and employees.

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

17:2-2.3 Ineligible persons

(a) The following classes of persons are ineligible for membership in the system:

1.-3. (No change.)

4. Any employee who is provisionally appointed to a Civil Service position is considered as an employee with temporary employment status and is ineligible to establish membership until he or she receives a regular Civil Service appointment, **or has one year of continuous service.**

5. (No change.)

6. Any person not in classified or unclassified service, or a regular budgeted position, who is employed on an on-call basis and works on average less than 10 days a month throughout the regular work year of the employer. This type of employment is temporary employment which is not continuous.

(a)

DIVISION OF PENSIONS

Consolidated Police and Firemen's Pension Fund Nominating Petitions; Elections

Proposed Amendment: N.J.A.C. 17:6-1.4

Authorized By: Consolidated Police and Firemen's Pension Fund Commission, Anthony Ferrazza, Secretary.
Authority: N.J.S.A. 43:16-7.
Proposal Number: PRN 1989-89.

Submit comments by March 23, 1989 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 17:6-1.4 reduces the required number of signatures on a nominating petition to five signatures from the current requirement of 20. The Commission felt that, due to the maturing nature of the fund, it is very difficult to obtain the current requirement of 20 signatures on the nominating petitions.

Social Impact

This proposed amendment will only affect those candidates who are seeking a seat on the Consolidated Police and Firemen's Pension Fund Commission, by easing the nominating petition signature requirements.

Economic Impact

It does not appear that this amendment will have any significant economic impact upon the persons affected by the amendment, the State or the public at large.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. Since the rules of the Division of Pensions only impact upon public employers and/or employees, this amendment will not have any adverse effect upon small businesses or private industry in general.

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

17:6-1.4 Election of members-commission

(a) (No change.)

(b) Requirements for the election notice and petition shall include:

1.-2. (No change.)

3. The election notice will also indicate that at least [20] **five** eligible or retired members must sign the petition in order for a candidate's name to be placed on the ballot.

4.-8. (No change.)

(c)-(j) (No change.)

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Corporation Business Tax
Scope of Allocable Receipts; Sales of Tangible Personal Property

Proposed Amendment: N.J.A.C. 18:7-8.8

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:10A-27.
Proposal Number: PRN 1989-88.

Submit comments by March 23, 1989 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment adds four subparagraphs and examples to N.J.A.C. 18:7-8.8(a)1 which clarify the application of the rule. Existing N.J.A.C. 18:7-8.8 defines the scope of receipts to be included in the receipts fraction of the three-fraction business allocation factor (apportionment formula) used in calculating corporate net income. Existing N.J.A.C. 18:7-8.8(a)1 allocates to New Jersey receipts from sales of tangible personal property where shipments were made to points in New Jersey.

Proposed new subparagraph N.J.A.C. 18:7-8.8(a)1i and example would include in the receipts fraction receipts from the sale of goods shipped to a New Jersey customer where possession is transferred in New Jersey. New subparagraph N.J.A.C. 18:7-8.8(a)1ii and example would include in the fraction receipts from the sale of goods shipped to a non-New Jersey customer where possession is transferred in New Jersey. New subparagraph N.J.A.C. 18:7-8.8(a)1iii and example would include receipts from the sale of goods shipped by a taxpayer from outside New Jersey to a New Jersey customer by a common carrier. New subparagraph N.J.A.C. 18:7-8.8(a)1iv and example would exclude receipts from the sale of goods shipped from outside New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside of New Jersey.

Social Impact

The proposed amendment will have a positive social impact in that they will clearly set out the situations in which receipts from the sale of tangible personal property must be allocated to New Jersey. Implementation of these amendments will benefit the public by providing clarification of the policies adopted by the Legislature through the enactment of N.J.S.A. 54:10A-6(B) relating to transactions includible in computing corporate net income.

Economic Impact

The proposed amendment eliminates points of possible confusion over when corporations must allocate to New Jersey receipts from sales in situations involving interstate transportation of goods. These clarifications may increase revenues by enhancing taxpayer compliance and by eliminating the need for expensive litigation to determine the proper allocation of receipts from sales of tangible personal property. Expenses for tax preparation and administrative fees may be reduced for the taxpayers and tax administrators by implementing additional rules pursuant to this statute.

Regulatory Flexibility Statement

The proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. The new subparagraphs are only intended to provide clarification as to when to allocate to New Jersey receipts from sales of tangible personal property. The reporting, recordkeeping and other compliance requirements in the applicable statutes are applied without regard to whether or not a particular taxpayer is a business employing more than 100 people. Any action explicitly to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act from the application of this amendment would not be in compliance with applicable statutes.

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

18:7-8.8 Scope of allocable receipts

(a) [Receipts]**Unless otherwise noted herein, receipts** from the following are allocable to New Jersey:

1. Sales of tangible personal property where shipments are made to points in New Jersey. Delivery of goods to a purchaser in this State is a shipment made to a point in New Jersey regardless of the F.O.B. point or the fact that the goods may subsequently be resold and trans-shipped to a point outside this State.

i. The sale of goods shipped to a New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

Example: Taxpayer, a manufacturer located outside of New Jersey, transports goods directly to a customer's location in New Jersey. Since possession of the goods is transferred in New Jersey, shipment is deemed to be in this State resulting in receipts allocable to this State.

ii. The sale of goods shipped to a non-New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

Example: Taxpayer, a manufacturer located outside of New Jersey, transports goods into New Jersey where such goods are picked up by a non-New Jersey customer or a customer's representative in New Jersey for further transportation outside of this State. Since possession of the goods passed between the taxpayer and its customer in New Jersey, the sale results in receipts allocable to New Jersey.

iii. The sale of goods shipped by a taxpayer from outside of New Jersey to a New Jersey customer by a common carrier results in a receipt allocable to New Jersey. The common carrier is deemed an agent of the seller regardless of the F.O.B. point.

Example: Taxpayer, a manufacturer located outside of New Jersey, transports goods by a common carrier to a New Jersey facility where the customer takes possession of the goods. Since the common carrier is deemed to be an agent of the taxpayer, the common carrier's transportation of the goods into the possession of the customer in New Jersey results in receipts allocable to New Jersey.

iv. The sale of goods shipped from outside of New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside of New Jersey results in receipts which are not allocable to New Jersey.

Example: Taxpayer, a non-New Jersey manufacturer, transports goods from outside of New Jersey to a New Jersey location by either a common carrier or a private transporter. The goods are picked up in New Jersey by a common carrier and transported further to a customer outside of New Jersey. Since the common carrier is deemed an agent of the seller regardless of the F.O.B. point, the shipment by the common carrier from a point in New Jersey to a point outside of New Jersey results in receipts not allocable to New Jersey.

2.-5. (No change.)

(a)

DIVISION OF TAXATION

Sales and Use Tax

Fabricator/Contractor Sales

Proposed Amendment: N.J.A.C. 18:24-5.11

Authorized By: John R. Baldwin, Director, Division of Taxation.

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

Proposal Number: PRN 1989-87.

Submit comments by March 23, 1989 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 18:24-5.11 will provide a definition of "value" for the purposes of use tax on property produced by a fabricator/contractor as the price at which items of the same kind are sold or, in appropriate circumstances, the cost of materials used in fabrication. Further, the amendment provides that there is no tax liability in New Jersey where fabricated property is delivered by the fabricator/contractor to a job site outside this State for installation.

Social Impact

The proposed amendment will codify the Division's long-standing administrative position regarding fabricator/contractor sales and use tax liability in transactions taking place within and outside New Jersey. Thus, the affected taxpayers and their advisors will be informed as to the requirements of the Sales and Use Tax Act and can arrange their affairs accordingly.

Economic Impact

Adoption of the proposed amendment to N.J.A.C. 18:24-5.11 will result in no change in sales and use tax revenue. After amendment, the rule will only reflect the Division's enforcement practice in this area over a long period of time.

Regulatory Flexibility Statement

The amendment applies to small businesses as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act are applied uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes.

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

18:24-5.11 Fabricator/contractor sale and installation of completed products; tax

(a) Where a fabricator/contractor sells his **or her** fabricated product, and as a part of that sale further agrees to install the product **at a location in this State**, he **or she** may not collect tax from his **or her** customer **for charges rendered in connection with the installation** if the installation of his **or her** product results in a capital improvement to real property. In such cases, the fabricator is, **however,** required to pay use tax directly to the [Sales Tax Bureau] **Division of Taxation** upon the value of his **or her** product **as hereinafter set forth.** The use tax shall be computed on:

1. The [value] **price** at which items of the same kind are offered for sale by him **or her**; or

2. If the fabricator/contractor makes no sales of items of the same kind, the tax shall be computed on [market value of such property] **the cost of all materials used in fabrication.**

(b) Where a fabricator/contractor sells his **or her** fabricated product, and as a part of that sale agrees to install the product **at a location in this State**, and such installation does not result in a capital improvement to real property (see [Section 5.7 of this Chapter] **N.J.A.C. 18:24-5.7**), he **or she** is required to pay use tax on the product installed, in the same manner as described in [subsection] (a) [of this Section] **above**, and is further required to collect the sales tax on that portion of his **or her** bill attributable to installation charges.

(c) Where a fabricator/contractor sells his or her fabricated product, and as a part of that sale agrees to install the product at a location outside this State, he or she is neither responsible for the payment of use tax as provided in (a) above nor for the collection of sales tax on installation charges as provided in (b) above.

Example: A structural steel fabricator purchases steel which is delivered to his facility in New Jersey. The steel is fabricated as provided in shop drawing specifications for on-site installation. The fabricated structural steel is then shipped to a job site located outside this State. Such fabricated steel is not subject to tax in this State.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION
Rules of Practice and Procedure of the Office of Cable Television
Proposed Readoption with Amendments: N.J.A.C. 14:17

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities).
Authority: N.J.S.A. 48:5A-10.
Proposal Number: PRN 1989-95.

A **public hearing** concerning the proposal will be held on:
Tuesday, March 21, 1989, at 10:00 A.M.
Board of Public Utilities
Hearing Room—10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit comments by March 23, 1989 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 14:17 expires on May 7, 1989. The Board of Public Utilities, Office of Cable Television, has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

Pursuant to the New Jersey Cable Television Act, specifically N.J.S.A. 48:5A-10, the Office of Cable Television (hereinafter "OCTV") is empowered to promulgate rules and regulations governing cable television companies operating in the State of New Jersey. Chapter 17 of Title 14 of the New Jersey Administrative Code contains the rules of practice and procedure of the Office of Cable Television. These rules are necessary to ensure orderly procedure before the Office and the Board of Public Utilities (hereinafter "Board").

OCTV proposes that Chapter 17 be readopted with certain amendments. These amendments fall into three categories, (1) technical changes to conform with the rules of practice and procedure before the Board of Public Utilities, N.J.A.C. 14:1, (2) substantive changes to conform with N.J.A.C. 14:1, and (3) additional substantive changes governing cable television.

Certain technical and/or clarifying amendments to N.J.A.C. 14:17-1.1, -2.1(b), -3.4, -5.5, and -13.1 are proposed. It is believed that these modifications are self-explanatory.

The OCTV also proposes to amend certain provisions to ensure consistency with the rules governing general practice before the Board. These revisions will avoid potential confusion as to whether Chapter 1 or Chapter 17 apply to proceedings before the Board in general, or the Office specifically. The current language concerning the use of radio, television, photographs and sketches would be amended. N.J.A.C. 14:17-1.9(b) through (d) would be deleted and replaced with revised subsections (b) through (g). The amendments provide for more liberal access to OCTV and Board proceedings than the rules currently in effect.

A proposed subsection would be added to N.J.A.C. 14:17-3.3, Ethical Conduct Required, as subsection (c), to prohibit ex parte communications. This would conform to the existing requirements of N.J.A.C. 14:1-3.3.

N.J.A.C. 14:17-4.3 would be amended to clarify the status of objectors in a proceeding and would conform to N.J.A.C. 14:1-4.3.

N.J.A.C. 14:17-5.3 is amended to require an original and 10 copies of each pleading rather than an original and three.

A new rule is proposed, to be designated as N.J.A.C. 14:17-9.5, to clarify the procedure concerning the denial of motions. This would conform with N.J.A.C. 14:1-8.5.

Another new rule is proposed specifically outlining sanctions for the failure of a person to appear at scheduled hearings. This would be designated as N.J.A.C. 14:17-12.11 and would conform to N.J.A.C 1:1-10.11.

The proposed amendments would make three additional substantive changes. First, a subsection would be added to require that notice be provided to each municipality when a petition to transfer Certificates o Approval is filed. This would be designated as N.J.A.C. 14:17-6.8(b) Currently petitions for authority to transfer capital stock, N.J.A.C 14:17-6.14, require municipal notification. The proposed amendmen would extend the requirement to the transfer of Certificates of Approval

A subsection at N.J.A.C. 14:17-6.9, Petitions for Renewal Certificat of Approval, would be added to clearly specify the information requirec in petitions to renew Certificates of Approval. The OCTV believes thi merely clarifies existing requirements.

Finally, N.J.A.C. 14:17-11.3 through 11.10 is proposed for deletion These sections concern the role of hearing examiners in contested case and the OCTV believes these sections no longer apply.

Social Impact

The readoption and the majority of the proposed changes do not impose substantive changes and assure the orderly practice and procedure before the Board and the OCTV. Most of the proposed amendments are technical or clarify existing requirements. The proposal to increase the number of filed pleadings helps to ensure efficient use of staff and resources. The proposed requirement that cable operators provide notice to municipalities they service of petitions to transfer certificates of approval will insure municipalities are aware of potential changes in the status of their cable operator.

Economic Impact

As the rules proposed for readoption with amendments are procedural, any costs involved in their operation are administrative in nature, such as filing fees, copying costs and the business costs inherent in the production of the necessary documentation. In a larger sense, these rules provide a system under which cable television operators may obtain economic benefit or loss, dependent upon the circumstances of their individual operations.

Regulatory Flexibility Statement

The proposed readoption does not impose any reporting, recordkeeping or compliance requirements on small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules to be readopted and the proposed amendments are procedural in nature and no New Jersey cable television operator appears to fall within the definition of small business. A regulatory flexibility analysis is, therefore, not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:17.

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

14:17-1.1 Scope or Rules

Except for contested case hearings which shall be conducted pursuant to the UAPR, N.J.A.C. 1:1, [These] **these** rules shall govern practice and procedure before the Office of Cable Television within the [Department] **Board** of Public Utilities **Commissioners** of the State of New Jersey, **unless otherwise ordered by the Board in any proceeding.**

14:17-1.9 Radio, television, photographs and sketches

(a) (No change.)

[(b) The taking of photographs, or the making of sketches of the hearing room or any person in it or the broadcasting of proceedings by radio or television shall not be permitted.

(c) Nothing herein contained shall be construed to limit the free access to all public hearings by duly accredited members of the press, who shall be provided suitable facilities for the performance of their duties in reporting the proceeding.

(d) Neither shall anything herein contained be construed to preclude the use of sound recording devices for the purpose of making the official transcript of the proceeding before the Board or Office by the reporter so designated for that purpose.]

(b) The use of cameras or recording devices, including still cameras, movie cameras, television cameras, tape recorders and stenotype machines (hereinafter referred to as "equipment"), in open meetings or

hearings conducted by the Board, Staff Hearing Examiners or a Commissioner is permitted.

(c) Any accredited member of a news media desiring to use such equipment shall first contact the Board's Office of Public Information to arrange for the set-up and removal of equipment so as not to interfere with the orderly conduct of the proceedings.

(d) No such equipment shall be placed on the counsel tables, witness stand or on the presiding officer's bench, without the approval of the presiding officer; equipment which would require the user to move about the room during the proceedings is prohibited. Moving about the meeting or hearing room in order to more advantageously use such equipment is prohibited, while the meeting or hearing is in session.

(e) Except for portable equipment which is used at an individual's seat in the audience, such equipment must be in place and ready for use prior to the start of the meeting or hearing or set-up during a recess thereof. Such equipment may be removed only at the conclusion of the meeting or hearing or during a recess. A pre-arranged recess for the set-up or removal of such equipment may be requested through the Office of Public Information or presiding officer.

(f) The Board or presiding officer may suspend the operation of all or part of this rule with respect to a particular hearing or meeting.

(g) The Board or the presiding officer may at any time limit or prohibit the use of any or all of such equipment in hearings or meetings where in the opinion of the Board or the presiding officer use of such equipment may obstruct the conduct of the hearing.

14:17-2.1 Amount of fees and charges

(a) (No change.)

(b) All other fees and charges which the Office has been empowered, authorized and required by law to charge and collect are set forth in N.J.S.A. 48:5A-1 et seq., [or Chapter 73, P.L. 1963] **N.J.S.A. 48:2-56 and N.J.S.A. 47:1A-1 et seq.**

14:17-3.3 Ethical conduct [required] **and ex parte communications**

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

(c) After the filing of a complaint or petition in a proceeding and prior to the issuance of a final order thereon, no parties to the proceeding, or their counsel, shall discuss the merits of such matter or proceeding with the Commissioners, or with the presiding officer involved unless reasonable notice is given to all parties who have appeared therein, to enable such parties to be present at the conference. When, after the filing of a complaint or petition and prior to the issuance of a final order thereon, letters are directed to the Board, or any member of its staff, regarding a formal proceeding, copies of such letters shall be mailed to all parties of record and proof of such service furnished upon request.

14:17-3.4 Former employees

Except with the written permission of the board, no [No] former employee shall represent any person or party in any matter pending at the date of his **or her** termination before the agency in which the employee held office or employment for a period of six months following his **or her** termination of employment.

14:17-4.3 Designation of other than parties

Persons opposing petitions or tariff schedules filed by cable television companies shall be styled "objectors" unless permitted to intervene. **Participation by "objectors" shall be limited to a statement of position under oath or affirmation which may be subject to cross-examination by the parties. Objectors shall not be entitled to notices of hearing and copies of pleadings and other documents as a matter of right.**

14:17-5.3 Number of copies

(a) Unless otherwise required by the Board or office, there shall be filed with the Board through the office for its own use an original and [three] **10** conformed copies of each pleading or other paper and amendment thereof.

(b) (No change.)

14:17-5.5 Amendments

The Office, **or the Board,** may in its discretion before or after the conclusion of the hearing, allow any pleadings to be amended or corrected or any [commission] **omission** therein to be supplied upon such terms as may be lawful and just, provided such amendment, correction or addition does not prejudice a substantial right of any party.

14:17-6.8 Petitions for approval of the transfer of certificates of approval

(a) (No change.)

(b) Proof of service of notice of the proposed transfer to the clerk of each municipality being served by the cable television company shall be included with the petition.

14:17-6.9 Petitions for renewal of certificate of approval

(a) (No change.)

(b) The petition shall also contain the information as required by the provisions of N.J.A.C. 14:17-6.6, Petitions for certificate of approval, and shall indicate that the petitioner has complied with N.J.A.C. 14:18-13, Renewals.

14:17-9.5 Denial of motions

All motions shall be deemed denied if not decided within 60 days after the filing thereof, whether referred to the Board or to be decided by the examiner. The Board or the hearing examiner may waive this rule on their own or for good cause shown by a party.

[14:17-11.3 Hearing examiner's report and recommendations

(a) Unless otherwise directed or permitted by the Board, the hearing examiner shall not later than 30 days after completion of all steps in the proceeding before him, certify to and file with the Secretary of the Board the record of the hearing and his report and recommendations which shall include his findings of fact and conclusions of law and his recommended decision and order.

(b) The hearing examiner's report and recommendations shall be served by the Secretary of the Board upon all parties of record.

(c) The provisions of this rule pertaining to the filing and service of the hearing examiner's report and recommendations shall not apply where the preparation and service of the report and recommendations have been waived by the parties.

14:17-11.4 Waiver of hearing examiner's report and recommendations

(a) Where all parties of record waive preparation and service of the hearing examiner's report and recommendations, the hearing examiner shall certify the entire record directly to the Board for its determination.

(b) However, if any party of record does not rule, then all parties of record shall be served with a copy of the report and recommendations in accordance with N.J.A.C. 14:1-12.3 and the rights of all parties with respect thereto under these rules shall be preserved.

14:17-11.5 Effect of failure to appear at hearing

(a) Unless a contrary intent has been expressed on the record, any party of record who fails to appear at the final day of hearing shall be deemed to have waived the preparation and service of the hearing examiner's report and recommendations to have agreed to the certification of the proceeding to the Board.

(b) Waiver by failure to appear shall have the same effect as a waiver and consent under N.J.A.C. 14:17-13.4.

14:17-11.6 Appeals to Board from rulings of hearing examiner during hearing

Rulings of the hearing examiner may not be appealed to the Board during the course of any hearing except in extraordinary circumstances when prompt decision by the Board is necessary to prevent detriment to the public interest.

14:17-11.7 Exceptions to the Board from the report and recommendations of the hearing examiner

(a) Any party objecting to the report and recommendations of the hearing examiner shall within 15 days after service of a copy of the hearing examiner's report and recommendations file four copies of a notice of exceptions thereto together with proof of service of such notice of exceptions on all parties of record.

(b) Within 15 days after the filing of the notice exceptions the party filing the same shall file and serve his exceptions which shall specify the particular statements or parts to which exception is taken shall

designate by special references the portions of the record relied upon in support of such exceptions shall set out specific findings of fact and conclusions of law proposed in lieu thereof and shall include any proposed additional findings of fact and conclusions of law. Exceptions to conclusions of law shall be specific; shall briefly cite the statutory provisions or principal authorities relied upon; shall set forth conclusions suggested in lieu thereof; and shall include any proposed additional conclusions. Exceptions to the recommended order shall specify the portions thereof excepted to, and shall set forth a form of order suggested in lieu of the recommended order. Supporting reasons for exceptions shall be submitted in the same document or in an accompanying brief. Six copies of such exceptions and briefs shall be filed with the Board through the Office, together with proof of service of such exceptions on all parties of record.

(c) Failure to file a notice of exception or exceptions within the time allowed shall constitute a waiver of all objections to the hearing examiner's report and recommendations. Unless permitted by the Board any matter of record not included in the exceptions filed as provided in this rule may not thereafter be objected to before the Board upon brief or oral argument or upon application for rehearing and any matter of record not included in such exceptions shall be deemed waived. Exceptions to the hearing examiner's report and recommendations based upon admission or exclusion of evidence not objected to at the time of the hearing examiner's ruling was made will be unavailing unless permitted by the Board.

(d) If exceptions to the hearing examiner's report and recommendations and accompanying briefs have been filed and served, other parties of record may file an answer thereto and supporting brief within 15 days of service of the exceptions. The number of copies of the answer and brief to be filed with the Board, through the Office, the manner of service, and filing of proof of service shall conform to the provisions of subsection (b) of this Section.

(e) The exceptions and answer thereto, if any, will be disposed of by the Board on the exceptions, answers and briefs filed unless the Board in its discretion requires or permits oral argument, in which case the Board will schedule the matter for argument before it.

14:17-11.8 Review of hearing examiner's report and recommendations by the Board on its own motion or by recommendations of the Director

The Board may institute on its own motion or by recommendation of the Director a review of any aspect of the hearing examiner's report and recommendations and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

14:17-11.9 Hearing examiner's report and recommendations does not automatically become the order or decision of Board

(a) The report and recommendations of the hearing examiner will not become an order or decision of the Board without affirmative action.

(b) The Board will either adopt, reject or modify the report and recommendations.

(c) If there are no exceptions to the report and recommendations and the Board proposes to reject or modify the report and recommendations then the provisions of N.J.A.C. 14:17-12.9 are applicable.

14:17-11.10 Unavailability of hearing examiner

If a hearing examiner becomes unavailable to the Board, the Board or the Office with the approval of the Board will either designate another qualified officer to serve in his place, who shall read the record theretofore made, or will cause the matter to be certified to it, or take such other action as may be deemed appropriate, giving notice to the parties or their attorneys of record.]

14:17-12.11 Sanctions; failure to appear; adjournment; repeated violations

(a) If without just excuse or because of failure to give reasonable attention to the matter no appearance is made on behalf of a party on the day of a hearing, the Board may order one or more of the following:

1. Payment by the delinquent attorney or party of all of the Board's costs associated with the hearing;

2. The dismissal of the petition or other pleadings as appropriate and the entering of a decision or order by default; or

3. Such other action as the Board deems appropriate.

(b) If without just excuse or because of failure to give reasonable attention an application is made for an adjournment on the day of hearing, the Board or presiding officer may dismiss or grant the application or take such other action as it deems appropriate. If the hearing is continued, the Board may impose such other sanctions as provided by (a) above.

(c) If any attorney or party is repeatedly delinquent in appearances before the Board, such conduct will be deemed unacceptable and the Board shall take appropriate disciplinary action consistent with its rules and regulations; but with respect to attorneys, the Rules Governing the Courts of the State of New Jersey 1:20 et seq. shall be exclusively applicable.

14:17-13.1 Purposes

(a) (No change.)

(b) Prehearing **or pre-transmittal** conferences of parties or their attorneys may be held to expedite the orderly conduct and disposition of any hearing, and at such conferences there may be considered, in addition to the matters set forth in [Subsection] (a) [of this Section] **above** the possibility of the following:

1.-5. (No change.)

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program

Adopted Amendments: N.J.A.C. 2:32-2.2, 2.3, 2.10, 2.11, 2.13, 2.20, 2.22, 2.27 and 2.28

Adopted Repeals: N.J.A.C. 2:32-2.29, 2.30 and 2.33

Proposed: December 5, 1988 at 20 N.J.R. 2952(a).
Adopted: January 18, 1989 by the Sire Stakes Board of Trustees, and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: January 19, 1989 as R.1989 d.95, **without change.**

Authority: N.J.S.A. 5:5-91.

Effective Date: February 21, 1989.
Expiration Date: June 1, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 2. NEW JERSEY SIRE STAKES CONDITIONS

2:32-2.1 (No change.)

2:32-2.2 Qualifications for New Jersey Sire Stakes

(a) (No change.)

(b) A foal conceived by semen which is frozen, desiccated, transported off the premises where it is produced, or not implanted on the same day it is collected, or by embryo transplant, is not eligible for nomination to the New Jersey Sire Stakes Program.

2:32-2.3 Registration of stallions

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

(d) The fee for annual registration of a stallion shall be due on or before December 1 of the approaching breeding season and December 1 for new registration. The fee must accompany this registration.

1. The following fees shall be applicable:

i. $500.00 if the stud fee is under $1,000, private treaty, or free.

ii. $750.00 if the stud fee is $1,000 but under $10,000.

iii. $1,000 if the stud fee is $10,000 or higher.

2. (No change.)

(e)-(f) (No change.)

(g) The registration makes the foals of the stallion eligible to be nominated to the following:

1. Charles I. Smith Trotting Classic (Open and Filly Division);

2. Harold R. Dancer Memorial Trot (foals of participating stallions only) (Open and Filly Division);

3. Lou Babic Two-Year-Old Pace (Open and Filly Division);

4.-8. (No change.)

9. New Jersey Sire Stakes (Fair and Pari-Mutuel); and

10. New Jersey Yearling Show;

(h) (No change.)

2:32-2.4 through 2:32-2.9 (No change.)

2:32-2.10 Sustaining fees

The sustaining fee schedule will be as follows:

PARI-MUTUEL DIVISION

Age	First Sustaining Fee	Second Sustaining Fee
2	$300.00 (Feb. 15)	$500.00 (Apr. 15)
3	$350.00 (Feb. 15)	$600.00 (Apr. 15)

FAIR DIVISION

Age	First Sustaining Fee	Second Sustaining Fee
2	$100.00 (Jan. 15)	$150.00 (Mar. 15)
3	$100.00 (Jan. 15)	$150.00 (Mar. 15)

2:32-2.11 Payment dates

(a) In the Pari-Mutuel Division, the first sustaining payment on a two- or three-year-old must be made on or before February 15 of a year and the second sustaining payment on a two- or three-year-old must be made on or before April 15 of a year in order to remain eligible in that year.

(b) In the Fair Division, the first sustaining payment of a two- or three-year-old must be made on or before January 15 of a year and the second sustaining payment on a two- or three-year-old must be made on or before March 15 of a year in order to remain eligible in that year. In the event that the 15th day of the aforementioned month falls on a Saturday, Sunday, or holiday, the payment must be postmarked on or before the next business day following the 15th of that month.

2:32-2.12 (No change.)

2:32-2.13 Dishonored checks

An individual whose check for a sustaining payment, nominating payment, or starting fee is dishonored by the bank will be turned over to the New Jersey Racing Commission for appropriate action and the horse or horses will be immediately declared ineligible for all future Sire Stakes events until the check is made good. A $50.00 administrative fee must be paid for each dishonored check. After an individual has issued more than one dishonored check, all future payments must be made by certified check or money order.

2:32-2.14 through 2.19 (No change.)

2:32-2.20 Starting fees

Starting fees will be added to the basic purse only in Fair and Pari-Mutuel series races. Starting fees will be:

Pari-Mutuel Division		Fair Division	
2 year olds	$500.00	2 year olds	$75.00
3 year olds	$500.00	3 year olds	$75.00

2:32-2.21 (No change.)

2:32-2.22 Qualifying standards

(a) All starters in the New Jersey Sire Stakes Pari-Mutuel Division must meet the following qualifying standards and be eligible at time of entry.

1. (No change.)

2. The New Jersey Sire Stakes qualifying times at the Pari-mutuel tracks will be as follows:

	One Mile Track	5/8 Mile Track	1/2 Mile Track
Two-Year-Old Trot	2:06	2:07	2:08
Three-Year-Old Trot	2:03	2:04	2:05
Two-Year-Old Pace	2:02	2:03	2:04
Three-Year-Old Pace	2:01	2:02	2:03

NOTE: When racing at the mile track, two seconds are allowed off the half mile, but when racing on a 1/2 mile track, two seconds are subtracted.

3.-4. (No change.)

(b) All starters in the New Jersey Sire Stakes Fair Division shall have raced within 30 days of the race in which they have been entered. A three-year-old shall show a satisfactory racing line in one of their last two starts. A two-year-old shall show a satisfactory racing line in one of their last three starts. A satisfactory racing line is defined as a qualifying or racing line in the following times or better with allowances for track conditions.

	Trotters	Pacers
Two-Year-Olds	2:12	2:10
Three-Year-Olds	2:10	2:08

1. In the event a horse competes in an uncharted race or races, he will be eligible to race in the Fair Program provided he has a satisfactory charted line within 30 days.

2. Horses may be placed on the stewards list for subsequent poor performance.

2:32-2.23 through 2:32-2.26 (No change.)

2:32-2.27 Final races

(a) There will be a two- and three-year-old "Final" race in each Pari-mutuel Division at the Pari-mutuel raceways as scheduled by the New Jersey Sire Stakes Board of Trustees. There will be a minimum $10,000 Fair "Final" race in each Division for two- and three-year-olds. Consolation races in the Pari-mutuel program may be scheduled at the option of the tracks and shall be conducted under track rules. Horses eligible to race in the final events must race in the finals and not in the consolation events.

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

(d) In the event of less than five starters, the points shall be awarded in the same fashion as the purse breakdown with less than five starters, as in N.J.A.C. 2:32-2.21. In the event that a series is contested with less than three preliminary legs, additional points will be awarded as follows: sixth place (four points), seventh place (three points), eighth place (two points), and ninth place (one point).

(e) through (i) (No change.)

(j) Total points accumulated towards Final Race eligibility in the Pari-mutuel Division shall include only Pari-mutuel Division points. Only Fair Division race points count toward the Fair Final eligibility.

2:32-2.28 (No change in text.)

2:32-2.29 (No change in text.)

2:32-2.30 (No change in text.)

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Licensing and Degree Approval Standards

Adopted New Rules: N.J.A.C. 9:1

Proposed: December 5, 1988 at 20 N.J.R. 2965(a).
Adopted: January 26, 1989 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: January 27, 1989 as R.1989 d.118, **without change.**

Authority: N.J.S.A. 18A:3-14e, m, and n.

Effective Date: February 21, 1989.
Expiration Date: February 21, 1994.

Summary of Public Comments and Agency Responses:

There was one comment received in response to the proposed readoption. The comment, raised by a county college, raised an issue regarding N.J.A.C. 9:1-1.6(c). In particular, the college stated that the approval of new program offerings at a branch campus by the Department of Higher Education when that program has previously been approved at the college's main campus is overly restrictive and should be dropped.

The Board did not agree to drop the above requirement but stated that such reviews would be simplified and not as detailed as reviews of such programs offered on the main campus.

The rules proposed for readoption with amendments expired on January 17, 1989. Pursuant to N.J.A.C. 1:30-4.4(f), those rules are adopted herein as new rules.

Full text of the adopted new rules proposed for readoption appears in the New Jersey Administrative Code at N.J.A.C. 9:1.

Full text of the amendments to the adopted new rules proposed for readoption follows.

SUBCHAPTER 1. RULES FOR NEW JERSEY INSTITUTIONS OF HIGHER EDUCATION

9:1-1.1 Authority, purpose and scope

(a) New Jersey statutes provide that corporations furnishing instruction or learning leading to a diploma or degree shall obtain from the Board of Higher Education "a license to carry on the business under such rules as the Board of Higher Education may prescribe" (see N.J.S.A. 18A:68-3). The statutes further require that corporations submit and obtain approval of the basis and conditions of "any course or courses of study" leading to "the grade of a degree" prior to the conferring of such a degree (see N.J.S.A. 18A:68-6). Independent institutions whose charters antedate 1887 are exempt from approval of the basis or conditions for awarding the degree as stipulated in N.J.S.A. 18A:68-6.

(b) To assist institutions seeking to fulfill the necessary requirements outlined in N.J.S.A. 18A:68-3 and 18A:68-6, and to aid the Department of Higher Education and the Board of Higher Education in making judgments concerning institutions, the Board has from time to time set forth rules pertaining to licensure and approval. These newly revised rules have been drafted to serve the above mentioned purpose. These rules were reviewed by the Licensure and Approval Advisory Board and by the presidents of New Jersey institutions of higher education prior to their adoption by the Board of Higher Education. In developing and administering the rules for licensure, the Board and Department are mindful of the responsibilities vested in the trustees of individual institutions and of the institutional autonomy that is characteristic of American higher education. These rules delineate the Board's expectations for degree granting institutions of higher education; in the case of institutions already licensed and accredited, they do not contemplate that, in the absence of compelling reason, the Board will substitute its review processes (N.J.A.C. 9:1-2.1) for those of the institutions themselves or for those of the established accrediting agencies.

(c) The following assumptions governed the drafting of these regulations and serve to define their scope and intention:

1. The rules in this chapter shall apply to all colleges in New Jersey generally except where other statutes and Board of Higher Education rules exist that supplement these rules or more specifically govern the situation (other rules are defined as written rules, standards, or policy statements duly approved by the Board of Higher Education, such as "Regulations Governing County Community Colleges;" "State College Administrative Code," and so forth).

2. While it is desirable that rules be written to permit as much institutional flexibility as possible, their primary purpose is to protect the public interest when institutional good will, competence or knowledge are absent.

3. Although the primary purpose of the rules is to assure that minimum standards are met, they should also promote those facets of management that lead to institutional good health, productivity, and excellence beyond the minimum.

4. The rules are intended to make the applications of the law specific and have the effect of law (for example, "Copies of all statements of purpose shall be filed with the Chancellor. . . .").

5. The standards set forth in these rules specify desirable and acceptable practices which further implement the good intentions of the law but are not required in a specific form so that institutional flexibility may be maintained (for example, "Statements of institutional purpose should define the educational climate to be established. . . .").

6. While the ultimate responsibility for the enforcement of the rules must by law rest with the Chancellor and the Board of Higher Education, the Chancellor and the Board may choose to look to the educational community for the sources of good practice in academic and financial management that have already won peer group approval.

7. Because of changes in peer group emphasis on the details of good management and in order to permit flexibility on the part of the State when administering the rules (and on the part of institutions governed by the rules), where appropriate, the rules shall use

language such as "adequate," "suitable," "proper," "desirable," and so forth, to describe the end sought.

8. Specific interpretations of such words as "adequate," and so forth, are to be determined by the Chancellor and ultimately the Board of Higher Education in accord with existing standards of good peer group practice; and

9. Where peer group practice has evolved variations in desired requirements because of the nature of the degree offered, as in the case of faculty qualifications for associate level versus baccalaureate level degrees, the rules and standards therein shall so specify.

(d) In addition to those provisions of Title 18 developed in these rules and the standards therein, the Board of Higher Education is further charged by statute with special responsibilities for the public institutions. Other documents, such as the county community college regulations and standards and policy statements concerning the State colleges and the State university should be consulted.

9:1-1.2 Definitions

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

. . .

"College" means an institution of higher education which offers instruction beyond the 12th grade level, has an independent board of trustees and whose programs satisfy the requirements for a degree at the associate, baccalaureate, and/or graduate level, and, with the exception of those institutions which have as their major mission the preparation of individuals for religious vocation, offer a range of degree programs. It has a faculty whose duties include some combination of the instruction of students and involvement in scholarship and research. A college has policies and procedures that encourage the academic officers and the faculty to exercise their full responsibility for the academic direction of the institution. One indication of this type of collegiality is a system of tenure or a system of long-term contracts for the full-time faculty. A junior/community college or county college is an institution of higher education which offers the associate degree. A senior college offers degrees up to the baccalaureate level and/or offers graduate and professional degrees.

. . .

"Extension center" means a physical facility located at a place other than the institution's principal campus with no complete credit-bearing certificate, diploma, or degree programs but more than 15 courses for credit or more than 350 course enrollments for credit in any academic year. The establishment of an extension center requires approval by the Chancellor of Higher Education.

. . .

"Full-time faculty member" is one who is appointed as such and who occupies a full-time faculty position with academic rank and whose primary employment is directly related to teaching, research, and/or other aspects of the educational programs of institutions.

. . .

"Proprietary institution" means a postsecondary institution which is operated for profit.

"School" is ordinarily a major subdivision of a college or university, and is organized to carry out instruction and/or research in related academic and/or professional fields.

. . .

Renumber existing 9:1-1.2 through 1.5 as 1.3 through 1.6 (No change in text.)

9:1-1.7 Off-campus offerings

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

(c) Upon receipt of a request for approval of an Extension Center or a Branch Campus, the Department of Higher Education shall provide to all New Jersey institutions of higher education a summary of the request to enable the institutions to inform the Department as to how they would be affected by the proposed Extension Center or Branch Campus. Extension Centers and Branch Campuses will be approved for a period of up to five years for those institutions which are not Middle States accredited; reapproval at the end of this period will be considered following the submission by the institution of a new request for approval. Reapproval of branch campuses and extension centers for Middle States accredited institutions is contingent upon a positive evaluation of these sites at scheduled accreditation visits conducted by the Middle States team and the Department of Higher Education representatives. In every instance when a Board of Higher Education approved degree program, not previously offered at a particular branch campus, is contemplated as an addition to branch campus offerings, the procedures identified in (b) above and this subsection shall apply and Board of Higher Education approval is required. An institution proposing to offer at a Branch Campus a degree program which has not been previously offered at the main campus shall submit the program for full Departmental review and Board of Higher Education approval required for any new program.

(d) Off-campus sites at which credit courses are offered by a college in conjunction with or under contract with a non-collegiate organization must be approved by the Chancellor regardless of the size or scope of the effort. If a complete degree, certificate, or diploma program is offered under such an arrangement, it must be approved by the Board of Higher Education under the same procedure as holds for any Branch Campus. The approval process will include a review of the college's adherence to the following standards:

1. A college may grant credit only at the level and only in those areas for which it has degree granting authority; for example, a college may not award post-baccalaureate credit if it does not have authority to award graduate degrees, nor may it offer graduate or post-baccalaureate courses in a field (for example, psychology) if such offerings are not acceptable in an authorized graduate degree program at that college.

2. (No change.)

3. The courses shall be clearly and publicly identified as belonging to the college; that is, both parties shall take appropriate steps to ensure that the public understands that the college assumes responsibility for the course.

4. In determining the amount of credit to be granted for participation in a course offered by a contracting agency, the college shall adhere to the minimum definition of the credit hour as defined in N.J.A.C. 9:1-1.2. No more than 25 percent of a degree program shall be satisfied through such courses, except in the cases of arrangements between colleges and hospital-based programs in the health professions in which the clinical component of the program is provided by the hospital school. All course requirements, with respect to student attendance, amount of class time, amount of outside work, standards for performance, and prerequisites, shall be the same as for courses offered on campus. No more than one credit hour shall be granted for an experience compressed into one week's time or less.

5.-8. (No change.)

(e) All institutions shall submit reports at the Chancellor's request on each off-campus site.

(f) For the purposes of State fiscal support of off-campus instruction to eligible institutions where such support is provided for in State appropriations, only students enrolled at reported off-campus locations or formally approved Extension Centers and Branch Campuses may be included in FTE enrollments for funding purposes.

(g) The Chancellor should be notified at the time an institution formally determines that there is no longer a need for approved off-campus sites and discontinues offerings at that site. Discontinuance of a branch campus requires Board of Higher Education approval.

9:1-1.8 Faculty

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

(e) Newly appointed faculty members in a two-year institution offering the associate degree should have earned the master's degree or the equivalent in the field of specialization in which they are teaching or must present unassailable compensating qualifications. A significant proportion of the faculty should have completed graduate work beyond the master's degree in an accredited graduate school.

(f) (No change.)

(g) Faculty members should be engaged in continuing professional study, publication, and research appropriate to their responsibilities.

Renumber existing 9:1-1.8 as 9:1-1.9 (No change in text.)

9:1-1.10 Students and student services
(a)-(b) (No change.)
(c) Each institution shall maintain accurate records of each individual student's academic progress.
(d) (No change.)
Renumber existing 9:1-1.10 through 1.12 as 1.11 through 1.13 (No change in text.)

9:1-2.2 Licensure and Approval Advisory Board
(a) The Licensure and Approval Advisory Board shall consist of a representative of Rutgers, The State University, designated by the President of the University; a representative of the New Jersey Institute of Technology, designated by the NJIT President; a representative of the University of Medicine and Dentistry of New Jersey, designated by the President of the University; two representatives of the State Colleges, designated by the New Jersey State College Governing Boards Association; two representatives of the County Colleges, designated by the Council of County Colleges; three representatives of the Association of Independent Colleges and Universities in New Jersey, designated by the Association; three persons representative of the independent colleges, not members of the aforesaid Association selected as hereinafter provided; and one representative of the Department of Higher Education, designated by the Chancellor serving as an ex officio non-voting member.
(b)-(e) (No change.)

SUBCHAPTER 4. RULES FOR GRADUATE PROGRAMS

9:1-4.1 through 4.5 (No change.)

9:1-4.6 Post-master's programs
(a) (No change.)
(b) All post-master's programs shall possess a definite philosophy, purpose, design, and sequence, and shall be self-contained and terminal in nature.
(c) Post-master's programs shall perform a definable function and not be merely a continuation of courses beyond the master's degree. A student admitted to a specialist's certificate program in education must have a master's degree in the same field in which the certificate is being offered. Students who possess a master's degree in an unrelated field will be required to complete preliminary coursework or demonstrate equivalent knowledge acquired through work experience.
(d)-(e) (No change.)

9:1-5.2 Authorized degree
(a) The degree authorized for proprietary institutions shall be the Associate in Applied Science degree as defined in Standards Governing Community Colleges, specifically N.J.A.C. 9:4-1.6.
(b) Certificate and diploma programs at proprietary institutions shall be eligible for Board of Higher Education approval only in those instances where all of the courses comprising the certificate or diploma program are currently being offered by the institution in a Board approved Associate in Applied Science degree program. Certificate and diploma programs shall be designed in accordance with N.J.A.C. 9:4-1.6.

9:1-5.3 Reassessment of licensure and approval
In the event of a change in the ownership of a proprietary institution, a reassessment of the licensure and approval shall be made within six months to one year's time after the change.

9:1-6.3 Department of Higher Education review procedures
(a) Petitions from out-of-state institutions invited by in-state parties to offer educational services to a specific and delimited constituency in New Jersey:
1.-8. (No change.)
(b) (No change.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Approved Colleges

Adopted Amendment: N.J.A.C. 13:44-1.1

Proposed: November 7, 1988 at 20 N.J.R. 2680(b).
Adopted: January 25, 1989 by the Board of Veterinary Medical Examiners, Jean M. Buist, Acting President.
Filed: January 26, 1989 as R.1989 d.111, **without change.**

Authority: N.J.S.A. 45:16-3.

Effective Date: February 21, 1989.
Expiration Date: August 20, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:44-1.1 Approved colleges; doctoral degree
(a) A veterinary college or university approved by the board is a veterinary college or university accredited by the American Veterinary Medical Association (A.V.M.A.).
(b) An applicant for examination shall be a graduate of an approved veterinary college or university pursuant to N.J.S.A. 45:16-7 and shall have received a doctoral degree in veterinary medicine from that institution.

(b)

OFFICE OF WEIGHTS AND MEASURES

Scales, Instruments and Devices; Weights and Measures

Adopted New Rules: N.J.A.C. 13:47B

Proposed: November 21, 1988 at 20 N.J.R. 2856(a).
Adopted: January 23, 1989 by Thomas W. Kelly, State Superintendent, Office of Weights and Measures.
Filed: January 26, 1989 as R.1989 d.112, **without change.**

Authority: N.J.S.A. 51:1-61.

Effective Date: February 21, 1989.
Expiration Date: February 21, 1994.

Summary of Public Comments and Agency Responses:
No comments received.
N.J.A.C. 13:47B expired on January 4, 1989. Pursuant to N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendments are herein adopted as new rules.

Full text of the new rules as proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:47B.

Full text of the proposed amendments to the new rules proposed for readoption follows.

13:47B-1.24 Registry for security sealing devices
(a)-(f) (No change.)
(g) Any licensed repairman who shall issue a false certificate of inspection and test of a commercial weight or measure or weighing or measuring device or who shall delegate his or her authority or registry mark, to any person, shall be subject to the revocation or suspension of his or her license as provided in N.J.S.A. 51:1-122, including a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
(h) (No change.)

(a)

DIVISION OF CRIMINAL JUSTICE
Office of the State Medical Examiner
Adopted Amendments: N.J.A.C. 13:49
Adopted New Rules: N.J.A.C. 13:49-1.6, 1.7 and 6.2

Proposed: November 21, 1988 at 20 N.J.R. 2856(b).
Adopted: January 24, 1989 by Robert Goode, M.D., State Medical Examiner.
Filed: January 26, 1989 as R.1989 d.110, **without change.**

Authority: N.J.S.A. 52:17B-80.

Effective Date: February 21, 1989.
Expiration Date: December 16, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: (Monmouth County Prosecutors Office) Some counties do not have sufficient resources to send a medical examiner to the scene of discovery of partly or completely skeletonized unidentified bodies, as required by new section N.J.A.C. 13:49-1.7.

RESPONSE: N.J.S.A. 52:17B-87c requires that the medical examiner respond to the location at which a dead body has been discovered ". . . immediately upon receipt of such notification . . ." in cases of death upon suspicious or unusual circumstances. This requirement would clearly pertain to the discovery of a partly or completely skeletonized body or remains. Accordingly, this requirement is not one which may be lessened by regulation, nor should it be.

COMMENT: (Morris County Medical Examiner) Providing for release of the medical examiner's report only through the criminal discovery process where there is an ongoing criminal investigation of a death places the medical examiner's office in a subordinate position to that of the prosecutor and impinges on the professional independence of the medical examiner. Alternatively, the release of medical examiner reports in such circumstances might be controlled by the Attorney General where it is necessary to maintain secrecy in order to incriminate a suspect of the crime.

RESPONSE: The county medical examiner is appropriately subordinate to the county prosecutor in criminal investigatory matters, which an autopsy in a homicide would clearly constitute, as it is well established that the county prosecutor is the chief law enforcement officer of the county.

COMMENT: Rabbi Yakov M. Dombroff of the Agudath Israel religious organization believes that several of the proposed rules establishing procedures concerning the resolution of objections to autopsies on religious grounds improve the statutes addressing this issue. Concerning N.J.A.C. 13:49-1.6(f), however, he recommends changing this provision to allow the attendance of a family representative at the autopsy unless the medical examiner believes that such presence would cause and/or create undue disruption and interference with the autopsy. At present, such attendance is allowed at the option of the medical examiner.

RESPONSE: The medical examiner's primary responsibility is to the public which he or she serves. As such, the decision to allow attendance by non-medical examiner office personnel should remain completely within the discretion of the medical examiner. As it may foreseeably interfere with an autopsy, especially where there may be time and/or space constraints, it would be unduly burdensome to require the medical examiner to articulate why an observer should properly be excluded from the autopsy.

COMMENT: (Atlantic County Medical Examiner's Office) The requirement that the State Medical Examiner's Office review all cases of "non-skeletal unrecognizable bodies and recognizable but unidentified deceased" prior to burial contained in N.J.A.C. 13:49-1.7(h) will place an unnecessary burden on families, funeral directors, and county medical examiners without a corresponding benefit. Further, an authorized member of the State Medical Examiner's Office may not be readily available at all times to accomplish this review. Changing the language of this provision to require this review only in cases of "non-skeletal, unrecognizable, unidentified deceased" which would eliminate a large number of cases in which the decedent is unrecognizable but readily identifiable, such as in the case of severely burned victims in a house fire or decomposed bodies found in a secured residence would be beneficial.

RESPONSE: This provision is an appropriate and proper means by which the State Medical Examiner exercises his supervisory role with respect to county medical examiners. Further, there is at all times an authorized representative of the State Medical Examiner's office available to perform this review, including telephonically where a telephonic review is appropriate.

Full text of the adoption follows.

CHAPTER 49
STATE MEDICAL EXAMINER

SUBCHAPTER 1. AUTOPSIES

13:49-1.1 Mandatory autopsies

(a) In the absence of an objection based on the religious beliefs of the decedent, autopsies shall be performed in all cases of human death occurring in the following circumstances:

1.-3. (No change.)

4. All deaths of inmates of jail, prison, or penitentiary and all prisoners and suspects who were in the process of being detained, arrested or transported by guards, police and law enforcement or court officers unless the suspected cause of death is a known condition for which the inmate, prisoner or suspect is hospitalized and being treated at the time of death, and the medical examiner's investigation, review of hospital records, and examination of the decedent's body permit him or her to determine the cause of death beyond a reasonable doubt without an autopsy, and no other issues of public interest compel his or her conclusion that an autopsy is necessary.

5. (No change.)

6. In all cases wherein the State Medical Examiner, the Attorney General, any assignment judge of the Superior Court, or the county prosecutor (of the county wherein the injury occurred or where the decedent expired) requests an autopsy.

13:49-1.2 Discretionary autopsies

(a) In the absence of an objection based on the religious beliefs of the decedent, autopsies may be performed when it appears in the discretion of the county medical examiner to be in the public interest to do so in all cases of human deaths occurring in the following circumstances:

1. All cases of violent deaths which are apparently suicidal or accidental, including but not limited to deaths due to thermal, chemical, electrical or radiation injury, except as enumerated in N.J.A.C. 13:49-1.1, Mandatory autopsies;

2. (No change.)

3. All deaths of suspects in police custody and inmates of a jail, penitentiary or prison who are hospitalized and being treated at the time of death and the medical examiner's investigation, review of hospital records and examination of decedent's body reveal an issue of public interest which compels his or her conclusion that an autopsy is necessary, and deaths of inmates occurring in institutions maintained in whole or in part at the expense of the State or county when the inmate was not hospitalized therein for organic disease;

4.-5. (No change.)

13:49-1.3 Jurisdiction between counties

(a) When the medical examiner of the county wherein the death occurred determines that the incident which is suspected of being the cause of death has occurred in a New Jersey county other than his or her own, he or she may transfer jurisdiction to that county examiner immediately for the continuance of the investigation. Any county medical examiner to whom jurisdiction is transferred pursuant to this section shall immediately take charge of the continuance of the investigation and shall perform any examinations, autopsies or other functions required by the State Medical Examiner Act.

(b) Whenever any county medical examiner office has been notified of a death, that office shall take the name and address of the decedent, if known, the time of notification, time of death, time of onset of illness or injury if known, or time found, and the name and station of the person reporting the death.

1. He or she shall then determine jurisdiction, and either report the death properly to the medical examiner of the county wherein the death occurred, if necessary; or retain jurisdiction and complete the investigation, if applicable; or transfer jurisdiction, if required.

(c) (No change.)

13:49-1.4 Armed forces aircraft victims

(a) Because of mandatory regulations of the United States Armed Services concerning autopsies of military personnel killed in military aircraft accidents and the procedure for such examinations, it is desirable that autopsies in such cases be performed where feasible by pathologists who are members of or employed by the armed services.

(b) The county medical examiner, or such other person designated or approved by the State Medical Examiner to perform autopsies, is therefore authorized to allow transportation of bodies of armed forces personnel killed in military aircraft accidents in territory which is within the county's jurisdiction to facilities designated by either the Surgeon General or other authorized member of the United States military services for such autopsy.

(c) The county medical examiner shall endeavor to obtain a copy of the report of the findings of such autopsy from the military officer in charge of same in order that a proper death certificate may be issued.

13:49-1.5 Medical examiner autopsies

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

(f) Microscopic examination shall be conducted in the following circumstances:

1. In all cases of infant death;

2. Whenever an autopsy including toxicological testing fails to disclose a cause of death;

3. When the age of an injury requires further evaluation;

4. Whenever indicated by the circumstances of the death; and

5. Whenever else it is deemed necessary at the discretion of the medical examiner.

(g) The slides from microscopic examinations pursuant to (f) above shall be retained permanently, properly labeled with medical examiner case number.

(h) (No change in text.)

13:49-1.6 Objections to autopsy on religious grounds

(a) When the medical examiner determines that an autopsy is a compelling public necessity, as defined by N.J.S.A. 52:17B-88.1a(1) through (4), but the circumstances of the death or the appearance or personal effects of the decedent indicate an obvious reason to believe that it would have been against the religious beliefs of the decedent to be autopsied, or a member of the decedent's immediate family, or, in the absence thereof, a friend of the deceased (as defined by N.J.S.A. 52:17B-88.1b), has objected to the autopsy, then the medical examiner shall proceed as follows:

1. If the medical examiner has obvious reason to believe that it is against the decedent's religious beliefs, and a member of the decedent's immediate family, or, in the absence thereof, a friend of the deceased, does not raise the religious objection, then the medical examiner shall request a judge of the Superior Court to appoint a representative to act on behalf of the decedent and shall postpone the autopsy for 48 hours.

2. If a member of the decedent's family, or, in the absence thereof, a friend of the deceased, objects because the procedure is contrary to the decedent's religious beliefs, the medical examiner shall postpone the autopsy for 48 hours.

3. After making the decision to postpone the autopsy, the medical examiner shall reevaluate all of the facts, seek any necessary additional information, and examine the body and perform any examinations that do not invade the body, including, but not limited to, external examinations, photography, X-rays, laser examination, computerized tomography, and magnetic resonance.

4. At the conclusion of any procedures set forth in (a)3 above, the medical examiner shall reconsider whether the autopsy is a compelling public necessity, as defined by N.J.S.A. 52:17B-88.1a(1) through (4). If the medical examiner concludes that the autopsy constitutes a compelling public necessity, he or she shall notify the objecting party, shall advise the party of the party's right to institute an action in the Superior Court to determine the propriety of the autopsy, and, if any court proceeding is pending, shall notify the Superior Court judge that the autopsy constitutes a compelling public necessity. If at the end of this evaluation the medical examiner concludes that the autopsy is not a compelling public necessity, pursuant to N.J.S.A. 52:17B-88.1a(1) through (4), and that there are sufficient facts to complete a competent death certificate and to satisfy the forensic needs of the investigation, he or she shall issue a death certificate and may release the body for burial.

5. Notwithstanding the provisions of this subsection, the medical examiner may make *ex parte* application to the judge to dispense with the waiting period if the medical examiner determines that any compelling necessity exists, as defined by N.J.S.A. 52:17B-88.1a(1), (2), (3) or (4), and concludes that the delay may prejudice the accuracy of the autopsy, and makes a good faith effort to notify any court-appointed representative or objecting family member or friend.

(b) The waiting period of 48 hours shall begin upon earliest notice by the objecting party or court-appointed party that an objection to autopsy exists based on the religious beliefs of the decedent, even prior to the transfer of documentary evidence to that effect. The progress of the proceedings shall be recorded on forms provided by the State Medical Examiner Office for that purpose. If at the end of 48 hours the objecting party has not provided to the medical examiner documentary evidence or a sworn statement or affidavit that the autopsy is contrary to the decedent's religious beliefs, or the objecting party has not instituted an action in the Superior Court to determine the propriety of the autopsy, or the court grants permission to conduct the autopsy, the medical examiner may proceed with the autopsy.

(c) In any other instance of compelling public necessity, pursuant to N.J.S.A. 52:17B-88.4, the medical examiner may apply to a Superior Court judge for permission to perform an autopsy. The medical examiner shall institute such action by an order to show cause, on notice to the member of decedent's immediate family, or, in the absence thereof, a friend, who objects to the autopsy as contrary to the decedent's religious beliefs. If no family member or friend objects, but there is an obvious reason to believe that the procedure is contrary to the decedent's religious beliefs, the medical examiner shall request the judge to appoint a representative to act on the decedent's behalf. The medical examiner may then seek an order authorizing the autopsy by filing an order to show cause, on notice to the court-appointed representative, if any.

(d) No final decision regarding whether a compelling public necessity exists, pursuant to N.J.S.A. 52:17B-88.1a, shall be made by the medical examiner unless a court proceeding is instituted or the objecting party provides documentary evidence or a sworn statement of the objection, including, but not limited to, an affidavit stating that an autopsy is contrary to the decedent's religious beliefs.

(e) If the court prohibits an autopsy that the medical examiner determined was a compelling public necessity, and the medical examiner cannot establish a cause of death by other means, the cause of death shall be certified as "Cause of death undetermined", and notations shall be made in the appropriate place on the death certificate (currently Part II, section 27) that the autopsy was prohibited by court order, and shall include the name of the judge and the date of the court order.

(f) If the court grants permission to perform the autopsy, the autopsy shall be performed immediately and shall be the least intrusive procedure that is consistent with the medical examiner's finding that a compelling public necessity exists. Under such circumstances, a complete external examination, any non-invasive procedures described in (a)3 above, and an internal examination of the body viscera *in situ* and the collection of minimal samples for toxicologic and microscopic testing shall be deemed acceptable procedure. Permission may be granted by the medical examiner to a designated representative of the family to attend the autopsy and perform any religious rites that do not conflict with the compelling public necessity.

13:49-1.7 Medical examiner's investigative standards for unidentified decedents

(a) A decedent is to be regarded as "unidentified" when, at the time of initial discovery and investigation:

1. The body is visually recognizable but there is no circumstantial indication of the decedent's full name either by personal effects on

the body or by personal acquaintance of those present at the scene of discovery; or

2. The body is not visually recognizable due to alteration of physical features and there is no obvious reason to suspect a tentative identity for the decedent.

(b) The unidentified decedent is to be identified initially on the medical examiner records under the alias, "(AKA) UNIDENTIFIED (race) (sex)". The name John Doe, Jane Doe, or assigned nicknames are not to be used to identify official records of unidentified decedents.

(c) A physician medical examiner shall personally visit the scene of discovery of partly or completely skeletonized unidentified bodies, as defined in (a)2 above, and shall assist in the recognition, isolation, documentation, and recovery of items that may help to determine the cause and manner of death, and the identity of the decedent, and shall direct the search for and removal of additional body parts.

(d) A detailed examination of the body, clothing, and personal effects shall be performed and shall be fully and completely documented.

(e) No unidentified body shall be released or referred for burial until the following have been performed:

1. Post mortem x-rays of skull, chest, abdomen; pelvis, and extremities are made;

2. High quality post mortem photographs of available facial and other identifying features are made;

3. A complete autopsy is performed;

4. All available post mortem fingerprints are recorded;

5. Dental examination, charting, and radiographs are completed;

6. A form entitled, "UNIDENTIFIED PERSON REPORT", is filed with National Crime Information Center (NCIC); and,

7. A minimum of 30 days has elapsed after entry of unidentified person report into the NCIC.

(f) In any event, an NCIC entry shall be made no later than three days following completion of the autopsy incorporating all features of identification, including estimations of age, time of death, height, sex, race, any known medical conditions discovered by autopsy, and a full description of clothing and personal effects. The Unidentified Person File Data Collection Entry Guide may be used as an aid.

(g) No unidentified dead body shall be cremated.

(h) All skeletonized human remains reportable to the medical examiner shall be examined or physically reviewed at the State Medical Examiner Office prior to burial. In the case of non-skeletal unrecognizable bodies and recognizable but unidentified decedents, the medical examiner's report shall be reviewed by the State Medical Examiner's Office (SMEO) prior to burial.

(i) Any medical examiner who is unfamiliar with the processing of unidentified remains shall call upon the State Medical Examiner Office for assistance.

SUBCHAPTER 2. SPECIMEN COLLECTION

13:49-2.1 Collection of specimens for alcohol determination

(a) All county medical examiners, or the person designated by the State Medical Examiner or county medical examiner to conduct investigations and perform autopsies in a county, shall collect suitable specimens for determination of the alcohol content of the blood and brain tissue in all cases of violent death or death under unusual circumstances where death has occurred within 48 hours of the incident suspected of being the proximate cause of death.

(b) Said samples shall be properly labeled, refrigerated, and submitted within two weeks to the New Jersey State Medical Examiner Toxicology Laboratory for the required analysis.

13:49-2.2 Collection of specimens for narcotic or dangerous drug determination

(a) All county medical examiners, or the person designated by the State Medical Examiner or county medical examiner to conduct the investigations and perform autopsies in a county, shall collect suitable specimens for determination of the drug content of the body fluids and tissues in all cases of violent deaths or deaths under unusual circumstances where death has occurred within 48 hours of the incident suspected of being the proximate cause of death.

(b) Said samples shall be properly labeled, refrigerated, and submitted within two weeks to the New Jersey State Medical Examiner Toxicology Laboratory for the required analysis.

13:49-2.3 (No change.)

SUBCHAPTER 3. REPORTS AND RECORDS

13:49-3.1 Release of autopsy findings

(a) Copies of the official report of an autopsy performed by the State Medical Examiner, any county medical examiner or other persons designated by the State Medical Examiner to perform autopsies shall not be released except to the next of kin of the decedent, the decedent's legal representative, law enforcement agencies, or attorneys or insurance companies representing parties in litigation arising from the incident that caused the decedent's death. Any other person or agency with a proper interest in such records may receive a copy of the report after the authorized medical examiner, in consultation with the State Medical Examiner, determines the propriety of the party's interest. If the medical examiner and State Medical Examiner reach different conclusions as to the propriety of the release of the autopsy report, the medical examiner shall abide by the final determination of the State Medical Examiner.

(b) Notwithstanding (a) above, if the death has been referred to the county prosecutor or Attorney General for continuing criminal investigation, only the county prosecutor or Attorney General may disclose the autopsy findings. When a party seeks the autopsy report in connection with pending or future criminal litigation, the county prosecutor or Attorney General shall provide the report through the discovery process, in accordance with court rules, or before discovery is undertaken if the prosecutor or Attorney General deems it appropriate.

(c) Notwithstanding (a) above, the autopsy report may be furnished to any person upon written authority of the decedent's next of kin or legal representative, unless the death has been referred to the county prosecutor or Attorney General for continuing criminal investigation.

13:49-3.2 Fees for copies of records

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

(c) All fees collected by the medical examiner shall be paid into the county or State treasury on or before the 10th day of each month.

13:49-3.3 (No change.)

SUBCHAPTER 4. MORGUES AND LABORATORIES

13:49-4.1 (No change.)

SUBCHAPTER 5. INVESTIGATIONS

13:49-5.1 Death investigations; conduct

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

(c) The duty medical examiner shall take complete charge of every body whose death is reported to the office, and shall not release it to the next of kin or authorized representative for burial or cremation until sufficient information has been accumulated, proper specimens and evidence have been collected as needed, and appropriate examinations have been conducted to establish the cause and manner of death and the identity of the decedent.

1. In cases of suspected criminal homicide, the medical examiner shall coordinate with the county prosecutor or Attorney General the removal of the body from the scene of death and shall not order the removal of the body from said scene until such coordination has been accomplished.

(d) (No change.)

(e) The office of the county medical examiner shall be required to inspect the scene of homicidal, unusual or suspicious deaths, decomposed bodies or unwitnessed and unexpected deaths which are reportable to the office, when the body still lies there.

1. The physician medical examiner shall not refuse to inspect the scene when requested by the State Medical Examiner or by the county prosecutor or assistant prosecutor.

i.-iv. (No change.)

(f) It shall be the responsibility of the medical examiner to obtain information from first hand witnesses whenever possible, taking the names of these sources and recording the information in a report filed with the office.

1. (No change.)

2. Subsequent additional information shall be recorded with date and time and filed with the case record.

3. (No change.)

(g)-(h) (No change.)

SUBCHAPTER 6. DEATH CERTIFICATION

13:49-6.1 Medical examiner certification and amendments

(a) It shall be the responsibility of the medical examiner to require the proper identification of the decedent for the death certificate. This may be accomplished by visual recognition of the decedent's body by next of kin or friend when the decedent's body is in recognizable condition. "Friend" means any person who, prior to the decedent's death, maintained close contact with the decedent sufficient to render that person knowledgeable with the decedent's activities, and who presents a sworn statement or affidavit stating the facts and circumstances upon which the claim that the person is a friend is based. Identification may also be made by a combination of scientific means, circumstances, and personal effects if the deceased is not in recognizable condition.

(b) It shall be the responsibility of the medical examiner who issues a death certificate to conduct personally a complete physical examination of at least the external surfaces of the unclothed dead body and to make a full and complete description of this examination and to file it with the Office of the State Medical Examiner. The clothing and personal effects shall be viewed and an inventory prepared, and a receipt shall be obtained upon release from the medical examiner's custody.

(c) The medical examiner shall personally sign the death certificate after examining the body, as required by law, and shall be responsible for the truthfulness and accuracy of the medical information herein contained.

(d) (No change.)

13:49-6.2 Notification of death from contagious, infectious, or communicable diseases

(a) When a medical examiner who makes the actual determination and pronouncement of death determines or has actual knowledge that the deceased person was infected with human immunodeficiency virus (HIV) or hepatitis B virus or that the deceased person suffered from acquired immune deficiency syndrome (AIDS), AIDS related complex (ARC) or any contagious, infectious, or communicable disease as may be determined by the Commissioner of the Department of Health, he or she shall immediately place with the remains written notification of the condition and shall provide written notification to the funeral director who is responsible for the handling and disposition of the body.

(b) Notification provided funeral directors pursuant to this section shall be made on a form prescribed or designated by the State Medical Examiner and shall contain a portion which provides for acknowledgment of such notification by the funeral director or his or her authorized representative.

SUBCHAPTER 7. ELIGIBILITY STANDARDS

13:49-7.1 Eligibility standards of county medical examiner, deputy or assistant county medical examiner, and forensic pathologist

(a) Any person appointed or reappointed to the position of county medical examiner pursuant to N.J.S.A. 52:17B-83, deputy or assistant county medical examiner pursuant to N.J.S.A. 52:17B-84, or forensic pathologist authorized by the State Medical Examiner pursuant to N.J.S.A. 52:17B-88, on or after the effective date of this subchapter shall be a physician fully licensed in the State of New Jersey of recognized ability and good standing in his or her community, and shall have met the following standards relating to prior training and experience:

1. Successful completion of a minimum of 30 hours of basic education in death investigation conducted or sponsored by the Armed Forces Institute of Pathology, the American Society of Clinical Pathologists, the College of American Pathologists, the National Association of Medical Examiners, or an institution of higher education or other agency approved by the State Medical Examiner.

i. In addition, all persons appointed or reappointed to the position of county medical examiner pursuant to N.J.S.A. 52:17B-83 on or after the effective date of this subchapter who are to serve in the capacity of "County Medical Examiner", in addition to the above educational requirement, shall have completed a minimum of 20 hours of advanced education in death investigation conducted or sponsored by the Armed Forces Institute of Pathology, the American Society of Clinical Pathologists, the College of American Pathologists, the National Association of Medical Examiners, or an institution of higher education or other agency approved by the State Medical Examiner.

2. Successful completion of a basic course conducted by the Office of the State Medical Examiner on the laws, rules and regulations relating to the New Jersey Medical Examiner System.

3. (No change.)

(b) Any person appointed to or holding the position of county medical examiner, deputy or assistant county medical examiner or designated forensic pathologist on or after the effective date of these amendments shall enroll in and complete a program of continuing medical education in the forensic sciences for a minimum of 20 hours of American Medical Association Category I credit, every two years while holding said position.

(c) Any person appointed to or holding the position of county medical examiner, deputy or assistant county medical examiner or designated forensic pathologist on or after the effective date of this subsection shall enroll in and complete a supplemental program conducted by the Office of the State Medical Examiner on amendments to the laws, rules and regulations relating to the New Jersey Medical Examiner System or for any other necessary training. The State Medical Examiner shall conduct such courses when necessary.

(d) Only those county medical examiners, deputy or assistant county medical examiners or forensic pathologists authorized by the State Medical Examiner as competent to perform autopsies pursuant to N.J.S.A. 52:17B-88, shall perform such autopsies. Such person shall be qualified in one of the following categories:

1. Pathologists who shall have completed a two-year program of supervised training in anatomical pathology appropriate for eligibility to the American Board of Pathology are qualified to conduct death investigations and to perform postmortem examinations and autopsies under the direct guidance and supervision of a senior designated pathologist who has already been qualified to practice in an unsupervised capacity in the New Jersey Medical Examiner System, pursuant to Section 13:49-7.1(d)2, and under the general supervision of the State Medical Examiner as provided by law.

2. Pathologists who are qualified as anatomic pathologists and who have at least one year of formal supervised training or two years supervised experience in forensic pathology suitable for eligibility towards certification by the Specialty Board in Forensic Pathology may be certified to conduct death investigations and to perform postmortem examinations and autopsies under the general supervision of the State Medical Examiner as provided by law.

3. (No change.)

(e) Nothing in this section is intended to prevent a qualified person from serving both as a county medical examiner or deputy or assistant county medical examiner and simultaneously as a designated pathologist authorized by the State Medical Examiner to perform autopsies pursuant to N.J.S.A. 52:17B-88.

SUBCHAPTER 8. ENFORCEMENT

13:49-8.1 Enforcement of eligibility standards

(a) If any person appointed to or holding the position of, or being a candidate for appointment to, the position of county medical examiner, deputy or assistant county medical examiner or forensic pathologist, authorized by the State Medical Examiner to perform autopsies, pursuant to N.J.S.A. 52:17B-88, does not meet any of the

eligibility standards set forth in N.J.A.C. 13:49-7, the State Medical Examiner shall declare him or her ineligible to perform the duties prescribed in N.J.A.C. 13:49-7 and the person shall cease to perform those duties pending a hearing and final resolution. If any such person fails to comply with any other provisions of the State Medical Examiner Act or administrative rules pertaining thereto, the State Medical Examiner shall declare him or her ineligible to perform the duties prescribed in N.J.A.C. 13:49-7 and the person shall cease to perform those duties pending a hearing and final resolution.

(b) If any county medical examiner, deputy or assistant county medical examiner or forensic pathologist authorized by the State Medical Examiner to perform autopsies, pursuant to N.J.S.A. 52:17B-88, having met the eligibility standards set forth in N.J.A.C. 13:49-7, has been demonstrated professionally incompetent to perform the duties of his or her office, the State Medical Examiner shall declare him ineligible to perform the professional duties of his or her office, or shall restrict the level of professional duties in accordance with the demonstrated level of professional competence of the examiner.

(c) (No change.)

(d) Any proceeding brought under this subchapter shall provide the county medical examiner, deputy or assistant county medical examiner or designated forensic pathologist with notice of the charges against him or her and afford him or her an opportunity to be heard, which shall conform with the provisions applicable to contested cases set forth in the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.); P.L. 1978, c.67 (N.J.S.A. 52:14-1 et seq.), and N.J.A.C. 1:1.

NEW JERSEY RACING COMMISSION

(a)

Thoroughbred Rules
Horsemen's Associations
Adopted Amendment: N.J.A.C. 13:70-1.30

Proposed: December 5, 1988 at 20 N.J.R. 2995(c).
Adopted: January 19, 1989 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: January 26, 1989 as R.1989 d.106, **without change.**

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

Effective Date: February 21, 1989.
Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-1.30 Horsemen's associations

(a)-(i) (No change.)

(j) If the accumulated surplus exceeds $250,000 at the end of a calendar year, horsemen's organizations are required to utilize the amount in excess of the $250,000 for new or expanded benevolent programs or justify to the Racing Commission why they do not intend to utilize the excess funds.

(k) (No change.)

(b)

Thoroughbred Rules
Claims
Adopted Amendment: N.J.A.C. 13:70-9.29

Proposed: December 5, 1988 at 20 N.J.R. 2996(a).
Adopted: January 19, 1989 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: January 26, 1989 as R.1989 d.108, **without change.**

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

Effective Date: February 21, 1989.
Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-9.29 Claims

(a) Any person who has never previously been licensed as a jockey in any country, and who has complied with the conditions set forth in N.J.A.C. 13:70-9.27, may claim in all overnight races except handicaps the following allowances:

1. An apprentice jockey shall ride with a five pound weight allowance beginning with his or her first mount and for one full year from the date of his or her fifth winning mount.

2. If, after riding one full year from the date of his or her fifth winning mount, the apprentice jockey has failed to ride a total of 40 winners from the date of his or her first winning mount, he or she shall continue to ride with a five pound weight allowance for one more year from the date of his or her fifth winning mount or until he or she has ridden a total of 40 winners, whichever comes first.

(c)

Thoroughbred Rules
Apprentice Contracts
Adopted Amendment: N.J.A.C. 13:70-9.30

Proposed: December 5, 1988 at 20 N.J.R. 2996(b).
Adopted: January 19, 1989 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: January 26, 1989 as R.1989 d.107, **without change.**

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

Effective Date: February 21, 1989.
Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-9.30 Apprentice contracts

(a) An apprentice jockey must be at least 16 years of age to enter into a contract with a racing stable for a period not to exceed three years. Such contracts must be filed with the Racing Commission, and submitted to the stewards for their approval, and are binding in all respects on the signatories thereof.

(b) In lieu of a contract, an apprentice jockey certificate may be issued by the stewards and must be filed with the Racing Commission. The certificate shall terminate three years from date of issuance, except as set forth in N.J.A.C. 13:70-9.32.

(d)

Harness Rules
Horsemen's Associations
Adopted Amendment: N.J.A.C. 13:71-1.25

Proposed: December 5, 1988 at 20 N.J.R. 2997(a).
Adopted: January 19, 1989 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: January 26, 1989 as R.1989 d.109, **without change.**

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

Effective Date: February 21, 1989.
Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:71-1.25 Horsemen's associations

(a)-(i) (No change.)

(j) If the accumulated surplus exceeds $250,000 at the end of a calendar year, horsemen's organizations are required to utilize the amount in excess of the $250,000 for new or expanded benevolent programs or justify to the Racing Commission why they do not intend to utilize the excess funds.

(k) (No change.)

STATE

(a)

DIVISION OF COMMERCIAL RECORDING

Preclearance of Documents
Name Availability

Adopted New Rules: N.J.A.C. 15:2-2 and 3

Proposed: December 5, 1988 at 20 N.J.R. 2998(a).

Adopted: January 10, 1989 by Jane Burgio, Secretary of State.

Filed: January 17, 1989 as R.1989 d.89, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1988 c.94 and N.J.S.A. 52:16A-11(b).

Effective Date: February 21, 1989.

Expiration Date: May 2, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: A commenter made the following suggestions:

1. It might be helpful to refer at the beginning of each rule to the relevant statutory provision. For example, the first sentence in 15:2-2.1 could be changed by adding the words "pursuant to N.J.S.A. 14A:1-11" at the end of that sentence.

2. Why is it necessary for a document to be hand delivered, faxed, or sent by overnight mail in order to be eligible for preclearance? On some deals, there will be six or eight weeks from the time the document is prepared until it has to be filed. Why shouldn't people be able to send those documents for preclearance by regular mail?

3. How does one hand deliver or send by overnight mail something to the "preclearance basket"? Should the document be addressed to the "preclearance basket"? If it should, the commenter suggests the rule indicate how the document should be addressed.

4. The Division might wish to add a sentence to the preclearance rules to the effect that the preclearance of a document merely indicates that it is acceptable for filing and, once a document has been filed, should have no relevance in connection with any dispute concerning whether the legal action reflected in the document was duly adopted or legally taken.

RESPONSE: The Division appreciates these suggestions, and may incorporate the first and last in a later rulemaking.

Concerning the need for documents to be hand-delivered, faxed or sent by overnight mail, given the great volume of regular mail received by the Division daily, the specified delivery methods will ensure that preclearance documents are reviewed in a timely manner.

As to the delivery address in addition to "preclearance basket", that designation is preferred to the necessity of having to amend the rule whenever the address of the Division changes.

COMMENT: The New Jersey State Bar Association commented concerning the usefulness of a cover sheet requirement at N.J.A.C. 15:2-2.2(a)1, to parallel that at (a)2; that delivery of documents by regular mail be allowed; and that a maximum charge, perhaps $350.00, be set for hourly assistance under N.J.A.C. 15:2-2.3.

RESPONSE: The Division agrees with the cover sheet recommendation, and has added the requirement upon adoption. The regular mail filing issue is addressed in the preceding response. As to the setting of a maximum fee, while the Division believes it will be an unusual situation in which the fee would exceed the suggested maximum, the rule will be adopted as proposed to allow for fees to be assessed as warranted by the work performed.

COMMENT: A commenter observed that certain documents, such as Certificates of Dissolution, may not merit preclearance because of the time and cost involved.

RESPONSE: The observation is appreciated.

COMMENT: A commenter suggested adding to N.J.A.C. 15:2-3.1 that variances in capitalization between upper and lower case letters not be a distinguishing change.

RESPONSE: The Division is incorporating this change upon adoption at N.J.A.C. 15:2-3.1(a)1. As the Division's computer only makes entries in upper case, there would be no way to distinguish in the system between upper and lower case letters on a certificate. This additional exception will allow distinct entries to be preserved in the data base.

Both this change and the Division's addition, as N.J.A.C. 15:2-3.1(a)6, of a change exception for the misspelling in the word of a corporate name are not changes of such nature as would require reproposal, as they are in keeping with the rule's purpose to not allow minute or trivial differences to provide the basis for distinguishing between corporate names.

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

SUBCHAPTER 2. PRECLEARANCE OF DOCUMENTS

15:2-2.1 Documents which may be submitted for preclearance

Any document which may be filed with the Secretary of State pursuant to N.J.S.A. 14A:1-1 et seq. may be submitted for preclearance. These documents include, but are not limited to: Certificates of Incorporation; Amendments; Abandonments; Mergers; Restated Certificates; Dissolutions; Revocation of Dissolutions; Corrections; Foreign Qualifications; Foreign Withdrawals; Foreign Amendments; Change of Agents and/or Office; Reservations; Registrations; or Alternate Name Registrations. There is no requirement, however, that a document be precleared prior to submission for filing.

15:2-2.2 Preclearance submission procedure

(a) The Department of State will preclear any document which:

1. Is hand delivered ***with a cover sheet clearly indicating that the document is submitted for preclearance*** by messenger or overnight mail service to the preclearance basket at the Division of Commercial Recording; or

2. Is faxed to the Division of Commercial Recording with a cover sheet clearly indicating that the document is submitted for preclearance.

(b) The cover sheet must include a telephone number of the individual who is to receive the Department's opinion on the document. The Department will telephone its approval or required revisions to the document. To assure the document will be prescreened prior to filing, the document must be received by the Division of Commercial Recording at least 17 business hours prior to the date that the document will be submitted for filing. Business hours are defined as those hours that the Division's Expedited Service Counter is open. Normal business hours are from 8:30 A.M. to 5:00 P.M. Monday through Friday, except State holidays.

15:2-2.3 Preclearance fees

Any person who submits any document for preclearance shall pay to the Department of State a flat fee of $100.00. In addition, if preclearance review consumes more than one hour of Department personnel time, an additional fee of $50.00 per each additional hour or part thereof will be charged.

15:2-2.4 Method of payment of fees for preclearance service

(a) All fees for preclearance service performed by the Department of State may be paid via a pre-paid deposit account or charged against a major credit card held by the service user. A check payable to the Deparment of State is also acceptable payment for hand deliveries.

1. When a credit card is utilized as a method of payment, the user may be charged a separate fee to cover reasonable bank fees that are incurred by the Department in processing the credit charge.

2. Major credit cards shall be defined for the purposes of this section as those credit cards accepted by the Secretary of State.

SUBCHAPTER 3. NAME AVAILABILITY

15:2-3.1 Distinguishable defined

(a) A corporation name can be distinguished from other names recorded with the Secretary of State if it is sufficiently different from

those other names. All changes except for the following should be sufficient to distinguish one corporate name from another upon the records of the Secretary of State:

1. The insertion *[of]* ***or deletion of capitalization or*** a mark of punctuation, such as a comma, period, hyphen, etc.;
2. The changing of a word in a corporate title into its plural or singular form;
3. The addition of a different corporate designer as set forth in N.J.S.A. 14A:2-2(d);
4. The addition of an article ("a", "an", or "the"); *[and/or]*
5. The addition of spaces in a corporate name*[.]**; **and or***
6. The misspelling in the word of a corporate name.

TRANSPORTATION

TRANSPORTATION OPERATIONS

(a)

Speed Limits
Route N.J. 94 in Sussex County
Adopted Amendment: N.J.A.C. 16:28-1.79

Proposed: December 19, 1988 at 20 N.J.R. 3116(a).
Adopted: January 19, 1989, John F. Dunn, Director, Div. of Traffic Engineering and Local Aid.
Filed: January 27, 1989 as R.1989 d.114, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Effective Date: February 21, 1989.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.79 Route 94

(a) The rate of speed designated for the certain part of State highway Route 94 described in this subsection shall be established and adopted as the maximum legal rate or speed:

1. For both directions of traffic:

i.-xii. (No change.)

xiii. In Sussex County:

(1)-(2) (No change.)

(3) Hardyston Township:

(A)-(B) (No change.)

(C) 45 miles per hour between the Hamburgh Borough-Hardyston Township line and 2,600 feet south of Old Coach Road (mileposts 35.92 to 36.78); thence

(D) 35 miles per hour between 2,600 feet south of Old Coach and the Hardyston Township-Vernon Township line (mileposts 36.78 to 37.11); thence

(4) (No change.)

(5) Vernon Township:

(A) 35 miles per hour between the Hardyston Township-Vernon Township line and 1,000 feet north of Rudetown Road (County Road 517) (mileposts 37.11 to 38.57); thence

(B) 40 miles per hour between 1,000 feet north of Rudetown Road (County Road 517) and 400 feet south of Sand Hill Road (mileposts 38.57 to 39.87); thence

(C) 35 miles per hour between 400 feet south of Sand Hill Road and 600 feet north of Vernon Crossing Road (County Road 644) (mileposts 39.87 to 41.75); thence

(D) 45 miles per hour between 600 feet north of Vernon Crossing Road (County Road 644) and the New York State line (mileposts 41.75 to 45.71); thence

Redesignate existing (F) and (G) as (E) and (F).

2.-3. (No change.)

(b)

Restricted Parking and Stopping
Route N.J. 179 in Hunterdon County
Adopted Amendment: N.J.A.C. 16:28A-1.53

Proposed: December 19, 1988 at 20 N.J.R. 3117(a).
Adopted: January 19, 1989, John F. Dunn, Director, Div. of Traffic Engineering and Local Aid.
Filed: January 27, 1989 as R.1989 d.115, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138(g), and 39:4-199.

Effective Date: February 21, 1989.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.79 Route 179

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

(c) The certain parts of State highway Route 179 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 established time limit parking zones:

1. In the City of Lambertville, Hunterdon County:

i. Along both sides:

(1) Two hours time limit parking along Route 179 from Lambert Lane to Route 29 from 10:00 A.M. to 6:00 P.M. Monday to Saturday;

(2) Two hours time limit parking along Route 29 from Lambert Lane to Route 29 from 1:00 P.M. to 5:00 P.M. Sunday.

(c)

Miscellaneous Traffic Rules
Drawbridge Usage
Routes U.S. 1 and 9, N.J. 7, and I-280 in Essex and Hudson Counties; N.J. 3 in Passaic and Bergen Counties; U.S. 9 in Burlington and Atlantic Counties; N.J. 13, N.J. 37, N.J. 35, N.J. 70, and N.J. 88 in Ocean County; U.S. 30, U.S. 40, and N.J. 52 in Atlantic County; U.S. 30 in Camden County; N.J. 35, N.J. 36, N.J. 70, and N.J. 71 in Monmouth County; N.J. 35 in Middlesex County; .N.J. 44, and U.S. 130 in Gloucester County; N.J. 46 in Bergen County; N.J. 47, N.J. 50, N.J. 52, and N.J. 147 in Cape May County; N.J. 49 and U.S. 130 in Salem County.
Adopted Amendments: N.J.A.C. 16:30-9.1 and 9.2
Adopted New Rules: N.J.A.C. 16:30-9.3 through 9.22

Proposed: December 19, 1988 at 20 N.J.R. 3117(b).
Adopted: January 19, 1989, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: January 27, 1989 as R.1989 d.113, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-17 and 39:4-198.

Effective Date: February 21, 1989.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:30-9.1 Route 35

(a) The certain parts of State highway Route 35 described in this subsection shall not be used for the purposes described herein. In

accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of bridges and waterways listed:

i. Middlesex County:

(1) Morgan Bridge over the Cheesequake Creek in Old Bridge Township and Sayerville Borough;

(2) Victory Bridge over the Raritan River in Perth Amboy City and Sayerville Borough;

ii. Monmouth County:

(1) Bridge over the Manasquan River in Brielle and Point Pleasant Boroughs;

(2) Bridge over the Shark River in Belmar Borough and Neptune Township;

16:30-9.2 Route 88

(a) The certain parts of the State highway Route 88 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of bridge and waterway listed:

i. Ocean County:

(1) Veterans Memorial Bridge over the Point Pleasant Canal in Point Pleasant Borough.

16:30-9.3 Route U.S. 1 and 9 (truck)

(a) The certain parts of State highway U.S. 1 and 9 (truck) described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of bridge and waterway listed:

i. Essex County:

(1) The bridge over the Passaic River in Newark City;

ii. Hudson County:

(1) The bridge over the Passaic River in Kearny Town;

(2) The bridge over the Hackensack River in Kearny Town and Jersey City.

16:30-9.4 Route 3

(a) The certain parts of State highway Route 3 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of the bridge and waterway listed:

i. Passaic County:

(1) The bridge over the Passaic River in Clifton City;

ii. Bergen County:

(1) The bridge over the Passaic River in Rutherford Borough.

16:30-9.5 Route 7

(a) The certain parts of State highway Route 7 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of the bridge and waterway listed:

i. Hudson County:

(1) The Wittpen Bridge over the Hackensack River in Jersey City and Kearny Town;

(2) The bridge over the Passaic River in Kearny Town;

ii. Essex County:

(1) The bridge over the Passaic River in Belleville Town.

16:30-9.6 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of the bridge and waterway listed:

i. Burlington County:

(1) The bridge over Bass River in Bass River Township;

ii. Atlantic County:

(1) The bridge over Nacote Creek in Galloway Township.

16:30-9.7 Route 13

(a) The certain parts of State highway Route 13 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of the bridge over the waterway listed:

i. Ocean County:

(1) The Loveland Town Bridge over the Point Pleasant Canal in Point Pleasant Borough.

16:30-9.8 Route U.S. 30

(a) The certain parts of State highway Route U.S. 30 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of the bridge over the waterway listed:

i. Atlantic County:

(1) The bridge over Beach Thorofare in Atlantic City;

ii. Camden County:

(1) The bridge over the Cooper River in Camden City;

16:30-9.9 Route 36

(a) The certain parts of State highway Route 36 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of the bridge and waterway listed:

i. Monmouth County:

(1) The bridge over the Shrewsbury River in Sea Bright and Highlands Boroughs.

16:30-9.10 Route 37

(a) The certain parts of State highway Route 37 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of the bridge and waterway listed:

i. Ocean County:

(1) The J. Stanley Tunney and Thomas A. Mathis Bridges over the Barnegat Bay in Dover Township.

16:30-9.11 Route U.S. 40

(a) The certain parts of State highway Route U.S. 40 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering shall be permitted along both sides of the entire length of the bridge over the waterway listed:

i. Atlantic County:

(1) The bridge over the Inside Thorofare in Atlantic City.

16:30-9.12 Route 44

(a) The certain parts of State highway Route 44 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Gloucester County:
(1) The bridge over the Mantua Creek in Paulsboro Borough and West Deptford Township.

6:30-9.13 Route U.S. 46
(a) The certain parts of State highway Route U.S. 46 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge and waterway listed:
i. Bergen County:
(1) The bridge over the Hackensack River in Little Ferry Borough and Ridgefield Park.

6:30-9.14 Route 47
(a) The certain parts of State highway Route 47 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Cape May County:
(1) The bridge over Grassy Sound in Lower Township.

6:30-9.15 Route U.S. 49
(a) The certain parts of State highway Route 49 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Salem County:
(1) The bridge over the Salem River in Salem City;
(2) The bridge over the Alloways Creek in Quinton Township.

16:30-9.16 Route 50
(a) The certain parts of State highway Route 50 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Cape May County:
(1) The bridge over the Tuckahoe River in Upper Township.

16:30-9.17 Route 52
(a) The certain parts of State highway Route 52 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Cape May County:
(1) The bridge over Beach Thorofare in Ocean City;
ii. Atlantic County:
(1) The bridge over Ship Channel in Somers Point City.

16:30-9.18 Route 70
(a) The certain parts of State highway Route 70 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Monmouth County:
(1) The bridge over the Manasquan River in Brielle Borough;
ii. Ocean County:
(1) The bridge over the Manasquan River in Brick Township.

16:30-9.19 Route 71
(a) The certain parts of State highway Route 71 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Monmouth County:
(1) The bridge over Shark River in Avon By the Sea Borough and Belmar Borough.

16:30-9.20 Route U.S. 130
(a) The certain parts of State highway Route 130 described in this subsection shall not be used for the purposes listed herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Gloucester County:
(1) The bridge over Raccoon Creek in Logan Township;
ii. Salem County:
(1) The bridge over Oldman's Creek in Oldman's Township.

16:30-9.21 Route 147
(a) The certain parts of State highway Route 147 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Cape May County:
(1) The bridge over Grassy Sound in Middle Township.

16:30-9.22 Route I-280
(a) The certain parts of State highway Route I-280 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.
1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridge over the waterway listed:
i. Essex County:
(1) The bridge over the Passaic River in Newark City;
ii. Hudson County:
(1) The bridge over the Passaic River in Harrison Town.

(a)

Turns
Route N.J. 21 in Essex County
Adopted Amendment: N.J.A.C. 16:31-1.11

Proposed: December 19, 1988 at 20 N.J.R. 3120(a).
Adopted: January 19, 1989, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: January 27, 1989 as R.1989 d.116, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.
Effective Date: February 21, 1989.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:31-1.11 Route 21
(a) Turning movements of traffic on the certain parts of State highway Route 21 described in this subsection are regulated as follows:
1. (No change.)
2. No right turn in the City of Newark, Essex County:
i. No trucks over four tons registered gross weight and no bus shall make a right turn from south on Route N.J. 21 (McCarter Highway) to west on Market Street in the City of Newark, Essex County.

(a)

TRANSPORTATION SERVICES

Transportation of Hazardous Materials

Adopted Amendments: N.J.A.C. 16:49-1.3, 1.5, 1.6, 2.1 and 16:49 Appendix

Proposed: December 5, 1988 at 20 N.J.R. 3005(a).
Adopted: January 5, 1989 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.
Filed: January 25, 1989 as R.1989 d.101, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:5B-25, Hazardous Transportation Act, P.L. 16-633 and 49 CFR 171 et seq.

Effective Date: February 21, 1989.
Expiration Date: March 18, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

The proposed amendments were reviewed by the Department's Office of Freight Services staff, and it was noted that a technical change not requiring additional public notice and comment was required, namely that the wording under Appendix A, Section 173.118a, paragraph (7), be changed to conform with the phraseology as it appears in 49 CFR.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

16:49-1.3 General requirements

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

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation. The Federal "Hazardous Materials Regulations" referenced herein, are adopted as of October 1, 1987. The "Federal Motor Carrier Safety Regulations" as referenced in 49 CFR 177.804 are adopted as of October 1, 1987. The New Jersey Department of Transportation intends to amend these rules as new Federal publications become available.

(j)-(k) (No change.)

16:49-1.5 Document availability

(a) Copies of the Federal "Hazardous Materials Regulations," Title 49, Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178 and 179, revised as of October 1, 1987, and referenced herein, may be purchased from the places listed below. The "Federal Motor Carrier Safety Regulations," Title 49, Code of Federal Regulations, Parts 390 through 397 revised as of October 1, 1987, and adopted by reference in Section 177.804 of the Appendix to the Regulations Regarding the Transportation of Hazardous Materials may also be purchased at the places listed below.

1.-3. (No change.)

(b) (No change.)

(c) Copies of the Title 49 CFR volumes are also noted above, are further available for review at the New Jersey Department of Transportation, Office of Freight Services, 1035 Parkway Avenue, Trenton, New Jersey 08625. Hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. This office may be contacted at (609) 292-8367 or 292-4187.

16:49-1.6 Assistance

(a) For general assistance and procedural questions in matters related to New Jersey's Hazardous Materials Regulations, as adopted herein, contact:

Office of Freight Services
New Jersey Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 292-8367 or 292-4187

(b) For assistance in matters related to enforcement or interpretation of the Hazardous Materials Rules, contact:

Hazardous Materials Transportation Unit
New Jersey Division of State Police
P.O. Box 7608
West Trenton, New Jersey 08625
(609) 882-2000, extension 2581 or 2582

16:49-2.1 Parts adopted by reference

(a) The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby incorporates by reference the following portions of Title 49—Transportation, Code of Federal Regulations, revised as of October 1, 1987. The parts adopted by reference are found in Chapter I referred to as "Research and Special Programs Administration, Department of Transportation." These parts are detailed in the APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS. The portions adopted are summarized below:

1.-2. (No change.)

3. Part 173, Shippers—General Requirements for Shipments and Packagings (section 173.32a is exclusive from adoption herein).

4. (No change.)

5. Part 177, Carriage by Public Highway.

6.-7. (No change.)

APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS

This Appendix to the Regulations Regarding the Transportation of Hazardous Materials details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

CHAPTER I
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION
(Entire Subchapter B is not being incorporated upon adoption.)

SUBCHAPTER C HAZARDOUS MATERIALS REGULATIONS

Part 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

Section 171.2 through Section 171.16 (No change.)

Section 171.18 and Section 171.19 (No change.)

Part 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

Subpart A (No change.)

Subpart B—Tables of Hazardous Materials, Their Description, Proper Shipping Name, Class, Label, Packaging, and Other Requirements

Section 172.101 Purpose and use of Hazardous Materials table; including the Hazardous Materials table, the CERCLA List, and the List of Hazardous Substances and Reportable Quantities.

Section 172.102 through Section 172.330 (No change.)

Section 172.331 Bulk packagings other than portable tanks, tank cars and multi-unit tank car tanks.

Section 172.332 through Section 172.444 (No change.)

Section 172.448 through Section 172.524 (No change.)

Section 172.525 Standard requirements for the RESIDUE placard.

Section 172.527 through Section 173.5 (No change.)

Section 173.5a Oilfield service vehicles.

Section 173.6 through Section 173.103 (No change.)

Section 173.104 Cord, detonating fuse, mild detonating, metal clad or flexible; or flexible linear shaped charges, metal clad.

Section 173.105 through Section 173.118a (No change.)

(a)-(b)(6) (No change.)

(7) *[Standard packaging requirements for all packages as prescribed in Section 173.24]* ***The requirements of sections 173.1, 173.24, 174.1*** and 177.804 ***of this subchapter***.

Section 173.119 through Section 173.248 (No change.)
Section 173.249 Alkaline corrosive liquids, n.o.s.: alkaline liquids n.o.s.: alkaline corrosive battery fluid; potassium fluoride solution; potassium hydrogen fluoride solution; sodium aluminate, liquid; sodium hydroxide solution: potassium hydroxide solution.
Section 173.249a through Section 173.419 (No change.)
Section 173.420 Uranium hexafluoride (fissile and low specific activity).
Section 173.421 (No change.)
Section 173.421-1 Additional requirements for excepted radioactive materials.
Section 173.421-2 through Section 173.960 (No change.)
Section 173.965 Cotton and other fibers.
Section 173.985 through Section 173.1015 (No change.)
Section 173.1025 through Section 174.92 (No change.)
Section 174.93 Position in train of a tank car displaying residue placards.
Section 174.100 through Section 177.804 (No change.)
Motor carriers and other persons subject to this part shall comply with 49 CFR Parts 390 through 397 (excluding Section 391.69, 391.71, 393.81, 397.3, and 397.9) revised as of October 1, 1987, to the extent those rules apply. Carriers transporting hazardous materials, substances, or wastes as defined herein must comply with these parts as listed below.
(See N.J.A.C. 16:49-1.3(1) herein).

MOTOR CARRIER SAFETY REGULATIONS

Part 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL
Section 390.1 through Section 390.15 (No change.)
Section 390.17 through Section 391.67 (No change.)
Section 391.71 Intrastate drivers of vehicles transporting combustible liquids.
Part 392 through Section 392.16 (No change.)
Section 392.18 Slow moving vehicles; hazard warning signal flashers.
Section 392.20 through Section 397.7 (No change.)
Section 397.9 Routes.
Section 397.11 through Section 177.824 (No change.)
Section 177.825—Routing and training requirements for radioactive materials.
Section 177.826 through Section 178.53 (No change.)
Section 177.55 through Section 179.221 (No change.)
Section 179.222 Special commodity requirements for DOT 11SA tank car tanks.
Subpart E—Specifications for multi-unit tank car tanks (Classes DOT—106A and 110AW).
Section 179.300 through 179.500 (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Gross Income Tax
Qualified Investment Fund Distributions
Adopted New Rule: N.J.A.C. 18:35-1.24

Proposed: April 4, 1988 at 20 N.J.R. 742(b).
Adopted: January 17, 1989 by John R. Baldwin, Director, Division of Taxation.
Filed: January 19, 1989 as R.1989 d.94, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54A:9-17(a) and 54:50-1.

Effective Date: February 21, 1989.
Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes

N.J.A.C. 18:35-1.24(a) has been changed to eliminate the restriction that at least 80 percent of the distribution from a qualified investment fund must be attributable to interest or gain from exempt obligations in order for the distribution to be excluded from gross income. This amending language does not enlarge the scope of the rule but only reflects the Division's original intent.

The language of N.J.A.C. 18:35-1.24(b) has been amended to indicate that net gains or income from the disposition of shares of a qualified investment fund shall be excluded from gross income. This change merely clarifies an existing position.

N.J.A.C. 18:35-1.24(c)2 has been amended to indicate that the percentage of the aggregate principal amount that is comprised of exempt obligations shall be determined at the close of each quarter of the taxable year. In addition, N.J.A.C. 18:35-1.24(c)2.ii has been added to provide the qualified investment fund with a method for determining the aggregate principal amount. This change is not considered a change so substantial as to require reproposal because it merely clarifies the authorizing statute and is consistent therewith.

The applicability provision of the rule has been moved from N.J.A.C. 18:35-1.24(g) to N.J.A.C. 18:35-1.24(h). N.J.A.C. 18:35-1.24(g) now indicates the statutory authority for the reporting requirements contained in its subsections 1 and 2. These reporting requirements were originally proposed as N.J.A.C. 18:35-1.24(e)2 and 3, with a reporting deadline of January 31. The reporting date has been extended to February 15. This change merely indicates the statutory authority for an existing position.

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

18:35-1.24 Qualified investment fund distributions

(a) Gross income shall not include the *[amount]* ***portion*** of any distribution from a qualified investment fund paid on or after January 1, 1987 *[to the extent that at least 80 percent of such distribution]* ***which*** is attributable to interest or gain from the following:

1. Obligations which are issued by or on behalf of New Jersey or any county, municipality, school or other district, agency, authority, commission, instrumentality, public corporation (including one created or existing pursuant to agreement or compact with this or any other state), body corporate and politic or political subdivision of New Jersey; or

2. Those obligations which are statutorily free from state or local taxation under any act of New Jersey or under the laws of the United States.

(b) *[Any distribution or part thereof which includes]* ***Net*** gains or income derived from ***the disposition of*** securities which evidence ownership in a qualified investment fund *[is]* ***are*** excluded from gross income.

(c) A "qualified investment fund" is any investment company registered with the Securities and Exchange Commission or any series of such investment company which, for the calendar year in which the distribution is paid:

1. Has no investments other than the following:
i. Interest-bearing obligations;
ii. Obligations issued at a discount; and
iii. Cash and cash items, including receivables; and

2. *[Has]* ***At the close or each quarter of the taxable year has*** not less than 80 percent of the aggregate principal amount of all its investments in obligations described in (a)1 and (a)2 above.

i. The aggregate principal amount of investments shall not include cash and cash items, including receivables.

ii. For the purposes of determining aggregate principal amount, the investments of the fund shall be valued as follows:

(1) With respect to obligations for which market quotations are readily available, market value shall be used;

(2) With respect to other obligations, value shall mean the fair market value as determined in good faith by the board of directors of the investment fund.*

(d) A "series" of an investment company means a segregated portfolio of assets, the beneficial interests in which are owned by the holders of a class or series of stock or shares of the investment

company that is preferred over all other classes or series in respect to the portfolio of assets.

(e) The exclusions from gross income authorized by this section shall not apply to distributions of interest or gain from any qualified investment company which does not meet the following requirements:

1. The qualified investment company shall certify annually on or before February 15 to the Division of Taxation on the forms prescribed that for the preceding calendar year the *[company]* ***investment fund is a qualified investment fund because it***:

i. Was registered with the Securities and Exchange Commission;

ii. Had no investments other than interest-bearing obligations issued at a discount, and cash and cash items, including receivables; and

iii. Had not less than 80 percent of the aggregate principal amount of all its investments, excluding cash and cash items (including receivables) in obligations described in N.J.S.A. 54A:6-14 and N.J.A.C. 18:35-1.9(a)1. and 2.

*[2. The qualified investment company shall advise the Division of Taxation as to amounts distributed for the preceding calendar year to shareholders or beneficiaries from income or gain derived from New Jersey and Federal obligations.

3. The qualified investment company shall advise its shareholders on or before January 31 of each calendar year that distributions qualify for exclusion from gross income pursuant to this section.]*

(f) Subsection (e) above shall not apply with respect to distributions made for the calendar year*s* 1987 ***and 1988*** from an investment fund which otherwise satisfied the requirements of (c) above.

(g) ***Pursuant to N.J.S.A. 54A:8-6, a qualified investment fund must:***

1. Advise the Division of Taxation as to amounts distributed for the preceding calendar year to shareholders or beneficiaries from income or gain derived from New Jersey and Federal obligations; and

2. Advise its shareholders on or before February 15 of each calendar year that its distributions qualify for exclusion from gross income pursuant to this section.*

*[(g)]**(h)* This section applies to distributions of interest or gain from qualified investment funds which are made on or after January 1, 1987.

OTHER AGENCIES

ELECTION LAW ENFORCEMENT COMMISSION

(a)

Reporting and Recordkeeping

Adopted Amendments: N.J.A.C. 19:25-1.7, 4.6, 6.1, 8.1, 9.8, 10.6, 10.8, 11.6, 11.8, 12.4, 15.14 and 16.11

Proposed: November 7, 1988 at 20 N.J.R. 2640(a).

Adopted: January 24, 1989 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: January 25, 1989 as R.1989 d.99, **without change.**

Authority: N.J.S.A. 19:44A-6.

Effective Date: February 21, 1989.

Expiration Date: January 9, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the the context.

. . .

"Political committee" means any group of two or more persons acting jointly or any corporation, partnership or any other incorporated or unincorporated association which is organized to or does aid or promote the nomination, election or defeat of any candidate or candidates for public office, or which is organized to, or does aid or promote the passage or defeat of a public question in any election. A club organized to promote the candidacy of one or more candidates or aid or defeat the passage of a public question without a term of existence substantially longer than the campaign is a political committee. Political committee does not include:

1. (No change.)

2. A contributor not involved in fund raising or other election-related activity does not become a political committee solely by virtue of having made a contribution with respect to a candidate or public question.

. . .

19:25-4.6 Statement of organization: continuing political committee

(a) (No change.)

(b) A peripheral continuing political committee shall not be required to file a statement of organization (Form CPC-1) provided that the committee has not undertaken any election-related activity other than making contributions to candidates.

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

19:25-6.1 Deposits of funds by candidates or committees

(a) An organizational or campaign treasurer or deputy organizational or campaign treasurer of a candidate, political committee or continuing political committee shall make a written record of all funds which he receives as contributions to the candidate, political committee or continuing political committee, including in that record the name and address of the contributor and the amount and date of receipt of the contribution, and shall retain that record for a period of not less than four years.

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

19:25-8.1 Record keeping requirements

(a) An organizational or campaign treasurer or deputy organizational or campaign treasurer of a candidate, of a political committee, or of a continuing political committee shall make a written record of all funds which he or she receives as contributions to the candidate, political committee or continuing political committee, including in that record the name and address of the contributor and the amount and date the contribution was received.

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

19:25-9.8 Contributions made immediately before election

Each campaign treasurer of a candidate or a political committee shall file a written notice with the Commission of a contribution in excess of $250.00 received during the period between midnight on the 13th day prior to the election and the date of the election. The notice shall be filed in writing or by telegram with the commission within 48 hours of the receipt of the contribution, and the notice shall set forth the amount and the date of receipt of the contribution and the name and address of the contributor.

19:25-10.6 Contributions made immediately before election

(a) Each organizational treasurer of a continuing political committee shall file a written notice with the commission of a contribution in excess of $250.00 received after the final day of the quarterly report and on or before the date of an election as to which it has made or intends to make a contribution, or otherwise intends to or does participate or intends to participate in. The notice shall be filed in writing or by telegram with the commision within 48 hours of the receipt of the contribution, and the notice shall set forth the amount and the date of receipt of the contribution and the name and address of the contributor.

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

19:25-10.8 Short form for certain continuing political committees

(a) A continuing political committee may satisfy its reporting obligation for the 12-month period commencing July 1 if it files with the commission no later than September 15 of that year a certified statement (Form A-3) to the effect that the total amount to be expended in that 12-month period shall not exceed $2,500.

(b) (No change.)

(c) If a continuing political committee files with the Commission a certified statement pursuant to (a) above, and during any calendar

quarter it receives contributions from any one source aggregating more than $100.00, it shall report that fact by filing with Commission a report (Form C-3) identifying the name and address of the contributor, the date or dates of receipt of the contribution or contributions, and the aggregate amount of the contribution or contributions. Such report shall be filed with the Commission no later than the date on which quarterly reports are due for filing pursuant to N.J.A.C. 19:25-10.3(a).

(d) (No change.)

19:25-11.6 Anonymous contributions

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

(c) A contribution shall not be deemed anonymous if the identity of the contributor was known to the candidate or treasurer at the time when the contribution was made, even though the campaign may later be unable to identify the contributor because of loss or destruction of records. Nothing in this subsection shall prohibit the Commission from proceeding against any candidate or campaign for failure to keep proper records.

19:25-11.8 Currency contributions

(a) (No change.)

(b) Cumulative currency contributions of up to $100.00 may be made to a candidate, political committee or continuing political committee if the contributor submits, with his contribution, a written record containing the name and address of the contributor, the date of receipt and amount of the contribution and the signature of the contributor.

19:25-12.4 Computation of the expenditures by continuing political committees

(a) (No change.)

(b) Expenditures shall be reported as follows:

1.-3. (No change.)

4. If the committee is a peripheral continuing political committee, no reporting shall be required with respect to expenditures, including contributions and in-kind contributions, unless:

i. The committee is engaged in fund raising and solicitation expenses with respect to election-related activity; or

ii. (No change in text.)

5.-6. (No change.)

19:25-15.14 Contributions eligible for match; generally

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

(c) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of receipt of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his campaign committee, if such check, money order or instrument contains all of the foregoing information.

19:25-16.11 Contributions eligible for match; generally

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

(d) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, and amount and date of receipt of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his or her campaign committee, if such check, money order or instrument contains all of the foregoing information.

(e) (No change.)

(a)

Campaign Reporting

Adopted New Rules: N.J.A.C. 19:25-4.7, 8.3 and 11.9
Adopted Amendments: N.J.A.C. 19:25-1.7, 9.6, 10.4 and 12.2

Proposed: December 5, 1988 at 20 N.J.R. 3009(a).

Adopted: January 24, 1989 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: January 25, 1989 as R.1989 d.100, **without change.**

Authority: N.J.S.A. 19:44A-6.

Effective Date: February 21, 1989.
Expiration Date: January 9, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.

. . .

"Political party committee" includes every State, county or municipal committee of a political party. Political party committees are continuing political committees for the purpose of the quarterly reporting requirements of the act.

. . .

19:25-4.7 Write-in candidates

(a) For purposes of this section, the term "write-in candidate" shall mean an individual seeking or having sought election to a public office of this State or of a county, municipality or school district whose name does not appear as a candidate for that office on the ballot used for that election.

(b) There shall be no obligation on a write-in candidate as that term is defined in (a) above to file the reports described in N.J.S.A. 19:44A-16 provided that the total amount expended or to be expended on behalf of the write-in candidate by the candidate, any political committee, any continuing political committee or by any person does not in the aggregate exceed $2,000.

(c) If a write-in candidate who spends or has $2,000 or less spent on his or her behalf receives any contribution from any one source aggregating more than $100.00, the write-in candidate must, within 48-hours of receipt, file a report (Form C-1) with the Commission including the name and address of the source and the dates of and aggregate total of contributions.

19:25-8.3 Affidavit for missing records

(a) An organizational or campaign treasurer unable to produce any record required to be made pursuant to N.J.A.C. 19:25-8.1, Recordkeeping requirements, shall submit to the Commission within 10 days after the Commission so requests an affidavit specifying which record cannot be produced and the reasons the record is unavailable. The affidavit shall specify:

1. Whether a written record was made at the time of the transaction and, if so, the name of the person who made it, the position of that person in the campaign or organization, and the reasons the record is no longer available; or

2. If no contemporaneous record was made, the name of the person, if any, assigned responsibility for making such a record and the reasons the record was not made.

(b) Any affidavit prepared pursuant to (a) above shall include a re-creation of the missing records based on bank statements, copies of negotiated checks or instruments, or any other source. A description of the efforts undertaken to re-create the missing record shall be included in the affidavit.

(c) The submission of an affidavit pursuant to (a) above shall not preclude or otherwise estop the Commission from undertaking penalty proceedings for failure to make or maintain records.

19:25-9.6 Expenditures on behalf of a candidate

(a) When a political committee, or an individual seeking party office, makes or authorizes an expenditure on behalf of a candidate, the committee or individual shall provide within 48 hours of the expenditure written notice to the candidate containing the name and address of the committee or individual, the amount of the expenditure, the date the expenditure was made or authorized and the nature and purpose of the expenditure.

(b) In the event a candidate receives a written notice pursuant to (a) above of an expenditure exceeding $100.00, the candidate must:

1. Report pursuant to (c) below the receipt of an in-kind contribution from the contributor identified in the written notice; or

2. File the written notice with the Commission within 48 hours of receipt with a statement indicating that the candidate rejects the expenditure as part of the candidate's campaign.

(c) A candidate receiving written notice of an expenditure on behalf of his or her candidacy and accepting the expenditure as promoting his or her candidacy must report such an expenditure as an in-kind contribution made by the contributor identified in the written notice.

1. If the candidate is spending more than $2,000 and therefore filing reports (Form R-1) pursuant to N.J.A.C. 19:25-9.4, Reporting dates and periods covered, the in-kind contribution should be reported in the pertinent report period, that is, 29-day preelection, 11-day preelection, 20-day postelection; or

2. If the candidate is spending $2,000 or less and therefore filing a sworn statement (Form A-1), the contribution must be reported on Form C-1 pursuant to N.J.A.C. 19:25-9.9(c).

19:25-10.4 Expenditures on behalf of candidates

When a continuing political committee makes or authorizes an expenditure on behalf of a candidate or political committee, the continuing political committee shall provide within 48 hours of the expenditure written notice to the candidate containing the name and address of the committee, the amount of the expenditure, the date the expenditure was made or authorized and the nature and purpose of the expenditure.

19:25-11.9 Contribution by check

(a) The person or entity reported as the contributor of a contribution made by check shall be the person or entity owning the account on which the check is drawn.

(b) A contribution by check in excess of $100.00 drawn on a joint checking account shall be reported as a contribution in excess of $100.00 without regard to the number of owners of the joint account.

19:25-12.2 Expenditures for election-related activity

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

(d) Where the purchase of goods or services is made by use of credit card, the reporting of such purchase must include:

1. The exact name or title of the owner of the card, and the name of the lending institution that issued the card;

2. The date of the purchase;

3. The name and address of the vendor from whom the purchase was made;

4. The date of the purchase;

5. The purpose of the purchase; and

6. The cost of the goods or services purchased.

(e) Payment by use of credit card reported pursuant to (d) above shall not be deemed to be in violation of N.J.S.A. 19:44A-11, requiring campaign expenditures to be made through the campaign or organizational treasurer.

CASINO CONTROL COMMISSION

(a)

Accounting and Internal Controls
Table Inventories
Rules of the Games: Baccarat-Punto-Banco
Payout Odds; Vigorish
Adopted Amendments: N.J.A.C. 19:45-1.20 and 19:47-3.3

Proposed: November 7, 1988 at 20 N.J.R. 2647(b).

Adopted: January 19, 1989 by the Casino Control Commission, Walter N. Read, Chairman.

Filed: January 19, 1989 as R.1989 d.97, **without change.**

Authority: N.J.S.A. 5:12-70(f) and 5:12-100(e).

Effective Date: February 21, 1989.

Expiration Date: N.J.A.C. 19:45, March 24, 1993, N.J.A.C. 19:47, April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement fully supports the proposed amendments to N.J.A.C. 19:45-1.20 and 19:47-3.3.

RESPONSE: Accepted.

Full text of the adoption follows.

19:45-1.20 Table inventories

(a) Whenever a gaming table in a casino is opened for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table inventory" and no casino shall cause or permit gaming chips, coins or plaques to be added to or removed from such table inventory during the gaming day except:

1.-2. (No change.)

3. In exchange for gaming chips or plaques received from a patron having an equal aggregate face value;

4. In conformity with the Fill and Credit Slip procedures described in N.J.A.C. 19:45-1.22 and 1.23; and

5. In conformity with N.J.A.C. 19:47-3.3 and 7.3, coin may be used for the purpose of marking baccarat vigorish.

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

19:47-3.3 Payout odds; vigorish

(a) (No change.)

(b) A winning wager made on the "Banker's Hand" shall be paid off by a casino licensee at odds of 1 to 1 except that the casino licensee may extract a charge (to be known as a "commission" or "vigorish") on the amount won not to exceed five percent of such amount provided however a casino licensee may round off the commission or vigorish to 25 cents or the next highest multiple of 25 cents when the commission or vigorish is not exactly 25 cents or a multiple thereof. A casino licensee may collect the vigorish from a player at the time the winning payoff is made or may defer it to a later time provided, however, that all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe and in no event shall the collection of any vigorish be deferred beyond such point. The amount of any vigorish not collected at the time of the winning payouts shall be evidenced by the placing of a coin or marker button containing the amount of the vigorish owed in a rectangular space in front of the dealer on the layout imprinted with the number of the participant owing such vigorish.

(c) (No change.)

(a)

Gaming Equipment
Roulette Table; Physical Characteristics
Roulette; Inspection Procedures; Security During Non-Gaming Hours
Adopted Amendments: N.J.A.C. 19:46-1.7 and 1.9

Proposed: October 3, 1988 at 20 N.J.R. 2445(a).
Adopted: January 19, 1989 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: January 19, 1989 as R.1989 d.96, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69(c) and 5:12-70(i).
Effective Date: February 21, 1989.
Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Roberto Rivera-Soto, Vice President and Corporate Counsel of the Sands Hotel and Casino, supports the amendment to N.J.A.C. 19:46-1.7 and does not support the amendment to N.J.A.C. 19:46-1.9. Specifically, Sands objects to the requirement that casino maintenance personnel make adjustments to the roulette wheel in the presence of a security department member. Sands contends that "security is untrained and, hence, has no idea of what the casino maintenance person is doing", thus his presence is "unnecessary and wasteful." He also believes that a Division of Gaming Enforcement inspection after the adjustment negates the need for security.

RESPONSE: Rejected. Sands has misinterpreted the proposed language in N.J.A.C. 19:46-1.9. This amendment does not require a Division inspection being completed after an adjustment has been performed. In this regard, the requirement that security be present during an adjustment made by casino maintenance personnel is necessary for two reasons. First, it places an independent person in a position to observe the process, thus reducing the likelihood of an unauthorized adjustment, and secondly, it satisfies the access code requirement whereby casino maintenance personnel must obtain a security escort into the pit area since they do not have unfettered access to the gaming pits.

COMMENT: William C. Murtha, Assistant Counsel of Resorts International Hotel, Inc., supports the amendment to N.J.A.C. 19:46-1.7 and does not support the amendment to N.J.A.C. 19:46-1.9. Resorts supports the Sands' position regarding the requirement of security being present during an adjustment of the Roulette wheel.

RESPONSE: Rejected for the same reasons noted in the response to Sands.

COMMENT: Nicholas F. Moles, Vice President, General Counsel of Trump Plaza Hotel & Casino, supports the amendment to N.J.A.C. 19:46-1.7 and does not support the amendment to N.J.A.C. 19:46-1.9 as written. He states that roulette wheels now in use have internal moveable parts (that is, ring bearings, wheel bearings, etc.) which as part of the general maintenance of the equipment are replaced frequently without the completion of a Division inspection, and therefore, Trump Plaza would like the proposed amendment to distinguish between internal and external moveable parts.

RESPONSE: Accepted. The intent of the proposed amendment was to address only the replacement of external moveable parts. As such, for purposes of clarification, a minor change has been made to the proposed amendment to distinguish between internal and external moveable parts.

COMMENT: Susanne L. Lauber, Assistant Counsel of Marina Associates, supports the amendment to N.J.A.C. 19:46-1.7 and does not support the amendment to N.J.A.C. 19:46-1.9 as written. Ms. Lauber supports Trump Plaza's comment regarding the distinction between internal and external moveable parts.

RESPONSE: Accepted for the same reason noted in the response to Trump Plaza.

COMMENT: Thomas McCormick, Manager of Regulatory Affairs of Claridge at Park Place, Inc., supports the amendment to N.J.A.C. 19:46-1.7 and does not support the amendment to N.J.A.C. 19:46-1.9 as written. Claridge concurs with Trump Plaza's comment regarding internal moveable parts and Sands' and Resorts' comments regarding the requirement that a security officer be present during an adjustment.

RESPONSE: Partially rejected. The comment regarding security's involvement has been rejected for the reasons noted in the response to Sands and Resorts. The comment regarding the distinction between internal and external moveable parts has been accepted as noted in the response to Trump Plaza and Marina Associates.

COMMENT: The Division of Gaming Enforcement supports the adoption of the proposed amendments with the minor change made for clarification purposes regarding the distinction between internal and external moveable parts.

RESPONSE: Accepted.

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

19:46-1.7 Roulette table; physical characteristics

(a) (No change.)

(b) Each roulette wheel shall be of a single zero variety or a double zero variety as described and depicted below:

1. Each single zero roulette wheel shall have 37 equally spaced pockets around the wheel where the roulette ball shall come to rest. The roulette wheel shall also have a ring of 37 equally spaced areas to correspond to the position of the pockets with one marked zero and colored green and the others marked 1 to 36 and colored alternately red and black which numbers shall be arranged around the wheel as depicted in the following diagram unless otherwise approved by the Commission. The color of each pocket shall either be a corresponding color to those depicted on the ring or a neutral color as approved by the Commission.

2. Each double zero roulette wheel shall have 38 equally spaced pockets around the wheel where the roulette ball shall come to rest. The roulette wheel shall also have a ring of 38 equally spaced areas to correspond to the position of the pockets with one marked zero and colored green, one marked double zero (00) and colored green and others marked 1 to 36 and colored alternately red and black which numbers shall be arranged around the wheel as depicted in the following diagram unless otherwise approved by the Commission. The color of each pocket shall either be a corresponding color to those depicted on the ring or a neutral color as approved by the Commission.

(c) (No change.)

Editor's Note: (No change.)

19:46-1.9 Roulette; inspection procedures; security during non-gaming hours

(a) Prior to opening a roulette table for daily gaming activity, a casino supervisor or member of the casino security department shall:

1. (No change.)

2. Inspect the roulette wheel to assure that it is level and rotating freely and evenly;

3. Inspect the roulette wheel to assure that all parts are secure and free from movement; and

4. Inspect the roulette ball by passing it over a magnet or compass to assure its non-magnetic quality.

(b) If a casino licensee uses a roulette wheel which has ***external*** movable parts, a casino supervisor or a member of the casino maintenance department shall, in the presence of a security department member, make any adjustments to the movable parts only during non-gaming hours. These adjustments shall be completed prior to the required inspections in (a) above. The casino licensee may replace any of the movable parts at any time provided, however, *[an inspection is]* ***if any one or more of the moveable parts are external then an inspection must be*** completed by the Division prior to reopening the roulette wheel and table for gaming activity. A log shall be maintained which shall include, at a minimum, the date, the roulette table number, whether an adjustment or replacement was completed and the signature of the person making the adjustment or replacement.

(c) (No change in text.)

ENVIRONMENTAL PROTECTION

DIVISION OF ENVIRONMENTAL QUALITY

(a)

Volatile Organic Substances in Consumer Products Adopted New Rules: N.J.A.C. 7:27-23

Proposed: August 15, 1988 at 20 N.J.R. 2002(a).
Adopted: January 26, 1989 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.
Filed: January 27, 1989 as R.1989 d.119, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

DEP Docket Number: 030-88-07.
Effective Date: February 21, 1989.
Operative Date: March 26, 1989.
Expiration Date: Exempt under 42 U.S.C. 7401 et seq.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting new rules at N.J.A.C. 7:27-23, Volatile Organic Substances in Consumer Products, hereafter referred to as subchapter 23, to regulate emissions of volatile organic substances (VOS) to the atmosphere. These rules limit the amount of VOS that can be contained in architectural coatings and air fresheners. Except for recordkeeping requirements, those parts of the proposed rules relating to the control of the amount of VOS contained in consumer insecticides have not been adopted. They will be the subject of further study. In the interest of regional consistency, portions of the rules relating to architectural coatings were proposed in a form substantially similar to a proposal made by the New York Department of Environmental Conservation which the Department had studied and found to be appropriate. Subsequent to the proposal of these rules, New York adopted its rule with numerous changes. Where appropriate, the rules have been modified on adoption. Other category definitions and VOS limits which were determined to warrant further consideration have not been adopted pending further consideration by the Department. When appropriate categories and limits are determined, these categories will be included in amendments to the rules to be proposed in the near future. The provisions of subchapter 23 are to fulfill commitments made by the Department in the revisions to the 1980 State Implementation Plan (SIP) for Attainment and Maintenance of the National Ambient Air Quality Standard (NAAQS) for Ozone and Carbon Monoxide and are part of the Department's continuing effort to attain the NAAQS for ozone.

A public hearing was held on September 22, 1988 at the War Memorial Building in Trenton, New Jersey to provide interested parties the opportunity to present testimony on the proposed rules. The comment period closed on September 26, 1988. The Department received written testimony from 98 persons and 32 persons presented comments at the public hearing.

General Comments

COMMENT: The proposed rules will have an impact on a large number of very small companies that manufacture in the State using the products that will be regulated. For example, lacquer thinners are necessary for cleaning and aerosol products are needed for certain jobs. Because the commenter uses some of these products, he stated that he will probably be required to keep records which is onerous. Additionally, specifications may call for a certain type coating that is not available in the State. The order will then be taken out of the State. Small manufacturers who only need to use the product, not produce it, will be hurt. This should only be regulated on a national basis. The State of New Jersey can have little impact on its own.

RESPONSE: The products being regulated are generally not used in the manufacturing process. Lacquer thinners are not regulated under these rules. Most manufacturers needing aerosols use spray equipment to produce them. Air fresheners are not used in the manufacturing process. A small container exemption is being considered for architectural coatings, which would leave most aerosol paints unaffected by the rules. Retailers are no longer required to keep records.

The Department would prefer rules on architectural coatings and consumer products be enacted on a national level. However, New Jersey needs to proceed with these rules. California and New York are also involved in similar endeavors. Combined, the areas affected by substantially the same rules contain 18 percent of the population of the United States. There will be an impact on the products marketed in the United States and on the ozone problem in densely populated areas of the United States.

COMMENT: A national policy is needed for consumer products. Rules proposed at the state level will result in a patchwork of requirements with which companies cannot comply. The Department should work with the United States Environmental Protection Agency (USEPA), which already has legislation such as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), to develop national standards.

RESPONSE: The Department has always stated that consumer products should be regulated at the national level. However, in view of the lack of such action, the Department has been forced to proceed with rules for New Jersey as part of its responsibility under the Clean Air Act (CAA) to achieve the NAAQS for ozone. In order to promote national conformity, the Department is working in conjunction with New York, California, and other states to ensure uniform standards when possible throughout the country.

COMMENT: Product content oriented regulations are in conflict with Federal law and state by state regulation on this basis will eliminate interstate marketing of products. Effective regulation of product content can only take place at a national level.

RESPONSE: Product content oriented regulations as established in these rules are not in conflict with Federal law. Regulation of the VOS content of certain products is one of the measures contained in the New Jersey SIP and in the SIPs of a number of other states for attainment of the NAAQS for ozone. These SIPs were approved by USEPA and rules governing specific products are in effect in other states. While the Department would prefer a national rule, the State is committed to taking every measure necessary to protect the public health and the environment by attainment of the NAAQS for ozone. The Department has no information indicating these rules will have a significant impact on the interstate marketing of products.

COMMENT: The ozone problem is increasing in New Jersey with violation levels reported at nearly twice the national standard. There are significant health and environmental impacts from high ozone levels. The proposed measures are feasible and necessary for compliance with the CAA. The regulation of architectural coatings has been shown to be possible in California. The products chosen are appropriate as they are the most easily substituted for or reformulated—at least 11 air fresheners and 13 popular insecticides already contain no VOS. The ban on product use is important to avoid stockpiling. The gradual phase-in for insecticides is supported as providing the flexibility needed to produce new formulations or modified application technologies.

RESPONSE: The Department agrees that the ozone problem in New Jersey is severe. The measures committed to in the SIP are being implemented as expeditiously as possible. In addition, the Department will continue to work to identify all other appropriate control measures.

COMMENT: The proposed rules will have two additional benefits not recognized in the Summary. First, there will be a reduction in indoor air pollution which has become a major health threat. Second, reducing product VOS content will further the State's source reduction goals which the commenter supports as an approach to the State's solid and hazardous waste problem.

RESPONSE: The Department did mention indoor air pollution in the proposal, and agrees this is an area of increasing interest both to the Department and the public. The source reduction aspects of the rules are an added benefit.

COMMENT: Several commenters offered support for the rules. One cited a 1987 USEPA study that concluded that public health is at greatest risk in the United States from ozone and other criteria pollutants and in addition stated that recent studies indicate the existing 0.12 parts per million NAAQS for ozone may not be sufficient to protect the public health. This indicates reduction from levels which exceed the current standard may be even more important. Another commenter stated that the environmental benefits of these rules are not speculative; the connection between VOS emissions from these products and ozone creation has been shown again and again. Reformulation or substitution will reduce indoor air pollution as aerosols containing numerous chemicals in addition to VOS will be reduced. Even if the most dire predictions of

ndustry occur and some products must be removed from the shelves, his is not inconsistent with the CAA.

RESPONSE: The Department is working to achieve the attainment of environmental benefit with the least possible impact on industry. Because of a need for additional information, parts of the rules are not being adopted at this time. The Department agrees that the ozone concentration in New Jersey needs to be reduced and is working toward that goal as expeditiously as possible.

COMMENT: The proposed rules would impermissibly burden interstate commerce in violation of the Commerce Clause of the United States Constitution. If regulation of consumer products is warranted, it must occur at the national level to be consistent with Commerce Clause constraints. Congress has not imparted to the states in the CAA the authority to act free of such constraints. Congressional intent to remove a state regulation from the reach of the Commerce Clause must be "unmistakably clear" and this intent is not present: the CAA's emphasis on protecting and enhancing the quality of the Nation's air resources makes it clear that Congress intended to create a uniform program to promote national health and welfare. Further, the CAA authorizes USEPA to "encourage . . . the enactment so far as practicable [of] . . . uniform state and local laws relating to the prevention and control of air pollution" which further confirms Commerce Clause applicability.

RESPONSE: The Commerce Clause, while granting to Congress the power to regulate interstate and foreign commerce, does not preclude every state law that affects interstate commerce. In this case, the Department is exercising its authority under the New Jersey Air Pollution Control Act (1954), N.J.S.A. 26:2C-1 et seq. (the Act), to protect the health of the citizens of the State and to protect the environment from the proven debilitating effects of ozone. The CAA through the SIP process authorizes this action. Further, these rules are necessary to meet the State's responsibilities under the CAA. The rules do not affirmatively discriminate against interstate transactions, place only an incidental burden on interstate commerce and are within the Department's authority and duty to protect the public health and the environment.

The Department believes that the CAA, as demonstrated by the language quoted by the commenter, recognizes that, while uniformity of laws and rules is desirable where practicable, the measures taken by different states will necessarily vary depending on the particular circumstances in the area. Indeed, the CAA differentiates attainment from nonattainment areas and makes the states responsible for taking whatever measures are necessary in their situation to achieve and maintain the NAAQS for the designated criteria pollutant, including ozone. The rules adopted here are necessary as part of the State's effort to attain the NAAQS for ozone, were included in the State's SIP approved by USEPA, and are well within those acts contemplated under the CAA.

COMMENT: New Jersey should choose one of the following alternatives to this proposal:

1. Comply with its 1983 SIP by adopting VOS emission control measures for non-FIFRA regulated products as has been done in New York, California and Texas.

2. Adopt regulatory limits for VOS emissions which conform with the CAA emissions standards.

3. Defer to USEPA's contemplated regulation of consumer product VOS emissions by submitting for USEPA approval an amended SIP which deletes this control strategy.

RESPONSE: There are problems with each of the suggested alternatives. For alternative 1, the Department does not have sufficient information on other consumer products on which to base rulemaking. In addition, New York has adopted measures applicable to FIFRA products.

The Department has adopted all standards promulgated by USEPA. There are no existing standards under the CAA that are not in effect in New Jersey. Therefore, alternative 2 is not a solution.

The USEPA has not given any indication to New Jersey that they plan to regulate consumer products. In determining the VOS emission reductions necessary to attain the NAAQS for ozone, control strategies were evaluated and chosen. The regulation of consumer products was chosen as a measure. There is no known measure to take its place and therefore a SIP revision is not possible. Finally, New Jersey must take action to attain the NAAQS for ozone.

COMMENT: The quantity limit method proposed is an irrational method to address the concerns of emissions. The rules should address themselves only to emissions which are proven to be excessive.

RESPONSE: It can be argued that all emissions of VOS from consumer products are excessive. It would be difficult to prove how much actually is excessive. A rule based on a concept of excessive emissions would be very difficult to define, write, and enforce.

COMMENT: Subchapter 23 should be limited to architectural coatings, with other products placed in their own subchapter. All references to consumer products should be deleted as many of the coatings are used by industry as well as consumers. One commenter suggested the resulting rules be for architectural, maintenance and specialty coatings to more accurately reflect all coatings which are covered. One reason cited for the need to separate categories is that generalized requirements for labeling, recordkeeping and inspection can not possibly cover all categories in one subchapter. One commenter stated the definition of consumer product should be deleted from the resulting subchapter because it is flawed in that only architectural coatings, pesticides and air fresheners are defined while other components of the definition, such as toiletries and cleaning agents, are not defined.

RESPONSE: The possibility of dividing subchapter 23 into two separate subchapters is under consideration. It is not being done at this time, but may be in the future. The definition of consumer products is necessarily broad to define all products which could possibly come within the ambit of this subchapter. Those products within the definition which were proposed to be regulated are further defined to delineate what is included within these categories. As information becomes available which indicates other categories of consumer products are appropriate for regulation definitions for these categories will similarly be proposed.

COMMENT: The intent of these rules appears to be bureaucratic job creation and perpetuation in order to show that something is being done, without regard to whether it helps or not.

RESPONSE: The Department has worked hard to ensure that these rules do not create an unnecessary burden for either itself or the regulated community. These measures, although more severe than others previously adopted, are necessary to protect the public health and the environment and to acheive the NAAQS for ozone in New Jersey. Something is being done, and it is helping.

COMMENT: The comment period should be extended to allow time to assess the impact of the proposed rules. One commenter suggested 60 days after the public hearing be provided to allow for adequate time to respond to points raised at the hearing. One commenter stated that in addition to the extended comment period, the data used in computing the minimal cost of compliance and reporting cited in the summary should be made available and further study done on the impact on businesses other than architectural coating manufacturers.

RESPONSE: Comments were received from 130 people. Most included an assessment of the impact of the rules. Extension of the comment period, which was 43 days long, was not feasible or necessary under the Department's court-imposed schedule for adopting a rule for these categories.

Some of the data used to compute costs is confidential. The rest was and is available in the reports cited in the proposal. These reports are available from the Department for a small cost.

COMMENT: These rules should not be adopted until the need for extraordinary measures is seen to exist and it is determined that the benefit will outweigh the cost.

RESPONSE: The need for extraordinary measures was amply demonstrated this past summer when the NAAQS for ozone was exceeded on 45 days. All reasonably available control measures have been instituted in New Jersey. The extraordinary measures must now be adopted.

COMMENT: The issue is how best to reduce the impact of VOS on the stratospheric ozone layer.

RESPONSE: The compounds that are depleting the ozone layer are chlorofluorocarbons (CFCs). The Montreal Protocol, recently ratified by the federal government, is addressing this problem. These rules are designed to reduce emissions of VOS which contribute to the formation of ozone at ground level. It is this ozone, also known as smog, which is deleterious to the public health and the environment.

COMMENT: Scientific evidence shows that ozone formation is not solely and directly proportional to emissions of VOS. The reactivity of VOS differs depending on emission intensity, timing, and location.

RESPONSE: The formation of ozone is governed by three things: the concentration of VOS in the air; the concentration of nitrogen oxides (NOx) in the air; and sunlight. The Department cannot do anything to control the third factor. Therefore, of the remaining two, VOS was chosen for control. This was done using modeling and practices stipulated by USEPA. The Department realizes ozone formation is not directly proportional to emissions of VOS, but this was taken into account by the modeling when total VOS reductions were determined.

COMMENT: The Department has always stated that the transport of ozone and ozone precursors into the State is a major reason for nonattainment of the ozone standard. Increases in transport have impeded any progress in air quality. A national policy is needed to address transport.

RESPONSE: The Department still believes that transport of ozone and ozone precursors into the State is a major factor in New Jersey's ozone problem. However, without a Federal policy to address transport, New Jersey is responsible under the CAA for attainment of the NAAQS for ozone. The Department must take the steps necessary for the attainment of this goal and the protection of public health and the environment. New Jersey will argue forcefully for a national transport policy during upcoming debates in Congress over reauthorization of the CAA.

COMMENT: The Department must complete a regulatory flexibility statement and provide different compliance requirements for small business. Otherwise, the rulemaking process is invalid.

RESPONSE: A regulatory flexibility statement was prepared for the proposal notice. As explained there, the importance of these rules for the protection of the environment and human health, and the predominance of small business, makes it impossible to provide different requirements.

COMMENT: Questions such as need, cost effectiveness, feasibility, and available alternatives need to be addressed. Then, the rules can be reproposed.

RESPONSE: The continued exceedances of the NAAQS for ozone have shown the need for these rules. Cost effectiveness, feasibility, and the availability of complying products have been demonstrated for architectural coatings through the experience of California. Concerns raised about air fresheners and insecticides have lead the Department to reserve some parts of the rules until further study can be done. After this study is completed, appropriate revisions will be proposed.

COMMENT: The fear of reduced consumer product availability appears to be unfounded based on California's experience with paints. Although there may be a slight price increase, alternatives already exist for most products which would be affected. In any event, benefits far outweigh negative economic impacts.

RESPONSE: In the case of paints, complying products are available for most categories. For those categories where concerns were raised, the limits have not been adopted at this time. The information given to the Department is being used to develop amendments which will be proposed shortly. For air fresheners and insecticides, there is some uncertainty, and changes have been made to the rules to allow time to gather data to evaluate the situation.

COMMENT: The supporting documentation for rules such as these should include the number, nature and size of regulated parties, estimated dollar costs of compliance, cost of implementation to the Department, and the factual, scientific or technical basis for the determination that the proposed rules will be effective. Information should be solicited from experts. For these particular rules, the costs presented are weak or nonexistent.

RESPONSE: The studies done by Scientific Application International Corporation (SAIC) solicited information from experts on consumer products. However, these experts were reluctant to provide any hard data claiming problems of confidentiality and trade secrets made it impossible. The Department has encountered the same obstacle to data collection.

The Department developed a proposal using that data available. It gives a good approximation of present conditions, although not exact.

Information for architectural coatings was obtained from the California Air Resources Board (CARB) which has a technical group composed of experts from industry, environmental groups and academia working on architectural coatings.

The supporting documentation for the rules contained information necessary to propose the rules. It included a summary of the rules and the social, economic, and environmental impact of the rules. The regulatory flexibility statement addressed the impact of the rules on small businesses.

COMMENT: The rules should provide that the Department can extend deadline dates if, notwithstanding a manufacturer's best efforts, compliance within the prescribed timeframe is impossible.

RESPONSE: The Department foresees no problem with compliance with the rules as adopted. Therefore, the Department sees no need to provide a mechanism for extending deadline dates.

COMMENT: Several commenters suggested these rules are only a first step to what is needed. It was suggested that other measures should be incorporated into the rules, including a provision to address other building products such as particle board and carpeting which contain the respiratory irritant formaldehyde, a limitation of VOS used in the generation and application of commercial pesticides and restriction of VOS generated in the manufacture of consumer products where the end product itself may not act as a source of VOS emissions, but VOS are used in manufacture. These rules should also consider the presence of VOS in tap water due to industrial contamination. It was further suggested that other rules are necessary to ensure better air quality including greater efforts to monitor and control industrial air emissions of toxics, and a comprehensive program to promote industrial toxics use reduction to prevent continued toxics discharge into all environmental media. Another commenter stated that adhesives, hair sprays, all-purpose cleaners, car polishes and waxes are among the top seven subcategories cited in a November 1986 USEPA report as accounting for 85 percent of VOS emissions from consumer products. These should also be studied and restricted to ensure proper reduction of VOS emissions and ozone. Additionally, it was suggested that all businesses should be covered by limitations on VOS in consumer products.

RESPONSE: Many of the suggested future measures have already been instituted or are under consideration. The emissions of VOS from all manufacturing facilities is covered under N.J.A.C. 7:27-16. Toxic emissions to the air are regulated by N.J.A.C. 7:27-17, which is currently under revision. Other categories of consumer products will be studied for future inclusion in subchapter 23. The Department is exploring all avenues for ensuring that New Jersey has cleaner air.

N.J.A.C. 7:27-23.1

COMMENT: The applicability section is confusing, as the definition of consumer product covers many items not regulated.

RESPONSE: These rules are the beginning of a continuous process for the regulation of a variety of consumer products. Therefore, the definition has been written in a broad context to allow for the expansion of the rule to cover additional appropriate products as further information becomes available.

N.J.A.C. 7:27-23.2

COMMENT: One commenter stated that the rules should clearly say that perfumes and colognes for personal use on the body are not defined as "air fresheners".

RESPONSE: The Department agrees that as proposed, the definition of "air freshener" does not specifically exclude perfumes and colognes. The best way to amend the definition is presently being considered, and a revised definition will be proposed shortly.

COMMENT: Several commenters suggested that the definition of "architectural coating" be changed to be consistent with that used by New York. This consists of removing the phrase "applied and dried at ambient conditions" and adding the phrase "stationary structures and their appurtenances" before buildings. One commenter stated that the definition would then clearly include items such as water towers as stationary structures.

RESPONSE: The definition of architectural coating has been amended to clarify those products covered. The phrase "applied and dried at ambient conditions" has been left in the definition because the Department has determined this is an important aspect of such coatings which often makes them unique in relation to coatings used by industries to manufacture products. The phrase "stationary structures and their appurtenances" has been added to indicate that items such as buildings and bridges are not the only items covered.

COMMENT: The definition of "below ground wood preservative" should be deleted to ensure consistency with New York. There is no difference between "below ground wood preservatives" and those used for any other purpose.

RESPONSE: The Department agrees and the definition has been deleted. There is now just one category for wood preservatives, since they all perform the same function.

COMMENT: The definition of "bituminous coating" should be reworded to be the same as that used by New York and California. The definition should read "a coating material, soluble in carbon disulfide, consisting mainly of hydrocarbons and which is obtained from natural deposits or as a residue from the distillation of crude petroleum oils or of low grades of coal." One commenter also suggested including the phrase "a black or brownish" before "coating material".

RESPONSE: The Department is satisfied that the current wording is appropriate and substantially similar to that used by New York. The word "mainly" has been added to indicate that, although other compounds can be present, "bituminous coatings" are predominately hydrocarbons.

COMMENT: The "consumer insecticide" definition references the New Jersey Pesticide Control Code. Since it is incorporated by reference as part of the definition which establishes the scope of the rules, it would

ıave to be included in the SIP along with any pertinent implementation ules. It may be better to include a more comprehensive definition here han to include another body of law into the SIP.

RESPONSE: While the Department agrees that it would be preferable o avoid having to add the restricted use pesticide list and related ›rovisions of the New Jersey Pesticide Control Code, N.J.A.C. 7:30, to he SIP, this cross reference is a necessary part of the definition of ·onsumer insecticide. There is no simple description which would inform he reader what is included on this list. It would appear the only alterna- ive to the incorporation by reference of this list in the rules would be o repeat the list itself within the rules. The Department believes this vould be not only unwieldy, but would serve to confuse the reader in ome instances. Rather than attempt to duplicate the relevant provisions ›f the Pesticide Control Code in this section, the Department believes t more appropriate to include any necessary information in the SIP.

COMMENT: One commenter stated that the definition of "enamel ındercoating" should be eliminated to ensure consistency with New ſork. Another commenter pointed out that this definition is unnecessary, ince paints fitting this description will also fit into a general category 'primer, sealer, and undercoater", which it is suggested should be added o the definition in accordance with the New York rule. This new defi- ıition should read: "A coating which is intended to be applied to the ırface of a substrate to perform one or more of the following functions; 1) provide a firm bond between the substrate and subsequent coats, (2) ›rotect porous substrates, (3) prevent subsequent coatings from being ıbsorbed by the substrate, (4) prevent harm to subsequent coatings by naterials in the substrate, (5) provide a smooth surface for subsequent :oats, (6) seal fire, smoke or water damage, (7) neutralize odors, (8) block ıtains, (9) block efflorescence, (10) condition chalky surfaces, (11) coat ıcoustical materials without affecting their acoustical properties."

RESPONSE: A definition for the general category of "primer, sealer, ınd undercoater" has been added and the definition of "enamel under- :oating" has been deleted. The language used for the definition is substan- ıially the same as that suggested. It has been modified to fit the format ›f the rules. Coatings that would be included in "enamel undercoating" will now fall into the definition of "non-flat coatings" or "primer, sealer, ınd undercoater". The "primer, sealer, and undercoater" category en- :ompasses many proposed categories that have the same VOS limits, such ıs "general primer" and "general sealer". This consolidates the :ategories, and streamlines the rules.

COMMENT: The words "transparent, translucent, or opaque" should be inserted between "any" and "coating" in the definition of "fire retar- dant coating".

RESPONSE: The Department does not believe adding "transparent, translucent, or opaque" to the definition will improve the definition in any way or clarify its coverage. The definition has therefore been adopted as proposed.

COMMENT: The terms "general primer", "general sealer", and "gen- eral undercoater" should be deleted and replaced with a new definition of "primer, sealer, and undercoater". This definition should read "A coating which is intended to be applied to the surface of a substrate to perform one or more of the following functions: (1) provide a firm bond between the substrate and subsequent coats, (2) protect porous substrates, (3) prevent subsequent coating from being absorbed by the substrate, (4) prevent harm to subsequent coatings by materials in the substrate, (5) provide a smooth surface for subsequent coats, (6) seal fire, smoke or water damage, (7) neutralize odors, (8) block stains, (9) block ef- florescence, (10) condition chalky surfaces, (11) coat acoustical materials without affecting their acoustical properties." The rule would then be consistent with New York.

RESPONSE: The Department agrees with this suggestion. The defi- nition of "primer, sealer, and undercoater" has already been added. Since this definition adequately covers coatings described by "general primer", "general sealer" and "general undercoater", these definitions have been deleted. The definition added is substantially similar to that suggested, with minor changes made to the format.

COMMENT: The term "high performance coating" should be deleted. One commenter recommended this for consistency with New York. Another stated that it is not used in the rules and is therefore unnecessary.

RESPONSE: The term "high performance coating" is used in the definition of "industrial maintenance topcoat" and therefore has been retained.

COMMENT: The definition of "industrial maintenance topcoat" should be reworded to read: "A high performance coating which is formulated for the purpose of protecting against heavy abrasion, and/or water immersion, and/or providing resistance to chemicals, corrosion, temperature extremes, electric potential, or solvents."

RESPONSE: The definition has been reworded to coincide more close- ly with the suggested wording. However, the "and/or" has been in- corporated simply as "or", because it is sufficient and more appropriate.

COMMENT: In the definition of "lacquer" the words "which dries" should be changed to "to dry" and "provides" should be changed to "is intended to provide".

RESPONSE: The Department is satisfied the current definition suffi- ciently describes the "lacquer" category.

COMMENT: The definition of "metallic pigmented coating" should not be limited to non-bituminous coatings. The word "non-bituminous" should be deleted, and the words "a minimum of 0.4 pounds per gallon of" should be inserted between "with" and "pigment".

RESPONSE: Bituminous coatings are covered by the rules. The im- portant characteristic of "metallic pigmented coatings" is the metallic pigment, not if it is bituminous or non-bituminous. Therefore, the De- partment agrees that "metallic pigmented coatings" should not be limited to non-bituminous ones, and the word has been deleted from the defi- nition. Because the phrase "a minimum of 0.4 pounds per gallon of" defines when a coating is metallic pigmented, it has been added to clarify the definition.

COMMENT: The definition of "non-flat architectural coating" should be revised to eliminate the reference to label copy. Terms other than gloss, semi-gloss and eggshell are used for these coatings such as luster and satin, and the definition is complete without such a reference.

RESPONSE: The Department originally proposed the inclusion of the terms to attempt to clarify this definition. The Department agrees, how- ever, that the reference to label copy adds nothing to the definition and it has been deleted.

COMMENT: One commenter stated that the "quick-dry enamel" defi- nition is not needed because this is a subcategory of "non-flat architec- tural coatings". It should be deleted. Another commenter stated it should be deleted to be consistent with New York.

RESPONSE: Because "quick-dry enamel" fits into the category of "non-flat architectural coating", the definition has been deleted.

COMMENT: In the definition of "shellac", the words "and gum" should be inserted between "nitrocellulose" and "resins", and the defi- nition should be terminated after "chemical reaction" deleting the words "and intended to provide stain blocking properties as well as a solid protective film".

RESPONSE: The Department believes the suggested changes make the definition clearer. The addition of "and gum" more closely defines the component attributes of "shellac". The deleted phrase placed unnecessary restrictions on the category.

COMMENT: The definition of "stain" should be deleted to be consis- tent with New York, and new categories added for semi-transparent and opaque stains. Another commenter stated that opaque stains and wood preservatives should be separated from semi-transparent stains and clear wood preservatives. The distinction of stains versus wood preservatives is less meaningful than the distinction of clear/semi-transparent stains and preservatives versus opaque stains and preservatives. Therefore, the following definitions should be added:

"Semi-transparent stain" means a coating which is formulated to change the color of a surface but not conceal or change the texture of the surface.

"Semi-transparent or clear wood preservative" means a semi-trans- parent or clear wood preservative which is also formulated for the purpose of protecting exposed wood from decay or insect attack by the addition of a wood preservative chemical registered by the United States Environmental Protection Agency.

"Opaque stain" means all stains that are not classified as semi-trans- parent stains.

"Opaque wood preservative" means all wood preservatives that are not classified as semi-transparent or clear wood preservatives.

RESPONSE: The Department is considering the division of the "stain" category into semi-transparent and opaque. For this reason, the definition of "stain" has not been adopted at this time. Categories de- termined to be appropriate will be proposed as an amendment to the rules.

As for wood preservatives, the important aspect of this type of coating is the pesticide component, and not whether it is semi-transparent or opaque. The definition of "wood preservative" is sufficient to define this category.

COMMENT: The word "and/" should be inserted between "high- ways," and "or" in the definition of "traffic coating".

RESPONSE: Inserting the word "and/" adds nothing to the definition. If the coating is applied to one or all of the surfaces mentioned it is a covered coating without the additional word. The Department believes the definition is clearer without the suggested addition.

COMMENT: The definition of "varnish" needs to be clarified to distinguish from paints. The words "clear, transparent or translucent" should be added after the word "durable" and before the word "solid". The New York final rule uses this amended definition. Another commenter stated that the words "transparent or translucent" are required at the same place in the definition.

RESPONSE: The Department agrees that inserting "transparent or translucent" clarifies the definition, and has made this change.

COMMENT: To be consistent with other states and USEPA, the Department should use volatile organic compound (VOC) instead of VOS. In the alternate, some commenters suggested VOC should be recognized at least for labeling and other purposes as having the equivalent meaning of VOS. One commenter stated that a definition of VOC should be added and should read: "See definition of 'volatile organic substance.'"

RESPONSE: The terms "VOS" and "VOC" are not equivalent. There are certain compounds specifically exempted from the definition of "VOC" based on their low or nonexistent rate of photochemical reactivity. Not all of these compounds are exempted from the definition "VOS" because some of these compounds contribute to the transport of ozone. For example, ethane is not a "VOC" but it is a "VOS" because it has a rate of reaction that causes it to contribute to downwind ozone concentrations. Other compounds considered "VOS" but not "VOC" have adverse health effects. Methylene chloride and 1,1,1-trichloroethane are two such compounds. The Department includes these in the definition of "VOS" to protect the health of the citizens of New Jersey. These three compounds are not going to be exempted for architectural coatings, and therefore the term "VOS" will continue to be used.

COMMENT: The definition of "VOS" does not exempt 1,1,1-trichloroethane or methylene chloride. Both of these compounds are exempt in California and New York. Neither compound contributes significantly to ozone formation and regulating them will not lead to ozone reductions. Paints formulated to meet architectural coating rules in California and New York will not be compliant in New Jersey and new formulas will have to be developed for one state, incurring significant costs. New Jersey should be consistent with the other states and exempt 1,1,1-trichloroethane and methylene chloride.

RESPONSE: The Department includes methylene chloride and 1,1,1-trichloroethane in the definition of "VOS" so that they will be controlled for health reasons. Both of these compounds have unit risk factors assigned to them, and both have threshold limit values recommended by the American Conference of Governmental Industrial Hygienists. To protect the health of the citizens of New Jersey, they will not be exempted from the definition of "VOS".

COMMENT: One commenter believes that the definition of "VOS" is flawed because it includes liquid and solid compounds and the Department has stated that only aerosol propellants will be subject to reformulation or removal from the marketplace.

RESPONSE: The proposed rules do not cover only aerosol propellants. It is one of the main compounds affected, but it is not the only one. Any organic substance that falls into the definition of "VOS" is regulated, and therefore the definition is correct.

COMMENT: The phrase "mixture of organic substances, or mixture of organic and inorganic substances" should be eliminated from the definition of "VOS". It adds nothing to the definition and may confuse it.

RESPONSE: The phrase "mixture of organic substances, or mixture of organic and inorganic substances" indicates that a chemical does not cease to be a VOS when it is mixed with other substances. The phrase is necessary for the definition.

COMMENT: The definition of "VOS" should be clarified to indicate at what point the film discussed is considered to be dried.

RESPONSE: The Department assumes 100 percent evaporation of solvent when a coating dries. Virtually all the solvent will evaporate sooner or later, and it always has the potential to contribute to the formation of ozone.

COMMENT: Why does the definition of "VOS" exempt CFCs which were banned many years ago?

RESPONSE: The definition of "VOS" is for substances that contribute to the formation of ozone in the vicinity of the ground. CFCs do not do this, although they do deplete stratospheric ozone, which is why they were banned from use in aerosols.

COMMENT: One commenter stated that the definition for "wood preservative coating" should be reworded to read: "A coating which is formulated to protect wood from decay or insect attack and which is registered as a pesticide product with the United States Environmental Protection Agency." Another commenter pointed out that all wood preservatives are coatings, but not all of them are stains and therefore "stain" should be changed to "coating".

RESPONSE: The wording used in the present definition is equivalent to that suggested, except for the use of the word "coating". "Stain" has been replaced by "coating" in the definition, but no other change has been made.

The following comments were received on specific architectural coating definitions. There is one response to these comments which appears at the end of the comments.

COMMENT A: A definition should be added for "flat architectural coating". One commenter stated this should be done to ensure consistency with New York. Another stated it should be added because "flat architectural coating" is the biggest single category of paints subject to the rules. The definition should read: "A coating which registers a gloss of less than 15 on a glossmeter held at an 85 degree angle to the coated surface or less than five on a glossmeter held at a 60 degree angle, and which is identified on the label as a flat coating."

COMMENT B: The category "high heat resistant coating" should be added to coincide with the New York rule. The definition should read "A coating formulated specifically for use in high temperature applications. These coatings are designed to withstand temperatures in excess of 400 degrees Fahrenheit."

COMMENT C: A definition should be added for "opaque stain" in accordance with the New York rule. The definition is: All stains that are not classified as semi-transparent stains."

COMMENT D: A new definition for "quick-dry primer, sealer, and undercoater" should be added in accordance with the New York rule. The New York definition is: "A primer, sealer, or undercoater which is intended to be applied to the surface of a substrate to perform one or more of the following functions: provides a firm bond between the substrate and subsequent coats; seals fire, smoke, or water damage; blocks stains; conditions porous surfaces. These coatings dry to touch in one half hour and can be re-coated in two hours, as determined by test methods acceptable to the Commissioner." Without this new category these products would have to meet the "Specialty primer-sealer" category which is impossible.

COMMENT E: Calcimine coatings should be included in the definition of "specialty flat products". Other commenters stated that the "specialty flat product" category should be deleted. This product performs the same functions as a "primer, sealer, and undercoater" and a separate definition is unnecessary.

COMMENT F: "Specialty primer, sealer, and undercoater" should be deleted. Commenters suggested this be covered under the categories of "primer, sealer, and undercoater" or "quick-dry primer, sealer, and undercoater".

COMMENT G: The definition of "waterproof sealer" should be revised to recognize performance standards. The definition should read "colorless coatings which are formulated for the sole purpose of preventing penetration of porous substrates by water, though not to alter the surface appearance or texture, and which meet the following federal specifications for performance: SS-W-110T, paragraph 4.3.2. (water repellancy on masonry: maximum 1% water adsorption) and TT-W-572B paragaraph 4.3.4 (water repellancy on wood: minimum 60% water repellancy)."

RESPONSE: The Department intends to promote regional conformity where appropriate. In order to do so, suggested new categories are being considered, along with changes to proposed categories. The proposed categories the Department is considering changing are not being adopted. If the Department determines that these changes or additions are appropriate, they will be included in amendments to be proposed shortly. However, the Department will not sacrifice environmental benefit for conformity.

N.J.A.C. 7:27-23.3

COMMENT: Architectural coating VOS regulations should not be required in New Jersey. Only certain parts of California which have unique topographical and meteorological conditions presently have similar stringent rules. New Jersey does not share these conditions and architectural coatings make very little contribution to the ozone concentration. Several commenters stated automobile, truck and bus exhaust emissions are the main problem and should be regulated by restricting

driving and reducing gasoline volatility before a rule such as this is proposed.

RESPONSE: California is not the only state with architectural coating rules. In September, 1988, New York adopted a similar rule. New Jersey may not have the same topographical and meteorological conditions as California, but the ozone problem is similarly severe. The metropolitan New York area, which includes northern New Jersey, ranks in the top five areas for ozone pollution in the nation. With the problem being so severe, measures such as regulating the amount of VOS in architectural coatings must be taken.

By itself, regulating architectural coatings will not guarantee the attainment of the ozone standard. Other measures are under consideration. The Department is presently evaluating comments on proposed rules for gasoline volatility. Other mobile source strategies are being studied.

COMMENT: The Department should borrow workable language from other states. One commenter stated that the Department should adopt an exact duplicate of New York Part 205. Architectural coating VOS rules should be as consistent as possible to achieve the maximum reduction in air pollution. This consistency should extend to the number and names of category definitions. Without consistency, national manufacturers will not be able to provide products to every state.

RESPONSE: The Department has instituted some changes to the rules and is considering others to make them as consistent as possible with New York Part 205. New York's rule and California's model rule were used as the basis for Subchapter 23, and some of the language is directly from those rules. While the Department has attempted to maintain consistency with the New York rule, the Department has a duty to do all it finds appropriate to protect the public health and environment in New Jersey. Where differences are necessary, the Department must make the appropriate distinction in details.

COMMENT: The proposed rules should be withdrawn and a task force of academia, environmentalists, and industry should be convened to determine the significant financial impact, risk/benefit, achievable limits, and existing technology before reproposing. It should be determined how architectural coating VOS limits can be implemented without having an adverse impact on the economy of New Jersey, rather than adopt rules which will become part of the SIP and be difficult to modify.

RESPONSE: Pursuant to its statutory mandate, the Department has formulated and proposed for public comment what it believes to be appropriate rules for protection of the State's air. The information used as a basis for these rules was developed by a task force in California which included representatives from the interests cited. In addition, during the comment period, commenters, including industry, submitted more information. The Department has adopted what it believes to be appropriate provisions of the proposed rules. Based on some of the information received, the Department is studying certain areas further and amendments to the rules will be proposed shortly. The rules will not be submitted to USEPA for incorporation in the SIP until after the amendment process has occurred.

COMMENT: The Economic Impact Statement of the proposal states that the cost to reformulate coatings is expected to be relatively small for large companies. This is based on an outdated 1977 report containing an estimate of equipment changeover costs for a single manufacturer. Waterborne coatings may require formulation and application equipment constructed of different, more expensive materials. Sale of old equipment is unlikely, and at best will not bring a good return.

RESPONSE: The costs cited for equipment changeover cover the need for different, more expensive materials for construction. In addition, these costs were updated to 1988 dollars. It was stated in the proposal that the estimated $0.18 per gallon annualized cost of changeover did not include any savings that might be realized by sale of old equipment. Even without such sale, the cost is reasonable.

COMMENT: Because small East Coast paint companies have not needed to meet VOS limits, the research and development costs for reformulation will be very high. A number of companies will go out of business, increasing unemployment.

RESPONSE: New Jersey is not the only market for many of these companies. Such companies can continue to sell their products in other states while performing longer term reformulation efforts. As stated in the proposal, small companies can reduce research and development costs by drawing on the expertise of consultants and raw material suppliers. Also, up to 60 percent of all coatings sold in New Jersey are already in compliance. It is not anticipated that small companies will go out of business because of these rules.

COMMENT: The term "small business" in relation to architectural coating manufacturers is not defined. There are many manufacturers employing fewer than 25 employees which will have difficulty finding the economic resources or technical competence to conform with the proposed rules.

RESPONSE: The term "small business" is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. which was cited in the proposal. Any independent business, not dominant in its field, which employs fewer than 100 people is a small business. As stated in the proposal, by this definition, 70 percent of all architectural coating manufacturers are small businesses. Their needs were appropriately addressed in the proposal.

COMMENT: The information in the proposal stating that latex paint costs $1.25 a gallon less than alkyd (solvent reducible) paint is based on 11 year old information. It does not take into account differences between latex flat and alkyd flat. Batch size, competition in the marketplace, and the fact that gloss alkyds cost less than gloss latex are not considered.

RESPONSE: The Economic Impact analysis which the commenter questions provides a general analysis of products within specific categories in compliance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The numbers given will necessarily cover a general category of products and provide an average figure for that category. Numerous factors enter into this analysis. The Department is confident that the figure quoted is a good indication of the actual difference in price between solvent-borne and waterborne coatings.

COMMENT: Lowering the VOS content of coatings too far will result in inferior coatings which will require more frequent painting. This will increase the overall VOS emissions from architectural coatings and increase costs to the user.

RESPONSE: When performing a study covering the present state of compliant coatings in California in December, 1986, USEPA Region IX could find no data to substantiate claims that waterborne coatings are less durable than solvent-borne ones and therefore need more frequent repainting. The study found that manufacturers' literature guarantees waterborne performance for periods as long as 20 years, which outlasts the five year average between repainting.

The improper application of waterborne coatings may be the factor contributing most to claims of lack of durability. If surface preparation is not properly performed, if the climatic conditions are too severe for waterborne application, or if low quality paint is used, increased repainting may result. However, a substrate would have to be coated three times with a waterborne coating before emissions would be greater than from a single application of a solvent-borne coating.

COMMENT: While a 400 gram per liter standard exists for architectural coatings in California, products that can comply are not "user friendly". After the 10 year development period which began in 1977 and the year since compliance has been required, compliance has been mixed.

RESPONSE: The regulations in California establish a variety of VOS limits for different categories of architectural coatings. There is not just one 400 gram per liter limit. Some coatings have a limit lower than that, and others are higher. Some have been in compliance for 10 years, and others had a compliance date of September, 1987. A broad statement such as this is not supported by the information available to the Department.

COMMENT: Architectural coatings produced to meet the proposed VOS limits will be unacceptable to consumers because of ropiness and sagging. If high solids coatings are used, the increased expense of such coatings will fuel inflation. The technology problems that need to be overcome require exemptions, higher VOS limits, or an extension of the compliance dates.

RESPONSE: When applied by brush, all paints exhibit some degree of ropiness. This characteristic is acceptable to some consumers and not acceptable to others, but it is a subjective decision. The high market share of waterborne coatings indicates that their appearance is acceptable to a majority of consumers.

High solids coatings may cost more, but they will also cover more area. Consumers will need to buy less to paint the same area and the overall cost of the job should not increase appreciably.

Since compliant coatings exist in most categories, it is evident that technology problems have been overcome. For those categories in which technology is still developing, higher VOS limits are being considered and may be included in amendments to the rule to be proposed shortly.

COMMENT: The proposal states that consumer perception of inferiority in the case of waterborne architectural coatings is usually not based on material evidence, but rather personal opinion. One commenter disputes this and asks if there is supporting evidence.

RESPONSE: In the previously mentioned USEPA Region IX study, the perception of waterborne versus solvent-borne coatings was examined. They found that in most cases complaints about waterborne architectural coatings were due to poor surface preparation and not the coating itself. Some coatings of both types do have problems, but there are waterborne coatings available that have good performance. Manufacturers' literature indicates equal performance from both types of coatings.

COMMENT: VOS limits on architectural coatings used on bridges, guardrails and any steel highway structures work in California because salts are not used on roads due to the warmer climate. Contact with road salts will lead to increased painting with less resistant coatings which will result in increased taxpayer costs.

RESPONSE: Mountainous regions of California do get cold and snowy winters. The counties encompassing Lake Tahoe have architectural coating rules. Their limits on traffic coatings are to go into effect on September 1, 1989. Therefore, coatings are in development to meet the VOS limit and the environmental conditions to which such coatings will be subject. At this point, there is no evidence there will be a need for increased painting resulting in increased taxpayer costs.

COMMENT: The time needed for the necessary reformulation, engineering, and purchasing and installation of new equipment makes it doubtful that manufacturers, distributors, or users will be in compliance by January 1, 1990.

RESPONSE: Based on a survey of manufacturers performed in 1984, it is estimated that 65 percent of all architectural coatings sold in New Jersey are already in compliance with the VOS limits in these rules. If more time is needed to develop compliant coatings for the rest, those particular coatings can be removed from the market in New Jersey until reformulation is complete. However, it is not anticipated that this will be necessary.

COMMENT: N.J.A.C. 7:27-23.3(a) should provide for "grandfathering" to allow products to be used up and avoid the recall of thousands of gallons of coatings from dealer shelves. Disposal of this material will be wasteful, expensive, and could cause further environmental concerns. Further, it is stated stockpiling will not be a problem because of the up front costs involved and the lack of storage at smaller dealers. Stockpiling is not necessarily impossible, but it is very impractical. It is suggested that January 1, 1990 should be the last date for manufacture of coatings. Coatings manufactured prior to this date should be allowed to be sold, offered for sale, provided or applied for at least 18 months after that date, according to commenters. Commenters offered several suggestions to accomplish this as follows:

"Effective January 1, 1990, no person shall sell, offer for sale, provide or apply within the State of New Jersey an architectural coating manufactured after December 31, 1989 which contains . . ."

"No person will sell, offer for sale, or apply any architectural coating manufactured after January 1, 1990 . . ."

"Effective January 1, 1990, no person shall sell, offer to sell, provide or apply within the State of New Jersey any architectural coating manufactured after January 1, 1990 which . . ."

"Effective January 1, 1990, for products manufactured after this date, no person shall sell . . ."

RESPONSE: These rules will become operative on March 26, 1989 with a compliance date of January 1, 1990. This gives distributors and retailers nine months to clear noncomplying architectural coatings off their shelves. The Department believes that this is sufficient time to accomplish this changeover. Therefore, no date for ending manufacture is necessary.

COMMENT: New Jersey should not restrict the manufacture of noncompliant coatings as long as the coating is not sold, offered for sale, provided, or applied in the State. The word "manufacture" should be deleted from N.J.A.C. 7:27-23.3(a).

RESPONSE: The important aspect of this provision is not the word "manufacture" but the phrase "manufacture for sale in New Jersey". The Department prohibits manufacturing a noncompliant coating only if it is to be sold within the State. Any coating sold outside the State is not subject to the rules, except for the requirement to show proof that sale is actually outside the State (see N.J.A.C. 7:27-23.3(c)).

COMMENT: One commenter was concerned as to who would be liable if a container of architectural coating is found by an inspector in a store which is out of compliance but was sold to the retailer well in advance of the compliance date. This is a problem which would be avoided by converting the effective date to the date of manufacture.

RESPONSE: The Department determines enforcement action on a case-by-case basis. Everything possible is done to ensure that the person violating the rules is the one cited for the infraction. In this case, the retailer would be violating the rules.

COMMENT: The proposed rules do not distinguish between VOS content as packaged versus VOS content as applied, ready to apply or ready to spray. For multicomponent coatings which require the mixing of more than one package, the ready to use or ready to spray VOS content should be the critical criterion.

RESPONSE: The requirements of N.J.A.C. 7:27-23.5(a)1 state that the coating must not exceed the applicable VOS limit after thinning. This requirement also includes any other type of mixing necessary, such as multicomponent coatings.

COMMENT: The requirement in N.J.A.C. 7:27-23.3(c) for documentation is unnecessary. Instead, procedures used by New York, California, and Texas should be followed. Manufacturers are required to provide an explanation of their batch code systems which will provide information on when and where the material is produced.

RESPONSE: The documentation is necessary. An inspector in a manufacturing facility would have no other means of determining whether or not a noncompliant architectural coating produced by the facility is sold in the State. New York also requires documentation to show that a coating is to be marketed outside the regulated area.

COMMENT: N.J.A.C. 7:27-23.3(d) does not reference all of the appropriate ASTM test methods and some designations are incomplete. The complete list is:

D-3960—Practice for Determining Volatile Organic Content (VOC) of Paints and Related Coatings

D-2369—Test Method for Volatile Content of Coatings

D-1475—Test Method for Density of Paint, Varnish, Lacquer and Related Products

D-2697—Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings

D-3792—Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph

D-4017—Test Method for Water in Paints and Paint Materials by Karl Fischer Method

D-4457—Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into Gas Chromatograph.

Additionally, EPA Test Method 24, Determination of Volatile Matter Content, Water Content, Density, Volume Solids and Weight Solids of Surface Coatings (40 CFR Part 60, Appendix A) should be included.

RESPONSE: The Department has checked the referenced test methods against those listed in N.J.A.C. 7:27B-3 (Air Test Method 3). Those test methods acceptable to the Department and listed in Air Test Method 3 have been specifically listed in N.J.A.C. 7:27-23.3(d). The final list now includes: D-3960, "Practice for Determining Volatile Organic Content (VOC) of Paints and Related Coatings"; D-1475-60, "Standard Method of Test for Density of Paint, Varnish, Lacquer and Related Products"; D-2698-73, "Standard Test Method for the Determination of the Pigment Content of Solvent-Reducible Paints by High Speed Centrifuging"; D-2369-81, "Standard Method of Test for Volatile Content of Coatings"; D95-83, "Standard Method for Determining Water in Petroleum and Bituminous Materials by Distillation"; D-4017-81, "Standard Test Method for Water in Paints and Paints Materials by Karl Fischer". The ASTM D-4457 is not needed because neither dichloromethane nor 1,1,1-trichloroethane are exempt from the rules.

COMMENT: The method of calculation for the organic solvent listed in Table 1 of N.J.A.C. 7:27-23.3(e) will make compliance difficult, as water is excluded. When an organic solvent is mixed with water, this calculation raises the organic content because it reduces both the volume of the product as well as the total weight of the product. Water should be extracted from the weight portion and left in for the volumetric calculation.

RESPONSE: The water portion must be removed from both parts of the calculation. Otherwise, a large amount of water could be added to a very low solids coating, making it appear to comply. However, so much of such a coating would have to be used to coat a given area that just as much VOS would be emitted as by a noncomplying coating. The calculation method specified is that accepted by the USEPA.

COMMENT: One commenter stated water-reducible coatings have significant problems. First, they do not work on water tanks because to make these coatings a cold solvent is necessary which will contaminate water when the tank is filled. Second, the commenter stated water used in clean up of water-reducible coatings becomes a hazardous waste which causes a disposal problem. Lastly, water-reducible coating will not work well in areas where humidity gets above 75 percent because you can not get the water out of it.

RESPONSE: Waterborne paints are not necessarily the best product to use in all cases. High solids formulations that comply are also available. Any solvent used to clean up after a painting job is a hazardous waste, so that aspect of painting has not been changed by the promulgation of the rules. Complying coatings are marketed in San Francisco, which often has high humidity. These coatings have no more problems than solvent-borne ones.

COMMENT: All categories of architectural coatings that are exempt in California should be exempt in New Jersey. These categories are fire retardant coatings, tile-like glaze coatings, mastic texture coatings, metallic pigmented coatings, swimming pool coatings, multicolored coatings, shellac, sign paints, bond breakers, below ground wood preservatives, and quick-dry primers and sealers. These are low sales volume items with little impact on VOS emissions and no substitutes will be available in the short term. One commenter suggested that if these categories are not exempted, the rules should adopt the New York VOS limits.

RESPONSE: The Department is working toward regional conformity for the regulation of architectural coatings. Therefore, the VOS limits adopted by New York are being considered for inclusion in amendments to the rules which should be proposed shortly. It is the Department's understanding that California will be revising its rule soon, and these categories will likely be added to their rule. For these reasons, the requested changes to the rules will not be made at this time.

COMMENT: The limit for "below ground wood preservative" should be eliminated.

RESPONSE: The definition of "below ground wood preservative" has been deleted, with all wood preservatives now covered by the general category of "wood preservative" since they all perform the same function. The VOS limit for "below ground wood preservative" is no longer needed and has been deleted.

COMMENT: There is no basis for assigning a limit to "bituminous pavement sealers". The Department should restrict this category in the same manner as New York and California by stating that all bituminous pavement sealers must be a water emulsion-type coating with no limit on VOS. If a limit must be imposed, the 0.4 pounds per gallon and 0.10 kilograms per liter are not equivalent. It is sugggested the higher 0.8 pounds per gallon and 0.10 kilograms per liter be used.

RESPONSE: The problem with simply stating that bituminous pavement sealers must be water emulsion-type coatings is that no adequate definition of what "water emulsion" is exists. Without an agreed upon minimum water content necessary to be classified as a water emulsion, the vagueness of this type of requirement leaves wide areas for abuse. Therefore, the limit has been retained, but the discrepancy between the English and metric columns has been resolved by changing the English column to 0.8 lbs/gal.

COMMENT: One commenter recommended that a "clear coating" category be added to the rules with a VOS limit of 4.3 lbs/gal. This is consistent with other states' rules.

RESPONSE: No other state has a separate category for "clear coating" in its rule. New York has one for clear shellac, but not clear coatings in general. The Department does not believe the addition of such a category would be appropriate. Coatings that are clear, such as shellac and varnish, are already subject to the rules. The type of coating is usually more relevant to the VOS limit than whether it is clear or not.

COMMENT: One commenter requested that "deck coating" be given special consideration. These coatings are used on walkways, parking ramps, roof decks and such to protect the substrate and provide a nonslip quality for wet, snowy or icy weather. The commenter suggested the following limits:

base coat	2.5 lbs/gal	(0.30 kg/l)
intermediate top coat	3.3 lbs/gal	(0.40 kg/l)
top coat	3.3 lbs/gal	(0.40 kg/l)
finish coat	3.3 lbs/gal	(0.40 kg/l)

The defintion used should be "Deck coating systems are elastomeric coatings that exhibit good elongation and recovery properties while offering excellent weathering, impact and abrasion resistance. They are designed to protect and waterproof concrete in new construction or help solve remedial waterproofing and restoration problems. Specified applications include parking decks, roof decks, stadiums, mezzanines, foundation walls, potable water and wastewater treatment tanks."

RESPONSE: This type of coating, as described, would fall into the category of "industrial maintenance topcoat" which has a VOS limit of 3.8 lbs/gal. The Department sees no need to add a separate category for deck coatings.

COMMENT: "Enamel undercoating" and its corresponding VOS limit should be deleted.

RESPONSE: The definition of "enamel undercoating" has been deleted, because such coatings fall into the general category of "primer, sealer, and undercoater", which has the same VOS limit. Therefore, "enamel undercoating" and its corresponding limit have been deleted.

COMMENT: The word "general" should be removed from the "general sealer, primer and undercoater" category.

RESPONSE: The categories of "general sealer", "general primer" and "general undercoater" have been combined into the one new category of "primer, sealer, and undercoater" with the same VOS limit still applicable. Therefore, "general" has been removed from the "general primer, sealer, and undercoater" category.

COMMENT: The 2.9 lbs/gal (0.35 kg/l) limit for "general primers" will require production of a primer having high solids content which will require a greater amount of material being applied per square foot. This is likely to result in release into the atmosphere of as much solvent as would be released with the current lower viscosity primers which cover better and require use of less material. One commenter suggests a VOS limit of 3.8 lbs/gal (0.45 kg/l) for this category.

RESPONSE: The category of "general primer" has been eliminated from the rules. This type of coating is now covered by the category "primer, sealer, and undercoater" with the same VOS limit of 2.9 lbs/gal (0.35 kg/l).

It is not necessary to produce a high solids primer to be in compliance. There are waterborne formulations that are compliant. When coating an object, it is the thickness of the film that is important. A high solids coating can be applied in a thinner wet film to obtain the same dried film thickness. Therefore, a gallon of high solids coating will cover more area and less coating will be used. Emissions of VOS will not increase. Because of the availability of compliant coatings, the Department does not believe a higher VOS limit is necessary.

COMMENT: The category "industrial maintenance coatings" should be changed to "industrial maintenance primer and topcoat" to better fit the definition. In addition, new limits were recommended. One commenter recommended 3.5 lbs/gal (0.42 kg/l), in order to be consistent with other states, while another recommended 4.2 lbs/gal (0.50 kg/l). Another recommended 5.7 lbs/gal (0.68 kg/l) for "high performance industrial maintenance coatings" and 5.0 lbs/gal (0.60 kg/l) for "vinyl chloride and chlorinated rubber industrial maintenance coatings". The limits were recommended because of the much higher cost for low VOS materials.

RESPONSE: No change is being made to the VOS limit at this time. A higher cost for low VOS materials is not sufficient reason to increase the VOS limit for this category. The limit is consistent with New York and higher than that in California. After further review the Department is still convinced the limit is reasonable.

COMMENT: Metallic pigmented bituminous coatings will have to meet the "roof coating" limit of 2.5 lbs/gal (0.30 kg/l). This will be hard to conform with. These coatings should be included in the general category "metallic pigmented coating" with a limit of 4.2 lbs/gal (0.50 kg/l).

RESPONSE: The term "non-bituminous" has been removed from the definition of "metallic pigmented coating", so metallic pigmented bituminous coatings are now included in this category. The important characteristic of "metallic pigmented coatings" is the metallic pigment and not whether it is bituminous or not. The limit for this category is 4.2 lbs/gal (0.50 kg/l).

COMMENT: The proposed VOS limit of 3.2 lbs/gal (0.38 kg/liter) for nonflats will result in inferior drying properties and ropey application of some products, including porch and floor enamels, metal protective coatings and polyurethane enamels. 3.8 lbs/gal (0.45 kg/liter) is a more appropriate level.

RESPONSE: California has had a 3.2 lbs/gal (0.38 kg/l) limit on VOS for non-flats since 1979. There are many acceptable formulations on the market. Many manufacturers produce compliant coatings that their literature describes as equal in performance to solvent-borne coatings.

COMMENT: One commenter expressed support of the limit for "quick-dry enamel". Another stated that this category and its limit should be eliminated to be consistent with New York. A third commenter stated that the proposed level would result in a product that drags, picks up dust, and will be susceptible to wrinkling because of the long drying time, and therefore the limit should be raised to 3.8 lbs/gal (0.45 kg/l).

RESPONSE: The definition of "quick-dry enamel" has been deleted, so the corresponding limit has also been deleted. This now places this type of coating in the "non-flat" category.

COMMENT: The proposed rules on architectural coatings will have a potential adverse effect on public safety. The coatings used to make reflective road signs, hazard signs and lane markings should have higher VOS limits than those for "sign coating" and "traffic coating" because there are no effective substitutes available. Alternatives contribute more VOS in the long term by requiring more frequent application and less coverage per gallon. The commenter suggested the following limits:

Inks for Reflective Sheeting	7.5 lbs/gal	(0.90 kg/l)
Clear Coat for Reflective Sheeting	6.0 lbs/gal	(0.72 kg/l)
Reflective Liquids	4.5 lbs/gal	(0.54 kg/l)
Adhesives for Reflective Pavement Marking Systems	6.0 lbs/gal	(0.72 kg/l)

The definitions of these categories should be as follows:

"Inks for Reflective Sheeting" means the inks used in creating the letters and graphics on reflective sheeting used in traffic signs and in markings on the sides of vehicles.

"Clear Coats for Reflective Sheeting" means clear coats applied for protection of letters and graphics on reflective sheetings used in traffic signs and in markings on the sides of vehicles.

"Reflective Liquids" means reflective coatings that are applied, like paint, to such structures as fire hydrants, bridge abutments, curbings and barricades.

"Adhesives for Reflective Pavement Marking System" means the adhesive used to improve adhesion of reflective pavement marking tapes to the road surface.

RESPONSE: Many of the products mentioned by this commenter may not be covered by these rules. Inks that are used to make reflective sheeting would be subject to industrial surface coating rules. The Department is studying the specifics of these types of products to ensure that those used in the manufacturing process alone are not covered by these rules. The one coating mentioned which may be subject to the rules is "reflective liquids". A separate category may be added to the rules to accommodate such coatings. The Department has no intention of jeopardizing public safety. Highway safety considerations will be included in the decision on this type of coating, and any new definitions needed will be proposed as amendments shortly.

COMMENT: Some road signs use four-color systems that cannot be reformulated in a high solids form to comply with the rules. An ultraviolet cured system has been developed, but is expensive and small businesses cannot afford it. Therefore, small businesses which emit less than 20 pounds of VOS per day should be exempt from these rules, as they are in Los Angeles, or the following limits should be instituted:

Four-color Durable Inks	7.0 lbs/gal	(0.84 kg/l)
Masstone Durable Inks	7.0 lbs/gal	(0.84 kg/l)

RESPONSE: These rules are not intended to apply to the mass production of any type of product. The industrial use of surface coatings to make a product is already covered under N.J.A.C. 7:27-16, and a small size exemption is included there. The Department is determining how best to ensure that coatings that were not intended to be covered by subchapter 23 are not covered by it.

COMMENT: One commenter recommended a VOS limit of 3.3 lbs/gal (0.40 kg/l) for "waterproof mastic coatings".

RESPONSE: No supporting information for raising the limit was provided. Therefore, no need for a higher limit has been demonstrated. In order to maintain regional conformity, the Department is retaining a limit of 2.5 lbs/gal (0.30 kg/l) which the Department finds appropriate and has been adopted by New York.

COMMENT: There should be a category for "bituminous waterproof coatings" as there is in California, with a VOS limit of 3.5 lbs/gal (0.42 kg/l). Without this category, manufacture of this product is impossible.

RESPONSE: The only category that could be found in any of the California rules that this commenter may be referring to is a subset of "industrial maintenance primers and topcoats" labeled "bituminous coating" in the Bay Area Air Quality Management District's rule. If a coating fits into the category of "industrial maintenance coating", the VOS limit of 3.8 lbs/gal (0.45 kg/l) would apply, which is higher than the requested limit. No need is seen for a separate category.

COMMENT: "Wood preservative coatings" require high organic solvent content with a resulting low viscosity for penetration of the substrate. Two commenters recommended a VOS limit of 5.0 lbs/gal (0.60 kg/l) for all wood preservative coatings. Two other commenters recommended 4.6 lbs/gal (0.55 kg/l).

RESPONSE: The category of "below ground wood preservative" has been eliminated since all wood preservatives perform the same function. Now these coatings are covered under the general "wood preservative coatings" category. The limits for the two combined categories were different, and an appropriate limit needed to be established. The Department has determined that a VOS limit of 4.6 lbs/gal (0.55 kg/l) is appropriate. It is also consistent with New York.

COMMENT: Changes in formulations covered by FIFRA, including wood preservatives, are expensive and even if costs can be met, reformulation cannot be pursued without the permission of USEPA. This may not be possible in the compliance schedule proposed. One commenter suggested these products should be exempted completely from subchapter 23. Another commenter suggested that such products should be exempt from the VOS and labeling requirements until an amended FIFRA registration is approved. Another commenter suggested one of the following exemptions be provided:

"Any architectural coating that is registered with the EPA as a pesticide product is exempt from the provision of 7:27-23.3."

"Any architectural coating that is registered with the USEPA as a pesticide product is exempt from this part until the USEPA has submitted written approval of whatever changes are necessary to the formulation as are needed to comply with this part, provided the manufacturer submits an application to the USEPA for an amended registration by January 1, 1990 and submits a copy of the application to the Commissioner."

Another commenter submitted language similar to the second suggestion above which would provide the exemption until USEPA approves changes to the "formulation and/or the package label".

RESPONSE: The Department realizes that FIFRA places certain constraints on what a company can do in terms of formulation changes. Therefore, appropriate language to deal with these special circumstances for products within certain categories is being developed. It will be proposed shortly along with other amendments to the rules. Products covered by FIFRA are already exempt from labeling requirements pursuant to N.J.A.C. 7:27-23.5(c).

The following comments were received on specific architectural coating category VOS limits. There is one response to these comments which appears at the end of the comments.

COMMENT A: Fire retardant coatings should be exempt as they are in California. If they are not exempt, one commenter suggested a VOS level of 7 lbs/gal (0.84 kg/l) be established. The proposed 2.1 lbs/gal (0.25 kg/l) level limits use to only flat latex paint. All other fire retardant paints, varnishes and mastic coatings would be precluded. These products reduce the potential for loss of life and minimize spread of fire and should be taken out of the conventional architectural coating category and receive special consideration. Another commenter stated the category should be subdivided into "opaque" with a limit of 4.2 lbs/gal (0.50 kg/l) and "transparent and translucent" with a limit of 7.1 lbs/gal (0.85 kg/l). This would be consistent with what New York has adopted.

COMMENT B: A VOS limit of 5.4 lbs/gal (0.65 kg/l) should be established for "high heat resistant coatings", according to two commenters. One requested this for consistency with New York. The other stated this limit is needed because high solids coatings crack on exposure to high (up to 1000 degrees Fahrenheit) temperatures. A third commenter, who referred to these coatings as "temperature extreme" suggested 6.5 lbs/gal (0.78 kg/l) as the VOS limit for this category, stating that is what New York adopted.

COMMENT C: The VOS limit for "lacquer" should be increased to 5.7 lbs/gal (0.68 kg/l) as it is in other states. The proposed limit of 5.0 lbs/gal (0.60 kg/l) will lead to viscosity problems and end use thinning with solvents which will eliminate any emission reductions.

COMMENT D: The VOS limit for "multicolored coating" should be modified to 5.0 lbs/gal (0.60 kg/l) to be consistent with New York.

COMMENT E: The category of "quick-dry primers and sealers" should be added with the same VOS limit as "shellac". These products perform the same function, and by treating one differently, "shellac" will be substituted for "quick-dry primers and sealers". Therefore, no VOS reduction will be achieved and the quick-dry primer and sealer industry will be adversely affected. California and New York treated this category the same as "shellac".

COMMENT F: The category of "shellac" should be divided into the two categories of "clear" and "pigmented" to account for the many special uses and properties this product needs. This was done in New York, with VOS limits of 6.1 lbs/gal (0.73 kg/l) for clear and 4.6 lbs/gal

(0.55 kg/l) for pigmented. Another commenter stated that the VOS limits should be 6.3 lbs/gal (0.76 kg/l) for clear and 5.0 lbs/gal (0.60 kg/l) for pigmented.

COMMENT G: "Sign paints" which are used in small quantities should be exempt form VOS requirements as is done in California. Commenters suggested that at least a more reasonable VOS content of 3.8 lbs/gal as is required in New York under the term "graphic arts coatings" and which New Jersey proposed for "industrial maintenance primers and topcoats" should be used. Reformulation of these products may be inherently impossible due to necessary brushing characteristics and the one-coat opaque nature of the paint. Stronger solvents which could be used to meet the guidelines and achieve the necessary viscosity are not desirable from a health and safety standpoint. Waterborne or water-reducible systems which can produce a marketable product are not available.

COMMENT H: Durable graphics, which are required to have six year or greater durability, are used for diverse purposes and must have specialized properties. To produce an integrated system meeting the requirements of the proposal, research and development, static weathering, field testing and market testing must be done. If a product can be developed, this can require three to five years.

COMMENT I: Two commenters stated that the VOS limit for "specialty flat products" should be increased to 3.8 lbs/gal (0.45 kg/l). One wanted the increase for calcimine coatings because of the unique service of this special class of paints. Another commenter stated that this category and its corresponding limit should be removed to be consistent with New York.

COMMENT J: One commenter suggested that the word "specialty" be replaced with "quick-dry" in the "specialty primer, sealer, and undercoater" category, with the limit revised to 4.2 lbs/gal (0.50 kg/l). Another commenter stated the VOS limit should be 3.8 lbs/gal (0.45 kg/l).

COMMENT K: According to several commenters, the 3.3 lbs/gal (0.40 kg/l) level proposed for "stains" is too low because of the high solvent content necessary for penetration into wood fibers and the low level of pigment necessary in semi-transparent stains to allow substrates to transmit their appearance. Organic solvents are necessary to keep the stain binder and wood preservative ingredients in solution for uniform distribution during application. Waterborne products have many problems. Additionally, as some stains are registered with the USEPA as wood preservatives, these would be required by the rules to meet the even lower standard of 2.9 lbs/gal (0.35 kg/l). The required level must be increased. Several commenters stated 4.6 lbs/gal (0.55 kg/l) was a more appropriate level while two commenters stated 4.2 lbs/gal (0.50 kg/l) was necessary. Two other commenters recommended a limit of 4.6 lbs/gal (0.55 kg/l) for semi-transparent stains and one of 2.9 lbs/gal (0.35 kg/l) for opaque stains. One commenter stated that the limit should be lowered to 2.9 lbs/gal (0.35 kg/l) because stains can meet this standard and it is consistent with California.

COMMENT L: The VOS limits for "tile-like glaze coatings" should be revised to 4.6 lbs/gal (0.55 kg/l) according to two commenters, and to 4.2 lbs/gal (0.50 kg/l) according to another.

COMMENT M: One commenter expressed support for the proposed VOS limit for "varnish" claiming products exist that can meet this standard. Another commenter stated that compliant "varnish" will be available, but at substantially greater costs. Other commenters stated that varnish and urethane type coatings cannot be reformulated to high solids content with acceptable performance characteristics. Waterborne varnishes have shown poor shelf stability, sag and dust pickup due to extended drying time, susceptibility to wrinkling, and waterspotting. The resin technology is not sufficiently advanced to meet the proposed VOS limit and the limit should be increased. As this category only accounts for four percent of the total VOS emissions from architectural coatings, one commenter recommended a VOS limit of 4.5 lbs/gal (0.54 kg/l), which he stated is supported by current or near term technology. At a bare minimum, the commenter recommended the New York limit of 3.8 lbs/gal (0.45 kg/l). Three other commenters supported the New York limit. One commenter stated discontinuance of manufacture will result if a change is not made.

COMMENT N: "Waterproof sealers" are used to prevent the penetration of water through a porous surface. To comply with the rules, a waterborne material would be required which would introduce water into the surface the product is trying to prevent water from entering. High solids technology is not practical because of surface buildup, lack of penetration and inability of consumers to apply such coatings at effective coverage rates. Reformulation cannot occur in the proposed timeframe and without adequate waterproofing sealers, wood damage will increase. The expense of repair should be factored into the expense of the regulation. Two commenters recommended that the limit be raised to 5.0 lbs/gal (0.60 kg/l) to be consistent with New York. Another commenter recommended 4.2 lbs/gal (0.50 kg/l). A fourth commenter supported the proposed limit of 3.3 lbs/gal (0.40 kg/l), stating that products meeting this standard exist in California and are of good quality. Other commenters requested that the limit be raised to 5.8 lbs/gal (0.69 kg/l), one stating that this was necessary at least until January 1, 1993, when coatings complying with the proposed 3.3 lbs/gal (0.40 kg/l) may be feasible. This higher standard is necessary to maintain effectiveness in the northeast. Still another commenter wished to see this category exempted.

COMMENT O: The proposed 2.1 lbs/gal (0.25 kg/l) VOS limit for "all others", which the commenter equated with "flat architectural coatings", will require use of higher vehicle solids which will produce a paint with application problems including ropiness and stiffness. To eliminate these problems a level of 3.8 lbs/gal (0.45 kg/l) is more appropriate. Further, without this higher level, owners of older homes with calcimine ceilings would have no alternative for painting without "calcicoaters", which contain 3.8 lbs/gal (0.45 kg/l) of solvent, since the soluble calcimine matrix cannot be properly painted with latex emulsions.

COMMENT P: The category of "all others" should be defined or deleted.

COMMENT Q: Several commenters requested an exemption for all architectural coatings marketed in containers of one liter or less. Others requested an exemption for containers of a quart or less. The volume of coatings sold in small containers regardless of its VOS content are insignificant. The cost of replacing existing lines for low volume products cannot be justified and consumers will be deprived of specialty products with qualities previously available, according to one commenter. In addition, spray paints would be eliminated, as the technology does not exist to meet the standard for non-flat architectural coatings. Nonaerosol pumps will not work. Any concern about multi-quart unit packaging can be eliminated with appropriate regulatory language. Besides, the small jobs which small containers are used for do not fit into the definition of architectural coating.

RESPONSE: The Department intends to promote regional consistency for rules covering architectural coatings to the extent this is possible. Where appropriate, modifications and clarifications have been made on adoption. Those categories for which changes are being contemplated have not been adopted. The "all others" category has not been adopted because the wide variety of coatings which would now fall into that category could not meet the proposed VOS Limit.

Information and suggestions submitted on the above categories is under consideration by the Department. When this process is completed and appropriate categories and limits are determined, these categories will be included in amendments to the rules to be proposed shortly.

N.J.A.C. 7:27-23.4

COMMENT: New York proposed a similar rule calling for rigorous, near term cuts in VOS content of air fresheners and consumer insecticides which could not be sustained through the rulemaking process. The Department should review the "Notice of Proposed Rulemaking" and the "Notice of Adoption" for the New York consumer and commercial products rule, Part 235, and seriously consider adoption of a rule similar to Part 235.

RESPONSE: The Department has reviewed New York's experience with its rule on consumer products. However, the approach of the rule New York proposed is different from that of subchapter 23. New Jersey also received much more comment on consumer products, with 130 people submitting oral or written testimony. Based on all the information submitted, the Department has decided to go forward with the initial 50 percent VOS limit for air fresheners. Except for recordkeeping, the requirements for insecticides are not being adopted at this time. A future course of action is presently under consideration.

COMMENT: The proposed summary does not address the most serious economic consequence of the rules—the eventual exodus of manufacturers of products containing VOS from the State. The prohibition of the sale or offering for sale of noncompliant air fresheners and insecticides can be interpreted as prohibiting the manufacture of these products in New Jersey.

RESPONSE: The Department agrees that while the proposed wording would prohibit all manufacturers from selling or offering for sale in the State noncompliant products as intended, it is possible to read the requirement to further prohibit New Jersey manufacturers from selling or offer-

ing for sale products produced within the State even if the sale is for use outside the State, a result the Department did not intend. Clarification that only those products which are sold, offered for sale, used, or manufactured for use within the State are covered is necessary. Appropriate language has been added to N.J.A.C. 7:27-23.4.

COMMENT: The scientific evidence presented on consumer products is thin and inconclusive. A rule not based on scientific fact will not withstand judicial scrutiny. In addition, one commenter expressed concern that the approach of regulating consumer products without documenting that a benefit will actually occur sets the stage for unreasonable and irrational regulations.

RESPONSE: The information received during the comment period has pointed out some areas where further study or data gathering should proceed. That is why at this time, only the recordkeeping requirements will apply to insecticides and just the first tier reduction to 50 percent VOS by weight will apply to air fresheners. In the meantime, the Department is continuing to study how best to regulate additional consumer products.

COMMENT: The Science Application International Corporation (SAIC) study used as a basis for these rules is fundamentally flawed, riddled with errors and inconsistencies, and was developed for other purposes. An obsolete theory of photochemistry is used. It overestimates the VOS emissions from these products, the actual effect may not be measurable, contains no benefit or cost analysis, and the data does not represent the current market or take into account key marketplace factors. The report itself states that there is considerable uncertainty in this data. All information USEPA and New York has on this should be obtained and considered by the Department. Another commenter additionally stated the SAIC study is not appropriately used because it is based on VOC as defined by USEPA and not New Jersey's VOS. While similar, the definition of VOC excludes 16 specific compounds while the definition of VOS only excludes eight of the 16 compounds exempt from the VOC definition.

RESPONSE: The SAIC study was specifically done to help in the development of regulations for consumer products. The introduction to the work plan states: "The purpose of this Work Assignment is to identify, describe and assess alternative control strategies for controlling Photochemically Reactive Organic Compound (PROC) emissions from specific consumer product categories in the State of New Jersey and the New York City metropolitan area. The goal of the analysis is to provide as much useful information as possible in those subject areas relevant to possible future State decisions on control of emissions from consumer products." The study was never intended to be exhaustive, but to provide a foundation for rule development.

The study is generic in its approach, which limits its usefulness in some instances. There are some errors, but the basic concept has relevance to consumer product rulemaking. The photochemistry used is sufficient for its intended purpose.

The estimates for VOS emissions given in this study are very close to those given in a previous study. This earlier study, "Photochemically Reactive Organic Compound Emissions from Consumer and Commercial Products", used actual market data. It therefore appears that the emission reductions anticipated are reasonably accurate. The contractor was not asked to perform a cost/benefit analysis.

New York submitted what information it had to the Department. It was not as extensive as that submitted by other commenters and adds nothing overall. USEPA never put the SAIC study out for comment.

Some of the compounds included in the definition of VOS are there because of health effects associated with them. Others are there because they react to form ozone downwind of New Jersey. The Department cannot and does not claim SIP credit for reducing emissions of compounds found to be negligible photochemically reactive by USEPA. Therefore, the emission reductions predicted by the SAIC study covers only those for which SIP credit can be claimed, and is an appropriate basis for a reduction determination.

COMMENT: The discussion of alternative application techniques in the SAIC study suggests application of more concentrated products which raises various safety concerns with some products and is of limited feasibility for virtually all aerosols. Further, this section discusses barrier pack technology which is very expensive per unit and is not feasible packaging for the vast majority of aerosols. The suggested systems that may be used are extremely expensive contrary to the claims made and none of these technologies result in products with lower VOS content since the liquified gases being eliminated must be replaced by VOS solvents.

RESPONSE: The rules do not cover only aerosols. All forms of the products affected must meet the requirements. The Department is not regulating what form consumer products should take. The discussion of alternative application techniques in the SAIC study was not used in the development of these rules, although it did cover safety concerns. The manufacturers have the best idea of what changes to make and how best to weigh costs and feasibility. However, the study shows alternatives already exist.

COMMENT: The section of the SAIC study dealing with substitutes for VOS is highly misleading. Of the substitutes mentioned, only carbon dioxide and 1,1,1-trichloroethane have been designated non-photochemically reactive by USEPA, and they are of limited use as substitutes. Also, no consideration was given to effects of these substitutes on products, such as the higher pressure that would result from propellant substitution, increased acidity caused by substitutes, and effects on efficacy.

RESPONSE: The Department did not rely on the substitution section of the SAIC study. The substitution of less photochemically reactive compounds for those of higher reactivity is not an acceptable control strategy to the Department. However, since some products on the market already meet the requirements of the rules, compliance is possible. A few of these products use compounds mentioned in the substitution section of the SAIC study, and they obviously have overcome the indicated problems.

COMMENT: The studies required by the SIP were not performed. These should determine the principle sources of VOS in New Jersey and compare emissions from consumer products to them. Another commenter stated that computer modeling should be done to prioritize sources for control. This would take approximately three years.

RESPONSE: The SIP is based on the principal sources of VOS in New Jersey. When further control of VOS was determined to be necessary, the largest and most easily controlled sources of VOS were chosen for control. Since these decisions have been made, the Department has proceeded to adopt the identified measures. Some new measures have also been identified and incorporated into the rules. However, the emissions of VOS from consumer products still ranks high among the principal sources of VOS in New Jersey.

Sources of VOS were prioritized for the SIP. The available control technologies for consumer products were evaluated, as required by the SIP. Also, as required by the SIP, updated emission factors applicable to New Jersey were developed. These, then, constitute the required studies.

The State has an obligation to attain the NAAQS for ozone as quickly as possible, and a three year computer modeling project will not enhance the process. There are not many uncontrolled sources of VOS left in New Jersey.

COMMENT: One commenter was concerned about the future application of the "arbitrary procedure" the rules follow to other products produced by the commenter. The Department should not regulate broad classes of consumer products without an adequate understanding of the complexities of the formulations and potential adverse societal and economic consequences for the rules. New York determined the SAIC report was not a sufficient basis and decided to first develop an adequate database. New Jersey should similarly work with industry to develop a database.

RESPONSE: Future additions of categories of consumer products to these rules will not occur until the necessary studies have been completed. New Jersey is working in conjunction with New York, California, and other states to develop data bases and uniform consumer product regulations.

Comments on consumer insecticides have pointed out deficiencies in the Department's knowledge of these products. Therefore, provisions of the rules applicable to consumer insecticides are not being adopted at the present time. For air fresheners, information from the SAIC study was sufficient for what was adopted. No evidence was presented to indicate that the 50 percent VOS limit could not be attained.

COMMENT: The compounds contributing to ozone formation are carbon monoxide, carbon dioxide, methane, nitrogen oxides and the hydroxyl radical. Hydrocarbon propellants, such as butane, must undergo photolysis to one of these compounds before they will react to form ozone. In addition, most propellants have a long atmospheric residence time and are therefore less likely to react. A 40 percent reduction in propellant will result in a 15 percent reduction in ozone, while a one percent reduction in xylene or formaldehyde will result in the same 15 percent reduction in ozone.

RESPONSE: Carbon monoxide and carbon dioxide do not participate in the formation of ozone. Methane has such a low rate of photochemical reactivity, it has been declared nonreactive by USEPA. Nitrogen oxides and peroxy radicals, along with sunlight, are the contributing factors for ozone formation. All organic molecules released to the atmosphere undergo a transformation that brings them into the cycle of ozone formation.

The Department is aware that the correlation between VOS and ozone is not linear. However, a long atmospheric residence time simply means that an area downwind receives the ozone caused by emissions from New Jersey. All organic compounds which react to form ozone have the potential to do so over and over. Therefore, the percentage reductions cited are not meaningful without timeframes and other parameters.

COMMENT: The photochemical reactivity of the compound ethanol, which is used in many air fresheners and disinfectants, has been shown in laboratory studies, theoretical modeling studies and smog chamber studies to be very low. This is also true of paraffins. Other compounds such as olefins and alkenes and certain carbonyl compounds are up to 10 times as reactive and form 10 times as much ozone.

RESPONSE: The Department regulates all VOS, regardless of their relative reactivity. The transport of ozone and ozone precursors is a major factor in the nonattainment of the NAAQS for ozone in many areas. Therefore, control of ethanol emissions in New Jersey will help a downwind state such as Connecticut to attain the NAAQS for ozone. Also, on hot, stagnant summer days, when air masses do not move, controlling ethanol will reduce New Jersey's ozone concentration.

COMMENT: Several commenters stated that emissions from motor vehicles, including diesel trucks, should be controlled before consumer products are regulated. Aerosols emit only 0.44 percent of the amount motor vehicles do. Propellants are only about 0.5 percent of total VOS use. Aerosols account for only 0.5 percent of VOS emissions nationwide, so banning them cannot be an effective measure. Another commenter stated recent discoveries on the running evaporative loss of gasoline from automobiles shows emissions from this source can be as high as 750 tons per day in New Jersey. Air fresheners and pesticides emit 15 tons per day. The Reid vapor pressure of gasoline should be controlled to limit these emissions, which are particularly heavy on hot days and explain some of New Jersey's excess ozone episodes in the summer.

Still another commenter stated the Department should continue to focus efforts on motor vehicles and their emissions through an enhanced inspection and maintenance progam and regulations on the fossil fuels gasoline and diesel oil.

RESPONSE: The emissions standards that can be established for new motor vehicles and the follow up standards that can be required of these vehicles as they age is limited by the CAA. The State cannot develop its own unique requirements for new vehicles, nor can it require retrofitting of older vehicles to meet standards higher than those in existence when the vehicle was produced. However, under the CAA, the State is responsible for attaining the NAAQS for ozone. This can only be done by establishing rules within the realm of the State's power. Consumer products are within this realm.

In addition, not only aerosol products are being regulated. Other forms of consumer products also contain VOS. Therefore, the amount of VOS from consumer products as a whole will be larger than that just for aerosols and propellants.

The Department is doing work on those mobile sources it has the authority to control. This includes a proposed rule on the Reid vapor pressure of gasoline and consideration of an enhanced inspection and maintenance program. However, none of these measures is sufficient by itself to attain the NAAQS for ozone. They are all needed.

COMMENT: Air fresheners and insecticides make an insignificant contribution to the total VOS in the atmosphere. Reduction in emissions from these products will not yield an improvement in air quality. In addition, consumer products are mostly used indoors and much of the VOS emitted by them reacts with indoor surfaces or is washed down the drain. It therefore never reaches the outdoor atmosphere.

RESPONSE: It has been estimated that air fresheners and consumer insecticides used in New Jersey each year release 2580 tons of VOS. That is six metric tons per day (mtpd). The SIP estimated that a reduction of 153 mtpd would be necessary to attain the NAAQS for ozone. The VOS from these two products represents four percent of that needed reduction. This is not insignificant.

As to the VOS never reaching the outdoor atmosphere, the indoor environment is not a bottomless sink. Some reaction may occur on surfaces, but a saturation level will be reached and no more reactions will occur. At this point, 100 percent of the VOS will be emitted to the outdoor atmosphere. VOS which goes down the drain usually volatilizes into the air.

COMMENT: Most products are presently formulated with a minimum VOS content, since VOS has a high cost. The great percentage of products are water-based except for those for which no substitute for the VOS has been found, such as those using water insoluble ingredients, water unstable materials, or where the VOS is needed to help an active ingredient penetrate an insect. Further reductions are not possible. One commenter stated this is a basic difference from mobile and stationary sources whose VOS emissions are waste, with no economic incentive for reduction. This difference must be considered when considering this category.

RESPONSE: There are products on the market which perform the same function, but which have a wide range of VOS content. If all manufacturers had reduced VOS content as much as possible there would not be such a wide range. Products where the VOS is necessary, such as certain types of insecticides, have a much smaller range of VOS, generally being only one or two percentage points. It appears, however, that a general sweeping statement declaring that VOS has already been reduced as much as possible is inaccurate.

In order to have time to gather more information on the role of VOS in insecticides, that part of the rule has not been adopted. Further study will be done on how much a reduction in VOS content can be achieved. Air fresheners can be formulated to less than 50 percent VOS, as shown by products already on the market.

Mobile and stationary sources often have economic incentives to reduce emissions. Stationary sources can recover solvents or useful by-products through control. Mobile sources can have better fuel economy with reduced emissions. Propellants used in aerosols could be considered a waste, since they play no part in the actual function of a product. They are there simply to get the product out of the can.

COMMENT: The substitution of one chemical for another may adversely affect a product, resulting in its discontinuation. Another commenter stated that the substituted chemical may be more photochemically reactive than the one it replaces, so even if emissions are lower, the amount of ozone generated could be the same or greater.

RESPONSE: There are many factors involved in reformulating a consumer product. The manufacturer can best determine what chemical substitutions can be made without adversely affecting the product. As to photoreactivity, it is already assumed that all VOS contributes to the ozone problem and the reduction targets from the modeling for the SIP is for total VOS. A one-to-one substitution cannot be made of one VOS for another.

COMMENT: Conversion of aerosol products to pump-type sprays can result in substitution of a more highly reactive liquid solvent for a gaseous solvent VOS. In addition, for many products the conversion from an aerosol delivery system to a pump delivery system would have no impact on ozone formation since the propellants are often not VOS.

RESPONSE: The Department recognizes that pump sprays often contain just as much VOS as aerosols. However, the rules do not ban aerosols and the Department is not planning to do so. Therefore, the development of pump spray products is not necessary.

COMMENT: The concern shown for air quality by the manufacturing community through investment in air pollution control has been disregarded by these proposed rules whose major impact will be on manufacturers and retailers.

RESPONSE: The Department recognizes that the manufacturing community has borne a large portion of the burden of cleaning up New Jersey's air. There are a limited number of sources of VOS that can be controlled. Most of these are manufacturing sources. However, in the case of consumer products, the average consumer is being asked to make some lifestyle changes. Additionally, it can be assumed that much of the cost of compliance for manufacturers is ultimately passed on to consumers. The Department must take every step necessary to protect the public health and the environment by controlling significant emissions of VOS regardless of who bears the initial costs of compliance.

COMMENT: Some companies do not manufacture affected products but simply distribute them under their own label. Such companies are at the mercy of primary pesticide producers and aerosol fillers to determine the viability of compliance with the proposed rules.

RESPONSE: Companies that distribute products manufactured by other companies can stop purchasing noncomplying products and change to a manufacturer who makes a complying product. If enough small businesses distribute a given manufacturer's product, that manufacturer

will have to produce a complying product or lose a substantial portion of his or her business, including sales under his or her own label.

COMMENT: Many small formulators produce low volume, low profit margin specialty products and cannot afford the costs of compliance. These important products will no longer be available.

RESPONSE: Under the rules as adopted, many of these specialty products will not need to be reformulated. Because the provisions affecting consumer insecticides and the 25 and five percent limits for air fresheners are not being adopted at this time, only air fresheners containing more than 50 percent VOS will need to reformulate. Specialty products will be given careful consideration in the future study of consumer products and in future amendments to the rules.

COMMENT: Many commenters stated that the impact on small business, including support industries such as distribution, and container, valve, fragrance and propellant manufacturing, will be too great. There will be a significant financial burden, up to one million dollars per product, for research and development, efficiency and safety testing, and marketing. Relabeling and recordkeeping will add to the burden. In some cases, products will be discontinued.

RESPONSE: Subchapter 23 in its adopted form should not have a significant economic impact on industry. The most significant costs are associated with consumer insecticides. These are not covered by the rules at the present time and costs are therefore not exputed to be substantial. Most of the costs cited will not be incurred by small businesses because many air fresheners are already in compliance with the rules. In addition, alternate forms exist and are on the market, and have already undergone efficiency and safety testing. Therefore, there will still be a need for containers, valves, fragrances, and some propellants.

COMMENT: Consumers will not be happy with the suggested alternatives to consumer products. In addition, many of the suggested alternatives contain VOS and are not acceptable.

RESPONSE: These are the first air pollution control rules which will directly affect the consumer. Manufacturing facilities have done much to control emissions of VOS. As larger sources become controlled, it is necessary to promulgate more rules which will affect people's lifestyles. Changes may need to be made. However, the Department does not anticipate significant consumer dissatisfaction.

COMMENT: Restrictions on VOS content will hamper product development and restrain innovation.

RESPONSE: Restrictions often spur innovation. New ways of doing things must be researched and developed. Fresh approaches to old products will be needed.

COMMENT: Other states may follow New Jersey's lead, resulting in a reduction in large national product lines and loss of jobs.

RESPONSE: The Department would encourage a nationally coordinated program on consumer products. That way, all manufacturers will be on an equal footing and there will be greater incentive to develop low VOS products. While some jobs may be lost as the manufacture of old products is discontinued, it is possible such a nationwide rule would create jobs in research and development, pilot studies, and new manufacturing facilities.

COMMENT: No affected products will be available in New Jersey after the limits go into effect. Companies will not bother with developing products to meet the interim limits, but will immediately work on a five percent product because of scientific and economic considerations. The rules do not mandate product "reformulation" and substitution of one ingredient for another, but requires new product development. The five percent level is currently unattainable.

RESPONSE: The 25 percent and five percent limits have not been adopted. In addition, except for recordkeeping requirements at the manufacturing level, consumer insecticides are not covered at this time. The Department is doing further study on limits below the 50 percent level and on consumer insecticides for possible incorporation into future amendments to the rule.

COMMENT: Because existing products will no longer be sold in New Jersey, these rules will cause economic hardship due to increased capital expenditures and research, development, and marketing costs that many businesses cannot afford. In addition, these rules will cause unemployment and lost tax revenues due to the subsequent plant shut downs.

RESPONSE: The requirements for consumer products have been scaled down for the present time. The Department plans to conduct more studies of the costs and economic consequences of regulating consumer products before any amendments to the rules are proposed. The Department believes there will not be any plant shut downs due to these rules and that cost increases will not be excessive.

COMMENT: Distributors may stop sales of some products in the tri-state area as they attempt to ensure that no noncompliant products are sold in New Jersey. The cost of distribution will go up and so will the price of the product. The manufacturer has no control over how the distributor performs the distribution. Therefore, the rules should not cover sales, but shipping or delivery.

RESPONSE: The labeling requirement has been instituted, in part, to help eliminate this problem. Products acceptable for sale in New Jersey are required to display their maximim VOS content on the container. If this labeling is not present, the product does not comply with the rules. This is a simple and easy check of compliance.

COMMENT: With a VOS content limit of five percent, essential products will be eliminated from the New Jersey market. Consumers will travel to other states to purchase these products. The exhaust emissions from their trips will contribute to the ozone problem.

RESPONSE: The five percent limit has not been adopted at the present time. It is not anticipated that there will be increased vehicle trips due to these rules.

COMMENT: One commenter stated that the necessary reformulation to comply with these rules is analagous to the CFC ban. If aerosols can be reformulated, it will be prohibitively expensive. The CFC reformulations for 30,000 products took three years and cost $337 million. Another commenter stated the elimination of CFC cost over a billion dollars in 1976 and that this cost was reduced because an alternative was available, a situation which does not exist here. The commenter stated that a study in California found costs to be in the range of $30,000 to $98,000 per ton of VOS removed. Another commenter stated that a ban, rather than a phase out, of aerosol air fresheners and consumer insecticides should occur and cited CFC as an example that this can work.

RESPONSE: The banning of aerosol products will not necessarily reduce the VOS emissions from consumer products. Many nonaerosol forms have just as much VOS in them. The cost of reformulation is difficult to determine for industry as a whole. Some products are already in compliance and need no reformulation. There are alternatives available.

The cost of this measure is relatively high. In the effort to control ozone, the point has been reached where costs will be high and the average consumer's life will be affected. However, these measures are necessary to achieve progress towards attainment of the NAAQS for ozone.

COMMENT: Most aerosols use water, active ingredients and a relatively benign paraffinic hydrocarbon propellant. Several commenters stated that the propellants used in aerosols do not contribute significantly to ozone formation. The Department should compare hydrocarbon aerosol propellant production to overall hydrocarbon production and their respective ozone pollution potentials.

RESPONSE: For those products which contain less than 50 percent hydrocarbon propellant, no reformulation will be needed. Information in the possession of the Department indicates that propellants usually account for less than 40 percent of a given product. It is only those products which use a solvent other than water as a carrier which will require reformulation.

Hydrocarbon propellants react slowly, but they do react to form ozone. This ozone then contributes to the problem somewhere downwind of the source of the emission. The Department promotes regional strategies by controlling emissions of slow reacting compounds and thus helping downwind areas.

COMMENT: Are nonaerosol products covered by the rules? If so, please list these covered products.

RESPONSE: All types of products that fall into the definition of "air freshener" or "consumer insecticide" are subject to some part of these rules. For air fresheners, this includes aerosols, solid forms, wicks and powders. For insecticides, this includes aerosols, powders, shampoos, and other forms.

COMMENT: A fine spray is needed for good performance. Water and carbon dioxide cannot provide a fine spray like VOS propellants.

RESPONSE: Some manufacturers have found that water and carbon dioxide provide good performance. The Department has no information as to the superiority of VOS as a propellant.

COMMENT: To destroy the aerosol industry with its attendant employment, commerce, and tax base is ludicrous when it will have no effect on ozone pollution. Why wipe out $135.3 million in sales in New Jersey for a mythical reduction in the ozone concentration?

RESPONSE: Aerosols are not the only products affected by these rules. Additionally, the scaling back of N.J.A.C. 7:27-23.4 to air fresheners, and the VOS limit to 50 percent, will greatly reduce the

number of aerosol products affected. The aerosol industry will not be destroyed.

The reduction in ozone is not mythical, but is based on modeling and s necessary.

COMMENT: A large percentage of adhesive and sealant products are not sold directly to consumers, but some are and others are utilized by ndirect consumers. Is the portion of adhesive and sealant products sold o consumers or utilized by indirect consumers subject to the provisions of this regulation? If they are, why is this so?

RESPONSE: Adhesives and sealants are included in the definition of 'consumer product" but are not subject to the VOS limits in the rules at this time. Those adhesives and sealants sold to industrial users may already be subject to N.J.A.C. 7:27-16 and therefore would not be subject to this subchapter in the future.

COMMENT: The Department should not overreact in trying to reduce the ambient ozone concentration and risk the public health.

RESPONSE: The ozone problem in New Jersey is a risk to the public health. By not doing whatever it can to reduce the ambient ozone concentration, the Department would be endangering the public health. Protecting against this risk is not an overreaction, but is the Department's duty.

COMMENT: A five percent limit in VOS content will effectively ban all aerosols. It will also eliminate advantages of such products, such as more child-resistant packages, inherent product stability, ease of use, cleanliness, proper dilution, special product forms, and proper product delivery.

RESPONSE: The five percent limit is not being adopted at this time. All aerosols will therefore not be affected by the rules. The Department is considering how to best proceed with the regulation of consumer products, including VOS limits in the future.

COMMENT: It is not clear if disinfectants are covered by the rules. They should be exempt because they are necessary to control the spread of germs and disease. Another commenter stated the rules could be misinterpreted to include disinfectants or any product containing perfume. This would eliminate the use of disinfectants because the VOS is not the propellant but the active ingredient and reformulation is impossible. Any reduction in the active ingredient (VOS) content would severely effect the efficacy of the product. The commenter urges a tightening of the regulatory langauge to avoid any difficulty. Suggested solutions include specifically exempting disinfectants from the rules as was done with personal bodily hygiene products or an exemption of active ingredients from VOS limitations as New York did in drafting their regulations.

RESPONSE: The Department recognizes the importance of disinfectants to the health care profession. Such products are not subject to these rules. The Department is reexamining the rules to see if there is a way to make it clearer that disinfectants are not covered by the rules.

COMMENT: Many commenters are opposed to the limits on the VOS content of consumer products because the efficacy of disinfectants would be affected and certain instruments which require liquid sterilization with these products would become unavailable.

RESPONSE: Disinfectants are not subject to N.J.A.C. 7:27-23.

COMMENT: It is unfair and discriminatory to regulate air deodorants but not disinfectants, particularly when both are often used in the same product.

RESPONSE: Air deodorants (air fresheners) have a different function than disinfectants. Deodorants are used to add scent to the air, or to cover an unpleasant odor. Disinfectants kill germs and are registered under FIFRA. These different functions require that these compounds be treated differently.

COMMENT: Products claiming both deodorant and disinfectant properties should not be exempt from these rules. Too many high VOS products would be exempt and inquiries by the commenter found no evidence that general ambient air sprays actually disinfect. Viruses in the air are too diluted for spray droplets to come into contact with them all. Hospitals do not generally use household disinfectants and primarily use nonaerosol products to clean and disinfect rooms. The rules should be clarified to explicitly include any product which is an air deodorant even if it claims disinfectant properties and should not allow products to become exempt merely by modifying their label to eliminate the word deodorant.

RESPONSE: A claim of disinfecting properties is not sufficient to be a disinfectant. Disinfectants must be registered as pesticides under FIFRA. The Department has little information on disinfectants as a class, and therefore does not plan to regulate them at the present time. However, this category is under consideration for inclusion in the rules in the future.

COMMENT: Active ingredients should be exempt as they are necessary to render the product effective for its purpose.

RESPONSE: The term active ingredient can be very ambiguous. Instead of exempting active ingredients, the Department intends to set an allowable level of VOS to accommodate active ingredients that are VOS in a particular product category.

COMMENT: Approximately 75 percent of aerosol air fresheners and insecticides will be affected by these rules.

RESPONSE: Because the stricter limits are not being adopted at this time, fewer products will be affected. However, it is necessary that a number of products be impacted for the rules to have its desired effect in reducing ozone. If no products were affected, the rules would be useless.

COMMENT: The SAIC analysis of potential VOS emissions from aerosol air fresheners in the New York Metropolitan Area and New Jersey greatly overestimates these emissions. The report is based on a survey of consumers because it states that no recent data are available from manufacturers and distributors. In reality, annual surveys are conducted of pressurized products filled in the United States each year which include accurate production data for this category of products. The study states a national consumption of 435 million units of aerosol air fresheners with a national retail sales value of $46 million. If this data were true, simple division would show a per unit retail price of 10.6 cents. A more realistic estimate would appear to indicate that SAIC estimates for potential emissions from this category is high by a factor of least three while retail sales are least seven times that estimated by SAIC in this report. The emission estimates used by SAIC for air fresheners is incorrect for three reasons. First, there is a gross overestimation of the national annual consumption of air fresheners in aerosol form. Rather than the 435 million units estimated by SAIC, the actual annual production is only 161 million units. Second, the report uses eight ounces as the average weight of all aerosol air fresheners. This is only correct for alcohol based disinfecting air fresheners. Third, SAIC uses a "product use fraction" factor to estimate all air freshener emissions based on consumption of only four brand name aerosol air fresheners which resulted in overestimation of the relative contribution of alcohol based products and underestimation of water based products. Further, of the products cited in the study, contact with the manufacturers indicates that the formulations listed by the SAIC study for their products is incorrect. Lastly, SAIC underestimates retail sales because their figures are erroneously based on 1981 data for wholesale sales volume.

RESPONSE: The data used for the number of units of aerosol air fresheners sold in the United States came from the Simmons 1986 Study of Media and Markets. The product use fraction was determined by a survey of consumers. Therefore, the number of units sold can be assumed to be fairly accurate. Discrepancies between this number and that cited by the commenter could be caused by factors such as the fact that the survey used by the commenter is for aerosols filled in the United States, while the Simmons study covers those sold, no matter what their country of origin. The retail sales value in the SAIC report is most likely wrong, but it was not an important aspect.

A shelf survey was performed by SAIC to determine the average weight of aerosol air fresheners. Disinfecting air fresheners were found to have a product weight of 12 ounces. Other air fresheners had weights of seven or eight ounces. The eight ounces average weight appears to be reasonable.

The product use fractions represent greater than 85 percent of the air fresheners and aerosol disinfectants used in the northeast. The seven most popular air fresheners, of all forms, were included in the calculation. Some of these forms have no VOS content. The estimate of VOS emissions from this category is not exact, but should be reasonably accurate.

The product formulations used in the study are four to six years old. More recent data are considered proprietary by the manufacturers. It is anticipated that large changes in formulation will not have occurred in that time span.

The retail sales value of the products sold did not factor into the rule development process. If there is an error there, it did not affect the rules.

COMMENT: The prohibition against use should be eliminated. Enforcing such a provision would use a large amount of the Department's resources with no significant benefit.

RESPONSE: Without a prohibition against use, there is nothing to prevent a person from bringing noncompliant products into the State. This prohibition is necessary, particularly in view of people such as painting contractors who use a large quantity of an affected product.

COMMENT: Manufacturers should be included in the prohibitions section so that enforcement action can be taken against them in addition to those actually selling prohibited products.

RESPONSE: The Department agrees that manufacturers should be covered. The prohibition against manufacturing a noncomplying product for sale in the State, which are previously covered by the general prohibition against sale or offering for sale, has been clarified. Manufacturers in the State who sell their product out-of-State will only need comply with any product regulations applicable in that state.

COMMENT: One commenter requested a five year period between VOS content compliance steps to allow for re-engineering and long term reliability testing of packaging.

RESPONSE: The stricter VOS limits for consumer products are not being adopted at this time. Therefore, a longer time period between steps is not needed. This request will be taken into consideration if the Department proposes stricter limits in the future.

COMMENT: An incentive should be provided for companies with products in compliance prior to the respective compliance date.

To accomplish this the following clause should be added to N.J.A.C. 7:27-23.4(c):

"provided however that the effective date herein shall be extended to the extent a consumer product was in compliance with this paragraph (c) prior to the effective data set forth in paragraph (a) and (b) above."

RESPONSE: There is now only one compliance date. No incentive for further reductions is necessary at this time nor would it appear to have been appropriate even if the further reductions had been adopted.

COMMENT: Instead of limiting individual aerosol products, an overall reduction in aerosols as a percentage of product shipped or delivered to New Jersey by a given manufacturer should be considered.

RESPONSE: Aerosol products are not the only ones affected by these rules. In some cases, nonaerosol forms of a product can contain just as much VOS as aerosol forms. Therefore, limiting aerosol products as a percentage of total products will not necessarily achieve the desired reductions.

COMMENT: Are these rules directed at, or can it be applied to, industries, manufacturers or employers in SIC codes 20 to 30?

RESPONSE: These rules do not cover manufacturing applications which are included in SIC codes 20 to 30. It is for products available to consumers for use in their own homes. If a facility uses a product that is also available to consumers, then it will be affected.

COMMENT: Aerosols are not 75 percent of the air fresheners market as stated in the proposal, but comprise less than 50 percent. It is incorrect to state that aerosols are the only form containing greater than five percent VOS. Many nonaerosols do too. If the elimination of propellants is the purpose of these rules, the Department should simply say so rather than affect all products.

RESPONSE: It is the intent of the Department to regulate all forms of air fresheners which exceed the applicable limit. If fewer air fresheners are aerosols, then it is likely that fewer will be affected by the rule. With the VOS limit now set at 50 percent, it is unlikely that forms of air fresheners other than aerosols will be affected. However, this limit may be reduced in the future.

COMMENT: The estimated reduction in VOS from air fresheners appears to include disinfectants, because the SAIC report treated them as one category.

RESPONSE: The only disinfectant included in the SAIC report was one common household spray product which also advertises as an air freshener. No other disinfectants were included. The reductions achieved from air fresheners will be less than originally estimated, because disinfectants are not subject to the rules.

COMMENT: Some wick air fresheners can contain 10 to 20 percent VOS, according to one commenter. Much of this VOS is of low photochemical reactivity and is not a serious environmental threat.

RESPONSE: Because these wick products contain less than 50 percent VOS, they will not be affected by the rules at the present time.

COMMENT: Consumers prefer aerosol air fresheners because they are more efficient, can be used intermittently, immediately mask odors, can be formulated in more appealing scents, and physically cleanse the air of dust, smoke, pollen and other debris. Also, in combination with disinfectants they can kill serious disease carrying viruses and bacteria.

RESPONSE: Consumer preference cannot be the sole reason for eliminating the provisions of these rules. Besides, aerosol air fresheners containing less than 50 percent VOS are already available. Disinfectants are not subject to these rules.

The following comments were received on insecticides. There is one response to these comments which appears at the end of the comments.

COMMENT A: FIFRA applies to insecticides, so a longer time period will be needed to develop conforming products and a $700.00 user fee will have to be paid to USEPA.

COMMENT B: Development of a new insecticide will take three to five years, including time for formulation, to ensure safety, for corrosion testing, package development, stability testing, toxicological testing, marketing, and USEPA approval. Another commenter stated the USEPA approval process can take nine months to three years and can cost $100,000 for necessary testing and $4000 as an application fee. Another commenter stated that pesticides include disinfectants designed to kill germs and microbes, and that the proposed rules exceed the State's authority under FIFRA to "regulate the use or sale of any federally registered product" because they implicitly require reformulation of federally regulated products. FIFRA provides that a state "shall not impose . . . any requirement for labeling or packaging in addition to or different from those required under this subchapter". The proposed rules cannot be achieved without the reformulation or repackaging and relabeling of these products specifically and exclusively regulated by FIFRA. To the extent manufacturers are forced to reformulate or repackage to bring federally regulated pesticides into compliant ranges, the rules would be preempted by FIFRA.

COMMENT C: A large financial burden will be created by the inability to sell a FIFRA product anywhere in the United States until registration is complete.

COMMENT D: For insecticides, aerosols provide an improved and efficacious approach. Powders, baits, and traps are not as effective.

COMMENT E: The proposal Summary discusses product substitution and pump sprays in particular. Pump sprays are not a viable alternative for pesticides. They reduce the effective delivery to the target surface, are less convenient and have not been accepted by the consumer. Most contain "insecticide actives" which are organic compounds and require some VOS solvents for stability in a water-based formula. They will increase nonbiodegradable container waste drastically since the insecticide permeated plastics cannot be safely recycled. Further, the pump spray containers are not as safe as aerosol cans and are more likely to permit ingestion because of tamper resistance problems. Pump sprays cannot deliver the reduced particle size necessary, and the speed of kill for water-based liquid products is very slow. Commenters stated citizens' weapons against roaches and ants will be reduced and stated the regulation of insecticides should be reconsidered.

COMMENT F: The 1994 five percent VOS content limit for insecticides is impossible as no acceptable alternatives exist for most product forms. Pump sprays do not produce small enough particles and water-based formulations take long to work and overusage will result.

COMMENT G: The removal of insecticides from the market will increase the incidence of insects such as fleas and ticks, and of insect-borne disease such as Rocky Mountain Spotted Fever and Lyme Disease. No improvement in air quality will result.

COMMENT H: The proposed rules will have a large cost to consumers and will result in seven million less aerosol sales in the State alone each year. In some cases, consumers who can afford it will have to rely on professional services to replace the effectiveness and efficiency of existing products. For insecticides, applications currently costing five to 10 dollars for consumers to do themselves would cost from $80.00 to $100.00 each application. The annual consumer cost from insecticides alone would conservatively be nearly $120 million. For those who can not afford a professional service, a real health risk will result.

COMMENT I: Aerosol insecticides are remarkably imprecise and apply excess materials. Methods which are much more precise are to be favored if risk and exposure are to be reduced. Much of the aerosol is the VOS solvent carrier which has no role in killing mosquitos.

COMMENT J: By 1992, there will be no affected insecticides for sale in New Jersey.

COMMENT K: One commenter stated that flea and tick sprays need at least 11 percent VOS to formulate an effective product.

COMMENT L: Aerosol hornet and wasp killers which are to be used from a distance should be exempt. They are formulated with VOS to be nonconductive so they can be used by people such as utility workers around live wires.

COMMENT M: Foggers, which are exempted in the proposed rules, are a last ditch effort to eliminate infestations and release more VOS than the preventative use of insecticides which must comply with the VOS limits.

RESPONSE A THROUGH M: The proposed rules sought to regulate the emission of VOS from consumer insecticides by regulating the VOS content of products which are provided for use in the State, which is

within the Department's authority. The Department did not in any way attempt to impose labeling or packaging requirements on insecticides and explicitly exempted products covered by FIFRA from the labeling requirements applicable to other products covered by the rules. See N.J.A.C. 7:27-23.5(c). In recognition of technical problems which appear to exist in the area of developing compliant insecticides, the Department is not adopting that part of the rules relating to consumer insecticides with the exception of the recordkeeping requirements under N.J.A.C. 7:27-23.6. This recordkeeping duty will be used in conjunction with further study to determine an approach to regulating the VOS content of consumer insecticides.

COMMENT: How does the Department plan to locate and prosecute noncompliers? The Department should allocate adequate staff and resources to conduct inspections and to enforce any restrictions.

RESPONSE: The Department will perform shelf surveys to ensure that noncompliant products are not being sold in New Jersey. If such products are found, the Department will determine where they came from. In addition, manufacturers, distributors and large volume users of affected products will periodically be checked to determine the compliance of the products they utilize.

COMMENT: The suggestion that the use of fly swatters and rolled up newspapers is an acceptable substitute for insecticides is ridiculous. In reality, no substitutes exist for many of the functions the various products perform.

RESPONSE: It was not stated that fly swatters were a good substitute in all circumstances. Howver, when dealing with the occasional insect, a fly swatter is much more efficient and less expensive than filling one's house with a fine mist of insecticide.

N.J.A.C. 7:27-23.5

COMMENT: Labeling requirements contained in the rules are supported. Labeling products with the pounds of VOS per gallon and weight of VOS will inform the public of the hazardous constitutents in consumer products and give consumers the opportunity to choose less hazardous formulations in furtherance of the State's Right to Know laws.

RESPONSE: All VOS are not hazardous substances. The ozone that is formed in the atmosphere is a hazardous substance. However, the Department does want consumers to become aware of the effect on the environment of the products they use in their daily lives and to make decisions based on that effect.

COMMENT: Does the labeling requirement apply to nonconsumer products and those used by indirect consumers?

RESPONSE: The labeling requirement applies to all products included in the respective regulated categories. In the case of architectural coatings, all uses by both direct and indirect users are regulated and products such as industrial maintenance topcoatings and sign paints, as well as all other coatings covered, will need to be labeled. In the case of air fresheners, the subchapter only covers products available to a direct consumer. Only those products which will not potentially be available to direct consumers are exempt from the labeling requirement.

COMMENT: The labeling requirement appears to serve no purpose and will simply confuse consumers. An educational program should be included in the rules so consumers can learn to interpret the information on the label. Logistic problems will result for distributors, since a special label will be needed for New Jersey. This labeling requirement may be preempted for air fresheners by the Federal Hazardous Substances Act and is preempted in the case of insecticides by FIFRA. This requirement shows a lack of understanding of the national marketplace, and will pose an undue burden upon interstate commerce. These costs should be incorporated into the Economic Impact analysis.

RESPONSE: The labeling requirement contained in N.J.A.C. 7:27-23.5 serves the valuable function of providing information to the public on the relative amounts of VOS in the products they use and allows the consumer the opportunity to use this information in making consumption decisions. While an education program may be useful, the Department does not have funding for such a program at this time and believes that public knowledge of the ozone problem is sufficient to justify this provision.

The Department agrees that the labeling of insecticides is governed by FIFRA. In recognition of this, N.J.A.C. 7:27-23.5(c), which exempts these products from the labeling requirements, was included in the proposal and continues in the adopted rules. The preemptive provisions of the Federal Hazardous Substances Act, 15 USCA 1261 et seq., are not applicable to the provisions contained in the rules. States are preempted by that Act only when there is a cautionary labeling requirement imposed by the state for a covered substance and the requirement is designed to protect against the same risk of illness or injury that brings the substance within the federal Act. As this is not the case with these rules, an exemption for air fresheners would be inappropriate. The Department believes any burden imposed by this requirement will be minimal.

COMMENT: State by state labeling will create problems for business. Thus far, states have termed the substances to be regulated PROC, VOC, and VOS. This lack of consistency in nomenclature indicates that there will not be any consistency on more complex matters.

RESPONSE: The terms PROC, VOC, and VOS are not interchangeable. The Department regulates some compounds from a health standpoint that other states do not. In order to work toward national conformity, the Department is conferring with California, New York, and other states. A general approach is being developed and will be used, when appropriate, by all states involved.

COMMENT: N.J.A.C. 7:27-23.5(a) specifies label requirements aimed at restricting thinning of architectural coatings. This restriction will encourage users desiring thinning to purchase from manufacturers outside of the State where labeling does not restrict thinning. This will create an economic impact not considered.

RESPONSE: Noncompliant coatings cannot be used in New Jersey. If a coating without a restriction on thinning on its label contains more than the applicable limit of VOS, it is illegal in New Jersey.

COMMENT: N.J.A.C. 7:27-23.5(a)1 should be amended to read "containers shall carry a statement of the manufacturer's recommendation regarding thinning of the coating. This requirement does not apply to the thinning of architectural coatings with water. The statement shall . . ." This will reduce the burden on manufacturers regarding thinning instructions and will not in any way contribute to ozone formulation as water is not a VOS.

RESPONSE: The Department agrees that thinning with water will not cause a coating to exceed its applicable VOS standard. However, the Department believes it is important that thinning instructions be included to reflect the fact that the product is only to be thinned with water and not a VOS. The statement required, if not already present, should be simple and any burden will be minimal.

COMMENT: The statement in N.J.A.C. 7:27-23.5(a)2 should be amended to read "The containers shall display a statement indicating the maximum volatile organic compound content of the coating, expressed as grams of volatile organic compounds per liter, or pounds of volatile organic compounds per gallon, of coating excluding water and any colorant added to tint bases. If thinning is recommended on the label pursuant to subsection (a) above, the maximum volatile organic compound content displayed must be that after the recommended thinning." This allows statements on the container, uses the more common VOC, adds that VOC content excludes water and any colorant added to tint bases which is a restatement of N.J.A.C. 7:27-23.3(a), and allows flexibility in allowing either the grams per liter or pounds per gallon figure to be used. It also eliminates the phrase "excluding water" from the label, which is implicit in the determination of VOS as defined by USEPA.

RESPONSE: The labeling requirement in regard to VOS content has been modified. The phrase "This product contains a maximum of __ pounds of VOS per gallon" can appear on the label or on a sticker on the label. The phrase "excluding water" no longer must appear on the label. The maximum VOS content to be included on the label or sticker must be the maximum amount of VOS it is possible for that coating to contain, taking into account thinning and the variability of the manufacturer's formulation. Because the term VOS must be used, requiring the VOS content in pounds per gallon is not an additional hardship. The term VOC cannot be substituted for VOS, as they are not equivalent. A restatement of N.J.A.C. 7:27-23.3(a) is not necessary.

COMMENT: It is not practical to require an actual VOS number on each label for each product since many products use the same labels which are identical except for their color imprints. Manufacturers sometimes find it necessary to vary formulas slightly for viscosity specifications which will mean each batch will have slightly different VOS levels and, even though all are in compliance with the maximum levels, different labels will need to be printed. "Maximum VOC content" will avoid unnecessary costs.

RESPONSE: The labeling requirement has been modified so that the maximum VOS it is possible for that manufacturer's product to contain is what appears on the label. This maximum cannot be more than the allowable VOS limit from Table 1 in the rule. Additionally, the Department has clarified that the statement which appears on the label need not be printed directly on the label. It can be on a separate sticker permanently affixed to the label.

COMMENT: One commenter questioned if there is some variability in the label statement. Does the 'pound' statement mean a pound figure? What if it is a pound and one-tenth?

RESPONSE: The VOS content indicated on the label should have the same number of significant digits as given in the rule for the maximum allowable VOS content.

COMMENT: Labeling requirements in N.J.A.C. 7:27-23.5 should be consistent with other states which require a statement on maximum VOC content rather than a specific VOS content. Significant costs would be associated with developing separate labels for New Jersey. Several commenters requested the phrase "Maximum VOC Content: g/liter" be the required label statement. Another commenter suggested the section itself be reworded as follows "the containers shall also display the maximum volatile organic compound (VOC) content, less water and less exempt solvent. If any thinning is recommended on the label . . . The VOC content displayed shall be that after the recommended thinning. The manufacturers of such coating shall file with the Commissioner an explanation of each label" to make it conform with the California rule. One commenter felt that, since manufacturers conduct business in several states and label in an identical manner for all customers, the different language used by New Jersey will only serve to confuse customers outside the State of New Jersey.

RESPONSE: The term VOC is not equivalent to VOS, and is therefore not acceptable for labeling purposes in New Jersey. The labeling requirement has been revised to allow a separate sticker displaying the VOS content to be placed on the label of cans sold in New Jersey instead of being printed directly on the label. This sticker should display the maximum VOS content for the coating contained in the can.

COMMENT: Labeling requirements are ill-advised and will denigrate the impact of other label requirements under such laws as the Federal Fair Package and Labeling Act, the Federal Food, Drug, and Cosmetic Act and the Consumer Product Safety Act. Also, the rule assumes consumers will know what VOS is, which may not be the case.

RESPONSE: The Department does not believe that requiring a statement as to the VOS content of a product will in any way detract from any Federal labeling requirement. Recent news stories about ozone violations have informed consumers of what VOS is. Additionally, for those consumers not aware who are interested in more information, a variety of groups, such as the American Lung Association, have information available on VOS and ozone.

COMMENT: The proposed rule would impose label costs of significant amount. Various cost estimates were provided ranging from one to four thousand dollars per product to $75.00 per label plate which would cost a large company an estimated $150,000. It was additionally stated that large quantities of obsolete inventory would need to be disposed. One commenter objected to the label language requirement stating that New Jersey has modified the uniform requirements of other states. Other commenters suggested that N.J.A.C. 7:27-23.6 should be changed to read "The container shall carry the following statement" which would allow printing VOS information on the container lid. "This product (or paint) contains not more than X grams per liter (or pounds per gallon) of volatile organic substances, excluding water" was suggested as appropriate language for the statement.

Two commenters stated that the label should contain information on the date of manufacture. One suggested a new subsection to read "Containers of all architectural coatings subject to the requirement of N.J.A.C. 7:27-23.3 must display the date of manufacture of the contents or a code indicating the date of manufacture. The manufacturer of such coatings must file an explanation of each code with the NJDEP by January 1, 1990. Any subsequent new codes must be filed within 30 days of their first use." Another commenter suggested "Containers for all coatings subject to the requirements of N.J.A.C. 7:27-23.3 must display the maximum volatile organic compound (VOC) content of the coating, expressed in grams of volatile organic compounds per liter of coating, excluding water and any colorant added to tint bases." As an alternative to this, another commenter suggested the information on VOS content be added to the product's MSDS or technical data sheet.

RESPONSE: The requirements for labeling for architectural coatings contained in N.J.A.C. 7:27-23.5 have been revised. The VOS statement should now include the maximum amount of VOS it is possible for that coating to contain, taking into account thinning and the variability of the manufacturer's formulation. It does not have to appear directly on the label but can be attached to the printed label, so costs for new labels should be greatly reduced. The Department does not believe allowing the required statement to appear anywhere on the container would be as effective in alerting the public to the information contained on the label and has not made this suggested modification. The MSDS and technical data sheets are not the most appropriate place for VOS information, since they can be misplaced or supplied with the wrong coating and do not provide information to consumers as efficiently as the label statement does.

No language referring to a date of manufacture is necessary. The Department is not using the date of manufacture for regulatory purposes, so there is no need to determine when a coating was formulated.

COMMENT: N.J.A.C. 7:27-23.5(c) should be changed to require manufacturers subject to FIFRA to file an application for the necessary labeling changes. The following language was suggested:

(c) For any consumer product that is registered with the United States Environmental Protection Agency (EPA) as a pesticide product, the manufacturer is required to submit an application to EPA for an amended registration by the applicable compliance date in N.J.A.C. 7:27-23.3 and 23.4 and submit a copy of the application to the Commissioner. Only such consumer products for which an application for an amended registration has been submitted on time will be exempt from this Subchapter until EPA approves the changes to the formulation and/or the package label that are needed to comply with this Subchapter."

RESPONSE: The Department is considering the best way to treat FIFRA registered products. This suggestion for regulatory language will be studied, and when the most appropriate means of dealing with products subject to FIFRA is determined, any necessary language will be proposed as an amendment to the rule.

COMMENT: A section should be added which requires the Department to maintain a list of products that have been prohibited from being sold. This list should be available to the public.

RESPONSE: The Department believes that maintenance of an official list which would constantly have to be updated as prohibited products come into compliance would be unduly burdensome and circulation of out of date lists may unfairly cause consumers to forego purchase of complying products. The Department will provide current information to any person who requests it.

COMMENT: A test method must be included for determining compliance with N.J.A.C. 7:27-23.4.

RESPONSE: At the present time, there is no standard test method that can be applied to aerosol products. The Department is working on developing a method. When a test method is developed, it will be added to the rule.

N.J.A.C. 7:27-23.6

COMMENT: The recordkeeping requirement is burdensome, unnecessary and expensive. There is no support for it in the proposal and no consideration of cost. The Department should do a cost/benefit analysis before imposing this provision. Many businesses are not sophisticated enough to keep such records. This provision should be withdrawn. One commenter stated that it should be clarified to indicate that only businesses involved with the three affected products are required to keep records.

RESPONSE: The recordkeeping requirement has been revised to make it less burdensome. Retailers are no longer required to keep records, nor are distributors of consumer insecticides. Manufacturers and distributors must maintain records to be used by the Department during inspections.

N.J.A.C. 7:27-23.6 provides that manufacturers of consumer products "subject to this subchapter" and distributors who receive "covered consumer products" are subject to recordkeeping requirements. The Department does not believe further clarification is necessary.

COMMENT: The recordkeeping requirements of N.J.A.C. 7:27-23.6 will increase costs to the manufacturer, distributor and retailer including the costs for storing the records for five years. One commenter estimated the cost at up to $39,000 for one manufacturer for the five year period. One commenter stated that under the rule the manufacturer-distributor-retailer chain will be required to produce, store and maintain identical records. All costs will be passed on to the consumer. One commenter stated these requirements will be particularly burdensome if the label requirements are not changed to require a "maximum VOC" statement. Comments suggested this provision be deleted as it is not required by other states. One commenter suggested that if recordkeeping of some type is necessary the manufacturer should supply the retailer a list of related products indicating the maximum VOS levels of the products. Cross reference to this VOS list on the purchase order, copies of which are retained by the manufacturer, should be sufficient. Another commenter suggested a similar system with manufacturers placing the VOS level next to the product name on the order form or bill of lading.

RESPONSE: The Department believes the proposed requirements are the most appropriate. While some costs will be imposed for record main-

tenance, these costs should not be significant. The records kept will be created only by the manufacturer, not by all parties in the manufacture, distributor and retailer chain, and, in recognition of potential burdens on retailers, the part of the requirement related to retail operations has not been adopted.

COMMENT: The recordkeeping requirements N.J.A.C. 7:27-23.6 for each delivery are burdensome on distributors. The information on the VOS content of products leaving the distributor is already required from the manufacturer and can be obtained from them. The cost to business, including retailers, will be passed on to consumers and will be extremely high. This requirement should be deleted.

RESPONSE: Retailers are no longer required to keep records. Distributors must still maintain records of shipments received and shipped. Because distributors often ship to more than one state, these records are needed to ensure that no noncomplying products are sent to New Jersey. The cost is not anticipated to be significant.

COMMENT: N.J.A.C. 7:27-23.6(a) and (b) require manufacturers and distributors to maintain reports for deliveries received. This should only apply to manufacturers and distributors located in New Jersey. There is no authority to impose reporting requirements on out-of-State sites and these sites should not be required to maintain records on site. To do this would be an unconstitutional violation of interstate commerce. This should be deleted as it is not required by any other state.

RESPONSE: This rule regulates the sale, offering for sale, providing, use or manufacture for sale in the State of New Jersey of noncomplying products. This provision is within the Department's authority and is a reasonable cost of doing business in the State. The asserted lack of a similar requirement by other states is not a sufficient reason for deletion of a necessary provision.

COMMENT: The recordkeeping requirement is vague in that it does not specifically state how it will be used. Constitutional legal safeguards require the intent of such a recordkeeping requirement to be clearly stated if it will result in the imposition of civil or criminal sanctions. This section should be completely deleted. If not deleted, the vagueness in the purpose and use of this subsection must be addressed.

RESPONSE: The Air Pollution Control Act (1954) provides at N.J.S.A. 26:2C-19 for civil penalties applicable to any violation of the provisions of the Act or any code, rule, regulation or order issued pursuant to the Act. This rule is adopted pursuant to the Act and potential liability for violation of the recordkeeping provision is clear. The Department does not believe the addition of a sentence to every provision of the Air Pollution Control Code noting possible liability for violation of that particular provision would provide any clearer notice of liability and would only serve to make the rule confusing.

The section states clearly what records are required and is necessary for the Department to track noncompliant products.

COMMENT: The statement in N.J.A.C. 7:27-23.6(a) that says "other information as the Department may prescribe" needs to be clarified.

RESPONSE: The language cited by the commenter is necessary to provide for a situation in which, because of the particular characteristics of one manufacturer or distributor, additional information is needed to clarify or supplement the generally required information. The Department has delineated all generally applicable requirements. Should additional information be determined to be necessary from all manufacturers and distributors or even from a definable subset of a covered group, appropriate amendments to the rule will be proposed.

N.J.A.C. 7:27-23.7

COMMENT: One commenter offered general support for the rule and specifically supported the right to inspection contained in N.J.A.C. 7:27-23.7.

RESPONSE: The Department has the right to inspect and appreciates the support of that right.

The following comments were received on inspections. There is one response to these comments which appears at the end of the comments.

COMMENT A: There is no justification given for the inspection procedure and it most likely exceeds the powers of the Department. It is a violation of the Fourth Amendment, specifically searches without a warrant. In addition, it raises the question of the integrity of confidential and proprietary information as no provisions are made for maintaining confidentiality of information. This provision should be withdrawn.

COMMENT B: Paint formulations are trade secrets which should not have to be divulged to inspectors under N.J.A.C. 7:27-23.7. Another commenter stated that a provision should be added to safeguard trade secret information.

COMMENT C: Inspection of manufacturing facilities at any time is unmanageable and unnecessary.

COMMENT D: The constitution and case law decided on the basis of the Fourth Amendment of the Constitution limit the ability to arbitrarily search and inspect a business and require the use of an administrative warrant unless the subject of the search is a "closely regulated" industry "long subject to, close supervision and inspection". The paint industry is not "closely regulated". The inspection right under N.J.A.C. 7:27-23.7 is not automatic and modification should be made to reflect the current legal status of agency inspections.

COMMENT E: The Department does not have an unlimited right to copy or photograph/sketch either the site, building or equipment at a facility or documents and records. The right to privacy limits Department actions without a warrant. Additional problems include the potential for trade secret and proprietary information violations. Further, the right to interview employees has been found in court to be available provided the interview does not disturb an employee actually at work and does not create a danger of injury or unduly disrupt production. This section should be modified to reflect these limits.

COMMENT F: N.J.A.C. 7:27-23.7(a) on inspections can be read as an absolute right to enter any building within the United States to ascertain compliance with N.J.S.A. 26:2C, limited only by "the presentation of appropriate credentials as requested". State sovereignty and practice considerations prohibit the DEP from entering buildings in other states. This subsection should be modified to more accurately reflect these limitations and to clarify "appropriate credentials".

COMMENT G: The inspection provisions of N.J.A.C. 7:27-23.7 allowing an "absolute right" to enter and inspect "at any time" could prove disruptive for retail operations. Besides the disruption to customer transactions by the unannounced arrivals, personnel are required to assist Department inspectors in all aspects of the inspection which could include examining products on shelves and in stockrooms and examining documents required by the recordkeeping section. This will take personnel away from attending to customers and further interfere with the retail operation. To avoid this the Department should cooperatively schedule inspections. This could be accomplished by adding to N.J.A.C. 7:27-23.7(a) the following phrase after the term "pursuant thereto": "Except that at the retail level, a reasonable time and date for inspection be agreed to by both the Department and the retail owner or operator."

RESPONSE A THROUGH G: Pursuant to both the Department's enabling legislation at N.J.S.A. 13:1D-9(d) and the Air Pollution Control Act (1954) at N.J.S.A. 26:2C-9(d) and 9.1, the Department has the right to enter any facility except private residences, to ascertain compliance or noncompliance with any code, rules, and regulations of the Department. The Department has the legal authority under these provisions to conduct unannounced inspections to the extent necessary to determine compliance or noncompliance upon presentation of proper credentials, which could include Department identification documents, search warrants, etc., as appropriate to the circumstances. Any person supplying documents to the Department which they believe should be treated as confidential should identify the documents which should be so treated. The Department will treat confidential documents in accordance with N.J.S.A. 26:2C-1 et seq.

The following comments were received on sampling equipment. There is one response to these comments which appears at the end of the comments.

COMMENT A: Manufacturers should not have to supply sampling equipment under N.J.A.C. 7:27-23.7. The expense of constantly changing equipment can be a great burden to small and medium size companies. One commenter suggested inspections should be done at a State laboratory on paints purchased by the State for testing. Another commenter stated the State should have its own sampling equipment and recommended computer modelling of emissions. On the cost of sampling, another commenter pointed to other states which the commenter said have drafted language indicating costs for non-violative samples would be borne by the State and that facilities with gross sales of less than one million dollars would have testing costs borne by the State.

COMMENT B: N.J.A.C. 7:27-23.7(b), which requires sampling equipment be available for Department use, has many problems. The Department presence at the facility may increase the risk of a liability suit against the company, the inspector may not be adequately trained in all types of equipment to prevent unintentional misuse and resulting miscalibration or employee safety may be threatened and trade secret and proprietary information may be revealed. Additionally, it is unrealistic to expect retailers or distributors to have sampling equipment. Legally, there has

been a case decided which prohibits a Federal agency from compelling a company's employees to wear government supplied monitoring equipment. This case limits the Department from requiring manufacturers, distributors and retailers to provide sampling equipment. N.J.A.C. 7:27-23.7 should be deleted and replaced by the following language:

(a) The Department and its representatives shall have the right to enter a specific site or building with an administrative warrant upon showing of probable cause in order to ascertain compliance or noncompliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, or any order, or agreement issued or entered into pursuant thereto. Such right shall include the right to test or sample any materials present within the facility, to sketch or photograph only those portions in which permission has been granted or is proprietary in nature, to copy or photograph only those documents or records adequately specified in a warrant necessary to determine such compliance or noncompliance, and to interview any employees or representatives of the owner, operator, or registrant so as not to create any personal hazard to the employee or impair the production process. Such right shall be conditional upon action by the Department and compliance with appropriate standard safety procedure.

(b) Upon a showing of the proper credentials and administrative warrants, owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of any inspection. Such assistance shall include making available samples to be tested outside the manufacturing facility, distributor, or retail outlet.

RESPONSE A AND B: Pursuant to the Act, at N.J.S.A. 26:2C-9(d), the Department has the right to enter and inspect any building, except private residences, for the purpose of investigating suspected sources for air pollution and ascertaining compliance or noncompliance with any code, rules and regulations of the Department. In order to ascertain compliance or noncompliance with the Department's rules, it is necessary that sampling and testing occur. Depending on the particular facility, equipment necessary might include such items as ladders, keys, and hoses. It is both necessary and appropriate that the owner or operator make available the equipment and facilities needed to test his or her particular operation. As manufacturing sources will generally have sampling equipment at their facilities, it is anticipated any additional cost will be minimal or nonexistent. For distributors and retailers, due to their operations any equipment will be minimal.

Any representatives of the Department conducting an inspection will be fully trained and qualified and will follow the same safety requirements followed by the personnel at the site inspected. The Department will take all reasonable steps to assure employee and equipment safety, and is required by the Act to keep confidential any information relating to secret processes or methods of manufacture or production obtained in the course of the inspection, investigation or determination (see N.J.S.A. 26:2C-9(d).

While the Department appreciates the suggested alternate language for this provision, it does not find the case cited from the Federal Court of Appeals in the State of Illinois either controlling or directly applicable to this provision and for the above reasons feels the proposed language to be more appropriate.

COMMENT: The word "retail" should be omitted from N.J.A.C. 7:27-23.7(b) as the requirement for "making available sampling equipment" and "providing sampling facilities" would not appear to be appropriate at the retail level.

RESPONSE: The equipment that may be needed could consist of a ladder or stepstool to be used to take containers off of high shelves. Therefore, there is a need for requiring the supply of equipment at the retail level. Any additional cost to retailers should be minimal.

Full text of the adoption follows (additions to the proposal indicated in bold face with asterisks ***thus***; deletions from the proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 23. VOLATILE ORGANIC SUBSTANCES IN CONSUMER PRODUCTS

7:27-23.1 Applicability

This subchapter prescribes the rules of the Department for limiting the volatile organic substances content of consumer products. The following sections shall govern the content of consumer products used and provided for use in the State and the methods to be followed by manufacturers, distributors, and retailers to assure these standards are met.

7:27-23.2 Definitions

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

"Air freshener" means any product available to a direct consume which is marketed for the purpose of masking odors, providing a scent, or deodorizing, including but not limited to, sprays, wicks powders, and crystals. This does not include personal bodily hygien products.

"Architectural coating" means a surface coating formulation ap plied and dried at ambient conditions, and used to coat all or part of ***stationary structures and their appurtenances, such as*** buildings bridges, the interior or exterior of houses, and other items such a signs, curbs and pavements.

["Below ground wood preservative" means any coating whicl penetrates into the wood and is formulated solely for the purpos of protecting below ground wood from decay or insect attack usin a wood preservative product registered with EPA.]

"Bituminous coating" or "bituminous sealer" means a coatin material, consisting ***mainly*** of hydrocarbons and soluble in carbor disulfide, which is obtained from natural deposits or as residue from the distillation of crude petroleum oils or of low grades of coal.

"Bond breaker" means any coating whose sole purpose, wher applied between layers of concrete, is to prevent the freshly pourec top layer of concrete from bonding to the substrate on which it is poured.

"Concrete curing compound" means any coating whose sole purpose is to retard the evaporation of water from the surface of freshly cast concrete, thereby strengthening it.

"Consumer insecticide" means those insecticide formulations available to a direct consumer which are not classified as restricted-use pesticides under the provisions of N.J.A.C. 7:30-2 of the New Jersey Pesticide Control Code and which are liquids marketed in containers of one gallon (3.79 liters) or less, or which are marketed in pressurized containers of four pounds (1.8 kilograms) or less net weight.

"Consumer product" means any of the wide variety of household products such as architectural coatings, toiletries, and cleaning agents, used by a direct or indirect consumer and available in retail markets, and includes, but is not limited to, personal products, pesticides, automotive products, cleaners, air fresheners, and food products.

"Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

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

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"Direct consumer" means an individual who utilizes a consumer product in the satisfaction of his or her personal wants.

"Dry fog coating" means any spray coating which is formulated so that overspray droplets dry before falling on floors and other surfaces.

["Enamel undercoating" means any coating designed to improve the seal, provide better adhesion, and make a smooth base for non-flat coatings when applied over a primer or an existing coat of paint.]

"EPA" means the United States Environmental Protection Agency.

"Fire retardant coating" means any coating which is designed to retard fire and which will reduce the rate of flame spread on the surface of a substrate to which the coating has been applied, resist ignition when exposed to high temperatures, or insulate the substrate to which such a coating has been applied and thus prolong the time required to reach ignition temperature.

["General primer" means any coating which is intended to be applied to the surface of a substrate to provide a firm bond between the substrate and subsequent coatings.]

*["General sealer" means any coating which is intended for use on porous substrates to protect the substrate, to prevent subsequent

coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.]*

["General undercoater" means any coating which is designed for the sole purpose of providing a smooth surface for subsequent coatings.]

"High performance coating" means an architectural coating formulated for and exposed to harsh environmental conditions including, but not limited to: outside weather conditions all the time, or temperatures consistently above 95 degrees Centigrade or below zero degrees Centigrade; or solvents, detergents, abrasives or scouring agents; or corrosive atmospheres or fluids.

"Indirect consumer" means a person who utilizes a consumer product in providing a service to others.

"Industrial maintenance primer" means any coating which is intended to be applied to the surface of a substrate, prior to the application of an industrial maintenance topcoat, to provide a firm bond between the substrate and subsequent coatings.

"Industrial maintenance topcoat" means any high performance coating which is formulated for the *[sole]* purpose of protecting against *[damage from]* heavy abrasion*[.]* ***or*** water immersion, ***or providing resistance to*** chemicals, corrosion, temperature extremes, electric potential, or solvents.

"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes and wood lice.

"Insecticide" means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating any insect, and includes, but is not limited to, ant and roach killers, room and outdoor foggers, flea and tick sprays, and personal and area insect repellants.

"Lacquer" means a clear or pigmented coating formulated with nitrocellulose or synthetic resins which dries by evaporation without chemical reaction and provides a quick drying, solid protective film.

"Mastic texture coating" means any coating, except waterproof mastic coatings, which is formulated to cover holes and minor cracks and to conceal surface irregularities.

"Metallic pigmented coating" means any *[non-bituminous]* coating which is formulated with ***a minimum of 0.4 pounds per gallon (0.05 kilograms per liter) of*** metallic pigment.

"Multicolored coating" means any coating which exhibits more than one color when applied in a single coat and which is packaged in a single container.

"Normal environmental conditions" means temperatures above 50 degrees Fahrenheit (14 degrees Centigrade).

"Non-flat architectural coating" means a coating which registers a gloss of 15 or greater on a glossmeter held at an 85 degree angle to the coated surface or five or greater on a glossmeter held at a 60 degree angle*[, and which is identified on the label as a gloss, semigloss, or eggshell enamel coating]*.

"Person" means and includes corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

"Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, or virus, bacteria, or other micro-organism (except viruses, bacterial or other micro-organisms on or in living man or other animals) which is injurious to health or the environment.

"Pesticide" means and includes any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator; provided that the term "pesticide" shall not include any substance or mixture of substances which the EPA does not consider to be a pesticide.

"Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"Primer, sealer, and undercoater" means any coating which is intended to be applied to the surface of a substrate to perform one or more of the following functions: provide a firm bond between the substrate and subsequent coats; protect porous substrates; prevent subsequent coatings from being absorbed by the substrate; prevent harm to subsequent coatings by materials in the substrate; provide a smooth surface for subsequent coats; seal fire, smoke, or water damage; neutralize odors; block stains; block efflorescence; condition chalky surfaces; or coat acoustical materials without affecting their acoustical properties.

["Quick-dry enamel" means any coating which can be applied directly from the container by brush or roller at ambient temperatures between 60 and 80 degrees Fahrenheit and which is formulated to have a dried film gloss of 70 or greater on a gloss meter held at a 60 degree angle to the coated surface, and when tested in accordance with ASTM-D-1640 will set to touch in not more than two hours; be tack free (mechanical tester) in not more than four hours; and dry hard in not more than eight hours.]

"Roof coating" means any coating which is formulated for the sole purpose of preventing penetration of the substrate by water, including but not limited to, bituminous roof and waterproof mastic coatings.

"Room fogger" means any pressurized consumer insecticide used in a room empty of occupants in order to mitigate infestations of insects such as fleas or cockroaches.

"Shellac" means any clear or pigmented coating formulated with natural resins, except nitrocellulose ***or gum*** resins, thinned with alcohol, ***and*** dried by evaporation without a chemical reaction*[, and intended to provide stain blocking properties as well as a solid protective film]*.

"Sign paint" means any coating which is marketed solely for the application to indoor or outdoor signs, including lettering enamels, poster colors, and bulletin colors.

["Specialty flat product" means any self-priming flat coating only used to perform one of the following functions: repair fire, smoke or water damage; neutralize odors; block stains; or coat acoustical materials without affecting their acoustical properties.]

["Specialty primer, sealer, and undercoater" means any primer, sealer, or undercoater only used to perform one of the following functions: repair fire, smoke or water damage; neutralize odors; block stains; block efflorescence; condition chalky surfaces; or coat acoustical materials without affecting their acoustical properties.]

["Stain" means a coating intended to coat the surface of a substrate and reveal some property of the substrate, such as color or texture, as well as provide a protective coating.]

"Substrate" means any material to which an architectural coating is applied.

"Swimming pool coating" means any coating used on the interior surface of swimming pools which is specifically formulated to resist swimming pool chemicals.

"Tile-like glaze coating" means any coating which is formulated to provide a tough, extra durable coating system, applied as a continuous (seamless) high-build film, and which cures to a hard glaze finish.

"Traffic coating" means any coating formulated to be applied to public streets, highways, or other surfaces, including, but not limited to, curbs, berms, driveways, and parking lots.

"Varnish" means any clear or pigmented coating formulated with various resins to dry by chemical reaction on exposure to air and intended to provide a durable ***transparent or translucent*** solid protective film.

"Waterproof mastic coating" means any weatherproof or waterproof coating formulated to cover holes and minor cracks and to conceal surface irregularities and which is applied in thicknesses of at least 15 mils.

["Waterproof sealer" means any coating formulated for the sole purpose of protecting porous substrates by preventing the penetration of water.]

"Wood preservative coating" means any *[stain]* ***coating*** which is *[also]* formulated for the purpose of protecting exposed wood from decay or insect attack by the addition of a wood preservative product registered by the EPA.

"Volatile organic substance" or "VOS" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, dilutents, and thinners which have vapor pressures or sums of partial pressures of organic substances of 0.02 pounds per square inch (1.0 millimeter of mercury) absolute or greater measured at standard conditions; and, in the case of surface coating formulations, includes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1, 1, 2 trichloro-1, 2, 2 trifluoroethane, 1, 2 dichloro-1, 1, 2, 2 tetrafluoroethane, and chloropentafluoroethane.

7:27-23.3 Architectural coatings

(a) Effective January 1, 1990, no person shall sell, offer for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating which contains more than the applicable limit of VOS per volume of coating, excluding water and any colorant added to tint bases, as given in Table 1 in (e) below.

(b) For a specific architectural coating to which more than one VOS limit in Table 1 is applicable, or for any architectural coating which has anywhere on the coating container, on any sticker or label affixed thereto, or in any sales or advertisting literature, any indication that more than one VOS limit in Table 1 is applicable, the most stringent limit is applicable.

(c) The provisions of (a) and (b) above shall not apply to architectural coatings sold in New Jersey for shipment and use outside of the State. Documentation indicating the final destination of coating shipments shall be made available to representatives of the Department upon request.

(d) Compliance with this section shall be determined using the following test methods: ASTM ***D-***3960; ASTM ***D-***1475-60; ASTM D-3792-79; ***ASTM D-2698-73; ASTM D-2369-81; ASTM D-4017-81; ASTM D-95-83;*** any other method approved by the Department.

(e) Table 1 contains the VOS content limits for architectural coatings:

TABLE 1

VOS CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Type of Architectural Coating	Maximum Allowable VOS Content Per Volume of Coating Excluding Water	
	Pounds Per Gallon	Kilograms Per Liter
*[Below ground wood preservative	5.0	0.60]*
Bituminous pavement sealer	*[0.4]****0.8***	0.10
Bond breaker	5.0	0.60
Concrete curing compound	2.9	0.35
Dry fog coating	3.3	0.40
*[Enamel undercoating	2.9	0.35]*
*[Fire retardant coating	2.1	0.25]*
*[General sealer]****Sealer***, primer, and undercoater	2.9	0.35
Industrial maintenance coatings	3.8	0.45
*[Lacquer	5.0	0.60]*
Mastic texture coating	1.7	0.20
Metallic pigmented coating	4.2	0.50
*[Multicolor coating	3.3	0.40]*
Non-flats	3.2	0.38
*[Quick-dry enamel	3.3	0.40]*
Roof coating	2.5	0.30
*[Shellac	4.6	0.55]*
*[Sign paint	3.3	0.40]*
*[Specialty flat products	3.3	0.40]*
*[Specialty primer, sealer, and undercoater	2.9	0.35]*
*[Stains	3.3	0.40]*
Swimming pool coating	5.0	0.60
*[Tile-like glaze coating	3.3	0.40]*
Traffic coating	2.1	0.25
*[Varnish	2.9	0.35]*
Waterproof mastic coating	2.5	0.30
*[Waterproof sealer	3.3	0.40]*
Wood preservative coatings	*[2.9]****4.6***	*[0.35]****0.55***
*[All others	2.1	0.25]*

7:27-23.4 Air fresheners *[and consumer insecticides]*

(a) Effective February 28, 1990, no person shall sell, offer for sale, *[or]* use***, or manufacture for sale within New Jersey*** any air freshener *[or consumer insecticide]* which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

*[(b) Effective February 28, 1992, no person shall sell, offer for sale, or use any air freshener or consumer insecticide which, at the time of sale or manufacture, contains greater than 25 percent VOS by weight.

(c) Effective February 28, 1994, no person shall sell, offer for sale, or use any air freshener or consumer insecticide which, at the time of sale or manufacture, contains greater than five percent VOS by weight.

(d) The provisions of this section shall not apply to room foggers.]*

(b) The provisions of (a) above shall not apply to air fresheners sold in New Jersey for shipment and use outside of the State. Documentation indicating the final destination of product shipments shall be made available to representatives of the Department upon request.

7:27-23.5 Labeling requirements

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3, the following shall apply:

1. The label shall carry a statement of the manufacturer's recommendation regarding thinning of the coating. The statement shall specify either that the coating is to be applied under normal environmental conditions without thinning, or limit thinning required for normal environmental conditions such that the coating will not exceed its applicable standard as given in Table 1 at N.J.A.C. 7:27-23.3(e).

2. The label ***or a sticker affixed to the label*** shall carry the following statement:

"This product contains ***a maximum of*** x pounds of VOS per gallon of coating*[, excluding water]*."

i. Where x is the ***maximum*** pounds of VOS in a gallon of the architectural coating ***as produced by that manufacturer***, excluding water ***and after any recommended thinning***. ***In no case shall x exceed the applicable legal limit from Table 1.***

(b) For any consumer product containing greater than five percent VOS and subject to the requirements of N.J.A.C. 7:27-23.4, the following statement shall be displayed on all labels ***or on a sticker affixed to the label***:

"This product contains x percent VOS."

i. Where x is the ***maximum*** weight percent of VOS in *[the]* ***that manufacturer's*** consumer product.

(c) The provisions of (a) and (b) above shall not apply to any consumer product whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

7:27-23.6 Recordkeeping

(a) Each manufacturer of a consumer product***, except consumer insecticides,*** subject to this subchapter shall:

1. Document the ***maximum*** VOS content of the consumer product shipped for use in the State as it leaves the facility. A copy of this documentation shall be provided to the distributor or retailer to whom the consumer product is delivered.

2. Maintain records regarding the consumer products leaving the facility including the ***maximum*** VOS content, the destination of the shipment, shipment quantity and such other information as the Department may prescribe.

(b) Each distributor *[or retailer]* shall maintain records regarding each delivery of covered consumer products received. Dis-

.ributors shall additionally maintain records regarding the consumer products leaving the facility including the ***maximum*** VOS content, the destination of the shipment, shipment quantity and such other information as the Department may prescribe.

(c) For consumer insecticides, each manufacturer shall document the VOS content of the consumer insecticide shipped for use in the State as it leaves the facility.

*[(c)]**(d)* All records and documentation shall be maintained for not less than five years, and shall, upon request of the Department, be available for review.

7:27-23.7 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Owners or operators and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of consumer product being provided, stored, transported exchanged in trade, sold, or offered for sale at the manufacturing, retail, or distribution outlet. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(a)

Control and Prohibition of Air Pollution by Vehicular Fuels

Adopted New Rules: N.J.A.C. 7:27-25

Proposed: July 18, 1988 at 20 N.J.R. 1631(a).

Adopted: January 27, 1989 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: January 27, 1989 as R.1989 d.123, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 26:2C-1 et seq. specifically N.J.S.A. 26:2C-8.

DEP Docket Number: 022-88-06.

Effective Date: February 21, 1989.

Operative Date: March 27, 1989.

Expiration Date: Exempt under 42 U.S.C. 7401 et seq.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting a new subchapter to N.J.A.C. 7:27, entitled, "Control and Prohibition of Air Pollution by Vehicular Fuels" hereinafter referred to as "subchapter 25", to regulate and reduce the volatility of gasoline as part of a continuing effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone. Subchapter 25 establishes a limitation of 9.0 pounds per square inch (psi) Reid vapor pressure (RVP) as the maximum allowable volatility of gasoline during the ozone-producing period of May 1 through September 15. This limitation will be effective beginning in 1989.

A public hearing was held on August 18, 1988 to provide interested parties the opportunity to present testimony on the proposed new rules. The comment period closed on October 7, 1988. The Department received written testimony from 56 persons and 17 persons presented comments at the public hearing.

AIR QUALITY ISSUES

COMMENT: Several commenters expressed a concern that even if volatile organic substances (VOS) emissions are lowered by the proposed rules, there will not be a measurable change in ozone levels in New Jersey. Another commenter requested the results of specific tests to support the Department's claim of a positive environmental impact as a result of the proposal to reduce gasoline volatility. The commenter also stated the proposed rules will cost $10,000 per ton of VOS reduced with no effect on ozone levels.

RESPONSE: The Department considers a reduction in gasoline volatility to be the most effective VOS control measure available in terms of both emissions reduction and cost. To calculate the VOS emissions reductions attributable to the rules, inventory data on gasoline storage and transfer operations and motor vehicle evaporative emissions were considered.

The results of the Department's calculations show reducing gasoline volatility from 11.5 psi RVP to 9.0 psi RVP will result in a VOS reduction of 156 metric tons (MT) per day during the regulated period. This reduction is greater than any single VOS control measure that has been implemented by the Department or is currently under consideration by the Department.

The Department's calculation of the VOS reduction benefit includes decreased evaporative emissions from both stationary motor vehicles (hot soak/diurnal) and from gasoline storage tanks and transfer operations in New Jersey. The evaporative emission reductions from stationary motor vehicles were calculated based on a comprehensive study conducted by General Motors in 1985 which evaluated the relationship between evaporative emissions from motor vehicles and gasoline volatility. The published study (Society of Automotive Engineers Technical Paper 852132) was conducted on 267 vehicles, both fuel injected and carbureted, using the standardized federal evaporative emissions test procedure. The Department applied these evaporative emission reductions to Mobile-3 evaporative emission factors for the New Jersey motor vehicle population to determine overall reduction benefits. Emission reductions from gasoline storage and transfer operations were calculated using evaporative emission factors contained in EPA's "Compilation of Air Pollutant Emission Factors" (AP-42) applied to the Department's VOS inventory data for gasoline storage and transfer sites in New Jersey.

The Department's emission reduction calculations should be viewed as conservative since they do not include the additional VOS reductions to be expected from a decrease in evaporative emissions from motor vehicles while in operation, known as running losses. Recent EPA investigations indicate this previously unrecognized source of VOS emissions is highly significant and directly related to high gasoline volatility. EPA's studies also indicate that running losses can be greatly reduced by lowering the volatility of gasoline. The Department recognizes, therefore, that the calculated benefit of 156 MT/day is conservative and may be significantly greater if the benefit from reduced running losses is included.

Based on the Department's calculation of the cost of RVP reduction at 1.5 cents per gallon of gasoline, the cost effectiveness of the rules is approximately $2,000 per ton of VOS removed. The Northeast States for Coordinated Air Use Management (NESCAUM) estimates the overall cost of reducing the volatility of gasoline to 9.0 RVP in the northeast to be in the range of $1,000 per ton of VOS removed.

The Office of Technology Assessment (OTA) of the U.S. Congress has calculated the cost effectiveness of various VOS control measures. The OTA study showed the cost effectiveness of enhancements to vehicle Inspection/Maintenance (I/M) programs to be from $2,500 to $5,100 per ton VOS removed and reasonably available control technology (RACT) for stationary sources to be $2,900 to $7,200 per ton VOS removed.

Clearly, therefore, lowering the volatility of gasoline represents an efficacious and economical control measure.

The Department believes there is sufficient evidence to show that these rules will contribute significantly to the State's ability to meet the National Ambient Air Quality Standards (NAAQS) for ozone. In particular, EPA's Empirical Kinetic Modeling Approach (EKMA) has demonstrated that control of HC emissions is the most effective strategy to reduce ozone concentrations.

The ozone non-attainment problem is almost entirely a summertime problem with over 96 percent of ozone violations occurring between May and September. The most severe ozone violations occur on days during this period when ambient temperatures climb over 90 degrees Fahrenheit. These conditions also result in sharp increases in evaporative emissions from gasoline stored in motor vehicles. The rules are aimed at reducing these VOS evaporative losses during these critical five months of the year and, specifically, during the hottest days, when it is most important to limit the evaporation of gasoline by reducing its volatility. The Department, therefore, believes the rules will have a significant positive environmental impact and contribute to attainment of the ambient air quality standard for ozone in New Jersey.

COMMENT: Although it is very difficult to estimate emissions inventories, it appears the Department's figure of 15 percent reduction, or 152 tons per day, is optimistic. First, EPA's 1985 technical document on RVP reduction indicates that reducing RVP from 11.5 to 9.0 will yield VOS reductions of less than eight percent. Second, New Jersey's State Implementation Plan (SIP) shows forecast emissions for 1987 to be 903 tons per day, a 41 percent reduction from the base inventory of 1980. Yet, ozone levels in New Jersey have certainly not been reduced by a corresponding amount; if anything, 1987 and 1988 have been worse.

RESPONSE: The Department does not consider its calculation of VOS reduction benefits for the proposed rules to be optimistic; rather, it is most likely quite conservative. EPA's technical report calculated potential emission reductions for a national volatility reduction program. The Department's calculations are specifically for New Jersey, a state with a very large vehicle population per square mile while also containing a major refining and gasoline distribution center for the northeast. It is, therefore, to be expected that the benefits of reducing gasoline volatility in New Jersey on a percentage basis, would be greater than the percent reduction calculated for a national program.

The commenter also implies that reductions in the VOS inventory should yield equivalent reductions in ozone. This is simply not true, based primarily on photochemical principles, nor has the Department implied this relationship in the SIP.

The Department acknowledges that the summer seasons of 1987 and 1988 have shown a trend of increasing ozone levels in New Jersey. The Department believes this trend upward is partially related to the increase in evaporative VOS emissions from gasoline as the volatility of gasoline has increased. The Department believes this upward trend in ozone levels underscores the need for the volatility reduction.

COMMENT: A more rational, scientifically-based standard should be considered, particularly in light of the existing ongoing efforts of the State to control ozone and ozone formation in New Jersey. These existing steps include controls of stationary emissions, statewide inspection and maintenance of automobiles, Stage I and II, as well as those highlighted by the EPA in correcting deficiencies in the present New Jersey program. Therefore, New Jersey should focus on existing programs while studying the benefits, if any, of reduced RVP in a slow, phased-in approach such as that proposed by the EPA.

RESPONSE: As described in the Department's Basis and Background Document for these proposed new rules, the benefits from implementing the rules include a reduction in VOS emissions of 21,000 tons per year. VOS reductions would be particularly significant on hot summer days, a condition most likely to lead to violations of the NAAQS for ozone. The rules will result in immediate reductions in VOS emissions by lowering gasoline volatility. Existing air pollution control initiatives such as permitting stationary sources, inspection and maintenance of automobiles, and Stage I and Stage II vapor recovery, have provided and will continue to provide benefits, and through increased enforcement and correction of program inadequacies, they can be further improved. However, new initiatives, particularly those that provide an immediate VOS reduction of this magnitude, should not await the further development and improvement of existing programs. Furthermore, the Department does not believe a slow, phase-in schedule for volatility reduction, such as that proposed by EPA, is necessary. For reasons outlined in subsequent responses in this document, the Department believes a reduction to 9.0 RVP in 1989 is both environmentally justified and technically feasible.

COMMENT: Specific questions the State does not answer in its Basis and Background document are: On what basis does the Department make the claim that "the net benefit of these control measures has been offset by an increase in commercial volatility"; how does the Department know the controls they imposed were of any value; what are the negative impacts of the Department's proposed rules (such as reduced gas volume, increased refining costs, higher balance of trade deficit)?

RESPONSE: Commercial gasoline volatility was near 9.0 RVP during the 1970's. EPA's air quality modeling was therefore based on a gasoline RVP of 9.0, which was also required for new vehicle evaporative certification testing. State Implementation Plans for attaining the ozone standard utilized air quality modeling results based on gasoline at 9.0 RVP. In subsequent years, as gasoline volatility increased, the contribution of evaporative VOS emissions from gasoline distribution and usage increased substantially, offsetting much of the VOS reductions achieved through other stationary and motor vehicle control measures.

It is difficult to measure the actual air quality benefit of any particular control measure. However, modeling results, based on actual laboratory measurements of control technique effectiveness, indicate that the measures the Department has implemented on stationary and mobile sources are effective measures at reducing VOS emissions.

The Department considers the "negative impacts" of the rules are not unreasonable and not burdensome to the affected parties including the consumer of gasoline. The negative impacts include potentially a small increase in the volume of crude oil refined and an increase in the cost of gasoline to the consumer. The Department does not believe that the small increase in the importation of either crude oil or gasoline from foreign sources that may occur due to implementation of these rules will significantly impact the balance of trade deficit.

COMMENT: Volatile organic compounds (VOC) reductions will not affect ozone: the evidence indicates that calculated VOC reductions don't have much effect on measured ozone. Man-made VOC's are estimated to be one-third of all VOC emissions in the East. Man-made VOC emissions have already been reduced to the 1940's levels. VOC's from highway vehicles have been cut in half since 1970. Ozone problems today are due mostly to the combined effects of warm weather and natural emissions.

RESPONSE: According to Robert Lamb of the EPA's Atmospheric Sciences Research Laboratory, as reported in the New Jersey Clean Air Council's publication entitled "Ozone: New Jersey's Health Dilemma", ozone precursor VOS emissions in the northeast are evenly distributed between biogenic and anthropogenic sources. Along the eastern portion of New Jersey and New York, biogenic sources of VOS are low compared to anthropogenic sources. VOS reduction through gasoline volatility reduction will, therefore, have a significant impact on reducing ozone formation in New Jersey.

While the commenter is correct in stating that major VOS reductions have occurred through previous control measures, persistent summertime ozone violations, particularly in 1987 and 1988, illustrate that further measures, such as VOS reductions through these rules, are necessary.

The Department agrees that recent high summertime temperatures have exacerbated the ozone problem by promoting greater evaporative emissions and running losses from vehicles, and by facilitating photo-oxidation of ozone precursors in the atmosphere. However, these higher temperature trends cannot be regarded as an externality to the ozone problem, but a key element, one that must be considered when evaluating potential reduction measures such as these rules.

COMMENT: Given the importance of reducing ozone levels in the State, why weren't these rules proposed earlier?

RESPONSE: EPA has, in the past, regulated the formulation of motor vehicle fuels. EPA began to study the problem of increasing gasoline volatility in the early 1980's and completed a detailed analysis on the subject in 1985. The 1985 report concluded that in-use fuel volatility reduction was both feasible and cost-effective.

However, a proposal from EPA for a national program to control gasoline volatility is delayed. Faced with this delay, and a persistent and pervasive ozone problem throughout the northeast, the Department proposed the current gasoline volatility rules, as did other states in the NESCAUM group, in an effort to solve serious ground level ozone problems in the northeast.

COMMENT: Controlling gasoline volatility offers a number of important advantages. These include:

1. Substantial reductions of hydrocarbon emissions sooner than any other stationary or mobile source control strategy;
2. Larger and more cost-effective emission reductions than other ozone control strategies;
3. Reductions region wide resulting in reduced transport of ozone and ozone precursors throughout the Northeast.

RESPONSE: The Department agrees the rules will provide immediate, significant reductions in VOS emissions. The reduction in gasoline volatility will provide larger and more cost-effective VOS reductions than other measures already implemented or under consideration by the Department. The following is a listing of the potential emission reductions

from extraordinary control measures as outlined in revisions to the 1980 State Implementation Plan in comparison to potential reductions from the volatility reduction rules:

Control Measure	Potential Emission Reduction (Metric tons/day)
Gasoline volatility reduction:	156 MT/day
Lower Exclusion Rates:	64
Stage II:	32
Consumer/commercial solvents:	22
Barge and tanker loading:	19
Architectural coatings:	13

Additionally, as outlined in a previous response, the cost effectiveness of these rules is lower than many of the remaining VOS reduction strategies.

The Department also agrees that the NESCAUM regional volatility reduction initiative, of which New Jersey is a part, will result in a reduction in the transport of ozone precursor emissions throughout the northeast. Furthermore, the Department is aware of states upwind of New Jersey that are now considering volatility reduction proposals.

COMMENT: This proposal represents the single most significant action that the northeast states can take at this time to reduce emissions of volatile organic compounds.

RESPONSE: The Department agrees that the rules represent the single largest potential reduction in VOS emissions relative to other strategies under consideration by the Department at this time.

COMMENT: A benefit of the proposed gasoline volatility rules is that its cost will be spread among a wide segment of the population—those who purchase gasoline, and will not fall upon only a few individual businesses and industries.

RESPONSE: The Department agrees that the costs of gasoline volatility reduction will be diffused among a very large consumer base, thereby lessening the economic impact. This is particularly true when the program is viewed as a regional initiative for the entire northeast gasoline market.

COMMENT: Several commenters questioned why the Department has not included states upwind of New Jersey in this regional volatility control strategy. It was also commented that the Department should concentrate on curbing the transport of pollutants, which, in the commenters' view, is the major cause of New Jersey's air pollution.

RESPONSE: The Department agrees that air pollution from upwind states significantly contributes to New Jersey's ozone air pollution problem. The Department has in the past and continues to actively support broad regional and national approaches to controlling air pollution.

The volatility reduction rules arose partially from a need to seek regional coordination in the study of costs and benefits of a reduction in summertime gasoline volatility. The northeast states realized at that time that although a national volatility rule would be preferable from an air quality perspective, EPA's volatility proposal was delayed and, even if eventually adopted, contained an unnecessarily long phase in schedule. Consequently, the Department supported the NESCAUM goal of a uniform regional gasoline volatility standard by proposing and now adopting its own gasoline volatility rules.

Although states upwind of New Jersey are not members of NESCAUM and therefore did not participate in NESCAUM's regional volatility initiative, New Jersey has always encouraged and has provided assistance to upwind states that are considering similar air pollution control measures. Pennsylvania has proposed a reduction in gasoline volatility to take effect in the summer of 1990. Futhermore, it is the Department's understanding that several other upwind states are now considering similar volatility reduction proposals including Delaware and Maryland.

COMMENT: One commenter stressed the need to take immediate steps to reduce ozone, not only for the protection of public health and the environment, but also because this action is required under the Federal Clean Air Act and the State Implementation Plan for ozone to meet the NAAQS for ozone.

RESPONSE: The Department agrees that immediate steps are needed to address the serious ground level ozone problems and resulting public health problems experienced in New Jersey during the summer months. Ozone is a powerful oxidant, and as such reacts readily with a wide range of substances. In humans, ozone irritates the respiratory system and reduced lung functions. Laboratory studies suggest that it may damage lung and other tissue. There is concern that this damage can impair breathing and reduce immunity to disease for people in good health, and the effect may be more severe for people with pre-existing respiratory diseases. Thus, violations of NAAQS for ozone is considered a serious public health concern. The Clear Air Act does require states in violation of the NAAQS for ozone and carbon monoxide to submit plans demonstrating attainment of the standards within a prescribed time frame. The Department's rules are not a strategy contained in the State Implementation Plan (SIP) for the attainment and maintenance of the National Ambient Air Quality Standards for Ozone and Carbon Monoxide that was submitted to EPA in 1983. However, the Department is developing a revision to the SIP that contains the gasoline volatility reduction strategy of the rule for submittal to EPA.

COMMENT: The benefits of extending the reduction period beyond the May 1 through September 15 dates and further limiting the maximum volatility to less than 9.0 should be explored.

RESPONSE: The control period for the volatility rule is May 1 through September 15. This period was selected because it represents the entire portion of the year when historically, ozone concentrations in excess of the ozone air quality standard occur. The Department believes at this time that extending the volatility control period beyond these dates would have relatively small additonal benefit as an ozone reduction measure since very few ozone violations occur outside the proposed control period. Additionally, because there is some possibility of reduced vehicle performance with gasoline below 9.0 RVP during the coldest months of the year, the Department has decided at this time not to extend the control period. The Department recognizes, however, that there may be some additional public health benefit to be derived from either further decreasing gasoline below 9.0 RVP, or from extending the control period. The Department will, therefore, continue to monitor studies that address this issue.

The rules limit summertime gasoline volatility to 9.0 psi RVP. The Department examined the feasibility of reducing volatility below 9.0 psi RVP and determined that there is insufficient evidence to support reducing fuel volatility below 9.0 RVP at the present time.

The Department, therefore, has decided not to limit summertime fuel volatility to less than 9.0 psi RVP. However, the Department will periodically reexamine both the feasibility and cost effectiveness of further reductions in gasoline volatility.

COMMENT: Several commenters stressed the adverse health implications of high ozone levels in New Jersey. One commenter also indicated that the increased cost in gasoline will be more than compensated for by the decreased costs in treating illnesses related to high ozone such as asthmatic and sinus problems which the commenter indicated were directly attributable to high ozone occurrences.

RESPONSE: The Department agrees that high levels of ground level ozone have demonstrable adverse health implications, particularly for the elderly, young children and those with respiratory ailments who are more sensitive to its effects on the respiratory system. The Department believes the rules will have a significant health benefit by reducing the levels of ground level ozone and by reducing the public's exposure to toxic compounds in gasoline such as benzene. Although, the Department does not have data quantifying the increased cost of treating illnesses related to high ozone concentrations in New Jersey, the New Jersey Division of Occupational and Environmental Health (NJDOH) will undertake a study to see whether ambient air pollution can be correlated with emergency room and hospital admissions for respiratory complaints. Studies in other regions suggest that there is such a correlation.

COMMENT: Experience demonstrates the substantial gains that can be achieved from reduced gasoline volatility. Since 1971, the state of California has successfully implemented a 9.0 psi Reid vapor pressure for its gasoline. According to the commenter's discussions with staff of the California Air Resources Board, California's regulation of gasoline volatility has substantially reduced ozone levels in a cost-effective manner without impairing vehicle driveability. Consequently, the measure proposed by the Department is not only theoretically sound, but it is also empirically beneficial.

RESPONSE: The Department agrees that the California program to reduce gasoline volatility has been highly successful, both in demonstrating its feasibility and cost effectiveness. The California Air Resources Board, in correspondence with the Department, made the following statements in regard to their gasoline volatility regulation:

1. "California's 9.0 psi RVP regulation, together with Stage I and Stage II vapor recovery requirements and vehicular evaporative emission control requirements, have long been important ozone attainment and maintenance strategies in California. California's 9.0 psi RVP regulation has been in effect since 1971. We estimate that the regulation has reduced hydrocarbon emissions by about 730 tons per day."

2. "Refiners in California comply with the regulation by storing high RVP blending components such as butane during the summertime RVP season. This butane is blended into gasoline during the winter, or sold as liquid petroleum gas (LPG)."

3. "There have been no indications that the RVP regulation has resulted in impaired vehicle driveability in California."

4. "This strategy is one of the more effective strategies that we have implemented to meet the federal ozone standard in that a large reduction was achieved."

5. "The price of gasoline in California is a function of many factors. If the price is greater than that nationally, we do not believe that it implies a causal relationship with our volatility requirements."

COMMENT: The proposed rules would limit the emission of species of VOC of lower reactivity, but at the expense of increasing those which have higher reactivity. Thus, if implemented, the rules could be expected to have a counterproductive effect on ozone level reductions.

RESPONSE: Evaporative emissions from gasoline are primarily composed of butane, photochemically a relatively slow reacting VOS. However, slow reacting does not mean non-reactive. The Department has historically regulated even slowly reactive compounds because they can participate in ozone formation, particularly during the multi-day exceedances of the ozone standard. Additionally, slowly reactive VOS can be transported long distances and participate in ozone formation far downwind from their release, the so-called transport phenomenon.

Furthermore, summertime gasolines in New Jersey have reached a level of volatility such that, under ambient temperature conditions of over 90 degrees Fahrenheit, gasoline may be undergoing rapid volatilization in the fuel tanks of vehicles. Under these conditions, the evaporative emissions from motor vehicles will be comprised of additional VOS species of much higher photochemical reactivity. The rules will reduce gasoline volatility, thereby reducing evaporative losses of not only butane, but of other highly photochemically reactive hydrocarbon species in gasoline.

COMMENT: Butane vapors themselves may not be very important due to the low photochemical reactivity of butanes. However, the excessive overall pressure increase by the butanes results in emissions of other species in the gasolines.

RESPONSE: The Department agrees that the addition of butane to gasoline increases evaporative emissions of not only butane but other hydrocarbon species which can have significantly higher photochemical reactivities. Butane, although a relatively slow photochemical reactant, is important in the formation of ozone, particularly when ozone precursors are transported long distances.

COMMENT: As proposed, New Jersey's rules would have a major negative impact on the ethanol fuel industry by precluding the sale of ethanol-gasoline blends in New Jersey. Several alternative regulatory approaches would permit ethanol blends to be marketed in New Jersey while ensuring a volatility controlled fuel. For instance:

1. EPA has not imposed any volatility restrictions on 10 percent ethanol blends;

2. Massachusetts has excluded 10 percent ethanol blends from the 9.0 psi requirement for gasoline;

3. California has adopted specific volatility levels for ethanol blends, requiring only the gasoline portion to meet the 9.0 psi standard;

4. Another option is to provide ethanol blend fuel a one psi standard above that established for straight gasoline of 10.0 psi.

RESPONSE: The Department does not believe that mixtures of up to 10 percent ethanol should be excluded from the volatility limitations in the rules or granted a specific tolerance from those limitations. This will not preclude the sale of these blends in New Jersey but require that ethanol blenders obtain a low RVP gasoline blendstock to assure the final blend meets the volatility standard of 9.0 psi.

The addition of 10 percent ethanol to a base gasoline stock of 9.0 RVP will increase the blend RVP by 0.76 psi, according to EPA's guidance document entitled "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternate Fuels and Fuel Blends" (January, 1988). Additionally, EPA has reported a change in the midrange distillation curve for ethanol blended fuels resulting in an increase in hot soak evaporative emissions.

Another factor to consider with the use of ethanol blended fuels is "commingling" which refers to the mixing of gasoline/alcohol blends with non-alcohol gasolines in vehicle fuel tanks whenever consumers switch from one fuel type to the other. The resulting commingled blend will have a higher volatility than the simple volume weighted average of the commingled blend components.

Also, EPA has reported that the use of alcohol blended gasolines may adversely affect the working capacity of evaporative canisters on motor vehicles. There is evidence that the evaporative emissions from ethanol blended gasolines may require extended purge time to be fully extracted from the charcoal in the control canister.

All of these factors tend to increase the evaporative emissions from motor vehicles fueled with ethanol blended gasolines as compared to the base stock gasoline. EPA data shows that 10 percent ethanol blended fuel will increase evaporative emissions from motor vehicles as follows:

(No Commingling) Diurnal Evaporative Emissions	(percent change from 9.0 base gasoline) 10 percent Ethanol Blend
Carburetion:	+ 41.1 percent
Fuel Injection:	+ 42.7 percent
Hot Soak Evaporative Emissions	
Carburetion:	+ 25.5 percent
Fuel Injection:	+ 34.0 percent

The commenter also indicates that EPA has not imposed any volatility restrictions on 10 percent ethanol blends. This is correct. However, in EPA's notice of proposed rule making (NPRM) for gasoline volatility reduction, one of the options discussed is to require ethanol blended gasolines to meet the same volatility specifications as unblended gasolines. EPA also addresses the impact of allowing a RVP tolerance for ethanol blends in the NPRM as follows: "The emissions impact of allowing a 1.0 psi RVP disparity between gasoline and gasohol, as with the total RVP exemption, is significant. EPA estimates that at least one to two percent of the potential fleetwide ozone control achievable in the year 2010 by reducing Class C gasoline RVP to 9.0 psi could be lost because of gasohol's higher RVP."

The Department has determined that there is sufficient evidence showing vehicles fueled on ethanol blended gasolines will have significantly higher evaporative emissions than vehicles fueled with gasoline meeting the 9.0 RVP specification. This is true even if the base gasoline used for the blending is required to meet the 9.0 RVP specification. The Department, therefore, has decided that ethanol blended fuels should meet the same volatility requirements as unblended gasoline. This will impact the entry of the ethanol fuel industry into the New Jersey market. However, it will increase the incentive for the ethanol industry to explore the availability of lower volatility gasoline blendstocks and alternative uses for ethanol as an indirect blending agent in gasoline.

The Department is aware of several Midwestern refiners that are now supplying gasoline blendstocks formulated specifically for blending with ethanol. This approach to utilization of ethanol as a blending component with a gasoline blendstock, as opposed to blending ethanol with a finished gasoline offers several advantages:

1. The resulting finished gasoline can meet a 9.0 volatility specification;

2. The excellent octane qualities of ethanol are utilized as opposed to being essentially wasted by adding ethanol to a finished gasoline already meeting octane specifications;

3. The low-octane blendstock formulation will allow refiners to back-out additional aromatics resulting in a finished gasoline with a lower aromatic content.

The Department is also aware of current research being conducted into the use of ethanol as a feedstock for the production of ethyl tertiary butyl ether (ETBE). Current research indicates that ETBE may be extremely attractive as a blending component, having a very low vapor pressure (4.0 psi RVP) and excellent octane qualities.

In summary, the Department believes the ethanol fuel industry through further exploration of these alternatives can market ethanol as a gasoline blending agent while meeting the volatility requirements of the rules.

COMMENT: Although the use of ethanol blended fuels in automobiles can be expected to increase the ambient concentrations of VOS in urban atmospheres, these fuels are not likely to increase smog formation. Previous studies have not reached this conclusion because they did not account for the potential reduction in urban ozone that can be attributed to a reduction in emissions of carbon monoxide (CO) resulting from the use of ethanol blended fuel.

RESPONSE: The Department believes that, at this time, the link between CO and ozone formation is speculative and not adequately supported. EPA, in their document entitled "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternate Fuels and Fuel Blends," has reached a similar conclusion, stating as follows:

"Areas receiving ozone SIP calls and considering adoption of an alternative fuels program should account for its impact on both hydrocarbon and CO emission inventories, since both are inputs to the

atest model for predicting future ozone attainment. Directionally, CO mission reductions from alternative fuels will assist in attaining the ozone NAAQS, but the strength of this effect has not been documented for the ange of local conditions which affect ozone formation."

Additionally, the Department believes further study is needed to quantify the CO reduction benefits from the use of oxygenated fuels in the ummer months. Previous studies have indicated the largest CO reductions from the use of oxygenated fuels with closed loop vehicles occurs luring open loop modes of operation, when the engine is cold and varming up. Since these modes are much more limited and shorter in luration in the summer, one would not expect similar CO reductions in he summer months.

COMMENT: Smog chamber tests and computer modeling results indicate that, on a weight basis, ethanol contributes significantly less to ozone formation than typical urban VOC/NOx mixtures.

RESPONSE: EPA has reported in the Janaury 1988 technical report ntitled "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternate Fuels and Fuel Blends", in reference to the eactivity benefit of ethanol compared to hydrocarbons in either exhaust or evaporative emissions as follows: "A final factor has been raised for thanol blends concerning the relative contribution of ethanol emissions o ozone formation compared to hydrocarbons in either exhaust or vaporative emissions. Some smog chamber data have indicated that on a mass basis ethanol may be less reactive than the typical hydrocarbon ompounds in exhaust and evaporative emissions. This lower reactivity n effect has been incorporated into the evaporative VOC adjustment actors by ignoring the mass of oxygen in the ethanol. The issue of relative eactivity of ethanol on a per-carbon atom basis is much less clear-cut nd no further adjustment has been used in this report. The available lata indicate that a low HC/NOx ratios there may be some reactivity enefit, but at higher HC/NOx ratios this may not be true."

Additionally, ethanol tends to increase the overall vapor pressure of he ethanol/gasoline blend. The resultant increase in evaporative emissons is comprised of not only ethanol but other hydrocarbon species. EPA as reported that evaporative emissions from an ethanol blend consists nostly of gasoline vapor with a small amount of ethanol, roughly 15 ercent ethanol.

COMMENT: The proposed rules appear to be directed specifically to asoline. However, if the term VOS is not clarified so that it is limited o reactive species only, the proposed rules could preclude the use of nethane or natural gas as a vehicular fuel. USEPA and others have ecognized that natural gas is not a reactive organic substance.

RESPONSE: The Department agrees that the rules are specifically irected towards gasoline and gasoline-oxygenate blends. The Department believes it is clear that methane or natural gas would not fall under he rule's definition of gasoline, because they would not be considered etroleum distillates.

COMMENT: One commenter stated that the proposed rules will reduce the public's exposure to toxic gas compounds. Another commenter tated support for the rules because they will result in a reduction in enzene emissions from gasoline evaporation. The commenter also stated hat benzene is a known human carcinogen.

RESPONSE: The Department agrees that the reduction in gasoline olatility will reduce public exposure to several toxic compounds found n gasoline evaporative emissions. The reduction in volatility will reduce he public's exposure to benzene, a carcinogen, primarily by reducing the evaporation of gasoline from motor vehicles.

COMMENT: As the supporting document indicates, these rules have he potential to reduce sharply the amount of gas vapor entering our air ach year. To accomplish such a goal, small businesses cannot be exempted from the rules. As the SIP for ozone states, the attainment of NAAQS is dependent on the regulation of smaller and smaller sources of VOS.

RESPONSE: The Department agrees that small businesses should not e exempted from these rules, and, as such, no exemptions have been rovided in the rule.

COMMENT: One issue that must be raised is the potential for reemption of state fuel regulations by EPA under the Clean Air Act. Section 211(c)(4) of the Act prohibits states from enacting controls on, or prohibitions of, the use of a motor vehicle fuel, for the purpose of notor vehicle emission control, that are different from EPA controls or prohibitions on the fuel. However, section 211(c)(4)(C) may allow the override of this preemption if a SIP specifically provided for such a program. Because of the severity of its air quality problems, this condition can be met with the submittal of an appropriate SIP revision by New Jersey.

RESPONSE: The Department recognizes that under section 211(c)(4)(C) of the Clean Air Act, (42 U.S.C. 7545(c)(4)(C)), "[a] State may prescribe and enforce, for the purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 7410 of this title so provides." Accordingly, the State has already moved to revise its State Implementation Plan (SIP) to specifically provide for the gasoline volatility controls contained in N.J.A.C. 7:27-25. The Department does not believe, however, that it is preempted from adopting the volatility rules under section 211(c)(4) of the Act. Rather, it is clear that, aside from the regulation of lead additives, state and local governments are not preempted from regulating other aspects of fuel and additives used in motor gasolines, 40 C.F.R. 80.1(b). USEPA has concluded that its regulations for the phased reduction of lead additives in motor gasoline do not preempt State or local governments from controlling other aspects of fuel and additives, 42 F.R. 25731.

ECONOMIC ISSUES

COMMENT: The cost of achieving a 9.0 psi standard by 1989 argues against such a standard. New Jersey should instead have an incrementally reduced volatility standard such as EPA's phase-in approach. For example, a 10.5 psi standard taking effect in 1990 would provide 80 percent of the benefit of a 9.0 psi standard, but at 40 percent of the cost to New Jersey's consumers.

RESPONSE: The Department believes that reducing gasoline volatility to 9.0 RVP in 1989 is both feasible and environmentally justified. As outlined in subsequent responses in this Summary, the Department believes the oil industry can comply with the 9.0 RVP standard in 1989, and therefore, a slow phase-in approach such as EPA's proposal, is not necessary.

The Department's calculations show that lowering fuel volatility from 11.5 RVP to 10.5 would account for approximately 33 percent of the total cost of decreasing volatility from 11.5 to 9.0. However, data have not been provided by the commenter to support the argument that a reduction to 10.5 RVP will provide 80 percent of the air quality benefit.

The Department has calculated that a 1.0 psi RVP reduction from 11.5 to 10.5 will reduce motor vehicle hot soak and diurnal evaporative emisssions by 64 metric tons per day; reducing fuel volatility further to 9.0 RVP, reduces evaporative emissions by an additional 50 metric tons per day. A 1.0 psi RVP reduction, therefore, represents only 56 percent of the total VOS reduction benefit to be achieved by reducing volatility from 11.5 to 9.0.

It should be noted that these emission reductions only apply to evaporative losses from stationary motor vehicles (hot soak/diurnal) and do not include evaporative emissions from gasoline storage tanks and transfer operations.

COMMENT: Going to 9.0 psi RVP rather than 10.5 will cost New Jersey's citizens about $40 million per year, but would not give any measurable reduction of ozone levels. $40 million results from $.02 extra per gallon cost to consumers. The cost to produce 9.0 psi gasoline rather than 11.5 psi is $.03 per gallon.

RESPONSE: The Department has estimated the total cost of reducing gasoline volatility to 9.0 RVP to be $33 to $77 million in New Jersey. The Department has calculated the increased cost per gallon to produce 9.0 RVP gasoline, based on the Bonner and Moore analysis, to be 1.5 to 3.5 cents per gallon. Reducing volatility to 10.5 psi would cost approximately 0.5 to 1.2 cents per gallon but only provide 56 percent of the VOS reduction benefit of going to 9.0 RVP. Reducing volatility from 10.5 to 9.0 will provide an additional 50 metric tons per day reduction in motor vehicle hot soak/diurnal evaporative emissions alone.

From a consumer standpoint, a citizen driving a vehicle that averages 20 miles per gallon for 15,000 miles a year would pay an additional $3.75 to $9.00 a year for 10.5 RVP gasoline, and $11.25 to $26.25 a year for 9.0 RVP gasoline. The Department believes this potential additional cost to the consumer is justified by the additional VOS benefits to be achieved by a reduction to 9.0 RVP.

COMMENT: These rules will reduce VOS emissions at a lower cost (on a dollar per ton of VOS basis) than other control measures. In particular, the cost is far lower than the cost required to obtain similar quantities of reductions from stationary sources, such as manufacturing facilities. The commenter is concerned that if these rules are not adopted, additional VOS emission reductions would be required for stationary sources, which are already required to install controls equivalent to best available technology. Additional controls on this sector would not be effective.

RESPONSE: The Department has calculated the cost effectiveness of the rules to be approximately $2,000 per ton of VOS reduced. The Department considers this to be a reasonable cost relative to other VOS reduction measures by the Department or under consideration. This cost is considerably lower than many remaining stationary source VOS control strategies which, according to the U.S. Office of Technology Assessment range from $2,900 to $7,200 per ton VOS removed.

It should be noted, however, that the adoption of these rules does not preclude the Department from proposing additional control measures for both stationary and mobile sources. The Department believes there are additional control measures available for those VOS sources that would be effective if implemented.

COMMENT: Several commenters expressed concern over the increase in the price of gasoline that may result from the proposed rules and the sensitivity of the public to increases in the price of gasoline. One commenter expected an increase of three cents per gallon and indicated that increase would be more than the recent gasoline tax increase.

RESPONSE: The Department has estimated the increased cost to the refining industry as a result of the proposed rules to be 1.5 cents per gallon. The consumer may incur a similar cost increase assuming the oil industry passes the entire cost on to the retail level.

This cost increase is based on information contained in a study conducted under contract to EPA by Bonner and Moore Management Sciences, entitled "Estimated Refining Cost Impact of Reduced Gasoline Vapor Pressure", dated July 1985.

The Department realizes that the cost of reducing gasoline volatility is subject to many variables including the price of crude oil, butane storage and handling expenses, and the specific operational constraints of each refinery. EPA's Bonner and Moore study evaluated the costs of volatility reduction under several different scenarios. This study indicates that even under worst case conditions, the cost increase for reducing volatility to 9.0 RVP would not exceed 3.6 cents per gallon. The American Petroleum Institute's (API) analysis of the Bonner and Moore study indicates that the estimate of a 1.5 cents per gallon increase may be understated by a factor of three. Among the factors that API cites for this three-fold increase are amortization of new refining investment, longer transition periods to reduce RVP, RVP compliance margins, and other specifics of compliance.

The Department does not believe these costs are unreasonable or burdensome to the consumer, especially in light of the highly significant reduction in VOS emissions expected to be accrued as a result of the rules and corresponding improvement in air quality.

COMMENT: Given the serious economic impact these rules will have via increased gasoline prices for consumers, added to existing costs for emission tests for cars and retrofitting of service stations for vapor recovery, the Department must take a hard look at the costs compared to the health benefits achieved, especially when these rules will not improve the performance of automobiles and may actually pollute the air more.

RESPONSE: In response to other comments in this document, the Department has noted that the costs of reducing volatility may result in an increase of 1.5 cents per gallon of gasoline at the retail level. Given the major benefit the rules will have in reducing VOS emissions, this cost is considered reasonable.

The rules will have a significant impact on reducing ozone formation by significantly reducing VOS emissions during the hottest months of the year; a critical period for ozone formation. The health benefits will result from lower ozone concentrations and decrease public exposure to toxic compounds such as benzene.

The Department has also concluded and stated in previous responses in this Summary that summer automobile performance may improve and cooler weather performance will not be adversely affected as a result of the rules. Finally, the Department has determined that the rules will provide a net benefit to air quality, not an increase in air pollution as suggested by the commenter.

COMMENT: Several commenters expressed concern that the rules will increase the cost of producing gasoline, particularly to New Jersey's refineries. This will put these refineries at a competitive disadvantage with the Gulf States and foreign refineries.

RESPONSE: The Department agrees that the rules may increase the cost of producing gasoline for the New Jersey market. However, in light of the fact that six other northeastern states have already adopted or proposed similar volatility rules, the demand for 9.0 RVP gasoline will most likely include the majority of the northeastern gasoline market.

This market is supplied not only by New Jersey's refineries, but by refiners in the Gulf of Mexico (Gulf Coast), Pennsylvania, and foreign countries. These refiners will also incur the costs of producing lower volatility gasolines for a relatively large gasoline market. The costs, therefore, of producing a lower volatility gasoline will be felt by all refiners supplying gasoline to New Jersey not solely those refineries in New Jersey

COMMENT: These rules, if enacted, will inevitably burden interstate commerce and will impact on customers not even within New Jersey's jurisdiction. The Department will, by imposing these rules upon the State's petroleum refiners, force neighboring states to adopt New Jersey's rules on motor fuel volatility. This de facto interstate regulation is caused by the fact that no other northeastern state has resident refineries, and New Jersey refiners do serve this area with products. The Departmen has, therefore, overstepped its regulatory authority by proposing rules for this State that will have a profound effect upon all states in the northeast region, without the benefit of legislative concurrence.

RESPONSE: New Jersey's petroleum fuel market is supplied not only by New Jersey's refineries but also by refiners in the Gulf Coast, Pennsylvania, and foreign countries. These refiners will incur the same costs of producing lower volatility gasoline for the northeastern market as will New Jersey's refineries. Conversely, New Jersey's refineries will most likely continue to supply customers outside of the northeastern market that are not subject to the 9.0 psi RVP volatility limit. In either case neither refiners inside nor outside of New Jersey will be prohibited from refining a higher volatility fuel for sale outside of New Jersey.

The fact that refineries and customers outside of New Jersey will be impacted by the rules is, in itself, insufficient grounds to invalidate New Jersey's gasoline volatility rules under the interstate commerce provisions of the United States Constitution. It is a well accepted principle that states have the sovereign authority to regulate for the health and welfare of their citizens. Inasmuch as almost any state regulation impacts in some way on interstate commerce, courts have ruled that only those regulations designed to unfairly advantage in-state interests at the expense of out of-state interests, and which do in fact significantly burden interstate commerce, are invalid under the commerce clause. Clearly, New Jersey's gasoline volatility limit is a measure designed in the first instance to protect the health of New Jersey's citizens from the effects of serious ground level ozone pollution during the summer months. The rules do not, in any way, advantage in-State over out-of-State interests, and the extent to which it burdens interstate commerce is slight considering that all northeastern states will adhere to the same volatility limits and control period. The rules' overriding goal of protecting the health of New Jersey's citizens, therefore, outweighs any incidental impact on interstate commerce that the rules may have.

ALTERNATIVE CONTROL OPTIONS

COMMENT: New Jersey should adopt a new program designed to enforce the existing American Society for Testing and Materials (ASTM) standard for Class C gasoline of 11.5 for 1989. This would permit the State to document those exceedences of gasoline over the existing standard, take necessary steps to secure this standard and evaluate any particular problems which may arise. This additionally gives the State's refiners an opportunity to apply for and secure the permits from the Department to ensure this type of reduced gasoline volatility. It serves notice to those foreign importers, out-of-State refiners, blenders and pipelines that a lower volatility gasoline will be required in New Jersey. The program permits the present Stage II vapor recovery system, which is both expensive and burdensome to New Jersey's consumers and industry, to be completed.

RESPONSE: The Department agrees there is evidence that the existing ASTM standard of 11.5 RVP is being exceeded in New Jersey. However simply enforcing the 11.5 RVP standard will not provide the reduction of VOS achievable by reducing gasoline volatility to 9.0 RVP during the summer period.

The Department also believes the oil industry will have sufficient time to adjust refining and blending processes to produce 9.0 RVP gasoline in 1989 for use in New Jersey, including the securing of permits from the Department.

The Department does not consider the Stage II vapor recovery program to be burdensome to New Jersey's consumers and industry. Nonetheless over 50 percent of the service stations in New Jersey will have the Stage II equipment installed by the end of 1988.

COMMENT: Several commenters suggested that New Jersey should defer to EPA's proposal to reduce gasoline volatility on a national basis to both increase the reduction benefits and diffuse the costs among more states.

RESPONSE: The Department realizes a national volatility rule would be preferable from an air quality and cost equity perspective. However

New Jersey and the northeastern states are faced with a severe ground level ozone problem. EPA's proposed volatility rule is still proposed, with no assurance of adoption. Even if adopted, EPA's proposed phase in schedule for volatility reduction is unnecessarily slow.

The Department has therefore proposed a reduction in gasoline volatility as a participant in a regional program with six other northeast states. Since New Jersey and the northeast states receive their gasoline from a similar supply network, the overall cost of the program will be diffused among all the states.

The Department supports EPA's development of a national gasoline volatility reduction program. EPA has indicated to the Department that adoption of a national rule will not preempt New Jersey's rules since the Clean Air Act allows for override of Federal preemption if an appropriate SIP revision is submitted by the State. The Department, therefore, is developing a revision to the SIP reflecting the requirements of proposed N.J.A.C. 7:27-25 for submittal to EPA.

COMMENT: One commenter indicated that the NESCAUM states strongly support EPA's proposal but that the northeast cannot afford to wait until 1993 or longer for the VOS reductions that can be achieved. The commenter also indicated that EPA has suggested that because of delays in final adoption of their proposal, implementation of a 9.0 RVP standard would be delayed until at least 1993.

RESPONSE: The Department, as a member of NESCAUM, supports EPA's volatility reduction proposal. However, adoption of EPA's proposal is delayed and even if adopted soon, contains an unnecessarily slow phase in schedule. The Department cannot confirm the commenter's suggestion of further delay in EPA's phase in schedule. However, the Department agrees with the commenter regarding the immediate need to adopt effective measures such as these rules in light of the compelling air quality problem in New Jersey and the northeast.

REFINING ISSUES

COMMENTS: Several commenters stated that in order to produce 9.0 RVP gasoline in 1989, most of the butane must be removed, resulting in a decrease in gasoline volume of approximately five percent. This will result in spot shortages of gasoline in 1989 in New Jersey. Additionally, several commenters suggested that in order to replace this lost volume of gasoline, additional importation of crude oil will be required from unstable sources. Many commenters requested three to four years of lead time to adjust production for 9.0 RVP gasoline.

RESPONSE: Compliance with the rules may result in a marginal increase in crude oil being refined to replace the butane removed for volatility reduction. However, this increase is small relative to the volume of crude oil currently being imported and, therefore, the rules will not, in itself, substantially increase this country's reliance on imported crude oil. It should be noted that the domestic oil industry has become increasingly dependent on imported crude oil over the last five to 10 years as primarily an economically driven strategy related to the depressed price of crude oil. In addition, the Department does not believe that oil companies, through their opportunity to comment on the proposed rules, have adequately supported the contentions of possible gasoline supply disruptions to New Jersey in the summer of 1989 as a result of the rules.

The Department believes there is sufficient time available for the oil industry to determine the appropriate demand for 9.0 RVP gasoline in 1989 and for refiners and suppliers to produce sufficient supplies to meet demand.

Historically, gasoline demand has not been uniform (7.5 million barrels per calendar day (b/cd) in 1977-78 to 6.5 million b/cd in 1982-83, to 7.3 million b/cd in 1988). The demand fluctuations are not unusual and the oil industry has been able to respond to these fluctuations. The Department is therefore confident that the additional market demand can be met without supply disruptions.

In addition, the Department believes there are several potential short term strategies available to make up any loss in volume of gasoline that may result because of the rules. These include:

1. Refinery process modifications to increase gasoline yield per barrel of crude oil including octane catalysts, lower process severity and lower pool octane;
2. Increased utilization of Gulf Coast refining capacity;
3. Increased use of methyl tertiary butyl ether (MTBE) as an octane booster and volume extender (MTBE is produced from methanol or butane feedstocks);
4. Isomerization;
5. Alkylation; and
6. Increased importation of finished gasolines.

Although the Department believes that spot shortages caused by the requirements of the rules will not develop, the Department is providing a means for regulated parties to inform the Department of potential shortages, and to petition the Department through the rulemaking process for modification of the 9.0 RVP standard such that shortages in supply will be averted. Consequently, a new provision has been added to the rule at N.J.A.C. 7:27-25.6. Additionally, the Department is providing a phase-in compliance schedule for the 1989 control period to avert the possibility that insufficient lead time from adoption of the rule to the date of compliance will lead to potential supply shortfalls of 9.0 RVP gasoline. Details of this phase-in schedule are provided in a later response in this summary.

COMMENT: Several commenters indicated that RVP reductions to 10.5 psi can be accomplished with minor process changes, but further reduction to 9.0 or below will require capital investments in refinery operations. The commenters also expressed concern that, in light of the short lead time involved, it is unreasonable to expect the refiners to complete the necessary capital investments needed to produce a 9.0 RVP gasoline by May, 1989.

RESPONSE: The Department believes the refining industry can modify current refining operations to produce a 9.0 RVP gasoline for use in New Jersey by May of 1989. These modifications involve primarily alterations to blending practices and adjustments to operational parameters for current processes. These types of refining alterations will yield a much lower volatility gasoline without requiring new facility construction.

Evidence to support these conclusions can be derived from data supplied by the domestic oil industry. This data is contained in a study undertaken by the American Petroleum Institute (API) entitled "U.S. Gasoline RVP Reduction Capabilities and Costs" and dated November, 1987. This study surveyed domestic refiners by requesting responses to questions regarding specific refinery processes. Confidential responses were received from 142 U.S. refineries, representing 97 percent of 1987 domestic gasoline production capacity. The responses were summarized in the report by Petroleum Administration for Defense Districts (PADD).

The Department has further analyzed the data contained in section F of the API report using the following assumptions:

1. Butane blending RVP equal to 65 psi;
2. A gasoline grade mix of 50 percent unleaded regular, 25 percent unleaded premium, 10 percent unleaded intermediate, and 15 percent leaded regular for 1989 in New Jersey;
3. The primary domestic suppliers of gasoline consumed in New Jersey are PADD III refiners (Gulf Coast), supplying approximately 50 percent, and PADD I refiners (East Coast) supplying approximately 25 percent, with the remainder being imported gasoline.

The results of the Department's analysis of the API survey data can be summarized as follows:

	PAD III Refineries	PAD I Refineries
Average RVP of gasoline pool (July 1987):	10.07 psi	11.17 psi
Average RVP of pool without adding butane:	7.80	8.01
Butane added during blending (percent of blend)	3.5 percent	4.9 percent

The data show that the RVP of the base gasoline blending stocks, prior to the intentional addition of blending butanes at the refinery level, is near 8.0 psi in both PADD I and PADD III. The refiners can, therefore, produce a gasoline with an RVP of 9.0 or less by limiting the intentional addition of blending butanes. The key point is that a substantial reduction in volatility can be accomplished without significant facility construction, minimizing the amount of lead time required to comply with the requirements of the rules.

The Department realizes that limiting the intentional addition of butane to gasoline will decrease the overall volume of gasoline by three to five percent. As outlined in the previous response, the Department believes this potential loss in volume can be made up, if necessary, through increased utilization of refining capacity, process alterations to increase gasoline yields, and increased importation of finished gasolines.

The Department believes, therefore, that it is not unreasonable to require the oil industry to supply a 9.0 RVP gasoline to New Jersey by May of 1989.

COMMENT: Since butane is a high octane component, removing butane from gasoline will reduce the overall refinery octane pool. Replacing this octane requires more severe refinery processing which reduces gasoline yields and increases expenses. The cost to produce replacement octanes and lost volume will be more than that calculated in the Bonner and Moore study referenced in the NESCAUM background document.

RESPONSE: The oil industry has sharply increased the production of high octane unleaded gasoline over the last three years. This has occurred as a marketing strategy despite the fact that very few vehicles actually require higher octane gasolines. For example, in model year 1988, only one model of the General Motor's fleet requires premium unleaded fuel; all others are designed to operate on regular grade unleaded.

Currently, the predominant refining process utilized for producing high octane unleaded gasoline, catalytic reforming, significantly decreases the yield of gasoline per barrel of crude oil when operated under severe conditions, optimized for octane production.

The Department agrees that removal of butane will reduce the octane pool. The Department, however, believes that one option open to refiners is simply to produce less of the high octane unleaded grades and increase production of regular and intermediate grades of unleaded. This, in itself, would significantly increase yields of gasoline per barrel of crude oil and reduce pool aromatic content, while still providing an acceptable quality gasoline for the vast majority of vehicles in operation.

However, if refiners wish to maintain the current pool octane while reducing volatility, there are also options available. These include increased use of alkylation facilities, octane catalysts, and MTBE.

The Department considers the Bonner and Moore analysis of the cost of RVP reduction to be an accurate and comprehensive evaluation, taking into consideration the many variables involved in the calculation of this cost.

COMMENT: The amount of time between adoption of the gasoline volatility rules and their taking effect is insufficient lead time for planning, engineering and construction of facilities to extract, store and ship butane, and manufacture a lower volatility gasoline.

RESPONSE: The Department believes that there are many options open to refiners to both minimize the quantity of rejected butanes and to manage the excess butanes. These include (1) reducing the volume of incidentally produced butanes by decreasing refinery process severity; (2) consuming excess butanes at the refinery as a fuel gas in plants and boilers; (3) shipping excess butane to the Gulf Coast for use as petrochemical feedstock (ethylene feed); (4) increasing utilization of butane as an indirect blending agent, that is upgrading butane to a low volatility, high octane blending agent such as alkylate or MTBE; (5) retaining of butane in the gasoline pool as a result of volatility depressing blending agents such as MTBE and alkylate; and (6) storing butane for winter blending.

The Department believes refiners will utilize combinations of these strategies to utilize butanes rejected from the gasoline pool. While implementation of some of these strategies may require capital investment, the Department believes the necessary construction can be completed within the available time period in order to comply with the rule.

COMMENT: The position stated in the Economic Impact for the proposed rules that all additional expenses of implementing the rules (that is, purchase of equipment, cost of disposing of excess butane, making low volatility gasoline for New Jersey only) can be passed on to New Jersey's distributors, dealers and consumers, incorrectly assumes that all suppliers will be similarly impacted when in fact independent regional supplier/refiners will be more severely harmed than others who have a means of handling the excess butanes resulting from the effect of this rule.

RESPONSE: The Department believes that, while small refiners may have less flexibility in utilizing excess butanes, there is a range of options available to smaller refiners for managing excessive butanes. These options include (1) consumption of excessive butane at the refinery as a fuel gas in plants and boilers; (2) storage for winter blending; and (3) shipping excessive butane to other markets for use as a petrochemical feedstock.

The Department believes, therefore, that smaller refiners will be able to manage excessive refinery generated butanes through utilization of these options or combinations thereof, such that they should not experience a disproportionate or excessive economic burden relative to larger refiners.

COMMENT: The most likely home for excess butane resulting from the requirements of these rules will be as chemical feedstock. Since the majority of processors of this material are on the Gulf Coast, this necessitates expensive railcar shipping, placing New Jersey refineries at a competitive disadvantage.

RESPONSE: The Department recognizes that a certain amount o butane, depending on the specifics of individual refinery operations, wil have to be removed from the gasoline pool in order to achieve th volatility reduction. This is so because of the high volatility characteristic of butane as a component of gasoline, it having an RVP of approximatel 60-65 psi. Consequently, refiners will have to dispose of this excess butan appropriately.

The Department agrees that the petrochemical market is concentrate on the Gulf Coast. Refiners choosing to ship butane to this market wil incur additional transportation costs. The Department believes refiner will most likely pass these costs on to the wholesale level. However, a mentioned in the previous responses, the use of butane as a petrochemica feedstock is one of several options available to refiners. There are othe potential means for utilizing butanes within the refinery that do not entai railcar shipment. The Department believes refiners will utilize a combina tion of strategies to manage excessive refinery generated butane base on the specific operational conditions of each refinery. The Departmen has included the additional costs accruing to refiners pursuing thes strategies in its estimate of the increased cost to refiners of compliance with the rules, and does not believe that any combination of such strategies will significantly impact on the Department's estimate of a 1. to 3.5 cent increase in the price of gasoline.

COMMENT: The gas processing industry will be drastically affected The impact of the rules will also be felt by hundreds of small independen oil and gas producers, and thousands of individual citizens who hav invested in working or royalty interests in oil and gas producin properties.

RESPONSE: The Department realizes that implementation of th rules will most likely, in the short term, depress the price of norma butane.

The Department, however, believes that the supply/demand scenari for butane will come into balance through the increased utilization o butane as a feedstock for the production of high octane, low vapo pressure blending agents such as MTBE and alkylate. Additionally, th use of these lower vapor pressure blending components will enable re finers to retain additional butane in the gasoline pool. These factors will in the longer term, increase the demand for butane and enhance its valu as an indirect blending agent.

The Department, therefore, believes that the rules will not severel impact the gas processing industry.

COMMENT: The natural gas industry will experience a negative im pact due to RVP reductions. One of the industry's most profitable prod ucts is butane sold to refiners. These rules will result in refiners having surplus internally-produced butane that they will have to burn as fue and/or sell to the marketplace. This will eliminate the gas processor's market and cause the sale price of butane to decline significantly, at leas from early March to mid-September. The wellhead price for natural ga could decline and the consumer price for natural gas increase. Smal processors are not likely to survive this outcome.

RESPONSE: As mentioned in the previous response, the Departmen believes the rules will result in a short term depression in the price o normal butane. However, the Department does not believe the natura gas industry's market for butane will be eliminated due to the rules. The demand for butane will increase as refiners increase their utilization o butane upgrading processes such as alkylation and the production o MTBE with butane feedstock.

Also, butane is not the sole product marketed by the natural ga industry. The strong demand for natural gas should continue which wil help to support the price. Small gas processors (independents) will experience a greater impact. However, for the aforementioned reasons, the Department does not believe the economic viability of this industry will be in jeopardy.

DISTRIBUTION AND STORAGE ISSUES

COMMENT: New Jersey is a major storage center for refinery products throughout the Mid-Atlantic and New England states. Transportation and storage times will increase as volatility limits are imposed becuse it takes from two to four "turns" of a tank to replace higher volatility fuel with lower volatility fuel. Gasoline in storage does stratify, resulting in a "last in-first out" dispensation.

RESPONSE: The Department realizes volatility restrictions will require that refiners begin introducing lower volatility gasolines earlier in the year to assure compliance by May 1. The Department believes, however, that this transitional period can be reduced by modifying distribution logistics such as allocation of specific tankage for 9.0 RVP fuel, and scheduling modifications. Even considering factors such as "last in-

first out" dispensation, the Department has concluded that if a transition time of 60 to 65 days is required, as commonly stated by the oil industry, it will not preclude the marketing of 9.0 RVP fuel within the control period and will not, therefore, result in significant adverse impacts on vehicle driveability.

COMMENT: The proposed rules require that gasoline be tested at retail outlets on May 1 at 9.0 psi or less. Based on statistics, to attain the suggested 95 percent confidence limit on the quantity of gasoline leaving the production facility equaling quality at the point of retail purchase at 9.0 psi, gasoline would have to be shipped around March or 55 days in advance to guarantee compliance. The likelihood exists that some of this gasoline would reach the New Jersey consumer in cold weather during March and April, resulting in possible vehicle performance problems and poor driveability.

RESPONSE: The Department believes that the oil industry can minimize the lead time required for 9.0 RVP gasoline to enter the distribution system through procedural modifications.

Additionally, the American Petroleum Institute has reported a shorter transitional period in its study entitled "U.S. Gasoline RVP Reduction: Capabilities and Costs" (November, 1987) in which 142 domestic refineries were surveyed. The study lists the average lead time for seasonal gasoline volatility changes from refinery blending until service stations meet changed volatility specifications at 4.7 weeks or 33 days.

The Department's position concerning vehicle driveability during transitional periods of the rules is discussed in a later response in this Summary.

COMMENT: About one-third of the gasoline sold in the northeast is produced by U.S. Gulf Coast refiners and transported via pipeline or marine vessel to major terminals located in the middle Atlantic and New England states. Some of this gas is further moved by tanker or sea barge to small terminals. Having to satisfy the volatility restrictions imposed by one or more states or, for that matter, all NESCAUM states, would strain the already highly complex supply and distribution system.

RESPONSE: The Department has evaluated all segments in the gasoline distribution chain and has concluded that the steps necessary for refiners to meet the volatility controls will not result in excessive transitional periods. The expected market for 9.0 RVP fuel in 1989 will include most of the northeastern United States. This market consumes nearly 20 percent of the total United States gasoline sales volume. The size of this market will greatly alleviate the distribution problems associated with serving several smaller markets. This consideration is a primary reason why New Jersey has worked with NESCAUM to formulate a consistent, uniform regional volatility program.

COMMENT: Several commenters suggested that it will be very difficult to market gasolines with differing volatility specifications in a multistate market such as the Northeast due mainly to distribution difficulties.

RESPONSE: The rules are part of a regional gasoline volatility reduction strategy involving eight states coordinated by NESCAUM. Therefore, the demand for 9.0 RVP gasoline in 1989 will encompass a very large gasoline marketing region and not a single state, which will tend to lessen marketing and distribution difficulties and diffuse costs over a very large consumer base.

COMMENT: Pennyslvania, a state critical to New Jersey's problem with transport of ozone, has already indicated their intention to adopt a reduced gasoline volatility standard in the calendar year 1990. The linkage of and competition between the New Jersey and Pennsylvania refining community should not be ignored as well as the dependence of many New Jersey marketers who depend on Pennsylvania's supply to New Jersey.

RESPONSE: As the commenter suggests, gasoline marketing in New Jersey is highly competitive. There are many gasoline suppliers serving this marketing region including refiners on the Gulf Coast and foreign sources. This competitiveness among these suppliers, including agreements between New Jersey's and Pennsylvania's suppliers, will help to ensure an adequate supply of 9.0 RVP gasoline for New Jersey as well as supplying Pennsylvania's demands.

COMMENT: The rules in effect create an additional set of gasoline grades requiring more tankage and other infrastructure for the pipeline distribution industry. Providing additional tankage for another set of gasoline grades will be both very costly and require more than a year to complete.

RESPONSE: The Department understands that the petroleum products pipeline industry may have to make changes to accommodate the distribution of 9.0 RVP gasoline to New Jersey and much of the northeast. The Department, however, believes these modifications are feasible within the time frame and will not entail a significant economic burden to the pipeline industry. The Department bases this conclusion on previous marketing and product demand changes that the pipeline industry has accommodated, such as the introduction of additional grades of unleaded gasolines in a relatively short time period.

COMMENT: Under the proposed rules, an out-of-State refiner may be forced to negotiate a supply arrangement with another refinery whereby it supplies the out-of-State refiner with 9.0 psi RVP fuel in New Jersey and the out-of-State refiner returns product to it on exchange in other geographic markets. This option has drawbacks, since mutually satisfactory exchange agreements are limited and they reduce a supplier's flexibility and its ability to increase sales in a specific market. This option also creates a problem for the out-of-State refiner in that if it is compelled to receive its gasoline on exchange to comply with environmental regulations, then the State would have to adjust its revenues rules to allow it to retain its motor vehicle fuel tax license. A refiner could not effectively market without it.

RESPONSE: The Department believes that there is a wide variety of options open to refiners seeking to comply with the volatility rules. Refiners may manufacturer all gasoline at 9.0 RVP during the control period, manufacture 9.0 gasoline for the New Jersey market only, or pursue other marketing strategies as well as negotiate supply arrangements with other refiners. Therefore, the Department does not believe that refiners are overly restricted in their ability to comply with the volatility rules.

After reviewing N.J.A.C. 18:18, Motor Fuels Tax, and consulting with the Miscellaneous Tax Branch of the New Jersey Department of Treasury, this Department has no reason to believe that a refinery would lose its motor vehicle fuel tax license under the scenario set out above by the commenter. At the present time, there is no requirement that a supplier of motor fuels import a set percentage of product into New Jersey in order to retain its motor vehicle fuel tax license. The Department recommends, however, that the commenter contact the Miscellaneous Tax Branch of the New Jersey Department of Treasury should it desire an ad hoc opinion on this matter.

MOTOR VEHICLE ISSUES

COMMENT: Several commenters stated that the proposed rules will result in a gasoline that performs poorly in motor vehicles, particularly during the cooler months of the year when low volatility fuel would be in the distribution system. Additionally, commenters asserted that fuel meeting the specifications of the proposed rules will result in the State's motorists being subjected to potentially serious operating problems in March and April and again in the autumn.

RESPONSE: Although the reduction in gasoline volatility is intended to limit volatility to 9.0 only between May 1 and September 15, the Department realizes that because of the distribution system, lower volatility gasolines will be entering the State's supply in early spring and remain in the system until early fall.

After reviewing the evidence, the Department believes that there is sufficient evidence to show there will not be any significant deterioration in driveability as a result of the rules. This evidence originates from three sources: (1) California's extensive experience with low volatility gasoline; (2) historical data showing low volatility gasoline in this region prior to 1960; and (3) testimony of the Motor Vehicle Manufacturers Association (MVMA) at the New Jersey public hearing on the proposed rule to reduce gasoline volatility.

The Department believes that California's experiences with 9.0 RVP gasoline for the last 17 years provides sufficient evidence to show that vehicle driveability will not deteriorate significantly as a result of the rules. According to the California Air Resources Board, vehicle driveability has not been negatively impacted by the state's RVP regulations, even in those areas which experience low temperatures in spring and fall.

Historical data tracking gasoline volatility show that in this region of the country gasoline volatility was less than 8.0 RVP in the summer and near 10.0 RVP in the winter prior to 1960. During seasonal transition periods, therefore, gasoline RVP most certainly was 9.0 or less. There were no reports of degradation in cold weather driveability reported during this time period.

Finally, the Motor Vehicle Manufacturers Association (MVMA), a group representing all major domestic manufacturers of motor vehicles, testified at New Jersey's public hearing on the proposed rules as follows: "MVMA member companies do not anticipate any significant adverse driveability impacts even if 9.0 RVP fuel begins to arrive in late March or early April".

As a result of the aforementioned evidence, the Department believes that the use of 9.0 RVP gasoline will not result in significant driveability problems even under cooler weather conditions in the spring and fall.

COMMENT: NESCAUM's cite of California's experience with 9.0 psi RVP gasoline as a precedent for 9.0 psi in the northeast is not directly relevant for two reasons. First, the transition period from cold weather RVP levels to the 9.0 psi summer level is shorter in California because nearly all of the gas is supplied from local refineries, while the Northeast is supplied primarily with Gulf Coast and imported product. Second, temperatures in nearly all populated areas of California that have May 1 compliance are about 15 degrees warmer than most New Jersey locations in March, and about 10 degrees warmer in April. These higher temperatures reduce the risk of cold weather driveability problems.

RESPONSE: It is true that California's climate and gasoline distribution systems are not identical to those found in the northeast. They are, however, relevant. While it may be true that some areas of California experience warmer temperatures than New Jersey in March and shorter transitional periods, other areas of the state experience temperature conditions very close to New Jersey's climate. Areas in the northern part of the state and in the mountainous inland areas can experience temperatures more severe than those in New Jersey. Additionally, these areas are a considerable distance from the refineries in the state and, therefore, gasoline transportation times are extended. Furthermore, the volatility control period in these areas extends until October 31 as compared to September 15 for the rules.

Officials of the California Air Resources Board, in correspondence with the Department, have confirmed that "there have been no indications that the RVP regulation has resulted in impaired vehicle driveability in California."

COMMENT: Gasoline marketers' reputation for providing a high quality product may be negatively impacted by the rules inasmuch as low RVP gasoline could result in customer dissatisfaction. The rules could mean that marketers must provide an unacceptable product to consumers, and could produce a strong negative consumer reaction.

RESPONSE: As mentioned in previous responses in this summary, the Department does not believe that a gasoline meeting the 9.0 RVP specification will perform poorly in automobiles. California's experience with 9.0 RVP gasoline for 17 years has shown that a 9.0 RVP gasoline will perform satisfactorily in cooler transitional months and can be formulated to meet the octane requirements of in-use motor vehicles.

COMMENT: One commenter referred to the Center for Automobile Safety (CAS) study entitled "Stopping Vehicle Fires and Reducing Evaporative Emissions: The Need to Control Gasoline and Alcohol Blend Volatility" stating the study shows that reducing volatility will impact favorably on motor vehicle safety and driveability. The commenter stated further that the study shows that motor vehicle fires and safety problems increased significantly between 1979 and 1986 as a result of increased gasoline volatility.

Another commenter, referring to the same study, concluded that the study clearly shows fuel volatility related complaints differ by manufacturer with the majority coming from Ford ambulances and Ford manufactured vehicles. Therefore, these complaints originate from specific manufacturer-related problems and not gasoline volatility.

RESPONSE: The Department agrees that a high percentage of fuel related complaints listed in the CAS study have come from Ford ambulances and other Ford manufactured vehicles. The study, however, also shows that the number of fuel related complaints since 1982 has increased for all manufacturers. The largest number of complaints have been for fuel tank over-pressurization.

Several manufacturers have designed fuel tanks to operate under pressure. One of the reasons for this design is to attempt to limit vapor generation in the tank. However, with highly volatile summer gasolines and high ambient temperatures, the pressures in these systems can rise substantially, resulting in fuel tank deformation, fuel spurting and leakage.

Therefore, although some fuel volatility related safety complaints may be related to a particular manufacturing design, it is apparent from the CAS study that the increase in fuel volatility in recent years has resulted in an increase in fuel related safety complaints for all vehicle manufacturers.

COMMENT: Several commenters indicated that the reduction in gasoline volatility will result in driveabilty benefits in the summer such as a reduction in fuel foaming, fuel expulsion and vapor lock. Another commenter suggested that the proposed rules will result in a gasoline that provides better fuel economy through less gasoline evaporation, compensating for the higher cost of the gasoline.

RESPONSE: The Department agrees that the reduction in gasoline volatility will result in driveability improvements and increased fuel economy.

Several automobile manufacturers have reported performance problems related to high gasoline volatility in the summer such as hot engine restart difficulties and fuel tank over pressurization.

The Department also agrees that there will be an increase in vehicle fuel economy when vehicles are operating with lower volatility gasoline in the summer months. This increase results from the replacement of butane with components having a higher energy density and from retention of more gasoline in the fuel tank through decreased evaporation. While the increase in fuel economy is not expected to completely compensate for the increased cost of 9.0 RVP gasoline, it will lessen the economic impact on the consumer.

COMMENT: The changeover from carbureted induction to fuel-injected induction will ultimately reduce total evaporative hydrocarbon emissions by 58 percent. Because most vehicles in the future will be fuel-injected, emissions will decrease of their own accord.

RESPONSE: Fuel-injected vehicles generally have lower evaporative emissions than carburetor equipped vehicles during hot-soak periods primarily because they do not have carburetor bowls in the engine compartment. However, evaporative emissions that result from the diurnal increase in temperature in the fuel tank are comparable between fuel-injected and carburetor vehicles. It should be noted that the largest benefit from reducing gasoline volatility is in reducing diurnal evaporative emissions. Additionally, recent evidence from EPA indicates fuel injected vehicles, particularly those that recirculate fuel from the engine compartment to the fuel tank, can have higher evaporative emissions when in operation (running losses) than carburetor vehicles. The Department believes, therefore, that the in use evaporative emissions performance from a primarily fuel-injected fleet will not show an appreciable improvement over the current vehicle fleet mix. Furthermore, the correlation between running losses and elevated fuel tank temperatures associated with the use of fuel injection, indicates that fuel volatility must be kept at a minimum during the summer months.

COMMENT: State regulatory agencies should not regulate gasoline volatility because EPA studies have shown the lowest cost route is increasing the volatility of the certification fuel used to design and test the evaporative emission control systems on new motor vehicles. This would result in improved evaporative emission controls on-board each new vehicle.

RESPONSE: A November 1985 EPA study (EPA-AA-SDSB-85-5) concluded that changing the RVP of the certification fuel and modifying vehicle emissions controls would be a cost effective long term approach to achieve VOS emission reductions. EPA also noted, however, that the benefits of this strategy would not be fully realized until the majority of the in-use fleet was equipped with improved evaporative emissions controls. This fleet turnover process takes 10 to 15 years to complete. Additionally, the time required for manufacturers to develop emissions control technology can range from two to five years.

Vehicle oriented controls do not diminish evaporative losses from fuel storage and distribution. The Department has estimated that reducing the volatility of gasoline from 11.5 psi to 9.0 psi would reduce emissions from above ground storage tanks by 5318 tons per year, and reduce emissions from loading racks by 615 tons per year. Emissions from gasoline transfer operations would be reduced by 571 tons per year. A vehicle oriented approach would not affect these emission sources.

Additionally, there is now evidence from EPA and the MVMA to suggest that, under certain conditions, even larger evaporative control canisters may not be able to manage the large volume of vapor generated from vehicles fueled with 11.5 RVP gasoline. The MVMA reports that under certain conditions, vehicles fueled with 11.5 RVP gasoline can generate vapor at such a rate to exceed the fuel consumption requirements of a typical vehicle in city traffic. Under these conditions, a vehicle based evaporative control system would be ineffective in reducing VOS evaporative losses.

In summary, while improved evaporative control systems on board new motor vehicles would reduce evaporative emissions, reliance on this control methodology alone has several inadequacies:

1. Two to five years to develop emissions control systems;
2. Ten to 15 years to fully equip the in-use fleet with these controls;
3. Questionable effectiveness in reducing motor vehicle evaporative emissions under severe conditions; and
4. No reduction in evaporative losses from gasoline storage and transfer operations.

The Department, therefore, believes that gasoline volatility reduction is a highly cost-effective measure to reduce VOS emissions in a relatively short time period. The Department supports the development of on-board vaporative control systems as a longer term approach to controlling efueling emissions and improving evaporative emissions control.

COMMENT: One commenter expressed a concern about the explosive otential of 9.0 psi RVP gasoline at low temperatures experienced in the ortheast in the spring and fall months when 9.0 psi gasoline would be resent in the distribution system to ensure compliance in the May 1 to eptember 15 period. The commenter stated that gasoline is handled afely today because the vapor mixture in closed tanks is too rich in ydrocarbons to be ignited and as either the temperature or the vapor ressure of gasoline is reduced, the hydrocarbon concentration in the apor mixture decreases toward the explosive range. The commenter tated that 9.0 psi gasoline vapor is treated as explosive below about 15 egrees Fahrenheit.

RESPONSE: The American Petroleum Institute (API) issued a report ntitled "Potential Fire Hazards of Lowering Gasoline Volatility" in anuary of 1988. The report concludes that during refueling the potential xists for a flame originating outside the filler neck to extend through he filler neck and into the gasoline tank, if the fuel temperature is etween 20 to 30 degrees Fahrenheit and gasoline volatility is 7.0 psi RVP r lower. The Department expects the lowest temperatures during the ransitional phases of the proposed control period to be in the 20 to 30 legree Fahrenheit range. Therefore, gasoline volatility would have to be t 7.0 RVP or lower for a vapor concentration in the fuel tank to be n the explosive range (assuming a source of ignition). The rules would imit the RVP to 9.0 during the control period which results in a nonex- losive vapor concentration at the coldest temperatures.

Additional evidence that the rules will not result in increased safety roblems comes from California's experience with 9.0 RVP gasoline since 971. California experiences ambient temperature conditions similar to lew Jersey, particularly in the mountainous regions of the state. Accord- ng to NESCAUM, California has not reported a single incident of xplosion related to fuel volatility.

Also, it should be noted that prior to 1960, gasoline volatility in this egion of the country was 8.0 RVP or lower in the summer and near 0.0 in the winter. There were no reports of explosions related to fuel olatility during that period of time.

COMMENT: The Summary statement to this regulatory proposal tates that "left unchecked gasoline volatility will continue to rise." This ssertion is simply not true nor verified by facts. Gasoline is presently nanufactured to meet the overall broad requirements of both new and ld vehicles serving the general motoring public. Speculation that gasoline olatility will continue to increase implies that automobile manufacturers vill design engines that can operate with higher RVP fuel.

RESPONSE: Gasoline volatility in the Mid-Atlantic Region has limbed steadily over the last 20 years. This is verified by gasoline surveys onducted by the National Institute for Petroleum and Energy Research NIPER).

The Department does not see any reason to believe that gasoline nanufacturers will not continue to increase gasoline volatility further ecause of the design of motor vehicle engines. Motor vehicle manufac- urers have already found it necessary to institute field fixes and pro- duction modifications to attempt to accommodate high gasoline volatility n the summer months. These changes range from adjusting fuel injection ressures to installing cooling fans on fuel injection rails. Despite the vidence of operational problems related to high fuel volatility, there has ot been a decrease in summer gasoline volatility.

The Department, therefore, has no evidence to indicate that sum- mertime gasoline volatility will not continue to increase.

COMMENT: A commenter stated that the environmental benefit of reduced volatility fuel could likely be substantially higher than previously anticipated, based in part on EPA data and empirical work by Motor Vehicle Manufacturers Association (MVMA) member companies.

RESPONSE: The Department agrees that the environmental benefits of the rule could be substantially higher than previously calculated. The Department's calculations for the VOS reductions to be expected from a reduction in gasoline volatility are conservative since they do not include the reduction in motor vehicle "running losses". Recent EPA investiga- tions indicate that running losses (VOS evaporative emissions from motor vehicles while in operation) are directly related to high gasoline volatility. The Department's estimates, based on preliminary running loss data from EPA, indicates that these evaporative losses could be a highly significant source of VOS on high temperature summer days. EPA data also demon- strates a sharp reduction in running losses when gasoline volatility is reduced. EPA plans on including emission factors for running losses in the forthcoming mobile source emission model update (Mobile-4).

The Department, therefore, agrees that its calculations of the benefits of the rules are conservative and that the benefits may be considerably understated.

COMMENT: Gasoline volatility reduction appears to be an extremely effective strategy for controlling VOS emissions particularly in light of the newly discovered "running evaporative losses." This source of ex- cessive automotive emissions is associated with high temperatures and local fuel vapor pressure (RVP).

RESPONSE: The Department agrees that recent test results from EPA clearly show that evaporative running losses from motor vehicles are directly related to high gasoline volatility. EPA has concluded that the primary factors involved in high running losses are high gasoline volatility and the increase in fuel tank temperatures, primarily from the use of fuel injection systems which recirculate gasoline from the engine to the fuel tank. EPA testing has shown that the fuel tank temperatures of vehicles in operation may rise 20 to 30 degrees Fahrenheit over the starting temperature of the fuel. At these fuel temperatures, highly volatile gasolines can generate vapor at an unmanageable rate for the emission control systems on automobiles. The resulting uncontrolled vapors escape into the atmosphere through the charcoal canister or fuel tank cap.

EPA testing has shown that by reducing gasoline volatility from 11.5 RVP to 9.0 RVP on a 95 degree Fahrenheit day, running losses can be reduced by over 80 percent.

COMMENT: Several commenters indicated that reducing gasoline volatility to 9.0 RVP will result in an increase in exhaust emissions for primarily two reasons: (1) higher exhaust emissions will occur in cooler weather and (2) the reduction in volatility will result in an increase in the aromatic content of gasoline, primarily benzene, resulting in an in- crease in benzene emissions in vehicle exhaust.

RESPONSE: Some studies have shown a small increase in exhaust emissions from vehicles fueled on low volatility fuels during cold weather. However, the Department believes these rules must be evaluated for its overall impact on air quality. Any small increase in exhaust emissions which may occur on cold days at the extreme beginning and end of the volatility regulation period will be far outweighed by significant emission reductions gained over the entire control period.

The Department would also like to point out the results of research conducted by General Motors and Ford Motor Company (Society of Automotive Engineers technical papers No. 852132 and No. 860533) which concluded that the use of 9.0 RVP gasoline under summertime conditions resulted in a decrease in not only evaporative and refueling emissions but also exhaust emissions. Both studies established a positive correlation between exhaust emissions and high gasoline volatility; as RVP increased, so did exhaust emissions primarily from the increased volume of hydrocarbons to be purged and combusted by the engine. The General Motors study concluded that hydrocarbon exhaust emissions decreased by 14 percent to 19 percent and that carbon monoxide emiss- ions decreased by 17 percent to 20 percent when 13.5 psi gasoline is replaced with 9.0 psi gasoline. Similarly, Ford's study found that an increase in gasoline RVP from 9.0 to 12.5 psi resulted in average HC exhaust emission increases of about 20 percent and CO emission increases of about 25 percent.

The formulation of 9.0 RVP gasoline will vary from manufacturer to manufacturer. Some manufacturers may choose to increase the aromatic content in their gasolines. EPA concluded in their "Study of Gasoline Volatility and Hydrocarbon Emissions from Motor Vehicles" (EPA-AA-SOSB-85-5) that gasoline volatility reduction will result in an overall decrease in benzene emissions from motor vehicles. The EPA study in- dicates that although exhaust emissions of benzene may increase slightly because of volatility reduction, this increase will be more than offset by a decrease in benzene emissions from evaporative and refueling sources.

ENFORCEMENT AND COMPLIANCE ISSUES

COMMENT: Importers should be treated equally with refiners; they are not included within either the definition of refiner or distributor.

RESPONSE: The Department agrees that importers should be treated equally with refiners. In the proposed rules, they are, in effect, treated equally since, upon distribution of imported gasoline, an importer becom- es a distributor and, as such, becomes subject to appropriate requirements as outlined in the proposed rules.

However, for clarification, the word "importers" has been added to the rules at appropriate places in N.J.A.C. 7:27-25.1, 25.3, 25.4 and 25.5.

COMMENT: The proposed rules do not indicate how the Department intends to regulate blenders, as distinct from refiners of gasoline. Blenders are not included within the proposed definition of "refiners" in N.J.A.C. 7:27-25.2. Blenders perform an activity which would effect the volatility of gasoline, such as producing gasoline by combining gasoline components. Therefore, the Department should consider treating blenders equally with refiners and importers.

RESPONSE: The Department agrees that gasoline blenders should be treated equally with refiners and importers. Gasoline blenders are in the business of producing both finished gasolines and gasoline blendstocks and distributing these products to both the bulk distribution level and retail market.

In the proposed rules, blenders are, in effect, treated equally with refiners since, upon completion of the process of blending, the blender becomes a distributor and, as such, is subject to appropriate requirements as outlined in the proposed rules.

However, for additional clarification, definitions of blender and blending process have been added to the rules at N.J.A.C. 7:27-25.2 and the words "blender" and "blending facility" have been added at the appropriate locations in N.J.A.C. 7:27-25.1, 25.3, 25.4 and 25.5.

COMMENT: Several commenters questioned whether a regulatory strategy which is based on having all points within the distribution system meet the same RVP standard on the same day is appropriate. Several also suggested that the annual effective date of the rules should apply only to importers, refiners and terminals, not to the retail level. A concern was also voiced that because of low turnover at some low volume stations, application of the same effective date to all facilities would force the industry to begin producing low volatility gasoline earlier in the year, 50 to 60 days in advance of the May 1 effective date, possibly resulting in increased driveability problems for motorists.

RESPONSE: The Department believes that a 50 to 60 day turnover rate, even at low volume retail stations, will be sufficient to allow these stations to comply with the rules. Also, the Department believes the strategy requiring 9.0 RVP gasoline at the retail level by May 1 is both appropriate and technically feasible without causing adverse impacts on vehicle driveability. As mentioned in previous responses in this Summary, the bulk of evidence demonstrates that there will not be adverse driveability impacts at ambient temperatures to be expected during the transitional periods of the rules. This is true even if fuel must enter the distribution system as early as many commenters have suggested, 50 to 60 days in advance of the May 1 compliance date.

The Department recognizes, however, the relatively short amount of lead time between rule adoption and compliance for the 1989 control period. The Department has, therefore, chosen to modify the compliance schedule for 1989 at N.J.A.C. 7:27-25.3. Under the modified schedule, distributors and blenders are granted an additional 30 days from the May 1 deadline, thereby requiring full compliance by June 1, 1989. Retailers and wholesale purchaser-consumers have been granted an additional 60 days from the May 1 deadline, thereby requiring full compliance by July 1, 1989. Extension of the compliance deadlines for these segments in the supply and distribution chain should provide sufficient lead time for 9.0 RVP gasoline to make its way from the refining level through to the distribution and retail levels.

COMMENT: The seasonal effective date for these rules should be May 16 as proposed by EPA, not May 1.

RESPONSE: The Department believes enforcement of the rules on May 1 rather than May 16, at the retail level, is necessary to completely encompass the time period during which ozone violations most frequently occur in New Jersey.

COMMENT: The control of RVP should be imposed at the refinery and any other point of entry into the distribution system. A final "point of sale" volatility control mechanism would be prohibitively expensive.

RESPONSE: The rules are enforceable at all points in the gasoline distribution network, including the refinery and any other point of entry into the distribution system.

The rules are also enforceable at the retail level or final "point of sale." This enforcement approach requires refiners, distributors, importers and blenders to test and document the RVP of all gasoline prior to its release from the facility for use in New Jersey. Many of these facilities currently monitor RVP as a quality control procedure. Additionally, California has reported in correspondence with the Department that contract laboratories in that state charge as low as 15 dollars per sample for RVP analysis. Retailers and wholesale purchaser-consumers must maintain records regarding each delivery of gasoline. The Department does not consider this requirement to involve a significant cost to those parties. The Department, therefore, believes this enforcement approach will no be prohibitively expensive to the affected parties.

COMMENT: Requiring retail stations to maintain gasoline RVP re cords is not a practical regulatory approach, in view of the limited contro that retail stations have over RVP of gasoline they sell. A more effectiv way to enforce the rules is to require recordkeeping and testing at re fineries or distributors serving New Jersey, and to conduct spot samplin of gasoline. This would be similar to the enforcement of the Department' sulfur in fuel oil rules (N.J.A.C. 7:27-10).

RESPONSE: Gasoline volatility is to be tested and documented at th refinery and distribution levels under the rules. Retailers must maintai records of the RVP for each delivery of fuel. The Department regard this as a practical regulatory approach without placing undue burden o the retailer. In addition, maintenance of RVP records by the retailer i protection from culpability in the case of non-specification fuel bein misrepresented as 9.0 RVP fuel by the distributor.

COMMENT: One aspect which is insufficiently addressed is the in spection and enforcement aspects of the rules. Will testing be done b Department personnel or under the County Environmental Health Ac (CEHA)? What laboratories will do the testing? Is there a laborator certification protocol established? Does the Department have adequat funds and resources to do the testing?

RESPONSE: Sampling and testing for gasoline volatility will be con ducted by Department personnel and other agency personnel that th Department has agreements with for enforcement purposes. This ma include agreements under the CEHA.

There will not be a laboratory certification protocol established as par of the rules. The choice of a laboratory for RVP testing is at the discretio of the regulated party. The Department does not believe that the estab lishment of a laboratory certification protocol is necessary. The regulate party must select the most appropriate means to meet the testing require ments of the rules.

The Department has adequate resources to conduct an enforcemen program in support of the rules. The Department will follow an enforce ment protocol which will include a prescribed schedule of announced an unannounced inspections.

COMMENT: ASTM D-176 is not an existing ASTM test for RVP a listed in the proposed rules. ASTM D-176 is now ASTM D-4814.

RESPONSE: The commenter is correct in stating that ASTM-D-17 is not an existing ASTM test method for RVP.

Originally, ASTM proposed test method P-176 for determining th RVP of gasoline and gasoline-oxygenate blends. This proposed tes method is specifically aimed at accommodating gasoline-oxygenate blend in addition to gasoline. ASTM, however, to date, has not finalized th test methodologies contained in P-176.

ASTM-D-4814 does contain two proposed test methods for determin ing the RVP of gasoline and gasoline-oxygenate blends. These method are, however, also proposed and still under review by the appropriat ASTM subcommittee.

ASTM-D-323 is a final test method for RVP determination of gasoline ASTM will incorporate into D-323 the test methods for determining th RVP of gasoline-oxygenate blends proposed in ASTM-D-4814 when the are finalized.

The Department has therefore, added ASTM-D-323 to the rules as th approved test method for Reid vapor pressure determination of gasoline The rules have been changed to include the updated test method desig nation at N.J.A.C. 7:27-25.2 and 25.4.

COMMENT: Under N.J.A.C. 7:27-25, the responsibility of th gasoline's owner who controls its product and is the responsible part for the distribution is never defined. The proposed definition of dis tributor does not reflect the ownership of the gasoline but leaves th responsibility of compliance on the independent for hire bulk liqui storage terminals, the leased tank truck and driver, the leased barge an barge operator and many other people who transport and store th product before it reaches any retail outlet or wholesale purchaser-con sumer. The responsibility of the owner of the gasoline must be place into the rules to make the definition of distributor more specific. Th definition should read: "Distributor means the owner of gasoline wh transports, stores or causes. . . ."

RESPONSE: The gasoline volatility rules, particularly those section respecting recordkeeping and testing, are designed to encompass all point in the distribution network at which there is a potential for violation Therefore, ownership of gasoline cannot be the sole criterion in establish ing who or what is an affected party to the regulation. The Departmen seeks to prohibit any person who transports or stores or causes th transportation or storage of gasoline at any point between any refinery

importer or blender and any retail outlet or wholesale purchaser-consumer from providing, storing, offering for sale, selling, transporting, importing or exchanging for trade for use in New Jersey during the regulated period, gasoline having an RVP greater than 9.0 psi. The Department cannot overlook the possibility that some violations may occur at the distribution level. Therefore, any person who engages in one of the afforementioned activities may be liable under the rules, whether or not they own the non-complaint gasoline.

COMMENT: New Jersey is a key state in supplying gasoline to the Northeast; under one possible interpretation, the rules would not permit storage of gasoline with an RVP greater than 9.0 RVP for sale outside of the State.

RESPONSE: The rules are clear in prohibiting the storage of gasoline with an RVP of greater than 9.0 within the regulated period for use in New Jersey. Storage of gasoline with an RVP greater than 9.0 is not prohibited by the rules provided that use of this fuel is clearly not intended within New Jersey.

COMMENT: The rules would require testing and documentation at manufacturing and distribution facilities. At many terminals, there is only one tank available for each grade of gasoline sold. As a result, simultaneous receipt and shipment of products often occur. An enforcement approach requiring certification of an entire tank prior to release would result in shipping delays to customers, and possibly cause service station runouts.

RESPONSE: The rules do not specifically require that an entire tank be certified for compliance prior to release. It is up to the discretion of the affected party as to what approach is utilized to ensure that gasoline being provided, stored, offered for sale, sold, transported, imported or exchanged in trade for use in New Jersey meets the volatility specifications of the proposed rules during the regulated time period. The Department believes that there are sampling and testing methodologies available that can reduce the potential for shipping delays such as continuous, in-line sampling and testing.

COMMENT: Several commenters expressed concern that the recordkeeping and testing requirements in the proposed rules would require a distributor to test every truck load leaving a distribution facility, thereby increasing the cost of gasoline by three cents per gallon. Another commenter stated that all additional testing requirements beyond the refinery gate or importer's entry facility should be eliminated from the rules.

RESPONSE: The rules do not require that each truck load of gasoline leaving a distribution facility must be tested, although each truckload must be certified as having complied with the rules. It is up to the individual distribution facility to determine the means used to ensure that all gasoline leaving the facility for use in New Jersey meets the requirements of the rules. Some facilities may have to test each truckload to ensure compliance, while others may have adequate procedures to ensure that testing at the tank is sufficient to meet volatility requirements. The Department believes the recordkeeping and testing requirements that occur beyond the refinery or importer are necessary for proper enforcement of the rules.

For clarification purposes, however, the Department has changed the words "as it leaves the refinery" to "prior to its release from the refinery" at N.J.A.C. 7:27-25.4(a).

COMMENT: The cost to distributors of testing gasoline for RVP will be $200.00 to $300.00 per sample, not $90.00 as stated in the Department's basis and background document.

RESPONSE: The Department's estimate of the cost for RVP testing was based on a survey of three laboratories in New Jersey. The laboratories were asked the amount they would charge for an analysis of the RVP of gasoline on a per sample basis. The Department believes this testing cost could be considerably lower, particularly if a distributor were to contract with a laboratory for a large number of tests over a prescribed period of time. Additionally, the state of California, which has had a gasoline volatility rule since 1971, has reported in correspondence with the Department, that RVP analysis costs are as low as $15.00 per sample.

COMMENT: These rules should be extended to all marine vehicles.

RESPONSE: The Department does not have the authority to regulate marine vessel fuels.

Section 7545(c)(4) of the Clean Air Act prohibits states from enacting controls on, or prohibitions of, the use of a motor vehicle fuel, for the purpose of motor vehicle emission control, that are different from EPA controls or prohibitions on the fuel. However, Section 7545(c)(4)(C) provides for an exemption of this preemption if an EPA approved State Implementation Plan specifically provides for such a program. This procedure is being followed for the rules. And, EPA itself has interpreted section 7545(c)(4) as having a preemptive effect only with respect to lead additives, 40 C.F.R. 80.1(b), 42 C.F.R. 25731.

The aforementioned Section of the Clean Air Act, though, explicitly provides Federally sanctioned regulatory authority to states only in regard to the use of fuel or fuel additives in a motor vehicle or motor vehicle engine, not to fuel used in marine vessels or marine vessel engines. Therefore, only the EPA can regulate fuels used in marine vessels.

COMMENT: The legal requirements of owners of land where gasoline dispensing apparatus is housed should be clarified. The word "owner" in N.J.A.C. 7:27-25.5(b) should be eliminated to accomplish this clarification.

RESPONSE: The owners of land where gasoline dispensing apparatus is housed would be subject to the requirements of the rules if such owners are also subject to the requirements of the rules by virtue of being a refiner, importer, blender or distributor as stated in N.J.A.C. 7:27-25.3.

Likewise, the reference to "Owner or operators . . ." in N.J.A.C. 7:27-25.5 refers to the owner or operator of a business or any operation subject to the requirements of the rules as listed in N.J.A.C. 7:27-25.3.

COMMENT: The Department fails to address procedures regarding the disposition of off specification fuel and those who violate the standard.

RESPONSE: The Department is currently in the final stages of development of a subchapter which addresses penalties and fees. This document will include specific penalties and other enforcement aspects regarding the proposed rules. The disposition of off specification fuel will be addressed on a case by case basis by requiring reblending, storing, out of state shipment, penalties or other appropriate action. Penalties will be consistent with statutory maximums.

COMMENT: Enforcement tolerances for the measurement and enforcement of RVP should be based on current ASTM sampling and testing precision data.

RESPONSE: The final enforcement tolerances for RVP will be based on current ASTM testing precision guidelines. The Department will finalize the enforcement tolerances in the previously mentioned subchapter addressing penalties and fees.

COMMENT: After the equipment is in place to make 9.0 psi gasoline, it is estimated to cost up to $.03 per gallon more to produce than current 11.5 psi gasoline. This will provide a strong incentive for marketing noncompliant gasoline. To ensure that the marketplace remains competitive, New Jersey should develop a sound monitoring and enforcement program. Enforcement at bulk terminals appears to be most cost effective and should provide an adequate assurance of compliance. It is recommended that every vessel be tested, and every blending operation be monitored.

RESPONSE: The Department does not agree with the commenter's estimate of three cents per gallon additional cost to produce 9.0 RVP gasoline. The Department's calculations indicate the cost will be approximately 1.5 cents per gallon. Nonetheless, the Department agrees there will be a strong incentive to market noncompliance gasoline. Accordingly, the Department is in the process of formulating a comprehensive monitoring and enforcement program.

Although the Department agrees that enforcement at bulk terminals would be the most cost effective enforcement method, the Department does not believe that this approach provides an adequate measure of assurance that non-complaint gasoline is being kept out of the distribution system during the control period. Enforcement efforts must extend all the way down the distribution chain to the retail level in order to accomplish this goal. Additionally, the Department does not believe that every vessel must be tested and that every blending operation be monitored in order to ensure compliance with the rules.

COMMENT: The inspection sections in the final paragraphs of the proposed rules are overly aggressive and unnecessary. The Department's stated intention to take photographs of the site have little value in implementing an ozone strategy control level. The commenter suggests this entire section needs to be reexamined.

RESPONSE: The Department considers the inspection section of the rules to be necessary in order to assure effective enforcement at all levels of the gasoline storage and distribution network. The Department considers the right to take photographs a critical element in an enforcement program.

COMMENT: The Department does not have the absolute right to inspect any facility at any time, and to make copies or take photographs of anything it wants to. This power extends beyond the authority granted to the Department by statute and is a direct contravention of the Fourth Amendment of the U.S. Constitution, regarding searches without a war-

rant. Inspections should be limited to reasonable hours (that is, during normal working hours) unless there is cause to believe that a violation is in progress. Also, facilities must be provided with an opportunity to designate any documents or photographs taken by the Department as confidential in order to protect sensitive information from being released to competitors.

RESPONSE: Pursuant to N.J.S.A. 13:1D-9(c), the Department's enabling legislation, the Department has the authority to "[e]nter and inspect any building or place for the purpose of investigating an actual or suspected source of pollution of the environment and ascertaining compliance or noncompliance with any codes, rules or regulations of the Department." Similarly, N.J.S.A. 26:2C-9(d), the Air Pollution Control Act, grants the Department the power to "[e]nter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of air pollution and ascertaining compliance or noncompliance with any code, rule and regulations." Under both the Department's enabling legislation and the Air Pollution Control Act, the Department is required to keep confidential any information relating to secret processes or methods of manufacture or production obtained in the course of any such inspection, investigation or determination, N.J.S.A. 13:1D-9(d), N.J.S.A. 26:2C-9(d). Additionally, the Department does in practice conduct inspections, investigations and determinations of compliance during reasonable hours.

COMMENT: The Department should delete from the rules all phrases such as "and other information as the Department may require," and "may prescribe." The Department should submit additional requirements to notice and comment.

RESPONSE: The Department disagrees that the phrases "other such information as the Department may prescribe" and "other such information as the Department may require" should be deleted from N.J.A.C. 7:27-25.4(a)(2) and (b) respectively. Although the Department does not anticipate that any information beyond that specified by N.J.A.C. 7:27-25.4 will be required of refiners, importers, blenders or distributors, the Department does reserve the right to request additional information in extraordinary circumstances. Such circumstances include those in which the Department could not effectively enforce the rules absent the additional information.

OTHER ISSUES

COMMENT: Several commenters questioned whether the Department could propose the volatility rules absent Legislative concurrence:

It would appear that New Jersey's rules to impose RVP reductions in unison with other states is an agreement among states and/or their environmental agencies that has the mutual goal of reduction of hydrocarbon emissions through interstate cooperation. As such, the proposed rules should be submitted to the Legislature for approval.

A program as far reaching as controlling gasoline volatility must be recognized as a major initiative by a State department and as having major consumer and economic impacts. The commenter questions whether the Department has the direct statutory authority given by the Legislature and approved by the Governor. The Department should propose this type of initiative in the Legislature.

RESPONSE: Although New Jersey has participated in and supported regional efforts to solve ground level ozone pollution problems via the NESCAUM group, N.J.A.C. 7:27-5 neither depends upon nor anticipates similar volatility controls by other states in order to effectively reduce ground level ozone pollution. The memorandum of understanding entered into by the Commissioner and other states participating in NESCAUM simply affirmed New Jersey's commitment to working with other states in seeking regional solutions to ozone pollution. It did not constitute an agreement which in any way bound the Department to adopt specific gasoline volatility limits. The Department has relied solely on the authority given it by the Air Pollution Control Act in proposing these rules.

Pursuant to the Act, the Department has the power to "formulate and promulgate, amend and repeal codes, rules and regulations preventing, controlling and prohibiting air pollution, throughout the State . . . ." N.J.S.A. 26:2C-8. Consequently, since the Legislature has already vested the Department with the authority to promulgate rules relating to air pollution there is no need for the Department to seek and obtain legislative concurrence prior to proposal or adoption of these rules.

COMMENT: It is troubling that a single state government agency can propose, as a predetermined exercise of power by the state; become an advocate testifying in front of other state governments; be the judge of the adequacy of this type of rulemaking; act as the jury in weighing its outcome; as the permitter of equipment designed to allow the New Jersey facilities to compete in manufacturing with those of foreign or out of state interests and as the enforcer of such a standard. The commenter believes too much central planning authority resting in one department guarantees failure in its effectiveness resulting in a poor quality gasoline, an expensive administrative program, and reduced environmental benefits.

RESPONSE: The Department clearly has authority to perform the tasks necessary for it to carry out its legislative mandate to "formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State," N.J.S.A. 13:1D-9. Specifically, the Department is granted authority under the Air Pollution Control Act to "formulate and promulgate, amend and repeal codes and rules and regulations preventing, controlling and prohibiting air pollution throughout the State . . . ." N.J.S.A. 26:2C-8. The Department disagrees with the commenter that it is both judge and jury of the adequacy of its own rulemaking. The Department, like all government agencies in the State, is subject to the statutory requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., which govern the rulemaking process. Also, the Department must submit all proposed rules to the Office of Administrative Law for its review for compliance with the Administrative Procedure Act. Finally, the Department clearly has the power to enforce the rules it promulgates: "The Department shall . . . have the power to . . . Enforce the State air pollution, water pollution conservation, environmental protection, waste and refuse disposal laws rules and regulations," N.J.S.A. 13:1D-9(n). The Department believes that the powers vested in it by the Legislature do not exceed those necessary to formulate and administer effective environmental regulatory policies.

The Department has made the following minor changes based on comments or a need for clarification.

1. The words "importers, blenders" were added at N.J.A.C. 7:27-25.1 to clarify the applicability of the rules to importers and blenders of gasoline.

2. The definitions of blender and blending process were added at N.J.A.C. 7:27-25.2.

3. The reference to test method ASTM D-176 at N.J.A.C. 7:27-25.2 was replaced with "D-323" in the definition of Reid vapor pressure to reflect a change in the ASTM designation of the approved test method for determining Reid vapor pressure.

4. N.J.A.C. 7:27-25.3 was expanded to create three successive compliance dates for the control of gasoline RVP for the 1989 control period only. The words "(a) Except as provided for in (b) below," were added to existing N.J.A.C. 7:27-25.3 in order to signify the creation of the new 1989 compliance dates. These compliance dates are set forth in a new subsection (b) which reads as follows:

(b) The following compliance schedule shall be in effect in 1989 only; after 1989, the compliance schedule set out in (a) above shall be in effect:

1. No refiner or importer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period May 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

2. No blender or distributor shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period June 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

3. No wholesale purchaser-consumer or retailer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period July 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch."

4. This change was made in order to ensure an adequate lead time from the effective date of the rules to the date of compliance for various segments in the gasoline supply and distribution chain. Extension of the compliance deadlines for these segments in the supply and distribution chain should provide sufficient time for 9.0 RVP fuel to make its way from the refining level through the distribution and retail levels.

5. The words "importer, blender" were added at N.J.A.C. 7:27-25.3 to clarify applicability of the volatility standards to importers and blenders.

6. The words "as it leaves" were changed to "prior to its release from" at N.J.A.C. 7:27-25.4(a) to clarify that, although each truckload of gasoline leaving the refinery must be certified as complying with the rules, not every truckload needs to be individually tested as it is leaving the refinery.

7. The words ". . . or by an equivalent method approved by the Department based on study of comparability data. Such data shall compare the performance of the proposed alternative test procedure to the performance of the approved test procedures," were eliminated from N.J.A.C. 7:27-25.4(c) to clarify that the Department does not anticipate at this time that any sampling methods other than those prescribed at N.J.A.C. 7:27-25.4(c) 1 and 2 will be permitted or required. Corresponding with this change, the words "or Department approved equivalent" were removed from the definitions of "Reid Vapor Pressure" at N.J.A.C. 7:27-25.2, and the words "or an equivalent method approved by the Department based on a study of comparability data. Such data shall compare the performance of the proposed alternative test procedure to the performance of the approved test procedures," were removed from N.J.A.C. 7:27-25.4(d).

8. The words "and nozzle sampling" were added to "For continuous sampling:" and reference to California Administrative Code Title 13, R.2261(k)(3)(1987) was replaced with "California Administrative Code Title 13, R.2261(k)(3) and (k)(4)(1987)" at N.J.A.C. 7:27-25.4(c)2 to include an approved method for sampling gasoline from storage tanks at the retail and wholesale purchaser-consumer level.

9. The reference to test method ASTM D-176 at N.J.A.C. 7:27 25.4(d) was replaced with "D-323" to reflect a change in the ASTM designation of the approved test method for determining compliance with the volatility standard.

10. The words "importer, blender" and "import facility, blending facility" were added at N.J.A.C. 7:27-25.4(a) and 25.4(a)1 respectively, to clarify the applicability of the recordkeeping and testing requirements of the rules to importers and blenders.

11. The words "import facility, blending facility" were added at N.J.A.C. 7:27-25.5(b) to clarify the application of the inspection requirements to importers and blenders.

12. The word "operation" was changed to "operating" at N.J.A.C. 7:27-25.5(b) for grammatical reasons.

13. A new section, N.J.A.C. 7:27-25.6, was added to the rules to address the problem of potential supply shortages attendant to supplying 9.0 RVP gasoline during the control period. The new section reads as follows:

"7:27-25.6 Petition for rulemaking in the case of imminent supply shortage.

If at any time a refiner, importer, blender, distributor or retailer comes to the conclusion that the requirement of supplying 9.0 psi RVP gasoline during the control period May 1 through September 15 will cause an imminent shortage of gasoline such that supply cannot meet demand, such party shall file a petition for rulemaking with the Department pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, requesting that the Department modify the 9.0 psi RVP standard such that a shortage in gasoline supply will be averted. This petition may request that the Department pursue emergency rulemaking pursuant to N.J.S.A. 54:14B-4.4 and N.J.A.C. 1:30-4.5."

This addition to the rules is intended to provide regulated parties with a mechanism to avoid potential supply shortages, while providing the Department with notice that such shortages could occur.

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

SUBCHAPTERS 19 THROUGH 24. (RESERVED)

SUBCHAPTER 25. CONTROL AND PROHIBITION OF AIR POLLUTION BY VEHICULAR FUELS

7:27-25.1 Applicability

This subchapter prescribes the rules of the Department for the control and prohibition of air pollution by vehicular fuels. The following shall govern the volatility standards for fuels used and provided for use in the State and the methods to be followed by refiners, ***importers, blenders,*** distributors, wholesale purchaser-consumers and retailers to assure these standards are met.

7:27-25.2 Definitions

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

***"Blender" means a facility which carries out a blending process.**

"Blending process" means the combination of physical and chemical operations in which components including, but not limited to, gasoline, gasoline blendstocks, and other chemical components are combined to create a finished gasoline or gasoline blendstock.

"Crude oil" means a petroleum liquid removed from the earth and not previously used, including, but not limited to, partially refined oil.

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

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any refinery or importer and any retail outlet or wholesale purchaser-consumer.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) or greater and which is used as a motor vehicle fuel.

"Importer" means a person who imports gasoline from a foreign country into the United States.

"Motor vehicle" means all vehicles propelled by an internal combustion engine, excepting motorized bicycles and such vehicles as run only upon rails or tracks.

"Person" means corporations, companies, associations, societies, firms, partnerships, and joint stock companies as well as individuals, and shall also include political subdivisions of the State or any agencies or instrumentalities thereof.

"Petroleum distillate" means any mixture of volatile organic substances produced by a refining process, including, but not limited to, naphthas, aviation gasoline, motor vehicle gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum products.

"Reid vapor pressure" (RVP) means the absolute vapor pressure of a petroleum product at 100 degrees Fahrenheit (37.8 degrees Centigrade) as measured by the standard test method set forth in the American Society for Testing of Materials (ASTM) Designation *[D-176 or Department approved equivalent]* ***D-323***.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.

"Refinery" means a facility which carries out refining processes.

"Refining process" means the combination of physical and chemical operations, including but not limited to distillation, cracking, and reformulation, performed on crude oil in order to produce petroleum products.

"Retail outlet" means any establishment at which gasoline is provided, sold, or offered for sale directly for use in motor vehicles.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Standard conditions" means 70 degrees Fahrenheit (21.1 degrees Centigrade) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"State" means the State of New Jersey.

"Vapor" means the gaseous form of substances which, under standard conditions, are in the solid or liquid state and which can be changed to these states by either increasing the pressure or decreasing the temperature.

"Vapor pressure" means the pressure of the vapor phase of a substance, or the sum of the partial pressures of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substance or substances.

"Wholesale purchaser-consumer" means any person that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least a 550 gallon capacity substantially under the control of that person.

7:27-25.3 Gasoline volatility standards

(a) Except as provided for in (b) below, *[No]* ***no*** refiner, ***importer, blender,*** distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade for use in New Jersey during the period May 1 through September 15 of each year starting in 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

***(b) The following compliance schedule shall be in effect in 1989 only; after 1989, the compliance schedule set out in (a) above shall be in effect:**

1. No refiner or importer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period May 1 through September 15, 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

2. No blender or distributor shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period June 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.

3. No wholesale purchaser-consumer or retailer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the period July 1 through September 15 of 1989, gasoline having a Reid vapor pressure greater than 9.0 pounds per square inch.*

7:27-25.4 Recordkeeping and testing

(a) Each refiner*, **importer, blender*** or distributor shall:

1. Between April 15 and September 1 of each year, test and document the RVP of all gasoline *[as it leaves]* ***prior to its release from*** the refinery*, **import facility, blending facility*** or distribution facility for use in the State. A copy of this documentation shall be provided to the distributor, retailer or wholesale purchaser-consumer to whom the gasoline is delivered.

2. Maintain records regarding the gasoline leaving the facility, including Reid vapor pressure, shipment quantity, shipment date, and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets and loading tickets.

(b) Each retailer or wholesale purchaser-consumer shall maintain records regarding each delivery of gasoline, including Reid vapor pressure, delivery quantity, date of delivery, and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets and loading tickets.

(c) All sampling of gasoline required pursuant to the provision*s* of this subchapter shall be conducted by the following methods *[or by an equivalent method approved by the Department based on a study of comparability data. Such data shall compare the performance of the proposed alternative test procedure to the performance of the approved test procedures.]**:*

1. For manual sampling, ASTM D-4057; and

2. For continuous sampling ***and nozzle sampling***, California Administrative Code Title 13, R.2261(R)(3) ***and (k)(4)***(1987).

(d) All testing pursuant to the provisions of this subchapter shall be conducted using the standard test method set forth in ASTM Designation *[D-176 or an equivalent method approved by the Department based on a study of comparability data. Such data shall compare the performance of the proposed alternative test procedure to the performance of the approved test procedures]* ***D-323***.

(e) All records and documentation shall be maintained for not less than three years, and shall, upon request of the Department be available for review.

7:27-25.5 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of gasoline being provided, stored, transported, exchanged in trade, sold, or offered for sale at that refinery, ***import facility blending facility,*** retail, wholesale purchaser-consumer or distribution outlet. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine *[operation]* ***operating*** conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

***7:27-25.6 Petition for rulemaking in the case of imminent supply shortage**

If at any time a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer comes to the conclusion that the requirement of supplying 9.0 psi RVP gasoline during the control period May 1 through September 15 will cause an imminent shortage of gasoline such that supply cannot meet demand, such party shall file a petition for rulemaking with the Department pursuant to N.J.S.A. 52:14B-4(f and N.J.A.C. 1:30-3.6, requesting that the Department modify the 9.0 psi RVP standard such that a shortage in gasoline supply will be averted. This petition may request that the Department pursue emergency rulemaking pursuant to N.J.S.A. 54:14B-4.4 and N.J.A.C 1:30-4.5.*

HEALTH

DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

(a)

Certificate of Need: Cardiac Facilities; Cardiac Diagnostic Facilities

Adopted Amendments: N.J.A.C. 8:33E-1.2 and 1.11

Proposed: November 21, 1988 at 20 N.J.R. 2847(a).

Adopted: January 23, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: January 25, 1989 as R.1989 d.102, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Effective Date: February 21, 1989.

Expiration Date: June 23, 1992.

Summary of Public Comments and Agency Responses:

Only one comment was received during the 30 day public comment period for these proposed rule amendments. The comment was received from: Mr. David M. Ridgway, President and Chief Executive Officer, Muhlenberg Regional Medical Center, Inc., Plainfield, New Jersey.

COMMENT: The only comment received by the Department was submitted by Muhlenberg Regional Hospital (MRH) and was directed at the proposed waiver provision at N.J.A.C. 8:33E-1.11(a). Muhlenberg stated that the burden of proof accompanying the waiver request should be placed on the existing facility which has failed to meet minimum annual utilization requirements for cardiac catheterization services rather than on the facility that is seeking to initiate such services. MRH also states that the proposed amendments do not change what it feels is an inequitable statewide policy, since existing programs are still permitted to expand their services (in a region where there is an underutilized service) while proposed new programs are not permitted to have their applications accepted for processing.

RESPONSE: In the Department's view, the consideration of need for additional beds and health care services in a given area of the State is subject to an applicant's ability to document the presence of a community need for such added services that cannot be met by existing providers

in the area or region. The Certificate of Need process is specifically designed to respond to an applicant's intention to either replace, expand or introduce health care services. The Department cannot shift the burden of proof from a certificate of need applicant seeking to initiate a given service to an existing provider that is not an official party to the application under review. There are, however, other actions that can be taken, particularly with respect to licensure, that may serve to remedy the noncompliance of an existing provider. In short, the burden of proof for the initiation of any new service through the certificate of need process must be on the potential applicant, particularly given the quality implications that are associated with inappropriate utilization of sophisticated tertiary services.

This is certainly true of an invasive cardiac diagnostic service such as cardiac catheterization, which remains largely an elective procedure that is optimally performed in regional settings that can assure sufficient cardiac patient volumes to maintain effective and efficient service delivery. The Department has historically pursued a policy of encouraging the development of high volume invasive cardiac diagnostic and cardiac surgery services, rather than permitting a proliferation of services that would ultimately impact all providers. By selectively adding new programs, the Department has limited the negative impact of new cardiac services on existing providers to the benefit of providers and patients alike.

Historically, the development of new cardiac catheterization services in New Jersey has been relatively slow. Virtually all new providers have required the entire three years that are permitted under the rules in order to achieve appropriate utilization levels. As far as existing providers being allowed to expand their capacity is concerned, the minimum utilization requirement necessary to add a catheterization laboratory at an existing provider is 1,000 catheterizations annually. In short, an existing cardiac catheterization provider has to document that it is already in compliance with the minimum utilization requirements for both its existing and proposed catheterization laboratory (500 cardiac catheterizations annually for each laboratory) in order to be approved for additional capacity. Expansions of existing laboratories, therefore, are only considered where the existing provider has demonstrated the development of a highly successful regional program with a proven track record for the delivery of an efficient and effective service. And since these program expansions already have achieved minimum utilization levels for the added capacity, that added capacity does not impact on a potential new provider's ability to submit a certificate of need application. And since cardiac catheterization services have increased an average of 15 percent each year for the past decade, the likelihood of a program not achieving appropriate utilization levels over an appropriate period of time under the existing State policy is extremely remote.

In the Department's view, retention of the policies contained in this section (N.J.A.C. 8:33E-1.11) are essential in maintaining quality invasive cardiac diagnostic services at affordable costs. It was the view of the New Jersey Cardiac Services Task Force that, since most of these cardiac procedures are performed on a non-emergency basis, an appropriate networking of services would "enhance quality and reduce long-term costs". The Department not only shares this view, but considers the existing and amended language regarding a waiver based on documented access to this service to be supportive of this view as well. The intent of the waiver language is to minimize the possibility that serious problems of access to a needed service exist. Such a waiver is to be considered in extraordinary circumstances where an applicant has been able to demonstrate in quantifiable terms the nature and extent of the barriers to access for this service for specific population groups in its proposed service area that are not being served by existing providers. As stated by the New Jersey Cardiac Services Task Force, "provision of these services at the majority of community hospitals where most patients with acute myocardial infarction are first seen is neither desirable nor feasible, based on quality standards and the costs of establishing and maintaining high quality services." The inclusion of a waiver provision as proposed by the Department permits potential new applicants to obtain a fair hearing through the public certificate of need process in order to document access problems that prevent patients in need of invasive cardiac diagnostic services from obtaining these services. The Department is therefore adopting these amendments without change.

Full text of the adoption follows.

8:33E-1.2 Utilization of invasive cardiac diagnostic facilities

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

(e) Pediatric patients requiring invasive cardiac diagnostic procedures must undergo these procedures only in centers with invasive pediatric cardiac diagnostic and pediatric cardiac surgery programs.

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

8:33E-1.11 New facilities

(a) The Department of Health will process certificate of need applications for new invasive cardiac diagnostic facilities only from health service areas, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities meet minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2(b). Waivers from this policy may be considered where an applicant and the local health planning agency have been able to document specific and quantifiable evidence that, in the absence of a waiver, serious problems of access to a needed service would result. Documentation should also be provided that indicates that existing area providers of this invasive cardiac service will not be jeopardized (for example, experience a significant decline in volume) by the proposed new service and the proposed new provider will meet all requirements contained in this subchapter.

(b) No more than one new invasive cardiac diagnostic facility may be approved in each health service area, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities are operating at minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2(b). Additional new facilities, beyond the first approved pursuant to this subchapter, will be considered only when both existing and approved facilities in a given health service area are operating at minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2(b) or where a waiver has been granted in accordance with (a) above. Should a new provider be approved under such a waiver, no additional waiver will be granted until such time as the new waivered provider meets the minimum utilization requirements contained at N.J.A.C. 8:33E-1.2(b).

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

(a)

Certificate of Need: Cardiac Facilities Cardiac Surgery Centers

Adopted Amendments: N.J.A.C. 8:33E-2.3 and 2.4

Proposed: November 21, 1988 at 20 N.J.R. 2848(a).

Adopted: January 23, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: January 25, 1989 as R.1989 d.105, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Effective Date: February 21, 1989.

Expiration Date: June 23, 1992.

Summary of Public Comments and Agency Responses:

Comments were received from:

Mr. Norman A. Norton, C.C.P. President
Mid-Atlantic Perfusion Associates Inc.
11 Freedom Road
Sewell, New Jersey

Grant V.S. Parr, M.D., Chief
Cardiovascular Surgery
Morristown Memorial Hospital
Morristown, New Jersey.

COMMENT: Both comments that were received by the Department were directed at the proposed amendment regarding perfusionist certification at N.J.A.C. 8:33E-2.4(a)1v. Dr. Parr states that at least one certified perfusionist must be present during open heart surgery. In Dr. Parr's experience, so-called "trained perfusionists" are particularly dangerous

in uncommon situations. Mr. Norton also states his opposition to the proposed amendment to the qualifications for a perfusionist at N.J.A.C. 8:33E-2.4(a)1v, and proposes amended language that restricts operation of the perfusion pump to a "certified/certification eligible perfusionist". A follow-up comment by Mr. Norton suggests that the retention of perfusionists at a given cardiac surgery program is often less of an economic issue as it is an issue of a "pleasant working environment".

RESPONSE: The proposed amendment language regarding perfusionist credentials was recommended by the Commissioner's Cardiac Services Committee (CCSC) at its July, 1988 meeting, during the course of its annual review of the State's cardiac rules. This proposed CCSC language is also consistent with the original recommendation made by the New Jersey Cardiac Services Task Force (NJCSTF) in their January 1987 report. It was the Department's intention in proposing this amended language to permit appropriately trained and qualified perfusionists, who currently comprise the majority of perfusionists in the nation, to continue to participate as part of a cardiovascular surgical team as intended by the original recommendation of the NJCSTF and the CCSC.

The Department is unaware of studies which indicate improved cardiac surgery results that are attributable to "certified" versus "trained and qualified" perfusion personnel. By the same token, the Department recognizes the benefit of a certification process as a meaningful effort to improve the training and educational requirements for any allied health care professional. As stated by Mr. Norton in his thoughtful review of the perfusion certification issue, the process of certification is relatively new (seven years). As a result, many perfusionists are not certified and would be precluded from operating the perfusion pump regardless of their ability. It is the Department's view that requiring certification artificially limits the potential pool of available personnel qualified to perform this function and contributes to the cost of providing the service. In an effort to indicate that the Department is supportive of the certification effort, however, additional language is added in this section that states that "certification of all perfusionists is recommended."

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

8:33E-2.3 Utilization of cardiac surgical centers

(a) (No change.)

(b) The following shall apply to pediatric cardiac diagnostic and surgical services:

1. An applicant for a certificate of need as a regional pediatric cardiac surgical center must provide written documentation that the proposed center will perform at least 150 pediatric open and closed heart surgery procedures per year, at least 75 of which must be open heart procedures, for each operating room utilized for pediatric open heart surgery by the end of the third year of operation and each year thereafter.

2. (No change.)

3. The minimum acceptable number of pediatric cardiac catheterization patients per invasive pediatric cardiac diagnostic laboratory is 150 per year. New pediatric surgical centers shall achieve this minimum level of utilization in their invasive pediatric cardiac diagnostic laboratory within three years from the initiation of the service. As cited at N.J.A.C. 8:33E-1.2(e), pediatric patients requiring invasive cardiac diagnostic procedures must undergo these procedures only in centers with invasive pediatric cardiac diagnostic and pediatric cardiac surgery programs.

4. Each invasive pediatric cardiac laboratory should establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. The Commissioner's Cardiac Services Committee (CCSC) recommends that each physician perform 50 cases a year with a minimum of 100 cases over a two year period.

(c)-(e) (No change.)

8:33E-2.4 Cardiac surgery center personnel

(a) The following shall apply to cardiovascular surgical units:

1. Cardiac surgery is most successful when performed by a smoothly functioning team. Based on 250 open heart procedures, the basic team of the regional cardiac surgical center for each operation shall consist of the following permanently assigned staff:

i.-iv. (No change.)

v. One certified perfusionist (a trained and qualified perfusionis who is currently part of a cardiac surgery team may be included shall operate the perfusion pump. A second individual capable o handling the pump should be available to assist this perfusionist a: the need arises*. **Certification of all perfusionists is recommended***

vi-vii. (No change.)

2. (No change.)

(b)-(f) (No change.)

(a)

HEALTH FACILITIES EVALUATION AND LICENSING
Long-term Care Licensing Standards
Fire and Emergency Plan
Adopted Amendments: N.J.A.C. 8:39-41.3 and 42.2

Proposed: October 17, 1988 at 20 N.J.R. 2543(b).

Adopted: January 23, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 25, 1989 as R.1989 d.104, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 and 14.3.

Effective Date: February 21, 1989.

Expiration Date: June 20, 1993.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Department of Health received three sets of comments on its proposed amendments to make nursing home submission of heat emergency plans a mandatory, rather than an advisory, standard. The commenters were: the New Jersey Ombudsman for the Institutionalized Elderly; the New Jersey Association of Health Care Facilities; and a private provider of nursing home care.

In response to the comments received, the Department made four minor changes that it regards as technical. These comments and changes are as follows:

COMMENT: A commenter suggested that the 85-degree Fahrenheit maximum temperature should apply only to patient-care areas and not, for example, to a facility's boiler room.

RESPONSE: The Department has inserted a provision specifying that the heat emergency action plan need be implemented by a facility only when the temperature in patient-care areas exceeds the 85-degree maximum.

COMMENT: A commenter suggested that, in the interest of reducing the flow of unnecessary paperwork, facilities should not be required to resubmit every year a plan that is unchanged from the previous year.

RESPONSE: The Department has changed the submission requirement to permit a facility to submit a simple statement that the plan submitted the previous year has not been changed and remains in effect.

COMMENT: A commenter suggested that the rule should make clear that patients may have a higher room temperature if they desire, because many frail elderly individuals prefer a very warm environment.

RESPONSE: The Department has inserted a provision clarifying that a higher temperature would be permitted in the room of a patient who prefers the higher temperature, so long as the patient's health is not thus jeopardized in the opinion of the physician.

COMMENT: A commenter suggested that there are several ways, approved by Federal and other authoritative sources, in which facilities should act to reduce nursing home patients' exposure to the effects of excessive heat. These methods include: checking body temperatures every four to six hours; using available air conditioning; relocating patients to cooler areas of the facility; monitoring and appropriately increasing fluid intake; evaluating each patient's medications to determine whether those that interfere with perspiration should be reduced; and assuring that fans are not used in a way that causes dehydration.

RESPONSE: The Department has inserted a provision citing these methods as examples of elements of effective heat emergency action plans. These are very good examples, which the Department appreciated receiving. The Department is citing these as examples, rather than prescribing them as necessary components of a plan, in order to avoid overspecificity; the Department does not wish to encourage facilities to establish plans that merely restate basic required elements without considering the fa-

cility's own circumstances, population, resources, and technology.

In addition to presenting these comments and responses, the Department wishes to note that some authorities now advocate a rule that would prohibit nursing homes from maintaining indoor air temperatures of 85 degrees or higher for periods of four hours or longer. The Department is considering this approach, which could greatly benefit patients, especially individuals with chronic obstructive lung disease, but which could impose the costs of installation and maintenance of air conditioning systems on many facilities. The Department notes that, while it is now adopting the change that requires facilities to establish heat emergency action plans, it may soon propose a prohibition that would take precedence over such plans.

Full text of adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

8:39-41.3 Mandatory fire and emergency preparedness

(a)-(n) (No change.)

(o) The facility shall establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is 85 degrees Fahrenheit or higher for a continuous period of four hours or longer.

1. These procedures shall include the immediate notification of the Department of Health.

2. The facility shall submit such a plan to the Department of Health for approval at least once per year. ***If a plan remains unchanged from the previous year, the facility may submit a statement to that effect, in lieu of resubmitting an entire plan.***

3. In implementing a heat emergency action plan, a facility shall not prevent a patient from having a room temperature in his or her patient room in excess of 85 degrees Fahrenheit if the patient and patient's roommate, if applicable, so desire, and if the patient's physician approves.

4. A heat emergency action plan need not be implemented if patient care areas are not affected by an indoor temperature in excess of 85 degrees Fahrenheit.

5. The heat emergency action plan shall include a comprehensive series of measures to be taken to protect patients from the effects of excess of excessively high temperatures. For example, these measures may include: checking body temperatures every four to six hours; using available air conditioning; relocating patients to cooler parts of the facility; monitoring and, when indicated, increasing fluid intake; evaluating each patient's medication regimen to determine whether medications that interfere with perspiration should be adjusted; using fans in ways that do not cause dehydration; and using lightweight clothing.

8:39-42.2 Advisory fire and emergency preparedness

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

(d) (No change.)

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Anesthesia Care

Adopted New Rules: N.J.A.C. 8:43B-18

Proposed: October 17, 1988 at 20 N.J.R. 2544(b).

Adopted: January 23, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 25, 1989 as R.1989 d.103, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-5.

Effective Date: February 21, 1989.

Expiration Date: January 21, 1991.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Department received written sets of comments from nine hospitals, three associations representing providers of health care, and the State Board of Medical Examiners. A summary of the comments, and the Department's responses, follows:

COMMENT: Regarding the summary statements printed along with the proposed rule, one commenter questioned the value of a human life used in the economic impact statement. Another commenter objected that the language of the summary was too far-reaching in saying that the proposed rules would "protect" and "assure" against harm to patients.

RESPONSE: Given the youthful age of many patients harmed by a failure of adequate anesthesia monitoring, and given recent experience involving malpractice liability, the estimated value of one million dollars per life is admittedly conservative. More liberal estimates could be used in the future. The language of "quality assurance" obviously involves protection against a greater likelihood of harm; it does not involve 100 percent assurance that no harm could come to patients.

COMMENT: Two commenters sought assurance that the costs of purchasing equipment mandated by these rules would be allowed by the Hospital Rate-Setting Commission and the reimbursement system managed by the Health Department.

RESPONSE: These rules mandate the purchase of two fairly new technologies, pulse oximetry and end-tidal carbon dioxide monitoring. Under a system of reimbursement reform currently under consideration, hospitals would be eligible for reimbursement for any item, mandated by new rules, that costs $10,000 or more. This system would be retrospective to apply to purchases made on or after January 1, 1989.

For purposes of implementing these amendments to hospital licensure rules, if this aspect of reimbursement reform is adopted, the Department will support an interpretation and/or exception to allow reimbursement for purchases of pulse oximetry and end-tidal carbon dioxide monitoring equipment, regardless of whether the $10,000 threshold is met. This unique exception results from the complicated timing of reimbursement reform and these anesthesia amendments.

COMMENT: Five commenters advised that corresponding rules should be applied to free-standing surgical care centers, rather than to hospitals alone.

RESPONSE: The Department, as it expressed orally to the Health Care Administration Board on September 8, 1988, will propose such rules in the near future.

COMMENT: Three commenters supported the proposed rules as a positive step.

RESPONSE: The Department appreciates this comment.

COMMENT: On N.J.A.C. 8:43B-18.1(a), one commenter wanted to add preanesthesia preparation to the list of items that must be addressed by hospital policies and procedures.

An oral comment was received to the effect that surgical operators should not also serve as anesthetists during the same procedure.

RESPONSE: The Department has added preanesthesia evaluation, patient preparation, and intraoperative management to the list of required policies and procedures.

The Department has added text at N.J.A.C. 8:43B-18.2(g) which prohibits, in accordance with accepted medical practice, operator-anesthetist practice, except for minor local blocks and minor procedures performed in special procedure rooms.

COMMENT: On N.J.A.C. 8:43B-18.2(a), two commenters asserted that credentialing of directors should be left up to the hospital, and one said that the hiring of board-certified directors could cause an added expense.

RESPONSE: In 1988, physician directors of anesthesia services must be board-certified in anesthesia, or hold equivalent qualifications, in order to have credibility in their position. As long as this qualification is met, the selection of physician directors indeed is left up to hospitals. The Department knows of no hospital in the state that would need to find a new physician director in order to meet this standard.

COMMENT: On N.J.A.C. 8:43B-18.2, three commenters requested definitions of anesthetizing location, intravenous conscious sedation, or anesthetizing agents (as agents that produced a loss of consciousness or relief of pain).

RESPONSE: The Department uses the industry-accepted view that anesthetizing locations are places where anesthesia use could require resuscitation, and accordingly the Department has inserted a phrase in N.J.A.C. 8:43B-18.2(c), specifying which types of procedure rooms are covered by these standards. In accordance with the spirit of that subsection, medical staffs will retain some latitude in determining the scope of coverage of its anesthesia policies and procedures. A sentence also has been added to that subsection defining intravenous conscious sedation in accordance with accepted medical terminology. The definition of

anesthetizing agents proposed by the commenter is unreasonably broad and unrealistic; therefore, no change has been made regarding anesthetizing agents.

COMMENT: On N.J.A.C. 8:43B-18.2(b), a commenter suggested that the role of the physician director in the credentialing of physicians and nurse anesthetists should consist only of a review of the individual's qualifications and a delineation of privileges. Another commenter wanted the director to be involved in the credentialing of anesthesia service personnel only.

RESPONSE: The Department has added the word "process" to clarify that the director's role is limited to participation in the credentialing process. It is important that the director review the qualifications of everyone who administers anesthesia in the facility.

COMMENT: On N.J.A.C. 8:43B-18.2(d), a commenter wanted the Department to resolve now the issue of supervision of nurse anesthetists. Two commenters addressed the issue of which physicians or non-physicians should be permitted to administer anesthetic agents, such as intravenous sedation. An oral comment was received to the effect that dental residents should not be permitted to administer anesthesia in non-dental cases, since dentists are permitted to administer them only to dental patients.

RESPONSE: As the Department has stated, the issue of safe monitoring of patients has taken precedence over the issue of supervision of nurse anesthetists. The Department sees less reason for inflexibility in the case of patients who do not lose consciousness. Dental residents undergoing postgraduate training in anesthesia must participate, under supervision, in the administration of anesthesia to non-dental patients because so few hospital dental patients undergo anesthesia. To simplify this issue, N.J.A.C. 8:43B-18.2(d)6. has been deleted, and requirements for dental residents have been combined with the requirements for physician residents at N.J.A.C. 8:43B-18.2(d)4. In addition, to clarify the purpose of this entire section, it was renamed to read "Anesthesia staff: Qualifications for administering anesthesia."

COMMENT: On N.J.A.C. 8:43B-18.2(e), a commenter wanted to exempt patients in labor who are receiving epidural analgesia from the requirement of continuous monitoring by anesthesia personnel.

RESPONSE: A closer reading would reveal that such labor patients are exempt, because the provision only covers operating rooms.

COMMENT: On N.J.A.C. 8:43B-18.3, a commenter stated that it is unnecessary to require an anesthesiologist to be able to reach the hospital within 30 minutes.

RESPONSE: The Department recognizes that this provision is necessary for the proper management of emergencies that require surgery; therefore, no change has been made.

COMMENT: On N.J.A.C. 8:43B-18.4(c), three commenters opposed the requirement that a postanesthesia note be written for all patients, even those discharged within 24 hours of admission.

RESPONSE: The Department regards postanesthesia notes as necessary for all patients. However, the paragraph has been changed to simplify the language of the first sentence; omit the requirement that nurse anesthetists write their own note that would merely duplicate the physician's note in cases where nurse anesthetists administer anesthesia; and change the exemption to affect only minor local anesthesia and not regional anesthesia, correcting the text to conform to accepted medical practice.

COMMENT: On N.J.A.C. 8:43B-18.4(d), a commenter suggested that non-anesthesiologists should be permitted to discharge patients.

RESPONSE: The subsection does permit non-anesthesiologists to discharge patients under established criteria.

COMMENT: On N.J.A.C. 8:43B-18.4(e), a commenter requested a definition of postanesthesia surveillance.

RESPONSE: This suggestion would call on the Department to become involved too closely in the practice of medicine. The Department instead follows here the practice of the Joint Commission on Accreditation of Healthcare Organizations.

COMMENT: Two commenters asked that the Department phase in the equipment standards contained in N.J.A.C. 8:43B-18.5 and 18.7 over one or two years. Another commenter stated that these equipment requirements would raise costs and "restrict choice".

RESPONSE: The Department has added text at N.J.A.C. 8:43B-18.5(k) and 18.7(k), affording hospitals six months in which to order the required equipment. As the Department demonstrated in the Summary of the proposal notice, the major equipment requirements will yield benefits 10 times their costs when considering mortality alone. The Department does not understand the comment about restriction of choice, especially if it applies to patients' choices in selecting hospitals, since patients currently have no ready means of learning whether a hospital is equipped with modern monitoring equipment or not.

COMMENT: On N.J.A.C. 8:43B-18.5(e), two commenters said that interlock systems are unnecessary, except possibly for volatile inhalation anesthetics.

RESPONSE: Anesthesia systems without interlock systems are obsolete. Therefore, no change has been made.

COMMENT: On N.J.A.C. 8:43B-18.5(j), a commenter stated that no technologic system exists yet to signal such insufficiencies as depleted batteries and inactive sensors.

RESPONSE: This standard does not contemplate a technologic system, only a human one. To clarify this, the word "system" has been changed to "protocol".

COMMENT: On N.J.A.C. 8:43B-18.6(a), two commenters objected to requiring the physician director to approve credentials of equipment maintenance personnel.

RESPONSE: The last sentence has been changed to require the physician director only to determine that equipment is routinely serviced either by the manufacturer or by individuals whose qualifications are determined by the physician director to be equivalent to those of the manufacturers' agents.

COMMENT: On N.J.A.C. 8:43B-18.6(b), a commenter asked that the optional requirement of conformance with federal Food and Drug Administration guidelines for daily inspection of anesthesia equipment be made less prescriptive.

RESPONSE: To emphasize that this is only one optional way of complying with the requirement of daily inspections, the word "alternatively" has been added to the standard.

COMMENT: On 8:43B-18.6(c), four commenters objected to the requirement that equipment be checked before each use, with documentation of the check. One of these commenters asked that a simple "checkbox" form be permitted.

RESPONSE: The Department has added a sentence permitting use of a checkbox to meet this requirement.

COMMENT: On N.J.A.C. 8:43B-18.7(c), five commenters opposed the requirement of continuous temperature monitoring of all patients under anesthesia.

RESPONSE: The Department is concerned about incidents where potentially fatal malignant hyperthermia goes undetected, especially in postanesthesia care units. Temperature monitoring is an inexpensive and effective means of preventing unnecessary mortality. In order not to establish a very burdensome requirement, the Department is permitting any means of monitoring, rather than requiring the use of probes.

COMMENT: On N.J.A.C. 8:43B-18.7(e), a commenter remarked that continuous end-tidal carbon dioxide monitoring is not appropriate for all patients.

RESPONSE: The Department is concerned that this commenter apparently fails to understand relevant physiology or technology, and the Department urges the commenter to reassess its anesthesia policies in the light of current information and practices. The Department further notes that this requirement is effective only when technically feasible.

COMMENT: On N.J.A.C. 8:43B-18.7(g), a commenter asked for exemptions from the requirement of monitoring of vital signs, especially for patients in labor.

RESPONSE: The standard as written does not apply to patients in labor in non-anesthetizing locations.

COMMENT: On N.J.A.C. 8:43B-18.9(c), comments were received as follows:

On the issue of confidentiality of incident reports submitted to the Health Department, a commenter wanted the confidentiality extended to include telephone reports, and another commenter advocated sharing of these reports with the state Board of Medical Examiners.

RESPONSE: The Department has added a phrase clarifying that the confidentiality extends to telephone reports. The Department views submission of these reports to the Board of Medical Examiners as unnecessary and likely to cause compliance problems. However, the Department enthusiastically supports legislation, advocated by the Board, that would strengthen requirements that hospitals submit directly to the Board information about all instances involving malpractice liability or involving reductions in physician privileges related to incompetence or impairments. The Department further notes that this confidentiality provision does not cover reports of verified deficiencies resulting from investigations of reported incidents.

On the time frame for mandatory reporting, two commenters objected to the 24-hour or 10-day time frame, which may be too short for a hospital to determine whether a death was in fact an "anesthesia death". Addition-

ally, one of these commenters noted that it may not always be possible to reach the Department within 24 hours.

RESPONSE: The Department has changed the phrase "anesthesia death" to "deaths in anesthetizing locations" and added the Department's 24-hour hot line number to the standard to facilitate efforts to reach the Department quickly. The department also extended the time frame for written reports from 10 to 30 days.

On the overall burden of this requirement, one commenter said this requirement constituted a "major burden", while another commenter said that such reportable incidents are "extremely infrequent". Still another commenter claimed that the requirement would create "significant added personnel expenses". Two commenters proposed leaving incidents in the hands of hospital quality assurance programs. A final commenter said that the requirement is unjustified.

RESPONSE: It's difficult to envision how the simple reporting of "extremely infrequent" events will create a "major burden" involving "significant added personnel expenses". Nevertheless, in response to the volume of concern about this subsection, the Department has added a sentence requiring the Department to submit a report within approximately one year of the rule's effective date summarizing the effectiveness of this reporting provision. Another sentence has been inserted clarifying that the written reports submitted by hospitals would consist basically of a summary of the incident.

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

SUBCHAPTER 18. ANESTHESIA

8:43B-18.1 Anesthesia services policies and procedures

(a) Anesthesia services shall be controlled by written policies and procedures that are reviewed annually, revised as needed, implemented, and followed. These policies and procedures shall include at least:

1. Monitoring of patients in the postanesthesia care unit, including availability of monitoring equipment, and discharge from the postanesthesia care unit;

2. Monitoring of patients in any special procedure rooms where patients receive anesthesia; *[and]*

3. Reporting of morbidity and mortality*[.]**; **and***

4. Preanesthesia evaluation, patient preparation and intraoperative management.

8:43B-18.2 Anesthesia staff *[qualifications]**: **Qualifications for administering anesthesia***

(a) There shall be a physician director of anesthesia services who is a diplomate of either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, or who was made a fellow of the American College of Anesthesiology before 1972.

(b) The physician director of anesthesia services shall participate in the credentialing ***process*** and delineation of privileges of all personnel who administer anesthetic agents.

(c) Anesthetic agents, including intravenous conscious sedation, shall be administered *[at any]* ***in operating suites, obstetric suites, endoscopy rooms, and any other*** anesthetizing location only in accordance with medical staff policies and procedures that specify who may administer anesthetic agents and under what conditions. ***For purposes of this section, intravenous conscious sedation shall consist of the proper administration of drugs to obtund, or dull or reduce the intensity of, pain and awareness without the loss of defensive reflexes.***

(d) Anesthetic agents other than minor local blocks or intravenous conscious sedation shall be administered only by the following:

1. A physician;

2. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);

3. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification;

4. A physician resident ***or a dental resident*** participating in a nationally approved graduate medical education training program in anesthesiology;

5. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology*[; or]**.*

[6. A dental resident participating in a nationally approved graduate medical education training program in anesthesiology.]

(e) An anesthesiologist, anesthesia resident, or certified registered nurse anesthetist shall be continuously present in the operating room to monitor the patient and provide anesthesia care whenever a patient is receiving any anesthesia. If radiation or another direct hazard necessitates the absence of such personnel, provision shall be made for remote monitoring of the patient.

*[1.]**(f)* If the anesthesia consists of a minor local block or intravenous conscious sedation, the adminstrator of anesthesia shall be continuously present in the operating room or other anesthetizing location to monitor the patient.

(g) Except for minor local blocks and minor procedures performed in special procedure rooms, anesthesia shall not be administered by the individual who is performing the surgical procedure.

8:43B-18.3 Anesthesiologist availability

An anesthesiologist shall be on-site or on call and available to reach the hospital within 30 minutes under normal transportation conditions at all times.

8:43B-18.4 Anesthesia patient services

(a) A preanesthesia note, reflecting evaluation of the patient and review of the patient record prior to adminstration of anesthesia, shall be made by the anesthesiologist and entered into the medical record of each patient receiving anesthesia in the operating suite.

(b) A record of anesthesia that conforms with policies and procedures developed by the medical staff shall be made for each patient receiving sedation or anesthesia at any anesthetizing location.

(c) A postanesthesia note shall be *[made by the anesthesiologist]* ***entered into the patient's medical record by a member of the hospital's anesthesia services*** early in the postoperative period and after the patient's discharge from the postanesthesia care unit**.* *[and shall be entered into the medical record of each patient receiving anesthesia in the operating suite. If anesthesia was adminstered by a certified registered nurse anesthetist, he or she also shall make a postanesthesia note in conformance with hospital policies and procedures.]* For patients receiving only *[regional]* ***minor local*** anesthesia without anesthesia services' participation and in conformance with hospital policies and procedures, the postanesthesia note may be made by the surgeon.

(d) An anesthesiologist shall discharge each patient from the postanesthesia care unit personally or through established criteria for discharge.

(e) The patient shall receive postoperative anesthesia surveillance as required by the patient's condition and by requirements of the hospital's anesthesia services. Upon conclusion of anesthesia surveillance, the anesthesiologist shall enter into the patient's medical record the postanesthesia status of the patient who has received anesthesia care from anesthesia services.

8:43B-18.5 Anesthesia supplies and equipment; safety systems

(a) Diameter index safety systems shall be used on all large cylinders of medical gases and wall and ceiling outlets of medical gases.

(b) Pin index safety systems with a single washer shall be used on all small cylinders to prevent interchangeability of medical gas cylinders.

(c) All medical gas hoses and adapters shall be color-coded.

(d) An oxygen failure-protection device ("fail-safe" system) shall be used on all anesthesia machines to announce and, at lower levels of oxygen pressure, to discontinue other gases when the pressure of the supply of oxygen is reduced.

(e) A vaporizer exclusion ("interlock") system shall be used to assure that only one vaporizer, and therefore only a single agent, can be actuated on any anesthesia machine at one time.

(f) To prevent delivery of excess anesthesia during an oxygen flush, no vaporizer shall be placed in the circuit downstream of the oxygen flush valve.

(g) All anesthesia vaporizers shall be pressure-compensated in order to administer a constant non-pulsatile output.

(h) Accurate flow meters and controllers shall be used to prevent the delivery to a patient of an inadequate concentration of oxygen relative to the amount of nitrous oxide or other medical gas.

(i) Alarm systems shall be in place for high (disconnect), low (subatmospheric), and minimum ventilatory pressures in the breathing circuit for each patient under general anesthesia.

(j) There shall be a *[system]* ***protocol*** to assure that, when technically feasible, surgery does not proceed where there are disabled alarms, depleted batteries and inactive sensors in oxygen monitors, improperly positioned breathing-circuit sensors, or other insufficiencies.

(k) Each hospital shall have six months from the effective date of this subchapter to purchase equipment necessary to comply with the provisions of this section. Thereafter, hospitals either shall have such equipment in place or else shall have written proof that, within six months of the effective date of this rule; that is, until August 21, 1989, an order for such equipment has been received by a manufacturer or legitimate vendor of the equipment. Such proof shall include an anticipated date of delivery. All such equipment shall be properly installed in a timely fashion after delivery, and shall be used in conformance with this section.

8:43B-18.6 Anesthesia supplies and equipment; maintenance and inspections

(a) A record shall be maintained of all service and maintenance performed on all anesthesia machines, ventilators, and vaporizers. The record shall include machine identification; name of servicing agent; work performed; and date of work. This maintenance shall conform with maintenance requirements established by the machine manufacturer. Credentials of each servicing agent shall be approved by the machine manufacturer or *[by]* ***be determined by*** the hospital's physician director *[of anesthesia services]* ***to be equivalent to the credentials of manufacturers' servicing agents***.

(b) All anesthesia equipment shall be inspected fully at the beginning of each day of use. A record of each such inspection shall be maintained for each machine. The inspection shall conform with a checklist that is supplied by the manufacturer of the machine; issued by the Federal Food and Drug Adminstration; or***, alternatively,*** developed by the hospital's anesthesia services and approved by the hospital's physician director of anesthesia services.

(c) All anesthesia equipment shall be inspected before each use. A record of each inspection shall be maintained for each machine and contained in the patient's anesthesia record. ***The record may consist of a single phrase or check mark in a box on a form.***

8:43B-18.7 Anesthesia supplies and equipment; patient monitoring

(a) An in-circuit oxygen analyzer shall monitor the oxygen concentration within the breathing circuit, displaying the percent oxygen of the total mixture, for all patients receiving general anesthesia.

(b) A respirometer (volumeter) measuring exhaled tidal volume shall be used whenever the breathing circuit of a patient under general anesthesia allows.

(c) The body temperature of each patient under anesthesia shall be continuously monitored.

(d) Pulse oximetry shall be performed continuously during administration of all anesthesia, including intravenous conscious sedation, at all anesthetizing locations, when technically feasible. Any alternative method of measuring oxygen saturation may be substituted for pulse oximetry if the method has been demonstrated to have at least equivalent clinical effectiveness.

(e) End-tidal carbon dioxide monitoring shall be performed continuously during administration of all general anesthesia, when technically feasible.

(f) An electrocardiogram monitor shall be used continuously on all patients receiving general anesthesia at any anesthetizing location.

(g) Blood pressure, pulse rate, and respirations shall be determined and charted at least every five minutes for all patients receiving anesthesia at any anesthetizing location.

(h) The capacity for invasive monitoring of arterial pressure shal exist within the operating suite.

(i) A precordial stethoscope or esophageal stethoscope shall b used when indicated on each patient receiving anesthesia. If necess ary, the stethoscope may be positioned on the posterior chest wal or tracheal area.

(j) A peripheral nerve stimulator shall be available within th operating suite to monitor the patient's extent of muscle paralysi from muscle relaxants. Another peripheral nerve stimulator shall b available within the postanesthesia care unit.

(k) Each hospital shall have six months from the effective date o this regulation to purchase equipment necessary to comply with th provisions of this section, N.J.A.C. 8:43B-18.7. Thereafter, hospitals either shall have such equipment in place or else shall have written proo that, within six months of the effective date of this regulation, an orde for such equipment has been received by a manufacturer or legitimat vendor of the equipment. Such proof shall include an anticipated dat of delivery. All such equipment shall be properly installed in a timely fashion after delivery, and shall be used in conformance with this section, upon the effective date of the regulation and regardless of when it was purchased or delivered.

8:43B-18.8 Anesthesia staff education and training

Staff education programs and training sessions shall include patient safety and the inspection and use of equipment.

8:43B-18.9 Anesthesia quality assurance methods

(a) There shall be a program of quality assurance for anesthesia services that is integrated into the hospital quality assurance program and includes routinely collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) Quality assurance shall include morbidity and mortality conferences.

(c) The hospital shall notify the New Jersey State Department of Health by telephone (609) 588-7725 ***or (800) 792-9770*** within 24 hours, and in writing within *[ten]* ***30*** days, of all *[anesthesia]* deaths ***in anesthetizing locations*** and unexpected severe intraoperative or postoperative untoward events or outcomes related to anesthesia*[, including the patient's]***. **The written report shall include a summary of the incident and the patient's risk status or*** American Society of Anesthesiology (ASA) Physical Status classification. Records of such reports ***and telephone calls*** shall be made available only to Department of Health personnel for official purposes and, for each report, to the specific facility that the report covers. ***The Department shall submit a report to the Health Care Administration Board within 13 months after the effective date of this subchapter, that is, by March 21, 1989, summarizing the effectiveness of this reporting provision.***

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Residential Operational Standards Policies and Procedures for Group Homes

Adopted New Rules: N.J.A.C. 10:39

Proposed: October 17, 1988 at 20 N.J.R. 2547(a).

Adopted: January 27, 1989 by Drew Altman, Commissioner, Department of Human Services.

Filed: January 27, 1989 as R.1989 d.120, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:11B-1 et seq.

Effective Date: February 21, 1989.

Expiration Date: February 21, 1994.

Summary of Public Comments and Agency Responses:

Comments were received from the Community Health Law Project and from the Department of the Public Advocate, Division of Mental Health Advocacy. The comments and responses follow:

Subchapter 1. General Provisions

COMMENT: N.J.A.C. 10:39-1.1, the scope section, should be expanded to include proprietary homes and facilities other than group homes.

RESPONSE: These rules are intended to apply to group homes operated by non-profit mental health agencies only. This is clearly a subset of the total range of residential placements for those suffering from mental illness. The Division is in the process of developing rules which specifically address apartment programs and family care homes. Until such time as these rules are published and adopted, all rules under N.J.A.C. 10:37 which apply to residential services remain in effect.

COMMENT: N.J.A.C. 10:39-1.1 should initiate provisions regulating the provider agency's handling of a resident's personal needs allowance.

RESPONSE: The Department disagrees. It is not the responsibility of a provider agency to manage a resident's funds. It is the licensee's responsibility to provide the level of training and assistance needed to allow clients the greatest independence possible in managing their funds, through the development of an individual service plan, as outlined under N.J.A.C. 10:37-6.8.

COMMENT: The proposed rules should include procedural protection for a resident being denied access to or terminated from a service.

RESPONSE: The proposed rules supplement N.J.A.C. 10:37. Such protection already exists as N.J.A.C. 10:37-4.3 outlines in detail the Client Complaint/Agency Ombuds Procedure which includes procedural protection for clients.

COMMENT: In N.J.A.C. 10:39-1.2, the definitions of "assessment and evaluation" and "service management" should include the job titles responsible for performing these functions as well as indicate client consent to these services.

RESPONSE: These rules supplement N.J.A.C. 10:37-6.8, which requires the development of an individual service plan (ISP) to guide service provision to clients. Whenever possible, an interdisciplinary team will develop and implement an appropriate ISP. The particular staff persons responsible for different components of the ISP will vary, depending upon the service needs of the client. The team, however, is required to identify a designated coordinator or "primary service coordinator" who has overall responsibility for implementing the plan. Clients sign their treatment plan to indicate involvement and agreement.

COMMENT: In N.J.A.C. 10:39-1.2, the "group home" definition as currently worded appears to omit structures containing two dwelling units.

RESPONSE: Structures containing two dwelling units do not fall within the definition of a group home. This structural arrangement, when utilized by a Provider Agency, is designed programmatically to be an apartment living arrangement and is defined as such in the DMH&H and agency contractual agreement.

Subchapter 3. Division Responsibilities

COMMENT: Regarding N.J.A.C. 10:39-3.1, each resident should be served with a copy of any inspection reports and be given the right to intervene in any subsequent proceeding.

RESPONSE: The Department disagrees with the need for inspection reports to be given directly to each resident. N.J.A.C. 10:37-4.3 provides protection for the rights of residents. Within the proposed rules, adequate safeguards are provided for the health, safety and well-being of residents.

COMMENT: There is no provision in N.J.A.C. 10:39-31 requiring an investigation by the Division, based upon complaints made by residents.

RESPONSE: These proposed rules supplement N.J.A.C. 10:37. N.J.A.C. 10:37-4.3 specifies a detailed client complaint procedure and outlines Division involvement. In addition, Division protocols require timely investigation of all client complaints.

COMMENT: N.J.A.C. 10:39-3.1 requires clarification of those violations which pose an imminent threat to the health and safety of residents as opposed to those which are life-threatening.

RESPONSE: The Department accepts this comment and has clarified this requirement to read "for any violations cited by the Division as an imminent threat to the health, safety or welfare of the residents, the P.A. shall abate such deficiencies within 48 hours of notification . . . for any violations cited by the Division as life-threatening, immediate action is required" (see N.J.A.C. 10:39-3.6). It was never intended that the provider agency should have 48 hours to remediate life-threatening deficiencies. In fact, this was a typographical error in our document.

COMMENT: N.J.A.C. 10:39-3.3(c) places the responsibility for relocation of residents on the Provider Agency in the event the premises must be vacated. The Division should be included.

RESPONSE: The intent of this rule was misunderstood. N.J.A.C. 10:39-3.3(c) requires that the P.A. assume primary responsibility with stated supervision by the Division. In the event the P.A. was not fulfilling its responsibility, the Division would, of course, actively assume responsibility for the relocation of residents. However, these rules apply to P.A. obligations and were approached as such.

Subchapter 4. Residential Care Program

COMMENT: N.J.A.C. 10:39-4.4(c) states that residential staff shall consider compatibility needs of clients and potential roommates. "Compatibility" needs to be clarified to eliminate discrimination on the basis of age, race, religion, disability.

RESPONSE: The Department agrees and has clarified this requirement on adoption to read "in filling vacancies, residential staff shall also consider the compatibility needs of clients and potential roommates. Pursuant to Titles VI and VII of the Civil Rights Act of 1964 as amended and Section 504 of the Rehabilitation Act of 1973, discrimination on the basis of race, sex, religion, national origin, age or physical handicap in provision of services is prohibited."

COMMENT: 10:39-4.6(a)3 requires that residents share responsibility for shopping, laundry, etc. This rule should be clarified so that it is not misconstrued to allow involuntary, unpaid work.

RESPONSE: The Department has clarified this requirement to read, "To the greatest extent possible, residents shall share direct responsibility in the residential living arrangement for the following. . . .

(a)3. . . . The above responsibilities relate to those tasks which are intended to serve as activities of daily living training and not as unpaid, involuntary work under N.J.A.C. 5:27-3.1(a)13."

COMMENT: N.J.A.C. 10:39-4.6 should provide that copies of facility rules and expectations should be posted in prominent locations in the residence and a copy given to each resident upon entry into the program.

RESPONSE: The Department disagrees. Under N.J.A.C. 10:37-5.6 residential services are organized around the principles of resident responsibility and participation. To the greatest extent possible, residents share direct responsibility in decision-making concerning rules and expectations. The development of and posting of house rules by the licensee contradicts these principles. Procedurally, however, as rules are developed within each group home, copies will be given to residents. This will be defined through our contract process.

COMMENT: Concerning N.J.A.C. 10:39-4.8(b), although it is preferable that residential living arrangements shall be in close proximity to shopping, generic community resources, etc., the proposed rule should be clarified so as not to exclude group homes from other geographic settings.

RESPONSE: The Department agrees, as it was never the intent to mandate that group homes must always be in close proximity to generic community resources. The Department has clarified the passage to read, "Residential living arrangements, whenever possible, shall be in close proximity. . ."

COMMENT: Regarding N.J.A.C. 10:39-4.9, the Division is mandated to establish criteria for educational and professional standards of employees as well as staffing ratios. This section is vague.

RESPONSE: These rules are intended to supplement N.J.A.C. 10:37. Pursuant to N.J.A.C. 10:37-6.11, every mental health program, as are agency-sponsored group homes, shall hire staff with the appropriate qualifications, training, and length of experience as outlined in N.J.A.C. 10:37-6.11 and in specific purchase of service and community care contracts. Qualifications needed by staff employed by a community residence group home are related to the particular therapeutic design of the facility as well as to the clients in residence. This is an area addressed on an individual agency basis through contracting.

As outlined in the proposed rules, staffing patterns are dependent upon the physical arrangement of the setting, level of functioning of the residents, etc. It is not possible to specify staff ratios due to the heterogeneity and complexity of group homes throughout the state, and the highly individualized and fluctuating needs of those suffering from mental illness. This area is addressed through contracts with individual agencies.

Subchapter 5. Physical Plant

COMMENT: At N.J.A.C. 10:39-5.10, specific dimensions should be provided with regard to room size.

RESPONSE: The proposed rules outline dimensions required per person rather than per room, which is a more stringent and more effective mechanism for determining appropriateness of space.

COMMENT: At N.J.A.C. 10:39-5.10(e)2, the term "habitable" should be clarified for those rooms below ground level.

RESPONSE: The Department has clarified "habitable" by referencing all relevant subchapter 5 requirements.

COMMENT: At N.J.A.C. 10:39-7.2, the procedures of N.J.A.C. 10:37-4.6 relating to the client right of appeal are inappropriately adopted by reference. Those rules were designed for State-funded mental health programs, which deliver services very different from those delivered in a group home situation.

RESPONSE: The Department disagrees, as these rules are intended to supplement N.J.A.C. 10:37. N.J.A.C. 10:37-4.6 applies to all State-funded mental health programs. Group homes are a subsection of the residential services program element and are State-funded mental health programs. Developing an appeal process specifically for clients residing in group homes which is different from the process currently in effect for other mental health services would cause serious confusion for clients who are often concurrently enrolled in mental health program elements in addition to residential group home services.

General Comment

COMMENT: The proposed rules seem to supersede N.J.A.C. 5:27 and incorporate some of its provisions, yet significant provisions of Department of Community Affairs rules are deleted.

RESPONSE: The proposed rules have been developed in response to N.J.S.A. 30:11B-1 et seq., which gives the licensing authority for group homes for the mentally ill to the Department of Human Services, a responsibility which previously had been that of the Department of Community Affairs. In the development of the proposed rules, the Department of Human Services has incorporated the facility standards used by the Department of Community Affairs, owing to their expertise in that area. Program requirements are those in effect under N.J.A.C. 10:37, as they pertain to the specialized area of residential service delivery to the mentally ill. Department of Community Affairs program requirements under N.J.A.C. 5:27 have not been included in the Department of Human Services proposed rules as their applicability is to boarding homes, rather than group homes for the mentally ill.

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 39
RESIDENTIAL OPERATIONAL STANDARDS POLICIES AND PROCEDURES FOR GROUP HOMES*

SUBCHAPTER 1. GENERAL PROVISIONS

10:39-1.1 Scope

(a) The Division of Mental Health and Hospitals group home provider agencies shall comply with the physical and program standards contained within this chapter. The standards shall apply to group homes with a minimum of six and a maximum of 15 residents formerly licensed under N.J.A.C. 5:27-1 as Class D community residences for persons suffering from mental illness by the Department of Community Affairs and to group homes with five or fewer residents formerly operating under a waiver granted by the Department of Community Affairs whereby licensing as a Class D residence was not required.

(b) The standards set forth in this chapter are minimum operating standards for group homes serving persons who are suffering from mental illness in the State of New Jersey.

10:39-1.2 Definitions

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

"Assessment and evaluation" means a formal analysis to determine appropriate services based on individual requests and assessed needs. Included are social, personal and physical conditions affecting an individual's ability to function, as well as an analysis of the individual's current level of functioning in the face of these conditions.

"Bureau of Licensing and Inspections" (BLI) means the Bureau of Licensing and Inspections within the Division of Mental Health and Hospitals, Department of Human Services.

"Community organization" means intervention at the community level oriented toward influencing community groups, providers and institutions toward solving problems that threaten individual functioning. The focus is on organizing and developing available and potential community resources untapped or underutilized by mental health providers.

"Community residence for the mentally ill" means any community residential facility which provides food, shelter and personal guidance, under such supervision as required, to not more than 15 mentally ill persons who require assistance temporarily or permanently, in order to live independently in the community. These residences shall be approved for a purchase of services contract or an affiliation agreement pursuant to procedures established by the Division of Mental Health and Hospitals in the Department of Human Services. These residences shall not house persons who have been assigned to a State psychiatric hospital after having been found not guilty of a criminal offense by reason of insanity or unfit to be tried on a criminal charge. These residences shall not be considered health care facilities within the meaning of the "Health Care Facilities Planning Act", P.L.1971, c.136 (C.26:2H-1 et seq.) and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements, family care homes and hostels.

"Counseling" means a form of treatment for cognitive difficulties, behavior maladaptions and/or other emotional problems in which a trained person establishes a professional relationship with a client for the purpose of removing, modifying or retarding existing symptoms, altering or reversing disturbed patterns of behavior, and promoting positive personality growth and development.

"Daily living skills" means the activities or competencies to enable a resident to perform functions for everyday living, that is, basic housekeeping, grooming/dressing, nutrition management, money managements, daily routine, social/recreational activities and medication management.

"Department" means the Department of Human Services.

"Division" means the Division of Mental Health and Hospitals, Department of Human Services.

"Group home" means any leased or owned single family residence or any structure containing three or more dwelling units, all of which are utilized for the provision of residential care services; wherein staff reside or are stationed either on-site or in immediate close proximity; and for which a contract or formal affiliation agreement exists with the Division of Mental Health and Hospitals. Group homes shall not include family care home nor apartment facilities where individuals may receive regular or periodic staff supervision and/or training visits, except where such apartment facilities include those contained in a structure of three or more units and all units are operated under contract or affiliation agreement with the Division.

"Housing" means services to help individuals locate, improve and/or maintain housing suitable and adequate for their needs at prices they can afford, whether for purchase or for rent or just as a temporary place to stay while they are being helped to make other living arrangements.

"Independent living arrangement" means living settings where individuals assume total responsibility for all aspects of personal and home maintenance, and where supportive mental health and/or social services are not usually provided on site, unless crisis outreach is needed.

"Information and referral" means staff and resources available to community residents inquiring about the range of mental health and related services available in their community.

"Normalization" means the process of promoting personal relationships and positive expectations among staff and residents in an environment that is as close to a normal life style as possible.

"Placement" means a range of activities designed to identify, refer into, and/or provide community based residential/housing services to individuals requiring supervised, semi-independent, or no programmatic assistance in medical and/or mental health areas. Placement may be of an emergency short-term nature, transitional residential services, or for long-term utilization with or without supervision.

"Provider agency" (PA) means a public or private organization which has a mental health contract with the Division.

"Recreation" means a program of organized individual or group activities of a relaxing or entertaining nature designed to promote

a person's ability to socialize and manage his or her leisure time. For example, activities may include trips to art shows, musical events, movies, sports activities, field trips to historical points of interest.

"Resident(s)" means a person suffering from mental illness who resides in a community residence.

"Service management" means a series of constructive actions undertaken on behalf of an individual consumer to direct and coordinate appropriate service provision. Individuals are taught to cope with precipitating events that may lead to crisis situation and service providers are made accountable to the consumer. Actions are directed toward the consumer, the service team, providers, significant others and the community in general. Service management includes all of the following activities:

1. Information gathering, which includes identifying persons in need of services management, gaining access to and acquiring (with informed consent) pertinent information regarding a person's personal, social and health status; and assuring an assessment is completed by a service team.

2. Discharge/service planning through meetings among service providers and clients or inpatients returning to the community. The purpose is to assure the development of a time-oriented service plan with the consumer by the service team that relates directly to assessed needs.

3. Linkage, which means a process of determining eligibility for services, initiating contact with service providers, arranging and referring the individual to service and follow-up to assure services are rendered; if problems occur in obtaining and accessing service, planning to assure other appropriate services are substituted; and acting as a contact person to family and significant others and mobilizing their support.

4. Follow-up, which means a process of retaining responsibility for individual cases and, on an ongoing basis, monitoring service delivery to ensure that progress meets needs; helping consumers resolve problems and providing support; and recording and reporting progress to service teams.

5. Personal advocacy, which means acting as an agent for an individual consumer, using an assertive approach to address problems in service delivery, low motivation on the part of the consumer, and/or difficulty negotiating the system. The purpose is to ensure rights and effect positive changes in attitudes toward consumers.

"Target population" means:

1. Adults and children currently in a State/county/local psychiatric hospital who could live in the community with appropriate services;

2. Adults and children in the community, with a history of State/county/local psychiatric hospitalization, who are at serious risk of rehospitalization; and

3. Adults and children in the community who are mentally and functionally impaired and at serious risk of psychiatric hospitalization.

"Transportation" means arranging for or providing transportation to and from other services and/or community resources when necessary.

SUBCHAPTER 2. LICENSING PROCESS

10:39-2.1 Initial licensing process

(a) All inquiries related to licensure of group homes shall be made to: New Jersey Division of Mental Health and Hospitals, CN 700, Trenton, NJ 08625

(b) All applicants shall be providers of mental health services with a service contract or an affiliation agreement with the Division.

(c) The provider agency shall request an initial inspection be completed by the Division. All requests shall be made to the Division at the address in (a) above.

(d) The Division shall inspect the site based on physical and fire safety standards (N.J.A.C. 5:18 et seq.) and review program operations for compliance with residential care standards.

(e) The Division shall notify the provider agency (PA) in writing of all violations.

(f) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit a Certificate of Occupancy or other documents indicating habitability.

(g) A license shall be issued once all requirements are met and inspections are satisfactory and there is reasonable assurance that the residence shall be operated in the manner required by this chapter.

(h) The license shall be issued by the Department of Human Services through the Division of Mental Health and Hospitals.

(i) The license shall be issued for a period of one year and shall specify the maximum number of persons permitted to occupy the group home.

(j) The license shall be available on the premises for review by the Division.

10:39-2.2 Waiver

All current group homes contracted with the Division of Mental Health and Hospitals at the date the standards are adopted shall be considered approved for licensing and shall not be subject to the initial licensing process. From the adoption date on, licensure shall depend on the annual inspection. Those group homes which have not contracted with the Division at the time of the adoption shall follow the initial licensing process and shall be subject to annual inspections.

10:39-2.3 Waiver of standards

(a) Waivers of specific standards shall be considered at the discretion of the Division providing that such a waiver would not present a danger to the health, safety, welfare or rights of the residents.

(b) Requests for waivers shall be made in writing to the Division, with substantial detail justifying the request.

(c) Specific standards may be waived only under the following conditions:

1. Where strict enforcement of the standard would result in unreasonable hardship on the residents; or

2. The waiver is in accordance with the particular need of a client(s) but does not adversely affect the health, safety, welfare or rights of the client.

SUBCHAPTER 3. DIVISION RESPONSIBILITIES

10:39-3.1 Annual evaluation

(a) The Division's Bureau of Licensing and Inspections (BLI) shall annually conduct an on-site inspection of each group home to determine whether the program and facility meet the requirements for licensure under N.J.S.A. 30:11-1 et seq.

(b) The written report of the annual on-site inspection of each program and/or facility shall specify the violations and, if necessary, the manner and time frames in which the violations shall be abated.

(c) For any violations cited by the Division as *[life threatening]* ***an imminent threat to the health, safety or welfare of the residents***, the PA shall abate such deficiencies within 48 hours of notification and provide written notice within 48 hours to the BLI that all violations have been corrected. ***For any violations cited by the Division as life-threatening, immediate action is required (see N.J.A.C. 10:39-3.6).***

(d) If the Division report identified violations other than life threatening deficiencies, representatives from the Division, as part of their ongoing monitoring responsibilities, shall visit the specified facility and/or program and provide a report to the Division on progress toward remediation of deficiencies every 60 days until the deficiencies are fully remediated.

(e) No later than 40 days after receipt of the report, the PA shall provide written notice to the Division that violations have been corrected, and/or that actions have been taken to abate violations noted and that full correction is anticipated within the time frames noted in the report.

10:39-3.2 Appeal of the Division's findings

(a) The agency may appeal findings of the Division, with the exception of life threatening violations.

(b) The appeal of findings shall be directed to the Division Director or designee within 20 days of receipt of the written report of findings.

(c) A response to the appeal shall be provided within 20 days of its receipt.

10:39-3.3 Administrative sanctions

(a) In the event that the PA does not submit written notice specified in N.J.A.C. 10:39-3.1(e) by the required date, or if violations have not been abated within the time frames specified in the report, the Division shall have the option of suspension payments to which the PA may be entitled under any agreements with the Division, imposition of a moratorium on admissions to the facility, or revocation of the license to operate the facility.

(b) In the event that the Division requires the removal of the license and the relocation of the residents of the facility, a written order shall be directed to the PA's executive director or designee and to the President of the Board of Directors of the agency.

(c) Under the supervision of the Division, the PA shall be responsible for placement of residents when an order to vacate the premises and the removal of a license has been issued by the Division.

10:39-3.4 Review of administrative sanctions

Where an administrative sanction exists and the PA denies the basis of the sanction, the PA may apply to the Division Director or designee for a review, which shall be afforded and a decision rendered by the Division Director or designee within two working days of the receipt of the written request for a review.

10:39-3.5 Administrative hearing of appeal

If the PA chooses to appeal a decision made pursuant to the provisions of N.J.A.C. 10:39-3.4, the PA may request an administrative hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:39-3.6 Emergency situation

The Division, when it determines that the health, safety and welfare of the residents warrants it, may immediately suspend the license, provided that the PA shall have the right to an expeditious hearing.

SUBCHAPTER 4. RESIDENTIAL CARE PROGRAM

10:39-4.1 Scope and purpose

(a) Residential programs shall predominately include housing, placement, daily living education, and service management.

(b) A major goal of residential programs shall be to help clients to be as independent from the mental health system and as self-sufficient as possible. Residents shall live in the least restrictive environment necessary to assure safety and to promote growth.

(c) Residential programs shall provide a context in which rehabilitative and restorative efforts focus on client's acquisition of daily living skills and movement towards more independent living arrangements.

1. Skills training in daily living may take place within a residential living arrangement.

2. Whenever possible, mental health and social services and recreational activities should occur outside of the living arrangement, in community settings (YMCA, libraries, social clubs, churches, etc.). These activities should only be offered in the residential living arrangement when they are unavailable in the community or when the current level of functioning of residents temporarily precludes their participation in normalized activities.

3. Residential services shall be organized around the principles of resident responsibility and participation.

10:39-4.2 General responsibilities of all residential programs

(a) All residential programs shall develop appropriate linkages with mental health, social services and natural support systems and execute formal affiliation agreements with key service providers, including any existing service area transitional housing program on the grounds of State and county psychiatric hospitals.

(b) Plans for interfacing with other housing providers in the County should also be formalized.

10:39-4.3 Reserved

10:39-4.4 Population priorities

(a) First priority for residential group homes shall be given to individuals who fall within State Target Group "I" and "II" cited in N.J.A.C. 10:37-5.2. Within this sub-group of clients, housing spaces should first be filled by persons who are currently residing in hospital settings (I), then by persons residing in the community-at-large who meet Target Group II criteria.

(b) Only after referrals have been sought from State Target Group I, shall a residential program accept referrals of other individuals, prioritized as indicated in N.J.A.C. 10:37-5.2.

(c) In filling vacancies, residential staff shall also consider ***the*** compatibility needs of clients and potential roommates. ***Pursuant to Titles VI and VII of the Civil Rights Act of 1964 as amended and Section 504 of the Rehabilitation Act of 1973, discrimination on the basis of race, sex, religion, national origin, age or physical handicap in provision of services is prohibited.***

10:39-4.5 Services to be provided

(a) Residential programs shall include, but not be limited to, the following services, as defined in this chapter:

1. Housing;
2. Placement;
3. Assessment and evaluation;
4. Counseling;
5. Service management, which includes:
i. Information gathering;
ii. Discharge/services planning;
iii. Linkages;
iv. Follow-ups; and
v. Personal/advocacy;
6. Information and referral;
7. Daily living education;
8. Community organization;
9. Recreation; and
10. Transportation.

10:39-4.6 Service approaches

(a) To the greatest extent possible, residents shall share direct responsibility in the residential living arrangement, for the following:

1. Organization and planning of program and personal activities;
2. Decision-making concerning rules and expectations; and
3. Planning and execution of routine daily living tasks, such as shopping, meal preparation, laundry, cleaning, decorating, minor repairs, etc. ***The responsibilities in this paragraph relate to those tasks which are intended to serve as activities of daily living training and not as unpaid, involuntary work under N.J.A.C. 5:27-3.1(a)13.***

(b) Residential programs shall be responsible for advocating for residents so that they receive the full range of needed services. This includes advocacy with mental health and social services (welfare, social security, teaching homemaker, etc.) and housing agencies (Rental assistance/HUD Section 8 programs, local housing authority, etc.) to assure accessibility of their services to residents on an ongoing basis.

10:39-4.7 Recordkeeping

(a) In addition to standard reporting requirements of the Division, cited in N.J.A.C. 10:37-6.73-6.79, residential providers who charge fees to clients shall keep appropriate financial records.

(b) Financial records shall include, for each resident, specific charges for all housing-related items, including rent, food, utilities, telephone, etc., and payments for those expenses, including balances due.

(c) Fees received from residents should be recorded separately for each housing facility for which the residential provider collects such fees.

10:39-4.8 Setting

(a) Residential services shall be provided on-site and off-site, in residences and in the community, as needed.

(b) Residential living arrangements***, whenever possible,*** shall be in close proximity to shopping, generic community resources, recreational facilities, and public transportation.

10:39-4.9 Staff

(a) Staffing for residential programs may vary in relation to the physical arrangement of the setting, the number of housing locations offered, the capacity to share staff, and the level of functioning and number of residents.

(b) An additional determinant of staff size shall be the range of services which are offered on-site or at other locations, in collaboration with staff from other agencies.

SUBCHAPTER 5. PHYSICAL PLANT

10:39-5.1 Water supply

(a) Every residence shall be provided with a safe supply of potable water meeting the standards as set forth in the Safe Drinking Water Act rules, N.J.A.C. 7:10.

(b) The source of such water supply shall be approved by the New Jersey Department of Environmental Protection and/or the local health agency.

(c) The minimum rate of flow of hot or cold water issuing from a faucet or fixture shall not be less than one gallon per minute.

10:39-5.2 Facilities

(a) Every residence shall contain a kitchen sink of nonabsorbent impervious material.

(b) Every residence shall be provided with a minimum of one flush type water toilet, bathroom sink and a bathtub or shower.

(c) There shall be at least one toilet, sink and one bath or shower for each eight residents.

(d) The bathroom sink shall be located in or adjoining the toilet area.

(e) Every toilet, bathroom sink and bathtub or shower shall be:

1. Accessible from within the building without passing through any part of any other rooming unit; and

2. Contained in a room or rooms which are separated from all other rooms by walls, doors or partitions that afford privacy.

(f) No one shall be required to go farther than one floor above or below his or her rooming unit to the bathroom.

(g) No resident shall be without ready access to a bathroom, bathtub or shower by reason of physical disability.

(h) Every plumbing fixture shall be connected to water and sewer/septic systems approved by the New Jersey Department of Environmental Protection and/or the local health agency, and shall be maintained in good working condition. Plumbing systems shall be well maintained.

(i) Every kitchen sink, bathroom sink and bathtub or shower required by this section shall be connected to both hot and cold water lines.

(j) Every residence shall have water heating facilities which are installed and connected with the hot water lines.

(k) The water heating system must be capable of delivering water at a minimum temperature of not less than 120 degrees Fahrenheit and at a maximum temperature of not more than 140 degrees Fahrenheit at all times in accordance with anticipated needs.

10:39-5.3 Garbage and rubbish storage

Garbage, rubbish or other organic waste shall be stored in watertight receptacles of metal or other approved material. Such receptacles shall be provided with tight-fitting covers. A sufficient number of garbage or rubbish receptacles shall be available, and shall conform to State rules and local ordinances.

10:39-5.4 Lighting

(a) The residence lighting system must be in working order and sufficient for the appliances and/or equipment used.

(b) Every habitable room shall have at least one window or skylight facing directly to the outdoors.

(c) The minimum glazed area of the total windows or skylights shall be eight percent of the floor area of each room.

10:39-5.5 Electrical services

(a) Every residence shall be provided with electric service which shall be adequately maintained.

(b) Every habitable room shall contain sufficient wall type electric outlets and lamps or light fixtures to enable occupants to use the room for its intended function. Lighting in habitable rooms shall be sufficient to read.

(c) Every outlet and lamp shall be maintained in a good and safe condition and shall be connected to the source of electric power.

(d) No temporary wiring shall be used except extension cords which meet the following requirements:

1. Run directly from portable electrical fixtures to convenient outlets;

2. Do not lie under rugs or other floor coverings; and

3. Do not extend through doorways, transoms, or other openings through structural elements.

(e) Every portion of each staircase, hall, cellar, basement, landing, furnace room, utility room, and all similar non-habitable space shall have either natural or artificial light available at all times, with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portions, and sufficient for safe use of the area for its intended purpose.

(f) Every portion of any interior or exterior passageway or staircase shall be illuminated naturally or artifically at all times with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portion of the normally traveled stairs and passageways. Lighting must be sufficient to prevent accidents.

(g) Every bathroom and water closet compartment shall have either natural or artificial light available at all times, with an illumination of at least three lumens per square foot (three foot-candles). The light shall be measured 36 inches from the floor at the center of the room. Artificial lighting shall be controlled by a wall switch so located as to avoid danger of electrical hazard. There must be sufficient light to use the room and/or area for its intended purpose.

10:39-5.6 Ventilation

(a) Means of ventilation shall be provided for every habitable room. The ventilation may be provided either by an easily operable window or skylight having an openable area of at least 50 percent of the minimum window area, or by other means acceptable to the Division which will provide at least two air changes per hour.

(b) Means of ventilation shall be provided for every bathroom or water closet compartment. The ventilation may be provided either by an easily operable window or skylight having an openable area of at least 50 percent of the minimum window area or by other means acceptable to the Division which will provide at least six air changes per hour.

(c) Ventilation shall be sufficient to remove odors.

10:39-5.7 Heating

(a) Every residence shall have heating facilities which are:

1. Properly installed;

2. Maintained in good and safe working condition; and

3. Capable of safely and adequately heating all habitable rooms and bathrooms located therein to a temperature of at least 68 degrees Fahrenheit when the outside temperature is zero degrees Fahrenheit.

(b) The temperature shall be read at a height of three feet above floor level at the center of the room.

(c) There shall be heat adequate to maintain a minimum inside temperature in all habitable rooms and bathrooms of 68 degrees Fahrenheit from October 1 of each year to the next succeeding May 1 and when the outside temperature is 57 degrees or less.

(d) Every space heater, except electrical, shall be properly vented to a chimney or duct leading to the outdoors.

(e) Unvented portable space heaters, burning solid, liquid or gaseous fuels, shall be prohibited.

10:39-5.8 Structural safety and maintenance

(a) Every foundation, floor, wall, ceiling, door, window, roof or other part of a residence shall be kept in good repair and capable of the use intended by its design, and any exterior part or parts thereof subject to corrosion or deterioration shall be kept well painted.

(b) Every inside and outside stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition and good repair.

(c) Every stairway having three or more steps shall be properly banistered and safely balustraded.

(d) Every porch, balcony, roof, and/or similar place higher than 30 inches above the ground, used for egress or for use by occupants, shall be provided with adequate railings or parapets which are properly balustraded and be not less than three feet in height.

(e) Every roof, wall, window, exterior door and hatchway shall be free from holes or leaks that would permit the entrance of water within or be a cause of dampness.

(f) Every foundation, floor and wall of each residence shall be free from chronic dampness.

(g) Every residence shall be free from rodents, vermin and insects. A provider agency of a residence located in an area found by the Division to be infested by rats, insects or other vermin shall carry out such rat stoppage, vermin proofing or other means of preventing infestations of said dwellings as may be required by the Division.

(h) Every openable window, exterior door, skylight and other opening to the outdoors shall be supplied with properly fitting screens in good repair from May 1st until October 1st of each year. Screens shall have a mesh of not less than No. 16.

(i) Every residence, including all exterior areas of the premises, shall be clean and free from garbage or rubbish and hazards to safety.

(j) Lawns, hedges and bushes shall be kept trimmed and shall not be permitted to become overgrown and unsightly.

(k) Fences shall be kept in good repair.

(l) The grounds maintenance shall be consistent with that of the neighborhood, unless the condition of the neighborhood does not generally meet the standards for maintenance set forth in this subchapter.

(m) The Division may require that the provider agency clean, repair, paint, whitewash or paper such walls or ceiling, when a wall or ceiling within a dwelling has deteriorated so as to provide a harborage for rodents or vermin, or when such a wall or ceiling has become stained or soiled, or the plaster, wallboard, or other covering has become loose or badly cracked or missing.

(n) Every water closet compartment floor and bathroom floor shall be so constructed and maintained as to be reasonably impervious to water and shall be kept in a clean condition.

(o) No provider agency shall cause or permit any services facilities, equipment or utilities which are required under this subchapter to be removed from, shut off or discontinued in any residence or part thereof, except for such temporary interruption as may be necessary while actual repairs or alterations are in progress, or during temporary emergencies when discontinuance of service is authorized by the Division.

(p) In the event that any service or utility is discontinued, the provider agency shall take the immediate steps to cause the restoration of such service or utility.

(q) All residences shall be clean and sanitary prior to occupation by any resident, and shall be maintained in a clean and sanitary condition.

(r) The provider agency shall ensure the orderly maintenance of the premises. The storage of objects or materials shall be done in an orderly manner so as to not constitute a health, safety or fire hazard.

10:39-5.9 Kitchen facilities

(a) Kitchen storage space shall be clean and well ventilated.

(b) Containers of food shall be covered and appropriately stored at least 12 inches above the floor on shelves or other clean surfaces.

(c) Refrigeration and storage of food shall be provided at not more than 45 degrees Fahrenheit. Freezer compartments shall operate at no more than zero degrees Fahrenheit and must be maintained in good condition and without excessive ice build-up.

(d) All food and drink shall be:

1. Safe for human consumption, clean, wholesome and free of spoilage; and

2. Prepared and served in a sanitary manner.

(e) All equipment and utensils used for eating, drinking, preparation and keep shall be:

1. Kept clean and in good condition; and

2. Thoroughly washed after each use.

(f) Floors, walls and work surfaces of food preparation and food serving areas shall be kept clean and in good condition at all times.

10:39-5.10 Occupancy and use of space

(a) Every rooming unit occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space. Every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet of floor space for each occupant. Doors for privacy shall be provided and maintained.

(b) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet. The floor area of that part of any room where the ceiling is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(c) Sufficient closet space for storage shall be provided. The storage space shall be uncluttered and sufficient for clothing and supplies.

(d) Rooms shall be of adequate size for the number of people, types of activities and storage.

(e) A room located in whole or in part below the level of the ground may be used for sleeping, provided that the following requirements are met:

1. The walls and floor which are in contact with the earth have been damp-proofed in accordance with a method approved by the Division; and

2. All requirements generally applicable to habitable rooms ***under this subchapter*** are satisfied.

(f) Any matter or requirement essential for the structural safety of a residence or essential for the safety or health of the residents thereof or of the public, and which is not covered by the provisions of this subchapter, shall be the subject of determination by the Division Director in specific cases.

SUBCHAPTER 6. FIRE SAFETY

10:39-6.1 Uniform Fire Code

The provisions of N.J.A.C. 5:18, the Uniform Fire Code, are hereby incorporated by reference.

10:39-6.2 Group homes with five or fewer residents

The provisions of N.J.A.C. 5:18 which apply to the R-3 use group shall apply to group homes with five or fewer residents.

10:39-6.3 Group homes with six or more residents

The provisions of N.J.A.C. 5:18 which apply to the I-1 use group shall apply to group homes with six or more residents.

10:39-6.4 Group homes in multiple unit dwellings

The provisions of N.J.A.C. 5:18 which apply to the R-2 use group shall apply to group homes in multiple unit dwellings.

10:39-6.5 Smoke detectors

(a) Single station smoke detectors (battery-operated for those homes with five or fewer residents and electric for those homes with six or more residents and group homes in multiple dwellings) shall be installed at the following locations:

1. Living room and each bedroom;

2. Designated smoking areas;

3. The highest ceiling area in each stairwell; and

4. Basements and cellars located in the highest ceiling area of the first floor stair landing or other approved location where the earliest detection of fire would activate the alarm.

10:39-6.6 Fire drills

(a) Fire drills shall occur at a minimum of once per month.

(b) Fire drills should be conducted in the evening at least 50 percent of the time.

(c) Evacuation should be completed in less than two minutes.

(d) For each fire drill, the time, date, participants, problem areas, resolution of problems and timeliness of egress shall be documented.

(e) The Division's Bureau of Licensing & Inspections shall review provider agency compliance with the fire drill procedure annually during the on-site inspection.

10:39-6.7 Kerosene heaters
The use of kerosene heaters is prohibited.

10:39-6.8 Variances
(a) Variances from N.J.A.C. 5:18 shall be permitted in accordance with N.J.S.A. 52:27D-200.
(b) The PA shall provide the Division with a copy of all applications for variances and the action taken on them.

10:39-6.9 Administrative hearing
Administrative hearings regarding the provisions of this subchapter will be conducted in accordance with N.J.S.A. 52:27D-206.

SUBCHAPTER 7. RESIDENT COMPLAINT PROCEDURES

10:39-7.1 Development of resident complaint procedures
All PAs shall establish internal complaint procedures which will be subject to the Divisions's review and approval at the time of the PA's annual request for State funding or license renewal.

10:39-7.2 Appeal process; ombudsman
The provisions of N.J.A.C. 10:37-4.6, regarding client complaint/agency ombuds procedures are hereby incorporated by reference.

(a)

DIVISION OF PUBLIC WELFARE

Special Payments Handbook: Emergency Assistance; Funeral and Burial Expenses Appendix A: Supplemental Security Income Payment Levels

Readoption with Recodification and Amendment: N.J.A.C. 10:100-3 and Appendix A to N.J.A.C. 10:83-1

Proposed: October 17, 1988 at 20 N.J.R. 2563(a).
Adopted: January 19, 1989 by Drew Altman, Commissioner, Department of Human Services.
Filed: January 19, 1989 as R.1989 d.98, **without change.**

Authority: N.J.S.A. 44:7-12, 44:7-13, 44:7-38 and 44:7-43.

Effective Date: January 19, 1989 for Readoption, February 21, 1989 for Recodification and Amendment.
Expiration Date: January 19, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:100-3, which will be recodified as N.J.A.C. 10:83-1.

Recodification Chart

Old Citation	New Citation	Old Citation	New Citation
10:100-3	10:83	10:100-3.6	10:83-1.6
Subchapter 3.	Subchapter 1.	10:100-3.7	10:83-1.7
10:100-3.1	10:83-1.1	10:100-3.8	10:83-1.8
10:100-3.2	10:83-1.2	10:100-3.9	10:83-1.9
10:100-3.3	10:83-1.3	10:100-3.10	10:83-1.10
10:100-3.4	10:83-1.4	Appendix A	10:83-1.11
10:100-3.5	10:83-1.5		

Full text of the adopted amendment follows.

10:83-1.11 New Jersey Supplemental Security Income payment levels

New Jersey Supplemental Security Income payment levels are as follows:

Living Arrangement Categories	Payment Level 1/1/88
Eligible Couple	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	$50/532.00†
Residential Health Care Facilities and certain residential facilities for children and adults	$989.36
Living Alone or with Others	$557.36
Living in Household of Another, Receiving Support and Maintenance	$447.76
Eligible Individual	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	$25/354.00†
Residential Health Care Facilities and certain residential facilities for children and adults	$504.05
Living Alone or with Others	$385.25
Living with Ineligible Spouse (No other individuals in household)	$557.36
Living in Household of Another, Receiving Support and Maintenance	$280.31

†The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.

(b)

DIVISION OF PUBLIC WELFARE

Food Stamp Program

General Provisions, Application Process, Eligibility Factors other than Need, Resources, Financial Eligibility, Certification Procedures, Special Income Circumstances, Fair Hearings, Employment and Training Requirements, Incorrect Issuances, Maximum Income and Coupon Allotments, and Benefit Determination and Proration Formulas

Readoption with Amendments: N.J.A.C. 10:87
Adopted New Rules: N.J.A.C. 10:87-2.36, 3.16, 4.20, 5.11, 7.19, 11.32 and 11.33
Adopted Repeal: N.J.A.C. 10:87-10

Proposed: November 7, 1988 at 20 N.J.R. 2689(a).
Adopted: January 27, 1989 by Drew Altman, Commissioner Department of Human Services.
Filed: January 27, 1989 as R.1989 d.121, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4B-2; 7 CFR 272.5, .6, and .8; 7 CFR 273.1 through .14, .16, and .18; 7 CFR 274.1 and .2; and 7 CFR 278.1(h).

Effective Date of Readoption: January 27, 1989.
Effective Date of Amendments, Repeal and New Rules: February 21, 1989.
Expiration Date: January 27, 1994.

Summary of Public Comments and Agency Responses:

Comments were received from two county welfare agencies. The commenters noted typographical errors, recommended additional language which they believed would further clarify specific sections, and requested that alterations be accommodated in the final readoption in order to enhance county welfare agency administrative operations.

The Department acknowledges the typographical errors and omissions which were included in the proposed readoption, and has corrected those errors. The Department also agrees to modify the language of certain

sections in order to clarify the final rules (within the authority granted by the Food Stamp Act of 1977 as amended) so that local agency administrative operations may be improved. In other instances, the commenters recommended changes which are beyond the Department's authority to change because of specific Federal statute or regulation.

1. COMMENT: One commenter requested clarification of the existing policy concerning entitlement to food stamp expedited service. The commenter was uncertain when a food stamp applicant would be entitled to expedited service.

RESPONSE: The proposed language reflects Federal regulations on the subject, and the Department believes that the language, as it was proposed, adequately addresses all situations which require expedited service processing. In the instant situation related by the commenter, an applicant not meeting one condition for eligibility for expedited service would be entitled to it if the applicant met another condition.

2. COMMENT: A commenter noted that there was an inconsistency in that N.J.A.C. 10:87-5.4(a)6 states that JTPA earnings are to be treated as earned income, while N.J.A.C. 10:87-5.9(a)15xii states that such moneys are exempt income for food stamp purposes.

RESPONSE: Both regulatory references have been revised to state that JTPA earnings are the only JTPA funds which can be considered countable income when calculating food stamp eligibility.

3. COMMENT: A commenter recommended that the Department modify the method in which College Work Study Program funds are treated for food stamp purposes. Under the proposed rules, those funds are included in a student's total financial aid package when evaluating what portion of that package is considered food stamp income. The commenter suggested that the work study moneys be considered income separate from the educational financial aid package; those funds should be treated as earned income and should be reported by the recipient through the Monthly Reporting System.

RESPONSE: The Department does not have the statutory authority to alter the methodology used in the treatment of College Work Study Program moneys for food stamp purposes. Until such time as the U.S. Department of Agriculture revises the means in which those funds are processed, the Department is obliged to adhere to the Federal regulations.

4. COMMENT: One commenter expressed the opinion that it was not appropriate to include student eligibility rules at N.J.A.C. 10:87-5, when such information is already contained in N.J.A.C. 10:87-3.

RESPONSE: In order to reinforce the concepts related to the eligibility of students of higher education for the Food Stamp Program, the Department elected to include references to that subject in two subchapters of the Food Stamp Manual. Accordingly, the Department is retaining the presentation as proposed.

5. COMMENT: A commenter requested that N.J.A.C. 10:87-2.2(c)1i be expanded, for the purpose of clarification, to state that parents with minor children can only be granted separate household status from the parents with whom they reside if they purchase and prepare meals separately.

RESPONSE: The Department declined to include such a statement because the general definition of a food stamp household (N.J.A.C. 10:87-2.2) already makes adequate reference to the purchase and preparation of meals as it relates to the determination of household status. To include similar language elsewhere would be redundant.

6. COMMENT: A commenter called attention to N.J.A.C. 10:87-5.4(a)4 which refers to the Comprehensive Employment and Training Act. The commenter suggested that the term "Job Training and Partnership Act" might be more appropriate.

RESPONSE: The Federal food stamp regulations, at 7 CFR 273.9(b)(1)(iii), specifically use the term "Comprehensive Employment and Training Act". The Department, therefore, must use similar language.

7. COMMENT: A commenter noted that the case record retention requirement mandates that each case be available for review for three years from the month of origin of the last record in the casefile, rather than three years from the month of origin of each record.

RESPONSE: N.J.A.C. 10:87-9.9(b) has been revised to accommodate the commenter's concern.

8. COMMENT: A commenter asked whether the six year retention period of Authorization to Participate (ATP) documents was applicable to ATPs which were cancelled and never transacted.

RESPONSE: Appendix A; Section A2(B) has been revised to state that the six year retention requirement is not applicable to ATP cards cancelled and never transacted.

9. COMMENT: A commenter suggested that each county welfare agency's (CWA's) Food Stamp Supervisor be responsible for the examination of improperly manufactured food stamp coupon booklets.

RESPONSE: Rather than require a specific individual to perform the examination of coupon booklets, the Department revised Appendix A; Section A3 to permit either the CWA's Fiscal or Food Stamp Supervisor to conduct the examination.

10. COMMENT: A commenter noted that CWAs utilize a Line N transaction to generate a replacement ATP.

RESPONSE: Appendix A; Section C was revised to reflect the comment.

11. COMMENT: A commenter stated that the CWAs should be allowed to utilize an armored car courier service to deliver cancelled food coupons to the New Jersey Division of Public Welfare.

RESPONSE: Appendix A; Section 3 was revised to permit the utilization of an armored car service.

12. COMMENT: A commenter questioned the rationale for requiring the preparation of a written notice which specifies the number of each coupon denomination booklet to be replaced. The commenter noted that a Line N ATP serves the same purpose.

RESPONSE: Appendix A; Section C has been expanded to permit the generation of a Line N ATP for the purpose of noting the type of coupon booklets to be replaced.

Summary of Changes Subsequent to Proposal:

In addition to technical corrections, the following modifications were made as a result of further review and in response to public comments received.

1. In accordance with the October 7, 1988 edition of the Federal Register at 53 FR 39440, language was included at N.J.A.C. 10:87-1.14(a) to state that information obtained through the Systematic Alien Verification Program concerning aliens is to be afforded the same confidentiality safeguards afforded other programs listed under this subsection.

2. Language was added at N.J.A.C. 10:87-2.3(b)6 to reflect recent Federal court decisions which held that foster children are to be considered boarders for food stamp purposes. Foster children, at the option of the household, may be included in the household. This change may increase the food stamp benefits of households which provide foster care because payments intended for foster children will be excluded from household income if the foster children are not included in the household.

3. In accordance with the Immigration Reform and Control Act of 1986, language has been added to N.J.A.C. 10:87-2.3(c)3 which requires that each food stamp recipient attest to his or her citizenship or eligible alien status.

4. In accordance with Federal technical clarifications published in the Federal Register of August 19, 1988 at 53 FR 31641, language was added at N.J.A.C. 10:87-2.6(b)1iii to comply with the Federal regulation at 7 CFR 273.1(d)2 which stipulates that a mandatory food stamp head of household designation is subject to revision if the household's composition changes. In some instances, this might result in a disqualified household becoming eligible for program benefits.

5. The definition of a Public Assistance (PA) household at N.J.A.C. 10:87-2.12(a)1 was revised to reflect situations where food stamp applicants jointly file for AFDC and/or Medicaid, but are subsequently denied eligibility for the latter two programs while retaining food stamp eligibility. Under the original language, the household would still be considered a PA food stamp household, even though the household was eligible to receive only food stamps. It is anticipated that this clarification will enhance county welfare agency administrative operations.

6. N.J.A.C. 10:87-2.12(c) was added in order to comply with Federal Register regulations at 53 FR 39441, published on October 7, 1988, which require that each household member age 18 or older attest to his or her citizenship or eligible alien status.

7. N.J.A.C. 10:87-4.8(a)7i was deleted because it is not only confusing to administrative staff, but is also not supported by Federal regulations at 7 CFR 273.8(e).

8. N.J.A.C. 10:87-5.4(a)6 has been reworded, at the suggestion of a county welfare agency, to clarify how earnings received through JTPA are to be treated. Such monies are considered countable earned income unless the JTPA participant is under 19 years of age and is under the parental control of an adult household member, in which case the JTPA earnings are excluded from food stamp income.

9. Language has been added at N.J.A.C. 10:87-5.9(a)10ii to reflect recent Federal court decisions which have held that foster care payments are to be excluded, for food stamp purposes, if the foster child is not

included in the household receiving food stamp benefits. It is anticipated that this change will be beneficial to households which provide foster care.

10. N.J.A.C. 10:87-5.9(a)11 has been modified to comply with the Federal regulation at 7 CFR 273.9(c)7, which allows an income exclusion for students under the age of 18. That age limitation had inadvertently been changed to 19 in the proposed readoption.

11. N.J.A.C. 10:87-5.9(a)15xii has been rewritten, at the recommendation of a county welfare agency, to clarify how JTPA moneys are to be treated for food stamp purposes. JTPA earnings are considered earned income, unless the JPTA participant is under the age of 19 and is under the parental control of an adult household member. All other JTPA payments, allowances, and reimbursements are to be exempted from food stamp income.

12. Language at N.J.A.C. 10:87-5.10(a)4 pertaining to the food stamp dependent care deduction has been amended to reflect changes which took place as a result of The Hunger Prevention Act (P.L. 100-435). The household is now allowed a maximum income deduction for each dependent for whom the household pays dependent care. Households which pay for care for multiple dependents may have their allotments increased as a result of this change.

13. The language in N.J.A.C. 10:87-6.15(b)6 has been rewritten not only to remove typographical errors, but also to reflect the per-dependent deduction which was allowed under The Hunger Prevention Act (P.L. 100-435). The new language, in addition, more closely adheres to Federal regulations at 7 CFR 273.10(e), which specify how a food stamp allotment is to be calculated.

14. Language was added at N.J.A.C. 10:87-9.9(b) at the request of a county welfare agency, to clarify that a case record cannot be destroyed until no activity has occurred within it in the past three years.

15. The reference at N.J.A.C. 10:87-9.9(c) to Form FNS-286 was removed from the subsection. That document is no longer in use in the Food Stamp Program.

16. In accordance with Federal technical amendments which were issued in the Federal Register of August 19, 1988 at 53 FR 31641, a change has been made to N.J.A.C. 10:87-10.9(c)4iii which deletes non-work activity from Employment and Training (E&T) components for the purpose of determining the maximum hours which a household member can participate in E&T. The phrase "... in cash or in kind ..." was also incorporated in order to conform with Federal regulations at 7 CFR 273.7(f).

17. In accordance with Federal technical amendments issued in the Federal Register of August 19, 1988 at 53 FR 31641, language was added to N.J.A.C. 10:87-10.10 to conform with Federal regulations at 7 CFR 273.7(n) which provide clarification of the policies concerning the determination of voluntary quit, exemptions from voluntary quit, advance warning of voluntary quit penalties to applicant households, and how states are to impose voluntary quit sanctions in certain specific situations. The word "reduction" in 10.10(c)2i was deleted because voluntary quit penalties affect food stamp households, rather than individual recipients, and a household's allotment could not be reduced due a voluntary quit penalty; it could only be terminated. N.J.A.C. 10:87-10.10(d) was expanded to state that a food stamp head of household cannot be considered exempt from voluntary quit provisions when the only basis of the exemption is the fact that the head of household had been employed 30 or more hours per week, and then quit that employment. It is not anticipated that households or county welfare agencies will experience any additional negative impact as a result of the enactment of those technical regulatory clarifications.

18. In accordance with technical amendments which were issued in the August 19, 1988 edition of the Federal Register at 53 FR 31641, language was added to N.J.A.C. 10:87-10.13 to comply with Federal regulations at 7 CFR 273.7(g) which clarify conditions which may warrant either immunity from or removal of a voluntary quit disqualification penalty. A few households might retain their food stamp eligibility as a result of the enactment of these changes.

19. The last sentence of N.J.A.C. 10:87-11.7(m) was deleted because Federal regulations at 7 CFR 273.16(e)4 do not define good cause for failure to appear at an administrative disqualification hearing. The Division believes that each Administrative Law Judge should make the determination of good cause for failure to appear at an administrative disqualification hearing.

20. N.J.A.C. 10:87-11.33(a) was rewritten in order to conform with the Federal language contained in 7 CFR 273.16(i). A 10-day county welfare agency reporting requirement has been added so that the Division may comply with the 30-day reporting requirement mandated by that Federal regulation.

21. Several changes were made to Appendix A to correct typographical errors and omissions which were published in the proposed readoption.

Full text of the readopted rules can be found at N.J.A.C. 10:87.

Full text of the changes between proposal and adoption follows (additions to proposal indicated by **underlining** with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:87-1.2 Administration of the Program

(a) The Program is authorized by the U.S. Congress and regulated by the U.S. Department of Agriculture (USDA). In New Jersey, the county welfare agencies (CWAs) are responsible for certifying eligible households and arranging for coupon issuance outlets. Only persons employed by a CWA are legally empowered to enroll applicants in the program.

(b) Although the counties directly administer the Program, the State is ultimately responsible for ensuring that program operations conform with Federal laws and USDA regulations.

(c) The county administration of the Food Stamp Program is supported by a centralized computer management information system to comply with the requirement for keeping a uniform system of records and accounts throughout the State. CWAs have access to the management information system that performs routine clerical tasks, determines eligibility status, calculates the coupon allotment, produces food stamp Authorizations to Participate (ATPs), and management and fiscal reports. This automated system expedites implementation of policy changes, eliminates duplication of effort, and allows for efficient updating of information.

10:87-1.3 Legal basis of the Program

Policies and procedures for the administration of the program are derived from the Food Stamp Act of 1977 (7 U.S.C. 2011-2029) and current USDA, Food and Nutrition Service (FNS), regulations and instructions (which are uniform nationwide).

10:87-1.4 Program informational activities

(a) The Division of Public Welfare (DPW) will supply CWAs with posters and pamphlets concerning nutritional information, and, where available, explanations of Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP) explanations. CWAs shall display the posters and make the pamphlets available at all food stamp and public assistance offices.

(b) CWAs shall inform participant and applicant households of their program rights and responsibilities. The information may be provided through whatever means DPW deems appropriate.

(c) All informational material shall be available in languages other than English as required by FNS bilingual guidelines (see 7 CFR 272.4(b)) and shall include a statement that the program is available to all without regard to race, color, sex, age, handicap, religious creed, national origin, or political belief.

10:87-1.5 Purpose of the New Jersey Food Stamp Manual

The purpose of this manual is to outline the policies and procedures applicable to the certification and/or recertification of those who apply for food stamps. The policies and procedures contained in this manual shall be used to determine eligibility criteria and issuance requirements for food stamp benefits for all qualified households regardless of their eligibility for other assistance programs.

10:87-1.6 The concept of reasonable certainty; situations not covered by the manual

(a) While this manual attempts to minimize discretionary action on the part of the certification worker, there will be situations which are not specifically covered by existing policy guidelines. In those cases the certification worker shall be expected to make a judgment, based on his or her experience and/or knowledge of the Program, which can be defended as both reasonable and prudent.

(b) In cases where the treatment of a situation is neither specifically nor generally addressed in this manual, the matter shall be referred to DPW for resolution.

10:87-1.7 Assignment of manual

Copies of this manual shall be assigned to administrative and other staff working with applicants and recipients. Each staff member is expected to be thoroughly familiar with its contents so that policy and procedures may be consistently applied.

10:87-1.8 Responsibility of manual holders

Each holder of the manual shall be responsible for maintaining a current and up-to-date manual. DPW shall issue revisions and changes as necessary; the manual holder shall insert new material and remove obsolete pages promptly.

10:87-1.9 Retention of obsolete material

The CWA shall retain one copy of obsolete manual material for administrative purposes.

10:87-1.10 Public access to the manual

(a) This manual is a public document and shall be made accessible in accordance with (b) through (h) below.

(b) Fair hearings: Specific policy material necessary for an applicant, recipient, and/or representative to determine whether or not a hearing should be requested, or to prepare for a hearing, shall be provided to such persons without charge.

(c) Libraries: All public and private libraries which have agreed to maintain the manual on a current up-to-date basis shall make a copy available to the public, subject to their own regulations.

(d) Legal services: Each county legal services office shall be furnished with a copy of this manual.

(e) Service organizations: Welfare, social service and other nonprofit organizations shall be furnished with a free copy of the manual upon receipt by DPW of an official, written request.

(f) Individuals: A current up-to-date copy of the manual, or any part of it, shall be available from DPW, at the cost of printing and mailing, to anyone who requests it in writing.

(g) Public examination: A current up-to-date copy of the manual will be maintained in each CWA for examination by members of the public during regular working hours.

(h) All supplementary State policy directives shall be sent to those who have been supplied with the manual. A mailing list shall be maintained by DPW for that purpose.

10:87-1.11 Policy of nondiscrimination

CWAs shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings or any other program service, for reasons of age, race, color, sex, handicap, religious creed, national origin or political belief.

10:87-1.12 Complaint procedures

(a) Persons who believe that they have been subject to discrimination as described in N.J.A.C. 10:87-1.11 may complain directly to USDA and/or to DPW. The CWA shall explain the complaint procedures and advise the individual(s) of their right to file a complaint.

(b) Time limit for filing a complaint: A complaint must be filed no later than 180 days from the date of alleged discrimination, unless the period is extended by USDA.

(c) CWA responsibility: The CWA shall accept all complaints of discrimination and forward them promptly to the Director of DPW who will in turn forward them to USDA.

(d) If a person alleges verbally that a discriminatory act has been committed and does not (or cannot) put it in writing, the CWA worker receiving the complaint shall do so. If possible, the following information shall be obtained from the complainant:

1. (No change.)

2. Identity of the sources of discrimination: Location and name of the organization or office and/or person(s) accused of discriminatory practices;

3. Nature of incident: The nature of the incident, action, or aspect of the program administration that led to the alleged discrimination;

4. (No change.)

5. Identity of others having knowledge of discrimination: Names, titles (if appropriate), and addresses of persons (other than the complainant) who may have knowledge of the discriminatory act(s);

6. (No change.)

(e) Incomplete complaints: Written complaints shall be forwarded to the Director of DPW even if the information in (d) above is not complete. Persons who file complaints shall be encouraged to provide this information to facilitate the investigation of the alleged discrimination and shall be advised that investigations by USDA will be conducted only if information specified in paragraphs (d)2, 3, and 4 above is provided.

10:87-1.13 Public Notification Plan

(a) The CWA shall publicize the procedure described in N.J.A.C. 10:87-1.12.

(b) Minority group contacts: At least once every fiscal year, the CWA shall advise local minority group organizations, in writing, that the Food Stamp Program is available to all eligible households on a nondiscriminatory basis and of the complaint procedures. If there are no minority group organizations in the county, the CWA shall contact minority ministers, teachers, and/or other community leaders in the county, informing them of this nondiscrimination policy.

(c) Records relating to the Public Notification Plan: The CWA shall maintain file copies of correspondence concerning public notification of nondiscrimination. These documents shall be available for inspection during audits and compliance reviews conducted by State and Federal offices.

(d) The CWA shall display a nondiscrimination poster (supplied by FNS and/or DPW) in all local food stamp certification offices.

(e) The CWA shall ensure that participants (and other low-income households) have access to information regarding their rights, nondiscrimination statutes and policies and complaint procedures, no later than 10 days from the date the information is requested.

(f) The CWA shall advise applicants for program participation that his or her application shall be processed without discrimination in accordance with N.J.A.C. 10:87-1.11.

10:87-1.14 Confidentiality and disclosure of information

(a) Confidentiality of information: The CWA shall restrict the use or disclosure of information obtained from applicant or recipient households to persons directly connected with the administration or enforcement of the Food Stamp Program, AFDC, SSI, Medicaid, Child Support and Paternity program (CSP), Income Eligibility Verification System (IEVS), or with any other Federal or federally aided, means-tested assistance programs. ***The verification of immigration status of aliens applying for food stamp benefits will be accomplished through the Systematic Alien Verification for Entitlements (SAVE) Program and is subject to the same confidentiality safeguards afforded other programs listed herein.***

(b) Disclosure of information: The CWA may release information concerning an applicant or recipient household in the following situations only:

1. Law enforcement agencies: Upon written requests, the CWA shall cooperate in furnishing information to Federal, State or local law enforcement agencies in any investigation which concerns a household or person fraudulently obtaining coupons or otherwise violating the statutory provisions of the Food Stamp Act and/or FNS and/or State regulations. The law enforcement agency must provide a written request which shall include the identity of the individual requesting the information and his or her authority to do so, the violation being investigated, and the identity of the person about whom the information is requested.

2. Judicial summons: Staff members shall provide such testimony as may be mandated by a court of competent jurisdiction in connection with administration and enforcement of the Food Stamp Program (see (a) above).

3. Waiver of confidentiality: Upon written request by the household, the household may waive its rights to confidentiality of information and the CWA shall make disclosure of information, but only to the extent specifically authorized by the waiver.

4. Client review: If there is a written request by a responsible member of the household, its currently authorized representative, or

a person acting in its behalf to review materials in its case file, the material and information contained in the case file shall be made available during normal business hours.

i. Confidential information: The CWA may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

5. Fair hearings: Information and records shall be released to parties directly involved in a fair hearing procedure (see N.J.A.C. 10:87-8.6(a) and 10:87-8.15(a)).

6. Release of lists of names and addresses: The furnishing of any lists of names and/or addresses or both for purposes not directly related to the provisions of (a) above is specifically prohibited.

7. (No change.)

8. Parent Locator Service: The CWA shall make available, to the CSP's Parent Locator Service, food stamp case file information to assist the CSP program, under Title IV-D of the Social Security Act.

9.-10. (No change.)

10:87-1.15 Public access to information

(a) Copies of the manual, supplementary directives issued for use in certifying applicant households, and food stamp fair hearing reports shall be readily available for public inspection in all CWA central food stamp offices.

(b) In addition, Federal food stamp statutes, FNS regulations, instructions, the State Plan of Operation, and a copy of this manual shall be readily available for public inspection during regular office hours in the central DPW office as well as the FNS Regional Office.

(c) DPW, at its option, may require other CWA offices within the State to maintain a copy of Federal statutes and FNS regulations.

10:87-1.16 Appeals

An applicant or recipient shall have the right to appeal any action or inaction concerning the Program on the part of the CWA that affects his or her household (see N.J.A.C. 10:87-8 concerning fair hearings).

10:87-1.17 Suits against county

(a) The CWA shall notify the DPW immediately of any suit(s) filed by any person/organization against the CWA and/or DPW which involve(s) administration of the Food Stamp Program and shall furnish DPW with copies of the original pleadings and all subsequently filed pleadings.

(b) Failure to comply: If the CWA fails to comply with the provisions of (a) above and is ordered by a court to take actions which are determined by USDA to be inconsistent with the Food Stamp Act of 1977 and its FNS regulations or instructions, the CWA may be liable for the amount of coupons issued pursuant to the court order.

10:87-2.2 Household defined

(a) A household may be composed of any of the following individuals or groups of individuals:

1.-3. (No change.)

4. Elderly and disabled individual living with others: An individual who is 60 years of age or older (and the spouse of such individual) living with others who is unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act or suffers from some other physical or mental nondisease-related, severe, permanent disability may be a separate household (see definition of elderly or disabled in N.J.A.C. 10:87-2.38 and verification requirements in N.J.A.C. 10:87-2.21*[(i)]* ***(j)***). However, the gross monthly income of the household with which the individual resides cannot exceed the gross monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.7. This income determination shall be made in accordance with the following procedures:

i. (No change.)

ii. The gross monthly income of the others shall then be compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.7 to determine if the income is within the prescribed limit. The elderly, disabled person and his or her spouse would not be considered as household members for this comparison.

5. An applicant household that has customarily purchased and prepared food separately in the past but, because of changes in financial or other circumstances, is now temporarily buying and preparing food with others, shall be considered a separate household, providing it intends to return to its former status upon receipt of food stamps. The applicant household's statements on past and intended practices shall suffice, except when the information provided is questionable according to the criteria at N.J.A.C. 10:87-2.21(j). If the applicant household does not return to its former status, the actual household composition will prevail and will be considered a client-reportable change in accordance with N.J.A.C. 10:87-9.5(a). The 10-day period for reporting that the applicant household has not returned to its former status will commence upon receipt of food stamp benefits.

(b) (No change.)

(c) In no event shall nonhousehold member status or separate household status be granted to:

1. Parents living with their natural, adopted, or step children and such children living with such parents, unless at least one parent is elderly or disabled as defined in N.J.A.C. 10:87-2.38;

i. If the natural, adopted or step child is a parent of minor children and he or she and the children are living with his or her parents, the parent of the minor children together with such children, may be granted separate household status.

2.-3. (No change.)

4. Siblings (natural, adopted, half or step brothers and sisters), unless at least one sibling is elderly or disabled as defined in N.J.A.C. 10:87-2.38.

i. If a sibling is the parent of minor children and he or she and the children are living with his or her sibling, the sibling who is the parent of the minor children, together with such children, may be granted separate household status.

10:87-2.3 Nonhousehold members, boarders and excluded household members

(a) Nonhousehold members: The individuals in (a)1 and 2 below residing with a household shall not be considered household members in determining a household's eligibility or allotment.

1. (No change.)

2. The following nonhousehold members are ineligible to participate in the program as separate households.

i. Ineligible student of an institution of higher education: Persons enrolled in an institution of post-secondary education who are ineligible because they fail to meet the eligibility criteria in N.J.A.C. 10:87-5.9(a)12.

ii. Individuals disqualified for noncompliance with the work registration, work and training requirements or voluntary quit provisions (see N.J.A.C. 10:87-10 regarding work requirements).

(b) Boarders: Boarders are defined as individuals or groups of individuals residing with a household and paying reasonable compensation to the household for lodging and meals excluding residents of a commercial boarding house.

1. (No change.)

2. Parents, children, spouse or sibling: In no event shall boarder status be granted to children or siblings residing with elderly or disabled parents or siblings or to those individuals or groups of individuals described in N.J.A.C. 10:87-2.2(c).

3.-4. (No change.)

5. Income and resources of persons having boarder status: None of the income and resources of individuals determined to be boarders and who are not members of the household providing boarder services shall be considered available to such household. However, the amount of the payment that a boarder gives to a household shall be treated as self-employment income to the household in accordance with N.J.A.C. 10:87-5.4(a)*[2.]***3.***

6. Foster children cannot be required to be included in the household with whom they reside. The household has the option of including foster children in the household, but if it elects not to do so, then the foster children shall be treated as boarders.

(c) Excluded household members: The following individuals residing with a household shall be excluded from the household when determining the household's size for the purpose of assigning a ben-

efit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of an excluded household member shall be considered available to the remaining household members in accordance with N.J.A.C. 10:87-7.14. Excluded household members may not participate in the program as separate households.

1. Intentional program violation: Individuals disqualified for intentional program violation (see N.J.A.C. 10:87-11.1 through 11.5);

2. Social Security number: Individuals disqualified for failure to obtain or refusal to provide a Social Security number (see N.J.A.C. 10:87-3.15*[(a)]*);

3. Ineligible alien status: Individuals who do not ***attest to or*** meet the citizenship or eligible alien status requirements of N.J.A.C. 10:87-3.8 or the eligible sponsored alien requirements of N.J.A.C. 10:87-7.18; or

4. Questionable citizenship status: Individuals whose citizenship is questionable (see N.J.A.C. 10:87-2.21*[(j)]***(k)*** regarding verification of questionable citizenship).

10:87-2.4 Residents of institutions and homeless individuals defined

(a) Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. Residents of institutions are not eligible for participation in the Food Stamp Program, with the following exceptions:

1. (No change.)

2. Narcotic addicts or alcoholics: Narcotic addicts or alcoholics who, for the purpose of regular participation in a drug or an alcohol treatment and rehabilitation program, reside at a facility or treatment center as described in N.J.A.C. 10:87-2.7(e);

3. Group living arrangements: Blind and/or disabled individuals who receive benefits under Title II (Retirement, Survivors, Disability Insurance benefits) or Title XVI (SSI) of the Social Security Act and who reside in a public or private nonprofit group living arrangement that serves no more than 16 residents (see N.J.A.C. 10:87-2.7(f)); and

4. (No change.)

5. Residents of public or private nonprofit shelters for homeless persons.

(b) Homeless individual means an individual who lacks a fixed and regular nighttime residence or whose primary nighttime residence is:

1. A supervised shelter designed to provide temporary accommodations, such as a welfare hotel or congregate shelter;

2. A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;

3. A temporary accommodation in the residence of another individual; or

4. A place not designed for, or ordinarily used, as regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

10:87-2.6 Head of household

(a) (No change.)

(b) For purposes of failure to comply with work registration, work and training requirements, and voluntary quit provisions, the head of household shall be considered to be the principal wage earner.

1. Principal wage earner: The principal wage earner shall be the household member (including excluded members, see N.J.A.C. 10:87-2.3(c)) who has the greatest source of earned income in the two months prior to the month of the work registration, work or training requirement or voluntary quit violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours.

i.-ii. (No change.)

iii. The head of household designation is subject to adjustment if an individual joins the household and qualifies to be the household's principal wage earner.

10:87-2.7 Authorized representatives

(a) The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in one or all of the functions described in (b) through (f) below.

(b) (No change in text.)

1. (No change in text.)

2. (No change in text.)

(c) (No change in text.)

1. (No change in text.)

(d) (No change in text.)

(e) Drug or alcoholic treatment centers as authorized representatives: Narcotics addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis may elect to participate in the Food Stamp Program. The resident shall apply and be certified for program participation through the use of an authorized representative who shall be an employee of and designated by the publicly operated community mental health center or the private nonprofit organization or institution which is administering the treatment and rehabilitation program. The organization or institution shall apply on behalf of each addict or alcoholic and shall receive and spend the coupon allotment for food prepared by and/or served to the addict or alcoholic. The organization or institution shall also be responsible for complying with the requirements set forth in N.J.A.C. 10:87-7.16.

1. (No change in text.)

2. (No change in text.)

i. (No change in text.)

ii. (No change in text.)

(f) Group living arrangement facility as authorized representative: Residents of group living arrangements shall either apply and be certified through use of an authorized representative employed and designated by the group living facility or apply and be certified on their own behalf or through an authorized representative of their own choice. Prior to certifying any residents for food stamps, the CWA shall verify that the facility is authorized by FNS or certified by the Department of Human Services (see (f)1 below).

1. (No change in text.)

i. (No change in text.)

ii. (No change in text.)

Renumber ii through vi as 2 through 6 (No change in text.)

10:87-2.10 Restrictions on authorized representatives

(a) (No change in text.)

(b) Disqualified household members: Individuals disqualified for intentional program violation shall not act as authorized representatives during the period of disqualification, unless the disqualified individual is the only adult member of the household able to act on its behalf and the CWA has determined that no one else is available to serve as an authorized representative. The CWA shall separately determine whether or not these individuals are needed to apply on behalf of the household, to obtain coupons, and to use coupons for food for the household. For example, the household may have an authorized representative to obtain its coupons each month but may not be able to find anyone to purchase food regularly with the coupons. If the CWA also is unable to find anyone to serve as authorized representative to purchase food regularly with the coupons, the disqualified member shall be allowed to do so.

(c) (No change in text.)

(d) (No change in text.)

(e) Homeless meal providers may not act as authorized representatives for homeless food stamp recipients. A homeless meal provider means a public or private nonprofit establishment (for example, soup kitchens, temporary shelter), approved by the N.J. Department of Human Services, that feeds homeless persons.

1. The Division of Public Welfare, or another appropriate State or local governmental agency identified by the New Jersey Department of Human Services, shall approve establishments and shelters serving the homeless. The establishment or shelter is required to present sufficient evidence, as determined by the State agency, that it does in fact serve meals to homeless persons. The Division of Public Welfare will remain responsible for ensuring effective compliance with these provisions when another agency has been identified to approve establishments or shelters serving the homeless.

10:87-2.11 Application for food stamps

The application process includes filing and completion of an application form, interview of the applicant, and verification of certain information. The CWA shall act promptly (see N.J.A.C. 10:87-2.30 and 2.31) on all applications and provide food stamp benefits retroactive to the month of application to those households which have completed the application process and have been determined eligible. Expedited service shall be available to households in immediate need (see N.J.A.C. 10:87-2.32 through 2.34).

10:87-2.12 Food stamp application form

(a) The composition of the applicant household will determine the appropriate food stamp application to be used:

1. PA households: Public Assistance (PA) households are those food stamp households (as determined in N.J.A.C. 10:87-2.2) in which any or all members are also applying for ***and subsequently certified to receive*** AFDC ***and/or Medicaid benefits***. For such households the appropriate application form is the Form PA-1J, "Application and Affidavit for Public Assistance", which will serve as a joint application for public assistance and food stamps.

2. NPA households: Non-public Assistance (NPA) households are those households (as determined in N.J.A.C. 10:87-2.2) in which none of the members are also applying for public assistance. For such households, the appropriate application form is the Form FSP-901, "Application for Participation in the Food Stamp Program".

3. SSI jointly processed households: SSI jointly processed households are those households in which all members are applicants for, or recipients of, SSI and are neither certified for, nor have an application for food stamps pending and have applied for food stamps at a Social Security Administration district office (SSA/DO). For such households, the appropriate application form is Form FSP-901A, "SSI Jointly Processed Application and Recertification for Participation in the Food Stamp Program" (see N.J.A.C. 10:87-2.37).

(b) All applicants for food stamp benefits shall be notified at the time of application, and at each recertification, through a written statement, that information available through the State income and eligibility verification system will be requested to verify eligibility. Discrepancies found are subject to additional verification through collateral contact and such information may affect the household's eligibility and benefits.

(c) Each household member 18 years of age and older is required to sign the application that shall contain a statement attesting under penalty of perjury to his or her citizenship or alien status. An adult shall sign for all household members under age 18. If there are no adult members in the household the applicant shall sign the perjury statement for himself or herself and for all other household members under 18 years of age. An applicant or other adult household member who does not sign the statement shall be ineligible. The income and resources of the ineligible member(s) shall be considered available in determining the eligibility of any remaining household members in accordance with N.J.A.C. 10:87-7.14.

10:87-2.13 Filing an application

(a) Households must file a food stamp application by submitting the appropriate form to the food stamp office in person, through an authorized representative, or by mail. The amount of time for the CWA to deliver benefits is calculated from the date the application is filed in the food stamp office designated to accept the household's application (see N.J.A.C. 10:87-2.30 and 2.31). Households subject to SSI joint processing (see N.J.A.C. 10:87-2.12(a)3) must file a food stamp application by submitting the appropriate form to the SSA/DO in person, through an authorized representative, or by mail. The amount of time for the CWA to deliver benefits is calculated from the date the application is filed in the SSA/DO designated to accept the household's application (see N.J.A.C. 10:87-2.30).

(b) Right to file: Each household has the right to file an application during office hours of the same day it contacts the food stamp office within the county of its residence. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application.

1. Minimum requirements for application: In order to be considered an application for food stamp purposes, the application must contain, at a minimum, the applicant's name and address, and must be signed by a responsible member of the household or the household's authorized representative (see N.J.A.C. 10:87-2.7).

2.-3. (No change.)

(c) Contacting the food stamp office: The CWA shall encourage households to file an application the same day the household or its representative contacts the certification office, in person or by telephone, and expresses interest in obtaining food stamp assistance.

1. (No change.)

2. Contacting the wrong office: If a household contacts the wrong certification office within the county, either in person or by telephone, that certification office shall, in addition to meeting the requirements in 1 above, give the household the address and telephone number of the appropriate office, explain how to file an application, and encourage the household to file its application in person or by mail at the appropriate office that same day. The certification office shall also offer to mail the household's application to the appropriate office that same day if the household has completed enough information to file. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its request or application for food assistance to the wrong office, the certification office shall mail the request or application to the appropriate office on the same day.

(d)-(f) (No change.)

10:87-2.14 Household cooperation

To determine eligibility for program benefits, the application must be completed and signed, the household (or its authorized representative) interviewed, and certain information (see N.J.A.C. 10:87-2.21) must be verified. If the household refuses to cooperate with the CWA in completing this process, the application shall be denied at the time of refusal.

10:87-2.17 Refusal to cooperate with Quality Control reviews

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

(c) The CWA shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a quality control reviewer and who reapply 96 days from the end of the annual review period.

10:87-2.18 (Reserved)

10:87-2.19 Interview process

(a) All applicant households, including those submitting applications by mail, shall have a face-to-face interview with a qualified eligibility worker, prior to initial certification and all recertifications. All interviews for food stamp benefits shall meet the requirements below.

(b) (No change in text.)

(c) Responsibilities of interviewer: The interviewer shall not simply review the information which appears on the application but shall explore and resolve with the household any unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including an explanation of the processing standards and the household's responsibility to report changes.

1. The interviewer shall explain to the applicant the work registration and employment and training requirements and the consequences of the household's principal wage earner quitting his or her job without good cause (see N.J.A.C. 10:87-10.11).

(d) (No change in text.)

(e) Waiver of office interview: The office interview shall be waived for any household which is unable to appoint an authorized representative (see N.J.A.C. 10:87-2.7) and which has no household members able to come to the food stamp office because they are 65 years of age or older, or are mentally or physically handicapped. The CWA shall waive the office interview on a case by case basis for any household which reports it is unable to appoint an authorized representative and has no members able to come to the Food Stamp office because of transportation difficulties or similar hardships.

1. Hardships: Hardship conditions include but are not limited to: illness, care of a household member, prolonged severe weather, or work hours which preclude an in-office certification. If a waiver is granted, the CWA shall document the reason for the determination in the case record.

Renumber ii through iv as 2 through 4 (No change in text.)

(f) (No change in text.)

1. (No change in text.)

(g) (No change in text.)

(h) (No change in text.)

10:87-2.21 Mandatory verification

(a) The CWA shall verify the following information in (b) through (n) below prior to certification for households initially applying for food stamp benefits.

(b) (No change in text.)

(c) Alien status: For each household member identified on the application as an alien, the CWA shall determine if that member is an eligible alien (see N.J.A.C. 10:87-3.8) by requiring that the household present verification for each alien member.

1. Verification of immigrant status and continuous residence: Aliens lawfully admitted as immigrants and aliens in continuous residence (see N.J.A.C. 10:87-3.8(a)) shall present INS Form I-151 or Form I-551 "Alien Registration Receipt Card" or the "Re-entry Permit", a passport booklet for lawful permanent resident aliens.

2. INS Form I-94: Aliens in the categories specified in N.J.A.C. 10:87-3.8(a)3 through 7 shall present an INS Form I-94, "Arrival—Departure Record". The CWA shall accept the INS Form I-94 only if it is annotated with Section 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act; or if the form is annotated with one of the following terms or combination of terms: refugee, parolee, paroled, or asylum.

i. (No change in text.)

ii. If the INS Form I-94 does not bear any acceptable annotations and the alien has no other verification of alien classifications in his or her possession; the CWA shall advise the alien to submit Form G-641, Application for Verification of Information from Immigration and Naturalization Service Records, to INS. The CWA shall accept this form when presented by the alien and properly annotated at the bottom by an INS representative as evidence of lawful admission for permanent residence or parole for humanitarian reasons. The alien shall also be advised that classification under Sections 207, 208, 212(d)(5) or 243(h) of the Immigration and Nationality Act shall result in eligible status. Additionally, the alien shall also be advised that he or she may be eligible if acceptable verification is obtained and that the alien may contact INS or otherwise obtain the necessary verification. If the alien so wishes and signs a written consent, the CWA will contact INS to obtain clarification of the alien's status.

3. (No change in text.)

4. Other documentation of alien status: If the proper INS documentation is not available, the alien may state the reason and submit other conclusive verification. The CWA shall accept other forms of documentation or corroboration from INS that the alien is classified pursuant to Section 101(a)(15), 101(a)(20), 207, 208, 212(d)(5), 243 or 249 of the Immigration and Nationality Act, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act.

5. Awaiting verification of alien status: While awaiting acceptable verification, the alien whose status is questionable shall be ineligible. If the alien does not wish to contact INS or give permission for the CWA to contact INS, the household shall be given the option of withdrawing its application or participating without that member. The income and resources of the ineligible alien shall be treated in the same manner as an excluded individual as set forth in N.J.A.C. 10:87-7.14 and shall be considered available in determining the eligibility of any remaining household members.

6. (No change in text.)

i. (No change in text.)

(d) (No change in text.)

1. (No change in text.)

(e) (No change in text.)

(f) Residency: Residency (see N.J.A.C. 10:87-3.2 and 3.3) shall be verified except in unusual cases (such as homeless household, some migrant farmworker households or households newly arrived in the county) when verification of residency cannot reasonably be accomplished. Acceptable verification of residency should be accomplished, to the extent possible, in conjunction with the verification of other information such as but not limited to rent and mortgage payments, utility expenses and identity. If verification cannot be accomplished in conjunction with the verification of other information, the CWA shall use a collateral contact or other readily available documentary evidence. Any documents or collateral contacts which reasonably establish the household's residency shall be accepted and no requirements for a specific type may be imposed (see also N.J.A.C. 10:87-3.4).

(g) (No change in text.)

1. (No change in text.)

(h) Procedures for obtaining and verifying Social Security numbers are as follows:

1. The CWA shall verify the Social Security numbers (SSNs) provided by the household with the Social Security Administration (SSA) by submitting them through the management information system. Certification for, or issuance of benefits to, an otherwise eligible household shall not be delayed pending SSN verification. Once the SSNs have been verified, the CWA shall make a permanent annotation to the household case file to prevent unnecessary reverification of the SSN in the future. Social Security numbers previously verified by another program participating in the Income Eligibility Verification System shall be acceptable to the CWA for Food Stamp Program participation.

2. The CWA shall require an individual who is unable to provide, or does not have, a Social Security number to submit an application for a SSN (Form SS-5) to the Social Security Administration. The CWA shall advise the household member that proof of application from the SSA will be required prior to certification. The Social Security Administration receipt for application for a SSN, Form SSA-5028, may be used as evidence that an individual has applied for a Social Security number. Refusal or failure without good cause to provide a Social Security number will result in disqualification of the individual for whom a SSN is not obtained.

i. If the county welfare agency determines that a household member has refused or failed without good cause to provide or apply for a SSN, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification applies to the individual for whom the SSN is not provided, and not to the entire household. The earned or unearned income and resources of an individual disqualified for failure to obtain or provide a SSN shall be counted as household income and resources.

3. Determining good cause procedures are as follows:

i. In determining if good cause exists, the CWA shall consider information from the household member, Social Security Administration and other State sources, that the household member has applied for, and/or made every effort to obtain a SSN from the Social Security Administration. Good cause does not include delays due to illness, lack of transportation or temporary absences, as the Social Security Administration makes provisions for mailing applications in lieu of applying in person. If a household member can show good cause why an application for a SSN has not been completed, that person shall be allowed to participate for one month in addition to the month of application. The CWA caseworker should make every effort to assist the individual in obtaining documents required to support an application for a Social Security number.

ii. Good cause for failure to apply must be shown monthly in order for a household member to continue participation. Once an application has been filed, the CWA shall permit the member to participate pending notification of the household member's SSN.

4. The disqualified household member(s) may end the disqualification and become eligible upon providing the CWA with a SSN.

5. The CWA is authorized to use SSNs in the administration of the Food Stamp Program and shall enter all SSNs obtained into the management information system. CWAs shall have access to information regarding individual Food Stamp Program applicants and participants who receive SSI benefits under Title XVI of the Social

Security Act to determine such a household's eligibility for and level of food stamp benefits, or to verify information related to benefits received by such households. The CWA shall also use the SSN(s) to prevent duplicate participation and to determine the accuracy and/or reliability of information given by households.

(i) Verification of questionable information: With the exception of liquid resources and loans, the CWA shall verify all other factors of eligibility prior to certification only if they are questionable and affect the household's eligibility or benefit level. Procedures for verifying loans and liquid resources are described in (m) below.

1. (No change in text.)

(j) Household composition: The CWA shall veryify any factors affecting the composition of a household if questionable.

1. (No change in text.)

2. Elderly or disabled individuals as described in N.J.A.C. 10:87-2.2(a)4 who wish to be a separate household, shall be responsible for obtaining the cooperation of the individuals with whom they reside in providing the necessary income information to the CWA and for providing (at the CWA's request) a physician's statement that they cannot purchase and prepare their own meals. Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors at N.J.A.C. 10:87-2.38, shall be responsible for proving such claims.

3. For any surviving spouse or child of a veteran claiming a permanent disability that is questionable (not apparent) to the CWA, under N.J.A.C. 10:87-2.38(a)9 of the definition of "elderly or disabled member", the household shall provide (at the CWA's request) a statement from a physician or licensed or certified psychologist which substantiates the applicant's claim of disability.

(k) Citizenship: When a household's statement that one or more of its members is a U.S. citizen is questionable, the household shall be asked to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, or certificates of citizenship or naturalization provided by INS, such as Identification Cards for Use of Resident Citizens in the U.S. (INS Form I-179 or INS Form I-97) or U.S. Passports.

Renumber (1) through (3) as 1. through 3. (No change in text.)

(l) Deductible expenses. Deductible expenses other than utility costs which exceed the standard (see (d) above) shall be verified only if questionable and if allowing the expense would actually result in a deduction. For example, rent, even if questionable, would not be verified if the household's child care expenses exceed the limit on the combined dependent care/shelter deduction since the amount of the rent can not alter the amount of the deductions.

1. (No change in text.)

2. (No change in text.)

3. Subsequent verification: If the household subsequently provides the missing verification, the CWA shall redetermine the household's benefits, and provide increased benefits, if any in accordance with the timeliness standards on reported changes. The household shall be entitled to the restoration of any benefits lost as a result of the disallowance of the expense only if the expense could not be verified within the 30-day processing standard because the CWA failed to allow the household sufficient time (as defined in N.J.A.C. 10:87-2.31 (c)) to verify the expense. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in N.J.A.C. 10:87-2.30 and 2.31.

(m) Liquid resources and loans: The CWA shall verify liquid resources and whether or not moneys received by the household are loans whenever such items are questionable (see (i)1 above).

1. (No change in text.)

2. (No change in text.)

(n) Verification for PA households (as defined in N.J.A.C. 10:87-2.12(a)1): These verification procedures shall be followed for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both AFDC eligibility and food stamp eligibility, the CWA may use the AFDC verification rules. However, the CWA shall not delay the household's food stamp benefits if, at the end of 30 days following the date the application was filed, the CWA has sufficient verification to meet food stamp verification requirements but does not have sufficient verification to meet the AFDC verification rules.

1. Duplicate participation cross-checks: The CWAs shall check each household member by name through the ALFX file to verify that each individual is not already participating in the Food Stamp Program as part of another household. The ALFX file is an alphabetical listing, within the State's management information system, of the names of all individuals receiving AFDC and Food Stamp benefits in New Jersey. The ALFX file is available on computer terminal, and enables a worker to locate an individual's case record, when the case number is not known, by alphabetic cross-reference to all cases and recipients in the State.

10:87-2.22 Verification of Social Security and/or SSI using SDX/BENDEX

(a) The CWA shall ensure that the required verifications are obtained prior to certification. If documentary evidence of Social Security and/or SSI benefits is not readily available from the applicant, CWA may verify the income through the Beneficiary Data Exchange (BENDEX) and/or the State Data Exchange (SDX). The CWA shall not verify wages through use of the BENDEX. Any further contact by the CWA must be done by home visit (with permission of the SSI household), telephone or letter only, and shall not constitute a second food stamp certification interview.

(b) The CWA may use the BENDEX/SDX data to verify other food stamp eligibility criteria provided the household is given an opportunity to verify the information from another source if the BENDEX/SDX information is contradictory to the household's information or is unavailable. However, determination of a household's eligibility and benefit level shall not be delayed beyond the application processing time standards (see N.J.A.C. 10:87-2.30), if the BENDEX/SDX data are unavailable.

10:87-2.24 (No change in text.)

10:87-2.26 (Reserved)

10:87-2.27 (Reserved)

10:87-2.28 Verification subsequent to initial certification

(a) At recertification, the CWA shall verify a change in income, medical expenses or actual utility expenses claimed by a household if the source has changed or the amount has changed by more than $25.00 since the last time they were verified.

(b) Questionable information: The CWA may verify income, actual utility expenses or medical expenses claimed by households which are unchanged or have changed by $25.00 or less, only if the information is questionable as defined in N.J.A.C. 10:87-2.21(i)1. All other changes reported at the time of recertification shall be subject to the same verification procedures that apply at initial certification.

1. Unchanged information: Unchanged information, other than income and medical or utility expenses, shall not be verified at recertification unless the information is questionable as defined in N.J.A.C. 10:87-2.21(i)1.

(c) Changes: Changes reported during the certification period shall be subject to the same verification procedures that apply at initial certification, except that the CWA is not required to verify income, medical expenses or actual utility expenses if the source has not changed and the amount has changed by $25.00 or less since the last time they were verified.

1. Change in household composition: If the change reported is a change in household composition, the CWA shall verify through the ALFX system that no household member is participating in the Food Stamp Program as part of another household (see N.J.A.C. 10:87-2.21(n)1).

(d) Social Security numbers: Newly obtained Social Security numbers shall be verified at recertification in accordance with verification procedures in N.J.A.C. 10:87-2.21(h).

10:87-2.30 Normal processing standard

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

(c) Processing standards during a period of Federal reduction, suspension or cancellation of food stamp benefits: Determinations of eligibility shall be made in accordance with normal processing

standards. For a household entitled to expedited processing as specified in N.J.A.C. 10:87-2.34 et seq., issuance of benefits shall be made in accordance with the following provisions:

1.-2. (No change in text.)

10:87-2.31 Delays in processing

(a) If the CWA does not determine a household's eligibility and provide an opportunity to participate within 30 days of the date the application was filed, the CWA shall take action as indicated below.

(b) Failure to appear for two interviews: If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the CWA to express interest in pursuing the application, the CWA shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. (See (c)5 below) for households which express interest in pursuing the application after failing to appear for two scheduled interviews.

(c) Determining cause: The CWA shall determine the cause of the delay. A delay shall be considered the fault of the household if the household has failed to complete the application process even though the CWA has taken all the action required to assist the household. The CWA must have taken the following actions before a delay can be considered the fault of the household:

1. (No change in text.)

2. Failure to register for work: If one or more members of the household have failed to register for work (as required in N.J.A.C. 10:87-10.4), the CWA must have informed the household of the need to register for work and given the household at least 10 days from the date of notification to register those members.

3. Incomplete verification: In cases where verification is incomplete, the CWA must have provided assistance when required, as specified in N.J.A.C. 10:87-2.23, and allowed the household sufficient time to provide the missing verification.

4. Sufficient time to provide missing verification shall be at least 10 days from the date of the CWA's initial request for the particular verification which was missing.

5. (No change in text.)

Renumber (1) through (3) as i. through iii. (No change in text.)

(d) Fault of the CWA: Delays that are the fault of the CWA include, but are not limited to those cases in which the CWA failed to take one or more of the actions described in (c) above.

(e) (No change in text.)

1. (No change in text.)

2. (No change in text.)

(f) (No change in text.)

1. (No change in text.)

(g) Delays beyond 60 days: The following procedures apply as appropriate when a delay occurs in the second 30-day period.

1. (No change in text.)

i. (No change in text.)

ii. (No change in text.)

2. (No change in text.)

3. (No change in text.)

10:87-2.32 Expedited service

(a) The following households are entitled to expedited service:

1. Households with less than $150.00 in monthly gross income, as computed in N.J.A.C. 10:87-6.15 provided that the household's liquid resources (for example, cash on hand, checking or savings accounts, savings certificates and lump sum payments as described in N.J.A.C. 10:87-5.9(a)10) do not exceed $100.00;

2. Migrant or seasonal farmworker households who are destitute as defined in N.J.A.C. 10:87-6.18 provided that the household's liquid resources (for example, cash on hand, checking or savings accounts, savings certificates and lump sum payments as described in N.J.A.C. 10:87-5.9(a)10) do not exceed $100.00;

3. Eligible households in which all members are homeless as defined in N.J.A.C. 10:87-2.4; and

4. Eligible households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and utilities.

(b) The CWAs application procedures shall be designed to identify households eligible for expedited service at the time of a request for food stamp assistance. The household shall be prescreened for entitlement to expedited service. For example, a receptionist, volunteer or other agency employee shall screen applications as they are filed or as individuals come in to apply.

10:87-2.33 Expedited service processing standards

(a) For households entitled to expedited service, the CWA shall make available to the recipient an ATP card not later than the fifth calendar day following the date an application was filed in the appropriate food stamp office. The CWA shall ensure that a reasonable opportunity for ATP redemption exists on the day of issuance within the time limits specified in this section.

(b) Drug addicts and alcoholics, and residents of group living arrangement facilities: For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangements (see N.J.A.C. 10:87-7.16(c)1) who are entitled to expedited service, the CWA shall make an ATP available to the recipient no later than the fifth calendar day following the date an application was filed.

(c) Out-of-office interviews: If a household is entitled to expedited service and is also entitled to a waiver of office interview (see N.J.A.C. 10:87-2.19(e)), the CWA shall conduct the interview (unless the household cannot be reached) and complete the application process within the expedited service standards. The first day of this count is the calendar day following application filing.

1. (No change.)

(d) (No change.)

(e) Residents of shelters for battered women and children who are otherwise entitled to expedited service shall be handled within the time limits specified in this section.

10:87-2.34 Special procedures for expediting service

(a) The CWA shall use the following procedures when expediting certification and issuance.

1. Verification procedure: In order to expedite the certification process, the CWA shall use the following verification procedures:

i. (No change.)

ii. All reasonable efforts shall be made to verify, within the expedited processing standards, the household's residency, income statements (including a statement that the household has no income), liquid resources and all other verification factors required in N.J.A.C. 10:87-2.21 through collateral contacts or readily available documentary evidence;

(1) Benefits shall not be delayed beyond the delivery standards prescribed in N.J.A.C. 10:87-2.33 solely because these eligibility factors have not been verified.

iii. CWAs shall attempt to obtain as much additional verification as possible during the interview, but shall not delay the certification of households entitled to expedited services for the full time frame prescribed in N.J.A.C. 10:87-2.33 when the CWA has determined it is unlikely that other verification can be obtained within the expedited processing standards; and

iv. Households entitled to expedited service shall be asked to furnish or apply for a Social Security number for each household member before the first full month of participation. Those household members unable to provide the required SSNs or who do not have one prior to the first full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirement specified in N.J.A.C. 10:87-2.21(h).

v.-vii. (No change.)

2. (No change.)

3. Certification period: Households which are certified on an expedited basis and have provided all necessary verification required in N.J.A.C. 10:87-2.21 prior to certification shall be assigned a normal certification period (see N.J.A.C. 10:87-6.19). If verification is postponed, the CWA shall certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the option of the CWA, shall assign the normal certification period warranted by the household's circumstances. However, in no event will benefits be continued past the month of application if verification is not obtained. Federally mandated reduction, suspension, or

cancellation of allotments in a given month shall have no effect on the certification periods assigned to households.

i.-iv. (No change.)

4. Expedited service during a period of Federal reduction, suspension or cancellation of food stamp benefits: Households eligible to receive expedited processing which apply for program benefits during a month in which a reduction, suspension, or cancellation is in effect, shall have their cases processed in accordance with the above procedures, subject to the following provisions:

i. Reduction: Households which receive expedited service in a month in which a reduction is in effect and which are determined to be eligible, shall be issued allotments that are reduced in accordance with the reduction in effect. The reduced allotments shall be made available to the households within the time frame specified in N.J.A.C. 10:87-2.33.

ii. Suspension: Households which receive expedited service in a month in which a suspension is in effect and that are determined to be eligible, shall have benefits issued within the time frame specified in N.J.A.C. 10:87-2.33 unless the suspension is still in effect at the time issuance is to be made.

iii. Cancellation: Households eligible to receive expedited processing which apply for benefits during a month in which cancellation is in effect shall receive expedited service. However, the deadline for completing the processing of such cases shall be five days or the end of the month of application, whichever date is later. All other regulations pertaining to expedited service shall be applicable to these cases.

5. Work registration: The CWA shall at a minimum, require the applicant to register for work unless exempt.

i.-iii. (No change.)

10:87-2.35 AFDC eligibility determination (PA households)

(a) Action on the food stamp portion of the application shall not be delayed nor the application denied on the grounds that the AFDC eligibility determination has not been made.

1. (No change.)

2. Retroactive AFDC payments: Portions of initial AFDC payments intended to retroactively cover a previous month shall be disregarded as lump-sum payments in accordance with N.J.A.C. 10:87-5.9(m).

3.-5. (No change.)

10:87-2.36 Categorically eligible AFDC/SSI households

(a) Any household consisting solely of members who are receiving or are authorized to receive AFDC and/or SSI benefits shall be considered a "pure" AFDC/SSI household and, therefore, categorically eligible for the Food Stamp Program.

1. Authorized to receive means that an individual is considered a recipient if he or she has been determined eligible for AFDC/SSI but has not yet received or, is not currently entitled to, a money payment.

2. Categorically eligible recipients shall include those persons determined eligible to receive AFDC/SSI but currently not entitled to cash benefits; that is, persons whose benefits are being recovered and/or suspended subject to retrospective budgeting when the household is temporarily ineligible in a prior budget month, and AFDC recipients whose benefits are less than $10.00 and are therefore not payable.

3. Individuals entitled only to Medicaid and not AFDC/SSI shall not be considered categorically eligible. Additionally, General Assistance (GA) and AFDC-N recipients shall not be considered categorically eligible for food stamp purposes.

i. If an AFDC household contains one or more -N segment individuals or a GA recipient, the household shall not be considered categorically eligible.

(b) For any household that is otherwise categorically eligible, no person shall be included as a member of that household if that person is:

1. An ineligible alien as defined in N.J.A.C. 10:87-3.7 through 3.9;

2. An ineligible student as defined in N.J.A.C. 10:87-2.3(a)2; or

3. Institutionalized in a non-exempt facility (see N.J.A.C. 10:87-2.4).

4. When determining benefit levels for households containing ineligible individuals, the income and resources of such ineligible members shall be treated in accordance with procedures at NJ.A.C. 10:87-7.

(c) No household shall be considered categorically eligible for food stamps if any member of that household is disqualified for:

1. An intentional program violation (see N.J.A.C. 10:87-11.1 et seq.):

2. Failure to comply with monthly reporting requirements in accordance with N.J.A.C. 10:90; or

3. Failure to comply with the work and training requirements contained in N.J.A.C. 10:87-10.

4. Such households are subject to all food stamp eligibility criteria and benefit determination provisions.

(d) The factors which are deemed for food stamp eligibility without the verification required by N.J.A.C. 10:87-2.21 because of AFDC/SSI status are:

1. Gross and net income limits;

2. Resource limits;

3. Social Security number information;

4. Sponsored alien information; and

5. Residency.

(e) If any of the following factors are questionable, the CWA shall verify, in accordance with N.J.A.C. 10:87-2.21, that the household which is considered categorically eligible contains:

1. Only members that are AFDC or SSI recipients;

2. Meets the definition of a household in accordance with N.J.A.C. 10:87-2.2;

3. Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for AFDC or SSI purposes; and

4. Includes no person disqualified as specified in (c) above (see also N.J.A.C. 10:87-3.20, 10:87-10 and 10:87-11).

(f) The exemptions concerning work registration in the food stamp employment and training program shall be applied to individuals in categorically eligible households. Individual(s) not exempt from work registration shall be subject to work requirements contained in N.J.A.C. 10:87-10.

(g) Households in which all members are applying for AFDC/SSI shall be allowed to apply for food stamp benefits at the same time they apply for AFDC/SSI benefits. Such households' food stamp eligibility and benefit level shall be based on food stamp eligibility criteria. Households, whether jointly processed and/or eligible because of their AFDC/SSI status, shall be certified in accordance with the notice, procedural and timeliness requirements of N.J.A.C. 10:87-2.29 through 2.37.

(h) Households applying for both AFDC and food stamps shall complete a joint application for both programs. The joint application shall clearly indicate that the household is providing information for both programs and is subject to the criminal penalties of both programs for making false statements.

(i) The CWA shall conduct a single interview at intial application for both AFDC and food stamp purposes. AFDC households shall not be required to see a different eligibility worker or otherwise be subjected to two interview requirements to obtain the benefits of both programs.

i. Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for food stamps and AFDC.

ii. A household's eligibility for a food stamp out-of-office interview does not relieve the household of any responsibility for a face-to-face interview to be certified for AFDC.

(j) For households applying for both AFDC and food stamps, the verification procedures described in N.J.A.C. 10:87-2.21 shall be followed for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both AFDC eligibility and food stamp eligibility, the CWA may use the AFDC verification rules.

i. However, the CWA shall not delay the household's food stamp benefits if, at the end of 30 days following the date the application

was filed, the CWA has sufficient verification to meet the food stamp verification requirements, but insufficient verification to meet the AFDC verification rules.

(k) In order to determine if a household will be eligible due to its status as a recipient AFDC/SSI household, the CWA may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination, if the household is not entitled to expedited service and appears to be categorically eligible. However, the CWA shall postpone denying a potentially categorically eligible household until the 30th day, in the event that the household is determined eligible to receive AFDC/SSI benefits.

1. Once the AFDC/SSI application is approved, the household is to be considered categorically eligible if it meets all categorical eligibility criteria.

2. If the CWA can anticipate the amount and the date of receipt of the initial AFDC/SSI payment, but the payment will not be received until a subsequent month, the CWA shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial AFDC/SSI payments intended to retroactively cover a previous month shall be disregarded as lump sum payments.

3. If the amount or date of receipt of the initial AFDC/SSI payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the AFDC/SSI payments shall be handled as a change in circumstances.

(l) The CWA is not required to send a notice of adverse action if the receipt of the AFDC/SSI grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible.

(m) The CWA shall ensure that a denied application of a potentially categorically eligible household is easily retrievable, in the event that the household is subsequently found to be categorically eligible.

(n) For a household filing a joint application for food stamps and AFDC/SSI benefits, or a household that has an AFDC/SSI application pending and is denied food stamps but is later determined eligible to receive AFDC/SSI benefits and is otherwise categorically eligible, the CWA shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Benefits shall be paid from the beginning of the period for which AFDC/SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later.

1. The CWA shall not reinterview the household, but shall use any available information to update the application and/or make mail or phone contact with the household or authorized representative to determine any changes in circumstances. Changes shall be initialed and the updated application resigned by the authorized representative or household member. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985.

(o) Any household determined AFDC/SSI eligible which is categorically eligible within the 30-day food stamp processing time shall be provided benefits back to the date of the food stamp application. Benefits shall be prorated in accordance with current procedures.

(p) Households that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable or the date of the original food stamp application.

(q) The CWA shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's AFDC and/or SSI eligibility. The household shall be informed on the notice of denial to notify the CWA if its AFDC or SSI benefits are approved. Households who file joint applications for food stamps and AFDC/SSI and are subsequently denied may be required to file a new food stamp application or have their food stamp eligibility determined on the basis of the original applications.

(r) The CWA shall notify households of the need for a new application. If a required new application is filed within 30 days of the original application, the filing date of the new application shall be the filing date of the original joint application.

10:87-2.37 Procedures for SSI jointly processed households

(a) Supplemental Security Income (SSI) is defined as Federal SSI payments made under Title XVI of the Social Security Act, federally administered optional supplementary payments under section 1616 of that Act, or federally administered mandatory supplementary payments made under section 212(a) of Public Law 93-66. Households may apply and be certified for food stamp benefits in accordance with the procedures described herein and with the notice, procedura and timeliness requirements of the Food Stamp Act.

1. Households applying simultaneously for SSI and food stamps shall be eligible to receive benefits based solely on food stamp eligibility criteria until the household is considered categorically eligible. Households denied NPA food stamps that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility should they become SSI recipients

Renumber (a) through (c) as (b) through (d). (No change in text.

(e) The CWA receiving food stamp applications from SSA for SSI households are required to determine if any member of the SSI household is currently participating in the Food Stamp Program.

(f) The CWA shall ensure that information required by N.J.A.C 10:87-2.21 and 2.22 is verified prior to certification for households initially applying for food stamps. Households shall be provided the opportunity to provide verification from another source if all necessary SSI benefit payment information is not available on/through the State Data Exchange (SDX) or Beneficiary Data Exchange (BENDEX) (see N.J.A.C. 10:87-2.22 above).

(g) Households identified as categorically eligible due to their pure SSI status and requiring expedited service shall be handled in accordance with the provisions of N.J.A.C. 10:87-2.34 above.

(h) An applicant or recipient of social security benefits under Title II of the Social Security Act shall be informed by the SSA/DO of the availability of benefits and an application at the SSA office Interviews and application processing is not required by the SSA/DC unless an eligibility worker has been outstationed at the SSA office

10:87-2.38 Elderly or disabled household members

(a) Elderly or disabled member of a food stamp household is defined as a member who:

1. Is 60 years of age or older;

2. Receives supplemental security income benefits under Title XVI of the Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;

3. Receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act, provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act;

4. Receives federally or State-administered supplemental benefits under section 212(a) of P.L. 93-66;

5. Receives disability retirement benefits from a governmenta agency because of a disability considered permanent under section 221(i) of the Social Security Act;

6. Is a veteran with service-connected or non-service-connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under Title 38 of the United States Code;

7. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

8. Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38 of the United States Code;

9. Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the United States Code and has a disability considered permanent under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them; or

10. Receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled, based upon the criteria used under Title XVI of the Social Security Act.

10:87-3.1 Applicability

Nonfinancial eligibility factors in this section shall apply equally to all applicant households (see N.J.A.C. 10:87-2.21 for verification requirements).

10:87-3.2 Residency in the county

(a) A household must be a resident of the county in which it files an application for participation. No individual may participate as a member of more than one household, or in more than one county, in any month except as provided for in this section.

(b) (No change in text.)

1. (No change in text.)

10:87-3.3 Determination of residency

(a) For purposes of the Food Stamp Program, a person shall be considered a resident in the place in which he or she actually lives, without regard to legal residence or intent to remain permanently. There shall be no requirement that a person reside in the county for a specified period of time prior to application. A fixed residence is not required; for example, migrant campsites satisfy the residency requirement.

1. The residency requirement shall be verified except in unusual cases such as homeless households, migrant farmworker households or households newly arrived to the project area where verification of residency cannot reasonably be accomplished.

(b) Vacationer excluded: A person temporarily visiting the county solely on a vacation shall not be considered a resident.

10:87-3.4 Recording applicant's address

The county welfare agency shall be responsible for recording the applicant's correct address, or location where the applicant may be contacted, in the case record. The CWA shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility.

10:87-3.6 U.S. citizen defined

For the purposes of N.J.A.C. 10:87-3.5, the United States shall be defined as the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Swain's Island, American Samoa, and the Northern Mariana Islands. Citizenship shall be verified only if questionable in accordance with N.J.A.C. 10:87-2.21(c).

10:87-3.7 Eligible alien

(a) Aliens who have been lawfully admitted for permanent U.S. residence and/or who are permanently and lawfully residing in the U.S. shall be eligible for participation in the Food Stamp Program. For a specific listing of aliens eligible for program benefits, see N.J.A.C. 10:87-3.8.

(b) Ineligible alien as a member of the household: The presence of a person in the household who is ineligible for participation in the program because of his or her alien status shall not prevent the remainder of the household from being certified for program benefits, if eligible (see also N.J.A.C. 10:87-2.21(c)).

(c) (No change.)

10:87-3.8 Eligible aliens; listing

(a) With the provision that all other eligibility requirements are met, the following aliens shall be eligible for participation in the Food Stamp Program:

1. Immigrants: An alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in (a)8 and 9 below) (see N.J.A.C. 10:87-2.21(c) for verification);

2. Continuous residence: An alien who entered the United States prior to January 1, 1972, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act (see N.J.A.C. 10:87-2.21(c) for verification);

3. Conditional entry after March 31, 1980: An alien qualified for conditional entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political opinion pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationality Act (see N.J.A.C. 10:87-2.21(c) for verification);

4. Conditional entry prior to April 1, 1980: An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(a)(7) of the Immigration and Nationality Act (see N.J.A.C. 10:87-2.21(c) for verification);

5. (No change.)

6. Emergent reasons: An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a result of a grant of parole by the Attorney General (see N.J.A.C. 10:87-2.21(c) for verification);

7. Deportation withheld: An alien living within the United States from whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgement of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion (see N.J.A.C. 10:87-2.21(c) for verification);

8. An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for permanent residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act (Such aliens may obtain lawful permanent resident status under section 245A(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988);

9. An alien who is granted lawful temporary resident status pursuant to section 245A of the Immigration and Nationality Act at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A of the Immigration and Nationality Act (Such aliens may obtain temporary residence status no earlier than May 5, 1987);

10. An alien who is, as of June 1, 1987 or thereafter, a special agricultural worker (SAW) and lawfully admitted for temporary residence in accordance with section 210(A) of the Immigration and Nationality Act; or

11. An alien who is lawfully admitted for temporary residence as an additional special agricultural worker (ASAW), as of October 1, 1989 through September 30, 1993, in accordance with section 210A(a) of the Immigration and Nationality Act.

10:87-3.9 Ineligible aliens

Aliens other than those described in N.J.A.C. 10:87-3.8 are not eligible to participate in the program as a member of any household. Among those excluded are alien visitors, tourists, diplomats, and students, who enter the United States temporarily with no intention of abandoning their residence in a foreign country.

10:87-3.11 Awaiting verification

(a) If verification of eligible alien status or citizenship as required by N.J.A.C. 10:87-2.21(c) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The income and resources of the alien(s) whose status is unverified or individual whose citizenship is questionable shall be treated in the same manner as an excluded member as specified in N.J.A.C. 10:87-7.14(c) and considered available in determining the eligibility of the remaining household members.

(b) (No change in text.)

10:87-3.12 Eligibility to use coupons for prepared meals

(a) The following individuals, if members of an eligible household, may use food coupons to purchase prepared meals from any communal dining facility, meal delivery service, alcoholic and/or drug treatment center, group living arrangement, shelter for battered

women and children or homeless meal provider which is currently authorized by FNS to accept food coupons.

1.-2. (No change.)

3. Addicts and alcoholics: Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program may use coupons to purchase food prepared for them during the course of such program by a private nonprofit organization, institution or a publicly operated community mental health center authorized by FNS.

4.-5. (No change.)

6. Homeless food stamp households who obtain meals prepared for and served by an authorized public or private nonprofit establishment such as a soup kitchen or temporary shelter approved by the DPW or its designee.

OAL Note: N.J.A.C. 10:87-3.13 through 3.21 are recodified as N.J.A.C. 10:87-10.1 through 10.24.

10:87-3.13 State Income and Eligibility Verification System

(a) DPW shall maintain and use the Income and Eligibility Verification System (IEVS) as specified in this section. By means of IEVS, DPW shall request wage and benefit information from the agencies identified below and use that information in verifying eligibility for, and the amount of, food stamp benefits due to eligible households.

1. Such information shall be requested and used with respect to all household members, including any excluded household members, as specified in N.J.A.C. 10:87-7.14, whenever the SSNs of such included household members are available. (If not otherwise documented, DPW shall obtain written agreements from those information provider agencies that they shall not record any information about individual food stamp households and that staff of those agencies are subject to the disclosure restrictions of N.J.A.C. 10:87-1.14).

2. The wage and benefit information available through IEVS are:

i. Wage information maintained by the State Wage Information Collection Agency (SWICA);

ii. Information about net earnings from self-employment, wages, and Internal Revenue Service (IRS) data, retirement payments and unearned income maintained by the SSA and available pursuant to sections 6103(1)(7)(A) and (B) of the IRS Code; Federal retirement, survivors, disability, SSI and related benefit information available from the SSA; and

iii. Claim information from the agency administering Unemployment Insurance Benefits (UIB) and any information, in addition to information about wages and UIB, which is useful for verifying eligibility and benefits, subject to the provisions and limitations of section 303(d) of the Social Security Act.

(b) DPW shall exchange information with other State agencies administering certain other programs in the IEVS about food stamp households' circumstances which may be of use in establishing or verifying eligibility and/or benefits under the program. CWAs may exchange information with agencies in other states when they determine that the same objectives are likely to be met.

1. These programs are:

i. Aid to Families with Dependent Children (AFDC);

ii. Medicaid;

iii. Unemployment Compensation (UC);

iv. Food Stamps; and

v. Any State program administered under a plan approved under Title I, X, or XIV (the adult categories), or Title XVI of the Social Security Act.

2. DPW shall provide information to people administering the Child Support Program (Title IV-D of the Social Security Act) and Titles II (Federal Old Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(c) The CWA shall use information obtained from IEVS for the purposes of:

1. Verifying a household's eligibility;

2. Verifying the proper amount of benefits;

3. Investigating to determine whether participating households received benefits to which they were not entitled; and

4. Obtaining information which will be used in conducting criminal or civil prosecutions based on receipt of benefits to which participating households are not entitled.

(d) CWAs shall request through DPW, and use information about members of all applicant households as specified below:

1. Information shall be requested at the next available opportunity after the date of application even if the applicant household has been determined eligible by that time. Information about members of applicant households who cannot provide SSNs at application shall be requested at the next available opportunity after the CWA is notified of the household members' SSNs. Information received within the 30-day application period shall be used to determine household eligibility and benefits if the information is received timely enough. However, CWAs shall make eligibility and benefit determinations without waiting for receipt of IEVS data to conform with the promptness standards of N.J.A.C. 10:87-2.30. Information received after an eligibility determination has been made shall be used as specified in paragraphs (e) and (f) below.

2. Information from the SWICA, SSA, IRS, and claim information from the agency administering UIB shall be requested and used as specified in (d)1 above. Requests to SWICAs shall access the most recent SWICA data available. Requests to SSA and IRS shall be submitted according to procedures specified by those organizations.

3. Any information, other than wage and UIB which UC agencies may have and that DPW determines would be useful in verifying eligibility or benefits of applicant households, shall be requested by methods and at intervals to which DPW and UC agencies agree, and shall be used as specified in paragraph (d)1 above; and

4. Exchanges of information about applicant households with other programs specified in (b) above shall be made as the DPW and other programs may agree.

(e) Except as provided in (e)7 below, with respect to all members of recipient households, DPW shall:

1. Request information from the SWICA quarterly, such requests shall include all households which participated in any month of the quarter;

2. Request information about household members from SSA data bases no later than the second month of the certification period, when requests at application did not establish automatic reporting to the CWA of changes in SSA data. Requests shall be submitted according to procedures specified by the SSA;

3. Request information from IRS annually for all current recipients. Requests shall be submitted to IRS according to procedures specified by the IRS;

4. Exchange information with other programs specified in paragraph (a) above as the DPW and these other programs may agree;

5. Request information about UIB from the agency administering that program as follows:

i. For all household members about whom requests at application indicate no receipt of UIB, information shall be requested for the three months following the month of application or until the receipt of UIB is reported, whichever is earlier;

ii. For all household members who report a loss of employment, information shall be requested for the three months following the month the loss is reported or until the receipt of UIB is reported, whichever is earlier; and

iii. For all household members receiving UIB, information shall be requested monthly until UIB are exhausted; and

6. Request from UC agencies any information other than UIB information which DPW determines would be useful in verifying eligibility or benefits of recipient households. Requests shall be made by methods and at intervals to which the DPW and the UC agencies agree.

7. Under certain conditions DPW may exclude from the requests for information specified in this subsection those members of recipient households who are participating in one of the other programs listed in (b) above. The conditions for such exclusion are that:

i. The agency responsible for administering the other program is requesting and acting on information on food stamp recipients who are participating in that program as required by the pertinent regu-

ations for that program, including any concerning selective criteria or follow-up action;

ii. The other program agency agrees to inform the CWA of the information obtained from its follow-up action when that information shows discrepancies between actual circumstances of food stamp recipients and circumstances known by the other program agency;

iii. The other program agency agrees to make available, at the request of the CWA, information about food stamp recipients that it did not follow up on; and

iv. The follow-up action taken by the other program agency is at least as beneficial as similar action would be if taken by the CWA.

(f) With respect to information received as a result of requests made according to (e) above, CWAs shall initiate and pursue actions according to the specific attachment to the State Plan of Operation.

1. CWA action on information items about recipient households shall include:

i. Reviewing the information and comparing it to case record information;

ii. For all new or previously unverified information received, contacting the households to resolve discrepancies as specified in (d) and (e) above.

iii. If discrepancies warrant reducing benefits or terminating eligibility, sending out notices of adverse action.

2. CWAs shall initiate and pursue the actions specified above so that they are completed within 45 days of receipt of the information. Actions may be completed later than 45 days from the receipt of information on no more than 20 percent of the information if:

i. The only reason that the actions cannot be completed is the nonreceipt of verification requested from collateral contacts; and

ii. The actions are completed, as specified in N.J.A.C. 10:87-9.5, when verification from a collateral contact is received or, in conjunction with the next case action, when such verification is not received, whichever is earlier.

3. When the actions specified in (f)1 above substantiate an overissuance, CWAs shall take action on claims as specified in N.J.A.C. 10:87-11.23 through 11.32, inclusive.

4. State agencies shall use appropriate procedures to monitor the timeliness requirements in (f)2 above.

5. Except for the claims actions specified in (f)3 above, under the conditions of (e)7 above, CWAs may exclude from the actions required in (f) above, information items pertaining to household members who are participating in one of the other programs listed in (b) above.

(g) IEVS information and quality control responsibilities are:

1. In compliance with Federal regulations, the DPW uses an administrative system (IEVS) to measure the extent and number of, and occasion and basis for, errors of benefit issuance and/or eligibility in the program.

2. The CWA shall be responsible for investigating and then initiating and implementing actions designed to bring the incidence of errors, as established by DPW's Bureau of Quality Control, within certain pre-set tolerance limits.

10:87-3.14 Procedures for students in an institution of higher education

(a) A student in an institution of higher education defined is any person who is between the ages of 18 and 60 who is physically and mentally fit and is enrolled at least half time in an institution of higher education. Excluded from this definition are persons who are attending high school, participating in on-the-job training programs and training programs which are not institutions of higher education.

(b) Institution of post secondary education defined: An institution of post secondary education is any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the legal age of compulsory school attendance, provided that the institution is legally authorized by the State to provide an educational program beyond secondary education or provides a training program to prepare students for gainful employment.

(c) (No change in text.)

(d) Student eligibility requirements: In order to be eligible to participate in the Food Stamp Program, any student (as defined in (a) above) must meet at least one of the following criteria:

1.-5. (No change.)

6. Be assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act (JTPA).

(e) Ineligible student living with household: The income and resources of an ineligible student living with a household shall not be considered in determining eligibility or level of benefits of the household (see N.J.A.C. 10:87-5.9(a)12).

10:87-3.15 Social Security numbers

The CWA shall require that a household participating or applying for participation in the Food Stamp Program provide the CWA with the Social Security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The CWA shall explain to applicants and participants that refusal or inability to provide a SSN will result in disqualification of the individual for whom the number has not been provided.

10:87-3.16 Work registration

(a) Each household member who is not exempt shall be registered for employment by the CWA at time of application, and at least once every 12 months as a condition of eligibility for participation in the Food Stamp Program.

(b) The CWA shall provide work registration forms to the applicant or the household's authorized representative for each household member required to register for employment and permit the applicant or authorized representative to complete the form.

(c) See N.J.A.C. 10:87-10.1 et seq. for details concerning work registration, and employment and training requirements.

10:87-4.1 Applicability

(a) The resource criteria and eligibility standards of this subchapter apply to all applicant households, except those in which all members are also applicants for, or recipients of, AFDC and AFDC resource eligibility is or has been established.

1. (No change.)

(b) Households that are categorically eligible as defined at N.J.A.C. 10:87-2.36 et seq. do not have to meet the resource limits or definitions of this subchapter.

10:87-4.3 Resources defined

(a) The resources of a household shall include the following which shall be recorded by the CWA in sufficient detail to permit verification if necessary (see N.J.A.C. 10:87-2.21 and 4.5).

1. Liquid resources: Liquid resources such as cash on hand, money in checking and/or savings accounts, savings certificates, stocks and/or bonds, lump-sum payments as described in N.J.A.C. 10:87-5.9(a)10, funds held in Individual Retirement Accounts (IRAs), and funds held in Keogh plans that do not involve the household member in a contractual relationship with individuals who are not household members.

i.-ii. (No change.)

2. Nonliquid resources: Nonliquid resources, such as personal property, licensed and unlicensed vehicles, buildings, land, recreational property, and any other property not specifically excluded under N.J.A.C. 10:87-4.8.

3. (No change.)

10:87-4.4 Jointly owned resources

(a) Resources held jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resources, only the value of that portion shall be counted toward the household's resource level.

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

10:87-4.5 Verification of resource information

Resource information shall be verified prior to certification only if questionable (see N.J.A.C. 10:87-2.21(i)).

10:87-4.6 Resources of nonhousehold and excluded household members

(a) (No change.)

(b) Excluded household members: The resources of excluded household members, as described in N.J.A.C. 10:87-2.3(c), shall be counted as available to the remaining household members in accordance with N.J.A.C. 10:87-7.14(b) and (c).

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the CWA:

1. Home and surrounding property: The home and surrounding property which is not separated from the home by intervening property owned by others.

i. Public rights of way: Public rights of way, such as roads that run through the surrounding property and separate it from the home, will not affect the exclusion of the property.

ii. Home temporarily unoccupied: The home and surrounding property shall remain excluded when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, only if the household intends to return to the home.

iii. (No change.)

2.-5. (No change.)

6. Pension funds: The cash value of pension plans or funds, only if the funds remain in the pension plans. Keogh plans that involve no contractual relationship with individuals who are not nonhousehold members and Individual Retirement Accounts (IRAs) shall not be excluded.

i. (No change.)

7. Income producing property: Property which annually produces income consistent with its fair market value, even if used only on a seasonal basis. Such property shall include rental and vacation homes.

[i. Rental homes used for vacations: Rental homes which are used for vacation purposes by a member of the household shall be counted as resources on a prorated basis unless excluded by (a)7 above.]

8. Property essential for employment: Property, such as farm land, which is essential to the employment or self-employment of a household member.

9. (No change.)

10. Certain licensed vehicles: See N.J.A.C. 10:87-4.12.

11. (No change.)

12. Certain disaster payments: Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended. For example, payments made by the Department of Housing and Urban Development (HUD) through the individual and family grant program or disaster loans or grants made by the Small Business Administration (SBA) shall be excluded.

13. Inaccessible resources: Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds (see (a)14 below for treatment of irrevocable trusts), security deposits on rental property or utilities, property in probate and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold.

i. (No change.)

ii. Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the creditor from selling the asset(s) shall be excluded.

14. Irrevocable trusts: Any funds held in a trust or transferred to a trust, and the income produced by that trust, to the extent it is not available to the household, shall be considered inaccessible if all of the following criteria apply:

i. Controlled by the trustee: The trustee administering the funds is either:

(1) (No change.)

(2) An individual (who may be a household member) appointed by the court who has court-imposed limitations placed on his or her use of the funds that meet the requirements of this paragraph;

ii. Funds held in irrevocable trust: The funds held in an irrevocable trust are either:

(1) (No change.)

(2) Established from nonhousehold funds by a nonhousehold member;

iii.-iv. (No change.)

v. Power to revoke: No household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period.

15. Resources counted as income: Resources, such as those of students or self-employed persons, that have been counted as income (see N.J.A.C. 10:87-5.4(a) et seq).

16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is a listing of resources excluded by Federal statute:

i.-x. (No change.)

xi. Payments for relocation assistance to members of the Hopi and Navajo Tribes shall be excluded from both resources and income (Public Law 93-531);

xii. Financial assistance provided by a program funded in whole or in part under Title IV of the Higher Education Act in accordance with Public Law 99-498.

xiii. Earned income tax credits received before January 1, 1980, as a result of the Revenue Act of 1978 (Public Law 95-600).

18. HUD retroactive tax and utility cost subsidy payments issued pursuant to settlement of Underwood vs. Harris against HUD, for the month in which the payment was received and for the following month.

19. Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. (See N.J.A.C. 10:87-4.7.)

10:87-4.9 Treatment of excluded funds

(a) Any monies excluded by the provisions of N.J.A.C. 10:87-4.8 shall retain the resource exclusion for an unlimited period of time so long as such monies are kept in a separate account and not commingled in an account with nonexcluded funds.

(b) Commingled funds: The resources of students and self-employed persons that are excluded as provided in N.J.A.C. 10:87-4.8(a)15 and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded monies which are commingled in an account with nonexcluded funds shall retain their exclusion for six months from the date they are commingled. After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

10:87-4.10 Value of resources

The value of a nonexempt resource (except for licensed vehicles as described in N.J.A.C. 10:87-4.12) shall be its equity value. The equity value is the fair market value less encumbrances. When necessary, the value of resources shall be determined by consulting sources knowledgeable as to the value of such resources. The source and result of any such verification shall be documented in the case record.

10:87-4.11 Fair market value of licensed vehicles

(a) The fair market value of licensed automobiles, trucks, and vans will be determined by the value of those vehicles as indicated by the "Average Wholesale Value" in the most recent edition of The Red Book: Official Used Car Valuations. The CWA shall not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment. If a new vehicle is not listed in the Red Book, the CWA shall determine the wholesale value by some other means such as, but not limited to, contacting a car dealer that sells that make of vehicle.

(b) Households claiming Red Book value does not apply: A household may indicate that, for some reason such as body damage or inoperability, a vehicle is in less than average condition. Any household that claims that the Red Book value does not apply to its vehicle

shall be given the opportunity to acquire verification of the true value from a reliable source.

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

(e) Vehicle no longer listed in Red Book: If a vehicle is no longer listed in the Red Book, the household's estimate of the value of the vehicle shall be accepted unless the CWA has reason to believe the estimate is incorrect. In that case, and if it appears that the vehicle's value will affect eligibility, the household shall obtain an appraisal or produce other evidence of its value, such as newspaper advertisement which indicates the amount for which similar vehicles are being sold.

10:87-4.12 Treatment of licensed vehicles

(a) The value of licensed vehicles shall be excluded or counted as a resource as follows:

1. Vehicles totally excluded: The entire value of any licensed vehicle shall be excluded if the vehicle meets any one of the criteria below. If found to apply, this exclusion shall continue when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

i.-ii. (No change.)

iii. Vehicle essential to employment: The vehicle is necessary for long distance travel, other than daily commuting, which is essential to the employment of a household member (or excluded individual whose resources are being considered available to the household); for example, the vehicle of a traveling salesperson or of a migrant farmworker following the work stream.

iv. Vehicle used as a home: The vehicle is used as a home and therefore excluded under N.J.A.C. 10:87-4.8(a).

v. Vehicle necessary to transport a physically disabled household member: The vehicle is necessary to transport a physically disabled household member (or excluded individual whose resources are being considered available to the household) regardless of the purpose of such transportation. This exclusion is limited to one vehicle per physically disabled household member. A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is:

(1) (No change.)

(2) Specially equipped to meet the specific needs of the disabled person. However, the vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.

vi. Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle excluded under (a)1i, ii, or iii above. Only that portion of real property determined necessary for maintenance or use is excludable under this provision.

(1) For example, a household that owns a produce truck to earn a living may be prohibited from parking the truck in a residential area. The household may own a five-acre field and use a quarter-acre to park and/or service the truck. Only the value of the quarter-acre would be excludable under this provision. (It is possible that the entire five acres are excludable under other resource exclusions at N.J.A.C. 10:87-4.8(a).)

(b) Vehicles evaluated at fair market value: All licensed vehicles not excluded under (a)1 above shall be individually evaluated for fair market value (see N.J.A.C. 10:87-4.11) and that portion of the value which exceeds $4,500 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicle. For example, a household owning an automobile with a fair market value of $5,500 shall have $1,000 applied to its resource level even though it still owes $2,000 toward the purchase of the vehicle.

1. (No change in text.)

(c) Vehicles evaluated at equity value: Except as provided for below, the equity value of licensed vehicles and unlicensed vehicles not excluded under N.J.A.C. 10:87-4.8(a)7, 8 and 9 shall be attributed toward the household's resource level. Equity value is defined at N.J.A.C. 10:87-4.10.

(d) Vehicles not evaluated at equity value: The following vehicles shall not be evaluated at equity value:

1. Vehicles excluded by paragraph (a)1 above;

2. (No change in text.)

3. Any licensed vehicles used to transport household members (or excluded individuals whose resources are being considered available to the household*)* to and from employment or to and from training or education which is preparatory to employment, or to seek employment in compliance with the employment and training criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity value exclusion during temporary periods of unemployment.

(e) Vehicles assigned both fair market and equity value: In the event a licensed vehicle is assigned both a fair market value in excess of $4,500 and an equity value, only the greater of the two amounts shall be counted as a resource. For example, a second car that is not used by a household member to go to work will be evaluated for both fair market and equity values. If the fair market value is $5,000 and the equity value is $1,000, the household shall be credited with only the $1,000 equity value, and the $500 excess fair market value will not be counted.

(f) Summary: In summary, each licensed vehicle shall be handled as follows: First, it will be evaluated to determine if it is exempt as an income producer or as a home. If not exempt, it will be evaluated to determine if its fair market value exceeds $4,500. If worth more than $4,500, the portion in excess of $4,500 shall be counted as a resource. The vehicle will also be evaluated to see if it is equity-exempt as the household's primary vehicle or necessary for employment reasons. If not equity-exempt, the equity value will be counted as a resource. If the vehicle has a countable market value of more than $4,500 and also has a countable equity value, only the greater of the two amounts shall be counted as a resource.

10:87-4.13 Maximum allowable resources

(a) The maximum allowable resources, including both liquid and non-liquid assets of all members of the household, shall not exceed $2,000 for the household: except that for households including a member or members aged 60 or over, such resources shall not exceed $3,000.

(b) If the household's non-excludable resources exceed the above amounts at any point in time, the household's participation in the program shall be denied or terminated.

10:87-4.15 Disqualification

Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified for up to one year (see schedule at N.J.A.C. 10:87-4.19) from the date of discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified for benefits and which are then transferred to prevent the household from exceeding the maximum resource limit.

10:87-4.16 Transfers not subject to disqualification

(a) Eligibility for the program will not be affected by the following transfers:

1. Resources not affecting eligibility: Resources which would not otherwise affect eligibility; for example, resources consisting of excluded personal property such as furniture or money that, when added to other nonexcluded household resources, totalled less than the allowable resource limit at the time of the transfer;

2. Transfer at fair market value: Resources that are sold or traded at, or near, fair market value;

3.-4. (No change.)

10:87-4.19 Period of disqualification

The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceed the allowable limits. For example, if a one-person, non-elderly household with $1,750 in a bank account transferred ownership of a car worth $5,000, $250.00 of that transfer would be considered in determining the period of ineligibility because the first $4,500 of the car's value is excluded and an additional $250.00 of the transferred asset can be applied toward the $2,000

resource limit. The following chart shall be used to determine the period of disqualification:

Disqualification Period Chart

Amount in Excess of the Resource Limit	Period of Household Disqualification
$ 0.01-$ 249.99	1 month
250- 999.99	3 months
1,000- 2,999.99	6 months
3,000- 4,999.99	9 months
5,000 and over	12 months

10:87-4.20 Resources of nonhousehold members

(a) The resources of nonhousehold members, as defined in N.J.A.C. 10:87-2.3(a) shall be handled as outlined in N.J.A.C. 10:87-7.15.

(b) The resources of excluded members, as defined in N.J.A.C. 10:87-2.3(c) shall be handled as outlined in N.J.A.C. 10:87-7.14 and 7.15, as appropriate.

10:87-5.1 Applicability

(a) All households which do not contain an elderly or disabled member, including those in which all members are recipients of public assistance, shall meet both the net and gross income eligibility standards set forth in N.J.A.C. 10:87-12.3 and 12.4, respectively, in order to be eligible for program participation. Households which contain an elderly or disabled member shall meet the net income eligibility standards in N.J.A.C. 10:87-12.3. Net food stamp income shall be determined in accordance with procedures contained in this subchapter.

(b) Households that are categorically eligible as defined in N.J.A.C. 10:87-2.36 do not have to meet either the gross or net income eligibility standards.

10:87-5.2 Responsibilities regarding the reporting of income

(a) Responsibilities for the reporting of income shall be as follows:

1. Applicant Responsibility: At the time of certification or recertification, the applicant shall report all income currently being received by all members of the household and any income changes or additions which the household anticipates during the course of the certification period. The applicant also has the responsibility of reporting actual income changes during the certification period.

2. Responsibility of CWA: The CWA shall determine that the total income to the household, as reported by the applicant during the certification or recertification interview, is completely identified on the FSP-901, and in sufficient detail to permit verification (see also N.J.A.C. 10:87-2.21(b)).

10:87-5.3 Income defined

Household income shall be defined as all income from whatever source unless such income is specifically excluded under the provisions of N.J.A.C. 10:87-5.9.

10:87-5.4 Earned income

(a) For the purposes of determining net food stamp income, earned income shall include:

1. (No change.)

2. Combined income of household members and nonhousehold members: When the earned income of one or more household members and the earned income of a nonhousehold member are combined into one wage, the income of the household members shall be determined as follows:

i.-ii. (No change.)

3. Self-employment income: The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business (see N.J.A.C. 10:87-5.9(a)14).

i. Rental property: Ownership of rental property shall be considered a self-employment enterprise. However, income derived from the rental property shall be considered earned income only if a member of the household is actively engaged in the management of the property for an average of at least 20 hours per week (see also N.J.A.C. 10:87-5.5(a)3).

ii. (No change.)

4. Training allowances: Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the Work Incentive Program (WIN), Realizing Economic Achievement (REACH) or programs authorized by the Comprehensive Employment and Training Act (CETA) to the extent they are not a reimbursement (see N.J.A.C. 10:87-5.9(a)9iii(1)).

5. Payments to volunteers: Payments to volunteers under Title I (VISTA, University Year for Action, and so forth) of the Domestic Volunteer Service Act of 1973 (P.L. 93-113) shall be considered earned income and subject to the earned income deduction specified in N.J.A.C. 10:87-5.10(a)2, excluding payments to households as set forth in N.J.A.C. 10:87-5.9(a)15iii.

[6. Earnings to individuals who are participating in on-the-job training programs under the JTPA. This provision does not apply to a household member under 19 years of age who is under the parental control of another adult member.]

6. Earnings to participants in on-the-job training programs under JTPA, provided that the participant is not under 19 years of age and under the parental control of another adult member. JTPA participants under 19 years of age who are under the parental control of another adult household member shall have their JTPA earnings treated as excluded income in accordance with N.J.A.C. 10:87-5.9(a)15xii.

10:87-5.5 Unearned income

(a) For the purposes of determining net food stamp income, unearned income shall include, but not be limited to:

1. Assistance payments: Assistance payments from Federal or federally aided public assistance programs such as SSI or AFDC; and General Assistance program payments; or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment to a third party on behalf of the household, unless specifically exempt as countable income under the provisions of N.J.A.C. 10:87-5.9(a)1 and 2.

i. All assistance payments from programs which require, as a condition of eligibility, the actual performance of work such as the General Assistance Employability Program (GAEP), without compensation other than the assistance payments themselves, shall be considered unearned income.

2. Annuities, pension, Social Security, and other benefits: Annuities, pensions, retirement benefits, veteran's benefits, old-age, survivors, or disability benefits, workman's compensation, unemployment compensation, Social Security benefits, strike benefits, and foster care payments for children or adults;

3. Income from rental property: Gross income (minus the cost of doing business) derived from rental property in which a household member is not actively engaged in management of the property at least 20 hours a week (see N.J.A.C. 10:87-5.4(a)3i);

4. Educational grants and loans: Scholarships, educational grants, deferred payment loans for education, veteran's educational benefits, fellowships and the like in excess of amounts excluded in N.J.A.C. 10:87-5.9(a)7;

5. (No change.)

6. Payments from government-sponsored programs: Payments from Federal, State or local government-sponsored programs which can be construed to be a gain or benefit;

7.-10. (No change.)

10:87-5.6 Income of excluded individuals

(a) Income of individual excluded for intentional program violation: The earned or unearned income of an individual disqualified from the household for intentional program violation as set forth in N.J.A.C. 10:87-11.1 et seq. shall continue to be attributed in its entirety to the remaining household members (see N.J.A.C. 10:87-7.14(b)).

(b) Income of individual excluded for other causes: The earned or unearned income of individuals excluded from the household for failing to comply with the requirement to provide a Social Security number (see N.J.A.C. 10:87-21.1(h)) or for being an ineligible alien (see N.J.A.C. 10:87-3.8(a) et seq. for listing of eligible aliens) or for having questionable citizenship status (see N.J.A.C. 10:87-2.21(k)) shall continue to be counted as income, less the pro rata share for

that individual, to the remaining household members. Procedures for calculating this pro rata share are described in N.J.A.C. 10:87-7.14.

10:87-5.7 Treatment of recovery moneys and Title IV-D child support payments

(a) (No change.)

(b) Moneys used for recovery of overpayments caused by intentional noncompliance with requirements of other programs: Moneys withheld from a Federal, State, or local assistance grant such as AFDC, GA or SSI, for the purpose of recovering a prior overpayment which resulted from recipient fraud or intentional failure to comply with the other program's requirements, shall be included as income.

1. For the purposes of this provision, intentional noncompliance shall be defined as follows:

i.-ii. (No change.)

(c) Benefit determination in cases with recovery due to fraud or intentional noncompliance: The CWA shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in assistance payments has been imposed for fraud or intentional failure to comply with a Federal, State, or local welfare program such as AFDC, SSI or GA. Procedures for determining food stamp benefits when there is such a decrease in assistance are as follows:

1. (No change in text.)

i. (No change in text.)

ii. (No change in text.)

2. (No change in text.)

(d) Child support under Title IV-D: Child support payments received by recipients which must be transferred to the CWA pursuant to Title IV-D of the Social Security Act to maintain AFDC eligibility shall not be counted as income except for the following:

1. (No change.)

10:87-5.8 Income exclusions

Income which is classified as an exclusion shall not be considered for purposes of determining net food stamp income.

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; no other income shall be excluded.

1. (No change.)

2. Vendor payments: A payment made in money on behalf of a household shall be considered a vendor payment when a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative or friend who is not a household member pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household.

i.-iv. (No change.)

v. Moneys otherwise payable to the household: Moneys which are legally obligated and otherwise payable to the household but which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded as a vendor payment. The distinction is whether or not the person or organization making the payment on behalf of the household is using funds which otherwise would have to be paid to the household. Such funds include wages earned by a household member and therefore owed to the household, a public assistance grant to which the household is legally entitled, support and alimony payments in amounts which legally must be paid to a household member, and student educational assistance that is provided on behalf of the household to a third party for living expenses.

(1) Funds owed to the household: if any employer, agency, former spouse, or other person who owes these funds to a household diverts them instead to a third party to pay for a household expense, these payments shall be counted as income to the household. Diverted educational assistance payments made to the household for living expenses shall also be counted.

(2) (No change.)

3. HUD utility allowance payments which may be made directly to the individual, the utility or the landlord are counted as income and not excluded as a vendor payment.

4. An AFDC or GA payment which is not made directly to the household, but paid to a third party on behalf of the household to pay a household expense, shall be considered an excludable vendor payment and not counted as income to the household if the payment is for:

i. Medical assistance;

ii. Child care assistance;

iii. Energy assistance (as defined in N.J.A.C. 10:87-5.9(a)15viii); or

iv. Housing assistance payments made to a third party for a household residing in temporary housing if the latter unit lacks facilities for the preparation and cooking of hot meals and/or refrigerated food storage. Such vendor payments shall be excluded under this provision if paid to the housing provider during the period from October 20, 1987 to September 30, 1989.

5. Cash donations based on need which were received on or after February 1, 1988 from private nonprofit charitable organizations that do not exceed $300.00 in a Federal fiscal year quarter.

6. (No change in text.)

7. Educational grants and loans: Educational loans on which payment is deferred, grants, scholarships, fellowships, veteran's educational benefits and the like shall be excluded to the extent that they are used for tuition and mandatory school fees, books, supplies, transportation, and miscellaneous personal expenses for a student attending school on at least a half-time basis as determined by the institution of post-secondary education, including correspondence schools at that level, or a school for the physically or mentally handicapped at any level (see N.J.A.C. 10:87-5.11).

8. Loans: All loans, including loans from private individuals as well as commercial institutions, are excluded from income and resources. Additionally, deferred payment educational loans that provide income assistance beyond that used for tuition and mandatory fees shall be excluded if the lender/financial aid office of the school specifically designates portions of the loan as educational expenses rather than living expenses (see N.J.A.C. 10:87-2.21(m)).

9. Reimbursements: Reimbursements for past or future expenses shall be excluded to the extent that they do not exceed actual expenses and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage payments, personal clothing, or food eaten at home are a gain or benefit are not excluded.

i.-ii. (No change.)

iii. Examples of excludable reimbursements: Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

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

(4) Non-Federal reimbursements or allowances to students for specific educational expenses, such as travel or books, but not allowances for living expenses such as food, rent, or clothing. Portion of a loan, grant, or scholarship must be specifically designated by the grantor for educational expenses, rather than living expenses, to be excluded as a reimbursement.

(5) (No change.)

10. ***Money for care and maintenance of a third-party beneficiary:*** Money ***received and used*** for ***the*** care and maintenance of a third-party beneficiary who is not a household member shall be excluded.

i. (No change.)

ii. A foster care payment shall not be considered as income to the household when the foster child for whom that payment is intended is treated as a boarder, even when the household receives the payment directly.

11. Earned income of a student under *[19]* ***18*** years of age: Earned income (as defined in N.J.A.C. 10:87-5.4) of students (as defined in N.J.A.C. 10:87-10.7(b)3) under *[19]* ***18*** years of age shall be excluded. This exclusion will continue to apply during temporary interruptions in school attendance due to semester or vacation breaks; provided the child's enrollment will resume following the break.

i.-ii. (No change.)

12. Income of an ineligible student: The income, either earned or unearned, of an ineligible student as defined in N.J.A.C. 10:87-2.3(a)2, shall be excluded.

13. Nonrecurring lump-sum payments: Moneys received in the form of nonrecurring lump-sum payments including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum Social Security, SSI, public assistance, railroad retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities, shall be excluded. Such payments will be counted as resources in the month received in accordance with N.J.A.C. 10:87-4.3(a), unless excluded by N.J.A.C. 10:87-4.8(a)17.

14. The cost of producing self-employment income: The cost of producing self-employment income shall be excluded. The procedures for computing the cost of producing self-employment income are described in N.J.A.C. 10:87-7.6.

15. Income excluded by Federal law: Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

i-ii. (No change.)

iii. Payments to volunteers: Any payment to volunteers under Title II (RSVP, Foster Grandparents, and so forth) of the Domestic Volunteer Services Act of 1973 (Public Law 93-113), as amended, shall be excluded. Payments to volunteers under Title I of that Act (including payments from such Title I programs as VISTA, University Year for Action, and the Urban Crime Prevention Program) shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the Title I program, except that households which were receiving an income exclusion for VISTA or other Title I subsistence allowance at the time of conversion to the Food Stamp Act of 1977, shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once the initial determination has been made. New applicants who were not receiving public assistance or food stamps when they joined VISTA shall have these volunteer payments included as earned income.

iv. Income from certain Indian lands: Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (Public Law 94-114).

v. Payments of relocation assistance to members of the Navajo and Hopi Tribes under Public Law 93-531.

vi.-vii. (No change.)

viii. Payments or allowances made under any Federal, State, or local law for the purpose of energy assistance. In order to qualify for this exclusion, the State or locally authorized payments, allowances, or tax credits must be approved by the FNS. The State programs of Lifeline, Tenants Lifeline Assistance Program (TLAP), Home Energy Assistance, and the food stamp energy disregard portion of AFDC and GA payments qualify for this exclusion.

ix.-xi. (No change.)

xii. Job Training Partnership Act: Any allowances*[, earnings]* or payments provided to individuals participating in *[on-the-job training]* programs under the Job Training Partnership Act of 1982 (Public Law 97-300). *[This provision does not apply to household members under 19 who are under the parental control of another adult member.]* ***Earnings provided to individuals participating under JTPA on-the-job training programs shall be excluded if the participants are under 19 years of age and are under the parental control of another adult household member.***

xiii. Any allowances, earnings or payments provided to individuals under the Senior Community Service Employment Program (SCSEP) enacted by the Older Americans Act Amendments of 1987 (Public Law 100-175). Programs funded by Title V moneys include, but are not limited to, Green Thumb, Inc., National Council on Aging, Inc. (NCOA), National Council of Senior Citizens' (NCSC) Senior Aide Program, and United Progress, Inc. (UPI).

xiv. Any educational assistance funded in whole or in part under Title IV of the Higher Education Act Amendments of 1986 or funded by the Bureau of Indian Affairs (BIA) Higher Education Grant Program to the extent it is used for tuition, mandatory school fee, and other specified costs of education (see N.J.A.C. 10:87-5.11).

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1. Standard deduction: The standard deduction, specified at N.J.A.C. 10:87-12.1, shall be deducted from income, whether earned or unearned.

2. Work allowance deduction: An amount equal to 20 percent of earned income, as defined in N.J.A.C. 10:87-5.4, after application of income exclusions in N.J.A.C. 10:87-5.9, shall be deducted.

3. Excess medical deduction: That portion of medical expenses in excess of $35.00 per month, excluding the cost of special diets, incurred by any household member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. Spouses or other persons (i.e., essential persons) receiving benefits as dependents of the SSI or disability and/or blindness recipient are not eligible to receive this deduction. Persons receiving "emergency" SSI benefits based on presumptive eligibility are eligible for this deduction.

i. Allowable medical costs: The following items are allowable medical costs:

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

(4) Health and hospital insurance: Health and hospitalization insurance policy premiums. When policies include individuals who are not eligible for a medical deduction, only that portion of the premiums which covers the individual(s) eligible for the deduction shall be deductible. If that portion is not identifiable, then a prorated share may be used to determine the allowable amount (see N.J.A.C. 10:87-7.14(b)). This deduction only applies when the policy holder is a member of the eligible household. The costs of health and accident policies such as those payable in lump-sum settlements for death or dismemberment or income maintainence policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible;

(5)-(10) (No change.)

4. Dependent care deduction: Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job-search criteria (or an equivalent effort by those not subject to job-search), or to attend training or pursue education which is preparatory to employment, shall be deducted. The amount of this deduction shall be the actual cost of such care, *[not to]* ***but shall not*** exceed the amount in N.J.A.C. 10:87-12.1 ***per each dependent for whom the household pays dependent care***.

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1 unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly costs that exceed 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i. Allowable shelter costs: Only the following shall be considered in determining the shelter cost deduction:

(1)-(2) (No change.)

(3) Utilities: The costs of heating and cooking fuel; cooling and electricity; water and sewage; garbage and trash collection fees; the basic service fee, plus tax, for one telephone (the uniform telephone rate is found in N.J.A.C. 10:87-12.1) and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

ii. Shelter costs of unoccupied home: Shelter costs for a home not occupied temporarily by the household because of employment or training away from home, illness, or abandonment because of a

natural disaster or casualty loss, shall be deductible (see N.J.A.C. 10:87-2.21(1) for verification requirement). The following conditions must be met in order to qualify for this deduction:

(1) (No change.)

(2) Duplicate claim of shelter costs: Current occupants, if any, of the home must not be claiming the shelter costs of that home for food stamp purposes.

(3) (No change.)

iii. Charges for repair of a home: Charges for the repair of a home which was substantially damaged or destroyed due to a natural disaster, such as a fire or flood, shall be deductible. Shelter costs shall not include charges for home repairs that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

iv. Utility standard: Households which incur certain utility costs separate and apart from their rent or mortgage payments are entitled to claim the appropriate utility allowance (see N.J.A.C. 10:87-12.1) in accordance with the following provisions:

(1) Households that pay directly for their primary source of heat separate and apart from rent or mortgage payments may claim the heating utility allowance (HUA). The CWA shall verify that the household is responsible for primary heating costs.

(A) Households that are charged only for excess heating costs are not eligible for the HUA.

(B) Households that are responsible only for secondary sources of heat are not eligible for the HUA.

(C) Households that heat with wood must actually purchase the wood to be used as fuel to be eligible for the HUA.

(D) Renters who are billed by their landlords for heating fuel costs according to actual usage as determined by individual metering may claim the HUA.

(E) Households that receive a Home Energy Assistance payment are eligible for the HUA.

(2) Households that do not incur heating costs separate and apart from rent or mortgage payments but do incur a utility charge (other than telephone, water, sewage, or garbage collection fees) are entitled to use the standard utility allowance (SUA). The CWA shall verify that the household incurs such utility charges.

(3) (No change.)

(4) Recipient of energy payments under the HEA program.

(A) Once a household has made an election between the utility allowance and actual utility expenses, the CWA shall permit the household to switch between actual utility costs and the utility allowance at the time of recertification and one additional time during each 12 month period.

(B) (No change in text.)

(5)-(6) (No change.)

(7) When a household shares a residence and the utility costs with other individuals, the SUA or HUA shall be divided equally among the parties who pay the utility costs. In such cases, the household shall be permitted to use only its share of the utility allowance, unless the household elects to use its actual costs.

10:87-5.11 Treatment of educational assistance

(a) Mandatory school fees, those charged to all students or those charged to all students within a certain curriculum shall be excluded in determining the amount of educational assistance. For example, uniforms, lab fees, or equipment charged to all students in order to enroll in a chemistry course are excluded.

(b) Any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in New Jersey. The institution must be legally authorized or recognized by the State to provide an educational program beyond secondary education or a training program to prepare students for gainful employment.

(c) For purposes of State or other non-Federal educational assistance administered by the school for which the financial aid office takes part in determining eligibility for and level of educational assistance, the financial aid office of the school is to be considered as acting in the capacity of "grantor" for the purpose of determining the educational expenses each student incurs, or is likely to incur, during the semester.

(d) Federal education assistance, funded in whole or part under Title IV of the Higher Education Act of 1986 (Public Law 99-498) or by the Bureau*[,]* of Indian Affairs (BIA) Higher Education Grant Program, which is used by the student for tuition, mandatory school fees or specified costs related to college expenses shall be excluded from both income and resources. Title IV programs include Pell, Supplemental Educational Opportunity Grants (SEOG), State Student Incentive (SSIG) Grants, the National Direct Student Loan (NDSL) and Perkins Loans ***Guaranteed Student Loans*** (GSL), the PLUS program, the College Work Study Program, and the Byrd Honor Scholarships.

1. Specified costs of education that must be treated as income exclusions are tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials or supplies required of all students in the same course of study; an allowance for books, supplies, transportation and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

2. The institution or grantor shall indicate on budget sheets or other appropriate documentation that the assistance is meant to be used for allowable costs of attendance. The student is not required to verify how the assistance is actually used. However, assistance provided for room, board and dependent care shall not be excluded under this provision.

(e) State educational assistance such as Tuition Assistance Grants (TAG), Educational Opportunity Fund (EOF), Garden State Scholarships, and the PLUS program, shall be excluded from income to the extent that it is used for tuition, mandatory school fees and specified costs relating to education as designated by the "grantor" or the financial aid office of the school when that office takes part in determining eligibility for, and level of educational assistance.

(f) Non-Federal educational assistance (local and private) shall be excluded from income to the extent that it is used by the student for tuition, mandatory school fees and specified costs of education such as books, supplies, transportation, and other miscellaneous educational expenses. In order to be excluded, private educational assistance must be "earmarked" by the "grantor" for specific educational expenses.

(g) Verification of educational expenses for non-federal educational assistance.

1. In order to exclude State or other non-Federal educational assistance, administered by the school for which the financial aid office takes part in determining eligibility for and level of assistance, educational expenses must be identified by the financial aid office of the institution of post-secondary education.

2. An award letter by the post-secondary school administering the non-Federal educational assistance which distinctly identifies anticipated educational expenses separate and apart from normal living expenses shall be considered satisfactory verification for the purpose of determining countable student income.

3. For private educational assistance, an award letter or other document in which the "grantor" designates the funds for specific educational expenses shall be considered acceptable verification.

(h) The following shall not be considered as excludable reimbursements:

1. No portion of benefits provided under Title IV-A of the Social Security Act to the extent that such benefits are attributed to an adjustment for work-related or child care expenses.

2. No portion of any Federal educational grant, scholarship, fellowship, or veteran's educational benefit, to the extent that it provides income assistance beyond that used for tuition and mandatory fees as set forth in N.J.A.C. 10:87-5.9(a)7. This provision does not apply to assistance provided by programs funded under Title IV of the Higher Education Act, except as specified under N.J.A.C. 10:87-5.9(a)15xiv below.

3. No portion of any non-Federal (State, local or private) educational grant, scholarship, fellowship, or veteran's educational benefit that provides for living expenses such as food, rent, or clothing.

4. No portion of educational assistance, from sources other than Title IV, shall be excluded if such funds are not utilized for tuition, mandatory fees, origination fees, and insurance premiums for student loans or designated by the grantor or financial aid office for other specific educational expenses.

10:87-6.2 Month of application

(a) (No change.)

(b) Initial month defined: The term initial month means the first month that the household is certified for participation in the Food Stamp Program or, for ongoing cases, the first month that the household is certified for participation following any period of time during which the household was not certified for participation.

1. Recertifications shall be processed in accordance with N.J.A.C. 10:87-6.3.

2. (No change in text.)

(c) Determining benefit level for initial month: A household's benefit level for the initial month will be based on the day of the month it applies for benefits. Using a 30-day calendar month, households shall receive benefits prorated from the day of application to the end of the month. A household applying on the 31st of the month will be treated as though it applied on the 30th of the month. The $10.00 minimum benefit for one- and two-person households shall be prorated. To determine the amount of the prorated allotment for the month of application the CWA shall use the Allotment Proration Table found in N.J.A.C. 10:87-12.5. If the allotment for the initial month is less than $10.00 the CWA shall not issue benefits to that household.

10:87-6.3 Application for recertification

(a) Eligibility for recertification shall be determined by circumstances anticipated for the certification period beginning with the month following the expiration of the current certification period. The level of benefits for recertification shall be based on the same anticipated circumstances, except for retrospectively budgeted households which shall be recertified in accordance with N.J.A.C. 10:90-2.6.

(b) If an application for recertification is submitted after the household's certification period has expired, that application shall be considered an initial application and benefits for that month shall be prorated in accordance with N.J.A.C. 10:87-6.2(c).

1. If the household submits an application for recertification before the end of its certification period but is found ineligible for the first month following the end of that period, then the first month of any subsequent participation shall be considered an initial month.

2. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month for that household.

(c) Any household that receives certification, as discussed in N.J.A.C. 10:87-9.1(a) et seq., shall not be subject to proration for the first month of its certification period if the deadline for filing for recertification falls after the end of its current certification period. However, households found ineligible for the first month following the end of their certification shall have the first month of any subsequent participation considered an initial month.

(d) For all households that the CWA elects the timeframe for providing missing verification, as outlined in N.J.A.C. 10:87-2.21 through 2.28, and the end of the timeframe falls after the end of that household's current certification period, the household shall not be subject to proration for the first month following the end of its current certification period, if it has provided the missing verification and is otherwise eligible.

10:87-6.5 Ineligibility for month of application

(a) A household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for both the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in N.J.A.C. 10:87-2.30 and 2.31.

(b) (No change in text.)

(c) Eligible for month of application but disqualified on an ongoing basis: A household's gross income could be low enough to make it eligible while its net income could be high enough to disqualify it on an ongoing basis. The CWA shall deny these households participation on the grounds that their net income exceeds the level below which benefits are issued.

10:87-6.6 Varying allotments

As a result of anticipated changes, the household's allotment for the application month may differ from its allotment in subsequent months. The CWA must establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary on a monthly basis within the certification period, to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in N.J.A.C. 10:87-6.9(f).

10:87-6.7 Determining resources and income

The procedures contained in N.J.A.C. 10:87-6.8 and 6.9 shall be used to determine financial eligibility and benefit levels (see also N.J.A.C. 10:87-7 for households with special income circumstances).

10:87-6.8 Resources

The household's resources at the time the application is filed shall be used to determine whether or not they exceed the maximums prescribed at N.J.A.C. 10:87-4.13.

10:87-6.9 Income determination

(a) For the purposes of determining the household's eligibility and basis of issuance, the CWA shall consider the income already received by the household during the certification period and any anticipated income that the household and the CWA are reasonably certain will be received during the remainder of the certification period. Income from a new source anticipated after application shall not be counted if the household is destitute (see N.J.A.C. 10:87-6.16 through 6.18).

(b) Uncertain income: If the amount of income which will be received, or when it will be received, is uncertain, that portion of the household's income which is uncertain shall not be counted by the CWA. For example, a household anticipating income from a new source, such as a new job or public assistance benefits recently applied for, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the CWA unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. Households shall be advised to report all changes in gross monthly income in accordance with N.J.A.C. 10:87-9.5(b).

1. Exact amount unknown: If the exact amount of the income is not known, the portion that can be anticipated with reasonable certainty shall be considered income.

2. Fluctuating income: In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to average income in accordance with (f) below.

(c) Anticipated income: Income received during the most recent thirty-day period shall be used as an indicator of anticipated income. However, the CWA shall not use past income as an indicator of income anticipated for the certification if changes in income have occurred or can be anticipated.

Renumber i through iii as 1 through 3 (No change in text.)

(d) Income only in month received: Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged in accordance with (f) below.

1. (No change in text.)

2. Nonrecurring lump-sum payments: Non-recurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income (see N.J.A.C. 10:87-4.3 and N.J.A.C. 10:87-5.9(a)10).

3. (No change in text.)

4. (No change in text.)

5. Fluctuations caused by mailing cycles: Households receiving public assistance payments (e.g., AFDC, GA, or SSI) or Social Secur-

ity benefits on a regular monthly basis shall not have their monthly income from these sources varied merely because mailing cycles may cause two payments to be received in one month and none in the next.

(e) Averaging self-employment or contract income: Households which, by contract or self-employment, derive their annual income in a period of time shorter than one year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers or to destitute households. The procedures for averaging self-employed income are described in N.J.A.C. 10:87-7.2.

(f) Averaging fluctuating income: Households, except destitute households, may elect to have income averaged. Income shall not be averaged for a destitute household since averaging would result in assigning to the month of application income from future periods that is not available to the destitute household for its current food needs.

1. (No change in text.)

(g) (No change in text.)

10:87-6.10 Determining deductions

Deductible expenses include only certain costs of dependent care, shelter and medical costs as described in N.J.A.C. 10:87-5.10.

10:87-6.11 Disallowed expenses

(a) The following shall not be included in the determination of deductions:

1. Expense covered by excluded income: An expense covered by an excluded reimbursement or vendor payment (see N.J.A.C. 10:87-5.9) except an energy assistance vendor payment made under the Low Income Home Energy Assistance Act (LIHEAA), shall not be deductible. For example, that portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost. However, that portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. Households entitled to the medical deduction shall have the nonreimbursable portion considered at the time the amount of reimbursement is received or can otherwise be verified.

2. Expenses shall not be deductible if the household provides compensation for the service through an in-kind benefit or if another household member provides the service. For example, a dependent care deduction shall not be allowed if compensation for the care is provided in the form of an in-kind benefit such as food. Expenses shall only be deductible if the service is provided by someone outside of the household and the household makes a money payment for the service.

10:87-6.12 Billed expenses

(a) Except as provided in N.J.A.C. 10:87-6.13, a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense.

(b) (No change.)

10:87-6.13 Averaging expenses

(a) (No change.)

(b) One-time only expenses: The household may elect to have a one-time only expense, such as an installation charge for utilities, averaged over the entire certification period in which it is billed. Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of their certification period. Averaging would begin with the month the change becomes effective. The CWA worker shall explain to the household the advantages of averaging the expense or treating it as a one-time deduction.

10:87-6.14 Anticipating expenses

(a) (No change.)

(b) Updating utility bills: When the household is not claiming a utility allowance, the CWA may anticipate changes during the certification period based on last year's bills updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household.

(c) Past expenses: The CWA shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period.

(d) Conversion of deductions: The income conversion procedures in N.J.A.C. 10:87-6.9(d)1 shall also apply to expenses billed on a weekly or biweekly basis.

10:87-6.15 Calculating net and gross income and benefit levels

(a) The procedures below shall be used to calculate net and gross income and benefit levels.

(b) Net and gross monthly income: To determine a household's net monthly income, the CWA shall follow steps ***(b)*1** through 8 below. To determine a household's total gross income, the CWA shall add, after rounding (according to procedures at (c)1 below), each individual's monthly earned and unearned income(s). This total, minus income exclusions (see N.J.A.C. 10:87-5.9) provides the sum total gross monthly income figure which shall be used to determine the household's eligibility in accordance with (d)1 or 2 below.

1. Step 1: Add the gross monthly income earned by all household members minus earned income exclusions (see N.J.A.C. 10:87-5.9) to determine the household's total gross earned income. Net losses from the self-employment income of a farmer shall be offset in accordance with N.J.A.C. 10:87-7.6.

2. Step 2: Multiply the total gross monthly earned income by 80 percent to determine the net monthly earned income.

3. Step 3: Add to net monthly earned income, the total monthly unearned income of all household members, minus income exclusions (see N.J.A.C. 10:87-5.9).

4. Step 4: Subtract the standard deduction (see N.J.A.C. 10:87-12.1).

5. Step 5: If the household is entitled to an excess medical deduction as provided in N.J.A.C. 10:87-5.10(a)3, determine if total medical expenses exceed $35.00. If so, subtract the amount that exceeds $35.00.

6. Step 6: *[Subtract monthly dependent care expenses, if any, up to the maximum (see N.J.A.C. 10:87-12.1). If the household is not entitled to an excess shelter deduction, the net monthly income has been determined. If the household is entitled to an excess shelter deduction compute the household's excess shelter expenses in accordance with step 7.]* ***Subtract monthly dependent care expenses, if any, up to the maximum amount allowed for each dependent for whom the household renders payment. If the household is entitled to an excess shelter deduction, compute the household's excess shelter expenses in accordance with step 7.***

7. Step 7: Total the allowable shelter expenses to determine shelter costs. Subtract 50 percent of the household's monthly net income (after all the above deductions have been subtracted) from the total shelter costs. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction in Step 8.

8. Step 8: Subtract the excess shelter cost up to the maximum (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly net income after all other applicable deductions. The maximum amount allowed for shelter (for those households subject to a shelter maximum) is the maximum in N.J.A.C. 10:87-12.1. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income now has been determined.

(c) Rounding: The CWA shall, when calculating food stamp gross income and benefit levels, round down those income and deduction amounts ending in $.01 through $.49, and round-up those ending in

$.50 through $.99 to the nearest dollar. The CWA shall use the rounding procedure for both the work allowance and shelter cost deductions.

1. When to round: The CWA shall round the following, up or down:

i. Self-employment income;
ii. Earned income;
iii. Public Assistance benefits;
iv. Supplemental Security Income benefits;
v. Retirement Survivors Disability Insurance benefits;
vi. Unemployment/workers compensation;
vii. General Assistance benefits;
viii. Other unearned income;
ix. Dependent care payments;
x. Medical expenses; and
xi. Total shelter costs.

(d) Eligibility and benefits: Except for migrant, seasonal farmworker, and homeless households considered destitute in N.J.A.C. 10:87-6.16, the following eligibility and benefit determinations shall apply:

1. Households having an elderly or disabled member: Households which contain an elderly or disabled member (as defined in N.J.A.C. 10:87-2.38) shall have the household's net income, as calculated in (b) above, compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.3 to determine eligibility for the month.

2. Households subject to gross and net monthly tests: Households that do not contain an elderly or disabled member shall have their gross monthly income compared to the monthly income eligibility standards in N.J.A.C. 10:87-12.4 for the appropriate household size and shall have their net monthly income, as calculated in (b) above, compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.3 to determine eligibility for the month.

3. Benefits: After eligibility has been determined in accordance with (d)1 or 2 above, the CWA shall use the household's net monthly food stamp income to determine the amount of the household's benefits in accordance with N.J.A.C. 10:87-12.6.

i. If the allotment for an initial month is less than $10.00, or prorated to less than $10.00 in accordance with N.J.A.C. 10:87-6.2(c), no benefits shall be issued to the household for the initial month.

ii. Except during an initial month, all eligible one- and two-person households shall receive a minimum monthly allotment of $10.00 and all eligible households with three or more members entitled to $1.00, $3.00 and $5.00 allotments shall have their allotments rounded to $2.00, $4.00 and $6.00, respectively.

10:87-6.18 Destitute households with income from a new source

(a) Migrant or seasonal farmworker households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service only if income of more than $25.00 from a new source will not be received by the 10th calendar day after the date of application.

(b) Income received monthly or more frequently: Income which is normally received on a monthly or more frequent basis shall be considered to be from a new source only if more than $25.00 has not been received from that new source within 30 days prior to the date the application was filed.

(c) Income received less often than monthly: If income is normally received less often than monthly, it shall be considered to be from a new source only if more than $25.00 was not received within the last normal interval between payments.

1. Example: If a household applies in early January and is expecting to be paid every three months starting in late January, the income shall be considered to be from a new source only if no more than $25.00 was received from the source during October or since that time.

(d) Income from both a terminated and a new source: Households may receive both income from a terminated source prior to and income from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and more than $25.00 from the new source will not be received by the 10th day after the date of application.

(e) Consideration of income: Destitute households shall have their eligibility and level of benefits calculated for the month of application by considering only income that is received between the first of the month and the date of application. Any income from a new source that is anticipated after the day of application shall be disregarded.

(f) Travel advances: Some employers provide travel advances to cover travel costs of new employees who must travel to the location of their new employment. To the extent that these payments are excluded as reimbursements (see N.J.A.C. 10:87-5.9(a)6), receipt of travel advances will not affect the determination of when a household is destitute.

1. Advance on wages: If the travel advance is, by written contract, an advance on wages which will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. Nevertheless the receipt of a wage advance for travel costs of a new employee shall neither affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute.

i. Example: If a household that applies on May 10, has received a $50.00 advance for travel from its new employer on May 1 that, by written contract, is an advance on wages, but will not start receiving any other wages from the employer until May 30, shall be considered destitute. The May 30 payment shall be disregarded, but the wage received prior to the date of application shall be counted as income.

(g) Source of income: A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, rather than the crew chief. A migrant who travels with the same crew chief but moves from one grower to another is considered to have moved from a terminated income source to a new source.

(h) When expedited procedures apply: The above procedures apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source is disregarded in the first month of the certification period if income of more than $25.00 will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

10:87-6.19 Certification periods

(a) (No change.)

(b) Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility.

10:87-6.20 (Reserved)

10:87-6.22 PA households

(a) PA households (see N.J.A.C. 10:87-2.12(a)1) shall have their food stamp recertifications, to the extent possible, completed at the same time they are redetermined for AFDC. The CWA shall assign such households definite certification periods that will expire the month following the month that the household's AFDC redetermination is due, unless the circumstances of the household would otherwise require a shorter certification period.

(b) For households which do have their food stamp recertification scheduled for the same time as their AFDC redetermination, the CWA shall ensure that the food stamp recertification is completed timely, regardless of whether or not the AFDC redetermination is completed timely (see N.J.A.C. 10:87-2.36(d)).

1. If the AFDC redetermination is not completed timely, the household shall be sent a Notice of Expiration and recertified in accordance with N.J.A.C. 10:87-9.1(b).

2. (No change in text.)

3. (No change in text.)

10:87-6.23 Other households

(a) Other households shall be assigned the longest certification periods possible based on the predictability of the household's circumstances. Households shall be certified for at least three months, except as follows:

1. Certification processed after the 15th of the month: Households eligible for a certification period of three months or less at the time of certification, shall have their certification periods increased by one month if the certification process is completed after the 15th day of the month of application and the household's circumstances warrant it. For example, if a household eligible for a three-month certification period makes application in June and is not certified until late June or early July, the certification period would begin in June and go through September.

2.-5. (No change.)

6. Self-employed: Households whose primary source of income is from self-employment (including self-employed farmers) or from regular farm employment with the same employer shall be certified for up to 12 months, provided income can be readily predicted and household circumstances are not likely to change. Annual certification periods may be assigned to farm workers who are provided their annual salaries on a scheduled monthly basis that does not change as the amount of work changes.

7. Households required to submit monthly reports, in accordance with N.J.A.C. 10:87-9.5(a) shall be certified for not less than six months and not more than 12 months. The limit of 12 months and the six-month minimum for households subject to less frequent than monthly reporting may be waived if the CWA can demonstrate that such a waiver would result in improved administration of the program.

8. Households that are granted separate household status, in accordance with N.J.A.C. 10:87-2.2 because the household consists of an individual and that indivdual's minor child(ren) living with the individual's parent or sibling and purchasing and preparing meals separate from the parent/sibling, shall be assigned a certification period of not more than six months.

10:87-7.1 Applicability

The procedures in this subchapter are to be used in conjunction with the certification procedures in N.J.A.C. 10:87-6 to determine eligibility and benefit levels for households with special income circumstances.

10:87-7.2 Self-employment income

The procedures below shall be used to determine income for all households receiving self-employment income, including those households which own and operate a commercial boarding house. (The procedures for handling income received from boarders by a household that does not own and operate a commercial boarding home are described in N.J.A.C. 10:87-7.10.)

10:87-7.3 Annualizing self-employment income

(a) (No change.)

(b) However, if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the CWA shall calculate the self-employment income on anticipated earnings. The CWA shall not calculate self-employment income on the basis of prior income (for example, income tax returns) when the household has experienced a substantial increase or decrease in business.

(c) (No change in text.)

10:87-7.6 Determining monthly income from self-employment

(a) For the period of time over which self-employment income is determined, the CWA shall add all gross self-employment income (including capital gains as described in N.J.A.C. 10:87-7.7), exclude the cost of producing the self-employment income (see N.J.A.C. 10:87-7.8) and divide the self-employment income by the number of months over which the income will be averaged.

(b) Anticipated self-employment income: For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis (see N.J.A.C. 10:87-7.3(c), the CWA shall add any capital gain (see N.J.A.C. 10:87-7) the household anticipates it will receive in the next 12 months (starting with the date the application is filed) and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. The CWA shall then add the anticipated capital gains to the anticipated monthly self-employment income and subtract the cost of producing the self-employment income. The cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income.

(c) Determination of adjusted net monthly income: The monthly net self-employment income shall be added to any other earned income received by the household.

1. The total monthly earned income, less a 20 percent earned income deduction shall then be added to all monthly unearned income received by the household.

2. If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses shall be offset against any other countable income in the household. Losses from farm self-employment income shall be offset first against nonfarm self-employment income and second offset against the total of earned and unearned income.

3. For purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000.00 or more from the farming enterprise.

4. The standard deduction, dependent care, and shelter costs shall be computed in accordance with N.J.A.C. 10:87-6.15 and subtracted (from the amount computed in (c)1 above), to determine the monthly net income of the household. Net losses from the self-employment income of a farmer shall be prorated over the year in accordance with N.J.A.C. 10:87-7.3.

10:87-7.9 Assigning certification periods

(a) Households that receive their annual support from self-employment and have no other source of income may be certified for up to 12 months.

(b) (No change in text.)

(c) Annual income received in a short period of time: For those self-employed households that receive their annual income in a short period of time (see N.J.A.C. 10:87-7.3), the initial certification period shall be assigned to bring the household into the annual cycle. The annual cycle shall coincide with filing of the household's income tax.

10:87-7.10 Households with boarders

Persons paying a reasonable amount for room and board as specified in N.J.A.C. 10:87-2.3(b) shall be excluded from the household when determining the household's eligibility and benefit level. The income of households owning and operating a commercial boarding home shall be handled as described in N.J.A.C. 10:87-7.2. (Commercial boarding home is defined in N.J.A.C. 10:87-2.5). For all other households, payments from the boarder(s) shall be treated as self-employment income and the household's eligibility determined in accordance with the procedures below.

10:87-7.13 Deductible expenses

(a) The net income from self-employment shall be added to other earned income and the 20 percent earned income deduction shall be applied to the total.

(b) Shelter expenses: Shelter costs the household actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, shall be computed to determine if the household will receive a shelter deduction (see N.J.A.C. 10:87-5.10(e)). However, shelter costs shall not include any shelter expenses paid by the boarder to a third party, such as to the landlord or utility company.

10:87-7.14 Treatment of income and resources of certain nonhousehold members

(a) During the period of time that a household member cannot participate because he or she is an ineligible alien, disqualified due to intentional program violation; or failed/refused to obtain and provide a social security number, the eligibility and benefit level of

the remaining household member(s) shall be determined in accordance with this section.

(b) Excluded for intentional program violation disqualification: The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of disqualification for intentional program violation shall be determined as follows:

1. Resources: The resources of the ineligible household member(s) shall continue to be counted in their entirety to the remaining household members.

2. Income and deductions: The income of the ineligible household member(s) shall continue to be counted in its entirety and the entire household's allowable 20 percent earned income, standards, medical, dependent care, and excess shelter deductions shall continue to apply to the remaining household members.

3. Eligibility and benefit level: The ineligible member(s) shall not be included when determining the household's size for the purpose of:

i.-iii.(No change.)

(c) Excluded for other causes: The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible for being an ineligible alien or because of disqualification for refusal to obtain or provide a Social Security number shall be determined as follows:

1. Resources: The resources of such ineligible member(s) shall continue to count in their entirety to the remaining household members.

2. Income: A pro rata share of the income of such ineligible member(s) shall be counted as income to the remaining member(s). This pro rata share is calculated by first subtracting the allowable exclusions (see N.J.A.C. 10:87-5.9) from the ineligible members' income and then dividing the income evenly among the household members, including the ineligible member(s). All but the ineligible members' share is counted as income to the remaining household members.

3. Deductible expenses: The 20 percent earned income deduction shall only apply to that portion of the ineligible members' earned income which is attributed to the household in N.J.A.C. 10:87-7.14(c)2. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the ineligible member(s) shall be divided evenly among the household members, including the ineligible member(s). All but the ineligible members' share is counted as a deductible shelter expense for the remaining household members.

4. Eligibility and benefit level: The ineligible member(s) shall not be included when determining the household's size for purposes of:

i.-iii. (No change.)

(d) Reduction or termination of benefits within certification period: Whenever an individual is ineligible within the household's certification period, the CWA shall determine the eligibility or ineligibility of the remaining household members based, insofar as possible, on information in the case record and shall take the following action:

1. (No change.)

2. SSN disqualification, *[or]* ineligible alien ***or*** noncompliance with employment and training*[.]***:** If a household's benefits are reduced or terminated within the certification period because one or more of its members is an ineligible alien or is ineligible because he or she was disqualified for refusal to obtain or provide an SSN, the CWA shall issue a notice of adverse action, informing the household of the ineligibility, the benefit level of remaining members and action required by the household to end the ineligibility.

10:87-7.15 Treatment of income and resources of other nonhousehold members

(a) For those nonhousehold members who are ineligible for reasons other than those set forth in N.J.A.C. 10:87-2.3(c), such as ineligible students (see N.J.A.C. 10:87-2.3(a)2), the income and resources of the nonhousehold members shall not be considered available to the household.

1.-4. (No change.)

(b) Nonhousehold members shall not be included when determining household size for the purpose of:

1. Assigning a benefit level;

2. Comparing the household's monthly income with the income eligibility standards; or

3. Comparing household resources with the eligibility limits.

10:87-7.16 Residents of drug/alcoholic treatment and rehabilitation programs and group living arrangements

(a) Narcotic addicts or alcoholics, who regularly participate in publicly operated or private nonprofit drug or alcoholic treatment and rehabilitation programs on a resident basis, and disabled or blind residents of a group living arrangement who receive benefits under Title II or Title XVI of the Social Security Act may voluntarily apply for the Food Stamp Program.

1. Narcotic addicts or alcoholics: Resident addicts and alcoholics shall have their eligibility determined as a one-person household. The CWA shall certify residents of drug/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative (see also N.J.A.C. 10:87-2.7(e)).

2. Residents of group living arrangements: Residents of group living arrangements shall have their eligibility determined as one-person households when applying on their own behalf. The CWA shall certify residents of group living arrangements by using the same provisions that apply to all other applicant households except that certification may also be accomplished through an authorized representative of the group living arrangement or another representative chosen by the applicant (see also N.J.A.C. 10:87-2.7(f)).

(b) (No change.)

(c)-(e) (No change.)

(f) Fraud and misrepresentation: The organization, institution, treatment center or group living facility is responsible for any misrepresentation or IPV which it knowingly commits in the certification of center or facility residents. As an authorized representative, the organization, institution, treatment center, or group living facility must be knowledgeable about the household's circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The organization, institution, treatment center or group living facility acting in the capacity of an authorized representative is strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the households are residents of the treatment center or group living facility. A resident or a group of residents of a facility who applied and were certified on their own behalf, are liable for any overissuance.

(g)-(i) (No change.)

10:87-7.17 Residents of shelters for battered women and their children

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

(d) Any shelter residents eligible for expedited service shall be handled in accordance with the provisions of N.J.A.C. 10:87-2.32-2.35.

(e) CWA responsibilities: The CWA shall take prompt action to ensure that the shelter resident's former household's eligibility or allotment reflects the change in the former household's composition. Such action shall include either shortening the certification period by issuing a notice of expiration to the shelter resident's former household or acting on the reported change by issuing a notice of adverse action. (See N.J.A.C. 10:87-9.5.)

10:87-7.18 Deeming of income and resources of alien sponsors

(a) Portions of the gross income and resources of an alien's sponsor (and the sponsor's spouse if living together regardless of whether or not they were married at the time the affidavit of support was signed) shall be deemed available to the alien for a period of three years following the date established by the Immigration and Naturalization Service as the date the alien was admitted for permanent residence.

1. (No change.)

2. Deeming rules inapplicable: Deeming does not apply to the following aliens:

i. Any alien participating in the Food Stamp Program as a member of the sponsor's household or whose sponsor is participating in the Food Stamp Program separate and apart from the alien;

ii.-iii. (No change.)

(b) Deeming of income computation: To determine the amount of income deemed available to the alien:

1. Compute the total gross monthly earned income of the sponsor (and sponsor's spouse if applicable) at the time the household containing the sponsored alien applies or is recertifed for food stamp participation and multiply by 80 percent.

2. (No change.)

3. Subtract the monthly gross income eligibility limit (N.J.A.C. 10:87-12.4) for a household equal in size to the sponsor, the sponsor's spouse and any other person who is claimed or could be claimed by the sponsor or sponsor's spouse as a dependent for Federal income tax purposes.

4.-6. (No change.)

(c) Deeming of resources: To determine the amount of resources deemed available to the alien:

1. (No change.)

2. The amount of income and resources deemed to the sponsored alien in accordance with N.J.A.C. 10:87-7.18(b) shall be considered in determining the eligibility and benefit level of the household in which the alien is a member.

(d) (No change.)

(e) Change in sponsor: If the alien changes sponsors within a certification period, the deemed income and resources shall be recalculated based on information on the new sponsor as soon as possible. In the event that an alien loses his or her sponsor during the three-year limit on the sponsored alien provisions and does not obtain another, the deemed income and resources of the previous sponsor shall continue to be attributed to the alien until such time as the alien obtains another sponsor or until the three-year period for applying the sponsored alien provisions expires. However, should the alien's sponsor become deceased, the deemed income and resources of the sponsor shall no longer be attributed to the alien.

(f) Verification: The sponsored alien and his or her spouse are responsible for providing the CWA with any information necessary to determine the income and resources of the alien's sponsor and the sponsor's spouse. The alien and his or her spouse shall also be responsible for demonstrating to the CWA that the sponsor also sponsors other aliens, how many, and for obtaining any necessary cooperation from the sponsor.

1. The alien and his or her spouse shall be responsible for obtaining the cooperation of the sponsor for a period of three years from the alien's date of entry or admission as a lawful permanent resident and for providing information and/or required documentation necessary to calculate deemed income and resources at the time of application or recertification for participation in the Food Stamp Program. Reporting changes in sponsor income, employment, and for providing the names or other identifying factors of other sponsored aliens by the sponsor or the sponsor becoming deceased shall be the responsibility of the sponsored alien and shall be handled in accordance with the timeliness standards of N.J.A.C. 10:87-9.1 through 9.5.

2. The CWA shall obtain from the alien or alien's spouse the following information:

i. (No change.)

ii. The names and alien registration number of other aliens for whom the sponsor has signed an affidavit of support or similar agreement;

iii.-v. (No change.)

vi. The number of dependents who are claimed or could be claimed for Federal income tax purposes of the sponsor and the sponsor's spouse;

vii. (No change.)

3. The CWA shall verify the information obtained pursuant to (f) above. The CWA shall verify the information which the CWA determines is questionable and which affects household eligibility and benefit level in accordance with procedures established at N.J.A.C. 10:87-2.21(h) for verifying questionable information.

4. If information necessary to carry out these deeming provisions is not received or verified on a timely basis, the sponsored alien and his or her spouse shall be ineligible until such time as all necessary facts are obtained. The eligibility of any remaining household members shall be determined.

i. The income and resources of the ineligible alien and his or her spouse (excluding the deemed income and resources of the alien's sponsor and the sponsor's spouse) shall be considered available in determining the eligibility and benefit level of remaining household members.

ii. If a sponsored alien refuses to cooperate in providing or verifying needed information, other adult members of the alien household shall be responsible for providing/verifying the required documentation. If the same sponsor is responsible for the entire alien household, they shall remain ineligible until such time that the needed sponsor information is provided and/or verified.

iii. If information or verification is subsequently received, the CWA shall act on the information as a reported change in household membership in accordance with the timeliness standards in N.J.A.C. 10:87-9.5(b)2.

(g) Claims for overissuance:

1.-2. (No change.)

3. Claims against sponsors: The CWA shall initiate collection against a sponsor by sending a written demand letter which informs the sponsor of the amount owed, the reason for the claim, how the claim may be repaid, and that the sponsor will not be held liable if he or she can demonstrate that he or she was not at fault or had good cause for providing incorrect information. The CWA shall follow the demand letter with a personal contact if possible. The sponsor is entitled to a fair hearing, either to contest a determination that the sponsor was at fault where it was determined that incorrect information has been provided or as to contest the amount of the claim.

i.-ii. (No change.)

iii. If the sponsor responds to the demand letter and is financially able to pay the claim at one time, the CWA shall collect a lump sum cash payment. If the sponsor is not financially able to repay the claim at one time, a repayment schedule may be negotiated as long as the payments are provided in regular installments. Funds collected shall be forwarded to DPW in accordance with N.J.A.C. 10:87-11.31(d).

4. Claims against alien households: Prior to initiating collection action against the household of a sponsored alien for repayment of an overissuance caused by incorrect information having been supplied concerning the alien's sponsor or sponsor's spouse, the CWA shall determine whether such incorrect information was supplied due to inadvertent household error, or an act of intentional program violations on the part of the alien. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

i. If sufficient documentary evidence exists to substantiate that the incorrect information concerning the alien's sponsor or sponsor's spouse was provided due to intentional program violation on the part of the alien, the CWA shall pursue the case in accordance with the procedures specified in N.J.A.C. 10:87-11.29 for intentional program violations. The claim against the alien's household shall be handled as an inadvertent household error claim prior to the determination of intentional program violation by an administrative law judge or a court of appropriate jurisdiction.

ii. If the CWA determines that the incorrect information was supplied due to misunderstanding or unintended error on the part of the sponsored alien, the claim shall be handled as an inadvertent household error claim in accordance with the procedures specified in N.J.A.C. 10:87-11.26. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

10:87-7.19 Homeless Food Stamp households and homeless meal providers

(a) Homeless Food Stamp households shall be permitted to use their food stamp benefits to purchase prepared meals from approved homeless meal providers (see N.J.A.C. 10:87-2.7 and 2.10).

(b) Homeless meal providers are public or private nonprofit organizations as defined by the IRS, that apply for and qualify as retail food stores to accept food stamps from homeless food stamp recipients. The homeless meal provider shall be responsible for obtaining written approval from the New Jersey Division of Public Welfare, for submission to the Food and Nutrition Service (FNS) prior to obtaining final authorization to accept food stamps. Homeless meal providers serving meals which consist solely of donated foods shall not be eligible for food stamp coupon redemption authorization. The Food and Nutrition Service reserves the right to limit participation of homeless meal providers when evidence obtained indicates that participation of the provider indicates possible damage to the integrity of the Food Stamp Program.

10:87-8.1 General provisions

(a) The conduct of fair hearings shall be governed by the Uniform Administrative Procedure Rules contained in N.J.A.C. 1:1 and Public Welfare Hearings contained in N.J.A.C. 1:10. If any rule in this subchapter is inconsistent with those rules, N.J.A.C. 1:1 and 1:10 shall take precedence.

(b) Any household which is dissatisfied with any CWA action or inaction, affecting the household's participation in the Program shall be advised of its fair hearing rights and be given an opportunity to receive a fair hearing. The household shall also be advised of available legal services.

10:87-8.2A Fair hearing based on Federal changes

Fair hearings will be denied those households which are merely disputing the fact that a federally mandated reduction, suspension, or cancellation was ordered. If the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly or that regulations were misapplied or misinterpreted, the household shall be given an opportunity to receive a fair hearing (see N.J.A.C. 10:87-8.9(b)). Since the reduction, suspension or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, households do not have a right to a continuation of benefits pending the fair hearing. The household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the CWA was directed to reduce benefits. CWAs will only refer those requests which qualify for a fair hearing to the Bureau of Administrative Review and Appeals (BARA).

10:87-8.4 Right to request a fair hearing

(a) The right to request a fair hearing shall not be limited or interfered with in any way.

1.-2. (No change.)

(b) CWAs shall conduct pre-hearing settlement conferences concerning Food Stamp Program appeals, except for IPV issues in accordance with the following procedures:

1. The CWA shall contact the appellant to schedule a Pre-Hearing Settlement Conference (PHSC) within five working days as soon as the CWA receives and forwards the fair hearing request to the Division of Public Welfare (DPW). If the Fair Hearing request is made directly to DPW, the CWA will initiate the procedure upon notification of the request by DPW but not later than one day from receipt of the request.

2. The CWA Fair Hearing Liaison shall preside over the pre-hearing settlement conference and act as a mediator between the appellant and other appropriate CWA staff.

3. The CWA shall report the disposition of each food stamp hearing request to the Division of Public Welfare, Bureau of Administrative Review and Appeals (BARA) with an information copy to the Office of Administrative Law. The report shall contain at a minimum, but not be limited to, the following information:

i. The contested issues;

ii. The scheduled time, date and location of a pre-hearing settlement conference;

iii. The verbal or written acceptance or declination by the appellant to attend a pre-hearing settlement conference;

iv. Whether or not a settlement was reached; and

v. Terms of the settlement or basis for the appellant's decision to withdraw. The report must be co-signed by the appellant and the mediator or other CWA official.

10:87-8.6 Processing fair hearing requests

(a) To assure orderly and expeditious processing of complaints and fair hearing requests, the CWA and Division of Public Welfare (DPW) shall proceed in the following manner:

1.-6. (No change.)

7. DPW responsibilities regarding the household: A request for a fair hearing shall not be denied or dismissed except under the following circumstances:

i. Untimely request: The request for a hearing is not received within the time interval specified in N.J.A.C. 10:87-8.5.

ii. (No change.)

iii. Abandonment: The household abandons its request for a fair hearing.

(1) Abandonment defined: A request for a hearing shall be considered abandoned if neither the household nor its representative appears at the time and place established for the hearing, unless the DPW or CWA received notice not later than the scheduled date of hearing that the household would be unable to attend for reasonable good cause; in such case, the hearing shall be adjourned and rescheduled. (Good cause is defined in N.J.A.C. 10:87-10.23.) No hearing shall be delayed for a period of more than 30 calendar days under any circumstances except as provided in item (2) below.

(2) Notice of assumption of abandonment: If the household or its representative, fails to appear for a scheduled hearing without having given proper notice, a notice of assumption of abandonment shall be sent to the household. If there is no answer within 10 calendar days, the hearing shall be deemed abandoned. The household shall have the right to present in writing to the DPW directly or through the CWA, such facts or reasons for the failure to appear. The DPW may, determine whether or not the facts so presented by the household or its representative, constitute reasonable good cause, as defined in N.J.A.C. 10:87-10.23 to warrant reinstatement of the hearing.

8. Expedited hearing process: Hearing requests from households, such as migrant farm workers, which plan to move from the county before the hearing decision would normally be reached shall be expedited thus enabling them to receive a decision before they leave the area.

10:87-8.13 General hearing procedures

(a) A fair hearing shall be conducted in the following manner:

1.-6. (No change.)

7. Household request for postponement: The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days.

i. Extension of limit on final action: The time limit on implementation of the hearing decision shall be extended for as many days as the postponement (see N.J.A.C. 10:87-8.25).

8. Adjournment of a hearing: At any time during the proceedings, the hearing official at his or her discretion, may declare an adjournment at the request of the household or the CWA or on his or her own initiative. The total of all such adjournments in one case shall in no event exceed 30 days.

i. Effect of adjournment on final action: Adjournments requested by the household will extend the time limit on final action as provided for in (a)7 above. Adjournments initiated by the CWA or the fair hearing officer shall not extend the time limit on final action.

10:87-8.26 CWA responsibilities: fair hearings

(a) Household improperly denied benefits: When the hearing decision is that a household has been improperly denied program benefits or has been issued a lesser allotment *[that]* ***than*** was due, lost benefits shall be provided in accordance with N.J.A.C. 10:87-11.13.

(b)-(e) (No change.)

SUBCHAPTER 9. CERTIFICATION RELATED PROCEDURES

10:87-9.1 Recertification

(a) Action on applications for recertification are as follows:

1. The CWA shall complete the application process, if the household meets all requirements, prior to the end of the certification period. Applications received timely shall be approved or denied prior to the end of the household's current certification period including those received during a federally mandated, reduction, suspension or cancellation allotment time frame.

2. An eligible household shall be provided the opportunity to participate by its normal issuance cycle in the month following the end of its current certification period. A household shall lose its right to uninterrupted benefits for failure to attend any interview scheduled on or after the deadline for timely filing of the application for recertification or for failure to submit all necessary verification within the timeframes established by the CWA as long as the timeframe elapse after the deadline for filing a timely application for recertification.

3. The CWA shall provide benefits within 30 days after the date an application is filed for households that lost the right to uninterrupted benefits due to refusal to cooperate or lapsed certification only after the household corrects such failures.

4. Denials including those for failing to complete the interview or provide missing verification timely shall be completed either by the end of the current certification period or within 30 days after the date the application was filed as long as the household has had adequate time for providing the missing verification. Program benefits to the household shall not continue beyond the end of the current certification period unless recertification has been completed or joint processing requirements of N.J.A.C. 10:87-2.36 or 2.37 apply.

(b) Procedures concerning the notice of expiration are as follows:

1. The CWA shall provide each household with a notice of expiration at the end of its certification prior to the start of the last month of the household's certification period. Households whose applications for food stamps and PA were jointly processed will not receive a notice of expiration if the household is recertified for food stamps at the same time as their AFDC redeterminations.

2. A notice of expiration shall be sent to a household to arrive no earlier than one month prior to or later than one day before the household's last month of certification. Household's initially certified for one or two months shall be provided the notice of expiration at the time of certification.

3. Non-monthly reporting households provided a notice of expiration at the time of certification shall have 15 days from the date the notice is received to file a timely application for recertification. All other non-monthly reporting households that submit identifiable applications by the 15th day of the last month of certification shall be considered to have made a timely application for recertification.

4. The filing deadline for monthly reporting households shall be the normal date for filing a monthly report. SSI applicant/recipient households which apply for Food Stamp recertification at the SSA/DO shall be considered timely filed for normal processing when the SSA/DO receives the signed application.

5. The CWA shall use the postmark on the notice of expiration plus two days mailing time in determining if adequate time has been afforded the household for filing a timely application for recertification. Households disputing receipt of the notice of expiration may demonstrate that the notice was in fact, not received in a timely manner.

10:87-9.2 CWA action on timely application for recertification

(a) Scheduling interviews: The CWA shall not require households receiving notices of expiration to appear for an interview before the last month of their current certification period. However, the CWA may schedule an interview prior to the last month of certification period or prior to the date the application is timely filed, provided the household is not denied for failing or refusing to appear for the interview.

1. (No change in text.)

2. (No change in text.)

(b) Timeliness standards: The CWA shall act on timely reapplications to provide uninterrupted benefits to households determined eligible. The CWA shall take action on timely reapplications within the following time standards even if the CWA must issue a manual ATP:

1.-3. (No change in text.)

(c) CWA failure to act: Failure by the CWA to provide eligible households which filed a timely application for recertification with an opportunity to participate in accordance with the above provisions shall be considered an administrative error. These households shall be entitled to restoration of lost benefits if, as a result of such error, the household was unable to participate for the month following the expiration of the certification period.

(d) The following procedures apply when a household fails to act:

1. A household which submits a timely application for recertification and meets all other processing steps in a timely manner shall have the right to receive uninterrupted benefits. However, a household which fails to appear for an interview in accordance with the requirements in this section or to submit any missing verification within the CWA timeframes shall lose its right to uninterrupted benefits as long as such failures occur after the deadline for filing a timely application for recertification. Households which refuse to cooperate in providing required information shall be denied.

2. Any application not submitted in a timely manner shall be treated as an application for initial certification, except that for applications received within 30 days after the certification period expires, previously verified income or actual utility expenses of non-monthly reporting households need not be verified if the source has not changed and the amount has not changed by more than $25.00. The CWA shall ensure that any eligible household which did not submit a timely application for recertification is provided an opportunity to participate within 30 calendar days after the application is filed. If the household's application for recertification is received after the household's certification period has expired, the household's benefits shall be prorated in accordance with N.J.A.C. 10:87-6.3(c). However, households which receive a notice of expiration at the time of certification and which are otherwise eligible shall not have benefits for the first month of the new certification period prorated if they file their applications for recertification by the filing deadline in the notice of expiration.

3. A household which submits a timely application for recertification but is either interviewed and/or submits all verification in an untimely manner (but before the end of its current certification period) need not be provided uninterrupted benefits. For eligible households under these circumstances, the CWA shall, at a minimum, provide the household an opportunity to participate within 30 calendar days after the date the application was filed.

4. If the CWA is unable to provide an eligible household with an opportunity to participate within 30 calendar days after the date the application was filed due to the time period allowed for submitting any missing verification, the CWA shall provide the household an opportunity to participate within 5 working days after the date the household supplies the missing verification.

10:87-9.3 Notices of eligibility

(a) (No change.)

(b) Expedited applications: In cases where a household's application is approved on an expedited basis without verification, as provided in N.J.A.C. 10:87-2.32 through 2.35, the notice shall explain that the household must provide the verification that was waived. The notice shall also explain the special conditions of the longer certification period, as discussed in N.J.A.C. 10:87-2.34(a)3 and the consequences of failure to provide the postponed verification.

(c) PA households: For those PA households assigned definite certification periods in accordance with N.J.A.C. 10:87-6.22, the notice shall state that the certification will expire the month following the month the household's AFDC redetermination is due.

10:87-9.4 Recertification/denial/pending notice

(a) The CWA shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period. The CWA shall provide households that have received a notice of expiration at the time of certification and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date the household had an opportunity to obtain its last allotment.

(b) If an application is denied, the CWA shall provide the household with written notice explaining the basis for the denial. This requirement shall be accomplished by use of the "Adverse Action Notice". The notice shall be sent as soon as possible, but not later than 30 days following the date the application was filed.

(c) If the household's application is placed in pending status, the CWA shall send an "Adverse Action Notice" informing the household what action is necessary to complete the application process and that the application will be denied if the household fails to take the required action within 60 days of the date the application was filed.

10:87-9.5 Changes

(a) When changes occur within the certification period which affect a household's eligibility or coupon allotment, action must be taken to adjust the household's eligibility.

(b) Household responsibilities:

1. Changes to be reported: Certified households are required to report the following changes within 10 days of the date the change becomes known to the household:

i. Income: Changes in the sources of income or in the amount of gross monthly income of more than $25.00, except changes in the AFDC grant; NOTE: The Social Security Administration (SSA) does not provide the recipient of SSI with written notification as to whether the overpayment was due to unintentional or intentional causes. Also for most SSI overpayment recoveries, the nature of the recovery cannot be ascertained and would therefore not be available to the CWA. The CWA shall not count the amount of the SSI overpayment recovery in computing the Food Stamp benefit unless readily available reliable information verifies that an SSI overpayment recovery was due to recipient fraud or intentional failure to comply with program regulations.

ii. Household composition: All changes in household composition, such as the addition or loss of a household member (see N.J.A.C. 10:87-2.2 and 2.3);

iii. (No change in text.)

iv. (No change in text.)

v. Liquid resources: When cash on hand, stocks, bonds and money in a bank account or savings institution reach or exceed a total of $2,000, or $3,000 for households with members 60 years of age and older.

vi. (No change in text.)

2. Method of reporting: The change may be reported in person, by telephone or by mail. The CWA shall document the date a change is reported, which shall be the date the CWA receives a report form or is advised of the change over the telephone or by a personal visit. PA households which report a change in circumstances shall be considered to have reported the change for food stamp purposes.

3. Failure to report: If the CWA discovers that the household failed to report a change as required by (b)1 above and as a result, received benefits to which it was not entitled, the CWA shall file a claim against the household in accordance with N.J.A.C. 10:87-11.23 et seq. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if the household's benefits are reduced. A household shall not be held liable for a claim because of a change in household which it is not required to report per (b) above. Individuals shall not be terminated for failing to report a change, unless the individual is disqualified in accordance with the intentional program disqualification procedure specified in N.J.A.C. 10:87-11.1 and 2.

(c) CWA responsibilities: The CWA shall not impose any food stamp reporting requirement on a household except as noted above. Neither shall the CWA treat the submission of the report of change as a waiver of the household's right to a notice of an adverse action.

1. Change report form: A change report form and FCAL Explanation Sheet FSP-933 shall be provided to newly certified households at the time of certification, at recertification if the household needs a new form; and a new form shall be sent to the household whenever a change report form is returned by the household. The CWA shall provide a stamped self-addressed envelope with the form. Although households should be encouraged to complete and return the change form when a change is being reported, changes reported over the telephone or in person by the household shall be acted on in the sam manner as those reported on the change report form.

2. Action on reported change: The CWA shall advise the house hold of its responsibilities to report changes within the required tim period. The CWA is required to take prompt action on all change reported by the household to determine if the change affects th household's eligibility or allotment. Even if there is no change i allotment, the CWA shall document the change in the case record provide another change report form to the household, and notify th household of the receipt of the change report and effect of the change if any, on its benefits. Restoration of lost benefits shall be provide to any household if the CWA fails to take action on a change whic increases benefits within the time limits specified below.

i. Changes which increase benefits: For changes which result i an increase in a household's benefits, other than changes describe in ii below, the CWA shall make the change effective not later tha the first allotment following the 10th day after the date the chang was reported to the CWA. For example, a $30.00 decrease in incom reported on the 15th day of May would increase the household's Jun allotment. If the same decrease were reported on May 28, and th household's normal issuance cycle was on June 1, the household' allotment would have to be increased by July.

ii. Changes which increase benefits and require issuance of a sup plementary ATP: For changes which result in an increase in a house hold's benefits due to the addition of a new household member wh is not a member of another certified household, or due to a decreas of $50.00 or more in the household's gross monthly income, the CW shall make the changes effective no later than the first allotmen issued 10 days after the date the change was reported. However, i no event shall these changes take effect any later than the mont following the month in which the change is reported. Therefore, i the change is reported after the 20th of a month and it is too lat for the CWA to adjust the following month's allotment, the CW shall issue a supplementary ATP by the 10th day of the followin month.

(1) (No change in text.)

(2) (No change in text.)

(3) Verification: Verification required by N.J.A.C. 10:87-2.2 through 2.23, must be obtained prior to the issuance of the secon normal monthly allotment after the change is reported. If the house hold does not provide verification, the household's benefits will rever to the original benefit level. In cases where the CWA has determine that a household has refused to cooperate, as defined in N.J.A.C 10:87-2.14 through 2.17, the CWA shall terminate the household' eligibility.

iii. Changes that reduce benefits: If the household's benefit leve decreases or the household becomes ineligible as a result of th change, the CWA shall issue a notice of adverse action within 1 days of the date the change was reported, unless one of the exemp tions to the notice of adverse action in (g) and (h) below applies The decrease in the benefit level shall be made effective no later tha the allotment for the month following the month in which the notic of adverse action period has expired, provided a fair hearing an continuation of benefits have not been requested. Verification re quired by N.J.A.C. 10:87-2.21 through 2.23, must be obtained prio to recertification.

3. Mass changes: Certain changes are intitiated by the State o Federal government which may affect the entire caseload or signifi cant portions of the caseload. These changes include annual adjust ments to the net income eligibility standards and th shelter/dependent care deduction; adjustments to the maximun coupon allotment and standard deduction; seasonal adjustments t the utility standard; periodic cost-of-living adjustments to Socia Security, SSI and other Federal benefits; federally mandated reduc tions, suspensions, or cancellations of food stamp benefits; periodi adjustments to AFDC and other changes in the eligibility criteri based on legislative or regulatory actions.

(d) Food stamp program changes: These include Federal adjust ments to eligibility standards, allotments and deductions; federall mandated reductions, suspensions, or cancellations of food stam benefits, and State adjustments to utility standards. These adjust ments shall go into effect for all households at a specific point i

time. Adjustments to the maximum coupon allotment, shelter/dependent care deduction and the standard deduction shall be effective for all issuances in October. Annual adjustment to the income eligibility standards shall be effective for all October issuances. Adverse action notices are not required for such changes. However, prior publicity of adjustments shall be made through news media, by placing posters in certification offices, issuance locations or sites frequented by certified households, or by issuing general notices mailed to households.

1. (No change in text.)

(e) Mass changes in AFDC: When the State makes an overall adjustment to AFDC payments, corresponding adjustments in the household's food stamp benefits shall be handled as a mass change. When the CWA has at least 30 days advance knowledge of the amount of the AFDC adjustment, the CWA shall recompute food stamp benefits to be effective in the same month as the AFDC change. If the CWA does not have sufficient notice, the food stamp change shall be effective not later than the month following the month in which the AFDC change was made.

1. Notice not required: A notice of adverse action is not required when a household's food stamp benefits are reduced or terminated as a result of a mass change in the PA grant. However, th CWA shall send individual notices to households to inform them of the change. If a household requests a fair hearing, benefits shall be continued at the former level only if the issue being appealed is that food stamp eligibility or benefits were improperly computed.

(f) DPW shall establish procedures for making mass changes to reflect COLAs in benefits and any other mass changes under RSDI, SSI, and other programs where COLA information is readily available and applicable to a majority of those program's beneficiaries. Households on retrospective budgeting but not monthly reporting shall have the change reflected in accordance with current procedures. MR households shall report the change only on the appropriate monthly report. Non-MR households are not responsible for reporting these changes. The CWA shall be responsible for automatically adjusting the household's benefit level and the change shall be reflected no later than the second allotment issued after the month in which the change becomes effective for non-MR reporting households.

(g) Households shall be notified whenever their benefits are altered as a result of changes in the AFDC benefits or whenever the food stamp certification period is shortened to reflect changes in the household's circumstances. The household's certification period shall not end any earlier than the month following the month in which the CWA determines that the certification period should be shortened, allowing adequate time to send a notice of expiration and for the household to timely reapply. If the AFDC benefits are terminated but the houehold is still eligible for food stamp benefits, members of the household shall be advised of food stamp work registration requirements, if applicable, as their work requirement under Title IV of the Social Security Act exemption no longer applies.

(h) Whenever a change results in the reduction or termination of a household's AFDC benefits within its food stamp certification period, and the CWA has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the CWA shall:

1. Issue a single notice of adverse action for both the AFDC and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, the hearing shall be conducted according to AFDC procedures and timeliness standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change shall be made effective in accordance with the procedures specified in (c) above.

2. If the household's food stamp benefits will be increased as a result of the reduction or termination of AFDC benefits, the CWA shall issue the PA notice of adverse action, but shall not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the adverse action. If the household decides to appeal and its AFDC benefits are continued, the household's food stamp benefits shall continue on the previous basis. If the household does not appeal, the CWA shall make the change effective in accordance with the procedures specified in (c) above, except that the time limits for the CWA to act on changes which increase a household's benefits shall be calculated from the date the PA notice of adverse action period expires.

(i) Whenever a change results in the termination of a household's AFDC benefits within its food stamp certification period, and the CWA does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, rendering the household categorically ineligible for public assistance, and the CWA does not have any information on the income of the new household member), the CWA shall not terminate the household's food stamp benefits but take the following action:

1. Where a PA notice of adverse action has been sent, the CWA shall wait until the household's notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and its AFDC benefits are continued pending the appeal, the household's food stamp benefits shall be continued on the same basis.

2. If a PA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its AFDC benefits, the CWA shall send the household a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. The notice of expiration shall also explain to the household that its certification period is expiring because of changes in its circumstances which may affect its food stamp eligibility and benefit level.

(j) Notice of adverse action: Prior to any action to reduce or terminate a household's benefits within the certification period, the CWA shall, provide the household timely and adequate advance notice before the adverse action is taken. (see N.J.A.C. 10:87-9.5(j))

1. Timing of the notice: The notice of adverse action will be considered timely provided it is mailed at least 10 days prior to the date upon which the action becomes effective.

(k) Changes not requiring advance notice: Individual notices of adverse action are not required when:

1. Mass change: The State initiates a mass change as described in (f), (g) and (h) above.

2.-9. (No change.)

10. Converting household from cash and/or food stamp coupon repayment to benefit reduction: The household's food stamp allotment is reduced to repay a claim as a result of failure to make agreed upon installment payments in cash and/or food stamp coupons (see N.J.A.C. 10:87-11.31(c)3).

11. The household voluntarily requests in writing, or in the presence of a caseworker that its participation in the Food Stamp program be terminated. The CWA shall respond to all non-written requests by sending the household a letter confirming the voluntary withdrawal. Households provided written confirmation of voluntary withdrawal from the Food Stamp program may request a fair hearing.

12. The CWA determines, based on reliable information that the household is departing from the county of current residence prior to the next issuance and therefore will not be able to obtain and negotiate its next allotment. While the CWA may inform the household before its next issuance date, they shall not delay terminating the household's participation in order to provide advance notice.

10:87-9.6 Identification (ID) cards

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

(f) All program coupon issuers in CWAs having more than 100,000 persons participating are required to record the I.D. card serial number on the back of the ATP card at the time the ATP is negotiated. If the issuer fails to do so and an excessive issuance results, the issuer will be held liable for the amount issued. An excessive issuance may occur either due to a CWA error or when an original and replacement ATP are both cashed during the same

transaction month. The liability for excessive issuances is determined as follows:

1. If none of the ATP cards issued to a household reflects the household's correct I.D. card number, (that is, if they are blank or have an incorrect number recorded on the back), the issuer will be liable to the CWA for all of the ATP cards transacted for that household.

2. If one of the transacted ATP cards reflects the household's correct I.D. card number, and the others are either blank or have an incorrect number recorded on the back, the issuer will be liable to the CWA for those ATP cards which are either blank or have an incorrect number.

10:87-9.7 Replacement of lost, stolen, nondelivered or destroyed ATPs or food stamp coupons

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

(c) Food coupons mutilated after receipt: The CWA shall replace coupons which are mutilated after receipt, i.e., shredded by a pet, gone through the laundry, etc. The amount of coupons to be replaced shall be equal to the value of the mutilated coupons and shall be replaced in accordance with N.J.A.C. 10:87-Appendix A Section A(3).

1.-2. (No change.)

(d) (No change.)

(e) ATPs stolen or destroyed after receipt: The CWA shall issue a replacement of ATPs stolen or destroyed in a household disaster such as fire or flood.

1. To qualify for such a replacement, the household must report the theft or destruction to the food stamp office within 10 days of the incident or within the ATP's period of intended use, whichever is earlier. The household shall sign a statement which may be mailed to the CWA and be retained in the case record:

i.-iii. (No change in text.)

2. The CWA shall also adhere to the following procedures:

i.-vii. (No change.)

(f) Replacement of replacement ATPs: Replacement of replacement ATPs shall be treated as replacement of normal issuances and thus subject to the same limitations in accordance with the provisions of this section.

(g)-(h) (No change.)

(i) Replacement of an ATP lost or stolen in the mail prior to receipt:

1.-2. (No change.)

3. When a household reports the nondelivery of an ATP the CWA shall:

i.-iv. (No change.)

v. Deny or delay replacement of the ATP in cases which documentation indicates that the request for replacement is fraudulent. The household shall be informed of its right to a fair hearing to contest the delay or denial of the ATP issuance. The denial or delay of the replacement ATP shall remain in effect pending a hearing decision. The CWA must have valid documentation indicating the likelihood of fraud to deny or delay a replacement ATP. Unless the household reports that its identification card (ID) was stolen, the signature match on the original and replacement transacted ATPs or, notation by the issuing agent of the recipient's correct food stamp ID number, will be considered sufficient evidence for delaying or denying further ATP issuance.

vi. The CWA shall report all ATPs reported as stolen or lost in the mail to the appropriate office of the Postal Inspection Service on at least a monthly basis. The CWA shall assist the Postal Service during subsequent investigation and shall, upon request provide the Postal Service with facsimiles of the original ATP, if transacted, replacement ATP, and a copy of the nonreceipt statement.

vii. Comply with existing procedures found in N.J.A.C. 10:87-Appendix A including the reporting of all lost or stolen ATPs to the appropriate office of the Postal Inspection Service. In cases where the signatures do appear to match, referral to the Fraud Investigation Unit is to be made for referral to the county prosecutor or for administrative fraud hearing, as appropriate;

viii. (No change in text.)

ix. (No change in text.)

x. (No change in text.)

xi. In cases where an indication of fraud exists, the procedure in (i)***3.***vii above shall be followed.

(j) Coupons lost in the mail prior to receipt (direct mail issuance only):

1. (No change in text.)

2. Review the mail issuance log for return of undelivered coupons. Record the date of the reported nondelivery of mailed coupons in the issuance log.

3. (No change in text.)

4. (No change in text.)

5. When a household reports the nondelivery of coupons, the CWA shall follow the procedures for ATPs lost or stolen prior to receipt, in accordance with (i) above.

6. (No change in text.)

7. (No change in text.)

(k) Improperly manufactured coupons: The CWA shall provide a replacement for coupons that were received by a household but were subsequently found to be improperly manufactured. The amount to be replaced shall be equal to the value of improperly manufactured coupons and shall be replaced in accordance with Appendix A Section A.

10:87-9.8 Miscellaneous administrative procedures

(a) Personnel staffing: The CWA shall provide qualified employees as necessary to insure prompt and correct action on all applications. If necessary, bilingual staff shall be employed as required by DPW pursuant to FNS bilingual staffing requirements. Only such qualified employees shall interview applicants and determine the household's eligibility or ineligibility and basis of issuance. Additionally, unless prior approval is obtained from DPW, certification offices with more than two eligibility workers shall schedule food stamp certification services so that there is no break in service during the lunch period. Furthermore, only authorized employees of the CWA shall have access to food coupons, ATPs, or other issuance documents.

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

(d) Each CWA is responsible for the timely and accurate issuance of benefits to certified households. Households comprised of elderly or disabled members who have difficulty reaching an issuance office to obtain their coupon allotments, and households which do not reside in a permanent dwelling or at a fixed mailing address, shall be given assistance in obtaining their coupons. The CWA shall assist these households by arranging for mail issuance or direct delivery of coupons, by assisting the household in finding authorized representatives who can act on their behalf or by using other appropriate means to assure delivery of benefits. The Division of Public Welfare shall establish a standardized issuance and accountability system applicable to all counties which will ensure compliance with Food Stamp Program procedures as follows:

1. That only certified households receive benefits;

2. All certified households have access to their benefits;

3. The benefits are timely distributed in correct amounts;

4. Coupons are accepted and stored with adequate security after delivery to receiving points within the county; and

5. Coupon issuance and reconciliation***[s]*** activities are conducted timely and accurately.

10:87-9.9 Case records

(a) The CWA shall keep such records and other information as may be required by FNS and the DPW.

(b) Retention of case records: Case records shall be available for review or audit by FNS and the Division of Public Welfare for a period of three years from the ***[month of origin]* *date of last activity*** of each record.

(c) Content of case records: The case record shall include applications for certification or recertification; worksheets used in the computation of income for eligibility and basis of issuance; documentation, including verification techniques employed by the certification worker; copies of forms sent to data processing authorizing or changing participation or basis of issuance; copies of notices of adverse action and other notices sent to the household and replies thereto; actions related to the fair hearing process; fiscal adjustments includ-

ing claims, refunds, and credits for lost benefits; and any other data which affects a household's eligibility or basis of issuance*[,including Form FNS-286]*.

10:87-9.10 (No change in text.)

10:87-10.1 State Plan for Food Stamp Employment and Training Programs

(a) The Department of Human Services, Division of Public Welfare is responsible for designing and operating food stamp employment and training (E&T) programs effective April 1, 1987, which may consist of one or more of a combination of employment, training, education, and/or job search components. For purposes of retaining eligibility for the Food Stamp Program, a work registrant shall be required to comply with the provisions of this subchapter and the requirements of the State Plan for Food Stamp Employment and Training Programs.

(b) Employment and training component defined: Employment and training component is defined as a work experience, work training or job search program designed to help food stamp recipients move promptly into unsubsidized employment.

(c) The State shall receive an employment and training program grant for each fiscal year in which the State operates an approved employment and training program. The grant is 100 percent federally funded. The E&T grant shall require no State or county matching.

1. E&T program grants shall be used to fund the administrative costs of planning, implementing and operating employment and training programs in accordance with the approved State Plan. E&T grants shall not be used for the process of determining whether or not a participant shall be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity which takes place after the operator of an E&T component has reported noncompliance without good cause. For purposes of this paragraph, the certification process shall be considered to have ended when an individual is referred to an E&T component for assessment or participation.

2. E&T grants shall not be used to subsidize the wages of participants, or to reimburse participants under the provisions of N.J.A.C. 10:87-10.9(c)5.

3. E&T funds shall not supplant State or local funds devoted to basic education programs. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an employment and training program.

(d) If the State fails, without good cause, to comply with Federal work requirements, including an approved State Plan and specific performance standards established for the State by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), USDA/FNS may withhold funding for the employment and training programs. Non-receipt of an E&T grant does not release the State from performance requirements or sanctions for insufficient performance.

10:87-10.2 State Plan general requirements

(a) The State Plan for Food Stamp Employment and Training Programs must be approved by USDA/FNS. The State Plan shall detail the following:

1. The nature of the employment and training components the State plans to offer and reasons for such components, including cost information and an estimated operating budget;

2. The categories and types of mandatory work registrants exempted from E&T participation;

3. The characteristics of the work registrant population that the State intends to place;

4. The geographic areas covered and not covered by the plan and why, and the type and location of services to be offered;

5. The method the State will use to count all work registrants the first month of each Federal fiscal year;

6. The organizational relationship between the units responsible for certification and the units operating E&T components and between the State agency and other agencies it plans to coordinate with for the provision of services.

(b) The current State Plan for Food Stamp Employment and Training Programs is available for public inspection at the Division of Public Welfare, 6 Quakerbridge Plaza, Trenton, New Jersey.

(c) Quarterly reporting requirements: The Division of Public Welfare shall submit a quarterly report (FNS-583) no later than 45 days after the end of each Federal fiscal quarter containing monthly figures for the number of:

1. Participants newly work registered;

2. Work registrants exempted by the State Plan from participation in an E&T program, separated by the reason for exemption;

3. Participants who volunteer for and commence participation in an approved E&T component;

4. E&T mandatory participants, including Food Stamp Program applicants, who commence an approved E&T component;

5. Work registrants sent a notice of adverse action for failure to comply with E&T requirements, and the number of applicants who were denied food stamp certification or recertification for failure to comply with an E&T component;

6. The number of persons disqualified from the Food Stamp Program for failure to comply with an E&T requirement; and

7. The number of E&T participants who became employed.

(d) Annual reporting requirements: The Division of Public Welfare (DPW) shall submit annually, on their first quarterly report, the number of work registered persons in the State as of October in the new Federal fiscal year. DPW shall submit annually, on their final quarterly report the following information:

1. The number of Food Stamp Program work registrants who were exempted as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

2. The number of food stamp participants (E&T mandatory and volunteers) placed in each E&T component offered by the State Plan.

10:87-10.3 Employment and training program performance standards

(a) Performance standards: USDA/FNS establishes annual performance standards for the minimum number of eligible persons that must be placed in E&T programs. Mandatory performance standards will begin with Federal fiscal year 1989.

(b) Definition of placed: A person may be considered placed in an E&T program, for purposes of performance standards, if the person commences an employment and training component, or fails to comply with E&T requirements and is denied certification or is sent a notice of adverse action for the noncompliance. Notices of adverse actions sent for noncompliance with work registration or voluntary quit provisions shall not count as placements. Persons assigned to a component who have good cause for noncompliance shall not be counted as placed.

(c) Performance formula: To determine the level of performance at the end of each fiscal year, FNS will divide the number of E&T mandatory participants plus volunteers the State has "placed" in its E&T program over the course of the year (the numerator) by the number of E&T mandatory participants who were eligible to have been placed in the program over the course of the year plus volunteers (the denominator). The denominator is herein referred to as the "base of eligibles".

(d) Counting placements in an E&T program: DPW shall count a person as placed in an E&T program, for purposes of performance standards, in accordance with the following:

1. If the person commences an employment and training component, or fails to comply with E&T requirements and is denied certification or is sent a notice of adverse action for the noncompliance, that person may be counted as placed.

i. If an E&T mandatory participant does not comply with E&T requirements, and a notice of adverse action is sent, the person is counted as placed in the month the notice of adverse action is mailed.

ii. Notices of adverse action sent for noncompliance with work registration or voluntary quit shall not count as placements.

iii. Persons assigned to a component who have good cause for noncompliance shall not be counted as placed. If good cause for noncompliance is temporary (less than 60 days) the person shall be referred again to a component as soon as practicable. If the good

cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt.

2. If a participant reports to a component which involves several months, that individual would be counted as placed in the initial month only.

3. Each time a participant is placed in a different component after having completed a prior component, that individual may be counted as placed.

4. If participation in one type of E&T component is not continuous, the participant may be counted as having been placed only at the time of his or her initial commencement of the component.

(e) Counting the "base of eligibles": The base of persons eligible to participate in an E&T program (the denominator) consists of all work registrants in the month of October plus newly work-registered food stamp recipients who have not been exempted by the State Plan from participation in an E&T program. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. The State (DPW) need not count any individual in the base of eligibles (mandatory work registrants and volunteers) more than once in a fiscal year.

(f) Accounting for short-term participants: There are a number of work registrants considered E&T mandatory participants who are counted in the base of eligibles (denominator) but who remain on the Food Stamp Program for such a short period of time that it is not possible to place them in an E&T component. These short term recipients inflate the base of eligibles. To counteract the effects of short-term participants, DPW shall decrease the base of eligibles in accordance with the approved State Plan procedures.

(g) Performance data collection: To determine the annual total in the base of eligible (denominator) DPW shall count the actual number of work registered individuals in the first month of the Federal fiscal year. Each subsequent month the DPW shall add to that figure the number of E&T mandatory participants, and volunteers who were placed in an E&T component that month. The method of measuring the number of persons "placed" (the numerator) shall be the same.

1. Separate counts shall be maintained for the mandatory participants, including applicants, and volunteers.

2. A count of persons placed each month of the fiscal year shall be added cumulatively.

3. A cumulative total shall be kept monthly for the base of eligibles and the number of persons placed, and the monthly totals shall be reported to FNS no later than 45 days after the end of each quarter.

(h) Percentage of persons to be placed: USDA/FNS shall establish an annual performance standard for the minimum number of eligible persons that must be placed in E&T programs.

(i) Variations in performance standards: USDA/FNS may adjust the performance standard for an individual state, if the state can show prospectively that the components it plans to offer, or the type of participant it plans to serve, will require a significantly higher level of effort.

1. In determining whether an adjustment of the performance standard is warranted, and the level of the adjustment, FNS will consider the number of persons who will be placed, the intensity and effectiveness of the components and the cost.

2. Only in extraordinary circumstances will USDA/FNS approve a performance standard which is lower than 40 percent of the nationwide standard.

10:87-10.4 Work registration

(a) Each household member who is not exempt in accordance with the provisions of N.J.A.C. 10:87-10.7 shall be registered for employment by the CWA at time of application, and at least once every 12 months after initial registration, as a condition of eligibility for participation in the Food Stamp Program.

(b) Registrants who move out of the area shall reregister at their new location.

(c) The registration form need not be completed by the member required to register.

(d) The CWA shall provide work registration forms to the applicant or the household's authorized representative for each household member required to register for employment and permit the applicant or authorized representative to complete the form. Household members are considered to have registered when a completed work registration form is submitted to the CWA.

(e) The employment and training components to which participants will be referred may be limited by the availability of administrative funds provided by USDA.

10:87-10.5 Appropriate Food Stamp Employment and Training Program Office (FSETP) defined

For the purposes of Food Stamp Program work registration and work and training requirements, the "appropriate" Food Stamp Employment and Training Program Office (FSETP) shall be defined as that FSETP or its designee having jurisdiction in the area in which a registrant resides.

10:87-10.6 Registration procedure

(a) The CWA shall register for work each household member not exempted by the provisions of N.J.A.C. 10:87-10.7 regardless of whether or not the geographic area where the member resides is covered by an employment and/or training component. In addition, exempt food stamp participants who voluntarily elect to participate in E&T programs shall be work registered as a volunteer.

(b) Upon reaching a determination that an applicant or a household member of the applicant's household is required to register, the CWA shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply.

1. The CWA shall also provide, either by mail or in person, to each work registrant in the household, a written statement of the pertinent work requirements, rights and responsibilities of work registered household members, and consequences of failure to comply. A notice shall also be provided when a previously exempt member or new household member becomes subject to a work requirement, and at time of recertification.

(c) The CWA shall permit the applicant or the household's authorized representative to complete a work registration form for each household member required to register for employment in accordance with (a) above.

(d) Household members are considered to have registered when an identifiable work registration form is submitted to the CWA.

(e) Registration shall be accomplished through the execution of a work registration form. The certification worker shall review the registration form for completeness, retain a copy in the case record, and forward the original to the appropriate FSETP office in accordance with DPW instructions. If the certification worker is aware that any registrant is exempt from the E&T requirements, including migrant or seasonal farm workers away from their usual place of residence, and following the work stream, it shall be reflected on the work registration form. The CWA shall forward work registration forms to the FSETP office not later than five days after the date of certification.

(f) Frequency of registration: Each nonexempt person shall be required to register at the time of application and at least once every 12 months thereafter. Reregistration shall be accomplished by a return of a completed work registration form to the CWA which shall retain a copy in the case record and forward the original to the FSETP in accordance with (e) above.

(g) Changes to be reported to FSETP: The CWA shall be responsible for notifying the appropriate FSETP office via an information report form of those work registrants who become exempt from the work registration requirements subsequent to registration, are no longer certified for participation in the program, or move from the area. Such notification shall be provided to the appropriate FSETP office within a reasonable time period but not to exceed 30 days from the date the change becomes known to the CWA.

(h) Determination of work registration in case of FSETP/CWA disagreement: In the event that FSETP disagrees with the CWA determination that the individual is required to register for work, FSETP may request a reconsideration of the individual's nonexempt status. The CWA must respond to the reconsideration request within 30 days and FSETP must accept the response as final. If, however,

he CWA fails to respond within 30 days, FSETP shall deregister he household member.

0:87-10.7 Exemptions from the work registration requirement

(a) Exemptions to the work registration requirement shall be determined when the household applies or reapplies for benefits, when here is a change in the employment status of any member of the ıousehold, and/or when the 12 month registration period is initiated ›r renewed. The applicant shall cooperate fully with regard to the :stablishment of his or her exemption from the work registration equirement. If an applicant fails to cooperate in the determination ›f his or her exempt status, the county welfare agency shall require he applicant to complete a work registration form.

(b) The following persons shall be exempt from the work registration requirement:

1. Persons under 16 and over 60: Program participants or appli-:ants who are under 16 years of age or aged 60 years or over shall ›e exempt. If a child has its 16th birthday within a certification ›eriod, the child shall fulfill the work registration requirement as part ›f the next scheduled recertification process, unless the child qualifies ›or another exemption. A person age 16 or 17 who is not the head ›f household and who is attending school, or enrolled in an employ-nent training program on at least a half-time basis, is exempt.

2. Essential persons: The following shall be exempt from work ·egistration as essential persons:

i. Responsible for care of child under six or incapacitated person:)ne parent or other household member who has responsibility for :he care of a dependent child under six years of age, or who cares ›or an incapacitated person, shall be exempt. If the child has its sixth ›irthday within a certification period, the individual responsible for :he care of the child shall fulfill the work requirement as part of the ıext scheduled redetermination process, unless the individual quali-ies for another exemption.

3. Students: Persons enrolled at least half-time (as defined by the nstitution or programs in which they are enrolled) in any school or training program or institution of higher education which is re-:ognized by any Federal, State, or local government agency shall be :xempt.

i. Semester breaks and vacations: Once a student enrolls in an ınstitution of higher education, such enrollment shall be deemed to :ontinue through normal periods of class attendance, vacation and recess unless the student graduates, is suspended or expelled, drops ›ut, or does not intend to register for the next normal school term, excluding summer school.

ii. Correspondence courses: Persons enrolled in correspondence :ourses, where physical attendance is not regularly required, shall not be considered students for the purposes of (b)3 above.

4. Incapacitated adults: Adults who are physically or mentally unfit for employment shall be exempt. If a mental or physical disability is claimed and the disability is not evident, verification shall be required.

i. Evidence of incapacity: The following shall be considered evidence of incapacity:

(1) Certain SSI benefits: Current eligibility for SSI benefits for the blind or disabled, with the exception of "essential persons" (as defined by SSA);

(2) Disability benefits: Current receipt of temporary or permanent disability benefits issued by governmental or private sources;

(3) Medical verification: A statement from a physician or licensed or certified psychologist which substantiates the applicant's claim of disability; (the certification worker may obtain such medical verification in writing or by telephone);

(4) Report by the medical review team (MRT): In the case of applicants who are receiving public assistance, a report by the MRT substantiating the applicant's claim of disability.

ii. Documentation of incapacity: The certification worker shall document all facts relevant to, and verification methods utilized, in the determination of incapacity.

5. Employed persons: Persons who are employed or self-employed at least 30 hours per week or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be exempt. This shall include migrant and seasonal farm workers who are under contract or similar written agreement with an employer or crew chief to begin employment within 30 days, although this shall not prevent individuals from seeking additional services from FSETP.

i. Non-gainful employment: Persons engaged in hobbies or volunteer work or any other activity which cannot, because of the minimal amount of monies received from such activity, be considered gainful employment, shall not be exempt from work registration, regardless of the amount of time spent in such activity.

6. Certain addicts and alcoholics: A narcotics addict or alcoholic who regularly participates, as a resident or nonresident, in a drug or alcoholic treatment and rehabilitation program, which has been certified as such by the New Jersey Department of Health, shall be exempt.

i. Verification of program participation: Prior to certification, the regular participation of an addict or alcoholic in such a program shall be verified with the appropriate organization or center.

ii. Verification of center certification: An approved center shall be in possession of a letter from the New Jersey Department of Health, verifying certification by that agency.

7. Persons subject to registration under other programs: Persons registered for work in accordance with program requirements of General Assistance are exempt.

i. Persons exempt from registration under other programs: Persons exempt from work registration in accordance with program requirements of AFDC and General Assistance are not necessarily exempt from registration in the Food Stamp Program. Such individuals shall be exempt only if they meet the exemption criteria in this section.

ii. Persons failing to comply with AFDC or GA work registration requirements: Persons who fail to comply with an AFDC or GA work registration requirement that is equivalent to a food stamp work registration requirement shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-10.20.

(1) Notification procedures for GA recipients who fail to comply with work registration requirements: Municipal welfare departments shall advise the CWA of each GA recipient who fails to comply with any work registration requirement and of the actual requirement with which the recipient failed to comply. If the GA recipient is participating in the food stamp program, the CWA shall determine if the failure to comply with the GA work requirement is equivalent to a food stamp work registration requirement.

(2) Persons registered for, but not actively participating in, a GA work program requirement through the General Assistance Employability Program (GAEP), may be subject to the work registration and employment and training requirements of the food stamp program.

8. Recipients of unemployment compensation: Persons in receipt of unemployment compensation and persons who have applied for, but have not yet begun receiving unemployment compensation shall be exempt.

i. Failure to comply: Persons failing to comply with an unemployment compensation requirement comparable to a food stamp work registration or employment and training requirement shall be treated as though they had failed to comply with the corresponding food stamp requirement. If the CWA determines that the unemployment compensation requirement is comparable, the individual, or household (if the individual who committed the violation is head of household) shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-10.21. The CWA shall provide a notice of adverse action within 10 days after learning of the noncompliance with the unemployment compensation requirement.

ii. An individual or household shall not be disqualified if the noncomplying member meets one of the exemption criteria at N.J.A.C. 10:87-10.7 other than the exemptions at (b)8 (exemption due to receipt of UIB) or (b)10 below (exemption due to compliance with a Title IV (AFDC) work or training requirement).

iii. Household members who fail to comply with a noncomparable unemployment compensation requirement shall lose their exemption under this section and must register for work if otherwise required to register in accordance with (a) above.

9. Jointly processed households: Household members who are entitled to joint processing shall be exempt from work registration until they are determined eligible for SSI and therefore exempt from work registration in accordance with N.J.A.C. 10:87-(b)4 above. If in-

eligible for SSI and where applicable, a determination of such an individual's work registration status will then be made through recertification procedures.

10. Title IV (AFDC) work registrant: A household member subject to and complying with any work or training requirement under Title IV (AFDC) of the Social Security Act, including WIN or REACH registration and participation, shall be exempt.

i. Failure to comply: Persons failing to comply with a Title IV requirement comparable to a food stamp work registration or employment and training requirement shall be treated as though they had failed to comply with the corresponding food stamp requirement. If the CWA determines that the Title IV requirement is comparable, the individual, or household (if the individual who committed the violation is head of household) shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-10.21. The CWA shall provide a notice of adverse action within 10 days after learning of the noncompliance with the Title IV requirement.

ii. An individual or household shall not be disqualified if the noncomplying member meets one of the exemption criteria at N.J.A.C. 10:87-10.7 other than the exemptions at (b)8 above (exemption due to receipt of UIB) or (b)10 (exemption due to compliance with a Title IV (AFDC) work or training requirement).

iii. Household members who fail to comply with a noncomparable Title IV requirement shall lose their exemption under this section and must register for work if otherwise required to register in accordance with (a) above.

10:87-10.8 Persons losing exempt status

(a) Persons losing exempt status due to any change in circumstances that is subject to the reporting requirements of N.J.A.C. 10:87-9.5(a) (such as loss of employment that also results in a loss of income of more than $25.00 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported according to the following procedures:

1. The CWA shall be responsible for providing the participant with the work registration form when the change is reported.

2. Participants shall be responsible for returning the work registration form to the CWA within 10 calendar days from the date the work registration form was handed to the household member reporting the change in person, or the date the CWA mailed the work registration form.

3. If the household fails to return the work registration form, the CWA shall issue a notice of adverse action stating that the participant, or if the individual is head of household, the household is being terminated and why, but that the termination can be avoided by returning the work registration form.

(b) Persons who lose their exempt status due to a change in circumstances that is not subject to the reporting requirements of N.J.A.C. 10:87-9.5(a) shall register for employment at the time of the household's next recertification.

10:87-10.9 Work registrant requirements

(a) If a person is not exempt from employment and training requirements, the FSETP worker shall be responsible for screening (assessing) that person and, if appropriate, referring him or her to an employment and training component within 10 days of the initial assessment. Upon entry into each component, the registrant participant or volunteer shall be told, either orally or in writing, the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The CWA food stamp office shall take appropriate sanction action within 10 working days after learning of noncompliance.

1. Assessment defined: Assessment is defined as an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, employment search or training, an assessment of this nature could constitute part of an employment and training component.

(b) Work registrants shall:

1. Report, at the direction of the Food Stamp Employment and Training Program Office (FSETP), to an assessment interview and/or to an employment and training program component under the approved State Plan for Food Stamp Employment and Training Programs;

2. Participate in an employment and training program activity, if assigned;

3. Respond to a request from the FSETP or its designee for supplemental information regarding employment status or availability for work;

4. Report to an employer to whom referred by the FSETP or designee if the potential employment meets the suitability requirements described in N.J.A.C. 10:87-10.15.

5. Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage.

(c) Employment and training programs are as follows:

1. Persons required to register for work and not exempted by the State Plan for Employment and Training Programs from placement in a component shall be subject to the employment and training requirements imposed by the State Plan for that individual. Such individuals are referred to as E&T mandatory participants.

2. Employment and training programs may include, but are not limited to, approved:

i. Job search activity (see N.J.A.C. 10:87-10.17 and 18);

ii. Training activity (see N.J.A.C. 10:87-10.19);

iii. Employment activity; or

iv. On-the-job training when approved under JTPA;

v. Other activity that will lead to gainful employment.

3. Failure to comply without good cause with the employment and training requirements shall result in disqualification of the individual, or in the case of noncompliance of the head of household, the entire household shall be disqualified in accordance with the provisions of N.J.A.C. 10:87-10.20.

4. Time spent in an employment and training program: The number of months a participant spends in an employment and training component shall be determined by the FSETP. The FSETP shall also determine the number of successive components in which a participant may be placed.

i. The minimum level of effort of any work or training component shall provide that compliance by the work registrant shall entail an average of 12 hours of activity per month per participant for two months (or less in a work experience component if the household's benefit divided by the minimum wage is less than this amount).

ii. The time spent by the members of a household collectively each month in an employment and training program work experience component shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage.

iii. The total hours of participation in an E&T *[non-work]* component for any household member individually in any month, together with any hours worked for compensation ***in cash or in kind***, shall not exceed 120.

5. Participants in an employment and training program, including volunteers, shall receive a participant allowance provided through the CWA for costs of transportation, or other costs that are reasonably necessary and directly related to participation in the employment and training programs at the flat rate of $25.00 per month for all participants.

i. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining benefits.

6. Voluntary participation: Individuals may elect to voluntarily participate in available work and training programs.

i. The FSETP office shall permit, to the extent practicable, persons exempt from work registration or employment and training requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program offered.

ii. Voluntary participants in an employment and training component shall not be disqualified for failure to comply with work and training requirements.

iii. The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants as specified in (c)4 above.

10:87-10.10 Voluntary quit

(a) No household whose head of household *, **as defined in N.J.A.C. 10:87-2.6,*** voluntarily quits his or her most recent job without good cause shall be eligible for participation in the Food Stamp Program except as provided in (c) below. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer shall not be considered as a voluntary quit. ***If an individual quits a job, secures new employment at comparable wages or hours, and is then laid off or, through no fault of his or her own, loses the new job, the earlier quit shall not be the basis of a disqualification.*** An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike shall be considered to have voluntarily quit his or her job without good cause (see N.J.A.C. 10:87-10.16 concerning strikers). ***The CWA shall explain to the household at the time of application not only the potential consequences of the head of household quitting a job without good cause, but also the consequences of an individual subsequently joining the household as its head after that individual voluntarily quit employment.****

(b) Determining whether a voluntary quit occurred: When a household files an application for participation, or when a participating household reports the loss of a source of income, the CWA shall determine if any currently unemployed (that is, employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for full-time work has voluntarily quit his or her most recent job (that is, employment involving 20 hours or more per week or having received weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) without good cause. For applicant households, the CWA shall determine if a voluntary quit occurred within the last 60 days. If the CWA learns that a household has lost a source of income after the date of application but before the household is certified, the CWA shall determine whether a voluntary quit occurred. For participating households, the CWA shall determine whether any household member voluntarily quit his or her job while participating in the program.

1. Head of household: If a determination of voluntary quit is established, the CWA shall then determine if the member who quit is the head of household in accordance with N.J.A.C. 10:87-2.6.

(c) CWA Action: The CWA shall take the appropriate action, as outlined in (c)1 through *[3]* ***5*** below, upon a determination that the head of household voluntarily quit employment.

1. Denial of application: Upon a determination that the head of household voluntarily quit employment, the CWA shall determine if the voluntary quit was with good cause as defined in N.J.A.C. 10:87-10.11. If the voluntary quit was not for good cause, the household's application for participation shall be denied for a period of 90 days beginning with the date of quit. The household shall be advised of the reason for the denial and of its rights to reapply at the end of the 90 day period, the circumstances under which a voluntary quit disqualification may be ended, and of its right to request a fair hearing.

2. Disqualification of participating households: If the CWA determines that the head *[of household]* of a participating household voluntarily quit his or her job while participating in the *[Food Stamp P]* ***p***rogram, ***or discovers a quit which occurred within 60 days prior to application or between application and certification,*** the CWA shall provide the household with a notice of adverse action within 10 days of the date the determination of voluntary quit was made. The notice shall specify the period of the disqualification, the circumstances under which a voluntary quit disqualification may be ended ***or avoided***, the household's right to a fair hearing and that the household may reapply at the end of the disqualification period. The household shall be disqualified for three months beginning with the first ***day of the*** month after normal adverse action procedures have been taken. If the household leaves the program before the sanction can be levied, the sanction shall not be imposed until the household returns to the program. *[If a household requests a fair hearing and the CWA determination is upheld, the disqualification period shall begin the first of the next month after the hearing decision is rendered.]*

i. Fair hearings: Each household has a right to a fair hearing to appeal a *[reduction,]* termination*[,]* or denial of benefits due to a determination that the household's head of household voluntarily quit his or her job without good cause. If the participating household requests a fair hearing and the CWA determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered.

3. Application in third month of disqualification period: If an application for participation in the Food Stamp Program is filed in the third month of disqualification, the CWA shall (in accordance with N.J.A.C. 10:87-6.4 and 6.5) use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent months if all other eligibility criteria are met.

4. If a household is certified when a quit which occurred prior to certification is discovered, the household shall be regarded as a participating household and shall have the three month disqualification imposed.

5. If a voluntary quit either occurs or is discovered in the last month of the certification period, the household shall be denied recertification for 90 days, commencing with the first day of the month after the certification period expires. If the household does not reapply, the CWA shall establish a claim against the household for those benefits received by the household for up to 90 days subsequent to the last day of the month of the quit. If benefits were received for fewer than 90 days subsequent to the last day of the month of the quit, a claim shall be established for all benefits received during that 90-day period, and a period of ineligibility shall be assigned to the household for the number of days in that 90-day period for which a claim was not established, with the end result that a claim was established or the household was ineligible for a full 90-day period.*

(d) Exemptions from voluntary quit provisions: Persons exempt from the work registration provisions as stated in N.J.A.C. 10:87-10.7 are exempt from the voluntary quit provisions *, **with the exception of an individual who was employed 30 or more hours per week and then quit that employment (see N.J.A.C. 10:87-10.7(b)5)***.

10:87-10.11 Good cause

(a) Good cause for leaving employment includes the good cause provisions found in N.J.A.C. 10:87-10.23 and resigning from a job that does not meet the suitability criteria specified in N.J.A.C. 10:87-10.15. Good cause for leaving employment shall also include:

(b) Discrimination: Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;

(c) Working conditions: Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(d) Employment or education: Acceptance by the primary wage earner of employment or enrollment of at least half-time in any recognized school, training program or institution of higher education, that requires the primary wage earner to leave employment;

(e) Employment or education of other household member: Acceptance by any other household member of employment or enrollment of at least half-time in any recognized school, training program or institution of higher education in another county which requires the household to move and thereby requires the primary wage earner to leave employment;

(f) Retirement: A resignation which is recognized by the employer as retirement;

(g) Employment becomes unsuitable: Employment which becomes unsuitable (see N.J.A.C. 10:87-10.15) after acceptance of such employment;

(h) Employment does not materialize: Acceptance of a bona fide offer of employment more than 20 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 20 hours which, because of circumstances beyond the control of the primary wage earner, subsequently does not materialize or

results in employment of less than 20 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 20 hours; and

(i) Patterns of employment: Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs, particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment shall be considered to be with good cause if such movement from employer to employer is part of the pattern of that type of employment;

(j) Lack of adequate child care: Lack of adequate care of children who have reached age six but are under age 12.

10:87-10.12 Verification of voluntary quit and good cause

(a) To the extent that the information given by the household is questionable as defined in N.J.A.C. 10:87-2.21(i), the CWA shall request verification of the household's statements.

(b) Primary responsibility: The primary responsibility for providing verification rests with the household.

(c) CWA assistance: If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, the CWA shall offer assistance to obtain the needed verification.

(d) Acceptable sources: Acceptable sources of verification include but are not limited to the previous employer, employee associations, union representatives and grievance committees or organizations.

(e) Collateral contact: Whenever documentary evidence cannot be obtained from the household member, the CWA shall substitute a collateral contact. The CWA is responsible for obtaining verification from acceptable collateral contacts provided by the household.

(f) Unable to verify: If the household and the CWA are unable to obtain requested verification from the above or other sources because the cause for the quit resulted from circumstances which for good reason cannot be verified, such as a resignation from employment due to discriminatory practices, unreasonable demands by an employer, or because the employer cannot be located, the household shall not be denied access to the Food Stamp Program.

10:87-10.13 Rules on ending a voluntary quit disqualification

(a) Following the end of the voluntary quit disqualification period a household may begin participation in the program if it applies again and is determined eligible.

(b) Eligibility may be reestablished during a voluntary quit disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures *[new]* ***comparable*** employment *[which is comparable in salary or hours to the job which was quit]*. ***The new employment need not be identical to the previous employment in terms of salary or hours; it may entail fewer hours or a lower net salary than the previous employment.***

(c) Eligibility may also be reestablished during a voluntary quit disqualification if the violator becomes exempt from work registration requirements in accordance with N.J.A.C. 10:87-10.7(b), other than the exemptions at N.J.A.C. 10:87-10.7(b)8 (exemption due to receipt of UIB) and 10.7(b)10 (exemption due to Title IV (AFDC) work or training participation requirements). ***The sanction shall also be removed if an eligible individual joins the household and qualifies to be the household's principal wage earner as defined at N.J.A.C. 10:87-2.6(b).***

(d) Persons who have been disqualified for quitting a job as head of household of one household shall carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it in accordance with this section.

10:87-10.14 (Reserved)

10:87-10.15 Unsuitable employment

(a) Employment offered to a registrant shall not be considered suitable when any of the following conditions exist:

1. Earnings: The wages offered are less than the highest of: the applicable Federal minimum wage, the applicable State minimum wage, or, if neither the State or Federal minimum wage is applicable, 80 percent of the Federal minimum wage. If the employment offered is on a piece-rate basis, and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified above.

2. The registrant, as a condition of employment, is required to join, resign from, or refrain from joining, any legitimate labor organization.

3. The work offered is at a site subject to a strike or a lockout at the time of the offer unless the strike has been enjoined under Section 208 of the Labor-Management Relations Act (Taft-Hartley) or unless an injunction has been issued under Section 10 of the Railway Labor Act.

4. The registrant lacks adequate child care for children who have reached age 6 but are under age 12.

(b) Registrant proof of unsuitability: Any employment offered a registrant shall be considered suitable unless he or she can demonstrate or the CWA becomes aware that:

1. The degree of risk to health and safety is unreasonable;

2. He or she is physically or mentally unfit to perform the employment, as established by documentary medical evidence or reliable information obtained from other sources; or

3. The employment offered within the first 30 days of registration is not in his or her major field of experience;

4. The distance of the employment from his or her residence is unreasonable considering the expected wage and the time and cost of commuting. Employment shall not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transportation of a child to and from a child care facility. Nor shall employment be considered suitable f the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site;

5. The working hours or nature of the employment interferes with the individual's religious observances, convictions or beliefs; or

6. For students, the employment is offered during class hours or is more than 20 hours per week.

10:87-10.16 Strikers

(a) Households with striking member(s) shall be ineligible to participate in the Food Stamp Program unless the household was (or would have been) eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. Pre-strike eligibility shall be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur. Such households shall retain their eligibility but shall not receive an increased allotment as a result of a decrease in the income of the striking member(s) of the household.

(b) The CWA shall determine eligibility by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two figures to the current income of non-striking members during the month of application.

(c) To determine benefits (and eligibility for those household subject to the net income eligibility standard) deductions shall be calculated for the month of application as for any other household. Whether the striker's pre-strike earnings or current income is used, the earnings deduction shall be allowed, if appropriate.

(d) If other changes occur, such as but not limited to, a change in household size or non-strike related employment, the CWA shall take appropriate action and adjust the benefit level.

(e) Strikers shall be subject to work registration criteria.

(f) Striker defined: For the purpose of the Food Stamp Program the term "striker" shall be defined as anyone involved in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Additionally, any individual exempt from the work registration requirement, other than those exempt solely on the grounds that they are employed, shall not be deemed to be a striker. Examples of non-strikers who are eligible to participate in the program include, but are not limited to:

1. Employees whose workplace is closed by an employer in order to resist demands of employees (for example, lockout);

2. Employees unable to work as a result of striking employees (for example, truck drivers who are not working because striking pressmen prevent newspapers from being printed); or

3. Employees who are not part of the bargaining unit on strike who do not want to cross the picket line due to fear of personal injury.

10:87-10.17 Job search components

(a) Persons required to register for work shall also be subject to an independent job search or other appropriate employment and training (E&T) activity.

(b) Job search assignment: During the initial assessment interview, the FSETP worker shall determine the job search requirements of each work registrant and shall provide each registrant with written notification regarding his or her job search requirements, procedures to be followed and the consequences of failure to comply. Based on the capabilities and characteristics of the registrant, the FSETP worker shall determine the extent of appropriate E&T activity for each work registrant.

1. Job Ready: Those registrants that have no apparent substantial barriers to employment shall be considered job ready.

2. Non-Job Ready: Persons on temporary layoff or expecting to return to work within 60 days, shall be considered non-job ready for 60 days from the date of initial registration. At the end of the 60 day period, such persons shall be contacted to redetermine appropriateness for participation in job search.

(c) Exempt:

1. The FSETP determination of exempt status shall be made at the time the work registration form is received from the CWA to preclude the need of such registrants to travel to the FSETP office for an interview, unless it is impossible for the FSETP office to determine exempt status from the information on the work registration form.

2. Those work registrants for whom a job search is determined to be impractical, specifically including registrants residing an unreasonable distance from the E&T location or considered to be unsuitable for participation in any efforts toward employment due to a permanent condition of unemployability shall be considered exempt. Such exemption shall be subject to reevaluation at the time of the individual's next recertification.

i. A distance shall be considered unreasonable if the round trip exceeds two hours by reasonably available public or private transportation.

3. Migrant and seasonal farmworkers away from their usual place of residence and following the work stream shall also be considered exempt.

4. Those registrants with substantial barriers to employment such as, but not limited to, medical or social problems documented in writing, language or other serious problems, that alone or in conjunction with adverse labor market conditions would make them difficult to place shall be considered exempt. Such exemption shall be subject to reevaluation at the time of the individual's next recertification.

(d) Job search requirements: Persons determined to be job ready or persons losing exempt status or reentering the program after a period of absence shall be subject to and must comply with a job search for a minimum of eight weeks each 12 months. The FSETP office may require that the eight week period be one continuous period, or that it be divided into two separate job search periods which total eight weeks.

1. Job Contact: Registrants shall contact, as required by FSETP, up to a minimum of 24 prospective employers during the eight week period. If the job search period is shortened, the number of required job contacts shall be reduced on a pro rata basis, to the maximum extent practicable.

i. A referral to an employer shall be considered a job contact provided the registrant presents himself or herself to the employer as available for employment.

ii. To be considered a job contact initiated by the registrant, the registrant must present himself or herself to the employer as available for work and the employer must ordinarily employ persons in areas of work that the registrant is reasonably qualified for by means of experience, training or ability and is not considered unsuitable employment in accordance with N.J.A.C. 10:87-10.15.

iii. Depending upon the position being sought, the job contact requirements may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the FSETP office to be generally accepted practice.

iv. The work registrant cannot contact the same employer in subsequent weeks unless the initial contact indicated that vacancies in suitable job positions may soon exist.

2. Reporting job contacts to the FSETP office.

i. Twice during the eight week job search period the work registrant shall report at a prescheduled time to the FSETP worker, the result of all job search contacts. If the eight week job search activity is divided into two separate periods, the FSETP worker may require the registrant to report once during each period of job search activity.

ii. Job contacts shall be reported in writing in a manner prescribed by FSETP. At the time of the initial interview with the FSETP worker, the work registrant shall be informed about the manner of reporting. While such reporting will not require the employer's written confirmation of the job contact, the registrant shall be required to sign written documentation to attest to its validity. The written report shall be submitted to the FSETP worker at the work registrant's follow-up interview. The registrant shall be responsible for providing FSETP, upon reasonable request, any additional information regarding job contacts.

(e) FSETP review of job contacts: The FSETP worker shall determine if the work registrant has completed the assigned number of job contacts.

1. If the registrant was assigned a continuous job search period of less than eight weeks, the registrant shall have two additional weeks to complete any missed contacts.

2. If the registrant was assigned a single continuous eight week job search period, no additional time shall be allowed unless the FSETP worker fails to accept, for reasons such as suitability or manner of contact, a job contact(s) reported by the registrant. In such instances, the work registrant shall be allowed an additional two weeks to make up the disallowed contact(s).

3. Persons failing to complete the required number of job contacts, with good cause, shall be excused from completion of the job search requirements.

4. If a registrant believes that a FSETP determination is improper, review of the determination may be obtained from a designated FSETP official not involved in the original determination. For example, if the registrant believes he or she has been improperly assigned to a job search category or assigned an improper number of job search contacts, or that an action which should have been counted as a contact was not, a review may be obtained. This also applies to an FSETP determination that noncompliance was not for good cause.

(f) FSETP case records: A complete file on each work registrant shall be maintained by the FSETP office.

10:87-10.18 Job search training component

(a) Job search training: Job search training consists of two segments, classroom group job search training techniques and motivation, followed by a period of supervised job club or job search.

(b) The duration of the classroom training segment may vary dependent upon the approved program component available in a particular county.

1. The curriculum in the group training segment will include confidence-building, self-evaluation, goal assessment and training in job search skills. Participants will be taught to locate potential employers and to develop an individual job search profile.

2. Participants will be expected to attend all classroom sessions. Failure to adhere to attendance and participation requirements without good cause may result in disqualification from the Food Stamp Program for failure to comply.

(c) Following the job search training, participants will be required to undertake a supervised job search similar to independent job search, or participate in a supervised job club.

1. Job club participants may be required to report daily to a specific location (site) to make telephone contacts to obtain job interviews.

2. Participants will be expected to attend all assigned site sessions. Failure to adhere to attendance and participation requirements without good cause may result in disqualification from the Food Stamp Program for failure to comply.

10:87-10.19 Vocational/educational training component

(a) After initial screening and assessment by the FSETP worker, an individualized plan will be developed with the participant. Work registrants who have complied with other job search and/or job search training requirements may be referred on a voluntary basis for educational development, skill training or vocational training through the Job Training Partnership Act (JTPA) Program in any of the 21 counties.

(b) Vocational training may be offered through classroom training arranged by JTPA, and designed to train workers in occupations for which demand exceeds supply.

(c) Participants enrolled half time or more in an institution of higher education will continue to be eligible for Food Stamps if they:

1. Are employed 20 hours per week or the equivalent thereof;

2. Participate in a federally financed work study program;

3. Are responsible for the care of a dependent under the age of six, or 12 if no child care is available;

4. Are receiving AFDC benefits; or

5. Are assigned to an institution of higher learning through a program authorized/approved under the Job Training Partnership Act (JTPA).

(d) Unless a client is exempt from student ineligibility provisions based on the criteria in *[(b)]* *(c)* above, he or she may only be referred to higher educational components that are less than half time. Action taken other than that specified in this section could render the participant ineligible for the Food Stamp Program.

10:87-10.20 Failure to comply

(a) If the registrant fails to comply with any of the work registration or work and training requirement provisions in this subchapter, without good cause, the appropriate FSETP office shall notify the CWA in writing within five working days of the date such information becomes known to the FSETP, citing specific facts and circumstances, by means of an information report form.

(b) CWA responsibilities: Within 10 days after the FSETP provides notification of failure to comply, the CWA shall provide the individual, or if the individual is head of household, the household with notice of adverse action and begin the disqualification period in accordance with the provisions of N.J.A.C. 10:87-10.21.

1. Fair hearing: Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of non-exempt status or a CWA/FSETP determination of failure to comply with the work registration and/or work and training requirements of this subchapter (see N.J.A.C. 10:87-10.22).

10:87-10.21 Penalty for noncompliance with employment and training requirements

(a) If the CWA determines that an individual other than the head of household, as defined in N.J.A.C. 10:87-2.6, has refused or failed to comply with the requirements imposed by this subchapter and the State Plan for Employment and Training, that individual shall be ineligible to participate in the Food Stamp Program for two months and is treated as an ineligible household member in accordance with N.J.A.C. 10:87-7.14. If the head of household fails to comply, the entire household is ineligible to participate. The CWA shall take appropriate action as follows:

(b) The period of ineligibility shall continue in both cases either until the member who caused the violation complies with the requirement as specified in N.J.A.C. 10:87-10.24, leaves the household, becomes exempt from work registration through the provisions of N.J.A.C. 10:87-10.7 other than the exemptions at N.J.A.C. 10:87-10.7(b) (exemption due to receipt of UIB) or N.J.A.C. 10:87-10.7(b)10 (exemption due to compliance with a Title IV (AFDC) work or training requirement), or for two months, whichever occurs earlier.

(c) Change in household composition: Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household shall be ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he or she is not head of household, the individual shall be ineligible for two months and considered an ineligible household member in accordance with N.J.A.C. 10:87-7.15.

(d) The CWA shall determine whether good cause for noncompliance exists in accordance with N.J.A.C. 10:87-10.23.

(e) The CWA shall provide the individual or household with a notice of adverse action within 10 days of determining that the noncompliance was without good cause. Such notification shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included with the notice on the action which can be taken to end or avoid the sanction and procedures and requirements for reestablishment of eligibility.

(f) The disqualification period shall begin with the first month following the expiration of the adverse action notice period, unless a fair hearing is requested.

10:87-10.22 Fair hearings

(a) Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a determination of failure to comply with the work registration or work and training requirements of this subchapter. A fair hearing shall be scheduled in accordance with N.J.A.C. 10:87-8.6(a)4.

(b) Individuals or households may appeal CWA or FSETP actions such as exemption status, the type of requirement imposed, or CWA or FSETP refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decision on these matters.

(c) The CWA/FSETP agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means.

(d) A household shall be allowed to examine its employment and training component case file at a reasonable time before the hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by either party at the hearing.

(e) The results of the fair hearing shall be binding on the CWA and the FSETP.

10:87-10.23 Good cause for noncompliance

(a) The CWA shall be responsible for determining good cause in those instances where the work registrant fails to comply with the work registration, work and training requirements or voluntary quit requirements of this subchapter. The CWA shall take into consideration all of the facts and circumstances which existed at the time of the registrant's alleged failure to comply including information submitted by the employer and the household member involved. Good cause shall include circumstances beyond the control of the registrant.

1. If the good cause for noncompliance is temporary (less than 60 days) the person shall be referred again to a component as soon as practicable.

2. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt.

3. If the good cause for noncompliance no longer exists, the person shall be referred to a component as soon as practicable.

(b) Good cause circumstances: Good cause for noncompliance shall include circumstances such as, but not limited to, the illness

of the registrant or another household member, unavailability of transportation, an unanticipated emergency, and/or the lack of adequate care for children who have reached age six but are under age 12. Problems caused by inability of the registrant to speak or write English may constitute good cause. For example, a registrant who cannot read English would have good cause for not appearing for an FSETP interview if the appointment notice was written only in English.

1. Illness of another household member: In the case of a registrant's failure to comply due to the illness of another household member, such illness shall be sufficiently serious as to require the presence of the registrant.

10:87-10.24 Ending disqualification

(a) Following the end of the two month disqualification period for noncompliance with the work registration or employment and training requirements and, upon reapplication participation may resume if a disqualified individual or household applies again and is determined eligible.

1. New two month period: If the two month period should elapse, upon reapplication, the household member again refuses to comply with the work registration and/or work and training requirements, the member is subject to disqualification pursuant to provisions of this subchapter.

(b) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement, is no longer a member of the household, or the member complies as follows:

1. Refusal to register: Registration by the household member who refused to register;

2. Refusal to respond to request for additional information: Compliance with the request from the CWA, or the FSETP office or its designee, to provide supplemental information regarding employment status or availability for work;

3. Refusal to report to an employer: Reporting to that employer to whom referred by the FSETP office or its designee if work is still available or to another employer to whom referred.

4. Refusal to accept suitable employment: Acceptance of a bona fide offer of suitable employment to which referred by the FSETP office or its designee, if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing employment of at least 30 hours per week with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

5. Refusal to comply with a CWA/FSETP (or its designee) employment and training component assignment or requirement: Compliance with the CWA/FSETP (or its designee) employment and training component assignment or requirement or an alternate CWA/FSETP (or its designee) assignment or requirement.

10:87-11.1 Intentional program violation disqualification

(a) Individuals found to have committed intentional program violation either through an administrative disqualification hearing or by a court of appropriate jurisdiction or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the program for six months for the first violation, 12 months for the second violation and permanently for the third violation.

(b) One or more intentional program violation disqualifications which occurred prior to April 1, 1983 shall be counted as one disqualification in determining the appropriate penalty.

1. If the act of intentional program violation occurred prior to notification of the disqualification penalties specified in this section, the individual shall be disqualified in accordance with the disqualification period in effect at the time of the offense.

(c) If a court fails to impose a disqualification period for an intentional program violation, the CWA shall impose the appropriate disqualification penalty unless it is contrary to the court order.

(d) The CWA shall disqualify the individual determined to have committed intentional program violation or who signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement and not the entire household.

10:87-11.2 Imposing disqualification periods

(a) If the individual is not eligible at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits. However, once a disqualification period is imposed, the period of disqualification shall continue uninterrupted regardless of the eligibility of the individual.

(b) For individuals who sign a waiver of the right to an administrative disqualification hearing, the disqualification period shall begin with the first month which follows the date the household member received written notification of the disqualification.

(c) For individuals who sign a disqualification consent agreement, the disqualification period shall begin within 45 days of the date the individual signed the agreement.

(d) For individuals found guilty of intentional program violation by an administrative disqualification hearing, the disqualification period shall begin with the first month following the date the household member receives written notification of the hearing decision.

(e) For individuals found guilty of intentional program violation by a court of appropriate jurisdiction, the disqualification period shall begin within 45 days of the date the disqualification was ordered or if no disqualification period is specified by the court within 45 days of the date the court found the individual guilty of civil or criminal misrepresentation or fraud.

(f) Notification of disqualification: Whenever a household member is disqualified for intentional program violation, the CWA shall provide written notice of the disqualification, in advance of the disqualification if possible. The notice shall inform the household member of the disqualification and when it will take effect. The CWA shall also provide written notice to the remaining household members of the allotment they will receive during the period of disqualification.

10:87-11.3 Waiver of right to administrative disqualification hearing

(a) The accused individual shall have the option of waiving his or her right to an administrative disqualification hearing. The CWA shall provide written notification of this option to the client only after ensuring that the evidence against the client has been reviewed by someone other than the eligibility worker assigned to that case and that such evidence warrants the scheduling of a disqualification hearing. The written notification which informs the individual of the option of waiving his or her right to a disqualification hearing shall include:

(b) The date that the signed waiver must be received by the CWA to avoid the holding of a hearing and a signature block for the accused individual, along with the statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

(c) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him or her in a court of law;

(d) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the CWA;

(e) An opportunity for the accused individual to specify whether or not he or she admits to the facts as presented by the CWA;

(f) The telephone number and, if possible, the name of the person to contact for additional information; and

(g) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

10:87-11.4 Disqualification consent agreement

(a) Disqualification consent agreement: Individuals accused of intentional program violation which are referred to a court of appropriate jurisdiction but for which no determination of guilt is obtained due to the accused individual having met the terms of a court order or which were not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor, shall

be allowed to sign a disqualification consent agreement. The CWA shall make arrangements with the county prosecutors to provide advance written notification to the household member of the consequences of consenting to disqualification as a result of deferred adjudication and to include the disqualification consent agreement in agreements between the prosecutors and the accused individuals or in the court orders.

(b) The advance notice and agreement shall include, at a minimum:

1. A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block;

2. A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud;

3. A warning that the disqualification penalties for intentional program violation under the Food Stamp Program which could be imposed are a six-month disqualification for the first violation, 12-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification;

4. A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(c) If the individual signs the disqualification consent agreement, he or she shall be disqualified in accordance with this section unless contrary to the court order. The period of disqualification shall begin within 45 days of the date the household member signed the consent agreement. If the court specifies a disqualification period or specifies a date for initiating disqualification, the CWA shall adhere to the court order.

10:87-11.5 Definition of intentional program violation

(No change in text.)

10:87-11.6 Administrative disqualification

(a) A referral for an administrative disqualification hearing or referral to a court of appropriate jurisdiction shall be initiated by the CWA whenever the CWA has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional program violation as defined in N.J.A.C. 10:87-11.5 regardless of the current eligibility of the individual.

1. Referral for an administrative disqualification hearing shall be made:

i. When the facts of the case do not warrant prosecution through the court system;

ii. When a case previously referred for prosecution is declined by the appropriate legal authority;

iii. When no action has been taken in a reasonable length of time on a case which has been referred for prosecution and the referral has been formally withdrawn.

(b) A referral for an administrative disqualification hearing shall not be made against an individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by a court of appropriate jurisdiction.

10:87-11.7 Administrative disqualification hearing procedures

(a)-(i) (No change.)

(j) Advance notice of hearing: The CWA shall provide written notice to the household member suspected of intentional program violation at least 30 days in advance of the date an administrative disqualification hearing has been scheduled. The notice shall be mailed by certified mail—Return Receipt Requested.

1. The advance notice shall contain at a minimum:

i.-vi. (No change.)

vii. A listing of the household member's rights as contained in N.J.A.C. 10:87-11.7(g);

viii.-ix. (No change.)

2. (No change.)

(k) Scheduling of hearing: The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(l) (No change.)

(m) Good cause for failure to appear: If the household member is found to have committed intentional program violation but a determination is subsequently made by OAL that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid. A new hearing shall be conducted. The hearing official who originally ruled on the case may conduct a new hearing. A hearing official must enter the good cause decision into the hearing record. *[Good cause is defined in N.J.A.C. 10:87-10.23.]*

1. (No change.)

10:87-11.8 Participation while awaiting a hearing

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

10:87-11.9 Decision format

(No change in text.)

10:87-11.10 No further administrative appeal

(No change in text.)

10:87-11.11 Court imposed disqualifications

(a) Referral for prosecution: CWAs are encouraged to refer for prosecution under State statutes those individuals suspected of committing intentional program violation, particularly if large amounts of food stamps are suspected of being obtained by acts of intentional program violation or if the individual is suspected of committing more than one act of intentional program violation.

(b) (No change in text.)

(c) Recommendations of penalty: The CWA shall also encourage prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to any other civil or criminal penalties for such violations.

1. (No change in text.)

10:87-11.12 Reversed intentional program violation disqualifications

(a) (No change.)

(b) Restoration of lost benefits: The CWA shall restore any benefits that were lost as a result of the disqualification in accordance with the procedures specified in N.J.A.C. 10:87-11.13 through 11.21.

10:87-11.13 Restoration of lost benefits

The CWA shall restore to the household benefits which were lost whenever the loss was caused by an error by the CWA. Additionally, the CWA shall restore lost benefits when this Manual specifically states that the household is entitled to restoration of lost benefits or an intentional program violation disqualification was subsequently reversed as specified by N.J.A.C. 10:87-11.12. In SSI jointly processed cases the CWA shall restore to the household benefits which were lost whenever the loss was caused by an error by the CWA or by the SSA/DO. Such an error shall include, but not be limited to, the loss of an applicant's food stamp application after it has been filed with the SSA/DO. Benefits shall be restored even if the household is currently ineligible. The CWA shall maintain an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored to the household. The CWA shall, at a minimum, document how the amount to be restored was calculated and the reason for restoration. The accounting system shall be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

10:87-11.14 Period of restoration

(a) Benefits shall be restored for a period of not more than 12 months prior to whichever of the following occurred first:

1. Date the CWA was notified: The date the CWA was notified by the household or by another person or agency in writing or orally of the possible loss to that specific household;

2.-3. (No change.)

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

10:87-11.15 Errors discovered by the CWA

(a) If the CWA determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the CWA shall automatically take action to restore any benefits that were lost. No action by the household is necessary.

(b) (No change in text.)

(c) (No change in text.)

10:87-11.16 Disputed benefits

(No change in text.)

10:87-11.17 Computing amount to be restored

(a) After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the 12 month time limits described in N.J.A.C. 10:87-11.14, the CWA shall calculate the amount to be restored as follows:

1.-2. (No change.)

(b) (No change in text.)

(c) (No change in text.)

(d) Offsetting claims: If a claim against a household is unpaid or held in suspense as provided in N.J.A.C. 10:87-11.29(d), the amount to be restored shall be offset against the amount due on the claim before any restoration is made to the household. At the point in time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset the claims, even if the initial allotment is paid retroactively. Similarly, initial allotments given at recertification shall not be reduced to offset claims.

10:87-11.18 Individuals disqualified for intentional program violation

(No change in text.)

10:87-11.19 Method of restoration

(No change in text.)

10:87-11.20 Change in household composition

(No change in text.)

10:87-11.21 Benefits lost prior to EPR

(No change in text.)

10:87-11.22 Federally mandated reduction or cancellation of benefits

(No change in text.)

10:87-11.23 Claims against households

(No change in text.)

10:87-11.24 Inadvertent household error and administrative error claims

(No change in text.)

10:87-11.25 Instances requiring a claim determination for inadvertent household errors or administrative errors

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

(f) Claim offset by benefits not yet restored: After calculating the amount of the inadvertent household error or administrative error claim, the CWA shall offset the amount of the claim by any amounts which have not yet been restored to the household in accordance with N.J.A.C. 10:87-11.13. The CWA shall then initiate collection action for the remaining balance, if any.

10:87-11.26 Collecting inadvertent household error and administrative error claims

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

(c) The following procedures are to be followed when a household fails to respond to a demand letter:

1. When a household fails to respond to a written demand letter for repayment of an inadvertent household error claim within 30 days, the CWA shall reduce the household's monthly coupon allotment (see N.J.A.C. 10:87-11.31(d)).

2. (No change.)

(d) (No change.)

(e) Terminating collecting of an inadvertent household error or administrative error claim: A claim shall be determined uncollectible after it is held in suspense for three years. A CWA may use an uncollectible claim to offset benefits in accordance with N.J.A.C. 10:87-11.17(d).

(f) (No change.)

10:87-11.27 Intentional program violation claims

A claim shall be handled as an intentional program violation claim only if an administrative disqualification hearing or a court of appropriate jurisdiction has found a household member guilty of intentional program violation as defined in N.J.A.C. 10:87-11.5 or if the individual signs a waiver of rights to an administrative disqualification hearing or a disqualification consent agreement. Prior to the determination of intentional program violation, the claim against the household shall be handled as an inadvertent household error or administrative error claim, in accordance with N.J.A.C. 10:87-11.25 and 11.26.

10:87-11.28 Establishing an intentional program violation claim

(a) For each month that a household received an overissuance due to an act of intentional program violation, the CWA shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional program violation claim shall be calculated back to the month the act of intentional program violation occurred, regardless of the length of time that elapsed until the determination of intentional program violation was made. However, the CWA shall not include in its calculation any amount of overissuance which occurred in a month more than six years from the date the overissuance was discovered.

(b) Failure to report a change: If the household member is determined to have committed intentional program violation by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported. However, in no event shall the CWA determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(c) If the household received a larger allotment than it was entitled to receive, the CWA shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(d) When determining the amount of benefits the household should have received, the CWA shall not apply the 20 percent earned income deduction to that portion of earned income which the household intentionally failed to report.

(e) Offset against unrestored benefits: Once the amount of the intentional program violation claim is established, the CWA shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with N.J.A.C. 10:87-11.13.

10:87-11.29 Collecting intentional program violation claims

(a) If the household member is found to have committed intentional program violation at either an administrative disqualification hearing or a court of appropriate jurisdiction, or has signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, the CWA shall initiate collection action unless the household has repaid the overissuance as a result of inadvertent client error or administrative error demand letters or the CWA has documentation which shows the household cannot be located or the CWA determines that such collection action may prejudice a case which has been referred for prosecution. In cases where the household was found guilty of intentional program violation by a court, the CWA shall request the matter of restitution be brought before the court.

(b) No change in text.)

(c) Household fails to respond to first demand letter: If the household fails to respond to the first demand letter the following shall apply:

1. (No change in text.)

2. If the household is currently not participating in the program and does not respond to the first demand letter, additional demand letters shall be sent at 30 day intervals until the household agrees

to pay the claim, or the criteria for suspending or terminating collection action as specified in (d) and (e) below have been met.

(d) (No change in text.)

(e) Criteria for terminating collection action: A claim shall be determined uncollectible after it is held in suspense for three years. A CWA may use a suspended or terminated claim to offset benefits in accordance with N.J.A.C. 10:87-11.17(d).

10:87-11.30 Changes in household composition

(No change in text.)

10:87-11.31 Methods of collection

(a) The CWA shall collect intentional program violation, inadvertent household error and administrative error claims in accordance with N.J.A.C. 10:87-11.31 and 11.32.

(b) Lump sum repayment: The CWA shall collect payments from households in one lump sum if the household is financially able to pay the claim in one lump sum. However, the household shall not be required to liquidate all of its assets to make a lump sum payment.

Renumber i-ii as 1.-2. (No change in text.)

(c) Installments: If the household has insufficient liquid resources or is otherwise financially unable to pay the claim in one lump sum, the CWA shall negotiate a payment schedule. Payments shall be accepted by the CWA in regular installments. The household may use food coupons as full or partial payment of any installment.

1. In the case of inadvertent household error and intentional program violation claims, the CWA shall ensure that the negotiated amount to be repaid each month through installments is not less than the amount which could be recovered through allotment reduction (see (d) below). Once negotiated, the amount to be repaid each month shall remain the same regardless of changes in the household's monthly coupon allotment. However, the CWA and the client have the option to initiate renegotiation of the payment schedule if they believe the household's economic circumstances have changed enough to warrant such action.

2. Compromise of claim: If the full amount of the claim cannot be liquidated in three years without creating a financial hardship on the household, the CWA shall compromise the claim by reducing it to an amount that will allow the household to pay the claim in three years. The CWA may use the amount of such reduction of the claim to offset benefits in N.J.A.C. 10:87-11.13.

3. If the household fails to make a payment in accordance with the established repayment schedule (either a lesser amount or no payment), the CWA shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that it may contact the CWA to discuss renegotiation of the payment schedule. The notice shall also inform the household that unless the overdue payments are made or the CWA is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which an inadvertent household error or intentional program violation claim has been established may be reduced without a notice of adverse action.

i. If the household responds to the notice, the CWA shall take one of the following actions as appropriate:

Renumber (A)-(B) as (1)-(2) (No change in text.)

ii. (No change in text.)

(d) Allotment reduction: The CWA shall collect payments for inadvertent household error and intentional program violation claims from households currently participating in the program by reducing the household's food stamp allotment.

1. (No change in text.)

2. Prior to reducing the household's monthly allotment, the CWA shall advise the household of the appropriate formula to be used to determine the amount of food stamps to be recovered each month, the effect on the coupon allotment and the availability of other methods of repayment. If the household does not select another method of repayment, the CWA shall determine the amount to be recovered each month as follows:

Renumber (1)-(2) as i-ii (No change in text.)

iii. Intentional program violation claims: The household's food stamp allotment shall be reduced by the greater of 20 percent of the household's entitlement or $10.00. The allotment may be reduced by a greater amount if the household so chooses.

(1) (No change in text.)

Renumber (4)-(5) as iv-v (No change in text.)

(e) Receipt and transmittal of collections: The CWA shall instruct the household to submit checks or money orders payable to the respective CWA.

1. (No change in text.)

2. Transmittal of payments to the DPW: At the end of each calendar month a check shall be drawn, payable to "Treasurer, State of New Jersey", for the total amount of such funds received during that month and transmitted to the DPW.

i. (No change in text.)

(f) Accounting procedures: Each CWA shall be responsible for maintaining an accounting system for monitoring claims against households. The accounting system shall be designed to accomplish the following:

Renumber i-iv as 1.-4. (No change in text.)

(g) Claims discharged through bankruptcy: The CWA shall act on behalf of, and as, FNS in any bankruptcy proceeding against any bankrupt households owing food stamp claims. The CWA shall possess rights, priorities, interests, liens or privileges, and shall participate in any distributions of assets, to the same extent as FNS. Acting as FNS, the CWA shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed. Any amounts collected under this authority shall be transmitted to the DPW as provided in (d) above.

(h) (No change in text.)

10:87-11.32 Interstate claims collection

(a) A household which relocates from another State into an area under the jurisdiction of New Jersey shall be subject to claims collection for any overissuance the household incurred while receiving food stamp benefits.

(b) Prior to initiating action to collect an *[over issuance]* ***overissuance*** which occurred in another State, the CWA shall contact the State agency which overissued the benefits to ascertain their intention to pursue prompt collection. The State agency which overissued the benefits shall have the first opportunity to collect an overissuance.

(c) The CWA should initiate action to collect the overissuance if the State agency which overissued benefits fails or is unwilling to take prompt collection action. Claims collected shall be retained by DPW in accordance with current fiscal procedures.

10:87-11.33 CWA reporting requirements for incorrect issuances

(a) Each CWA shall report information concerning individuals disqualified for *[, IPV, administrative disqualification hearing, court of appropriate jurisdiction, and, those who signed a waiver of right to a disqualification hearing or consent agreement no later than 30 calendar days after the action was executed.]* ***intentional program violation, including those individuals disqualified based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement. This information shall be submitted to the Division of Public Welfare no later than 10 days after the date the disqualification either took effect or would have taken effect.*** The data submitted will be made available for use by other county and State welfare agencies.

(b) The CWA may determine the eligibility of program applicants to those cases where the agency believes that a household member is subject to disqualification in another jurisdiction. This procedure does not restrict CWAs from screening all program applicants prior to certification or periodically matching the entire list of disqualified individuals against current caseloads.

(c) The CWA shall submit a report to purge the data file of information relating to a disqualification in cases where the IPV is reversed by a court of appropriate jurisdiction.

APPENDIX A
STATE FISCAL MANAGEMENT
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APPENDIX A—FISCAL MANAGEMENT
SECTION A

Technical requirements and specifications

The Division of Public Welfare is responsible for designing, implementing and monitoring fiscal management procedures which ensure the security and control of Authorizations to Participate (ATPs) and Food Coupons.

The Bureau of Business Services/Food Stamp Program Fiscal Office (BBS/FSPFO) operating requirements in Appendix A are unique to the State of New Jersey Food Stamp Program fiscal administration. CWAs are encouraged to submit suggestions to improve this Appendix to:

Supervisor
Food Stamp Program Fiscal Office
Bureau of Business Services
Division of Public Welfare—CN 716
Trenton, N.J. 08625

1. Terms applicable to fiscal operations and their definitions are as follows:

(A) Coupon Issuers (CIs): FSP agents (Bank & Non-bank) that participate in the issuance of food coupons in return for ATP cards.

(B) Current month ATP: Negotiated ATP cards bearing an issuance period that coincide with the current transaction period being reconciled.

(C) Current series coupons and books: March 1975 to the present time. Coupon denominations: $1.00, $5.00 and $10.00. Book Denominations: $2.00, $7.00, $10.00, $40.00, $50.00, $65.00.

(D) Cutoff dates: The dates by which all Family Assistance Management Information System (FAMIS) A and B forms must be submitted to the Office of Telecommunications and Information Services (OTIS) Data Center to be included in the current updating operation.

(E) Expired: A negotiated ATP card that has been redeemed after the expiration date.

(F) Improperly manufactured: Food coupon books that contain printing, cutting or assembling errors.

(G) Locator number: A computer generated number, consisting of 10 digits sequentially assigned to an ATP card, preliminary to the FSP reconciliation operation.

(H) Machine issue: An ATP card printed by computer during a monthly or daily machine issuance cycle.

(I) Manual issue: An ATP prepared manually by the CWA when expedited machine issuance cannot be completed within the prescribed time frame.

(J) Master file: The file maintained at the OTIS Data Center which contains information relating to all NPA/PA cases which are in active status in the computer system. This file forms the basis for machine issuance of ATP cards.

(K) Matched: An ATP card bearing a number which coincides with corresponding data in the Work Record Card File or the Outstanding ATP Card File.

(L) Mutilated: Food coupon books that were properly manufactured but, for a variety of reasons, have become unusable.

(M) O/S File: The information file maintained at the OTIS Data Center that contains all data relating to ATP Cards that have not been negotiated for up to six months.

(N) Replacement: An ATP card issued in place of one previously issued (machine or manual) and bearing the same validity period as the original.

(O) Sort: Sequencing of information on computer printouts by the computer program.

(P) Unmatched: An ATP card bearing a number which does not coincide with the corresponding data in the Work Record Card File or the Outstanding ATP Card File.

(Q) Unmatched cancelled: An ATP card bearing a number which was previously cancelled through replacement issue (for example, lost, stolen, mutilated, and so forth).

(R) Work record: The record maintained at the OTIS Data Center which contains information relating to the current month issuance. The updated information contained in the FAMIS A and B forms is used during the reconciliation of ATPs returned by CIs. All data that clears the various edit programs will become integrated into the FAMIS Master File, with the exception of replacement data.

2. Retention of fiscal records: Retention regulations for FSP fiscal records at the CWA are divided into two categories:

(A) Category I: Computer operations source documents: FAMIS A and B source documents used for terminal input are to be retained for a period of three months after terminal entry. Copies of both are to be filed in the case record and must be retained in accordance with the case record retention schedule.

(B) Category II: Computer printouts and ATP cards: All originals of printout documents shall be retained for three years. Authorization to Participate (ATP) cards returned following the reconciliation cycle shall be retained by the CWA for six years from the origination month of each record. ***The six year retention period is not applicable to ATP cards cancelled by the CWA and never transacted. Destruction of the ATP shall be witnessed by two persons. The CWA is required to maintain a list of the destroyed ATPs for audit purposes.***

(C) Approval and destruction: Approval for destruction of documents must be received from the Bureau of Archives and History by completing Form ED-6. Actual destruction through incineration or shredding is mandatory.

NOTE: Category II documents listed above shall not be destroyed if the CWA has been instructed in writing by DPW (or the USDA/FNS) to retain them.

3. Processing of returned books: Upon receipt of an improperly manufactured (see 1(F) above) or mutilated (see 1(L) above) coupon book(s) from a participant, the CWA Fiscal ***or Food Stamp*** Supervisor, with the authorization of the CWA Director, shall:

(A) Examine returned books containing printing errors. Ascertain that the proper number of coupons are in the book and there is an actual printing error.

(B) Books with alleged missing coupons should be examined as follows:

(1) Count the stubs at the top, bottom, and middle of the book. Ensure that no portion of the stub of the alleged missing coupon(s) is still in the book. Replacements are not to be issued if the stubs are still in the book, unless authorized by the FSPFO ***or Food Stamp Supervisor***.

(2) Examine the staples and their position on the book to determine if there are loose or bent staples, indications that the book has been taken apart and restapled, or other indications that might reveal that the book contained the correct number of coupons at the time of issuance.

(3) Do not bend or remove the staples while examining the books. The condition and presence or absence of the staples are factors which must be considered by the FSPFO ***or Food Stamp Supervisor*** when making a determination.

(C) If the request for replacement is determined to be valid:

(1) Determine the total value of the coupons to be replaced. Provide written authority to the appropriate CI to issue new coupon books to the recipient, specifying the number of each denomination to be issued. Cash refunds are prohibited. Replacements may be made with books of any denomination. ***(Note: The CWA may use a Line N Transaction to produce the ATP for coupon replacement.)***

(a) Example: A recipient returns a $50.00 book containing $20.00 in damaged coupons, or two loose $10.00 damaged coupons from a $50.00 book. The other $30.00 worth of coupons had been expended for eligible foods. A replacement with two $10.00 coupon books is considered appropriate.

(2) Write or stamp "CANCELLED" across the coupons being replaced.

(3) Forward the cancelled coupons with an FNS-471 (Coupon Account and Destruction Report) by certified mail ***or armored car service*** to the address on page one of this Appendix.

(4) Instruct the CI to record the total number of replacement books issued on the current FNS-250 (Food Coupon Accountability Report), Line 13, entitled "Credits". The total will be deducted from stock in computing the value of inventory change.

(5) In those isolated instances in which a participant returns a mutilated $1.00 coupon, three $1.00 coupons or a $5.00 coupon for replacement, it is not possible to issue full coupon books as replacements. The CI must be instructed to remove a $1.00 coupon from a $2.00 book and write or stamp "CANCELLED" on the removed coupon. That coupon is forwarded together with the FNS-250 Report by certified mail ***or armored car service*** to the address on page one of this Appendix. ***(Note: The CWA may use a Line N Transaction to produce the ATP for coupon replacement.)***

(D) Procedures concerning the validity of issuing replacement coupon books shall be directed to the FSPFO ***or Food Stamp Supervisor*** for resolution as follows:

(1) Submit Form FNS-471 and the cancelled book(s) by certified mail ***or armored car service*** to the address on page one of this Appendix.

(2) Responsibility of CWA when authorizing replacement: In the event that the USDA/FNS fails to concur with the claim as submitted, the responsibility for reimbursement to the CI authorized to make the replacement rests with the CWA.

4. Filing, storing and locating negotiated ATP cards: ATP cards are negotiated at the CIs and are returned to the FSPFO each month for analysis, verification and reconciliation.

(A) The initial step in the reconciliation phase of the FSP computer operation is the imprint of a locator number on each ATP.

(B) The locator number consists of 10 digits. The first five digits will represent a Julian Date (year/day) and the last five digits will contain the numerical sequence of each card in a given batch.

For example: Several batches containing a total of 25,000 ATP cards were submitted to the OTIS Data Center on the first working day in January, 1989 (January 3, 1989). The ATP cards were assigned locator numbers as follows:

Julian Date	Sequence No.
89003	00001
89003	00002
89003	24998
89003	24999
89003	25000
	etc.

(C) Upon completion of the reconciliation cycle, the ATP cards are maintained in numerical sequence until they are returned to the CWAs for storage.

(D) Reference to specific ATP cards may be required when unusual or problem situations are identified during the reconciliation operation. Computer printouts which include detailed line items for the various problem areas will be provided to the CWA each month following completion of the reconciliation cycle. The locator number will be included in the detail line of those printouts.

(E) Description of the various printouts referred to are included in Appendix A, Section C.

5. Altered ATP cards:

(A) Purpose: The alteration of any ATP (FORM*[-]*FSP*-*906) card, including those prepared manually, is expressly prohibited by specific USDA/FNS regulations.

(B) UNDER NO CIRCUMSTANCES SHALL FORM FSP-906 (ATP) BE ALTERED FOR CORRECTION OF AN ERROR. IN EACH INSTANCE A NEW FORM SHALL BE PREPARED.

6. Reimbursement for processed transactions: Each month following completion of the reconciliation, the CWA will be provided with a statement of the number of transactions completed by each CI. This report provides a basis for the fee computation for transactions payable to the CI (as appropriate). The CWA then charges the proper administrative account.

7. Billings for coupon shortages, errors and expired ATPs: In accordance with USDA/FNS regulations, DPW is required to make semi-annual settlements for liabilities which have occurred as a result of food coupon shortages as reported on the monthly Food Coupon Accountability Report (FNS-250) from CI locations and for ATPs which were erroneously issued or transacted. The sources of the information concerning these erroneously issued ATPs are included in the details contained in program documents CI-634-01 (Excessive Issuances—Current), CI-634-02 (Excessive Issuances—Supplemental), FS-07003 (Coupon Amount Discrepancy Report) and FC-071-2 (Unmatched). (See #9 below.) Separate semi-annual billings will be sent to each CWA for coupon shortages and erroneously issued ATPs.

(A) The amounts listed for coupon shortages and expired ATPs represent CI liability and should be deducted from all current transaction fees remitted to each CI. Any balance remaining for any CI, after applying the deficiency to the current fee for transactions, should be carried forward and deducted from the fee for transactions for the subsequent month(s) as necessary.

(B) Any CI which has cumulative expired ATP amounts in excess of three months' transaction fees should be requested to make a direct reimbursement rather than to effect recovery in the manner described above. When making the request for direct payment, instruct the CI to issue a check payable to the CWA. The check should be reported as a refund for transaction fees. (Account number 71.1.)

(C) At the time payments to the CIs are adjusted to offset the expired charges, a letter should be prepared for each CI explaining the reason for the reduction. The following is a suggested text:

(D) In accordance with USDA/FNS regulations, we have reduced the fee for the number of transactions applicable to _____ _____ (Month(s), Year) by the semi-annual accounting period _____ (Oct-Mar/Apr-Sep) in the amount of $_____. These amounts will be applied against the Federal share of FSP administrative costs. This will be accomplished by adjustments made to the quarterly cost allocation plan. Please call us if you have any questions, and so forth.

8. Validation of monthly Food Stamp Program documents: Financial losses involved in the issuance of food stamps are to be assumed by the CWA. Liabilities for which the CWA may be held accountable include transacted ATPs that are:

1. Blank when lost or stolen from the CWA and subsequently transacted,
2. Expired,
3. Out-of-state,
4. Excessive issuances caused by CWA error,
5. Unmatched, or
6. Coupon amount discrepancies.

It is necessary for CWAs to validate all requested printouts monthly and return them to DPW 30 days from the date of receipt. For any ATP found to be erroneously issued due to CWA error, the CWA shall circle the respective coupon value and enter the code "AE" next to the circled amount. If the issuance of the ATP in question resulted from a replacement of a valid ATP, the CWA should circle the respective coupon value and enter the code "REPL" next to the circled amount. Although the "REPL" ATPs must be

reported, they are not considered CWA liabilities. The CWA shall indicate on the appropriate transmittal letter the number of ATPs and the coupon value for the following categories:

Excessive ATPs—Both Excessive—Current (CI 634-01) and Excessive—Supplemental (CI 634-02) reports are to be validated by the CWA.

Unmatched ATPs—Any ATP that cannot be substantiated with documentation contained in the case file shall also be reported to DPW via document FC 071-2.

9. Coupon amount discrepancies—Document FS 07003 requires a comparison in each listed case of the amount shown on the ATP with the amount reported on the respective valid Form A or B. It is necessary to identify as invalid the excess portion of those ATPs in which the amount reflected in the "Coupon Amount on ATP File" column is greater than indicated in the "Coupon Amount on Issued File" column. Additionally, all replacement ATPs which are issued and cashed (and where the original ATPs were not returned by the recipient or the U.S. Postal Service) must be reported to DPW. CWAs are to use the following criteria when reporting the number and value of replacement ATPs:

(A) Replacements must be separated into the appropriate transaction months to ensure that they are reported for the month in which they are negotiated.

(B) CWAs must identify not only ATPs replacing those lost or stolen from the mail (code L), but also those issued to replace ATPs which were stolen (code S), mutilated or improperly manufactured (code M), or destroyed in a disaster (code D).

(C) If the original ATP was cashed, the replacements coded L, S, M and D should be counted both as replacements and duplicates.

APPENDIX A—FISCAL MANAGEMENT
SECTION B

1. The CWA is required to notify the appropriate Postal Inspection Service Center listed below when ATPs or food stamp coupons are reported lost or stolen in the mail.

U.S. Postal Service geographic jurisdiction is as follows:

Postal Inspection Service, Newark Division
Postal Inspector in Charge
P.O. Box 509
Newark, N.J. 07101
Att: External Crimes Section

COUNTIES: Bergen, Burlington (only ZIP Codes beginning with 085), Essex, Hudson, Hunterdon, Mercer, Middlesex, ***Monmouth,*** Morris, Ocean (only ZIP Codes beginning with 087), Passaic, Somerset, Sussex, Union and Warren

Postal Inspection Service, Philadelphia Division
Postal Inspector in Charge
P.O. Box 7500
Philadelphia, PA 19101
Att: External Crimes Section

COUNTIES: Atlantic, Burlington (only ZIP Codes beginning with 080), Camden, Cape May, Cumberland, Gloucester, Ocean (only ZIP Codes beginning with 080), and Salem

APPENDIX A—FISCAL MANAGEMENT
SECTION C

Data Processing Services

1. The computer generated documents provided for CWA management of fiscal operations of the Food Stamp Program are as follows:

CWA ACTION

Document Number	Title	Required	Source	Produced
CI 909-01	Food Stamp Replacements Issued	Yes	Form A	The 10th of the month after transaction month
FC 072-01	Food Stamp Authorizations Issued (Monthly)	No	Form A	The 4th working day prior to month end
CI 940-01 CI 940-02 FC 072-03	Food Stamp Authorizations Issued (Daily)	No	Form A	Daily
FC 0072-04	Food Stamp Authorizations Issued (Cumulative Daily)	No	Form A	The 10th of the month following transaction month
FS 07003	Coupon Amount Discrepancy Report	Yes	Form Al/ Negot'd ATPs	The 20th of the month following transaction month
FC 071-2	Authorizations Cashed Totally Unmatched	Yes	Negot'd ATPS	The 20th of the month following transaction month
FC 085-02	Food Stamp Authorizations Cashed	No	Negot'd ATPS	The 20th of the month following transaction month
CI 634-01 (Current) CI 634-02 (Supplemental)	Statement of Excessive Authorizations Cashed	Yes	Negot'd ATPs	The 20th of the month following transaction month

FC 071-1	Statement of Post-Dated Food Stamp Authorizations Cashed	No	Negot'd ATPs	The 20th of the month following transaction month
CI 900-01	List of Transaction Errors	No	Form A	Daily

CORRECTIONS

(a)

THE COMMISSIONER

Notice of Administrative Correction Change of Correctional Institution Names N.J.A.C. 10A

Take notice that, pursuant to N.J.S.A. 30:1-7, the names of certain State correctional institutions have been changed as follows:

State Prison, Trenton to New Jersey State Prison

State Prison, Rahway to East Jersey State Prison

State Prison, Leesburg to Bayside State Prison

Youth Reception and Correctional Center, Yardville to Garden State Reception and Youth Correctional Facility

Youth Correctional Institution, Bordentown to Albert C. Wagner Youth Correctional Facility

Correctional Institution for Women, Clinton to Edna Mahan Correctional Facility for Women

Youth Correctional Institution, Annandale to Mountainview Youth Correctional Facility

Training School for Boys, Jamesburg to New Jersey Training School for Boys

Training School for Boys, Skillman to Lloyd McCorkle Training School for Boys and Girls

By this notice of administrative correction, these name changes, effective November 30, 1988, are being incorporated into the text of N.J.A.C. 10A, CORRECTIONS.

INSURANCE

OFFICE OF THE COMMISSIONER

(b)

Automobile Insurance: Standards for Written Notice for Policyholders Seeking Renewal of Coverage (Buyer's Guide and Coverage Selection Form)

Adopted Amendments: N.J.A.C. 11:3-14.1, 14.3, 14.6 and 14.7

Adopted Repeals: N.J.A.C. 11:3-13.5 and 14.5

Adopted Repeals and New Rules: N.J.A.C. 11:3-15.1 through 15.8

Adopted New Rule: N.J.A.C. 11:3-15.10

Proposed: December 5, 1988 at 20 N.J.R. 2984(a).

Adopted: January 27, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: January 27, 1989 as R.1989 d.117, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e) and 39:6A-23, as amended by P.L. 1988, c.119.

Effective Date: February 21, 1989.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: In Item 2 of the Buyer's Guide and Coverage Selection Form, the use of the terms "Lawsuit Threshold" and "No Threshold" drew objections from Paul E. Newell of Freehold and Bruce H. Stern of Princeton, both certified civil trial attorneys, and by Richard H. Bassin, an attorney from Elizabeth. They said the terms are misleading.

In Mr. Newell's view, the lay person would interpret "Lawsuit Threshold" to mean prohibiting all lawsuits. Mr. Stern and Mr. Bassin, on the other hand, believe the lay person would interpret "Lawsuit Threshold" as permitting all lawsuits.

RESPONSE: Any new term will be confusing if the reader fails to read the definition. The Department believes the definition which appears in the Buyer's Guide is clear and concise. There were no negative comments about the definition.

In their comments, Messrs. Newell, Stern and Bassin presumed that the lay person would see the terms on the Coverage Selection Form without reading the Buyer's Guide. This is an inappropriate assumption because the Coverage Selection Form instructs the policyholder to read the Buyer's Guide, and because the two documents were prepared carefully to complement one another for easy cross-reference.

The use of any other term would be equally confusing to a policyholder who does not read the Buyer's Guide.

The term used in previous political discussions over the past decade, "verbal threshold," was avoided because it is not descriptive of the choice facing consumers. In past years, legislators were asked to abandon the monetary threshold for the verbal threshold, and the "verbal" term was descriptive in that context. In this case, though, consumers are choosing between a threshold or no threshold at all. "Verbal" is no longer descriptive. It would be an irrelevant, confusing term for the lay person to understand.

The threshold restricts lawsuits, hence the term "Lawsuit Threshold."

Similarly, Mr. Stark stated that "No Threshold" implied that the policyholder would have no access or limited access to the courts. Once again, the term is adequately described in the Buyer's Guide. The term was chosen because the option means there is no restriction on the right to sue.

COMMENT: Messrs. Newell and Stark also commented on the method of indicating the higher cost of the "No Threshold" option. They said that the use of dollar increases rather than percentage increases would be more easily understood.

RESPONSE: The Department agrees that dollar figures are more easily understood. The rule will be amended upon adoption to require this additional information on the Coverage Selection Form.

At the same time, however, the Department recognizes that the range of dollars will be fairly large, so the percentage information will continue to be required.

The impact of this change in the rule on insurance companies is minor because only a minor amount of work is involved in making the calculation and only a small part of the Coverage Selection Form must be changed to provide this information. Too, this change can be made at the same time as other changes. Furthermore, companies already have been implementing this change pursuant to Order A88-280, issued November 3, 1988, and Amended Order A89-104, issued January 18, 1989. The impact of the change on the regulated public is positive in that they will be given additional information from which to make their coverage decisions.

COMMENT: Messrs. Newell and Stark also said that basing the percentage increase on only the liability coverage premium, rather than the total premium, is misleading.

RESPONSE: The Department disagrees. The question facing the consumer involves liability coverage, not PIP or physical damage. The consumer's choice will have no impact on these other coverages. Accordingly, including these other coverages in the calculation is confusing.

Furthermore, including the other coverages in the calculation adds to the complexity of the Coverage Selection Form and to the potential for incorrect information because many insureds carry high deductibles on both PIP and physical damage, and many do not carry physical damage at all. These varieties complicate and exaggerate any calculation of the impact of the Lawsuit Threshold/No Threshold choice on policyholders' individual premiums throughout New Jersey.

Mr. Newell said the calculation is misleading because the average lay person does not distinguish the "bodily injury liability premium" from his total premium. Once again, the Buyer's Guide clearly explains that term, so no change is justified.

COMMENT: Concerning the "No Threshold" option, Messrs. Newell and Stark suggested that the exact dollar amount of premium increase be provided on the form.

RESPONSE: This is impossible on a pre-printed form because the exact dollar amount varies from policyholder to policyholder. Requiring the information on a customized form specific to each policyholder would be onerous and inefficient. The statute does not require such specificity.

As always, the policyholder who wants that specific information has the right to request and receive it. Therefore, as a more appropriate method to achieving the goal sought by Messrs. Newell and Stark, the rule will be amended upon adoption to require an additional line on the Coverage Selection Form reminding the policyholder of this right.

The impact of this change on companies is insignificant because it involves only adding a sentence to the Coverage Selection Form. Furthermore, companies already have been implementing this change pursuant to Order A88-280 and Amended Order 89-104. This change does not create new rights or obligations. The change will benefit the public by insuring that they are fully apprised of their rights and of the consequences of their Coverage Selection Form choices.

COMMENT: Peter K. Barbano, assistant general counsel of MCA Insurance Cos., Newark, New Jersey, suggested adding a paragraph in Item 2 of the Buyer's Guide stating that the Lawsuit Threshold is not a deductible and does not limit no-fault medical benefits.

RESPONSE: Mr. Barbano's stated intention is to dispel mistaken impressions in the minds of some policyholders. While this is a worthwhile goal, the Department disagrees with this proposal because the extra wording can confuse policyholders who previously did not have that mistaken impression. In most cases, clarity is best served by describing what something is, rather than what it is not.

COMMENT: Mr. Barbano also recommends expanding the minimum standards of the Coverage Selection Form to require a space for writing in the policy number, to require space for writing in the names of resident relatives eligible for additional PIP benefits if the policyholder elects to buy such coverage, and to require space for writing in different elections for physical damage coverages and deductibles for different vehicles.

The same general comment was made by Stanley Eisenberg of the Eisenberg-Gollin Agency of Irvington.

RESPONSE: The Department disagrees with this suggestion. Companies which want to expand the form to solicit this information are already permitted to do so under proposed new N.J.A.C. 11:3-15.7(b) and (c).

By contrast, there is no public policy reason for the Department to compel all companies to solicit that information in this particular way. Companies should retain flexibility to obtain this information in the way they choose.

COMMENT: Mr. Barbano recommends that the last paragraph of the Coverage Selection Form use the phrase "its authorized representative" instead of "an insurance producer with the company's appropriate binding authority." This would make the last paragraph conform with the wording in the third to last paragraph.

RESPONSE: The Department agrees. However, although such conformity as noted by Mr. Barbano is desirable, it is better accomplished in a different manner—by replacing the phrase "its authorized representative" with the phrase "an insurance producer with the company's appropriate binding authority." The former phrase is too general and has no clear meaning, while the latter is clear and specific and personifies the Department's intent. Accordingly, the rule will be amended upon adoption to delete the phrase "its authorized representative" from the third to last paragraph of the Coverage Selection Form and to insert in its place "an insurance producer with the company's binding authority." The word "appropriate" is being deleted upon adoption because it is unnecessary and confusing.

This change will benefit the public and insurers by clarifying the Department's original intent and by avoiding the confusion inherent in using two different phrases to mean or say the same thing. The change can be made at the same time as other changes required to be made are effected.

COMMENT: Mr. Barbano also suggested a change in wording in the penultimate paragraph on the Coverage Selection Form, third sentence, which states: "Otherwise, if I do not complete choices, I will receive the same coverage as in my previous policy." Mr. Barbano said the word "Otherwise," should be replaced with "For the other items," to make the sentence grammatically correct.

RESPONSE: The rule as adopted makes this change for the reason noted.

COMMENT: In the same sentence as noted in the immediately preceding comment, a further correction is suggested by Gloria Armstrong, a compliance analyst with Colonial Penn Insurance Co. of Philadelphia.

RESPONSE: The original sentence stated that, if a policyholder failed to make selections for items 1, 3, 4 and 5, "I will receive the same coverage as in my previous policy."

That is not correct because, for 1988 policies renewing in 1989, PIP benefits are lower due to the new 20 percent copayment and the new minimum $250.00 deductible, and uninsured/underinsured coverage is lower due to the $500.00 property damage deductible instead of $250.00. Also, providing similar coverage is possible only for renewals, because for new policies, the company needs information directly from the applicant.

Clarification about this being a renewal was also necessary in the previous sentence. The rule as adopted adds the words "this is a policy renewal and."

Therefore, the two sentences now read: "If I carry collision or comprehensive coverage without making a written choice for item 6 or item 7, I will receive the $500 deductible unless this is a policy renewal and my previous deductible was higher. For the other items, if this is a policy renewal and I do not complete choices, I will receive the same coverage as in my previous policy except where changes are set by law."

The impact of this change on companies is insignificant because they can change this wording when making other changes within the time prescribed herein. The change is consistent with N.J.A.C. 1:30-4.3 because it merely corrects a misleading statement in the proposed rule which was inconsistent with existing law. The public will benefit from this change because it clarifies existing law and the Department's original intent.

COMMENT: In the same paragraph as noted in the immediately preceding comment, Ms. Armstrong recommends a change because the descriptions about what happens when a policyholder fails to complete the Coverage Selection Form seems to contradict the previous paragraph, which states that coverages will continue upon renewal as selected by the policyholder.

Ms. Armstrong points out that, if a policyholder makes written choices in 1989 for "No Threshold" and for collision and comprehensive deductibles lower than $500.00, he or she may feel compelled to complete the Coverage Selection Form filling in those choices repeatedly upon subsequent renewals in 1990 and beyond.

RESPONSE: The Department believes that the original wording is clear and that no change is warranted.

COMMENT: Ms. Armstrong also recommends adding a section to both the Buyer's Guide and Coverage Selection Form describing the Extended Medical Expense Benefits Coverage which is required by N.J.A.C. 11:3-7.3.

RESPONSE: The Department disagrees because it is a relatively minor coverage, providing only a $1,000 benefit for certain injuries involving only non-PIP-covered vehicles. An explanation of this coverage could be confusing. Brevity serves the primary goal of clarity.

Furthermore, company offerings for this coverage vary. While all companies must provide at least $1,000 coverage in all policies, not all companies offer the additional protection of up to $10,000 coverage.

No purpose is served by requiring all companies to state in their Buyer's Guide that only some companies offer the additional coverage.

Companies which do offer the additional coverage are already permitted by the proposed new rules to expand the Buyer's Guide and the Coverage Selection Form to state the offering and solicit the business (see, for example, proposed N.J.A.C. 11:3-15.6(c) and 15.7(c)).

COMMENT: Ms. Armstrong also recommends more flexibility in the list of liability limits listed in Item 1 of the Coverage Selection Form.

She says Colonial Penn and some other companies do not "offer" basic limits of 15/30/5 because they feel it does not provide enough protection, though they will write basic limits if a policyholder specifically requests it. She wants flexibility not to list 15/30/5.

Also, she says the four most popular limits include two very similar limits. She wants flexibility to list the same four popular options listed in Colonial Penn's Quotation/Enrollment form.

RESPONSE: As to the first comment, the rule requires that basic limits must be listed if they are available for sale to the public. As to the second comment of Ms. Armstrong, the proposed new rule already

provides the flexibility requested (see "NOTE" in Question 1 of the Coverage Selection Form).

COMMENT: For uninsured/underinsured coverage, Item 5 on the Coverage Selection Form, Ms. Armstrong requests flexibility to list not only the same offerings listed in Item 1, but other offerings as well.

RESPONSE: The Department agrees that this flexibility should be permitted, and the rule has been amended to accommodate those insurance companies which would like to list additional offerings. This change should have no negative impact on insurance companies or policyholders and should enhance the information provided to policyholders. It is not an additional requirement for insurance companies.

COMMENT: Ms. Armstrong recommends adding an additional disclaimer to Items 2, 3, 4, 6 and 7 of the Coverage Selection Form regarding the percentage increase or decrease in premium for certain selections. She says the current wording presumes that the policyholder already has certain coverage, rendering the wording inappropriate in many cases.

RESPONSE: The Department disagrees. The wording compares one coverage versus another, clearly stating the conditions of each coverage without implying that the reader already carries anything in particular.

COMMENT: Ms. Armstrong also seeks flexibility to quote rates to prospective insureds by using the $2,500 PIP deductible instead of the basic $250.00. She says the proposed new rule is written from the perspective of the $250.00 deductible, and she would like to modify the Buyer's Guide text to start with $2,500.

RESPONSE: There is no need to change the rule to achieve the goal sought by Ms. Armstrong. The rule already permits additional statements in both the Buyer's Guide and Coverage Selection Form to incorporate the company's marketing stance. Words could be added to the effect that Colonial Penn offers the $2,500 deductible on most policies.

Proper disclosure, however, requires an explanation of the statute, which necessarily includes (first) reference to the basic $250.00 deductible and subsequent reference to the options. The Department disagrees with changing the text. Additions may be made, but no editing of existing text is permissible except where specifically permitted.

COMMENT: James A. Tignanelli, Associate General Counsel of Prudential Property and Casualty Insurance Co., Holmdel, New Jersey, recommends flexibility in the weight of paper requirement which appeared in proposed new N.J.A.C. 11:3-15.6(g).

Mr. Tignanelli said the 50-pound offset minimum requirement is costly without delivering commensurate benefit to the consumer. Printing, computer processing of premium notices, and mailing would be easier and cheaper with lightweight paper.

RESPONSE: The Department agrees and has amended subsection (g) accordingly.

The impact of this change on companies and the consumer will be positive because of the cost savings they may receive due to the relaxation of the original requirement. There will be no impact on consumers because other minimum standards assure that the Buyer's Guide will be useful and easily understood.

COMMENT: Richard C. Reeves of The Travelers states that the third paragraph of the Buyer's Guide section concerning "Collision and Comprehensive Coverages" improperly says "damage caused by your car" rather than "damage caused to your car."

RESPONSE: The statement in the Buyer's Guide as proposed will be changed upon adoption to clarify that collision pays for damages to the insured's car. This is really the import of the existing language, but the Department will implement this comment. This change is clarificatory only and can be made by insurance companies at the same time as other changes required to be made within the time prescribed in these rules.

CHANGES MADE UPON THE DEPARTMENT'S OWN INITIATIVE:

1. It has come to the Department's attention that insurance producers, and possibly policyholders, were confused when comparing Coverage Selection Forms issued by different companies.

Under Order A88-280, which was similar to this proposed rule, companies have been using a Coverage Selection Form which calculates the increased premium for the "No Threshold" option using different base figures. Some companies have based the percentage increase calculation solely on the bodily injury liability premium, some on the liability premium including both bodily injury and property damage, and some on the premium including coverages mandated by law.

The percentage increase ranges listed by various companies, therefore, have been drastically different. The difference is due to the different base of calculations, rather than any significant difference among companies. The different base for calculations was permitted by Order A88-280.

To immediately prevent such confusion, Commissioner Merin issued Amended Order A89-104, which requires all companies to use the same base; specifically, the bodily injury liability premium. This requirement is presently in effect.

This rule has been amended likewise.

The impact of this change in the rule on insurance companies is minor because only a small amount of work is required to calculate the percentages, and because the change affects only those companies which failed to use bodily injury liability as the base for calculations pursuant to Order A88-280. Furthermore, companies already have been implementing this change pursuant to Order A89-104. The change benefits the public by preventing confusion among insureds who are comparing company prices and making unintended and at times undesirable choices, and among insurance agents who represent more than one company.

2. The 16-page requirement in proposed new N.J.A.C. 11:3-15.6(f) was reduced to 14 pages because the detailed description of how to lay out the pages, which produced two blank pages, proved unnecessary to assure the primary goal of mandating a bound document rather than loose pages.

The impact of this change on insurance companies should be positive because it may reduce their mailing and printing costs. The change does not diminish the usefulness of the booklet to policyholders.

3. The explanation of uninsured/underinsured coverage in Item 5 of the Buyer's Guide has been changed to include information which was previously omitted. The new language explains, consistent with the statute, that the policyholder has the right to purchase uninsured and underinsured coverage up to the limit purchased for liability coverage. The new language does not impose new obligations on insurance companies or policyholders.

This addition assists both the policyholders and the companies by providing more useful information consistent with law. The negative impact is insignificant because the change can be made when other changes are implemented consistent with the provisions of this rule.

4. The rules have been amended to permit companies which sell only certain coverages—such as physical damage—to publish, at their option, only that portion of the Buyer's Guide and Coverage Selection Form which is applicable to them. Such an abbreviated document, however, must explain why it was shortened.

This change will assist insurance companies and policyholders by removing the confusion which might be caused by a company explaining coverages it does not offer.

5. The rules as adopted include new requirements for (1) adding a date to the bottom of the Buyer's Guide and/or Coverage Selection Form whenever a company implements changes; and (2) imposing a deadline for filing those documents with the Department's Division of Public Affairs.

These changes are minor because the original proposal already had a filing requirement. The seven day filing requirement is not considered onerous since a company need only mail a copy of changed forms at the time they are prepared and ready for use. The requirement that the date on which the changes were implemented be included is clearly beneficial to both the company and the policyholder since it prevents confusion surrounding the effective date of the changes made in the Buyer's Guide and/or the Coverage Selection Form.

6. The rules as adopted include the new requirement that documents conforming with the rule must be used by May 1, thus affecting renewals which take effect June 1. Documents produced pursuant to A88-280 and A89-104 may no longer be used after May 1.

This change provides sufficient time for companies to prepare and print the documents and relieves them of the obligation to immediately implement the new provisions, which would have been the case if the rule as proposed was adopted.

7. Typographical errors are corrected in proposed N.J.A.C. 11:3-15.7(c).

8. In Items 7 and 8 of the Buyer's Guide, a sentence has been added stating that same companies may refuse to sell collision coverage without comprehensive.

This was done to provide additional useful information for the benefit of both policyholders and companies. Not all companies engage in such a restriction, but a significant number do with the Department's permission. Failure to mention this fact leaves the incorrect impression that the consumer may purchase collision alone. This change does not in itself create new obligations or rights, but merely further clarifies existing law.

This change has only a minor impact on companies because the extra wording can be added with other required changes at the time prescribed by this rule.

9. On Items 6 and 7 of the Coverage Selection Form, more detailed explanations of the choices are presented to the policyholder. The purpose of this change is to enhance clarity.

There will be no impact on companies and consumers because the original language was never used in the documents published pursuant to Order A88-280 and Amended Order A89-104. Those orders required the language as amended here.

10. Proposed N.J.A.C. 11:3-15.5 is being amended upon adoption to clarify that coverage changes can only be made by means of an original signed Coverage Selection Form, rather than by telephone or by photocopied forms, or by any other means. This was the original intent of the Department and is clearly implied in the proposed rule—since no other options are established there in. Moreover, this will help ensure that all policyholders make choices only after reviewing the Coverage Selection Form and thus only after a review of all pertinent information. This attempt to foster rational decision-making is consistent with the intent of P.L. 1988, c.119.

11. A new section, N.J.A.C. 11:3-15.10, is adopted concerning penalties. The new section does not impose any penalties in and of itself but merely codifies the general principle that violations of an administrative rule may result in the imposition of sanctions pursuant to pre-existing law.

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

11:3-13.5 (Reserved)

11:3-14.1 Purpose

The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 (P.L. 1983, c. 362) requires each automobile insurer offering personal injury protection coverage to provide, at appropriately reduced premiums, optional deductibles and/or exclusions. This subchapter establishes rules for the implementation of these requirements.

11:3-14.3 Optional medical expense benefit deductibles for personal injury protection coverage

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

(d) The buyer's guide and written notice specificed in N.J.S.A. 39:6A-23 shall satisfy the requirements of this subchapter.

(e) (No change in text.)

(f) Should an applicant or policyholder fail to elect a deductible, the basic $250.00 deductible provided by N.J.S.A. 39:6A-23 shall apply and an appropriate premium shall be charged.

(g) (No change in text.)

11:3-14.5 (Reserved)

11:3-14.6 Refund or credit of unearned premium

Every automobile insurer offering personal injury protection coverage shall establish a fair, practicable and non-discriminatory plan for the refund or application of credit of any unearned premium resulting from the selection of any deductible and/or exclusion option pursuant to this subchapter.

11:3-14.7 Filing requirements

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

Recodify existing (d) and (e) as (c) and (d) (No change in text.)

SUBCHAPTER 15. STANDARDS FOR WRITTEN NOTICE: BUYER'S GUIDE AND COVERAGE SELECTION FORM

11:3-15.1 Purpose

(a) N.J.S.A. 39:6A-23 requires the Commissioner of the Department of Insurance to promulgate standards for the written notice to be provided to applicants for automobile insurance and to policyholders seeking renewal of coverage. This written notice includes a Buyer's Guide and a Coverage Selection Form as required by N.J.S.A. 39:6A-23. This subchapter implements this statutory requirement and establishes the necessary minimum standards insurance companies authorized to transact the business of private passenger automobile insurance and New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) servicing carriers shall use in giving notice of available coverages, options and rate credits.

(b) The purpose of the standards is to help consumers understand the choices they will make. The standards prescribe an attractive format and plain language describing the choices in general, thereby encouraging consumers to read the documents and to make informed choices about the auto insurance coverages and options available to them.

11:3-15.2 Scope

This subchapter applies to every insurance company authorized to transact the business of private passenger automobile insurance in this State and to the servicing carriers for the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA).

11:3-15.3 Definitions

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

"Department" means the Department of Insurance of the State of New Jersey.

"Insurance company" means any person, corporation, association, partnership, company and any other legal entity issuing a contract of insurance.

11:3-15.4 Compliance

Pursuant to N.J.S.A. 39:6A-23, as amended by P.L. 1988, c. 119, no new private passenger automobile insurance policy or renewal shall be issued on or after January 1, 1989, unless the application for the policy or renewal is accompanied by a written notice which meets the minimum standards prescribed in this subchapter.

11:3-15.5 Content of written notice

(a) The written notice shall include the New Jersey Auto Insurance Buyer's Guide as it appears in this subchapter.

(b) The written notice shall include the Coverage Selection Form as it appears in this subchapter. ***An insurance company shall effect coverage changes pursuant to this subchapter only upon receipt of an original signed coverage Selection Form.****

(c) For a limited period of time, and for policy renewals only, the written notice shall include the Transmittal Letter as it appears in this subchapter. The Transmittal Letter shall accompany six-month policy renewals issued Janaury 1, 1989 through June 30, 1989, and one-year policy renewals issued January 1, 1989 through December 31, 1989. The Transmittal Letter shall not be included thereafter.

11:3-15.6 Minimum standards for New Jersey Auto Insurance Buyer's Guide

(a) Any insurance company or NJAFIUA servicing carrier may comply with this subchapter by using a camera-ready typeset Buyer's Guide produced by the Department. To obtain this camera-ready Buyer's Guide, an insurance company or NJAFIUA servicing carrier may contact the Division of Public Affairs, Department of Insurance, 20 West State St., CN-325, Trenton, New Jersey 08625-0325.

(b) Insurance companies or NJAFIUA servicing carriers that wish to produce their own plates may do so according to the requirements prescribed in this subchapter.

(c) In preparing the Buyer's Guide, insurance companies or NJAFIUA servicing carriers shall use the text provided in this subchapter. The text shall be used in its entirety without changes, except where specific alterations are permitted as indicated by ***1***, ***2***, ***3***, *[and]* ***4*** ***and ***5***** (see *[(n),]* (o)*[, (e), and (q)]* ***through** (s)* below). ***Insurance companies which do not offer all the coverages described in the Buyers Guide may eliminate those sections and shall indicate clearly that they do not offer those coverages.**** Insurance companies or NJAFIUA servicing carriers may add information to the Buyer's Guide provided that the additional information is consistent with the purpose of the written notice.

(d) To assure conformity with this subchapter, each insurance company and NJAFIUA servicing carrier shall file its Buyer's Guide with the Division of Public Affairs. The filing shall include a sample

copy of the insurance company's or NJAFIUA servicing carrier's Buyer's Guide and a letter listing all alterations, if any, made from the text appearing in this section. The filing shall be made once when the first Buyer's Guide is issued by the insurance company or NJAFIUA servicing carrier and again whenever changes are made.

***(e) Changes made pursuant to this subchapter as effective February 21, 1989 shall be implemented by May 1, 1989, affecting notices for policy renewals effective June 1, 1989.**

1. When changes are made, the new Buyer's Guide shall be filed with the Division of Public Affairs within seven days of its use, and the bottom of the last page shall clearly state the month and year in which the changes were implemented.*

*[(e)]**(f)* The size of the pages of the Buyer's Guide shall not be smaller than three and a half inches by eight and one-half inches. The camera-ready Buyer's Guide produced by the Department shall use pages measuring five and one-half inches by eight and one-half inches.

*[(f)]**(g)* An insurance company or NJAFIUA servicing carrier which uses the Department's camera-ready Buyer's Guide shall not reduce the image or the size of its pages. *[It shall print the 16-page booklet on four pieces of paper measuring eight and one-half inches by 11 inches, folded in half at the center and]* ***The 14-page booklet shall be*** bound by glue or staples. If an insurance company or NJAFIUA servicing carrier intends to fit this printed booklet in a common-size four-inch by nine-inch business envelope, the booklet may be folded once lengthwise.

*[(g)]**(h)* The Buyer's Guide shall be printed on paper of a quality *[not less than 50-pound offset]* ***sufficient to assure that printing does not bleed from one side to the other***. The cover may be of the same or better paper quality as the pages.

*[(h)]**(i)* The type size used in the Buyer's Guide shall be at least 10-point. The camera-ready material provided by the Department shall be 12-point type.

*[(i)]**(j)* The type style used shall be within the discretion of the insurance company or NJAFIUA servicing carrier, but it shall be suitable for the use of italics or boldface type for emphasis. In the text required by this subchapter, material which is underlined shall be printed in italics or boldface type. The type style used in the camera-ready material provided by the Department shall be New Century Schoolbook.

*[(j)]**(k)* To provide adequate white space for an attractive format, the typeset shall be paragraphed consistent with the text of the Buyer's Guide in (m) below. Additionally, at least one line shall be skipped between each paragraph.

*[(k)]**(l)* The Buyer's Guide shall have a cover with the following title in large type: "New Jersey Auto Insurance Buyer's Guide." In regular type, the cover shall state, "This contains only general information and is not a legal document." An insurance company or NJAFIUA servicing carrier may include its name and/or company logo on the cover.

*[(l)]**(m)* An insurance company which writes at least two percent of the New Jersey private passenger automobile market, and each NJAFIUA servicing carrier, shall print its name and toll-free telephone number on the last page of the Buyer's Guide. To facilitate compliance with this requirement, the Department shall, upon request, provide a camera-ready final page of the Buyer's Guide with the insurance company's name and toll-free telephone number.

*[(m)]**(n)* The text of the New Jersey Auto Insurance Buyer's Guide follows:

Buying auto insurance can be both expensive and confusing. One important way to keep costs down is to read your policy and consider whether you are buying the coverages which are appropriate for you and your family.

This Buyer's Guide can help you do that. It explains the purpose of each type of coverage. It tells you what the law requires you to buy and what options are available to you.

It will help you fill out the Coverage Selection Form.

For more details, read your policy. The policy, not this Buyer's Guide, is the legal contract between you and your insurance company.

EXPLANATION OF COVERAGES

Your auto insurance policy is actually several kinds of policies, or coverages, rolled into one.

For each coverage, you are charged a separate price, which is known as the premium.

You pay only one price for auto insurance, but that price is determined by adding the premiums for all the coverages you buy.

Use your Coverage Selection Form to indicate what coverages you will buy in accordance with New Jersey law.

The coverages are:

LIABILITY
PERSONAL INJURY PROTECTION
UNINSURED/UNDERINSURED MOTORISTS
COLLISION
COMPREHENSIVE

Use these explanations to help you complete the Coverage Selection Form.

LIABILITY COVERAGE
(Required by Law)
Item 1 on the Coverage Selection Form

Liability coverage pays for injuries to other people or damages to their property, if you are legally responsible for their losses. The company **1** will pay only as much in damages as the amount of coverage you have chosen.

There are two kinds of liability coverage:

Bodily injury coverage involves cases in which another person is hurt or dies as a result of an auto accident. If you are legally responsible, it will compensate for pain, suffering or other personal hardships, and will also pay for some economic damages, such as lost wages.

Property damage coverage will reimburse other people if you are legally liable for damage to their belongings as a result of an auto accident.

If a liability claim is filed against you, your insurance company **1** will investigate the claim and will decide whether it should be paid, negotiated, or defended in court. Your insurance company **1** will pay the legal bills.

Under state law, you must buy a coverage which will pay, for each accident, at least the following amounts: **2**

- $15,000 for any one person's injuries;
- $30,000 when more than one person is injured;
- $5,000 for property damage.

Some companies sell a combined, single limit, which must be at least $35,000 per accident.

Higher limits of liability coverage are available at relatively low cost.

If you cause an accident and don't have enough insurance to cover your legal responsibilities, you then are personally responsible and could lose some of your assets or spend years paying this debt.

COST SAVER: Lawsuit Threshold
Item 2 on the Coverage Selection Form

Liability claims often involve costly lawsuits. In order to hold down insurance premiums, New Jersey motorists may now choose to limit when they may sue for non-economic loss, which means pain, suffering and inconvenience resulting from an auto accident.

The Lawsuit Threshold is a "verbal threshold" because it uses words, rather than a dollar amount of medical bills, to describe when a suit may be filed. If you select this limitation, then you, your spouse and children living with you who are not covered by name by another auto insurance policy will not be able to sue unless the injury sustained appears on this list:

"death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute that person's usual and customary daily activities for not less than 90 days during the 180

days immediately following the occurrence of the injury or impairment."

(N.J.S.A. 39:6A-8, effective January 1, 1989)

You can reject this threshold and retain the right to sue for any auto-related injury. This option, called No Threshold, will increase the price of your insurance policy.

Under state law, you must choose either the Lawsuit Threshold or the No Threshold option. The same choice should be made under all policies that you have. If you do not choose one of these options, you are considered by law to have selected the Lawsuit Threshold option.

PERSONAL INJURY PROTECTION (PIP)
(Required by Law)
Item 3 on the Coverage Selection Form

New Jersey law requires Personal Injury Protection, sometimes called PIP or no-fault coverage, which pays all reasonable medical bills regardless of who caused an auto accident.

In addition to paying medical bills, the Basic PIP Coverage provides these benefits:

• Income Continuation: If you can't work because of an auto accident injury, you can collect up to $100 a week for one year for lost wages.

• Essential Services: You can collect as much as $12 a day for one year to pay someone to do necessary services that you normally do yourself, such as cleaning your house, mowing your lawn, shoveling snow or doing laundry.

• Death Benefit: If you die from auto accident injuries, your family or estate will receive any benefits you haven't already collected under the income continuation and essential services coverages.

• Funeral Expense Benefit: In addition to the death benefit, reasonable funeral expenses are covered up to $1,000.

COST SAVER: PIP Medical Expenses Only

If you wish, you can buy PIP medical coverage without any income continuation, essential services, death benefits and funeral expense benefits. This is called PIP Medical Expenses Only.

You might want this cost-saving option if you and relatives who live with you wouldn't lose income if any of you were disabled by an auto accident. For example, this option should be considered if your sources of income are pensions, Social Security or investments which would continue regardless of an auto accident, and if someone is always available to care for your personal needs, and if your funeral expenses are covered in some other way.

But the option is a package deal. Either you keep all four of these PIP benefits, or you drop them all. You can't pick and choose.

Additional PIP Coverage

On the other hand, you and relatives who live with you might want higher benefits for income protection and essential services than the amounts provided in the basic PIP plan.

If you buy these additional benefits, the price of your insurance will be higher.

3 You have various options for income continuation. You can buy amounts as high as $700 a week, lasting for either a two-year period or an unlimited period of disability. However, this benefit may not be more than 75 percent of your actual income before the accident, and it may be reduced by other insurance benefits. This additional benefit ends at death.

Based on your choice for income continuation, your essential services benefit would be either $12 per day for two years or $20 per day for two years. This additional benefit ends at death.

If you die due to an auto accident, funeral expenses are covered up to $2,000 under all Additional PIP Coverage options.

Also under all Additional PIP Coverage options, the policy provides a $10,000 death benefit if death occurs within two years of the accident. **3**

PIP Medical Expenses Deductible
Item 4 on Coverage Selection Form

This option involves only the medical bills paid by PIP, not the income continuation, essential services or funeral expense benefits.

Under New Jersey law, your auto insurance policy will cover your medical bills if you are injured in an auto accident. It is one of the broadest such policies in the nation because there is no limit to the amount of medical expenses payable.

However, for the first $5,000 of medical bills per accident, your auto policy will pay only part of the cost of your treatment or the treatment of others covered by your policy. There is a $250 deductible, meaning the first $250 will not be covered. The deductible applies only once per accident regardless of the number of people injured.

There is also a 20 percent co-payment, which means that for the bills from $251 to $5,000, the policy will pay only 80 percent. Medical bills above $5,000 are paid in full by the policy.

COST SAVER: Higher PIP Medical Expense Deductibles

A way to lower the price of your auto insurance is to have a larger PIP deductible. Instead of PIP not paying the first $250 of medical bills, you can choose a $500 deductible, a $1,000 deductible or a $2,500 deductible. The 20 percent co-payment still applies to expenses between the deductible chosen and $5,000.

You should consider the $2,500 PIP deductible if you are already covered by a health insurance policy, Medicare and a Medicare supplement policy, or a health maintenance organization (HMO). In most cases, those plans will pay part of the medical bills which auto insurance won't pay.

Before taking this option, ask your health insurance company or HMO two things:

• Will your health policy or HMO cover auto-related medical bills not paid by auto insurance? The state Department of Insurance requires that health insurance sold in New Jersey cover treatment for auto-related injuries the same as other injuries. But your policy may not follow this rule because you may be covered by a health insurance group based out of state or an employer self-insurance plan. Find out.

• What are your health policy's or HMO's own deductibles, co-payments and exclusions? Find our what your health plan covers. For instance, it may cover only hospitalization but not doctor visits. Also, your health insurance or HMO has its own rules regarding what you pay out of your own pocket for medical treatment. Those rules will apply if you use your health plan to cover the $2,500 PIP deductible.

UNINSURED/UNDERINSURED MOTORIST COVERAGE
(Required by Law)
Item 5 on the Coverage Selection Form

Despite New Jersey law, which requires auto insurance, many cars are not covered by insurance. Some motorists break the law. Many other motorists are residents of other states which don't require auto insurance by law.

Because these motorists can cause accidents, you are required to buy uninsured motorist coverage. This coverage does not benefit the uninsured driver. It will provide benefits to you, your passengers or relatives living with you if a motorist without insurance is legally liable for injuries to these persons *or* for damage to your car or its contents.

You must by law purchase coverage which will pay, for each accident, at least the following amounts: **2**

- $15,000 for any one person's injuries;
- $30,000 when more than one person is injured;
- $5,000 for property damage.

Many companies sell a combined, single limit, which must be at least $35,000. The property damage coverage has a basic $500 deductible, which means you pay the first $500 of a claim under that coverage.

You can buy higher uninsured/underinsured motorist coverage limits *[than what is required by law. You should consider whether you want to buy this additional protection for yourself for the damages caused by other motorists.]* ***, but only as high as the liability coverages you have purchased. Most companies sell up to $250,000/$500,000/$100,000 coverage or a combined single limit of $500,000.***

A higher limit of uninsured/underinsured motorist coverage may help if damages are caused by a motorist who has insurance, but not enough insurance to pay all of your damages—in other words, an "underinsured" motorist. In such an accident, your policy will pay the uncompensated damages up to the dollar difference between your underinsured motorist coverage limit and the other driver's liability coverage limit.

COLLISION AND COMPREHENSIVE COVERAGES **4**
(Optional)
Items 6 and 7 on Coverage Selection Form

Collision coverage and comprehensive (also known as "other than collision") **4** coverage pay for damage to your car. These coverages will pay to repair your car or pay for its value at the time of the loss if it is stolen or declared a total loss.

These coverages are not required by law. But, if you borrowed money to buy your car or if you are leasing the car, the lender or lessor may require you to buy these coverages.

Collision pays for damage ***to your car*** caused by your car hitting things like other cars, trees or telephone poles, or for the car overturning, or for other moving objects hitting your car.

Comprehensive **4** insurance pays for nearly every other kind of damage to your car, such as fire, theft, flood, vandalism, or contact with a bird or animal.

COST SAVER: No Collision or No Comprehensive **4**

If your car is older and is paid for, consider eliminating collision or comprehensive **4** coverage, or both. This decision will reduce your premium.

To make the decision, consider what you will pay for these coverages versus the possible benefit if you file a claim.

Collision and comprehensive **4** coverage will reimburse you only for the actual cash value of your car. This is the maximum payout you will ever receive from any collision or comprehensive **4** claim. The insurance payment probably will be less than the actual cash value because of deductibles.

*****5** Note that some companies **1** will provide collision coverage only if you buy comprehensive **4** coverage too. Contact your company **1** for details.***

COST SAVER: Collision and Comprehensive **4** Deductibles

If you decide that you need collision or comprehensive **4** coverage or both, a significant way to hold down the price of your insurance policy is to select higher deductibles.

If you file a claim, a deductible is the amount of money you will pay before the insurance company **1** starts paying. Deductibles are a way of controlling insurance company costs, and thereby reducing the price of your insurance policy.

For example, during the late 1970s and early 1980s, the "basic" deductibles were $200 for collision coverage and $100 for comprehensive **4** coverage. Now, to hold down auto insurance prices, New Jersey law says the "basic" deductible for each coverage is $500.

You still have the right to buy collision or comprehensive **4** coverage with smaller deductibles, but the lower the deductible, the higher the price of your insurance policy.

It may be a more efficient use of your insurance dollars to pay for coverage for large losses—for such things as auto theft or a major wreck—than to pay extra for deductibles less than $500.

Your insurance policy will cost even less if you have deductibles of $1,000, $1,500 or $2,000. But only you can decide whether you can afford to pay that much if you have an accident. Also, if you are paying a car loan or are leasing your car, you should check if your contract requires certain deductibles.

In deciding what to do, think about how much collision and comprehensive **4** coverages cost and about what would happen if you file a claim.

* * *

If you have any questions about your insurance policy, call your company, **1** agent or broker.

*[(n)]**(o)* Where **1** appears in *[(m)]**(n)* above, an insurance company or NJAFIUA servicing carrier may substitute its name.

*[(o)]**(p)* Where **2** appears in *[(m)]**(n)* above, an insurance company or NJAFIUA servicing carrier which offers only split limits may delete language explaining combined limits, and an insurance company which offers only combined limits may delete language regarding split limits. If an insurance company does not offer limits as low as the minimums required by law, that information may be inserted in this paragraph.

*[(p)]**(q)* The symbol **3** appears twice in *[(m)]**(n)* above, forming a bracket around the explanation of Additional PIP benefits. An insurance company which offers higher benefits than described in the text may modify this paragraph to explain those higher benefits.

*[(q)]**(r)* Where **4** appears in *[(m)]**(n)* above, an insurance company or NJAFIUA servicing carrier which uses only one term, "Comprehensive" or "Other Than Collision", to describe this coverage, may delete reference to the inappropriate term.

(s) Where **5** appears in (n) above, the paragraph may be deleted by an insurance company or NJAFIUA servicing carrier if it provides collision coverage without the purchase of comprehensive coverage as well.

11:3-15.7 Minimum standards for Coverage Selection Form

(a) The Coverage Selection Form shall be printed on at least two pages of paper, size eight and one-half inches by 11 inches. A space shall be provided at the top of the front page for the consumer's name to be handprinted, and a space shall be provided at the bottom of the last page for the consumer's signature and date.

(b) The insurance company or NJAFIUA servicing carrier may include additional lines for application number, policy number or other necessary information.

(c) An insurance company *[of]* ***or*** NJAFIUA servicing carrier may expand the form to solicit additional information, including, but not limited to, the names of resident relatives eligible for PIP benefits, or different collision and comprehension deductibles applying to different vehicles covered by the same policy.

(d) The type size shall be at least 12-point.

(e) The Department will not provide camera-ready typeset for the Coverage Selection Form.

(f) The Coverage Selection Form shall include the range of premium rate differences as indicated by this subchapter. Each insurance company or NJAFIUA servicing carrier shall determine the numbers for use in these sections.

(g) The Coverage Selection Form shall include the language in (h) below, except that language marked "(NOTE)", which describes language which the insurance company or NJAFIUA servicing carrier shall insert.

(h) The text of the Coverage Selection Form follows:

(NOTE: Company's name may be included here.)

(NOTE: If a company has more than two percent of the New Jersey private passenger automobile market, or is a NJAFIUA servicing carrier, it shall include its name and toll-free number here.)

COVERAGE SELECTION FORM

Name: _____

You must choose one option for each item below. ***The premium reductions or increases that are mentioned in this form compare the cost of one of the current options to the cost of another option now available. However, you should not use your old premium to determine the dollar amount of your premium increase or savings, because your new premium could include rate changes and surcharges that you were not paying previously.***

The item numbers match the explanations in the New Jersey Auto*[-mobile]* Insurance Buyer's Guide. Read the Buyer's Guide for information and help in completing this form.

1. Liability Coverage

How much coverage do you choose for damage you may do to others?

☐
☐
☐
☐

(NOTE: At least four of the most popular coverage limits shall be listed, including the lowest limit offered.)

(NOTE: If a complete list is not provided, state that other coverage limits are available.)

2. Lawsuit Threshold

Do you accept the basic limit on the right to sue if injured in an auto accident?

☐ Yes. I want the Lawsuit Threshold.

☐ No. I want No Threshold. *[My _____ premium will be ____ % to ____ % higher if I select the No Threshold option.

(NOTE: The range of percentage increase shall be included, with the words before "premium" describing what premium was the base for computing the percentage, i.e., bodily injury liability premium, the total liability premium, etc.)]* ***My bodily injury liability premium will be ____ % to ____ % higher if I select the No Threshold option, depending upon where my car is garaged, my bodily injury liability coverage limit, and other factors. Per vehicle, my bodily injury liability premium will be $____ to $____ higher if I select the No Threshold option. I understand that I can contact my company or my insurance producer for specific details.***

The additional cost of the No Threshold option is determined by calculating the No Threshold rate as a percentage increase relative to the comparable (verbal) Lawsuit Threshold rate. For example, if the Lawsuit Threshold rate is $52 and the No Threshold rate is $112, then the percentage increase for the No Threshold option is 115% and the dollar increase is $60.

3. Personal Injury Protection (PIP). Choose the kind of coverage you want.

☐ Basic PIP Coverage.

☐ PIP Medical Expenses Only coverage, for a ____ % to ____ % savings in the _____ premium. (NOTE: Include the range of percentage savings and the base, i.e., basic PIP premium.)

☐ Additional PIP Coverage, at an extra cost. Contact company or insurance producer for details. (NOTE: Company's name may be used here or a chart listing options may be enclosed.)

4. PIP Deductible. Choose only one:

☐ $250 deductible, minimum required by law.

☐ $500 deductible, for a ____ % to ____ % reduction in the _____ premium.

☐ $1,000 deductible, for a ____ % to ____ % reduction in the _____ premium.

☐ $2,500 deductible, for a ____ % to ____ % reduction in the _____ premium.

5. Uninsured/Underinsured Motorists Coverage

How much coverage do you choose for damage which another driver who has little or no insurance may do to your car, your family, your passengers or yourself?

☐

☐

☐

☐

(NOTE: List the same options available for liability coverage above. ***Other options may also be listed.***)

*[6. Do you choose "collision" coverage?

☐ No. I do not wish to be covered for collision damage.

☐ Yes, with the basic $500 deductible. This premium is ____ % to ____ % lower than the collision rate with the $200 deductible, which was the basic deductible under prior law.

☐ Yes, with a _____ deductible. Write in one of these deductibles: (NOTE: List all the available deductibles.)

7. Do you choose "comprehensive" coverage? (NOTE: If appropriate, use the term "other than collision" coverage throughout this section.)

☐ No. I do not wish to be covered for comprehensive damage.

☐ Yes, with the basic $500 deductible. This premium is ____ % to ____ % lower than the comprehensive rate with the $100 deductible, which was the basic deductible under prior law.

☐ Yes, with a _____ deductible. Write in one of these deductibles: (NOTE: List all the available deductibles.)]*

***6. Do you choose "collision" coverage?**

☐ No. I do not wish to be covered for collision damage.

☐ Yes, with the basic $500 deductible. This premium is ____ % to ____ % lower than the collision premium with the $200 deductible, which was the basic deductible under prior law.

☐ Yes, with the deductible circled here: $1,000, $1,500 or $2,000. This premium will be proportionately less than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: $100, $150, $200 or $250. This premium will be proportionately more than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

7. Do you choose "comprehensive" coverage? (NOTE: If appropriate, use the term "other than collision" coverage throughout this section.)

☐ No. I do not wish to be covered for comprehensive damage.

☐ Yes, with the basic $500 deductible. This premium is ____ % to ____ % lower than the comprehensive premium with the $100 deductible, which was the basic deductible under prior law.

☐ Yes, with the deductible circled here: $1,000, $1,500 or $2,000. This premium will be proportionately less than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: $50, $100, $150, $200 or $250. This premium will be proportionately more than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(NOTE: For both collision and comprehensive, if either the $200 deductible or $250 deductible is not offered, that option may be deleted from this form. Also, all other available collision and comprehensive deductibles shall be listed where appropriate.)*

I have read the Buyer's Guide outlining the coverage options available to me. My choices are shown above. I agree that each of these choices will apply for all vehicles insured by my policy and to each subsequent renewal, continuation, replacement or amendment until the insurance company or its *[authorized representative]* ***insurance producer with the company's binding authority*** receives my written request that a change be made.

I understand that, if I do not make a written choice for Item 2, I will receive the Lawsuit Threshold option. If I carry collision or comprehensive coverage without making a written choice for Item 6 or Item 7, I will receive the $500 deductible unless ***this is a policy renewal and*** my previous deductible was higher. *[Otherwise, if]* ***For the other items, if this is a policy renewal and*** I do not complete choices, I will receive the same coverage as in my previous policy ***except where changes are set by law***.

I understand that these choices do not take effect immediately. They will take effect upon policy renewal, or if the choices are delivered after policy renewal, they will take effect upon receipt by the company or by an insurance producer with the company's *[appropriate]* binding authority.

SIGNATURE_____ DATE_____

(i) To assure conformity with this subchapter, each insurance company and NJAFIUA servicing carrier shall file its Coverage Selection Form with the Division of Public Affairs. Whenever the Coverage Selection Form is changed, the new form shall be filed*[.]**, **and the month and year the changes were implemented shall be clearly stated at the bottom of the revised form. Deadlines for implementation and filing requirements regarding the Coverage Selection Form shall be the same as for the Buyer's Guide. See N.J.A.C. 11:3-15.6(e).***

***(j) Insurers shall be required to calculate the percentage and dollar change in premium arising from the selection of the No Threshold option in the following manner:**

1. The Percentage Change Calculation: The percentage increase in the bodily injury liability premium arising from the selection of the No Threshold option shall be determined by calculating the No Threshold

rate as a percentage increase relative to the comparable (verbal) Lawsuit Limit rate. The low end of the percentage range shall be produced by calculating the percentage increase in the bodily injury liability premium of a policy with a $500,000 split or single limit when the motorist goes from the (verbal) Lawsuit Threshold option to the No Threshold option. The high end of the percentage range shall be produced by making the same calculation using a policy with basic limits. In both calculations, Territory 1 rates shall be used.

2. The Dollar Change Calculation: The dollar increase in the bodily injury liability premium arising from the selection of the No Threshold option shall be determined by subtracting the (verbal) Lawsuit Limit rate from the comparable No Threshold rate. The range shall be produced by calculating the dollar change at basic limits for that territory with the lowest basic limit (verbal) Lawsuit Threshold rate. In addition, the dollar change for a $500,000 split or single limit policy also is to be determined for whatever territory has the highest basic limit (verbal) Lawsuit Threshold rate. These two figures will be the low and the high end of the dollar range, respectively. Because the range of the possible additional dollar cost will depend upon both territory and bodily injury liability loss limits, insurers shall be permitted to use round numbers to represent the approximate range of the cost increase. For example, if the smallest rate increase was $56 and the largest $305, the insurer may use the range $50 to $300 on its Coverage Selection Form.

(k) Insurance companies which do not offer all the coverages described in the Coverage Selection Form shall list those coverages on the form and shall clearly state that those coverages are not available from that company.*

11:3-15.8 Minimum standards for Transmittal Letter

(a) The purpose of the Transmittal Letter is to alert policyholders to two major policy changes which will occur upon renewal: the new tort threshold options, and the basic $500.00 collision and comprehensive deductibles. The Transmittal Letter is not intended to be a substitute for the Buyer's Guide, but is intended to call the public's attention to the Buyer's Guide.

(b) The text material contained in (e) below shall be included in the Transmittal Letter in its entirety. In addition, an insurance company or NJAFIUA servicing carrier may include its name and may, provided that the additional information enhances the purpose of the Transmittal Letter as stated in (a) above, provide more information regarding:

1. The new tort thresholds;
2. Collision or comprehensive deductibles; and/or
3. Other policy changes occurring upon renewal.

(c) The Transmittal Letter shall be a separate document.

(d) The Transmittal Letter type size shall be at least 12-point.

(e) The text of the Transmittal Letter follows:

SPECIAL NOTICE:

Major changes are being made in your policy as it renews in 1989.

Please review the changes now and decide what you want your policy to cover.

If you don't act now, your policy will change automatically as required by a New Jersey law enacted in September 1988.

Please read the New Jersey Auto Insurance Buyer's Guide and complete, sign and return the Coverage Selection Form.

Pay special attention to Item 2, the Lawsuit Threshold.

There are new threshold options which determine when a lawsuit seeking damages for pain and suffering may be filed by you, your spouse or children living with you who are not covered by name by another auto insurance policy.

The right to sue will no longer be based on the amount of the injured party's medical bills. Under prior law, your choice was between a $200 medical expense threshold or a $1,950 "higher" threshold. Under the new law, the options available to you are different.

The Buyer's Guide explains the new threshold options. Please make your choice by completing Item 2. Otherwise, the law will automatically assign to you the Lawsuit Threshold.

Also, if you carry collision or comprehensive (also known as "other than collision" coverage), pay special attention to Items 6 and 7. The "basic" deductibles are now $500 for both collision and comprehensive coverages, instead of the previous $200 deductible for collision and $100 for comprehensive.

Please complete Items 6 and 7. Otherwise, if you had smaller deductibles previously, they will by law become $500 deductibles automatically when your policy renews.

Please return the completed form as soon as possible.

(f) The text of the Transmittal Letter may be modified to use the words "comprehensive" or "other than collision", as appropriate.

(g) The insurance company or NJAFIUA servicing carrier may, at its discretion, send an abbreviated Transmittal Letter without reference to collision and comprehensive coverages to its renewals which do not carry those coverages.

***11:3-15.10 Penalties**

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as prescribed by law.*

(a)

DIVISION OF ACTUARIAL SERVICES

Term Life Insurance Comparison Survey

Adopted New Rules: N.J.A.C. 11:4-31

Proposed: December 5, 1988 at 20 N.J.R. 2990(a)

Adopted: January 27, 1989 by Kenneth D. Merin Commisioner of Insurance.

Filed: January 27, 1989 as R.1989 d.122, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:21-1 et seq., specifically 17B:21-3.

Effective Date: February 21, 1989.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received which essentially stated that the New Jersey Department of Insurance is not authorized to regulate rates; therefore, the requested information would not be advancing any regulatory function of the agency. Further, the comment stated that the duty of informing the public lies with the insurance industry, not the Department of Insurance.

RESPONSE: It is a well-accepted principle that the primary function of all State agencies is to act in the public good, and as a State agency, the Department of Insurance has an obligation to act in the public's interest. This function may be explicitly understood from the Department's power to require licensing, filing of policy forms full disclosure compliance, and compliance with loss-ratio standards. Compilation of premium rate information for publication in a comparison guide to be utilized by the general public is merely another facet of the Department's primary function. The Department of Insurance is not attempting to overstep the boundaries of its explicit or implied powers.

COMMENT: Several comments were received concerning the definition of the term "non-standard risk" at N.J.A.C. 11:4-31.2, and the treatment of the classification within the proposed filing forms. Comments stated that most companies have several categories of "non-standard risk," and that it is not sufficient, therefore, to define the term as simply the opposite of "standard." This is apprently true when companies have more than one "standard risk" category, offering "preferred" rates to certain insureds. One comment suggested that the terms be defined more precisely on the basis of an individual's admitted smoking behavior, since the Department's intent appeared to be to distinguish rate premiums between smokers and non-smokers, rather than all other variables which could conceivably create a sub-standard risk element.

RESPONSE: After consideration, the Department has eliminated all references to non-standard risks. The Department's desire is to present data in as uncomplicated a manner as possible, with a qualifying statement within the proposed Comparison Guide that many variables exist to alter an individual's underwriting classification. Only "standard risk" premium rates will be compared, recognizing the fact that, while some variations between companies exist in determining who is "standard risk," the variations are fewer, and have less significant impact between either insurers or applicants. A qualifying statement shall be included in

the Comparison Guide which effectively states that the consumer should be aware that smokers typically pay higher premiums than non-smokers.

COMMENT: Several comments were received concerning the effect that other policy options have upon pricing of term life policies, that is, whether the options should be considered for filing purposes, and the distortion of the information which will be received if these options are ignored.

RESPONSE: The Department recognizes and understands that various policy options, varying degrees of underwriting practices, and marketing strategies have an impact upon policy pricing. However, the purpose of the Comparison Guide is to present an overview of available insurers and price ranges to be expected when shopping for annual renewable term life insurance policies. The Comparison Guide is not intended to be an exhaustive analysis of term life products or industry trends in that area.

In order to clarify the information the Department is seeking, the definition of "annual, renewable convertible term life insurance" has been amended to include only renewable and convertible policies in which premium rates are determined on an attained age basis, but which do not include indeterminate premium options or re-entry options. Renewal and conversion privileges have not been limited or otherwise defined. This amendment will narrow the scope of policies for which information is required to be filed, and will clarify the type of product the Department is attempting to compare.

The $100,000 face amount requirement has been maintained, for several reasons. It is an easy, round number. It eliminates the necessity of filing premium rates for many policy plans, while maintaining a sufficiently large data pool for comparison purposes. It is a clear benchmark for consumers, even if most consumers are not seeking $100,000 policies. Company banding practices vary enough that use of bands would not clearly eliminate distortions in comparisons between companies, and would create the need for more clarifications, qualifiers and/or disclaimers in the Comparison Guide than the $100,000 face amount presently requires.

COMMENT: Several comments were received concerning the filing of information on proudcts introduced midway during the year, and products discontinued during the survey period.

RESPONSE: The Department determined that the rules and forms were unclear concerning the subject, and have amended both the forms and N.J.A.C. 11:4-31.3(a) 2, 3, 4, 5 and 6 for clarification purposes.

COMMENT: One comment was received concerning the fact that publication of a comparison guide for term life policies may give the public the impression that the Department of Insurance is promoting term life policies above other forms of life insurance.

RESPONSE: The Department chose to survey and compare term insurance because this type of insurance is the least complex of the life insurance products typically available to the individual consumer, and should not be interpreted by the industry as an endorsement of one product over another.

Summary of Agency Initiated Changes:

1. Clerical errors were detected within the "authority" section of the proposed rule, and have been corrected for adoption purposes. The general grant of authority at N.J.S.A. 17:1-8.1, inadvertently left out at proposal, has been included at adoption. N.J.S.A. 17:23-4 is deleted and replaced by 17B:21-1 et seq., specifically 17B:21-3. This latter section, 17B:21-3, was correctly cited at proposal. All references to 17:29A-1 et seq. are deleted as clear error.

2. Several linguistic changes were made throughout the rules, either as a matter of expediency in language, a change from the passive to active voice, for clarification purposes, or purposes of consistency. All punctuation changes have been made for grammatical consistency. Any changes made for reasons other than those previously stated are explained specifically in the body of the following paragraphs.

At N.J.A.C. 11:4-31.1 (a), the phrase "in order to assist" is changed to the phrase "so that", and "in its compilation of" is replaced by the phrase "may compile." In subsection (b), the word "term" is deleted in recognition of the fact that insurers are authorized to sell lines of insurance, rather than a particular product. At subsection (c), the word "between" is replaced by the phrase "on or after". The remaining portion of the proposed sentence has been deleted as unnecessary verbiage.

At N.J.A.C. 11:4-31.2, the definition of "annual, renewable, convertible term life insurance" is amended to read as follows: "means term insurance issued which provides renewal privileges, which has conversion privileges, and which provides premium increases on an attained age basis. This definition does not apply to indeterminate premium contracts, wherein the premium may be changed by the company subject to contractual maximums, nor does it apply to term contract with re-entry options, wherein the insured may qualify for reduced premiums upon submission of satisfactory evidence of insurability." The amended definition is intended to clarify what types of policies do and do not fall within the survey scope.

At N.J.A.C. 11:4-31.2, in the definition of "insurer", the phrase "an authorized corporation, association, partnership, or other" is deleted in favor of the existing legal entity terminology. Also, "authorized" is misplaced as an adjective when it should be a verb. The word "any" is inserted in front of "legal entity". The phrase "writing term" is replaced by "authorized to write." Following New Jersey, the phrase "who issues individual term life insurance in this State," is added. The amended definition is in line with the fact that insurers are authorized to sell lines of insurance, but narrows the term "insurer" as it is to be used throughout the rules and exhibits to mean only those issuing individual term life policies.

At N.J.A.C. 11:4-31.2, the definition of "non-standard risk" is deleted. The deletion was determined to be the best alternative in achieving Department goals of simplicity, and insurers' concerns about distortions resulting from submission of non-standard risk information.

At N.J.A.C. 11:4-31.2, the definition "standard risk" has been amended to read as follows: "means a usual and customary underwriting classification assigned to those insureds who do not smoke and who are expected to experience normal rates of mortality." The amended definition will permit industry and individual insurers' definitions of "standard risk" to control in the survey information submitted, except that information should exclude smokers if and when they fall into a standard risk classification.

At N.J.A.C. 11:4-31.3 (a), the word "prepare" is replaced by the word "complete," and the phrase "with the Department" is inserted after the word "file." The phrase "relevant to premiums charged" is changed to "requesting information." The word "individual" is inserted before the phrase "term life insurance," further clarifying the types of term life policies for which information is being requested. The phrase "in the following manner" is replaced by the phrase "as set forth below."

At N.J.A.C. 11:4-31.3(a)2, the word "survey" is replaced by the word "insurer," and the word "reflect" is replaced by the word "provide." The word "individual" is inserted before phrase "annual term life", to distinguish the type of policy information being requested. The phrase "of the calendar year for which the survey is being conducted," is inserted after "December 31," the phrase "of those dates" is inserted after the word "inclusive," while the phrase, "of the preceding calendar year" is deleted. These changes are intended for clarification purposes.

Paragraph (a)2 is further amended by addition of subparagraphs i and ii. Subparagraph (a)2i is as follows: "The requested aggregate information shall include policies which become available for purchase by proposed insureds during the reported survey period." Subparagraph (a)2ii reads as follows: "The requested aggregated information shall include policies which become unavailable to proposed insureds during the reported survey period." The amendments are intended to clarify to insurers that both aggregate and current year-end information is being requested, and that aggregate information should include new and discontinued plans existing in that survey period.

At N.J.A.C. 11:4-31.3(a)3, the word "survey" is replaced by the word "insurer." The word "differentials" is replaced by the word "rates." The phrase ", based upon their categorization as a standard or non-standard risk, for the year in which the individual policy is issued" is deleted because non-standard risk classification information is no longer being requested. The phrase "only for policies which are current and available for purchase by proposed insureds as of December 31st of the survey period being reported" is added to clarify that premium rate information is being requested only for current policies.

At N.J.A.C. 11:4-31.3(a)4, the word "survey" is replaced by "insurer." The phrase ", categorized as standard and non-standard risk, for the year in which the policy is issued" is deleted because non-standard risk classification information is no longer being requested. The phrase "only for policies which are current and available for purchase by proposed insureds as of December 31st of the survey period being reported" is added to clarify that dividend rate information is being requested only for current policies.

At N.J.A.C. 11:4-31.3(a)5, the word "survey" is replaced by "insurer." The phrase ", based upon their categorization as a standard or non-standard risk," is deleted because non-standard risk classification information is no longer being requested. The phrase ", but only for those policies which are current and available for purchase by proposed in-

sureds as of December 31st of the survey period being reported" is added to clarify that projected premium and dividend rates for the sixth and eleventh policy year are only being requested for policies current during the survey period.

N.J.A.C. 11:4-31.3(a)6 has been recodified as subsection (b). In its place, a new paragraph (a)6 has been inserted for filing clarification purposes, and reads: "Information for each current policy plan for which premium and/or dividend rates are to be reported for a particular survey period is to be submitted on separate sets of forms (Appendices A, B, and C), and identified by its policy plan number."

Recodified paragraph (a)6, now subsection (b), has been further amended as follows: the period following the phrase "survey period" is deleted, and the phrase ", which shall be that calendar year immediately preceding that March 31st" is added for clarification. The second line of the address line is changed by deletion of the phrase "State of" and addition of the phrase "Department of Insurance," while the third proposed address line is deleted to make the address more uniform with the address presented in the forms in the Appendices.

3. A new section, N.J.A.C. 11:4-31.4, has been added, which includes three explanatory subsections concerning the forms in appendices A, B, and C.

4. The Department has revised the survey forms contained in Appendices A, B, and C. The new forms in Appendix A includes directions for filling out the upper and lower portions of the form which were lacking in proposed Appendix A. The adopted form does not make any year specifications; the form proposed in Apendix A requests "total individual annual renewable term premium written in 1988 . . ." Unlike the proposed form, Appendix A as adopted, does not require any non-standard information, and thus, makes no provision for both the highest and lowest non-standard rate, if more than one should exist. The adopted form does not include any specific Director's name, while the proposed form did.

The forms adopted as Appendices B and C, which are substantially alike except for the policy year which is addressed, differ from proposed Appendices B and C in that no non-standard information is requested, and no specific Consumer Affairs Director is named.

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 31. TERM LIFE INSURANCE COMPARISON SURVEY

11:4-31.1 Purpose and scope

(a) This subchapter requires annual submission of data by insurers to the Department of Insurance, relevant to premium information on annual, renewable, convertible term life insurance policies*[, in order to assist]* ***so that*** the Department *[in its compilation of]* ***may compile*** an annual Term Life Insurance Comparison Guide for use by the general public.

(b) This subchapter applies to every insurer authorized to provide and sell *[term]* life insurance policies in the State of New Jersey.

(c) This subchapter applies to all policies for annual, renewable, convertible term life insurance which were issued *[between]* ***on or after*** January 1, 1988 *[and December 31, 1988, inclusive of those dates, and shall apply to such policies subsequently issued between January 1 through December 31, inclusive, thereafter]*.

11:4-31.2 Definitions

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

"Annual, renewable, convertible term life insurance" means *[a policy insuring against an individual's death, for a]* term*[,]* ***insurance*** issued *[with both]* ***which provides*** renewal *[and]* ***privileges, which has*** conversion privileges*,* *[for the policyholder.]* ***and which provides premium increases on an attained age basis. This definition does not apply to indeterminate premium contracts, wherein the premium may be changed by the company subject to contractual maximums, nor does it apply to term contracts with re-entry options, wherein the insured may qualify for reduced premiums upon submission of satisfactory evidence of insurability.****

"Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey.

"Department" means the Department of Insurance of the State of New Jersey.

"Insurer" means *[an authorized corporation, association, partnership, or other]* ***any*** legal entity *[writing term]* ***authorized to write*** life insurance in the State of New Jersey ***who issues individual term life insurance in this State****.

["Non-standard risk" means the definitional value, determined through actuarial methods, calculating the expected cost of insuring a particular individual, which is assigned to those insureds who do not qualify for standard risk categorization, for purposes of the term life insurance policy.]

"Standard risk," means *[the definitional value, determined through actuarial methods, calculating the expected cost of insuring a particular individual, which is]* ***a usual and customary underwriting classification*** assigned to those insureds who do not smoke and who *[have no health problems, for purposes of the term life insurance policy]* ***are expected to experience normal rates of mortality****.

11:4-31.3 Coverage option survey

(a) Every insurer shall *[prepare]* ***complete*** and file ***with the Department*** a premium survey *[relevant to premiums charged]* ***requesting information*** on annual, renewable, convertible ***individual*** term life insurance policies with a face amount of $100,000 *[in the following manner]* ***as set forth below****:

1. Insurers shall use the forms prescribed and provided by the Commissioner, which appear as Appendices A, B, and C of this subchapter, and are incorporated herein by reference as part of this subchapter.

2. The *[survey]* ***insurer*** shall *[reflect]* ***provide*** the total number of ***individual*** annual term life insurance policies containing renewal and conversion privileges issued between January 1 through December 31 ***of the calendar year for which the survey is being conducted,*** inclusive ***of those dates****[, of the preceding calendar year]*.

i. The requested aggregate information shall include policies which become available for purchase by proposed insureds during the reported survey period.

ii. The requested aggregate information shall include policies which become unavailable to proposed insureds during the reported survey period.*

3. The *[survey]* ***insurer*** shall provide the premium *[differentials]* ***rates*** which apply to male and female insureds in age groups of 25, 35, 45 and 50 years*[, based upon their categorization as a standard or non-standard risk, for the year in which the individual policy is issued]**, ***only for policies which are current and available for purchase by proposed insureds as of December 31st of the survey period being reported****.

4. The *[survey]* ***insurer*** shall provide the annual dividend rate, if any, which applies to male and female insureds in each age group*[, categorized as standard and non-standard risk, for the year in which the individual policy is issued]* ***only for policies which are current and available for purchase by proposed insureds as of December 31st of the survey period being reported****.

5. The *[survey]* ***insurer*** shall provide the projected premium and dividend rates which apply to male and female insureds in each age group*[, based upon their categorization as a standard or non-standard risk,]* for the *[6th and 11th]* ***sixth and eleventh*** policy year of the individual policy***, but only for those policies which are current and available for purchase by proposed insureds as of December 31st of the survey period being reported****.

6. Information for each current policy for which premium and/or dividend rates are to be reported for a particular survey period is to be submitted on separate sets of forms (Appendices A, B and C), and identified by its policy plan number.*

*[6.]**(b)* Survey forms shall be filed with the Department not later than the 31st day of March next following the survey period ***, which shall be that calendar year immediately preceding that March 31st****. Completed coverage option survey forms shall be submitted to:

Director of Consumer Affairs
[State of] New Jersey ***Department of Insurance***
[Department of Insurance]
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

***11:4-31.4 Survey forms**

(a) Insurers shall file all requested aggregate information for annual, renewable, convertible term life policies during the survey period as specified in the upper portion of the form in Appendix A.

(b) Insurers shall file current policy plan information for the first policy year as specified in the lower portion of the form in Appendix A.

(c) Insurers shall file current projected policy plan information for the sixth and eleventh year of the policy, as specified in the forms in Appendices B and C.*

OAL NOTE: Proposed Appendices A, B and C were not adopted by the Department of Insurance, and are not reproduced herein for purposes of deletion demonstration. The adopted Appendices A, B and C follow.

APPENDIX A

NJ DEPARTMENT OF INSURANCE TERM LIFE QUESTIONNAIRE

COMPANY _____ .

PERSON FILING FORM (TITLE) _____ .

PHONE _____ .

NUMBER OF INDIVIDUAL ANNUAL RENEWABLE TERM POLICIES IN FORCE IN NJ (AS OF DECEMBER 31, 19__) _____ .

TOTAL INDIVIDUAL ANNUAL RENWABLE TERM PREMIUM WRITTEN 19__ (INCLUDE ONLY NEW BUSINESS, NOT RENEWAL, ON AN ANNUALIZED BASIS) IN NJ? _____ .

DOES COMPANY PAY ANNUAL DIVIDENDS? _____ .

HOW IS THE POLICY SOLD? AGENTS _____ DIRECT MAIL _____ OTHER (EXPLAIN) _____ .

A.M. BEST CO. RATING _____ .

(FOR THE ABOVE DATA, PLEASE PROVIDE COMPANY AGGREGATES FOR THE TERM JAN. 1 TO DEC. 31 OF THE REPORTING YEAR.)

PLEASE PROVIDE PREMIUM RATES FOR A $100,000 FACE AMOUNT, ANNUAL, RENEWABLE, CONVERTIBLE TERM LIFE POLICY FOR THE FIRST POLICY YEAR. RATES SHOULD INCLUDE EXPENSE CHARGES AND REFLECT THE EXACT PREMIUM AS PAID BY A CONSUMER. DO NOT LIST RATES PER $1,000.

POLICY PLAN (FORM) NUMBER _____ .

ISSUE AGE	*UNDER-WRITING	MALE STANDARD PREMIUM	MALE STANDARD DIVIDEND	FEMALE STANDARD PREMIUM	FEMALE STANDARD DIVIDEND
25					
35					
45					
50					

*PLEASE ANSWER BY USING APPROPRIATE LETTER A) MEDICAL EXAM_____ B) QUESTIONNAIRE _____ C) OTHER, EXPLAIN _____ .

(FOR DATA ABOVE AND ON FORMS B & C, PLEASE PROVIDE DATA FOR ONLY THOSE POLICY PLANS STILL IN EFFECT ON DEC. 31 OF THE REPORTING YEAR USE A SEPARATE SET OF FORMS FOR EACH POLICY PLAN.)

(EXHIBIT A)
PLEASE RETURN TO:
DIRECTOR OF CONSUMER AFFAIRS
NEW JERSEY DEPARTMENT OF INSURANCE
20 W. STATE STREET
TRENTON, NJ 08625

APPENDIX B

NJ DEPARTMENT OF INSURANCE TERM LIFE QUESTIONNAIRE

PLEASE PROVIDE PREMIUM RATES FOR A $100,000 FACE AMOUNT, ANNUAL, RENEWABLE, CONVERTIBLE TERM LIFE POLICY FOR THE *SIXTH* POLICY YEAR. RATES SHOULD INCLUDE EXPENSE CHARGES AND REFLECT THE EXACT PREMIUM AS PAID BY A CONSUMER. DO NOT LIST RATES PER $1,000.

ISSUE AGE	*UNDER-WRITING	MALE STANDARD PREMIUM	MALE STANDARD DIVIDEND	FEMALE STANDARD PREMIUM	FEMALE STANDARD DIVIDEND
25					
35					
45					
50					

*PLEASE ANSWER BY USING APPROPRIATE LETTER A) MEDICAL EXAM_____ B) QUESTIONNAIRE _____
C) OTHER, EXPLAIN _____ .

(EXHIBIT B)
PLEASE RETURN TO:
DIRECTOR OF CONSUMER AFFAIRS
NEW JERSEY DEPARTMENT OF INSURANCE
20 W. STATE STREET
TRENTON, NJ 08625

APPENDIX C

NJ DEPARTMENT OF INSURANCE TERM LIFE QUESTIONNAIRE

PLEASE PROVIDE PREMIUM RATES FOR A $100,000 FACE AMOUNT, ANNUAL, RENEWABLE, CONVERTIBLE TERM LIFE POLICY FOR THE *ELEVENTH* POLICY YEAR. RATES SHOULD INCLUDE EXPENSE CHARGES AND REFLECT THE EXACT PREMIUM AS PAID BY A CONSUMER. DO NOT LIST RATES PER $1,000.

ISSUE AGE	*UNDER-WRITING	MALE STANDARD PREMIUM	MALE STANDARD DIVIDEND	FEMALE STANDARD PREMIUM	FEMALE STANDARD DIVIDEND
25					
35					
45					
50					

*PLEASE ANSWER BY USING APPROPRIATE LETTER A) MEDICAL EXAM_____ B) QUESTIONNAIRE _____
C) OTHER, EXPLAIN _____ .

(EXHIBIT C)
PLEASE RETURN TO:
DIRECTOR OF CONSUMER AFFAIRS
NEW JERSEY DEPARTMENT OF INSURANCE
20 W. STATE STREET
TRENTON, NJ 08625

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Certificate of Need for Electric Facilities

Readoption with Amendments: N.J.A.C. 14A:14

Proposed: September 6, 1988 at 20 N.J.R. 2188(b).
Adopted: January 26, 1989 by Borden R. Putnam, Commissioner, Department of Commerce, Energy and Economic Development.
Filed: January 30, 1989 as R.1989 d.124, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with portions not adopted.**

Authority: P.L. 1983, c.115, N.J.S.A. 48:7-18 and 52:27F-11q.

Effective Date: January 30, 1989, Readoption.
February 21, 1989, Amendments.
Expiration Date: January 30, 1994.

Summary of Public Comments and Agency Responses:

The Division of Energy Planning and Conservation, Department of Commerce, Energy and Economic Development is adopting a change to the definition of electric facility. This change is based on testimony from three electric public utilities. The Division is the proposed section N.J.A.C. 14A:14-3.1 Submission requirements (a) and (b). In addition section N.J.A.C. 14A:14-2.1, 3 and 4 are withdrawn. Only one non-utility generator, Cogeneration Partners and Cogen Technology, submitted comments on the proposal. In their comments they did not provide an alternative definition of electric facility.

A Public hearing was held on the proposed amendments on November 29, 1988 in the State House Annex, Trenton. The Department received testimony from three utilities: Public Service Electric and Gas Copmany, General Public Utility Corporation and Atlantic Electric Company and one non-utility company, Cogeneration Partners and Cogen Technology.

COMMENT: The three public utilities commented on the proposed definition of electric facility. The definition in their view should be based on the summer net capacity of the unit. This rating is used for determining capacity requirements under the PJM Agreement and for all reporting of company total capacity data, including all capacity and capacity forecast information provided to State agencies and the company's portion of the MAAC Annual Reports. The capacity rating also serves as the basis for future company capacity planning.

RESPONSE: The Division accepts the utility definition. It is in the interest of both the government and private sector to use a common set of definitions for purposes of administering the Certificate of Need Program and capacity planning in general. Therefore, the Division is not adopting the proposed definition of electric facility, and is adopting a definition based on summer net capacity.

COMMENT: The three utilities stated that proposed subsections N.J.A.C. 14A:14-3.1(a) and (b) were beyond the legislative intent of the statute authorizing these rules, N.J.S.A. 48:2-16 et seq. The non-utility company did not comment on the authority question.

RESPONSE: The Division asked the Office of the Attorney General to evaluate the rule proposal in light of the statute and the legislative history surrounding its enactment. The Attorney General has advised the Division that the rule proposal with respect to subsections N.J.A.C. 14A:14-3.1(a) and (b) is inconsistent with the intent of the Certificate of Need Statute.

The Division in accord with the advice of the Attorney General is not adopting proposed subsections N.J.A.C. 14A:14-3.1(a), (b) and (c), and is retaining the present rule text.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14A:14.

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

14A:14-2.1 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

. . .

"Commissioner" means the Commissioner of the Department of Commerce, Energy and Economic Development.

"Division" means the Division of Energy Planning and Conservation in the Department of Commerce, Energy and Economic Development.

"Electric facility" means:

1. Any electric power generating unit or combination of units at a single site which is owned by one or more *[electric]* ***public*** utilities as defined by the public utility laws of New Jersey, N.J.S.A. 48:2-13, and

i. Has a combined electric power generating capacity ***(as defined in paragraph 2 below)*** of 100 megawatts or more *[as measured under N.J.A.C. 14A:14-2.2(a)]*; or

ii. *[Will increase the installed capacity of any electric utility's existing electric power generating facility by 25 percent or more, even if the proposed addition is less than 100 megawatts.]* ***Any facility which will increase the capacity of an individual generating unit greater than 100 megawatts or by 25 percent, whichever is smaller.***

2. For the purposes of this definition, the size in megawatts of any facility or additions thereto shall be measured by determining the *[maximum potential operating capacity of that facility (hereafter, the "maximum gross design capacity"), which means the highest total power output that can be achieved and maintained by the facility as designed at any time during the potential operation of the electric facility, but does not include any facility, regardless of its maximum gross design capacity, which is either of the following:

i. A "qualifying facility," ("QF") as defined by the Federal Energy Regulatory Commission (FERC) in its regulations, 18 C.F.R. 292.101(b)(1), implementing and interpreting the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§2601-2645 (1982); or

ii. An independent power production facility which would be a QF but for its failure to meet the operating and efficiency standards necessary for QF status, as specified in FERC regulations, 18 C.F.R. 292.203(b)(i).]* ***Summer Maximum Net Capability of that facility. The Summer Maximum Net Capability means the capacity rating in megawatts which can be delivered by an electric generating unit for at least two hours less the power generated and used for unit auxiliaries and other station use based on tests conducted for summer peak load conditions. For steam and turbine units, summer peak load conditions mean ambient air and humidity conditions forecasted to occur at the time of the annual summer peak. Cooling water temperature shall be in the range experienced at the unit's location during the summer peak season (June-September).***

*[3. Multiple electric power generating facilities which individually fail to meet the maximum gross design capacity, as set forth in paragraph 2. above, or otherwise fail to expand the capacity of an existing public utility facility by 25 percent shall be aggregated and their total capacity utilized in determining whether they require compliance with this chapter, if the facilities are to be constructed or developed as part of a common plan, or if they are connected to the same switching station, even if they do not occupy the same or contiguous tracts of land.

4. For the purposes of this definition, all facilities, structures, storage tanks, pipelines or transmission lines or interconnection equipment appurtenant to the electric facility shall also be considered a part of the facility and shall be included in any application for a certificate of need and in all environmental, economic and other studies required by this chapter.]*

. . .

14A:14-3.1 Submission

*[(a) If growth in peak demand for electric power exceeds the expected demand forecast of a utility in two or more consecutive years, or in three out of five years, or rises by three percent or more in any single year, the electric utility shall notify the Division in writing of such condition within 30 days.

(b) Within 90 days after providing the notification required in (a) above, the electric utility shall file and initiate a Notice of Intent with

the Division, unless the electric utility demonstrates to the Division Director the continued ability of the electric utility to meet the reasonable needs of ratepayers without seeking additional supplies of electric power, due to the adequacy of any or a combination of the following:

1. Existing electric power generating capacity, owned, operated or under contract to the utility;

2. New or expected electric power generating capacity, including power from a "qualifying facility" and independent power production facilities; and/or

3. Energy conservation measures or initiatives designed to reduce demand growth.

(c) The demonstration of adequacy required under (b) above shall be made through clear and convincing evidence and may include testimony at any public hearings which the Division Director deems necessary or useful for making the required findings of adequacy. If such findings cannot be met, or if, after 120 days, the electric utility has failed to carry its burden of proving adequacy, the utility shall forthwith file a Notice of Intent.]*

***(a) Each applicant shall provide the Department with a Notice of Intent at least one year prior to the anticipated submission of an application for a certificate of need.**

1. The Notice of Intent shall be submitted to the Department in accordance with the requirements of N.J.A.C. 14A:14-1.2;

2. The applicant shall publish in such newspapers of general circulation as the Commissioner shall designate a notice indicating that a Notice of Intent was filed.*

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Surface Water Quality Standards Triennial Review Use Attainability Review for the New York Harbor Complex and the Delaware River and Estuary

Take notice that the Department of Environmental Protection ("the Department") proposed retaining surface water classifications for portions of the Mainstem Delaware River and the New York Harbor Basins which do not incorporate the fishable and/or swimmable goals of the Federal Clean Water Act in a proposal published in the New Jersey Register on July 18, 1988, 20 N.J.R. 1597(a). The Federal Water Pollution Control Act, 33 U.S.C.A. 1251-1376 (1987) ("Clean Water Act") requires the states, from time to time, but at least once every three years, to hold public hearings to review, and as appropriate, modify their Surface Water Quality Standards. 33 U.S.C.A. 1313(c)(1)(1987). New Jersey's last triennial revision of its standards was completed in August 1985.

For all water bodies which do not have all the uses described in Section 101(a)(2) of the "Clean Water Act" as designated uses, the Federal Water Quality Standards Regulations, 40 CFR 131, require a use attainability analysis to document that the missing uses cannot be attained. In 1985, a detailed use attainability analysis was conducted on the New York Harbor Complex waters. A similar, but less exhaustive, use attainability analysis for the Delaware River and Estuary was completed in 1986. Additionally, the Delaware River Basin Commission (DRBC) was given the lead in completing an exhaustive use attainability analysis for the Delaware River and Estuary.

Because no significant changes have occurred in the sources of pollution discharged into the specified waters of the New York Harbor Complex and the Delaware River and Estuary, the Department does not intend to modify the designated uses of these waters at this time.

New York Harbor Complex

The waters of the New York Harbor Complex which do not contain all of the Section 101(a)(2) uses are:

—Arthur Kill
—Saline portion of Berrys Creek
—Elizabeth River (From the Broad Street Bridge to its mouth)
—Hackensack River and tributaries (From Overpeck Creek to the mouth)
—Hudson River (River and saline portions of New Jersey Tributaries from the Harlem River to a north-south line connecting Constable Hook in Bayonne to St. George in Staten Island)
—Kill Van Kull
—Morses Creek (Saline portion)
—Newark Bay (Mouths of Passaic and Hackensack Rivers to an east-west line connecting Elizabethport with Bergen Pt., Bayonne)
—Overpeck Creek (Saline portion)
—Passaic River (Confluence with Second River to mouth)
—Piles Creek
—Rahway River (South Branch from Hazlewood to mouth and Main Stem from Pennsylvania Railroad Bridge to the Route 1 and 9 crossing)
—Saddle River (Saline portion)
—Smith Creek
—Woodbridge River
—Unlisted saline tributaries to the above listed waters

The "Use Attainability Analysis of the New York Harbor Complex" (UAA report) (NJDEP, June 1985) concluded that bringing all point source discharges up to secondary treatment levels would not result in water quality improvements sufficient to allow changing the designated uses to include the missing Section 101(a)(2) uses. Discussions with the New York Department of Environmental Conservation and the Department's Wastewater Facilities Management Element held during 1988 for this Use Attainability Analysis led to the Bureau of Water Quality Standards and Analysis's decision to retain the 1985 uses for the New York Harbor Complex. Changes to significant point sources of pollutants in the New York Harbor Complex Area are summarized below:

Coney Island (NY)—Currently providing 60 to 70 percent biochemical oxygen demand (BOD) removal. Upgrading to secondary treatment from intermediate treatment. Estimated completion of upgrading is sometime in 1995.

Red Hook (NY)—Primary treatment plus disinfection started in May 1987. System became stabilized in August 1987. Replaced discharge of untreated wastewaters. Currently handling about 95 percent of the flow from its drainage area (45 million gallons per day (MGD)). Estimated completion of upgrading is sometime in 1989.

North River (NY)—Upgrading from discharging untreated wastewaters. Primary treatment plus disinfection started in May 1986. Currently handling 170 to 180 MGD. Secondary treatment expected by the end of 1989.

Owl's Head (NY)—Upgrading from primary to secondary treatment. 30 to 50 percent BOD removal currently and actively upgrading. Estimate secondary treatment by 1995.

The changes which have occurred to point source discharges deal with only a fraction of the total point source loadings scheduled for increased treatment. At the same time, no significant change has occurred in nonpoint source loadings to these waters since the 1985 UAA report was issued. Based upon this examination of the current status of the New York Harbor Complex the Department concluded that it should retain the existing classifications and designated uses of these waters.

Delaware River and Estuary

Waters of the Delaware River and Estuary which do not incorporate all of the uses in Section 101(a)(2) of the "Clean Water Act", are the Delaware River and its saline estuary waters 2 ("SE2") tributaries from River Mile 117.81 to River Mile 54.5. The Delaware River Basin Commission (DRBC) is the lead agency for conducting use attainability analyses (UAA) on the mainstem Delaware River. An initial UAA was issued in October 1985 which summarized the existing situation and described the next steps to be taken. That report stated that "some improvements in uses may be considered after 1988 upon completion of upgrading of some major water pollution control facilities. Accordingly, the Delaware River Basin Commission (DRBC), with the support of the New Jersey Department of Environmental Protection, the Pennsylvania Department of Environmental Resources, the Delaware Department of Natural Resources and Environmental Control, Environmental Protection Agency Regions 2 and 3 and State and Federal fishery experts will undertake a more detailed use attainability study for the Delaware Estuary." This "more detailed use attainability study" was originally scheduled for completion in time to be used for subsequent triennial review of water quality standards. Unfortunately, this study was not completed in time to be used for this review. It is currently scheduled for completion by early March, 1989. No significant changes have occurred with respect to nonpoint sources of pollutants. Changes to significant point sources of pollutants within the area of the Delaware River and Estuary that are not classified as fishable and swimmable are summarized below:

Camden County Municipal Utilities Authority, Main Plant (NJ)—Achieved secondary treatment with disinfection in September 1987. Disinfection stopped to allow for seasonal disinfection study from October 1987 through April 1988.

Philadelphia, Northeast Plant (Pa)—Began secondary treatment with chlorination in August 1985. Disinfection stopped to allow for seasonal disinfection study from October 1987 through April 1988.

Philadelphia, Southeast Plant (Pa)—Began secondary treatment with chlorination in November 1986. Disinfection stopped to allow for seasonal disinfection study from October 1987 through April 1988.

The DRBC is currently working on finalization of the UAA for these waters. In order to avoid unnecessary duplication of effort, the Department will not perform its own UAA. The Department will utilize the DRBC UAA in determining whether additional designated uses are appropriate for any of the water in this portion of the Delaware River and Estuary. The next revision to the New Jersey Surface Water Quality Standards should be completed by January 21, 1991 and will incorporate appropriate changes from the DRBC UAA.

Comments on the Department's decision to retain the existing uses for these waters may be submitted by April 13, 1989 to:

Edward J. Morrison, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN402
Trenton, New Jersey 08625

A public hearing on this matter will be held on:
April 13, 1989
7:00 P.M. until the close of testimony
Auditorium
Labor Education Center
Rutgers University-Cook College Campus
Ryders Lane and Clifton Avenue
New Brunswick, New Jersey 08903

(a)

DIVISION OF WATER RESOURCES

Notice of Petition for Rulemaking Individual Subsurface Sewage Disposal Systems N.J.A.C. 7:9A-1.6(e)

Petitioner: Neil Yoskin, Esq.

Take notice that on January 13, 1989, the Department of Environmental Protection (Department) received a petition for rulemaking concerning individual subsurface sewage disposal systems. Petitioner requests that the Department amend proposed N.J.A.C. 7:9A-1.6(e) (see 20 N.J.R. 1790(a)) to allow administrative authorities to construct or alter individual subsurface disposal systems regardless of their proximity to sanitary sewer lines.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. A Wastewater Management Plan (WMP) has been submitted for Clinton Township. The WMP identifies an expanded sewer service area to be served by the Town of Clinton Sewage Treatment Plant (STP). Two on-site groundwater disposal wastewater treatment facilities are proposed serving the Arrow Mill Plaza and the Glen Meadows development, in addition to the designation of an on-site groundwater disposal area in the southwest portion of the Township. Also identified are the sewer service areas of the proposed Township of Clinton West STP and the Township of Clinton East STP, both of which propose surface water discharges, and will serve areas along Interstate 78 and Route 22. The remainder of the Township will be served by individual septic systems.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan 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 Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 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 Quality 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.

(c)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan for Chatham Township. That document allows for the upgrade and expansion of the Chatham Township Water Pollution Control Plant from 0.75 million gallons per day (mgd) to 1.0 mgd to accommodate flows from that facility's existing and proposed sewer service areas as delineated in the Wastewater Management Plan.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 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 Quality 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.

(d)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan for the Borough of Wanaque. That document allows for an expansion of the Wanaque Valley Regional Wastewater Treatment Plant from 0.70 million gallons per day (MGD) to 1.25 MGD and establishes a sewer service area for that facility.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 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 Quality 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 Ocean County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Ocean County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would amend the Ocean County Water Quality Management Plan to expand the sewer service area of the Stafford Township MUA to include the site of the Stafford Township Intermediate School, Block 118 Lot 1.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 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 Quality 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.

HEALTH

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of a One Time Only Moratorium on the Acceptance of Certificate of Need Applications for New Organ Transplant Services for a Maximum of One Year by the New Jersey State Department of Health

Take notice that the Department of Health, with the approval of the Health Care Administration Board (HCAB) and the Statewide Health Coordinating Council (SHCC), removes from consideration for one time only applications for new organ transplant services for a maximum of one year. No health care services other than proposed new organ transplant services are affected by this action. Any certificate of need application for new organ transplant services that have been previously filed by any applicant prior to February 1, 1989 is also unaffected by this moratorium.

The Department of Health establishes this one year moratorium in response to a recent recommendation made by the New Jersey Advisory Council on Organ Transplantation which stated:

That there be a moratorium on all Certificate of Need applications for organ transplantation for at least six (6) months but no more than 12 months pending the development of review criteria by the Department of Health. (The application currently on file is excepted.)

The purpose of this moratorium is to allow sufficient time for the Department, with the assistance of the New Jersey Advisory Council on Organ Transplantation (NJACOT), to establish a coordinated Statewide policy regarding the orderly development of organ transplant services in the future. The one year time period will also permit the Statewide transplant policy that is developed to undergo extensive public review through the state's health planning and rule-making processes.

This one year moratorium will become effective (following publication in the New Jersey Register) with the March 15, 1989 certificate of need review cycle (February 1, 1989 application submission deadline) and will end with the March 15, 1990 certificate of need review cycle. Should the Department of Health complete its development of Statewide organ transplant review criteria prior to this one year time period, the length of the moratorium will be shortened accordingly.

Any inquiries should be sent to:

John A. Calabria, Chief
Health Systems Services
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

(c)

Notice of Response to Petition for Rulemaking Smoking in Acute Care Hospitals

N.J.A.C. 8:43B

Take notice that the New Jersey Department of Health has responded to the April 8, 1987 petition from the New Jersey Medical Society and the New Jersey Group Against Smoking Pollution to adopt a rule prohibiting smoking in acute care hospitals (see 19 N.J.R. 889(a)).

At the January 12, 1989 meeting of the Health Care Administration Board (HCAB), the Department, in coordination with the departmental advisory Commission on Smoking or Health, announced the release of an application for funds to the New Jersey Hospital Association. This initiative is in lieu of granting the petition, and the Department's position to refrain from issuing this rule is contingent upon the success of this project.

The Hospital Association will undertake a program to assist all its member hospitals in voluntarily becoming smoke-free over a three year period. The focus of this program will be consultation and coordination of hospital administrators in the development and implementation of smoke-free policies. These funds are to be used for personnel, consultation and material development costs in accordance with application requirements.

(d)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Deferral of Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) Services for One Time Only from the May 15, 1989 Certificate of Need Batching Cycle for Diagnostic Imaging Services to the July 15, 1989 Certificate of Need Batching Cycle.

Take notice that the Department of Health, with the approval of the Health Care Administration Board (HCAB), postpones from consideration for one time only applications for Nuclear Magnetic Resonance (NMR) or Magnetic Resonance Imaging (MRI) Services from the May 15, 1989 certificate of need batching cycle for diagnostic imaging equipment (that is, CT, PET, NMR/MRI, Nuclear Medicine) for two months. No services other than NMR/MRI are affected by this proposed action. The NMR/MRI demonstration period is scheduled to conclude on or before March 15, 1989. The eight approved NMR/MRI demonstration sites include:

Englewood Hospital, Englewood
MRI of Northern New Jersey, Inc., Hawthorne
New Brunswick Affiliated Hospitals, New Brunswick
Overlook Hospital, Summit
St. Barnabas Medical Center, Livingston
University Hospital/UMDNJ, Newark
Mercer MRI Consortium, Lawrenceville
Cooper Hospital/University Medical Center, Camden

The Department is proposing elsewhere in this issue of the New Jersey Register a readoption of the current NMR/MRI rules (N.J.A.C. 8:33J), which is scheduled to expire on May 7, 1989 pursuant to Executive Order No. 66(1978). In addition, new NMR/MRI rules are being proposed in this issue of the New Jersey Register which will repeal the existing NMR/MRI rules as of the date that the new rules become effective. Unfortunately, the anticipated effective date of the proposed new NMR/MRI rules will be May 15, 1989, well beyond the April 1, 1989

submission date for the next NMR/MRI certificate of need batching cycle.

In order to allow potential certificate of need applicants sufficient time to address the proposed new NMR/MRI rules, a two month postponement of the NMR/MRI portion of the May 15, 1989 diagnostic imaging certificate of need batching cycle is being established. The next certificate of need batching cycle for NMR/MRI equipment will therefore by the July 15, 1989 cycle (June 1, 1989 submission date).

Any inquiries should be sent to:

John A. Calabria, Chief
Health Systems Services
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

(a)

Petition for Rulemaking
Licensing Standards for Home Health Agencies
Testing and Certification of Homemaker/Home Health Aides

Petitioner: Kathleen E. Campbell, Administrator, The Visiting Nurse Association of Morris County, Inc.

Authority: N.J.S.A. 26:2H-5 and N.J.A.C. 8:42-1.1 et seq.

Take notice that on December 22, 1988, the Department of Health received a petition for rulemaking from Kathleen E. Campbell, Administrator of The Visiting Nurse Association of Morris County, Inc. The petition seeks formal rulemaking concerning the testing and certification of homemaker/home health aides, so that all segments of the home health care industry could provide input and insight on the matter.

Formal rules governing the licensure of home health agencies were first promulgated by the Department of Health in 1976 and were most recently revised in August 1987 (see N.J.A.C. 8:42). The current set of licensing standards has an express provision that any homemaker/home health aide employed by a licensed home health agency "shall have completed a training program approved by the Department, shall be certified by the Department, and while providing direct patient services shall have with him or her an identification card issued annually by the Department," N.J.A.C. 8:42-7.8(a)1.

The Department believes it is clearly implicit that the regulatory requirement to "have completed a training program" means satisfactory completion of the program. As part of the certification process, the Department is requiring a written examination to show such satisfactory completion of the approved training program for homemaker/home health aides. A written examination is a standard aspect of educational courses and an established method of validating the effectiveness of the curriculum. Since the certification process results in a certification signifying that the individuals have successfully completed a training program, the Department is incorporating a written examination into the approved training program.

Further, since the rules already in place require certification for homemaker/home health aides after completion of an approved training program, and since interested persons have already had opportunity to comment on this certification requirement at the time the rules were promulgated, the Department finds no need to reopen the issue through the rule-making process. The petition for further formal rule-making is accordingly being denied.

HUMAN SERVICES

(b)

THE COMMISSIONER

State Plan for Implementing the Job Opportunities and Basic Skills (JOBS) Training Program

Take notice that the New Jersey Department of Human Services will receive public comment on the State Plan for the Job Opportunities and Basic Skills (JOBS) Training Program. That State Plan is required pursuant to the Family Support Act of 1988 (P.L. 100-485), which was enacted on October 13, 1988 and creates a new Aid to Families with Dependent Children (AFDC) education, training, and employment program known as JOBS. The purpose of the JOBS Training Program is to "assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence." Operation of a JOBS program, under a plan approved by the Secretary of the Federal Department of Health and Human Services, is a condition for the State's participation in the AFDC program.

Copies of the Plan will be available for review on or after March 1, 1989 at college libraries throughout the State, county welfare agencies and offices of the following: Private Industry Council Directors, Job Training Partnership Act Service Delivery Areas and county REACH Program coordinators. Copies of the plan may also be obtained on or after March 1, 1989 from the Division of Public Welfare through contact by telephone at (609) 588-2289 or by writing to: New Jersey Division of Public Welfare, Bureau of Policy and Standards Development, CN 716, Trenton, N.J. 08625.

Written comments may be submitted until March 31, 1989 to:

Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

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 January 3, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 19, 1988

NEXT UPDATE: SUPPLEMENT JANUARY 17, 1989

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
20 N.J.R. 435 and 570	March 7, 1988
20 N.J.R. 571 and 692	March 21, 1988
20 N.J.R. 693 and 842	April 4, 1988
20 N.J.R. 843 and 950	April 18, 1988
20 N.J.R. 951 and 1018	May 2, 1988
20 N.J.R. 1019 and 1126	May 16, 1988
20 N.J.R. 1127 and 1316	June 6, 1988
20 N.J.R. 1317 and 1500	June 20, 1988
20 N.J.R. 1501 and 1594	July 5, 1988
20 N.J.R. 1595 and 1758	July 18, 1988
20 N.J.R. 1759 and 1976	August 1, 1988
20 N.J.R. 1977 and 2122	August 15, 1988

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
20 N.J.R. 2123 and 2350	September 6, 1988
20 N.J.R. 2351 and 2416	September 19, 1988
20 N.J.R. 2417 and 2498	October 3, 1988
20 N.J.R. 2499 and 2610	October 17, 1988
20 N.J.R. 2611 and 2842	November 7, 1988
20 N.J.R. 2843 and 2948	November 21, 1988
20 N.J.R. 2949 and 3046	December 5, 1988
20 N.J.R. 3047 and 3182	December 19, 1988
21 N.J.R. 1 and 88	January 3, 1989
21 N.J.R. 89 and 224	January 17, 1989
21 N.J.R. 225 and 364	February 6, 1989
21 N.J.R. 365 and 588	February 21, 1989

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-5.5	Non-lawyer representatives: consent orders and stipulations	20 N.J.R. 2845(a)		
1:1-10.4	Discovery: requests for admissions	20 N.J.R. 2845(b)		
1:1-14.3	Interpreters for hearing impaired	20 N.J.R. 2845(c)		
1:10-12.2	Emergency fair hearings concerning AFDC and General Assistance: transmittal of notices and initial decisions	20 N.J.R. 3049(a)		
1:13A	Lemon Law hearings	21 N.J.R. 91(a)		
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)	R.1989 d.20	21 N.J.R. 152(a)
Most recent update to Title 1: TRANSMITTAL 1988-5 (supplement November 21, 1988)				
AGRICULTURE—TITLE 2				
2:2	Animal disease control program	20 N.J.R. 2419(a)	R.1989 d.30	21 N.J.R. 154(a)
2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia	21 N.J.R. 92(a)		
2:24-2, 3	Registration and transportation of bees	20 N.J.R. 2951(a)		
2:32-2.2, 2.3, 2.10, 2.11, 2.13, 2.20, 2.22, 2.27, 2.28	Sire Stakes conditions	20 N.J.R. 2952(a)	R.1989 d.95	21 N.J.R. 443(a)
2:33	Agricultural fairs	20 N.J.R. 2954(a)		
2:52-1.6	Reporting by small milk dealers	20 N.J.R. 2955(a)		
2:71-2.4, 2.5, 2.6	"Jersey Fresh" logo program	21 N.J.R. 227(a)		
2:76-5.3	Soil and water conservation projects: cost sharing	21 N.J.R. 230(a)		
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 1761(a)	R.1989 d.49	21 N.J.R. 158(a)
2:76-8	Acquisition of farmland in fee simple	20 N.J.R. 2501(a)	R.1989 d.48	21 N.J.R. 160(a)
2:76-9.1, 9.2	Emergency acquisition of development easements on farmland	21 N.J.R. 231(a)		
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3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)		
3:24-5.1	Licensed check cashing	20 N.J.R. 2353(a)		
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)		
Most recent update to Title 3: TRANSMITTAL 1988-7 (supplement November 21, 1988)				
CIVIL SERVICE—TITLE 4				
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)				
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4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
Most recent update to Title 4A: TRANSMITTAL 1988-3 (supplement September 19, 1988)				

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5:11	Relocation assistance and eviction	21 N.J.R. 231(b)		
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5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-3.15	Uniform Construction Code: plumbing subcode	20 N.J.R. 2846(a)	R.1989 d.66	21 N.J.R. 288(a)
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)		
5:91-4.1	Council on Affordable Housing: adoption of housing element	20 N.J.R. 2613(b)	R.1989 d.41	21 N.J.R. 160(b)
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
5:91-14	Council on Affordable Housing: amending of certified municipal plan	20 N.J.R. 2613(c)	R.1989 d.42	21 N.J.R. 161(a)
5:92-12.4	Council on Affordable Housing: initial pricing of units	20 N.J.R. 3051(a)		
5:92-14.4	Council on Affordable Housing: rental unit credit	21 N.J.R. 234(a)		
	Most recent update to Title 5: TRANSMITTAL 1988-12 (supplement December 19, 1988)			
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
	Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)			
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6:2	Appeals to State Board	20 N.J.R. 2615(a)	R.1989 d.67	21 N.J.R. 288(b)
6:3-1.10, 1.12, 1.14, 1.18, 1.21, 1.22, 3.1	School districts: corrections to text	———	———	21 N.J.R. 19(b)
6:3-5	Reporting of allegations of child abuse	21 N.J.R. 3(b)		
6:8-1.1, 4.3, 7.1	High school core proficiencies	20 N.J.R. 235(a)		
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:20-2	Bookkeeping and accounting in local districts	20 N.J.R. 2502(a)	R.1989 d.86	21 N.J.R. 292(a)
6:20-5.7	Reimbursement to nonpublic schools for asbestos removal and encapsulation	20 N.J.R. 2505(a)		
6:28	Special education	21 N.J.R. 239(a)		
6:39	High school core proficiencies	20 N.J.R. 235(a)		
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7:2	State Park Service: extenstion of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7-2.3	Waterfront development	20 N.J.R. 2815(a)	R.1989 d.8	21 N.J.R. 34(a)
7:7-2.3	Waterfront development	21 N.J.R. 4(a)		
7:7-2.3	Waterfront development: extension of comment period	21 N.J.R. 267(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A–G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)	R.1989 d.28	21 N.J.R. 43(a)
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7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)	R.1989 d.12	21 N.J.R. 46(a)
7:11-2.1–2.5, 2.8–2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:14A-5.12	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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7:22-10	Environmental assessment requirements for State-assisted wastewater treatment facilities	20 N.J.R. 1983(a)	R.1989 d.53	21 N.J.R. 179(a)
7:25-1.5, 8	Clam licenses	20 N.J.R. 2666(a)	R.1989 d.26	21 N.J.R. 55(a)
7:25-2.18	New Sweden and Oyster Creek wildlife management areas	21 N.J.R. 267(b)		
7:25-7.13	Taking of blue crabs	21 N.J.R. 268(a)		
7:25-22.1–22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)		
7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1–3.5, 3.7, 4.1–4.5, 4.7–4.10, 16.2, 16.3, 16.13	Solid waste facility and transporter registration fees	20 N.J.R. 2668(a)		
7:26-1.1, 1.4, 4, 4A, 7.3, 7.5, 12.2, 13A.6, 16.2, 16.3	Hazardous waste fee schedule	20 N.J.R. 1995(a)	R.1989 d.54	21 N.J.R. 190(a)
7:26-1.1, 1.4, 4, 4A	Hazardous waste fee schedule: extension of comment period	20 N.J.R. 2427(c)		
7:26-1.4, 1.7, 1.11, 1.12, 2.1, 2.4, 2.8, 2.13	Permit exemptions for composting facilities	20 N.J.R. 2817(a)	R.1989 d.55	21 N.J.R. 198(a)
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7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)		
7:26-9.4	General facility standards: correction to text	———	———	21 N.J.R. 56(a)
7:26-12.4	Hazardous waste management: permit standards	21 N.J.R. 108(a)		
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)	R.1989 d.11	21 N.J.R. 56(b)
7:26B-1.10	Environmental Cleanup Responsibility Act: fee schedule	20 N.J.R. 2000(a)	R.1989 d.27	21 N.J.R. 57(a)
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)		
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 1866(a)	R.1989 d.62	21 N.J.R. 321(a)
7:27-23	Volatile organic substances in consumer products	20 N.J.R. 2002(a)	R.1989 d.119	21 N.J.R. 462(a)
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)	R.1989 d.123	21 N.J.R. 483(a)
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)	R.1989 d.61	21 N.J.R. 324(a)
	Most recent update to Title 7: TRANSMITTAL 1988-12 (supplement December 19, 1988)			
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8:31B-2.2, 2.4	Hospital reimbursement: DRG classification of newborns	20 N.J.R. 3057(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)		
8:31B-3.19	Hospital reimbursement: burn care unit reporting	20 N.J.R. 2541(a)	R.1989 d.77	21 N.J.R. 295(a)
8:31B-3.19, 3.38, 3.45	Hospital reimbursement: newborn DRGs; outlier categories	20 N.J.R. 3057(b)		
8:31B-3.43	General acute care hospitals: implementation of proposed schedule of rates	20 N.J.R. 2542(a)	R.1989 d.79	21 N.J.R. 296(a)
8:31B-3.44	Hospital reimbursement: DRG outliers	20 N.J.R. 2542(b)	R.1989 d.80	21 N.J.R. 296(b)
8:31B-3.51–3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(a)		
8:31B-3, App. II	Hospital reimbursement: laundry and linen cost center	20 N.J.R. 2543(a)	R.1989 d.78	21 N.J.R. 297(a)
8:31B-4.37	Uncompensated Care Trust Fund: charity care eligibility and charges	20 N.J.R. 2219(a)	R.1989 d.25	21 N.J.R. 58(a)
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8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)		
8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)		
8:33E-1.2, 1.11	Cardiac diagnostic facilities: pediatric patients; new facilities	20 N.J.R. 2847(a)	R.1989 d.102	21 N.J.R. 498(a)
8:33E-2.3, 2.4	Cardiac surgery centers: pediatric patients; surgery teams	20 N.J.R. 2848(a)	R.1989 d.105	21 N.J.R. 499(a)
8:33K	Residential alcoholism treatment facilities: bed standards	21 N.J.R. 150(a)		

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8:33N	Advanced life support programs: mobile intensive care units and critical care transport units	21 N.J.R. 268(a)		
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8:39-41.3, 42.2	Long-term care facilities: excessive heat emergency plan	20 N.J.R. 2543(b)	R.1989 d.104	21 N.J.R. 500(a)
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)		
8:43B-1.10	Hospital facilities: confidentiality of patient information	20 N.J.R. 2221(b)	R.1989 d.87	21 N.J.R. 297(b)
8:43B-18	Hospital anesthesiology standards	20 N.J.R. 2544(a)	R.1989 d.103	21 N.J.R. 501(a)
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:65-10.2, 10.4, 10.5	Scheduling of controlled dangerous substances	————	————	21 N.J.R. 70(b), 70(c), 70(d)
8:66-1	Bureau of Alcohol Countermeasures (recodified from 13:20-31)	————	————	21 N.J.R. 70(a)
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d), 2768(b))	20 N.J.R. 871(a)	R.1989 d.3	21 N.J.R. 63(a)
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a))	20 N.J.R. 1766(a)	R.1989 d.5	21 N.J.R. 63(b)
8:71	Interchangeable drug products	20 N.J.R. 2356(a)	R.1989 d.4	21 N.J.R. 63(c)
8:71	Interchangeable drug products	20 N.J.R. 3078(a)		
8:71	List of Interchangeable Drug Products	21 N.J.R. 7(a)		

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9:1	Licensing and degree approval standards	20 N.J.R. 2965(a)	R.1989 d.118	21 N.J.R. 444(a)
9:6A-4.3	Managerial employees at State colleges: annual salary increases	20 N.J.R. 3079(a)		
9:7-3.2	1989-80 Tuition Aid Grant Award Table	21 N.J.R. 109(a)		
9:7-4.4	Garden State Scholarships supplemental awards eligibility	21 N.J.R. 110(a)		
9:7-6.4	Garden State Graduate Fellowships: approved programs	20 N.J.R. 2624(a)		
9:7-8.1	Vietnam Veterans Tuition Aid: eligibility	20 N.J.R. 2625(a)		
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		

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10:37-5.6–5.11, 5.16–5.24	Repeal (see 10:31)	21 N.J.R. 273(a)		
10:39	Group homes for mentally ill: operating standards	20 N.J.R. 2547(a)	R.1989 d.120	21 N.J.R. 504(a)
10:41-2	Services to developmentally disabled: confidentiality of client records	20 N.J.R. 2435(a)		
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)		
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
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10:56-3.7, 3.10	Medicaid reimbursement for dental services	20 N.J.R. 2558(a)		
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10:63-3.9–3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:66	Independent Clinic Services Manual	20 N.J.R. 2562(a)	R.1989 d.33	21 N.J.R. 162(a)
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:66-3.2	Medicaid reimbursement for independent clinic services	20 N.J.R. 2558(a)		

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10:81-4.5	AFDC program: voluntary restricted payments	21 N.J.R. 7(b)		
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:83-1	Special Payments Handbook for SSI recipients	20 N.J.R. 2563(a)	R.1989 d.98	21 N.J.R. 511(a)
10:85-3.2	General Assistance: residency in therapeutic care facility	20 N.J.R. 2968(b)		
10:85-3.3	General Assistance: income-in-kind	20 N.J.R. 2238(a)	R.1989 d.7	21 N.J.R. 20(a)
10:85-3.3	Medically Needy eligibility	20 N.J.R. 2688(b)		
10:87	Food Stamp Program	20 N.J.R. 2689(a)	R.1989 d.121	21 N.J.R. 511(b)
10:87-12.1–12.4, 12.7	Food Stamp Program: income deductions, coupon allotment, maximum allowable income	20 N.J.R. 2592(a)	R.1989 d.1	21 N.J.R. 21(a)
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10:100-3, App. A	Special Payments Handbook for SSI recipients (Recodified to 10:83-1)	20 N.J.R. 2563(a)	R.1989 d.98	21 N.J.R. 511(a)
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
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10:124-1.2, 1.3, 5.2	Shelters accepting juveniles: corrections to text	———	———	21 N.J.R. 162(b)
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10:141	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 8(a)		

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10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
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10A:6-3.2	Notification of inmate's change of name	21 N.J.R. 11(a)		
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:16-2.9	Infirmary care	20 N.J.R. 2969(a)		
10A:16-6.6	Infants born to female inmates	20 N.J.R. 2747(a)	R.1989 d.68	21 N.J.R. 299(a)
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 277(a)		
10A:18-4.7	Inspection of outgoing publications	21 N.J.R. 277(b)		
10A:32-6.5	Temporary restriction of juveniles	20 N.J.R. 2442(a)	R.1989 d.32	21 N.J.R. 163(c)
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11:4-31	Term life insurance comparison survey	20 N.J.R. 2990(a)	R.1989 d.122	21 N.J.R. 566(a)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
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12:60-8	Public works and EDA projects: debarment from contracting	20 N.J.R. 2520(a)	R.1989 d.23	21 N.J.R. 21(b)
12:100-4.2	Public employee safety and health: access to exposure and medical records	20 N.J.R. 2995(a)	R.1989 d.82	21 N.J.R. 299(b)
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
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13:29-6	Practice of accountancy: continuing education	20 N.J.R. 2532(a)		
13:29-6	Continuing professional education for accountants: public hearing and comment period	20 N.J.R. 3114(a)		
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13:38-2.11	Practice of optometry: delegation of duties to ancillary personnel	20 N.J.R. 2363(a)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	20 N.J.R. 2995(b)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	21 N.J.R. 284(a)		
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13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		

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13:44-1.1	Qualified graduate of veterinary medicine	20 N.J.R. 2680(b)	R.1989 d.111	21 N.J.R. 446(a)
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)		
13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
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13:49	State Medical Examiner rules	20 N.J.R. 2687(a)	R.1989 d.35	21 N.J.R. 171(b)
13:49	State Medical Examiner: standards and procedures	20 N.J.R. 2856(b)	R.1989 d.110	21 N.J.R. 447(a)
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13:70-5	Thoroughbred racing: registration of colors	20 N.J.R. 2536(a)	R.1989 d.74	21 N.J.R. 344(a)
13:70-9.29	Thoroughbred racing: apprentice jockey weight allowance	20 N.J.R. 2996(a)	R.1989 d.108	21 N.J.R. 451(b)
13:70-9.30	Thoroughbred racing: apprentice jockey contracts	20 N.J.R. 2996(b)	R.1989 d.107	21 N.J.R. 451(c)
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16:28-1.72	School zone along U.S. 206 in Montaque Township	20 N.J.R. 2862(a)	R.1989 d.51	21 N.J.R. 172(a)
16:28-1.79	Speed limits along Route 94 in Sussex County	20 N.J.R. 3116(a)	R.1989 d.114	21 N.J.R. 453(a)
16:28-1.79, 1.81	Speed limit zones along Route 49 in Salem County and Route 94 in Sussex County	20 N.J.R. 2632(a)	R.1989 d.17	21 N.J.R. 28(a)
16:28-1.130	Speed limit zones along Route 66 in Monmouth County	20 N.J.R. 2633(a)	R.1989 d.13	21 N.J.R. 27(b)
16:28A-1.4, 1.11, 1.21, 1.38	Bus stop zones and no stopping or standing along Routes 4, 21, and 71, and U.S. 30	20 N.J.R. 2862(b)	R.1989 d.52	21 N.J.R. 172(b)
16:28A-1.7, 1.22, 1.32, 1.34	Parking restrictions along U.S. 9 in Tuckerton, Route 31 in Hopewell, U.S. 46 in Mountain Lakes, and Route 49 in Pennsville	20 N.J.R. 2633(b)	R.1989 d.18	21 N.J.R. 28(b)
16:28A-1.20	Parking restrictions along Route 29 in Lambertville	20 N.J.R. 3001(a)	R.1989 d.76	21 N.J.R. 308(a)
16:28A-1.21, 1.51, 1.53, 1.68	Parking restrictions along U.S. 30 and Route 168 in Camden County, Route 179 in Lambertville, and Route 93 in Leonia	20 N.J.R. 3001(b)	R.1989 d.75	21 N.J.R. 308(b)
16:28A-1.33	No stopping or standing zone along Route 47 in Franklin Township	20 N.J.R. 2634(a)	R.1989 d.15	21 N.J.R. 29(a)
16:28A-1.53	Parking along Route 179 in Lambertville	20 N.J.R. 3117(a)	R.1989 d.115	21 N.J.R. 453(b)
16:28A-1.105	Bus stop zones along Route 54 in Atlantic County	21 N.J.R. 120(a)		
16:30-3.6	Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan	20 N.J.R. 737(b)		
16:30-9	Use restrictions on bridges along highway system	20 N.J.R. 3117(b)	R.1989 d.113	21 N.J.R. 453(c)
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