

# NEW JERSEY



# REGISTER

## THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 21 NUMBER 23

December 4, 1989 Indexed 21 N.J.R. 3689-3812

(Includes adopted rules filed through November 8, 1989)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: SEPTEMBER 18, 1989**

See the Register Index for Subsequent Rulemaking Activity.

**NEXT UPDATE: SUPPLEMENT OCTOBER 16, 1989**

### RULEMAKING IN THIS ISSUE

#### RULE PROPOSALS

Interested persons comment deadline .....	3690
<b>BANKING</b>	
Pinelands Development Credit Bank: resale of bank-owned credits .....	3691(a)
<b>COMMUNITY AFFAIRS</b>	
Standards of conduct .....	3693(a)
Relocation assistance: definitions; relocation plans .....	3694(a)
Neighborhood Preservation Balanced Housing Program: administration of affordability controls .....	3695(a)
Uniform Construction Code: Radon Mitigation Subcode ..	3696(a)
New Home Warranty Security Plan: builder premium rates .....	3698(a)
Landlord registration form for one and two-unit rental dwellings—Administrative correction .....	3699(a)
<b>EDUCATION</b>	
Private vocational schools: instructional hours .....	3700(a)
<b>ENVIRONMENTAL PROTECTION</b>	
Use of water from Manasquan Reservoir water supply system .....	3701(a)
Hazardous waste management: testing facility exemptions for treatability studies .....	3705(a)
<b>HEALTH</b>	
Newborn biochemical screening: public hearing .....	3708(a)
Clinical laboratory services: licensure and charges .....	3708(b)
Interchangeable drug products .....	3710(a), 3711(a)
<b>HUMAN SERVICES</b>	
Developmental disability services: determination of eligibility .....	3712(a)
<b>INSURANCE</b>	
Automobile coverage: flex rate percentage calculations .....	3719(a)
Multi-tier and good driver rating plans .....	3721(a)

Private passenger automobile insurers: examination of financial experience .....	3726(a)
<b>LAW AND PUBLIC SAFETY</b>	
Preparation of land surveys .....	3715(a)
<b>TRANSPORTATION</b>	
Federal Aid Urban System Substitution Program .....	3716(a)
Transportation Trust Fund: municipal aid .....	3716(b)
Speed limit zones along Route 33, U.S. 30, Routes 175, 15, 91, 53, and 50 .....	3717(a)
<b>TREASURY-GENERAL</b>	
Consultant selection procedures for State project assignments: extension of comment period .....	3739(a)

#### RULE ADOPTIONS

<b>COMMUNITY AFFAIRS</b>	
Department organization .....	3740(a)
Neighborhood Preservation Balanced Housing Program: affordability controls .....	3740(b)
Uniform Fire Code: casino hotel fire safety plan .....	3746(a)
Asbestos hazard abatement subcode: administrative correction to N.J.A.C. 5:23-8.8 .....	3747(a)
Housing and Mortgage Finance Agency: notice of rent increases .....	3748(a)
<b>ENVIRONMENTAL PROTECTION</b>	
Freshwater wetlands protection: administrative correction to N.J.A.C. 7:7A-8.2 .....	3748(b)
Vapor control during marine transfer operations .....	3748(c)
Air pollution control: civil administrative penalties and adjudicatory hearings .....	3751(a)
Division of Economic Assistance: administrative change ...	3777(a)

(Continued on Next Page)

# INTERESTED PERSONS

**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **January 3, 1990**. 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.

## RULEMAKING IN THIS ISSUE—Continued

<b>CORRECTIONS</b>		
Parole Board rules: administrative correction to N.J.A.C. 10A:71-3.19 .....	3777(b)	Reclassification of tidal portion of Morses Creek in Linden: petition for rulemaking .....
<b>INSURANCE</b>		Flood Control Bond Grants Program .....
Long-term care insurance: administrative correction to N.J.A.C. 11:4-34.6 .....	3777(c)	Proposed deer hunt at Monmouth Battlefield State Park: public hearing .....
<b>LAW AND PUBLIC SAFETY</b>		<b>LAW AND PUBLIC SAFETY</b>
Nursing practice: temporary permit holders .....	3777(d)	Board of Medical Examiners: petition for rulemaking concerning practice of physician assistants .....
<b>TRANSPORTATION</b>		<b>TREASURY-GENERAL</b>
Highway access driveways and intersections: permit and application fees .....	3778(a)	Architect-engineer selection for major projects .....
<b>TREASURY-GENERAL</b>		<b>EXECUTIVE ORDER NO. 66(1978)</b>
Public Employees' Retirement System .....	3788(a)	<b>EXPIRATION DATES</b> .....
<b>CASINO CONTROL COMMISSION</b>		<b>INDEX OF RULE PROPOSALS AND ADOPTIONS</b> .....
Insurance wagers in blackjack .....	3788(b)	<b>3800</b>

### EMERGENCY ADOPTION

<b>HUMAN SERVICES</b>	
Emergency shelter assistance for individuals with AIDS/HIV positive with symptoms and for terminally ill .....	3790(a)

### PUBLIC NOTICES

<b>ENVIRONMENTAL PROTECTION</b>	
Tri-County water quality management: Evesham Township .....	3791(a)
Tri-County water quality management: Atlantic Basin WMP .....	3791(b)

### Filing Deadlines

<b>January 2, 1990 issue:</b>	
Adoptions .....	December 8
<b>January 16 issue:</b>	
Proposals .....	December 14
Adoptions .....	December 21
<b>February 5 issue:</b>	
Proposals .....	January 5
Adoptions .....	January 12
<b>February 20 issue:</b>	
Proposals .....	January 19
Adoptions .....	January 26

## NEW JERSEY REGISTER

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

Material published in the New Jersey Register is the property of the State of New Jersey. However, it may be copied, reproduced or republished by any person for any purpose whatsoever without permission, providing that no such reproduction or republication shall bear the title "New Jersey Register" or "Official Rules Publication" without the written permission of the Director, Office of Administrative Law.

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, \$90 (\$180 by First Class Mail); back issues when available, \$10 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

*The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 42-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to five volumes depending on the Department coverage desired.*

# RULE PROPOSALS

## BANKING

### (a)

#### PINELANDS DEVELOPMENT CREDIT BANK

##### Procedural Rules

##### Sale, Transfer, Exchange, Conveyance or Retirement of Pinelands Development Credits Owned by the Board

##### Proposed Amendment: N.J.A.C. 3:42-2.2

##### Proposed New Rules: N.J.A.C. 3:42-7

Authorized By: Pinelands Development Credit Bank Board,  
Mary Little Parell, Chairman.

Authority: N.J.S.A. 13:18A-30 et seq.

Proposal Number: PRN 1989-630.

A public hearing concerning the proposed new rules will be held at the following location and time:

December 14, 1989 at 6:00 P.M.  
Medford Town Hall, Cranberry Hall  
17 North Main Street  
Medford, New Jersey

Submit written comments by January 3, 1990 to:

John T. Ross  
Executive Director (Acting)  
Pinelands Development Credit Bank  
CN 035  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed new rules establish procedures and requirements regarding the sale of Pinelands Development Credits owned by the Pinelands Development Credit Bank, Board of Directors. Two methods for these sales are proposed: by open bidding at a duly advertised auction or by receipt of written, sealed bids.

The rules also establish criteria that govern the conveyance of Pinelands Development Credits at no cost. In addition, a definition of "prime interest rate" is added at N.J.A.C. 3:42-2.2.

#### Social Impact

The proposed new rules will allow the Board to resell credits that have been purchased from landowners whose property is situated in either the Preservation, Agricultural, or Special Agricultural areas of New Jersey's Pinelands. Developers, whose residential projects are dependent upon their ownership of Pinelands Development Credits, will have an opportunity to purchase credits directly from the Bank. Consequently, the rules will also help facilitate the Pinelands Development Credit program.

#### Economic Impact

The proposed new rules will allow the Board to recoup funds it has expended in purchasing Pinelands Development Credits. These funds may then be used to purchase additional Pinelands Development Credits.

Although developers seeking to purchase credits will incur costs (a minimum of \$2,500 for each right to build one additional home), these developers will realize enhanced economic benefits from the ability to pursue residential development projects in designated growth areas of the Pinelands. The sale of credits will be a voluntary program; bids will be submitted by willing participants only. Credits sold for more than the minimum bid should have a positive economic impact for landowners entitled to Pinelands Development Credits.

#### Regulatory Flexibility Analysis

The purpose of the proposed new rules is to set forth procedures governing the sale and conveyance of Board-owned Pinelands Development Credits. No reporting or recordkeeping requirements are imposed upon bidders for such Credits or upon applicants for their conveyance at no cost. However, bidders and applicants are required to comply with the bidding and application procedures, respectively. While a portion of these bidders and applicants may be small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Bank

anticipates that no capital cost (except for the purchase price in a successful bid) or need for professional services will be incurred. The bidding is conducted in substantially a "standard" manner, and the information required of a no-cost conveyance applicant would be otherwise developed in the course of preparation for a Pinelands project. No differentiation in requirements or exemption is, therefore, provided to small businesses under these rules.

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

#### 3:42-2.2 Definitions

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

...

"Prime interest rate" means the base rate on corporate loans at large United States money center commercial banks. This rate is published in the Wall Street Journal under money rates.

...

#### SUBCHAPTER 7. SALE, TRANSFER, EXCHANGE, CONVEYANCE OR RETIREMENT OF PINELANDS DEVELOPMENT CREDITS OWNED BY THE BOARD

#### PART 1—SALES OF PINELANDS DEVELOPMENT CREDITS

##### 3:42-7.1 Board decision to hold sale

(a) The Board may from time to time authorize the Executive Director to sell all or a portion of those Pinelands Development Credits owned by the Bank.

(b) The Board shall authorize such a sale and determine how many Pinelands Development Credits will be made available for sale only upon a finding that:

1. There is sufficient interest in the purchase of its Pinelands Development Credits to warrant a sale; and
2. The timing of the sale and the number of Pinelands Development Credits to be sold will not substantially impair the private sale of Pinelands Development Credits.

(c) All sales authorized by the Board will be conducted by open bidding through a public auction or by closed bidding through the receipt of sealed, written bids.

(d) When authorizing these sales, the Board shall determine a minimum acceptable bid pursuant to N.J.A.C. 3:42-7.3(b) and shall also determine which method of sale is most advantageous for the purpose of stimulating competitive bidding.

(e) The Board may establish such conditions for the bidding and sale as are necessary and desirable to advance the Pinelands Development Credit program, provided that any such conditions do not otherwise conflict with the minimum requirements set forth in this subchapter.

##### 3:42-7.2 Notifications of upcoming sales

(a) All sales of Bank-owned Pinelands Development Credits shall be held only after due notice has been given by the Executive Director at least 10 business days prior to the date of the sale.

(b) At a minimum, the Executive Director shall:

1. Have notices of the sale published in at least four newspapers; and
2. Transmit notices to every person who has submitted to the Bank a written request to be informed of upcoming sales.

(c) The notice shall contain, but not necessarily be limited to, the following information:

1. The method by which the sales shall be conducted;
2. The date, time and location for the auction or bid opening;
3. The number of Pinelands Development Credits available for sale;
4. The minimum acceptable bid and deposit;
5. The date, time and location when the sales must be completed;
6. A summary of the rules governing the sale and the terms and conditions of the sale; and

7. How an interested person can obtain a complete set of instructions for, and the terms and conditions of, the sale.

### 3:42-7.3 Requirements governing all bidding

(a) Bidders who are acting on behalf of another person shall supply to the Executive Director with their sealed written bid or prior to the commencement of an auction the following:

1. If the bidder is representing an individual, a notarized statement from the individual duly authorizing the bidder to act on his behalf; or

2. If the bidder is representing a corporation, public agency, business trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity, a duly adopted resolution or other legal instrument authorizing the bidder to act on the entity's behalf.

(b) The minimum acceptable bid shall be \$2,500 for each one-quarter of one Pinelands Development Credit to be sold, provided, however, that the Board may establish a higher minimum acceptable bid if it determines that, based upon recent Pinelands Development Credit sales prices, a higher amount is necessary to avoid a substantial impairment of the private sale of Pinelands Development Credits.

(c) Pinelands Development Credits will be sold in one-quarter increments to the highest bidder or bidders, unless the Board expressly authorizes sales in larger increments.

(d) No bid or sale shall be conditioned upon a bidder obtaining financing or any municipal, county, State or Federal permit or development approval.

(e) All bids, whether they be submitted verbally or in writing, shall be deemed to be an acceptance of all terms and conditions of the sale as specified in the written instructions.

(f) Except as provided in N.J.A.C. 3:42-7.8, successful bidders shall be required to complete the purchase within 30 days of the date of award.

### 3:42-7.4 Additional requirements governing open bidding

(a) All bidders shall sign a register before the auction begins. After signing the register, no bidder shall be permitted to leave and re-enter the room except at intervals pre-determined by the Executive Director.

(b) Each time a bid is made, the bidder shall state his or her name and the amount of the bid clearly.

(c) All bids during the auction shall be in increments of \$100.00.

(d) A deposit equal to 10 percent of the highest bid shall be required at the completion of the auction.

1. The deposit shall be in the form of a certified check, cashier check, money order, or travelers check made payable to the State of New Jersey. No exceptions shall be made.

2. If the highest bidder does not have the required deposit, the Executive Director may cancel all bids for that Pinelands Development Credit or fraction thereof, or may award the bid to the second highest bidder.

(e) Successful bidders will be required to sign an agreement of sale following the auction, which specifies the conditions and terms of the sale.

### 3:42-7.5 Additional requirements governing sealed bids

(a) All sealed bids shall be submitted to the Executive Director in such form as he or she shall from time to time specify.

(b) Sealed bids shall specify the maximum number of Pinelands Development Credits the bidder wishes to purchase; however, awards will be made to the highest bidder for each one-quarter of a Pinelands Development Credit, or other increment if established by the Board pursuant to N.J.A.C. 3:42-7.3(c). Submission of a sealed bid shall be deemed to be a bid for each one-quarter of a Pinelands Development Credit or other increment and the Board reserves the right to award a bid for less than the maximum number of Pinelands Development Credits specified by the bidder.

(c) Sealed bids will be publicly opened, read and tabulated on the date, time and the location specified in the notice of sale.

(d) Within five business days of the bid opening, the Executive Director will notify all successful and unsuccessful bidders.

(e) A deposit equal to 10 percent of the bid shall accompany all sealed bids.

1. The deposit shall be in the form of a certified check, cashier check, money order, or travelers check made payable to the State of New Jersey. No exceptions shall be made.

2. If a bid is received without the required deposit, the bid shall be deemed to be invalid and will not receive any further consideration.

3. The Executive Director shall return all deposits to all unsuccessful bidders within five business days of the bid opening date.

4. In cases where a bidder is awarded a portion of the Pinelands Development Credits it bid on, the Executive Director shall provide the bidder an opportunity to submit, in lieu of the original deposit, a deposit equal to 10 percent of the award within five business days of the bid opening date. If no such deposit is received, the Executive Director shall accept the original deposit and apply any excess amount toward the payment due at the time of closing.

### 3:42-7.6 Bid awards

(a) Awards shall be made for each one-quarter of a Pinelands Development Credit, or other increment established by the Board pursuant to N.J.A.C. 3:42-7.3(c), offered for sale.

(b) The total number of Pinelands Development Credits awarded for valid bids shall equal the total number of Pinelands Development Credits offered for sale, except as provided in (e)3 below.

(c) In the case of sealed bids, successful bidders shall be determined by tabulating the bids on the basis of the highest per unit bid.

(d) Once the highest per unit bid is established, the highest bidder will be awarded the total number of Pinelands Development Credits specified in his or her bid. If there is more than one highest bidder and the total number of Pinelands Development Credits specified in those bids exceed the number available, no award shall be made and the Executive Director shall immediately arrange for another open or closed bid.

(e) In the event any Pinelands Development Credits remain, the Executive Director will offer them to the other bidders at a per unit price equal to that of the highest bid.

1. The Executive Director will tender this offer in writing to each bidder within five days of the bid opening.

2. Each bidder may supplement his or her bid in writing and enclose a certified check, cashier check, money order, or a travelers check for the balance of the deposit no later than 10 days of the bid opening.

3. In the event that the maximum number of Pinelands Development Credits specified in those bids exceed that available for sale, the Executive Director shall award the available Pinelands Development Credits to the bidders in descending order of their original bid. If the original bids are equivalent and the number of Pinelands Development Credits specified in those bids exceed the number available, no award shall be made.

### 3:42-7.7 Completion of sales

(a) Except as otherwise provided in N.J.A.C. 3:42-7.8, all sales shall be completed no earlier than 21 days and no later than 30 days following the award.

(b) Failure of the bidder to pay the balance of the purchase price as scheduled shall be considered to be a breach of contract and the deposit shall be retained by the State as liquidated damages.

(c) Payment of the balance shall be in the form of a certified or cashier check only, made payable to the State of New Jersey.

(d) Upon receipt of payment, the Executive Director shall issue a duly executed Pinelands Development Credit Certificate to the purchaser.

### 3:42-7.8 Deferring the date for completion of sales

(a) When authorizing a sale, the Board may also authorize the Executive Director to defer the date on which sales to the highest bidder(s) are to be completed. Such authorization shall specify the maximum period of time for such a deferral and all notices of the sale shall include such a notation.

(b) If the Board authorizes deferrals, any successful bidder may, at his or her option, enter into an agreement with the Executive Director which extends the date for completing the sale.

(c) All such agreements shall require that a payment be made for each year, or portion thereof, that the sale completion date is deferred.

1. The thirty-first day following bid award shall be considered the first day when calculating deferral periods.

2. The payment shall be equal to the sum of the prime interest rate in effect on the date of the bid award plus two percentage points times the remaining balance of the purchase price of the Pinelands Development Credits for each year that the completion date is deferred. The payment shall be pro-rated for portions of a year.

3. Payment for the first year, or portion thereof as specified in the agreement, shall be in the form of a certified check, cashier check, money order, or travelers check made payable to the State of New Jersey. This first payment shall be due no later than 30 days following the award.

4. Payments for each succeeding year, or portion thereof as specified in the agreement, shall be due no later than the anniversary date of the first payment.

(d) These payments shall be in addition to the purchase price for the Pinelands Development Credits and shall be non-refundable except as provided in (e) below.

(e) The successful bidder may at his or her option choose to complete the sale prior to the date specified in the agreement.

1. The bidder shall notify the Executive Director in writing of his or her intent to complete the sale and the sale shall be completed within 10 business days of the Executive Director's receipt of the notification.

2. The bidder shall be entitled to receive a pro-rated refund of any payment for that portion of the deferral period which he did not utilize.

3:42-7.9 and 3:42-7.10 (Reserved)

## PART 2—CONVEYANCE OF BOARD OWNED PINELANDS DEVELOPMENT CREDITS AT NO COST

### 3:42-7.11 Board authorization to convey Pinelands Development Credits at no cost

(a) The Board may authorize the Executive Director to convey at no cost Pinelands Development Credits when it determines that:

1. The proposed development will serve a compelling public purpose;
2. The proposed development could not proceed without the conveyance of Pinelands Development Credits at no cost;
3. The benefit of the conveyance of Pinelands Development Credits at no cost will inure to the public and will be made to a governmental agency or incorporated, not for profit organization;

4. The conveyances of Pinelands Development Credits at no cost will not substantially impair the sale of Pinelands Development Credits in the private market; and

5. The Pinelands Development Credit being conveyed will be redeemed within one year of the Board's authorization.

(b) Such authorizations shall be made only upon an affirmative vote of two thirds of the Board's members.

### 3:42-7.12 Application for conveyance of Board-owned Pinelands Development Credits at no cost

(a) Application for conveyance of Board-owned Pinelands Development Credits at no cost shall be made to the Executive Director in such form and number as he or she shall from time to time specify.

(b) The Executive Director may waive or modify any of the application requirements set forth in (c) below if he or she determines that any required information is not relevant or necessary for the purposes of conveying Pinelands Development Credits at no cost.

(c) The following information shall be included in applications for conveyance of Board-owned Pinelands Development Credits at no cost:

1. The applicant's name and mailing address;
2. The municipality in which the Pinelands Development Credits are to be redeemed;
3. The number of Pinelands Development Credits needed;
4. A duly adopted resolution granting preliminary subdivision or site plan approval pursuant to the Municipal Land Use Law (N.J.S.A. 40:55-1 et seq.);
5. Written affirmation of the subdivision or site plan approval from the Pinelands Commission;
6. The municipal tax block and lot number for which the Pinelands Development Credits will be redeemed;
7. A written description of the property along with any relevant plans; and
8. A written statement addressing the project's consistency with the standards set forth in N.J.A.C. 3:42-7.11.

### 3:42-7.13 Notification to applicant

Upon the Board's decision on an application for conveyance of Board-owned Pinelands Development Credits, the Executive Director shall notify the applicant, in writing, setting forth the basis for the Board's decision.

### 3:42-7.14 Completion of Board-authorized conveyances

The Executive Director is authorized to complete any and all administrative procedures to consummate the conveyance after approval by the Board provided that no conveyance shall be made until such time as the applicant is required to redeem the Pinelands Development Credits.

### 3:42-7.15 Voiding conveyances

(a) No Pinelands Development Credits conveyed pursuant to this part shall be:

1. Conveyed, sold or transferred to a person other than that who received the Board's approval;
2. Redeemed for use in a project other than that which received the Board's approval; and/or
3. Redeemed after one year following the Board's authorization.

(b) The Executive Director shall void any such conveyance of Pinelands Development Credits which is in violation of (a) above.

## COMMUNITY AFFAIRS

### (a)

### OFFICE OF THE COMMISSIONER

#### Standards of Conduct

**Proposed Repeal and New Rule: N.J.A.C. 5:1-6.1**

**Proposed Amendments: N.J.A.C. 5:1-1.1 and 2.1**

**Proposed Repeals: N.J.A.C. 5:1-6.2 through 6.11 and 7.4**

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 1989-633.

Submit comments by January 3, 1990 to:

Michael L. Ticktin, Esq.  
Administrative Practice Officer  
Department of Community Affairs  
CN 802  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Department's rules concerning standards of conduct are proposed to be revised to incorporate by reference the Department's new Code of Ethics that was approved by the Executive Commission on Ethical Standards pursuant to N.J.S.A. 52:13D-23 and became effective November 1, 1989. This Code of Ethics supersedes the requirements of N.J.A.C. 5:1-6.1 through 6.11 and 5:1-7.4, as well as certain of the definitions in N.J.A.C. 5:1-2.1. The superseded provisions are proposed to be repealed.

#### Social Impact

The conflict of interest provisions contained in the current text of the chapter predate the New Jersey Conflicts of Interest Law, P.L. 1971, c. 182 (N.J.S.A. 52:13D-12 et seq.). N.J.S.A. 52:13D-23 sets forth a procedure for the adoption of a Departmental code of ethics. This procedure has been followed and an approved Department of Community Affairs Code of Ethics now exists and is referenced by the rule. By repealing the rules that the code of ethics supersedes, the Department avoids possible confusion as to what conflict of interest requirements are applicable.

#### Economic Impact

There will be no adverse economic impact on anyone since the proposed rules reference standards of conduct that have already been made applicable by the procedures set forth in N.J.S.A. 52:13D-23.

**Regulatory Flexibility Analysis**

While the proposed amendments themselves impose no requirements on small businesses, the code of ethics that has been adopted may affect small businesses doing business with the Department. However, there is no reason for any different standards of conduct to be used for small businesses than for other persons and companies.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:1-6.2 through 6.11 and 7.4.

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

**5:1-1.1 Applicability**

The standards of conduct applicable to employees in the classified service pursuant to the rules of the Department of [Civil Service] **Personnel** are hereby made applicable to all officers and employees of the Department of Community Affairs, irrespective of whether they are or are not in the classified civil service.

**5:1-2.1 Words and phrases defined**

The following words and terms, when used in this [Chapter] **chapter**, shall have the following meanings, unless the context clearly indicates otherwise:

...  
 "Department" means the **New Jersey Department of Community Affairs** [within the State of New Jersey].

"Firm means any proprietorship, partnership, limited partnership, limited partnership association, corporation and any other business unit. Where appropriate, firm shall also mean any unit of local government authorized by law to issue bonds.

"Interest" means:

1. **Real property.** A person shall have an interest in real property if he has any enforceable right therein, including, but without limitation, fee simple ownership, a remainder interest, a contingent interest, a right of reversion or a right of entry, a future interest, or any other interest, direct or indirect, in such property.

2. **Firm.** A person shall have an interest in a firm if he is a proprietor thereof, a general partner, a limited partner, a partner in a limited partnership association, an employee thereof or is a stockholder holding five percent or more of the capital stock of a corporation. Provided, however, that the holding of any bonds in any amounts whatsoever issued by any political subdivision of this State may be deemed to be an interest subject to these regulations when, in the opinion of the Commissioner, ownership of such government bonds is likely to create a conflict of interest.

3. **Holding companies.** Interest shall also include an interest in a firm which has an interest in real property or in a firm which has an interest in real property.

4. The definition of interest herein shall not be restricted to a legal interest, but shall also include all interests enforceable in equity.

5. An interest held by a person shall not only include those which he personally holds, but shall also include those known to be held by his spouse, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law.]

...  
 ["State assisted urban renewal project" is defined in the State Aid for Urban Renewal Projects Law of 1967, N.J.S.A. 52:27D-44 et seq.]

**5:1-6.1 [Interest in real property] Compliance with Department of Community Affairs Code of Ethics**

[No person shall retain any interest whatsoever in any real property which is included or to his knowledge is to be included in a State assisted urban renewal project.]

(a) **All officers and employees of the Department of Community Affairs shall comply with the Department of Community Affairs Code of Ethics, approved by the Executive Commission on Ethical Standards pursuant to N.J.S.A. 52:13D-23 and effective November 1, 1989.**

(b) **Copies of the Department of Community Affairs Code of Ethics may be obtained from the Office of Human Resources, CN 800, Trenton, NJ 08625. Telephone: (609) 292-6030.**

(a)

**DIVISION OF HOUSING AND DEVELOPMENT****Relocation Assistance  
Definitions; Relocation Plans****Proposed Amendments: N.J.A.C. 5:11-1.2 and 6.2**

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

Authority: N.J.S.A. 52:31B-10 and 20:4-10.

Proposal Number: PRN 1989-634.

Submit comments by January 3, 1990 to:

Michael L. Ticktin, Esq.  
 Administrative Practice Officer  
 Department of Community Affairs  
 CN 802  
 Trenton, NJ 08625

The agency proposal follows:

**Summary**

The definitions section of the relocation assistance rule is proposed for amendment to make clear that any discrepancy between a statutory definition and a rule definition is to be resolved in favor of the former and to correct the definition of "unit of local government" to conform to the definition in N.J.S.A. 51:31B-3 by including instrumentalities chartered by, as well as created by, political subdivisions. The difference is significant because a private company may be "chartered," that is, given certain rights and powers, specifically with regard to redevelopment, by a municipality without being deemed to have been created by the municipality. These powers can be conferred after a municipality has declared an area to be blighted and thereby subject to acquisition of property by eminent domain for redevelopment, eligible for urban renewal tax abatement for the designated redeveloper, and subject to a plan that supersedes municipal zoning. People can be dislocated by the combined action of the municipality, which initiates the process, and the redeveloper, who carries it out with municipal support and as the municipality's agent.

The proposed amendment to N.J.A.C. 5:11-6.2 allocates responsibility for the relocation plan required by statute between a political subdivision and a private entity that is a "unit of local government" chartered by it. The responsibility for the filing of the plan rests with the political subdivision. Responsibility for providing relocation assistance may be allocated by agreement between the political subdivision and the private entity. In the absence of such an agreement, however, the political subdivision will have primary responsibility to any claimants for relocation assistance.

**Social Impact**

The social impact of the proposed definition amendment will be to avoid confusion, particularly as to the relocation obligations of municipally-designated redevelopers. By statute, they are already deemed to be within the definition of "unit of local government," but this would not be apparent to someone having only the rule definition. The amendment concerning allocation of responsibility for the relocation plan and payments alerts municipalities and redevelopers to the desirability of making such an allocation in advance of any actual dislocation.

**Economic Impact**

To the extent that designated redevelopers have avoided responsibility for providing relocation assistance by reliance upon the rules, they will be adversely impacted by the discontinuation of their ability to do so. Persons who might now receive relocation assistance once the ambiguity that now exists has been eliminated will, to that extent, be favorably affected.

**Regulatory Flexibility Analysis**

To the extent that designated redevelopers who qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are required to provide relocation assistance that they had not previously provided, they will be affected in the same manner as other designated redevelopers. Similarly, relocated small businesses will receive the same benefits as other relocated businesses that might not have received relocation assistance had this clarification not been made. In neither case is special consideration warranted since the only purpose of the rule amendments is to further compliance with an existing statutory requirement.

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

5:11-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context or any definition set forth in P.L. 1967, c.79 (N.J.S.A. 53:31B-1 et seq.) or P.L. 1971, c.362 (N.J.S.A. 20:4-1 et seq.) clearly [indicated] indicates otherwise.

...  
 "Unit of local government" means any political subdivision of this [state] State, or any two or more such political subdivisions acting jointly pursuant to law, and any department, division, office, agency or bureau thereof or any authority or instrumentality created or chartered thereby.  
 ...

5:11-6.2 Joint exercise

(a) A displacing agency may contract with another agency in order to provide the benefits required in subchapters 3 and 4 of this chapter and two or more displacing agencies may agree to provide the benefits jointly; provided that the Department gives prior approval. In the event of a displacing agency contracting with another or in the event of joint exercise, the ultimate responsibility for relocation assistance and benefits remains with the displacing agency.

(b) In any case in which displacement is being undertaken by a "unit of local government" that is a chartered private entity, responsibility for the filing of the WRAP shall rest with the political subdivision by which the private entity was chartered to exercise governmental powers and, unless otherwise agreed between the political subdivision and the private entity, primary responsibility for providing relocation assistance shall rest with the political subdivision.

(a)

**DIVISION OF HOUSING AND DEVELOPMENT**  
**Neighborhood Preservation Balanced Housing Program**  
**Affordability Control Procedures**  
**Proposed Amendment: N.J.A.C. 5:14-4.1**

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

Authority: N.J.S.A. 52:27D-320.

Proposal Number: PRN 1989-635.

Submit comments by January 3, 1990 to:  
 Michael L. Ticktin, Esq.,  
 Administrative Practice Officer  
 Department of Community Affairs  
 CN 802  
 Trenton, N.J. 08625

The agency proposal follows:

**Summary**

The Department has adopted new rules published elsewhere in this issue of the New Jersey Register establishing affordability control procedures for the Neighborhood Preservation Balanced Housing Program. These rules, set forth at N.J.A.C. 5:14-4, are intended to implement the provisions of the Fair Housing Act (P.L. 1985, c.222) that require the Department to ensure that any unit of housing provided for low and moderate income households shall continue to be occupied by low and moderate income eligible households for at least 20 years following the award of a loan or grant, by incorporating contractual guarantees and procedures into the grant or loan agreement. The Affordable Housing Management Service has been established within the Division of Housing and Development in order to administer the affordability controls for Balanced Housing projects set forth in these rules.

The current text of N.J.A.C. 5:14-4.1 provides that municipalities may either adopt individual affordability control programs or contract with the Department to assume this responsibility. The Department proposes to amend subsection (b) of this rule to provide consistency in the administration of affordability controls by specifying that the Affordable Housing Management Service shall be designated in the funding contract as the

administering agency for Balanced Housing projects unless the Department provides otherwise for specific projects. Nonprofit funding recipients shall receive these services at no extra cost to the project. For-profit funding recipients shall be charged a per unit fee for the use of these services.

**Social Impact**

The designation of an established administrative body practiced in the administration of affordability controls is now considered essential to guarantee a continuing supply of low and moderate income housing that benefits residents of the State who do not have adequate opportunities to acquire affordable housing. Affordable housing units provided through Balanced Housing grants and loans to municipalities are a valuable investment of public funds in the housing stock of the State. The Division has determined through experience that this trust requires an experienced and knowledgeable administrative entity to ensure compliance with affordability control procedures.

**Economic Impact**

Recipients of Balanced Housing funds shall be charged a fee of \$300.00 per unit for the use of the Affordable Housing Management Service. Assured compliance with affordability control procedures shall preserve the supply of affordable housing during the controlled periods and provide maximum economic return to the public on Balanced Housing investments as intended by the long term controls established pursuant to P.L. 1985, c.222.

**Regulatory Flexibility Analysis**

The proposed amendment relieves municipalities and developers from burdensome requirements that otherwise would have impacted some developers who may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The fee for administrative services to for-profit developers must be approved by the State Treasurer, is reasonable, and is necessary to maintain affordability controls. The Program's statutory purpose would be hindered by a relaxation of requirements for small business developers. No such differentiation based upon business size is, therefore, provided by the proposed amendment.

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

5:14-4.1 General provisions

(a) (No change.)

(b) In order to receive approval for a grant or loan from the Department of Community Affairs, Neighborhood Preservation Balanced Housing Program, a municipality must [provide a plan for assuring] assure that units remain affordable to and occupied by low and moderate income-eligible households for the prescribed time period. [A municipality may adopt its own program subject to Department review and approval or it may contract with the Department to assume this responsibility. This subchapter shall apply in all cases where the municipality has elected to contract with the Department to administer the affordability controls.]

**1. The Affordable Housing Management Service is established within the Department to administer affordability controls for Balanced Housing projects. This service shall be utilized by municipalities receiving Balanced Housing funds as a condition of the funding contract. Funding recipients shall be charged a \$300.00 per unit fee for the use of these services.**

**2. If the funding recipient is a non-profit organization or a municipality acting as the developer, this fee will be added to the total funding and paid to the Affordable Housing Management Service. If the recipient is a for-profit developer, the fee will be paid by the developer to the Affordable Housing Management Service.**

**3. An alternative affordability control program may be utilized for special projects requiring more stringent procedures provided verification of an alternative program has been submitted by the project sponsor and written approval has been received from the Affordable Housing Management Service.**

**4. These rules will be used as a standard for the review and approval of any affordability control program [designed and administered by a municipality] as it pertains to the Neighborhood Preservation Balanced Housing Program.**

(c) (No change.)

## (a)

**DIVISION OF HOUSING AND DEVELOPMENT****Uniform Construction Code****Radon Mitigation Subcode****Proposed New Rules: N.J.A.C. 5:23-10****Proposed Amendments: N.J.A.C. 5:23-1.1, 3.4 and 4.5**

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

Authority: N.J.S.A. 52:27D-123; P.L. 1989, c.186.

Proposal Number: PRN 1989-636.

Submit comments by January 3, 1990 to:

Michael L. Ticktin, Esq.  
Administrative Practice Officer  
Department of Community Affairs  
CN 802  
Trenton, N.J. 08625-0802

The agency proposal follows:

**Summary**

The recently enacted P.L. 1989, c.186 requires the Department of Community Affairs to incorporate into the State Uniform Construction Code standards to ensure that schools and residential buildings within tier one areas, as defined by the Department of Environmental Protection pursuant to P.L. 1985, c.408, are constructed in a manner that minimizes radon gas or radon progeny entry and facilitates any subsequent remediation that might prove necessary. Radon mitigation is important because prolonged exposure to elevated concentrations of radon and its decay products has been associated with an increased risk of lung cancer.

The proposed radon mitigation subcode contains rules intended to offer construction techniques that can minimize radon entry and facilitate any post-construction radon level reduction that may be required. Since there is not now any nationally recognized model code on this subject, the Department has drafted its own subcode, which will apply to buildings and structures in Use Groups E and R, as defined in the building subcode.

**Social Impact**

The implementation of these rules will provide construction techniques that will better protect the health and welfare of people occupying residential and school buildings in known or suspected radon hazard areas.

**Economic Impact**

The proposed rules for radon mitigation will impose a minimal additional initial cost upon builders and property owners. However, since this cost would be substantially less than the cost to remedy a radon problem after construction, the net economic impact would generally be positive.

**Regulatory Flexibility Analysis**

The proposed new rules impose compliance requirements on builders and property owners, a number of which, as affected, will be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In the interest of public health and safety, the same construction standards must apply both to construction work done by small businesses and to that done by other builders.

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

5:23-1.1 Title; division into subchapters

(a) (No change.)

(b) The regulations consist of the following subchapters:

1.-8. (No change.)

9. "Code Interpretations" which may be cited throughout the regulations as N.J.A.C. 5:23-9 and when referred to in subchapter 9 of this chapter may be cited as this subchapter.

10. "Radon Mitigation Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-10 and when referred to in subchapter 10 of this chapter may be cited as this subchapter.

5:23-3.4 Responsibility

(a)-(f) (No change.)

(g) Responsibility for enforcement of specific provisions of the radon mitigation subcode shall be as set forth at N.J.A.C. 5:23-10.3.

5:23-4.5 Municipal enforcing agencies—administration and enforcement

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

(f) Duties of construction officials:

1. The construction official shall enforce the regulations and:  
i.-xvii. (No change.)

xviii. Coordinate the activities of the subcode officials in enforcement of the energy, radon mitigation and mechanical subcodes;  
xix.-xx. (No change.)

2. (No change.)

(g)-(h) (No change.)

**SUBCHAPTER 10. RADON MITIGATION SUBCODE**

5:23-10.1 Title, scope; intent

(a) This part of the regulations, adopted pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217, as amended and as supplemented by P.L. 1989, c. 186 (N.J.S.A. 52:27D-119 et seq.), and entitled Radon Mitigation Subcode, shall be known and may be cited throughout the regulations as N.J.A.C. 5:23-10 and, when referred to in this subchapter, may be cited as "this subchapter".

1. This subchapter is intended to complement rules adopted by the New Jersey Department of Environmental Protection at N.J.A.C. 7:28-27 which provide for certification of persons who test for the presence of radon gas and radon progeny contamination in buildings and the reporting of this test data.

i. Copies of N.J.S.A. 26:2D-70 et seq. and N.J.A.C. 7:28-27 may be obtained from the New Jersey Department of Environmental Protection, CN 411, Trenton, NJ 08625.

(b) This subchapter pertains to the construction of all buildings in Use Groups E and R, as defined in the building subcode, within recognized radon prone areas defined as tier one by the New Jersey Department of Environmental Protection and shall control matters relating to construction techniques for radon mitigation.

(c) This subchapter seeks to protect and ensure public safety, health and welfare insofar as it is affected by radon entry into schools and residential buildings.

1. It is the purpose of this subchapter to establish standards and procedures to ensure that construction techniques that minimize radon entry and that facilitate any post-construction radon removal that is required shall be incorporated in the construction of all buildings in Use Groups E and R in tier one areas and are permitted to be incorporated elsewhere in New Jersey.

2. Radon is a colorless, odorless, tasteless, radioactive gas that occurs naturally in soil gas, underground water, and outdoor air. Prolonged exposure to elevated concentrations of radon and its progeny (that is, substances formed as a result of the radioactive decay of radon) has been associated with increases in the risk of lung cancer. An elevated concentration is defined as being at or above the guideline of 4 pCi/L or 0.02 WL average annual exposure.

3. Inasmuch as it is deemed to be more cost effective to build schools and residential buildings that resist radon entry than to remedy a radon problem after construction, design and construction techniques shall be employed, in tier one areas, to minimize pathways for soil gas to enter and features shall be incorporated during construction in tier one areas that will facilitate radon removal after completion of the structure if prevention techniques prove to be inadequate.

5:23-10.2 Definitions

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

"Foundation pipe drain" means a drain placed around the perimeter of a foundation that utilizes a perforated pipe. An "interior foundation pipe drain" is one placed around the internal perimeter of a foundation. An "exterior foundation pipe drain" is one placed around the external perimeter of a foundation.

“French drain” or “channel drain” means a path used to assist with water drainage which is installed in basements of some structures during initial construction, which consists of a gap (typically one-half to one and one-half inch in width) between the basement block wall and the concrete floor slab around the entire inside perimeter of the basement.

“Mitigate” means to apply materials and/or install systems and materials to reduce radon and radon decay product concentrations in the indoor atmosphere or prevent entry of radon and radon decay products into the indoor atmosphere.

“Picocurie per Liter (pCi/L)” means 2.2 disintegrations per minute of radioactive material per liter. It may be used as a measure of the concentration of radon gas in air. One picocurie is equivalent to 10<sup>-12</sup> Curies.

“Radon” means the radioactive noble gas radon-222.

“Radon progeny” means the short-lived radionuclides formed as a result of the decay of radon-222, including polonium-218, lead-214, bismuth-214 and polonium-214.

“Sump” means a pit or hole in or through a basement floor slab designed to collect water, and from which such water is drained by means of a vertical-lift or sump pump.

“Sump pump” means a pump used to move collected water out of the sump to an above grade discharge remote from the structure.

“Working level (WL)” means that concentration of short-lived radon decay products that will result in 130,000 million electron volts of potential alpha-particle energy per liter of air. Working level is a measure of radon decay product concentration in air.

5:23-10.3 Enforcement

(a) The provisions of this subchapter shall be enforced by the local enforcing agencies having responsibility for the enforcement of this chapter.

(b) Enforcement responsibility shall be divided among subcode officials in the following manner:

1. Plan review and inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)1, 2, 10 and 11 shall be the responsibility of the building subcode official;

2. Plan review and inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)3, 4, 5, 7 and 8 shall be the responsibility of the plumbing subcode official;

3. Plan review with regard to compliance with N.J.A.C. 5:23-10.4(b)6, 9 and 12 shall be the joint responsibility of the building and fire protection subcode officials; and

4. Inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)6, 9 and 12 shall be the responsibility of the building subcode official.

5:23-10.4 Construction techniques

(a) Tier one radon hazard areas shall be identified in accordance with the county/municipal radon listing established by the Department of Environmental Protection. The current list of municipalities in tier one areas is set forth in Appendix 10-A of this subcode.

(b) The construction techniques set forth in this subsection shall be incorporated into construction of buildings in Use Groups E and R in tier one areas, and may be incorporated elsewhere, in order to minimize radon entry and facilitate any post-construction radon removal that may be required.

1. A continuous vapor barrier not less than six-mil (.006 inch; .152 mm) polyvinyl chloride or polyethylene with any seams overlapped not less than 12 inches (305 mm), or other approved materials, shall be installed under the slab in basement and slab-on-grade construction and on the soil in crawl space construction.

2. Floors of basements and slab on grade construction shall be placed over a base course, not less than four inches (102 mm) in thickness, consisting of gravel or crushed stone containing not more than 10 percent of material that passes through a No. 4 sieve.

3. Basement slabs with interior foundation pipe drains installed shall have a solid three-inch minimum diameter vent pipe section installed in conjunction with this drainage system with termination between six and 12 inches above the slab and appropriately capped or connected to an independent vent stack pipe terminating at an approved location on the exterior of the building. Basement slabs with exterior foundation pipe drains installed shall have a three-inch minimum diameter solid vent pipe section installed in conjunction with this drainage system that terminates at grade level and is appropriately capped.

4. Basement slabs which do not have a piped drainage system shall not be permitted unless one three-inch minimum diameter solid vent pipe section with a “T” pipe fitting for every 1,500 square feet, or portion thereof, of slab area is installed into the sub-slab aggregate. The horizontal openings of the “T” pipe fitting shall be placed in the sub-slab aggregate, which shall terminate between six and 12 inches above the slab and shall be appropriately capped or connected to an independent vent stack pipe terminating to an approved location on the exterior of the building. These fittings shall be clearly labeled.

5. Basement slabs with French drains or channel drains shall not be allowed unless interior foundation pipe drains as described in this section are installed.

6. Joints in foundation walls and floors, including, without limitation, control joints between slab sections poured separately, and between foundation wall and floor (except for French drains or channel drains), as well as penetrations of the foundation walls and floor including, but not limited to, utility penetrations, shall be substantially sealed by utilizing a non-cracking polyurethane or similar caulk, or equivalent, in order to close off the soil gas entry routes. Any openings or penetrations of the floor over the crawl space shall be substantially sealed in order to close off the soil gas entry routes.

7. Untrapped floor drains shall be provided with removable stoppers which substantially close off the soil gas entry routes.

8. A sump cover which substantially closes off the soil gas entry routes shall be provided for all sump installations. If foundation pipe drains terminate at a sump installation and provisions are made for venting from the sump installation, the three-inch diameter solid vent pipe section requirement of (b)3 above need not be provided.

9. Any ductwork that is routed through a crawl space or beneath a slab shall be properly taped or sealed.

10. Sealant materials that substantially close off the soil gas entry routes shall be installed on any doors or other openings between basements and adjoining crawl spaces that are vented to the exterior.

11. The tops of foundation walls, including, without limitation, interior ledges, that are constructed of hollow masonry units shall be capped or the voids shall be completely filled.

12. When capped interior vent pipe sections are provided in accordance with (b)3 or 4 above, an adequately supported three-inch minimum diameter solid vent pipe shall be installed from a point that is within 10 feet of the capped interior vent pipe section, through any enclosed portions of the building, terminating at an approved location on the exterior of the building. The termination point shall be at least 10 feet from the lot line or any adjacent building and shall be at least 10 feet above average grade, thereby allowing any future discharge to be directed away from the building. Unused openings shall be closed or capped.

APPENDIX 10-A

New Jersey Municipalities in Tier 1

County	Municipality
Hunterdon	All Municipalities
Mercer	Ewing Hopewell Borough Hopewell Township Lawrence Pennington Princeton Borough Princeton Township
Middlesex	Highland Park New Brunswick North Brunswick Piscataway Plainsboro South Brunswick
Monmouth	Colts Neck Freehold Borough Freehold Township Holmdel Little Silver

	Marlboro Tinton Falls Upper Freehold
Morris	Boonton Town Chester Borough Chester Township Denville Dover Harding Jefferson Kinnelon Mendham Borough Mendham Township Montville Morris Plains Morris Morristown Mount Arlington Mount Olive Passaic Randolph Roxbury Victory Gardens Washington Wharton
Passaic	Pompton Lakes West Milford
Somerset	Bedminster Bernardsville Bernards Branchburg Bridgewater Far Hills Franklin Hillsborough Millstone Montgomery Peapack & Gladstone Raritan Rocky Hill Somerville South Bound Brook Warren
Sussex	All Municipalities except Hardyston
Warren	All Municipalities

(a)

**DIVISION OF HOUSING AND DEVELOPMENT  
New Home Warranty and Builders' Registration  
State New Home Warranty Security Plan  
Warranty Contributions  
Proposed Amendment: N.J.A.C. 5:25-5.4**

Authorized By: Anthony M. Villane, Jr., D.D.S., Commissioner,  
Department of Community Affairs.  
Authority: N.J.S.A. 46:3B-10.  
Proposal Number: PRN 1989-637.

Submit comments by January 3, 1990 to:  
Michael L. Tickin, Esq.  
Administrative Practice Officer  
Department of Community Affairs  
CN 802  
Trenton, New Jersey 08625.

The agency proposal follows:

**Summary**

The premium paid by builders for homes enrolled in the State New Home Warranty Security Plan is now set at four-tenths of one percent of the cost or value of the home. This proposed amendment would

eliminate the fixed rate and substitute a rate based upon a given builder's record with the State Plan and the approved private plans. The New Home Warranty and Builders' Registration program has now been in effect for 10 years. Under the proposed amendment, a builder who has had no payments resulting from claims, and no final determinations that a payment must be made, for 10 years will pay a rate of 0.145 percent. Rates will be 0.175 percent for builders with seven years without such claims or determinations, 0.225 percent for builders with five years without any such payments or determinations, 0.275 percent for builders with two years without any such payments or determinations, 0.35 percent for new builders, 0.55 percent for builders who have had such payments or determinations made within the previous two years, and 0.7 percent for builders who have such payments or determinations made while paying a rate of 0.55 percent on account of a previous claim and payment. Builder entities with identity of ownership and control will be treated as a single builder for purposes of determining the appropriate rate. Builder entities with overlapping ownership or control will be rated as if the application were made by the entity with the least favorable rating.

It is additionally provided that no fee is to be charged for the enrollment of new homes affordable to persons of low or moderate income and subject to resale controls approved by the Department or by the Council on Affordable Housing.

**Social Impact**

Careful, responsible builders, who either have no claims made against them or correct all defects themselves, as envisioned by the New Home Warranty and Builders' Registration Act, so that State New Home Warranty Security Fund or an approved private plan fund, as the case may be, is not required to make any payments, are to be rewarded with lower contribution rates for each home that they sell that is enrolled in the State Plan. By creating an added incentive for careful building, the Department hopes to have a positive impact on the quality of new home construction.

In the interest of consumer protection, the Department has not excluded builder claim and payment records from the category of public records by N.J.A.C. 5:3-2.1. These records are therefore available for public inspection and for the securing of copies pursuant to P.L. 1963, c.73.

**Economic Impact**

The proposal would result in a net reduction of approximately 25 percent in the contributions paid by builders to the State New Home Warranty Security Plan. The premium now paid for the enrollment of a \$200,000 house is \$800.00. This will be reduced to \$290.00 for a builder who has not been responsible for any payments from the fund, and has not been determined to be responsible for a payment to be made by the fund, for at least 10 years. The premium on a \$200,000 house built by a new builder will be \$700.00 rather than \$800.

Such a reduction is appropriate because the Department has determined that, after 10 years, the Plan has sufficient resources to cover all claims for which it might be liable and some reduction in builder contributions is justified. The Department believes it to be in the public interest, however, that the benefit of any reduction should be accorded to those who have, over time, demonstrated the greatest degree of care and responsibility in their building practices. Consequently, reductions will be based upon the period of time for which the builder has not been responsible for any payments being made for any claim. It may be expected that, in a competitive market, the savings realized by builders with good claim records would be passed on to homebuyers. Builders who have had payments made within the last two years as a result of claims against them will pay a premium of 0.55 percent. Those who are responsible for additional payments while in the 0.55 percent category will be subject to a rate of 0.7 percent.

The exemption for affordable housing will help make it economically possible to produce more of such housing.

**Regulatory Flexibility Analysis**

The great majority of homebuilders in New Jersey are "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This proposed amendment does not distinguish between those homebuilders that are "small businesses" and those that are not because they are all equally obligated to conform to the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., and the New Home Warranty and Builders' Registration Act, N.J.S.A. 46:3B-1 et seq., whenever they build a house. The ability to be careful and to be responsible in correcting any problems that may arise is not a function of the size of the builder. Such care and responsibility is required of all, and all who demonstrate it will benefit in equal proportion from this amendment.

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

5:25-5.4 Warranty contributions, amount, date due

(a) Except as otherwise provided in (c) below, each [Each] builder not participating in an approved private plan shall contribute to the State New Home Warranty Security Fund in an amount equal to [0.4 of one percent] a percentage of the purchase price of the home, or of the fair market value of the home on its completion date if there is no good faith arms' length sale, determined in accordance with (b) below, each time he sells a home. When the cost of land is not included in the sale, the purchase price shall be 125 percent of the contract amount and shall be the basis of calculating the premium and [will] shall be the dollar value placed on the Certificate of Participation.

1.-4. (No change.)

(b) The contribution percentage to be paid for each new home by a builder not participating in an approved private plan shall be determined as follows:

1. If, for at least 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder, the contribution percentage shall be 0.145.

2. If, for at least seven years but less than 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder, the contribution percentage shall be 0.175.

3. If, for at least five years but less than seven years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder, the contribution percentage shall be 0.225.

4. If, for at least two years but less than five years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder, the contribution percentage shall be 0.275.

5. If a builder has not previously been registered, or has been registered for less than two years and there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder, the contribution percentage shall be 0.35.

6. If, within the previous two years, there has been any payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder, the contribution percentage shall be 0.55.

7. If, at any time while a builder's contribution percentage is 0.55 by reason of the builder's having been responsible for a payment having to be made on a claim under either the State Plan or an approved private plan, there is any further payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of another claim against the builder, the contribution percentage shall be 0.7.

8. Whenever a builder is a builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, of a corporation, partnership or subsidiary, the claim and payment record of that corporation, partnership or subsidiary, shall, if less favorable than that of the builder individually, be attributable to the builder for purposes of this subsection.

9. Whenever a builder is a corporation, partnership or subsidiary, the claim and payment record of any builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, or of any corporation, partnership or subsidiary, having any builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, in common with the builder, shall, if less favorable than that of the builder, be attributable to the builder for purposes of this subsection.

10. If a builder is an individual who is the sole owner of a builder that is a corporation, partnership or subsidiary, or if a builder is a corporation, partnership or subsidiary having the same builder designee, officers, and stockholders or partners with at least a 10 percent own-

ership interest, as another builder, the claim and payment record of the one builder shall be attributable to the other for purposes of this subsection.

11. For purposes of this subsection, "10 years" shall mean the 120 month period immediately prior to the date of enrollment of a new home under the State Plan, "five years" shall mean the 60 month period immediately prior to such date, and "two years" shall mean the 24 month period immediately prior to such date.

(c) No contribution to the State Fund shall be required to be paid for the enrollment of any new home that is affordable to households of low or moderate income, as defined in accordance with the "Fair Housing Act," P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.), and that is subject to resale price controls intended to assure continued affordability to such households for at least 20 years, or such shorter period of time for such resale controls as may be authorized for the unit by the Department of Community Affairs, the New Jersey Housing and Mortgage Finance Agency, or the Council on Affordable Housing.

(a)

**DIVISION OF HOUSING AND DEVELOPMENT  
Notice of Administrative Correction  
Landlord-Tenant Relations  
One- and Two-Unit Dwelling Registration Form  
Proposed New Rule: N.J.A.C. 5:29-1.2**

Take notice that the Department of Community Affairs has discovered an error in the text of the Landlord Identity Statement set forth in proposed new rule N.J.A.C. 5:29-1.2 as published in the November 6, 1989 New Jersey Register at 21 N.J.R. 3349(a). Preceding each paragraph following Statement paragraphs 2, 3, 4, 5, 7 and 8 should be a check box (☐) and sufficient space should follow each numbered paragraph for the listing of information. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected proposed new rule follows (additions indicated in boldface thus):

5:29-1.2 One- and two-unit dwelling registration form

(a) The form of the certificate of registration to be filed with the municipal clerk and distributed to tenants by owners of non-owner occupied one- and two-unit dwellings shall be substantially as follows:

**LANDLORD IDENTITY STATEMENT  
(One- and Two-Unit Rental Dwellings)**

1. The names and addresses of all record owners of the building or of the rental business (including all general partners in the case of a partnership) are as follows:

2. If the record owner is a corporation, the names and addresses of the registered agent and of the corporate officers are as follows:

☐ Record owner is not a corporation.

3. If the address of any record owner is not located in the county in which the dwelling is located, the name and address of a person who resides in the county and is authorized to accept notices from a tenant, to issue receipts for those notices and to accept service of process on behalf of the out-of-county record owner(s) are as follows:

☐ The addresses of all record owners are in the county in which the dwelling is located.

4. The name and address of the managing agent are as follows:

☐ There is no managing agent.

5. The name and address (including dwelling unit, apartment or room number) of the superintendent, janitor, custodian or other person employed to provide regular maintenance service are as follows:

## COMMUNITY AFFAIRS

There is no superintendent, janitor, custodian or other person employed to provide regular maintenance service.

6. The name, address and telephone number of an individual representative of the record owner or managing agent who may be reached or contacted at any time in the event of an emergency affecting the dwelling or any dwelling unit, including such emergencies as the failure of any essential service or system, and who has authority to make emergency decisions concerning the building, including the making of repairs and expenditures, are as follows:

7. The names and addresses of all holders of recorded mortgages on the property are as follows:

There is no recorded mortgage on the property.

8. If fuel oil is used to heat the building and the landlord furnishes the heat, the name and address of the fuel oil dealer servicing the building and the grade of fuel oil used are as follows:

The building is not heated by fuel oil.

The building is heated by fuel oil, but the landlord does not furnish heat.

Date: \_\_\_\_\_  
Landlord or Authorized Representative

(b) Copies of this form may be obtained from private sources or from:

Office of Landlord-Tenant Information  
Division of Housing and Development  
Department of Community Affairs  
CN 805  
Trenton, NJ 08625

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### Local Area Vocational School Districts and Private Vocational Schools

#### Instructional Hours

#### Proposed Amendments: N.J.A.C. 6:46-1.1, 4.6, 4.10 and 4.12

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:7A-1 et seq., 18A:54-6, 18A:54-10, 18A:69-1 et seq., 34:1A-38 and Public Law 98-524.

Proposal Number: PRN 1989-652.

Submit written comments by January 3, 1990 to:

Irene Nigro, Rules Analyst  
New Jersey Department of Education  
225 West State Street, CN 500  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Effective October 1, 1989, 13 private vocational schools in New Jersey no longer were eligible for participation in Federal financial assistance programs under credit hour approval. Based on a change in Federal regulations promulgated by the U.S. Department of Education, students in those schools will lose eligibility for Federal assistance or have the amount of Federal assistance for which they qualify reduced. The proposed amendments to N.J.A.C. 6:46-1.1, 4.6, 4.10 and 4.12 will permit the provision at N.J.A.C. 6:46-4.6(d), effective May 1, 1989 to be reorganized by the U.S. Department of Education. The provision at N.J.A.C. 6:46-4.6(d) permitted the Commissioner the opportunity to

## PROPOSALS

grant course or program approval in credit hours in accredited private vocational schools using a conversion formula from clock to credit hours approved by the appropriate accrediting agency recognized by the Secretary, U.S. Department of Education. The U.S. Department of Education will not presently recognize the conversion process because the term "clock hour of instruction" in the State rules conflicts with the same term used in Federal regulations to determine eligibility for Federal student financial assistance programs. The proposed amendments will eliminate the conflict by removing the phrase "clock hour of instruction" and substituting the term "instructional hour."

#### Social Impact

The proposed amendments will have a positive social impact on students needing Federal student financial assistance to finance their education at a private vocational school. A reduction in or loss of anticipated student financial assistance will cause the most needy students to terminate their education if they do not have the personal finances available to offset the reduction in or loss of the anticipated Federal financial assistance.

#### Economic Impact

The proposed amendments will permit the affected students to receive the amount of Federal student financial assistance anticipated to permit them to pay the costs associated with financing their education at a private vocational school. The Private Career School Association of New Jersey, after gathering data from member schools, estimates that 8,132 students will lose \$13,753,125 in Federal loans and grants without these amendments.

#### Regulatory Flexibility Statement

The proposed amendments will only affect those Department-approved private vocational schools that are accredited and eligible to participate in Federal student financial assistance programs and wish to maintain eligibility based on credit hour approval of courses and programs. Thirteen schools currently are included in this category. Most of these schools are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments will not impose additional reporting, recordkeeping or other compliance requirements. Adoption of the amendments will preclude the reduction or elimination of Federal financial assistance to students and reduce the possibility that affected students will terminate and possibly cause the schools to lose income through reduced enrollments.

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

6:46-1.1 Words and phrases defined

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

...  
["Clock hour of instruction"] "**Instructional hour**" in a private vocational school means 60 consecutive minutes of which a minimum of 50 minutes is dedicated to instruction.

6:46-4.6 Courses or programs offered

(a) (No change.)

(b) Each request for course or program approval submitted by the private vocational school shall contain sufficient information for proper evaluation. The information shall include:

1.-2. (No change.)

3. The course or program content in outline form showing the major elements of instruction, the number of [clock hours of instruction] **instructional hours** for each element, and the total number of [clock hours] **instructional hours** required for completion. [If desired, the school may also include credit hours.]

4.-9. (No change.)

(c) (No change.)

(d) An accredited private vocational school approved by the Commissioner may request that the Commissioner grant course or program approval in credit hours. The Commissioner may grant approval in credit hours for a course or program taught in an approved private vocational school provided the course or program approval request contains the information specified in (b) above. In addition, the number of credit hours requested must be in accordance with

the conversion formula [from clock hours] to credit hours used by the appropriate accrediting agency recognized by the Commissioner and accepted by the Secretary of the United States Department of Education.

6:46-4.10 School bulletin

(a) (No change.)

(b) The school bulletin shall be the official statement of the school's policies, regulations, charges and fees and shall include, but not be limited to, the following items:

1.-9. (No change.)

10. A description of each approved course or program describing course content, type of work or skill to be learned and [clock hours of instruction.] **instructional hours** [If desired, the school may also include credit hours];

11.-16. (No change.)

(c)-(d) (No change.)

6:46-4.12 Conduct of the school

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

(e) A pupil shall not be retained by the school when the pupil fails to meet the school's minimum standards of academic progress or exceeds the maximum number of absences as stated in the school bulletin. The maximum number of unexcused absences shall not exceed 20 percent of the total [clock hours] **instructional hours** of the course or program.

(f) (No change.)

## ENVIRONMENTAL PROTECTION

### (a)

#### NEW JERSEY WATER SUPPLY AUTHORITY

#### Use of Water from the Manasquan Reservoir Water Supply System

#### Proposed New Rules: N.J.A.C. 7:11-5

Authorized By: Christopher J. Daggett, Chairman, New Jersey Water Supply Authority and Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:1B-1 et seq.

DEP Docket Number: 051-89-10.

Proposal Number: PRN 1989-641.

A **public hearing** concerning these proposed new rules will be held on: January 11, 1990 at 10:00 A.M. to close of comments  
Allaire State Park, Administration Building  
Route 524  
Farmingdale, New Jersey

**Interested persons** should submit any questions relevant to the proposal before or at the public hearing. Submit written comments by February 3, 1990 to:

Mark Benevenia, Esq.  
Division of Regulatory Affairs  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625; and  
Rocco D. Ricci, Executive Director  
New Jersey Water Supply Authority  
Post Office Box 5196  
Clinton, New Jersey 08809

#### Summary

Proposed N.J.A.C. 7:11-5 establishes the rules governing the use of water from the Manasquan Reservoir System of the New Jersey Water Supply Authority (Authority). The proposed new rules when implemented will provide consistent water management requirements for the Manasquan Reservoir System as administered by the Authority. The Authority plans a July 1, 1990 operative date for the proposed new rules. The rules establish efficient and integrated practices for the Authority's management of water from the Manasquan Reservoir System.

A brief summary of the text of each section of the proposed subchapter follows:

7:11-5.1, Application for water supply, informs interested parties about how potential users may obtain, and subsequently submit, an "Application for Water Supply".

7:11-5.2, Definitions, contains definitions for terms used in this subchapter.

7:11-5.3, Water purchase contract, discusses the general requirements for the formal water purchase contract for any water withdrawn from the Manasquan Reservoir System.

7:11-5.4, Rates charges and debt service assessments, establishes the most current rates, charges and debt service assessments for all water diverted from the Manasquan Reservoir System. It also establishes the Manasquan River intake facility as the common point of water withdrawal.

7:11-5.5, Payments, describes the payment procedures for water purchased from the Manasquan Reservoir System.

7:11-5.6, Sale of excess water, provides a mechanism for the possible sale of a purchaser's surplus water.

7:11-5.7, Peak demand, explains that contract allocation will be in terms of million gallons per day and that the maximum permitted withdrawal rate shall be specified in the water purchase contract by the Authority.

7:11-5.8, Period of contract, sets forth requirements that the effective date, period of contract, and date of commencement of charges be set forth in the water purchase contract.

7:11-5.9, Renewal, details the procedures for a purchaser to renew its water purchase contract.

7:11-5.10, Temporary curtailment or suspension of service, establishes the Authority's right to temporarily terminate or suspend a purchaser's withdrawal of water under certain circumstances.

7:11-5.11, Force Mejeure, provides a relief mechanism for either party to a water purchase contract in the event of inability to perform due to circumstances not reasonably within the control of the affected party.

7:11-5.12, Assignment, states that the water purchase contract may not be assigned without the consent of both parties, except for certain three party agreements.

7:11-5.13, Withdrawal scheduling, details the procedures and requirements established by the Authority for water withdrawal.

7:11-5.14, Withdrawal limitation, prohibits a purchaser from withdrawing in excess of its water withdrawal schedule as required in 7:11-5.13. It also establishes procedures for prioritizing water withdrawal in the event that water rationing is required.

7:11-5.15, Withdrawal system, details the requirements for installing and constructing withdrawal apparatus, equipment, structures and facilities.

7:11-5.16, Meter requirements, establishes requirements for the use of flow meters by water purchasers.

7:11-5.17, Meter failure, sets forth the procedures which the Authority will follow in the event of meter malfunction. This includes estimating the amount of water withdrawn, ordering meter repair or replacement and ordering suspension of water withdrawal.

7:11-5.18, Meter readings, details the procedures for flow meter reading and appropriate record requirements.

7:11-5.19, Assistance to be furnished by purchaser, establishes the general requirement that the purchaser furnish such assistance as required by the Authority to monitor the implementation of the water purchase contract.

7:11-5.20, Water quality, stipulates the water withdrawn from the Manasquan Reservoir System is raw water and the Authority does not guarantee the quality of the water supplied. It also sets forth that the Authority will establish and maintain a system to monitor ground and surface water quality.

7:11-5.21, Disposition of facilities, details the procedures for disposition of all facilities installed by the purchaser after expiration of a water purchase contract.

#### Social Impact

The proposed new rules will have a positive social impact and effect. The proposed rules represent the Authority's efforts to ensure that the procedures for raw water allocated and withdrawn from the Manasquan Reservoir System are equitable to all purchasers.

The rules provide the basis for the use of the new Manasquan Reservoir System. This new surface water supply will provide a means for reducing the stress on the ground water resources of the region and provide a needed water supply to keep pace with the continuing growth in Monmouth County.

The new Manasquan Reservoir System will provide the region with an additional dependable water supply of 30 million gallons per day. Contracts have already been signed with 16 private and public water purveyors to provide water from this new system to approximately 145,000 residents of the region starting July 1, 1990.

When the full capacity of the system is reached, more than 300,000 residents will benefit from this new surface water source.

#### Economic Impact

The proposed new rules will have minimum economic impact. Certain nominal costs will be involved in applying for a supply of water from the system and in the preparation of a water purchase contract as well as in the day-to-day implementation of the proposed rules. A withdrawal meter must be obtained by the purchaser and daily readings are to be taken. Monthly usage reports must also be submitted to the Authority. While the Authority and the purchasers will incur direct and indirect costs in complying with the proposed rules, such costs are normal to the operation of water supply utilities and do not represent any significant additional expense.

The water rate schedule (to be proposed soon in the New Jersey Register at N.J.A.C. 7:11-4) will result in a total charge for raw water supply from the new Manasquan Reservoir Water Supply System of \$1,006 per million gallons starting July 1, 1990.

It is estimated that the impact of this proposed wholesale water rate on the typical household will amount to \$100.00 per year. The additional costs for treatment and distribution of the water which is to be provided by the public and private water purveyors who purchase their wholesale raw water supply from the Authority will vary with each system.

#### Environmental Impact

The proposed new rules are a necessary part of the operation of the new Manasquan Reservoir. This new water supply system will have a very important and positive environmental impact since its operation will reduce the stress on the valuable ground water resources of the region by providing an alternate surface water supply. By reducing the pumping of ground water, salt water intrusion will be limited and present ground water levels will not be further reduced.

The 30 million gallon per day water supply which the system will provide will help to ameliorate the urgent need to protect the region's threatened ground water resources from further depletion. In addition, the Manasquan Reservoir will provide for the protection of waterfowl and wildlife in the region through the construction of a 740 acre reservoir with several protected wetlands sites for the rearing of waterfowl and wildlife.

#### Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. the Department has determined that these rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses because these rules impact upon municipalities and major water purveyors, all of which fail to qualify as small businesses as defined in the Regulatory Flexibility Act.

Full text of the proposal follows:

### SUBCHAPTER 5. RULES FOR THE USE OF WATER FROM THE MANASQUAN RESERVOIR WATER SUPPLY SYSTEM

#### 7:11-5.1 Application for water supply

Application for withdrawal of water from the Manasquan Reservoir System shall be submitted to the New Jersey Water Supply Authority (Authority) on an "Application for Water Supply" form, copies of which will be furnished by the Authority upon request. Any application for water from the Manasquan Reservoir System shall be accompanied by a water allocation permit approval from the New Jersey Department of Environmental Protection, stating the specific amount which is to be allocated to the applicant.

#### 7:11-5.2 Definitions

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

"Authority" means the New Jersey Water Supply Authority established pursuant to N.J.S.A. 58:1B-1 et seq.

"Force Majeure" means acts of God, strikes, lockouts or other industrial disturbances, orders of the Government of the United States or the State or any agency or instrumentality thereof or of any civil or military authority, acts of terrorism, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, explosions, breakage or accidents to machinery, pipelines, dams or canals, partial or entire failure of water supply, arrests, civil disturbances, acts of any public enemy, and any other causes not reasonably within the control of the party claiming inability to timely comply with its obligations.

"Manasquan Reservoir System" means the water supply system constructed by the Authority in Monmouth County, the major components of which are a 740 acre, four-billion gallon reservoir facility in Howell Township, a raw water intake facility and pump station located adjacent to the Manasquan River in Wall Township, and a five mile transmission pipeline connecting the reservoir and the intake facility, together with all component plants, structures and other real or personal property, and additions and improvements thereto.

"Point of delivery" means the location where the Manasquan Reservoir System's delivery equipment interconnects with the purchaser's interconnection system.

"Purchaser" means the party who contracts with the Authority to purchase water from the Manasquan Reservoir System.

"Purchaser interconnection system" means the building, structures, piping, valves, meters and other control apparatus and equipment, to the extent located on properties or facilities owned by the Authority, to be installed by or on behalf of, and owned by, the purchaser to connect purchaser's water supply system with the Manasquan Reservoir System.

"Short-term service" means the supply of Manasquan Reservoir System water for interim or short-term uses, such as growing agricultural or horticultural products or meeting extraordinary requirements in consumer demand for potable water, provided on a non-guaranteed or interruptible basis.

"Standby service" means the supply of Manasquan Reservoir System water for certain occasional uses, such as fire protection or other emergencies, natural or otherwise.

"Uninterruptible service" means the supply of Manasquan Reservoir System water which the purchaser is authorized to continuously withdraw without interruption, for public water supply purposes.

#### 7:11-5.3 Water purchase contract

(a) Water shall be withdrawn from the Manasquan Reservoir System only in accordance with the terms of this subchapter and a formal water purchase contract between the Authority and the purchaser.

(b) The water purchase contract shall be executed by the purchaser within 60 days after transmittal by the Authority; otherwise, the application for water withdrawal shall be null and void.

#### 7:11-5.4 Rates, charges and debt service assessments

(a) The rates, charges and debt service assessments to be applied to water supplied from the Manasquan Reservoir System shall be the most current schedule of rates, charges and debt service assessments.

(b) The Authority reserves the right from time to time to adopt adjustments to the rate schedule in accordance with applicable laws and rules, including the public notice and hearing requirements and other requirements set forth in the rate schedule. If as a result of any such adjustments the annual payment for uninterruptible service is adjusted by the Authority subsequent to the notice given as provided in the rate schedule, the Authority shall notify the purchaser of the adjustment and of any revised schedule of quarterly water payments required to reflect such adjustment.

(c) The Operation and Maintenance Expense component of all rates shall be based upon point of delivery being located at the Authority's Manasquan River intake facility and any purchaser taking delivery of Manasquan Reservoir System water at a different point of delivery will be assessed an additional charge to cover additional operation and maintenance expense associated with establishment of and making delivery at such point of delivery. Such additional charges may include, but not be limited to, in the case of any purchaser establishing a point of delivery on the transmission

line between the Manasquan River intake facility and the reservoir, an additional charge to cover the cost of pumping water to the reservoir to replace water delivered from the reservoir to such purchaser.

#### 7:11-5.5 Payments

(a) The purchaser shall pay the Authority for all raw water taken from the Manasquan Reservoir System in accordance with the most current rate schedule.

(b) The purchaser shall make quarterly water payments for uninterrupted service not later than the 10th day of January, April, July and October in each year with respect to the calendar quarter ending on the last day of the immediately preceding month.

(c) Except as provided in (d) below, payments for uninterrupted service made with respect to all quarters of the same fiscal year shall be equal whether or not:

1. The purchaser elected to utilize the optional water use schedule as defined in the water purchase contract; or

2. The purchaser actually withdraws the full amount of water available pursuant to uninterrupted service.

(d) The purchaser is not required to make payment to the extent that the Authority does not make water available under such uninterrupted service (whether by reason of rationing or otherwise) except for an event of default by the purchaser. In all other cases, purchaser's obligations under the terms of the water purchase contract are absolute and unconditional, and shall not, except as expressly provided for under the terms of the water purchase contract, be affected by fluctuations in consumptive use by purchaser's customers or by any failure by the Authority to perform its obligations under the water purchase contract or be subject to any other defense or to any reduction, whether by offset, counterclaim or otherwise except for any reductions or credits provided for in the water purchase contract or in the most current rate schedule or this subchapter.

(e) The Authority shall notify the purchaser not later than 30 days prior to the beginning of each annual payment period as defined in the rate schedule or the water purchase contract of the amount of the purchaser's annual payment for uninterrupted service and, if the Authority determines that the quarterly water payments under the water purchase contract should be made on a basis other than in equal installments, in order to permit the Authority to meet its obligations as they become due, it shall, concurrently with such notice, provide the purchaser with a schedule of the amounts of each of the quarterly water payments to be made by the purchaser.

(f) Payment for water provided to purchaser pursuant to either short-term service or standby service as defined in N.J.A.C. 7:11-5.2 or the water purchase contract, as well as for any other charges payable by reason of excessive withdrawals, shall be made within 30 days following receipt of the Authority's invoice therefore and shall be based upon Manasquan Reservoir System water actually consumed, or in the case of standby service, the demand charge referred to in the rate schedule.

(g) Payments shall be made as billed, at such place as the Authority may designate.

(h) All amounts not paid when due shall be subject to a late payment charge at two percent above the prime rate of the First Fidelity Bank, N.A., prevailing on the due date, but not to exceed 18 percent per annum, from the date when due until paid.

(i) Unless otherwise provided in the water purchase contract, any payment, notice, communication, request, reply or advice to be provided or permitted to be given, made or accepted by the Authority or purchaser to each other shall be given or be served either by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified.

1. Notice deposited in the mail in the manner described in paragraph (i) above shall be conclusively deemed to be effective, from and after the expiration of three days after it is so deposited.

2. Notice given in any other manner shall be effective only if and when received by the party to be notified.

#### 7:11-5.6 Sale of excess water

(a) The purchaser may notify the Authority that for a period of not less than 60 days nor more than one year (surplus period) specified amounts of water available to it under the uninterrupted service provided for in the water purchase contract (surplus water) will be surplus to the needs of the purchaser, which notice shall be given not less than 30 days nor more than 90 days prior to commencement of the surplus period.

(b) Following receipt of such notice, the authority shall notify each other purchaser of the availability for purchase of the surplus water (and any surplus water under any other water purchase contract) on the same basis as provided for short-term service in the most current rate schedule.

(c) To the extent that the Authority shall receive purchase requests from purchasers for surplus water (which are in addition to and not in substitution for purchases of water on a short-term service or standby service basis under existing water purchase contracts), it will use its best commercially reasonable efforts to provide such surplus water (on a pro rated basis if other surplus water is also available) to such purchasers.

(d) The Authority shall pay over to the purchaser, or credit against the amounts due or to become due from the purchaser under the water purchase contract, the amounts received from the sale of the surplus water arising under the water purchase contract after first deducting therefrom all costs and expenses (pro rated as appropriate) incurred by the Authority in carrying out this section.

#### 7:11-5.7 Peak demand

(a) The water purchase contract shall specify the uninterrupted service which will be provided in terms of million gallons per day (mgd). This represents the maximum amount to be withdrawn in any 24 hour period except as otherwise permissible under the optional water use schedule.

(b) The maximum permitted withdrawal rate shall be specified by the Authority in the water purchase contract.

#### 7:11-5.8 Period of contract

(a) The effective date, period of contract, and date of commencement of charges shall be set forth in the water purchase contract.

(b) The water purchase contract shall expire at the end of the specified upon period, except as to those matters set forth at N.J.A.C. 7:11-5.9 and 5.10.

#### 7:11-5.9 Renewal

(a) If the Department of Environmental Protection approves an apportionment of Manasquan Reservoir System water to the purchaser for an additional period beyond the term of the expiring water purchase contract, the purchaser shall immediately give notice to the Authority.

(b) If the purchaser desires to continue withdrawal of water from the Manasquan Reservoir System beyond the expiration date specified in the current water purchase contract, the purchaser shall submit to the Authority notification of intent to renew not less than 90 days in advance of the expiration date of the current water purchase contract.

(c) If the purchaser has not submitted a notification of intent to renew as provided in (b) above, the Authority shall notify the purchaser of the expiration date of the water purchase contract. If, after such notification by the Authority, the purchaser continues withdrawal, the charge for such withdrawal will be twice the rate per million gallons as specified in the Authority's rate schedule in effect at that time.

#### 7:11-5.10 Temporary curtailment or suspension of service

In the event of an emergency, natural or otherwise, and where practicable, after public notice and hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Authority may temporarily curtail or suspend the purchaser's withdrawal of water from the Manasquan Reservoir System, in which event purchaser's payment obligation shall be reduced as provided in N.J.A.C. 7:11-5.5.

## 7:11-5.11 Force Majeure

(a) If by reason of Force Majeure either the Authority or purchaser shall be rendered unable wholly or in part to satisfy its obligations under the water purchase contract, the obligation of that party, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed.

(b) The party claiming to be affected by the Force Majeure shall provide the other party with written notice of the facts and circumstances of the Force Majeure and how they impact upon contract performance.

(c) The existence of an element of Force Majeure shall in no event affect the obligation of the purchaser to make the quarterly water payments and other payments required under the water purchase contract (subject to the provisions of N.J.A.C. 7:11-5.5(b)), but nothing in this subchapter shall require the purchaser to make any payment for water which the Authority does not make available to the purchaser.

## 7:11-5.12 Assignment

(a) Neither party to the water purchase contract may assign its contractual rights or obligations without the consent of the other party or parties entitled to the benefit of such rights or obligations except for any assignment by a purchaser under the terms of a three party water purchase contract to New Jersey-American Water Company, Inc.

(b) In the case of New Jersey-American Water Company, Inc., upon any such assignment, and the delivery to the Authority of an instrument of assumption of the liabilities of the purchaser by New Jersey-American Water Company, Inc., the purchaser shall be relieved of all further liability under the terms of the water purchase contract.

## 7:11-5.13 Withdrawal scheduling

(a) Prior to withdrawal of Manasquan Reservoir System water, the purchaser shall submit in writing to the Authority a schedule for the normal withdrawal of water from the Manasquan Reservoir System, presented in terms of instantaneous withdrawals of water at specified gallons per minute and gallons per daily period.

(b) If the purchaser elects to utilize the optional water use schedule, it shall submit to the Authority the water use plan required by the optional water use schedule.

(c) The purchaser shall notify the Authority 48 hours in advance of any proposed departure from said schedule or plan.

(d) If an unanticipated emergency, natural or otherwise, necessitates the withdrawal of more water than contemplated by said schedule or plan, purchaser shall promptly notify, and to the extent feasible, secure prior approval of the Authority and notify the Authority of the proposed time of resumption of normal consumption.

(e) If the purchaser fails to notify the Authority, purchaser shall reimburse the Authority for any loss or expense occasioned thereby.

## 7:11-5.14 Withdrawal limitation

(a) The purchaser shall not withdraw any quantity of water on any day in excess of the amount in the schedule or plan submitted to the Authority pursuant to N.J.A.C. 7:11-5.13.

(b) The purchaser shall not, without the consent of the Authority, withdraw water at rates greater, in the aggregate for all supplies provided under the water purchase contract, than the maximum gallons per minute and total gallons in any daily period, as specified in the water purchase contract. These amounts shall be appropriately adjusted to reflect fluctuations in water use permissible under the optional water use schedule.

(c) The purchaser shall not withdraw any water under short-term service provisions of the water purchase contract without first giving notice to the Authority of its proposed utilization of the short-term service, and receiving approval for such utilization from the Authority, in accordance with the procedures established in N.J.A.C. 7:11-5.13.

(d) Subject to the provisions of uninterruptible service and/or short-term service as specified in the water purchase contract, purchaser may withdraw water under standby service without prior notification to the Authority.

(e) If the Authority determines that rationing Manasquan Reservoir System water is necessary by reason of drought conditions (the existence of which shall be determined in compliance with all applicable provisions of law) or a Manasquan Reservoir System emergency, it shall allocate all available water first to providing uninterruptible service under all water purchase contracts, without any preference or priority based on date of entry into the water purchase contract or commencement of service thereunder, at the Authority's election in accordance with the following:

1. Pro rata in accordance with the volume of water available to each system water purchaser under the uninterruptible service provided for in the relevant water purchase contract;

2. Pro rata in accordance with the volume of water actually provided each system water purchaser during the last preceding annual payment period in which rationing of water was not necessary; or

3. Upon such other basis as shall be, in the judgment of the Authority, appropriate to distribute equitably among all system water purchasers the burden of such rationing.

(f) In the event that rationing is to be imposed by reason of a Manasquan Reservoir System emergency for more than a seven day period, the Authority shall act in accordance with the requirements of the Department of Environmental Protection.

(g) If such rationing is instituted, or if in fact the Authority does not provide the amount of water called for in the water purchase contract, or advises the purchaser that it will be unable to do so, the purchaser may procure replacement water from other sources but shall nevertheless at all times be required to pay for all water available for delivery to the purchaser from the Manasquan Reservoir System on an uninterruptible service basis, except to the extent that purchaser is required, in order to obtain replacement water, to contract for more replacement water than the amount of the curtailment imposed by the Authority.

(h) Purchaser shall notify the Authority of the terms upon which it arranges for such alternate supply of water.

## 7:11-5.15 Withdrawal system

(a) Water shall be withdrawn from the Manasquan Reservoir System at purchaser's sole cost and expense. Title to all water supplied from the Manasquan Reservoir System shall be in the Authority up to the point of delivery, at which point title shall pass to the purchaser upon its withdrawal of such water.

(b) The Authority shall grant to the purchaser an easement for the term of the water purchase contract permitting access for the purchaser's staff and equipment upon, over and under Manasquan Reservoir System property as may be necessary to install and construct the purchaser's interconnection system at the point of delivery and on adjoining Manasquan Reservoir System property at or near the point of delivery, and to replace, repair, operate and maintain purchaser's interconnection system, all at purchaser's sole cost and expense.

(c) Purchaser shall submit its engineering plans for purchaser's interconnection system to the Authority and shall commence construction of such interconnection system as soon as final approval of such plans by the Authority. Purchaser shall allow the Authority to test the interconnection system prior to operation of the interconnection system. Failure to complete construction of the purchaser's interconnection system shall not affect the obligation of purchaser to make the quarterly water payments and the other payments provided for under the water purchase contract.

(d) The purchaser shall make no material alterations in purchaser's interconnection system without the prior written approval of the Authority.

(e) The purchaser shall make such changes in its withdrawal system as may from time to time be ordered in writing by the Authority.

(f) The Authority or its designated representative shall have the right at any time to examine purchaser's interconnection system. The purchaser shall, at its sole cost and expense, within 10 days (or such longer period as may be required by law) after receipt of written demand from the Authority, make such modifications or repairs to purchaser's interconnection system as, in the opinion of the Authority, may be required to eliminate leakage of water from, or

potential damage to, the System. On purchaser's failure to do so the Authority may make such modifications and repairs and the purchaser shall reimburse the Authority promptly after demand for the Authority's cost and expense in so doing.

7:11-5.16 Meter requirements

(a) The purchaser shall purchase or construct, install, operate, maintain and repair, as part of purchaser's interconnection system, at its sole cost and expense, a flow meter or measuring device of a type and in a location approved by the Authority.

(b) The purchaser shall have said flow meter tested for accuracy at its own sole cost and expense before installation, by a testing firm approved by the Authority, and shall furnish a certified report of such test to the Authority.

(c) The purchaser shall have such test repeated and furnish a report of said test to the Authority:

1. At least once each year no later than the anniversary date of the meter installation;
2. Following meter repairs; and
3. At such other reasonable times as the Authority may reasonably request at purchaser's sole cost and expense.

(d) In the event that any test required pursuant to (c)3 above establishes that the meter does not vary more than two percent from actual, such test shall be at the sole cost and expense of the Authority.

(e) In the case of a joint allocation to be operated through a single agent designated as the purchaser, there shall be provided by the purchaser in addition to the meter at the point of withdrawal, meters to measure the distribution to each of the several parties to the allocation.

7:11-5.17 Meter readings

(a) The purchaser shall meter all water withdrawn from the Manasquan Reservoir System.

(b) Monthly meter readings shall be taken by the purchaser on the last day of each month, unless otherwise approved by the Authority, or if that day falls on Sunday or a legal holiday, on the first working day thereafter.

(c) The purchaser shall keep a daily record of flow rates and cumulative daily water withdrawal totals and shall submit to the Authority, not later than the tenth business day of each such month, copies of such records for the preceding month.

(d) The Authority or its designated representative shall have the right at any time to examine the flow meter or other measuring device and the above mentioned records, as well as to order tests pursuant to N.J.A.C. 7:11-5.16, and repairs or replacements pursuant to N.J.A.C. 7:11-5.18.

7:11-5.18 Meter failure

(a) In the event of meter malfunction involving variances greater than two percent from actual, the Authority may estimate the amounts of water actually withdrawn and base charges upon such estimates rather than meter readings, without prejudice to the right of the purchaser in the event of any dispute to pursue any legal remedy in connection therewith. Such estimates shall be based on the purchaser's average daily withdrawals, with due consideration of the scale of plant operation before and during the breakdown period, or on such other method as the Authority shall select.

(b) In the event of repeated or prolonged failure of any meter or measuring device to operate properly, the purchaser shall, upon Authority order, repair or replace the meter or other measuring device at the purchaser's cost and expense.

(c) In the event of failure of the purchaser to comply with the order set forth in (b) above, the Authority may order suspension of withdrawal until the faulty meter or other measuring device has been repaired or replaced provided that such suspension shall not excuse the purchaser from payment of charges set forth in the applicable rate schedule.

7:11-5.19 Assistance to be furnished by purchaser

The purchaser, at his or her own expense, shall furnish the Authority such assistance as it may require for the purpose of examining the purchaser's withdrawal system, making meter tests, taking

samples, or performing other duties in connection with the water purchase contract.

7:11-5.20 Water quality

(a) The water to be supplied by the Authority shall be raw, untreated water which the Authority shall supply to all system water purchasers without distinction as to source or quality of the water supplied.

(b) The Authority shall establish and maintain a system, of such design as the Authority shall, in its sole discretion, deem appropriate, to monitor the water quality of ground water and surface water from which Manasquan Reservoir System water is derived and to provide the information derived from such system to the purchaser.

(c) Water withdrawn for potable use shall be treated by the purchaser to meet the standards contained in N.J.A.C. 7:10.

7:11-5.21 Disposition of facilities

Within 90 days after termination of the water purchase contract or such longer period as may reasonably be required, the purchaser shall remove from Manasquan Reservoir System property purchaser's interconnection system and any other facilities installed by purchaser on Manasquan Reservoir System property, and shall restore said property to its former condition as nearly as may be and in a manner satisfactory in the reasonable judgment of the Authority and shall release and reconvey any easement granted pursuant to N.J.A.C. 7:11-5.15. On purchaser's failure to do so, the authority may make such removal and restoration at the sole cost and expense of the purchaser, which cost and expense the purchaser agrees to pay on demand. The Authority also reserves the option to sell purchaser's interconnection system and other facilities to assist in defraying the cost and expense of removal and restoration. Purchaser may, within 30 days after termination of the water purchase contract, submit a written offer to sell or donate such systems and/or facilities to the Authority, which the Authority shall accept or reject in writing within 60 days.

(a)

**DIVISION OF HAZARDOUS WASTE MANAGEMENT  
Exclusion for Treatability Studies**

**Proposed Amendments: N.J.A.C. 7:26-1.4, 7.4, and 8.2**

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

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 050-89-10.

Proposal Number: PRN 1989-629.

Submit written comments by February 2, 1990 to:

Daren R. Eppley, Esq.  
Division of Regulatory Affairs  
New Jersey Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The New Jersey Department of Environmental Protection (Department) is proposing to amend N.J.A.C. 7:26-1.4, 7.4, and 8.2 to exempt testing facilities conducting treatability studies and specific quantities of hazardous waste sent for treatability studies from certain hazardous waste management rules. Amendments addressing the same topic were initially pre-proposed as "Hazardous Waste Research and Testing Facilities" (see 20 N.J.R. 460(b), March 7, 1988). However, shortly after this pre-proposal, the United States Environmental Protection Agency (EPA) promulgated regulations on the same topic (see 53 Fed. Reg. 27,292, July 19, 1988). Thereafter, the Department decided to draft this rule proposal in a manner consistent with the Federal regulations and not, therefore, based upon the pre-proposal. These amendments are not required by the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq. However, if the State elects to seek authorization for this part of the RCRA program, the State must demonstrate its rules are

equivalent to or more stringent than the Federal regulations. These rule amendments will be equivalent to the Federal regulations for treatability studies.

Previously, in order to receive hazardous wastes, a testing facility would have to be permitted, or have existing facility status as a treatment, storage or disposal (TSD) facility, or qualify for the sample testing exemption at N.J.A.C. 7:26-8.2(a)12. The sample testing exemption can be applied only to "[s]amples of solid waste or water, soil, or air, which are collected for the sole purpose of testing to determine their characteristics or composition." This limited the availability of treatability testing for hazardous wastes. Generators may have been reluctant to seek out innovative methods of hazardous waste treatment since they could not be certain their wastes would be amenable to a particular form of treatment. The proposed exemption would help alleviate this problem and encourage innovative treatment methods.

Since the sample quantity tested under these amendments will be limited, the Department believes that this exemption for testing facilities will present a minimal environmental risk. In addition, the cost of shipping samples and the quantity limitations for storage and testing at a testing facility will also minimize the environmental risks associated with handling these materials. According to the EPA's introduction to its treatability studies exemption at 53 Fed. Reg. 27,292 (July 19, 1988), the cost of conducting legitimate treatability studies as an alternative to conventional treatment or disposal will be prohibitive. This cost differential will also help prevent treatability studies from being used as a means to dispose of large quantities of hazardous wastes. Moreover, the definition of treatability study will specifically state that such a study is not a means to commercially treat or dispose of hazardous waste.

The amendment at N.J.A.C. 7:26-1.4 would add the definition "treatability study" to define the scope of the exclusions at N.J.A.C. 7:26-8.2(a)22 and 23.

The amendment at N.J.A.C. 7:26-7.4(g) will add reporting requirements for testing facilities receiving the exclusion at N.J.A.C. 7:26-8.2(a)23. This section is also being amended to clarify generator reporting requirements.

The amendment at N.J.A.C. 7:26-8.2(a)22 will exclude generators and sample collectors from certain hazardous waste management rules during the collection, preparation and transportation of samples sent for treatability studies. No more than 1,000 kilograms (kg) of non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water or debris contaminated with an acute hazardous waste may be sent for treatability studies for each generated waste stream.

Samples will have to be safely packaged for shipment so that they will not leak, spill or vaporize in transit. Each sample will have to be transported in compliance with all applicable transportation requirements such as those for the United States Department of Transportation (DOT) or United States Postal Service (USPS). If the waste is not subject to DOT, USPS or other shipping requirements, then the generator or sample collector will have to comply with the shipping requirements at N.J.A.C. 7:26-8.2(a)22ii(3)(B). Samples can be sent only to a facility excluded under N.J.A.C. 7:26-8.2(a)23 or to a TSD facility permitted under N.J.A.C. 7:26-12 or which has existing status under N.J.A.C. 7:26-12.3. Generators and sample collectors will have to keep records of wastes sent for treatability studies for a minimum of three years after the completion of the study. Under certain circumstances, it will be possible for the Department to grant variances from the quantity limitations specified in the rule. In petitioning the Department for such a variance, the generator or sample collector will have to explain why additional quantities of waste are necessary, describe what different parameters (if any) will be evaluated, and provide documentation for all previous sample shipments of that waste.

The amendment at N.J.A.C. 7:26-8.2(a)23 will exclude testing facilities performing treatability studies from certain hazardous waste management regulations. However, hazardous waste management activities beyond the scope of the treatability studies exclusion will continue to be fully regulated.

To qualify for this exclusion, a testing facility intending to conduct treatability studies will have to notify the Department at least 45 days prior to beginning any studies. In addition, the testing facility will have to obtain an EPA identification number. A testing facility could not initiate treatment studies on more than a total of 250 kg of hazardous waste per day or store more than 1,000 kg of hazardous waste for treatability studies at any time, including not more than one kg of acute hazardous waste or 500 kg of soil, water or debris contaminated with acute hazardous waste from all sources. A sample can be kept no longer than the lesser of one year from the date of shipment by the generator

or 90 days following completion of the study. Treatability studies can not include open burning or placing hazardous waste on the land. A testing facility would have to retain, on the premises, copies of all contracts with generators to conduct treatability studies and all associated shipping papers for at least three years after the completion of the study. A testing facility conducting treatability studies under this exclusion will be required to submit an annual report to the Department covering the previous year's activities as well as projections of the activities for the present year and the time period prior to the reporting deadline.

Unused hazardous waste samples and hazardous waste residues from treatability studies will have to be managed as hazardous waste by the testing facility or returned to the originator. A testing facility intending to discontinue its treatability study activities will have to notify the Department.

#### Social Impact

There will be a positive social impact from these amendments. They will encourage the use of new and innovative treatment methods. This can lead to the development of additional treatment alternatives, which are needed to assure adequate capability to manage hazardous wastes as more traditional options, such as land disposal, become less available.

#### Economic Impact

There will be a positive economic impact from these amendments. These amendments will make it possible for generators to have hazardous wastes tested for suitability for various treatment processes without having to send these wastes to a TSD facility. In the alternative, these hazardous wastes may continue to be sent to a TSD facility for such testing. Likewise, facilities performing treatability studies on limited amounts of wastes will not have to engage in the necessary, but costly, process of obtaining a TSD facility permit. The Department believes these amendments contain adequate safeguards to prevent abuse of this exclusion. The Department also anticipates that the discovery and/or development of innovative treatment alternatives may have a substantially positive economic impact by creating less costly disposal.

#### Environmental Impact

There will be a positive environmental impact from these amendments. These amendments will make it easier for generators to explore the use of innovative treatment possibilities which may decrease their reliance on more traditional disposal options, such as landfilling. As disposal methods, such as land disposal, become unavailable, it will be necessary to find new means of treatment and disposal or new applications of old treatment methods to ensure adequate hazardous waste management capacity. These amendments will encourage the pursuit of new and innovative treatment possibilities, thereby limiting adverse impacts to the environment in connection with the treatment of hazardous wastes.

#### Regulatory Flexibility Analysis

These amendments will apply to testing facilities conducting treatability studies on hazardous waste. It is estimated that most of those businesses impacted by these amendments are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these amendments, the small businesses will have to comply with the requirements set forth in the summary above. In doing so, it is likely small businesses will need staff and equipment to comply with the recordkeeping and reporting requirements. However, the Department believes these amendments are less costly for this class than requiring this type of facility to become a permitted TSD facility as is currently required. In developing these amendments, the Department has balanced the need to protect human health and the environment against the economic impact of the proposed amendments and has determined that to minimize the impact of the rule would endanger public health and safety and the environment; therefore, no exemption from coverage is provided.

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

#### 7:26-1.4 Definitions

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

...  
**"Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:**

1. Whether the waste is amenable to the treatment process;
2. What pretreatment (if any) is required;

3. The optimal process conditions needed to achieve the desired treatment;

4. The efficiency of a treatment process for a specific waste or wastes; or

5. The characterization and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of N.J.A.C. 7:26-8.2(a)22 and 23 exclusions are liner compatibility, corrosion, other material compatibility studies, and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste and does not involve the placement of hazardous waste on land or open burning of hazardous waste.

#### 7:26-7.4 Hazardous waste generator responsibilities

(a)-(f) (No change.)

(g) Annual reporting requirements are as follows:

1. The hazardous waste generator shall submit to the Department by March 1 of each year a report of manifest activities during the previous calendar year. The report shall be on forms approved by the Department and shall include the following information:

i. Generator's name, address, and EPA identification number; and  
ii. [Designated] Each designated facility's name, address, and EPA identification number [;] and the following information for each designated facility:

(1) For each hazardous waste sent, a description of the waste, DOT hazardous class, EPA or State hazardous waste number, total annual amount, and unit of measure; and

iii. [Hauler's] Each transporter's name, address, and EPA identification number; and

[iv. Designated facility name and address; and

v. Waste identification, describing the total annual amount each waste shipped to the facility identified in subparagraph 7.4(g)lii above; and

vi. Description of waste; and

vii. DOT hazardous class; and

viii. EPA hazardous waste number; and

ix. Amount of waste; and

x. Unit of measure;]

[xi.-xvi.] iv.-ix. (No change in text.)

[xvii.] x. The New Jersey Department of Environmental Protection Hazardous Waste Generator Annual Report certification signed by the generator or authorized representative[.]; and

xi. In accordance with N.J.A.C. 7:26-8.2(a)22v, information on waste sent for treatability studies.

2.-4. (No change.)

(h)-(j) (No change.)

#### 7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-21. (No change.)

22. Subject to the following conditions, samples collected for the purpose of conducting a treatability study, defined at N.J.A.C. 7:26-1.4, or treatability study residues returned to the sample originator are not subject to the requirements of N.J.A.C. 7:26-7.1 through 7.5 and N.J.A.C. 7:26-8. Samples collected for the purpose of conducting a treatability study are not included in quantity determinations under N.J.A.C. 7:26-8.3 (small quantity generator). However, treatability study residues or unused samples once returned to the generator or sample collector are specifically not excluded and are subject to the requirements of N.J.A.C. 7:26-7.1 through 7.5 and N.J.A.C. 7:26-8.

i. The samples are accumulated, stored, and prepared for transport by the generator or sample collector; the samples are not stored longer than 90 days prior to transport; and the samples are transported to a testing facility which conducts treatability studies;

ii. The exclusion in this paragraph is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting a treatability study provided that:

(1) The generator or sample collector uses (in "treatability studies") no more than 1,000 kg of any non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated

with acute hazardous waste for each process being evaluated for each generated waste stream;

(2) The mass of each sample shipment does not exceed 1,000 kg of non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste; and

(3) The sample is packaged so that it does not leak, spill, or vaporize from its package during shipment;

(A) The transportation of each sample shipment shall comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

I. The name, mailing address, and telephone number of the originator of the sample;

II. The name, address, EPA identification number and telephone number of the testing facility that will perform the treatability study;

III. The quantity of the sample;

IV. The date of shipment; and

V. A description of the sample, including its EPA Hazardous Waste Number;

iii. The sample is shipped to a testing facility meeting the requirements of N.J.A.C. 7:26-8.2(a)23 or to a hazardous waste treatment, storage, or disposal facility which is either permitted under N.J.A.C. 7:26-12 or has existing status under N.J.A.C. 7:26-12.3, or to an out-of-State facility meeting the equivalent regulations in the receiving state;

iv. The generator or sample collector maintains the following records for a period of at least three years after completion of the treatability study:

(1) Copies of the shipping documents;

(2) A copy of the contract with the facility conducting the treatability study; and

(3) Documentation showing:

(A) The amount of waste shipped under this exemption;

(B) The name, address, and EPA identification number of the facility to which the shipment was sent;

(C) The date the shipment was made; and

(D) The amount of unused samples and residues returned to the generator;

v. The generator reports the information required under (a)22iv(3) above as part of its annual report; and

vi. The Department may grant variances for samples collected in New Jersey, on a case-by-case basis, for quantity limits in excess of those specified at (a)22ii above. A variance may be granted for up to an additional 500 kg of non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste, except the variance may exceed these quantity limits where the material is not considered a hazardous waste under the Federal regulations at 40 C.F.R. Pts. 260 and 261, but is considered a hazardous waste under the New Jersey rules. Additional quantities granted by a variance are subject to the provisions of N.J.A.C. 7:26-8.2(a)22. The following limitations shall also apply:

(1) The Department may grant a variance only:

(A) Where an equipment or mechanical failure has occurred during the conduct of a treatability study;

(B) To verify results of a previously conducted treatability study;

(C) To study and analyze alternative techniques within a previously evaluated treatment process; or

(D) Where further evaluation of an ongoing treatability study is necessary to determine final specifications for treatment; and

(2) The generator or sample collector requesting a variance under this paragraph shall submit the following written information to the Department:

(A) The reason the generator or sample collector requires an additional quantity of sample for the treatability study evaluation;

(B) The additional quantity needed;

(C) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including, for each previous sample from the waste stream,

the date and quantity of shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(D) A description of the technical modifications or changes in specifications which will be evaluated and the expected results;

(E) If additional quantities are being requested due to equipment or mechanical failure, specific information regarding the reason for the failure and a description of what procedures or equipment improvements have been made to protect against further failures; and

(F) Such additional information as the Department deems necessary. The Department may return, reject, or refrain from acting on, a variance request for which it deems additional information necessary until such information is submitted.

23. Samples undergoing treatability studies and the testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to the requirements of N.J.A.C. 7:26-7 through 12, provided the following conditions are met:

i. No less than 45 days prior to conducting treatability studies, the testing facility notifies the Department, in writing, that it intends to conduct treatability studies under N.J.A.C. 7:26-8.2(a)23;

ii. A testing facility conducting treatability studies has an EPA identification number;

iii. No more than a total of 250 kg of "as received" hazardous waste, that is, the waste as it is received in the shipment from the generator or sample collector, shall be subjected to initiation of treatment in all treatability studies in any 24 hour period;

iv. The quantity of "as received" hazardous waste stored at the testing facility for the purpose of evaluation in treatability studies, from all sources, shall not exceed 1,000 kg, the total of which can include not greater than 500 kg of soils, water, or debris contaminated with acute hazardous waste or one kg of acute hazardous waste. This quantity limitation does not include:

(1) Treatability study residues; and

(2) Treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste;

v. No more than 90 days have elapsed since the treatability study for the sample was completed or no more than one year has elapsed since the generator or sample collector shipped the sample to the testing facility, whichever date occurs first, without the hazardous waste and residues being either manifested to a designated hazardous waste facility or returned to the originator of the sample;

vi. The treatability study does not involve the placement of hazardous waste on land or open burning or hazardous waste;

vii. The testing facility retains records, on the premises for three years following completion of each study, that show compliance with the limitations for treatment rate, storage time, and quantity, including the following specific information for each treatability study conducted:

(1) The name, address and EPA identification number of the generator or sample collector of each waste sample;

(2) The date the shipment was received;

(3) The quantity of waste received, including a description of the waste;

(4) The quantity of "as received" waste in storage each day;

(5) The date the treatment study was initiated and the amount of "as received" waste introduced into treatment each day;

(6) The date the treatability study was concluded;

(7) The shipping papers including information for date, amount, and description for any unused sample or residues generated from the treatability study returned to the generator or sample collector or, if sent to a designated facility, the date, the name of the facility, its EPA identification number, and a copy of the manifest; and

(8) A copy of the treatability study contract;

viii. The facility prepares and submits a report to the Department by March 1 of each year that estimates the number of studies and amount of waste expected to be used in treatability studies during the current calendar year and through March 1 of the following year, and includes the following information for the previous calendar year:

(1) The name, address, and EPA identification number of the testing facility conducting the treatability studies;

(2) The types, by process, of treatability studies conducted;

(3) The name, address, and EPA identification number of each person for whom studies have been conducted;

(4) The total quantity of waste in storage each day;

(5) The quantity and types of waste subjected to treatability studies;

(6) The date each treatability study was started and completed or expected to be completed; and

(7) The final disposition of residues and unused sample from each treatability study;

ix. The testing facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under N.J.A.C. 7:26-8. If so, then such hazardous wastes are fully regulated under N.J.A.C. 7:26, unless the residues and unused samples are returned to the sample originator, in accordance with the shipping standards at (a)22ii(3) above, under the exclusion at (a)22 above;

x. The testing facility notifies the Department in writing when it is no longer planning to conduct treatability studies at the site; and

xi. The Department, initially or upon review, after considering the competency, reliability and integrity of the owner or operator, has determined that the facility or operation thereof does not pose a threat to the environment.

## HEALTH

### (a)

#### PARENTAL AND CHILD HEALTH SERVICES

##### Notice of Public Hearing Newborn Biochemical Screening

##### Proposed New Rules: N.J.A.C. 8:19-2

Take notice that a public hearing will be held on the proposed new rules for Newborn Biochemical Screening, which was published in the New Jersey Register of November 20, 1989. This public hearing will be held in conjunction with the proposed readoption of the rules for Fees for Licensure of Clinical Laboratories and Laboratory Charges, which is published elsewhere in this issue of the New Jersey Register.

The public hearing will be held on January 5, 1990, beginning at 10 A.M. at the Department of Health, Health Agriculture Building, Board Room, 1st Floor, John Fitch Plaza, Trenton, New Jersey.

### (b)

#### DIVISION OF PUBLIC HEALTH AND ENVIRONMENTAL LABORATORIES

##### Clinical Laboratory Services Fees for Licensure of Clinical Laboratories; Laboratory Charges

##### Proposed Readoption with Amendments: N.J.A.C. 8:45

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,  
Department of Health.

Authority: N.J.S.A. 45:9-42.30 and 26:1A-33.

Proposal Number: PRN 1989-640.

A public hearing on the proposed readoption with amendments will be held on January 5, 1990 at 10 A.M. at:

Health and Agriculture Building  
Board Room, 1st Floor  
John Fitch Plaza  
Trenton, New Jersey

Submit written comments by January 3, 1990 to:  
Shahiedy I. Shahied, Ph.D., Assistant Commissioner  
State Department of Health, Room 400  
CN 360  
Trenton, N.J. 08625-0360

The agency proposal follows:

**Summary**

The New Jersey Department of Health has historically provided public health and clinical laboratory improvement services to assure that all residents of New Jersey have access to quality, efficient and cost effective analytical laboratory services. These services are technologically complex to perform and require specially trained staff as well as special and expensive technical equipment and reagents.

The current Clinical Laboratory Services rules and laboratory charges (fee-for-service) are scheduled to expire on May 20, 1990, pursuant to Executive Order No. 66(1978). In order to avoid expiration of those rules and to maintain the current level of quality and cost effectiveness in laboratory services, the re-adoption of this chapter and the inclusion of new laboratory proficiency testing charges is proposed.

The last rule adoption relating to laboratory services was May 20, 1985. The New Jersey State Department of Health is responsible for the licensure and inspection of all clinical laboratories in New Jersey. Under these rules, highly trained professionals inspect laboratory facilities to assure testing proficiency. Currently the rules provide for the following:

- Subchapter 1. Licensure of Clinical Laboratories
- N.J.A.C. 8:45-1.1 Initial licensure of clinical laboratory
- N.J.A.C. 8:45-1.2 Annual renewal of licensure
- N.J.A.C. 8:45-1.3 Licensure fees

It is proposed that these rules be re-adopted with no changes.

In addition, the Health Department administers a detailed proficiency testing program through which it mails analytical specimens to clinical laboratories for performance evaluation. This is a critical service necessary for the Department to monitor the analytical testing proficiency of clinical laboratories throughout the State. The materials necessary to provide such services (that is, reagents, blood gases, mailing materials, etc.) have become increasingly more expensive. Proposed new rule N.J.A.C. 8:45-1.4 will establish a fee structure to charge laboratories by analytical discipline for participation in the State's proficiency program.

In the area of analytical laboratory services, the Department of Health provides a wide range of testing services applicable to both the general population and specifically to newborns in New Jersey. Through this testing, diseases of public health importance are either identified or confirmed. These diseases have enormous impact on the health of the citizens of New Jersey as well as long-term health care which would be required if such diseases are not identified and remedial action followed. Sophisticated new instrumentation which allows for more rapid and accurate diagnosis and the increasing costs of laboratory reagents and supplies require the costs for such services to be increased. In addition, in such clinically significant areas as Lyme Disease and Sickle Cell, the Department is offering new analytical services of public health importance.

The Department is proposing to re-adopt N.J.A.C. 8:45-2.1, Fees; generally, with amendment in order to adjust the fees already established and to designate fees for tests not previously offered, in order to be able to maintain this critical public service.

**Social Impact**

The Division of Public Health and Environmental Laboratories has historically provided quality Clinical Laboratory Improvement Services and Public Health Laboratory Services to New Jersey citizens and clinical laboratories for many years. These services are made available to help ensure that the citizens of New Jersey are provided with accurate and current laboratory services.

The benefit of these laboratory services will be realized by clinical laboratories, physicians, clinicians and the general public from newborns to adults. The Clinical Laboratory Improvement Program is designed to monitor the quality of private and hospital laboratory analyses while the Public Health Laboratory Services provide actual analytical testing. Many of these analytical activities are new initiatives such as Lyme Disease and Sickle Cell analysis that affect all populations from newborns through adults.

As a result of these Division activities, the quality of private and hospital analytical services will be maintained to help insure that those activities are meeting defined standards and that new public health threats are being evaluated and addressed through available analytical services.

Projected reaction to these rule changes may include both positive and negative elements. Laboratories and clinicians may express negative concern regarding the increased financial burden of these analytical charges. Many submitting agencies or health care providers may react positively to the enhanced services available for Lyme Disease screening and the addition of Sickle Cell testing for all newborns.

**Economic Impact**

These proposed rule changes could affect all clinical laboratories (695), hospitals (116), physicians, third party insurance payments and the general public through the projected increases in laboratory fees and proficiency testing charges.

The funding impact will be experienced in two ways: (1) all agencies utilizing the Department of Health laboratory services will be required to identify funding sources for increased support; and (2) the Department of Health, despite severe fiscal constraints, will be able to continue to offer quality laboratory services as well as expand its base of available services.

Administrative mechanisms will have to be set in place by submitting agencies to deal with the increased costs, forecasting of required laboratory services, changes in forms and ordering procedures, etc. Due to the link to third party payment system, it is difficult to assess the direct economic impact which will be felt by the general public.

Social/monetary savings are also difficult to measure. Since failure to adopt these rules could result in the Department of Health's inability to maintain some laboratory services, the social impact could be devastating. The public health cost in terms of delays in the identification of diseases, some of which result in mental retardation or death, cannot be accurately projected.

**Regulatory Flexibility Analysis**

Some health care providers, such as physicians and clinical laboratories, may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No reporting or recordkeeping is required by these rules, but health care providers may find additional record-keeping necessary in order to track the purchase and provision of analytical laboratory services. These rules will impose compliance requirements related to new and increased fees for the analytical laboratory services provided by the State of New Jersey. Such fees will not entail the need for capital expenditures or additional professional services for small businesses. They will entail annual compliance costs which will vary according to the size of the health care provider and the amount of analytical testing requested from the State.

Small business exemptions will not be permitted under these rules due to an overriding concern for public health, which requires uniform application of the rules. The rules (fees) will be applied uniformly, and are intended to become operative April 1, 1990.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:45.

Full text of the proposed amendments to the re-adoption follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

**8:45-1.4 Proficiency testing fees**

(a) Those laboratories enrolled in the State's Clinical Laboratory Improvement Services analytical proficiency testing program will be assessed an annual fee by specialty area according to the following table:

**Clinical Laboratory Improvement Program  
Laboratory Proficiency Testing by Specialty Area:**

<b>Bacteriology</b>	<b>\$250.00</b>
<b>Gram Stain</b>	<b>150.00</b>
<b>Throat</b>	<b>100.00</b>
<b>GC</b>	<b>200.00</b>
<b>TB</b>	<b>400.00</b>
<b>TB smears only</b>	<b>100.00</b>
<b>Parasites</b>	<b>250.00</b>
<b>Pinworms</b>	<b>200.00</b>
<b>Mycology</b>	<b>300.00</b>
<b>Syphilis</b>	<b>100.00</b>
<b>Non-syphilis</b>	<b>150.00</b>
<b>CBC; Coag; Cyto</b>	<b>150.00</b>
<b>Hematocrit</b>	<b>100.00</b>
<b>Immunology</b>	<b>150.00</b>
<b>Chemistry</b>	<b>200.00</b>
<b>Blood gases</b>	<b>200.00</b>
<b>DOA</b>	<b>150.00</b>
<b>Blood Lead</b>	<b>200.00</b>
<b>EP</b>	<b>200.00</b>
<b>Urine (L); Urine (M)</b>	<b>100.00</b>

8:45-2.1 Fees; generally

(a) Commencing [July 1, 1985,] **April 1, 1990**, the following changes will be made in the fee-for-service cost structure, Division of Public Health and Environmental Laboratories, New Jersey State Department of Health:

Laboratory Test

Inborn Errors of Metabolism (PKU, T4, Galactosemia, Sickle Cell)	\$[6.00]	<b>19.00</b>
RPR Syphilis	\$[5.00]	<b>8.00</b>
Toxoplasmosis	\$[9.00]	<b>12.00</b>
HATTS, FTA-ABS (Confirmatory syphilis)	\$[5.00]	<b>8.00</b>
Rubella Screen	\$[6.00]	<b>9.00</b>
<b>Blood Lead</b>		<b>\$12.00</b>
<b>Mycobacteriology (TB)</b>		<b>\$30.00</b>
<b>Water Bacteriology</b>		<b>\$10.00</b>
<b>Bacteriology Culture</b>		<b>\$30.00</b>
<b>Susceptibility Studies (TB)</b>		<b>\$30.00</b>
<b>Isolation of Special Pathogens</b>		<b>\$30.00</b>
<b>Parasitology</b>		<b>\$15.00</b>
<b>Mycology</b>		<b>\$25.00</b>

(b) Commencing [July 1, 1985] **April 1, 1990**, the following newly established fee for service charges will go into effect:

Bacteriology

<b>Lyme Disease</b>		<b>\$20.00</b>
[Isolation of Special Pathogens		\$25.00]
[Identification of Problem Cultures Reference		\$20.00]
[Susceptibility Studies (TB)		\$25.00]
[Mycology		\$25.00]
[Mycobacteriology (TB)		\$25.00]
[Parasitology		\$15.00]
[Serology]		
[Non-syphilis Serology		\$6.00]
[Virology]		
[Viral Serology		\$20.00/case]
[Viral Isolation		\$20.00/case]

**(a)**

**DRUG UTILIZATION REVIEW COUNCIL**

**Interchangeable Drug Products**

**Proposed Amendments: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council, Sanford Luger, Chairman.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1989-638.

A **public hearing** concerning these proposed amendments will be held on January 8, 1990 at 2:00 P.M. at the following address:

Auditorium, Room 106  
 First Floor  
 Department of Health  
 Health-Agriculture Bldg.  
 Trenton, N.J. 08625-0360

Submit written comments by January 16, 1990 to:

Thomas T. Culkin, PharmD, MPH  
 Executive Director  
 Drug Utilization Review Council  
 New Jersey Department of Health  
 Room 108, CN 360  
 Trenton, N.J. 08625-0360  
 609-984-1304

The agency proposal follows:

**Summary**

The List of Interchangeable Drug Products is a list of acceptable generic drugs and their manufacturers which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For the past decade, whenever a product was proposed for addition to the List of Interchangeable Drug Products, the Drug Utilization Review Council (while not being legally bound to do so) has taken into consideration the Food and Drug Administration's (FDA's) advisory opinion on the "therapeutic equivalence" of the proposed generic. With only one recent (and erroneous) exception, which these proposed amendments also attempt to correct, no product has been added to the List of Interchangeable Drug Products when the FDA's opinion has been that the generic was not proved therapeutically equal to the brand for which it was to be substituted.

On September 28, 1989, the FDA formally changed its opinion on one generic product (Bolar's triamterene with hydrochlorothiazide capsules), downgrading it from a rating of "therapeutically equivalent" to one of "insufficient information" to assure therapeutic equivalence. That Bolar product had been added to the New Jersey List of Interchangeable Drug Products in 1988. The FDA also has given notice to Bolar that their nitrofurantoin macrocrystals products will be downgraded to a rating of less than therapeutically equivalent.

A third product, Danbury's probenecid with colchicine tablets, was erroneously added to the List of Interchangeable Drug Products in August, 1989, without checking the Food and Drug Administration's advice, which was that the product was not considered therapeutically equivalent to its branded counterpart, ColBenemid.

In order to be consistent with its 10 years of precedent, the Drug Utilization Review Council proposes that the Bolar triamterene with hydrochlorothiazide capsule product, the Bolar nitrofurantoin macrocrystal product, and the Danbury probenecid with colchicine product should be proposed for deletion from the List of Interchangeable Drug Products due to the change in FDA opinion for the first two products and the mistaken oversight of the FDA's negative opinion in the latter instance.

**Social Impact**

There would be little social impact on prescribers, pharmacies or patients, because the brand name products remain on the market and would still be available.

**Economic Impact**

A negative economic impact would primarily affect the involved manufacturers, Bolar and Danbury, which would lose most current sales in New Jersey because their products would no longer be acceptable as a legal substitute for Dyazide, Macrochantin, or Colbenemid, the branded products.

To the extent that some of the generics cannot be returned to suppliers for credit, a secondary economic impact would also be felt by certain pharmacies that stocked medications made by these companies. If every pharmacy now stocks the Bolar generic, it is estimated that unacceptable returns could amount to \$70.00 (the approximate cost of a bottle of 500 generic capsules) in each of New Jersey's 1,500 community pharmacies.

Similarly, unacceptable returns of the Bolar nitrofurantoin products could cost each pharmacy as much as \$9.00 per bottle of 100 capsules.

Fewer pharmacies would stock the Danbury generic, but a loss of as much as \$8.00 is estimated in each pharmacy that does stock it.

A significant negative economic impact would also be felt by the New Jersey Medicaid Program. Based on 1988 data, an estimated increase in Medicaid's costs of at least \$125,000 annually would occur due to use of the brand, Dyazide, in place of the Bolar generic. No similar data are available to estimate the increased expenses to the Medicaid Program due to Macrochantin and ColBenemid not being substituted, but both are seldom prescribed in comparison to Dyazide.

Cash-paying consumers would also incur a negative economic impact. Based on the Medicaid payment data, each cash paying consumer who could not receive the generic substitute for Dyazide would pay at least an extra \$10.00 per prescription for 100 Dyazide capsules. The number of prescriptions so affected cannot be determined, but would be quite large: Dyazide is one of the most frequently prescribed medications. Extra costs to consumers for the substitute for Macrochantin would approximate \$15.00 and for ColBenemid would be about \$17.00 per prescription.

**Regulatory Flexibility Analysis**

The proposed amendments, which delete specific medications, impose no recordkeeping or recording requirements, however, the amendments do impose compliance requirements on pharmacies and those licensed to prescribe medications, in that they may no longer consider the deleted medications as generic alternatives when prescribing or when filling prescriptions. Some members of the regulated group are small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. However, the Depart-

ment does not consider it appropriate to make any differential requirement for small businesses, due to an overriding concern for public health and safety, which requires consistency in the application of standards.

Full text of the proposal follows:

The Drug Utilization Review Council proposes to delete from the List of Interchangeable Drug Products the following products:

Nitrofurantoin macrocrystal capsules 50 mg, 100 mg	Bolar
Probenecid/colchicine (500 mg/0.5 mg) tablets	Danbury
Triamterene/hydrochlorothiazide (50 mg/25 mg) capsules	Bolar

(a)

**DRUG UTILIZATION REVIEW COUNCIL**

**Interchangeable Drug Products**

**Proposed Amendments: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council, Sanford Luger, Chairman.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1989-639.

A public hearing concerning these proposed amendments will be held on January 8, 1990 at 3:00 P.M. at the following address:

Auditorium, Room 106  
 First Floor  
 Department of Health  
 Health-Agriculture Bldg.  
 Trenton, N.J. 08625-0360

Submit written comments by January 16, 1990 to:

Thomas T. Culkin, PharmD, MPH  
 Executive Director  
 Drug Utilization Review Council  
 New Jersey Department of Health  
 Room 108, CN 360  
 Trenton, N.J. 08625-0360  
 609-984-1304

The agency proposal follows:

**Summary**

The List of Interchangeable Drug Products is a list of acceptable generic drugs and their manufacturers which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

The Drug Utilization Review Council is mandated by law to ascertain whether every manufacturer included in the List of Interchangeable Drug Products meets all Federal and State standards, specifically to include compliance with the U.S. Food and Drug Administration's (FDA's) Current Good Manufacturing Practices (CGMP) regulations.

Congressional hearings on September 11, 1989, revealed that some unspecified generic manufacturers did not meet FDA's Current Good Manufacturing Practices. On September 14, 1989, the FDA was formally asked which companies did not meet CGMPs. An FDA letter response, received on October 10, 1989, stated that two manufacturers, Pharmaceutical Basics (for its Illinois manufacturing site, which only manufactures liquids and topical products) and Watson Laboratories, do not meet Current Good Manufacturing Practices.

At its October 10, 1989 meeting, the Drug Utilization Review Council agreed that the appropriate products of those manufacturers who do not meet Current Good Manufacturing Practices should be proposed for deletion from the List of Interchangeable Drug Products.

**Social Impact**

There would be no social impact on prescribers, pharmacies or patients, because in all instances other generic manufacturers who continue to meet the FDA's CGMPs will remain on the List of Interchangeable Drug Products. There is no evidence nor allegation that the failure of Watson and Pharmaceutical Basics to meet CGMPs has resulted in products being marketed that would be detrimental to the public's health. Thus the main impact of these proposed amendments would fall on the non-compliant manufacturers.

**Economic Impact**

A negative economic impact would primarily affect the involved manufacturers, who would lose sales in New Jersey (of a magnitude not determinable) because their products would no longer be acceptable as legal substitutes for brand-name medications. To the extent that some of the medications from the involved manufacturers cannot be returned to suppliers for credit, a secondary impact would also be felt by certain pharmacies that stocked medications made by these companies.

**Regulatory Flexibility Analysis**

The proposed amendments, which delete specific medications, impose no recordkeeping or recording requirements; however, the amendments do impose compliance requirements on pharmacies and those licensed to prescribe medications, in that they may no longer consider the deleted medications as generic alternatives when prescribing or when filling prescriptions. Some members of the regulated group are small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. However, the Department does not consider it appropriate to make any differential requirement for small businesses, due to an overriding concern for public health and safety, which requires consistency in the application of standards.

Full text of the proposal follows:

The Drug Utilization Review Council proposes to delete products from the List of Interchangeable Drug Products as follows:

**The following Watson products are proposed for deletion:**

Clorazepate dipotassium tablets, 3.75 mg, 7.5 mg, and 15 mg  
 Fenoprofen calcium capsules, 200 mg and 300 mg  
 Fenoprofen calcium tablets, 600 mg  
 Furosemide tablets, 20 mg, 40 mg, and 80 mg  
 Hydrocodone bitartrate 5 mg with acetaminophen 500 mg tablets  
 Indomethacin capsules, 25 mg, 50 mg  
 Lorazepam tablets, 0.5 mg, 1.0 mg, 2.0 mg  
 Loxapine succinate capsules, 5 mg, 10 mg, 25 mg, 50 mg  
 Maprotiline HCl tablets, 25 mg, 50 mg, 75 mg  
 Methyl dopa 500 mg with hydrochlorothiazide 30 or 50 mg tablets  
 Methyl dopa with hydrochlorothiazide tablets 250/15 and 250/25  
 Metoclopramide tablets, 10 mg  
 Norethindrone 1 mg with mestranol 50 mcg tablets, 21s and 28s  
 Propranolol HCl tablets, 10 mg, 20 mg, 40 mg, and 80 mg  
 Triamterene 75 mg/hydrochlorothiazide 50 mg tablets  
 Verapamil HCl tablets, 80 mg and 120 mg

**The following My-K/PharmBasics liquid/topical products are proposed for deletion:**

Acetaminophen with codeine elixir, per 5 ml: 120 mg APAP & codeine 12 mg  
 Aminophylline 105 mg liquid  
 Belladonna alkaloids with phenobarbital elixir  
 Bromodiphenhydramine HCl 12.5 mg with codeine phosphate 10 mg syrup  
 Brompheniramine maleate 2 mg, phenylpropranolamine HCl 12.5 mg, codeine phosphate 10 mg syrup  
 Brompheniramine maleate 2 mg, pseudoephedrine HCl 30 mg, dextromethorphan HBr 10 mg syrup  
 Butabarbital sodium elixir, 30 mg/5 ml  
 Caramiphen edisylate 6.7 mg, phenylpropranolamine HCl 12.5 mg liquid  
 Carbinoxamine maleate, dextromethorphan HBr, and pseudoephedrine HCl syrup  
 Carbinoxamine maleate, dextromethorphan HBr, and pseudoephedrine oral drops  
 Chloral hydrate syrup, 500 mg/5 ml  
 Chlorpheniramine, phenylephrine HCl, phenylpropranolamine HCl, and phenyltoloxamine citrate (adult) syrup  
 Chlorpromazine HCl concentrate, 100 mg/ml  
 Chlorpromazine HCl concentrate, 30 mg/ml  
 Cyproheptadine HCl syrup, 2 mg/5 ml  
 Dexamethasone elixir, 0.5 mg/5 ml  
 Dicyclomine HCl syrup, 10 mg/5 ml  
 Diphenhydramine elixir, 12.5 mg/5 ml  
 Doxepin HCl oral solution, 10 mg/ml  
 Erythromycin topical solution 2%

Fluocinolone acetonide creams, 0.01% and 0.025%  
 Fluocinolone acetonide ointment, 0.025%  
 Fluocinolone acetonide solution, 0.01%  
 Furosemide solution, 10 mg/ml  
 Guaifenesin 200 mg, hydrocodone bitart. 5 mg, pseudoephedrine HCl 60 mg syrup  
 Haloperidol solution, 2 mg/ml  
 Homatropine MBr 1.5 mg with hydrocodone bitartrate 5 mg syrup  
 Hydrocodone bitart. 5 mg, pseudoephedrine HCl 60 mg liquid  
 Hydrocodone bitartrate 2.5 mg with phenylpropanolamine HCl 12.5 mg syrup  
 Hydrocodone bitartrate 5 mg with phenylpropanolamine HCl 25 mg syrup  
 Hydrocortisone cream, 1%  
 Hydrocortisone cream, 2.5%  
 Hydrocortisone ointment, 1% and 2.5%  
 Hydroxyzine HCl Syrup, 10 mg/5 ml  
 Iodinated glycerol, 30 mg; codeine phosphate, 10 mg liquid  
 Iodinated glycerol, 30 mg; dextromethorphan, 10 mg liquid  
 Lactulose syrup, 10 g/15 ml  
 Lidocaine HCl solution (viscous), 2%  
 Lindane lotion, 1% and Shampoo, 1%  
 Metaproterenol inhalation solution, 5%  
 Metaproterenol syrup, 10 mg/5 ml  
 Metoclopramide syrup, 5 mg/5 ml  
 Multiple vitamins with fluoride drops, with 0.25 mg F/ml  
 Multiple vitamins with fluoride drops, with 0.5 mg F/ml  
 Nystatin suspension, 100,000 units/ml  
 Oxtriphylline elixir, 100 mg/5 ml  
 Oxtriphylline pediatric syrup, 50 mg/5 ml  
 Potassium chloride liquid, 10% (20 mEq/15 ml) and liquid, 20% (40 mEq/15 ml)  
 Potassium gluconate elixir, 10% (20 mEq/15 ml)  
 Prochlorperazine maleate concentrate, 10 mg/ml  
 Prochlorperazine maleate syrup, 5 mg/5 ml  
 Promethazine HCl 6.25 mg, codeine phosphate 10 mg syrup  
 Promethazine HCl 6.25 mg, dextromethorphan HBr 15 mg syrup  
 Promethazine HCl 6.25 mg, phenylephrine HCl 5 mg, codeine phosphate 10 mg syrup  
 Promethazine HCl 6.25 mg, phenylephrine HCl 5 mg syrup  
 Promethazine HCl syrup, 25 mg/5 ml  
 Promethazine HCl syrup, 6.25 mg/5 ml  
 Selenium sulfide lotion, 2.5%  
 Theophylline 150 mg, guaifenesin 90 mg liquid  
 Theophylline elixir, 80 mg/15 ml  
 Theophylline with potassium iodide elixir 80 mg/15 ml with 130 mg/15 ml  
 Thioridazine HCl concentrates; 30 mg/ml and 100 mg/ml  
 Triamcinolone acetonide creams and ointments, 0.025%, 0.1%, and 0.5%  
 Triamcinolone acetonide lotion, 0.025% and 0.1%  
 Trifluoperazine HCl concentrate, 10 mg/ml  
 Trimeprazine tartrate syrup, 2.5 mg/5 ml  
 Trimethoprim/sulfamethoxazole suspension 200 mg/5 ml with 40 mg/5 ml  
 Triprolidine HCl 1.25 mg/codeine phosphate 10 mg/pseudoephedrine 60 mg syrup  
 Valproic acid syrup, 250 mg (as Sod. valproate)/5 ml  
 Vitamins A, D, and C drops, with 0.25 mg F/ml and drops, 0.5 mg/F ml

## HUMAN SERVICES

### (a)

#### DIVISION OF DEVELOPMENTAL DISABILITIES

##### Determination of Eligibility

##### Reproposed Repeal and New Rules: N.J.A.C. 10:46

Authorized By: William Waldman, Acting Commissioner,  
 Department of Human Services.

Authority: N.J.S.A. 30:4-23; 30:4-25.2; 30:6D-23 et seq.

Proposal Number: PRN 1988-632.

Submit comments by January 3, 1990 to:

James M. Evanochko  
 Administrative Practice Officer  
 Division of Developmental Disabilities  
 CN 700  
 222 So. Warren Street  
 Trenton, New Jersey 08625

The agency proposal follows:

##### Summary

The Department proposed eligibility criteria for services from the Division of Developmental Disabilities at 20 N.J.R. 2008(a) on August 15, 1988. Comments received resulted in substantial revision of the rules. As a result, the proposal was withdrawn on May 1, 1989 and is being reproposed at this time.

An intensive review by Department staff indicates that the existing rules regarding eligibility criteria for the developmentally disabled are outdated. The Department intends to repeal the current chapter and to adopt new rules on eligibility.

The new rules are proposed to establish eligibility criteria for services under the Division of Developmental Disabilities and to establish the process for determining if those criteria are met. In 1985, N.J.S.A. 30:6D-23 et seq. (P.L. 1985, c.145) changed the name of the New Jersey Division of Mental Retardation to the New Jersey Division of Developmental Disabilities. That act charged the Division with the responsibility to develop new eligibility criteria.

In order to be determined eligible, an individual must have a severe and chronic disability attributable to a mental and/or physical impairment. That disability must be manifested before age 22 and must result in substantial limitation in three or more of the following major life activities: self care, receptive and expressive language, learning, mobility, self direction and capacity for independent living or economic self sufficiency. The disability must result in a condition that is expected to be of life-long or extended duration.

The rules clarify that the mental or physical impairment cannot be based upon a mental illness. Mental illness is defined according to N.J.S.A. 30:4-27.1 et seq. Persons who are found to be eligible but have a mental illness may receive services while being treated for that mental illness.

The person on whose behalf application is made must be a resident of New Jersey. The person must need services at the time of application.

The Division has reorganized the eligibility chapter for ease of reference.

The first subchapter (General Provisions) contains three sections containing purpose and authority; scope of the chapter; and definitions of terms used in the chapter.

Subchapter 2, Eligibility Criteria, contains specific guidelines used in determining eligibility. Subchapter 3, Application, contains application procedures. Subchapter 4, Determination Process, describes how a determination regarding eligibility is made and what notice procedures are required.

##### Social Impact

The proposed new rules will benefit that group of individuals who have not previously been served by the Division of Developmental Disabilities by setting forth specific criteria that will provide them with the procedures to be used in making application for the services offered by the Division. The services include: residential services in developmental centers, private residential facilities, group homes, skill development homes and other alternate living arrangements; day training and adult training; case management and evaluation and referral services; guardianship services; and Foster Grandparent services. Such services may, for example, enable eligible individuals to improve their skills in a variety of areas, such as

self-help, communication, employment and social skills, and to maintain or improve their health and physical functioning.

#### Economic Impact

The proposed new rules will affect the Division by providing guidelines for a wider population eligible for services, with associated increases in costs of administration and service delivery, subject to legislative appropriation.

As of March 31, 1989, the Division has received 5491 applications under N.J.S.A. 30:6D-23 et seq. Of these, 2615 persons have been declared eligible; 592 have been found ineligible. There are 1136 applications pending review. The remaining applications have been withdrawn or are not being actively pursued by the applicant. Additional applications are anticipated. With regard to the families and the population of individuals who are deemed eligible for services, there will be substantial beneficial economic impact.

#### Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; therefore, a regulatory flexibility analysis is not required. The rules provide criteria for eligibility for services to individuals from the Division of Developmental Disabilities.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 10:46.

Full text of the proposed new rules follows:

### CHAPTER 46 DETERMINATION OF ELIGIBILITY

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10:46-1.1 Purpose; authority

Pursuant to N.J.S.A. 30:4-25.2, Application for determination of eligibility, and N.J.S.A. 30:6D-1 et seq. (P.L. 1985, c.145), the Division of Developmental Disabilities, Department of Human Services (Division), intends this chapter to establish guidelines and criteria for determinations of eligibility for services, subject to legislative appropriation of funds therefore, to persons with developmental disabilities.

##### 10:46-1.2 Scope

The provisions of this chapter shall apply to all persons making application to the Division for services under N.J.S.A. 30:4-165.1 et seq.

##### 10:46-1.3 Definitions

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

"Application" means the form available at Division offices (see N.J.A.C. 10:46-3.2(a)). The term includes any supporting documentation necessary to the making of an informed determination with regard to applicant eligibility, including medical information. Supporting documentation may include, but is not limited to, educational, psychiatric, psychological, vocational, rehabilitation or social service records.

"Appropriate program of training" means that program of training which at a minimum includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

"Child" means a person under 18 years of age.

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

"Developmental disability" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and

5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

6. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met. (N.J.S.A. 30:6D-25.)

"Director" means the Director of the Division of Developmental Disabilities.

"Division" means the Division of Developmental Disabilities.

"Educational and related services" means those programs and/or therapies that are provided to a child in association with a free appropriate education.

"Intake worker" means an employee of the Division who meets the Department of Personnel requirements for that position and who completes an appropriate program of training as provided by the Division. The program of training at a minimum includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

"Medical information" means reports that have been compiled by licensed practitioners which demonstrate the existence of a developmental disability as well as the individual's current physical condition and significant medical history.

"Mental illness" means a current substantial disturbance of thought, mood, perception or orientation which significantly impairs judgement, behavior or capacity to recognize reality but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability. (P.L. 1987, c.116).

"Mental or physical impairment" means impairment in cognitive, neurological, sensory, cerebral or motor functioning resulting from other than mental illness.

"Psychiatric facility" means a State psychiatric hospital listed in N.J.S.A. 30:1-7, a county psychiatric hospital, a psychiatric unit in a county hospital or a private psychiatric hospital which is not a short term care facility.

"Resident" means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the State.

If the applicant was placed in a private institution or facility in New Jersey at a time when that person was not a resident of New Jersey as defined herein, he or she is not a resident for purposes of this chapter.

"Short term care facility" means an inpatient, community based mental health treatment facility which provides acute care and assessment services to a mentally ill person whose mental illness causes the person to be dangerous to self or dangerous to others and property. A short term care facility is so designated by the Commissioner and is authorized by the Commissioner to serve persons from a specified geographic area. A short-term care facility may be part of a general hospital or other appropriate health care facility and shall meet certificate of need requirements and shall be licensed and inspected by the Department of Health pursuant to P.L. 1971, c.136 (N.J.S.A. 26:211-1 et seq).

"Support services" mean services provided to developmentally disabled persons and their families that are generally of short term duration (that is, less than 12 months) or are a specific type of care, treatment, training, assistance or device that will help the individual avoid the need for more intensive care which would require coordination of a sequence of generic or specialized services.

"Team" means two or more Division employees and/or professionals holding appropriate certification and/or licensure in their respective fields who review recommendations regarding eligibility. The professions represented on the team will vary according to the presenting need for services. At least one member of the team shall be a Qualified Mental Retardation Professional (QMRP) as defined in 45 CFR 249.12(c)(3).

## SUBCHAPTER 2. ELIGIBILITY CRITERIA

## 10:46-2.1 General eligibility

(a) A person determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2, and who is a resident of the State of New Jersey, is eligible for services of the Division.

(b) With regard to a child, the presenting developmental disability shall be evaluated according to expectations based upon the child's chronological age.

(c) With regard to a student who has entitlements to a free public education pursuant to N.J.S.A. 18A:1-1 et seq., who is otherwise eligible, the expenses of educational and related services shall not be borne by the Division.

(d) If a determination has been made by a student's local district board of education that a student's educational needs can only be appropriately served in a living situation other than the student's home, then the expenses of that residential placement shall not be borne by the Division.

(e) If the applicant anticipates that services of the Division will not be required within two years of the application for services, he or she shall not be declared eligible. The name of the person and background information shall be maintained on file. The application may be activated at any time services are requested.

(f) Persons who are determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2 and who exhibit symptoms of mental illness and are in need of outpatient services or treatment in a short term care facility only, shall be determined eligible and receive services while being treated for a mental illness.

(g) Persons who are determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2 but require long term care in a psychiatric facility shall not be eligible for the services of the Division.

(h) Persons who are determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2 and who exhibit symptoms of mental illness and reside in psychiatric facilities but no longer require long term psychiatric care shall be eligible for services.

## 10:46-2.2 Presumptive eligibility

If the applicant appears to be eligible for services and manifests an emergent need for services from the Division, then such person may be declared presumptively eligible by the Division Director or his or her designee. The eligibility determination process shall be completed subsequent to the admission to service. If the person is found ineligible, immediate referral shall be made to the appropriate agency or agencies for services.

## 10:46-2.3 Services

(a) The Division provides comprehensive evaluation, functional and guardianship services (see N.J.A.C. 10:40).

1. Functional services include both residential and nonresidential services.

i. Nonresidential functional services shall include, but need not be limited to: case management; support services; counseling of family or guardian, of employer, or of retarded person; consultative services to social, educational, or welfare and health agencies and to the courts; adult training; and day training programs.

ii. Residential functional services shall include, but need not be limited to: evaluation study, treatment, education, training, rehabilitation, care and protection provided in State schools and in other residential facilities operated by the department; family care and sheltered life programs; interim placement in approved residential facilities other than State schools. Such programs may be of short- or long-term duration as required. (N.J.S.A. 30:4-165.2.)

(b) Support services may be offered without supplying all information required under N.J.A.C. 10:46-3.3 when:

i. The applicant requests limited services to meet the person's needs and those services may avoid the need for more intensive services;

ii. The intake worker determines through a preliminary review of available information that the person is developmentally disabled; and

iii. The applicant agrees to accept support services.

(c) All information required under N.J.A.C. 10:46-3.3 shall be required if the applicant disagrees with the initial recommendation for support services or, subsequent to the provision of support services, more intensive services are desired.

(d) Support services include:

1. Respite care to give families relief from continuous care of the person;

2. Personal care to an individual where the family is unable to do this alone;

3. Assistive devices to aid in moving and positioning an individual while giving personal care. Assistive devices shall be available if the individual lives independently, in the home of a relative or in a home licensed in accordance with N.J.A.C. 10:44B. The assistive device cannot be available through an alternate funding source. Assistive devices remain the property of the Division;

4. Supported employment which is:

i. Paid employment for persons with developmental disabilities for whom competitive employment at or above minimum wage without the benefit of supported employment services is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;

ii. Conducted in a variety of settings, particularly work sites in which persons without disabilities are employed; and

iii. Supported by any activity needed to sustain paid work by persons with disabilities, including training, and transportation;

5. Home adaptation to accommodate persons with a physical or sensory disability if the individual owns his or her own home, lives with a relative who owns the home or lives in a home licensed in accordance with N.J.A.C. 10:44B. Home adaptations may not be offered under presumptive eligibility; and

6. Rehabilitation technology services which provide a systematic application of technology engineering methodology or scientific principles to meet the needs of and address the barriers confronted by individuals in areas that include education, rehabilitation employment, transportation, independent living and recreation.

## SUBCHAPTER 3. APPLICATION

## 10:46-3.1 Who may apply

(a) Application for services under this chapter may be made by the following persons:

1. An adult on his or her own behalf;

2. The parents or guardian of a minor;

3. An agency, public or private, other than those agencies within the Department of Human Services, on behalf of a minor of whom it has care and custody;

4. A court having jurisdiction over a minor;

5. The guardian of an adjudicated incompetent adult; or

6. A court of competent jurisdiction on behalf of an adult person who appears to be developmentally disabled.

## 10:46-3.2 Where to apply

(a) The initial contact may be made to an intake worker by telephone.

(b) If the intake worker determines that the request is for the services of the Division, he or she shall send the person an application.

(c) If the intake worker determines that the request is for services not offered by the Division, the intake worker shall offer to refer the person to an appropriate agency. If the person wishes to pursue the services of the Division, the intake worker shall send an application.

(d) Application shall be made to local offices of the Division or to the Division central office. Forms, instructions and addresses of the local offices may be obtained by writing to:

Division of Developmental Disabilities

Office of Community Services

CN 700

Trenton, New Jersey 08625

(e) To request the transfer of a person to the State of New Jersey under the Interstate Compact on Mental Health (N.J.S.A. 30:7B-1 et seq.), the application shall be sent to the Assistant Director for Residential Services, Division of Developmental Disabilities, at the

address specified in (a) above. All information required in N.J.A.C. 10:46-3.3 shall be provided.

#### 10:46-3.3 How to apply

- (a) Application shall be made on forms supplied by the Division.
- (b) Minimum information submitted shall include, but not be limited to:
  1. Social data, such as name, address, telephone number, social security number, and present living arrangement;
  2. Medical information;
  3. Present program or employment type;
  4. Name, address and telephone number of the applicant, if someone other than the person on whose behalf application is being made; and
  5. Presenting request, such as the specific service(s) that may be desired.
- (c) Accommodations shall be made available by the Division for applicants who are non-English speaking, illiterate or blind/visually impaired.
- (d) It is the responsibility of the applicant to cooperate with the Division in obtaining required records by signing consent to release of information forms and identifying persons or agencies known by the applicant to be in possession of the needed records.
- (e) An application shall be deemed complete when all documentation is received by the Division.

### SUBCHAPTER 4. DETERMINATION PROCESS

#### 10:46-4.1 Determination

- (a) A Division intake worker shall begin a case file upon receipt of an application for determination of eligibility for services.
- (b) The intake worker shall assist in completion of the application upon request of the applicant.
- (c) Upon receipt of an application including all necessary documentation and completion of an in person interview with the applicant, the intake worker shall make an initial recommendation in writing based upon specific findings regarding eligibility pursuant to N.J.A.C. 10:46-2.
- (d) A professional team shall review the recommendation of the intake worker and:
  1. Render a final determination of eligibility;
  2. Render a final determination of ineligibility; or
  3. Refer the matter to a second professional team, when there is disagreement among the first team concerning eligibility. No member of the second team shall have participated in the initial team review.
- (e) The recommendation of the team(s) shall be made in writing based upon specific findings.
- (f) In cases where the matter is referred for further review, the intake worker shall present the case record to the second team. The second team shall review the record and shall make a final determination.

#### 10:46-4.2 Notice requirements

- (a) Division staff shall notify the applicant in writing of the status of the eligibility determination no more than 60 days after initial contact with the intake worker.
- (b) If the eligibility decision cannot be made within 60 days after the initial contact, the applicant shall be apprised of the status of the application at least every 30 days thereafter.
- (c) If the client is determined eligible, Division staff shall notify the applicant in writing within 10 working days of the determination and such notice shall include information regarding the service(s) deemed most suitable by the professional team.
  1. If the most suitable service as determined by the professional team is not immediately available, the Division shall provide an alternate service. (N.J.S.A. 30:4-25.6.)
  2. At the request of the applicant, the Division shall also place the eligible person on a list for the service(s) deemed most suitable by the professional team pending its availability.
- (d) If the client is determined ineligible, the Division shall notify the applicant in writing within 10 working days of the determination. Such notification shall include specific criteria that were not met by

the applicant, and shall also include information regarding the applicant's right to appeal the determination pursuant to N.J.A.C. 10:48.

## LAW AND PUBLIC SAFETY

### (a)

#### STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

##### Land Surveyors; Preparation of Land Surveys Proposed Amendment: N.J.A.C. 13:40-5.1

Authorized By: Board of Professional Engineers and Land Surveyors, Bruce Blair, President.

Authority: N.J.S.A. 45:8-27 et seq., specifically, 45:8-28(e).  
Proposal Number: PRN 1989-646.

Submit comments by January 3, 1990 to:

Cathleen A. McCoy, Executive Director  
Board of Professional Engineers and Land Surveyors, Room 317  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

Effective January 19, 1988, N.J.A.C. 13:40-5.1(d) was amended to limit the ability to contractually agree to omit corner markers to the "ultimate user," defined as the purchaser of the property or the attorney representing the purchaser. At that time, the State Board of Professional Engineers and Land Surveyors found a number of instances where a home purchaser expected to have corners set but this was not done because the surveyor and some other interested party had agreed to omit them. Since that amendment was adopted, the Board has received numerous complaints from purchasers alleging that their attorneys have, without their knowledge, waived the corner setting requirements. In many instances, the subsequent setting of corner markers revealed the existence of a buried corner. Accordingly, the Board, through deletion of language permitting an "ultimate user" waiver, seeks to aid the home purchaser by making the setting of corner markers mandatory.

#### Social Impact

The proposed amendment to N.J.A.C. 13:40-5.1(d), which makes the setting of corner markers mandatory, will provide greater protection for the consumer by assuring the consumer a more complete survey. Since the amendment will require that a surveyor must visit the site, improper "windshield" or "drive-by" surveys will be eliminated.

The proposed amendment to N.J.A.C. 13:40-5.1(d) will also have a beneficial impact on licensees governed by the Board of Professional Engineers and Land Surveyors in that the abundance of corner markers will make surveying much less difficult. The resolution of boundary difficulties, once boundaries are marked on the ground, will aid an adjoining surveyor in researching and analyzing data that might otherwise have been overlooked.

#### Economic Impact

Economic impact foreseen for licensees includes the slight extra cost to provide corner markers at every site, since the setting of markers can no longer be waived by the house purchaser or purchaser's attorney. However, the Board-required material and corner cap is only a few dollars a corner and this expense will diminish as corners are set on every site surveyed.

Economic impact foreseen for the home purchaser is a possible increase in the cost of a survey; licensees might raise fees slightly in order to comply with this requirement. Any such increase, however, is expected to be minimal since the cost of setting corners is only a small percentage of the total survey cost. The Board considers it more than outweighed by the benefit to the home purchaser in having corner markers placed. The home purchaser will be spared any extra fees involved in having corner markers set after a survey has been prepared, and expensive boundary disputes will be minimized.

#### Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., it has been determined that, with few exceptions, most land surveying entities are small businesses that will be affected by the

proposed amendment. The specific number is impossible to determine since the Board licenses individuals and not entities. However, the proposed compliance requirements are equally applicable to all land surveying licensees and entities, without differentiation as to types and sizes of businesses. Any such differentiation would destroy the value of the rule.

The proposed amendment entails no reporting or recordkeeping requirements for small businesses, and no professional services are needed for compliance. The amendment requires no initial capital costs. The annual cost of compliance is a few dollars a corner for the Board-required material and corner cap, and this expense will decrease as additional corners are set. Because the required material is inexpensive, the economic impact of the proposed amendment on small businesses is minimized.

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

13:40-5.1 Land surveyors; preparation of land surveys

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

(d) Appropriate corner markers, such as stakes, iron pipes, cut crosses, monuments, and so forth shall be set either by the licensed land surveyor or under the supervision of the licensed land surveyor. Such markers shall be set at each property corner not previously marked by a property marker, unless the actual corner is not accessible. [ , or unless written contractual arrangements with the ultimate user specify otherwise. For the purpose of this section "ultimate user" shall mean, in the case of a transfer of title, the purchaser of the property or the attorney representing that purchaser and not a representative agent such as a title company, real estate agent, real estate broker, mortgage company or other individual or entity. When written contractual arrangements are made to omit corner markers, a specific notation stating that such omissions have been made by written contractual agreement with the ultimate user shall be clearly displayed on the plat or plan of survey. This notation must relate specifically to that plat or plan of survey and may not be included as a preprinted title block, standard form, or other reproducible medium.]

1.-5. (No change.)

(e) through (n) (No change.)

## TRANSPORTATION

### (a)

#### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

#### New Jersey Transportation Trust Fund Authority Act Federal Aid Urban System Substitution Program: County and Municipal Aid

#### Proposed Readoption: N.J.A.C. 16:20A

Authorized By: Robert A. Innocenzi, Acting Commissioner,  
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47 and the  
New Jersey Transportation Trust Fund Authority Act,  
N.J.S.A. 27:1B-1 et seq.

Proposal Number: PRN 1989-627.

Submit comments by January 3, 1990 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:20A, New Jersey Transportation Trust Fund Authority Act Federal Aid Urban System Substitution Program: County and Municipal Aid, will expire on December 17, 1989. The Bureau of Local Highway Design has reviewed these rules and has determined them

to be necessary, reasonable, and proper for the purpose of which they were originally promulgated. Under the provisions of N.J.A.C. 1:30-4.4, the Department is proposing the readoption of this chapter, as it currently appears in the New Jersey Administrative Code.

These rules were proposed to implement provisions and purposes of the New Jersey Transportation Trust Fund Authority Act. The Department, in compliance with the provisions of the Trust Fund Authority Act and applicable regulations, must ensure and maintain a safe and reliable transportation system. Additionally, safe and reliable road and bridge improvements are essential to the well being of the citizens and the economy of the State.

The funds under the act are appropriated by the Legislature for the improvement of any public road or bridge under the jurisdiction of a county, regardless of location within that county, and any road or bridge located on the Federal Aid Urban System.

The subchapters are summarized as follows:

N.J.A.C. 16:20A-1 outlines the general provisions of the rules.

N.J.A.C. 16:20A-2 describes the State's participation in the project's eligible costs, project approval, and standards to be followed.

N.J.A.C. 16:20A-3 prescribes the responsibility of the local government in the preparation of plans and specifications.

N.J.A.C. 16:20A-4 provides the procedure to be followed in the awarding of contracts.

N.J.A.C. 16:20A-5 outlines the requirements for an annual audit by county and/or municipality.

#### Social Impact

The proposed readoption will provide a source of added revenues to the county and local government in the rehabilitation and improvement of any public roads or bridges. The rules will also assist in providing a safe and reliable system of road and bridge improvements which are essential to the well being of the citizens and the economy of the State.

#### Economic Impact

The Department and local government will incur direct and indirect costs for its workforce in the processing of plans and specifications, cost of engineering, contractual agreements and cost regarding the specific rehabilitation or improvement project. The cost of design engineering and right of way acquisition shall be borne totally by the county or municipality.

#### Regulatory Flexibility Statement

The proposed readoption 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. The rules primarily affect counties and municipalities.

**Full text** of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 16:20A.

### (b)

#### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

#### New Jersey Transportation Trust Fund Authority Act: Municipal Fund

#### Proposed Readoption with Amendment: N.J.A.C. 16:20B

Authorized By: Robert A. Innocenzi, Acting Commissioner,  
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47 and the  
New Jersey Transportation Trust Fund Authority Act,  
N.J.S.A. 27:1B-1 et seq.

Proposal Number: PRN 1989-628.

Submit comments by January 3, 1990 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:20B, New Jersey Transportation Trust Fund Authority Act: Municipal Fund, will expire on December 17, 1989. The staff of the Bureau of Local Highway Design has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose of which they were originally promulgated, and have recommended the deletion of phraseology not required in N.J.A.C. 16:20B-1.4(d). Under the provisions of N.J.A.C. 1:30-4.4, the Department is proposing the readoption of this chapter with amendment.

These rules were proposed to implement provisions and purposes of the New Jersey Transportation Trust Fund Authority Act: Municipal Fund. The Department, in compliance with the provisions of the New Jersey Transportation Trust Fund Authority Act and applicable regulations, must ensure and maintain a safe and reliable transportation system. Additionally, a safe and reliable system of rail and road transportation is essential to the well-being of the citizens and the economy of the State.

The funds under the Act are appropriated by the Legislature as the State's share of the cost for the improvement of public highways under municipal jurisdiction.

The subchapters are summarized as follows:

N.J.A.C. 16:20B-1 outlines the general provisions of the rules.

N.J.A.C. 16:20B-2 prescribes the responsibility of the local government in the preparation of plans and specifications.

N.J.A.C. 16:20B-3 provides the procedure to be followed in the awarding of contracts.

N.J.A.C. 16:20B-4 describes the cost sharing or cost participation by the responsible agency.

N.J.A.C. 16:20B-5 outlines the requirements for an annual audit by municipalities.

**Social Impact**

The proposed readoption with amendment will provide a source of added revenues to the local government in the rehabilitation and improvement of public highways under municipal jurisdiction. The rules will also assist in providing a safe and reliable system of public highways which is essential to the well-being of the citizens and the economy of the State.

**Economic Impact**

The Department and local government will incur direct and indirect cost for its workforce in the processing of plans and specifications, cost of engineering, contractual agreements and cost sharing regarding the specific rehabilitation or improvement project. The municipality shall bear the costs for a professional engineer to prepare construction plans and specifications, and to provide construction engineering and inspection and material testing as required.

**Regulatory Flexibility Statement**

The proposed readoption with 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. The rules primarily affect municipalities.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:20B.

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

16:20B-1.4 Procedures

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

(d) Separate from the State Aid formula appropriation, the Commissioner shall allocate \$5,000,000 to municipalities qualifying for urban aid under P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) in the same proportion that they receive aid under P.L. 1978, c.14. The proportion is determined by the Department of Community Affairs [(a list of eligible municipalities for Fiscal Year 1989 is hereby incorporated by reference and attached as Appendix I)].

(e) (No change.)

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**Speed Limits**

**Routes N.J. 33 in Monmouth County; U.S. 30 in Camden County; N.J. 175 in Mercer County; N.J. 15 in Sussex County; N.J. 91 in Middlesex County; N.J. 53 in Morris County; and N.J. 50 in Cape May and Atlantic Counties**

**Proposed Amendments: N.J.A.C. 16:28-1.14, 1.57, 1.66, 1.76, 1.103, 1.116 and 1.118**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1989-631.

Submit comments by January 3, 1990 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 N.J. 33 in Monmouth County; U.S. 30 in Camden County; N.J. 175 in Mercer County; N.J. 15 in Sussex County; N.J. 91 in Middlesex County; N.J. 53 in Morris County; and N.J. 50 in Cape May and Atlantic Counties for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

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 limit zones along Routes N.J. 33 in Monmouth County; U.S. 30 in Camden County; N.J. 175 in Mercer County; N.J. 15 in Sussex County; N.J. 91 in Middlesex County; N.J. 53 in Morris County; and N.J. 50 in Cape May and Atlantic Counties were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.14, 1.57, 1.66, 1.76, 1.103, 1.116 and 1.118 based upon the requests from the local governments and the traffic investigations.

**Social Impact**

The proposed amendments will establish speed limit zones along Routes N.J. 33 in Monmouth County; U.S. 30 in Camden County; N.J. 175 in Mercer County; N.J. 15 in Sussex County; N.J. 91 in Middlesex County; N.J. 53 in Morris County; and N.J. 50 in Cape May and Atlantic Counties 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 et seq. The amendments primarily affect the motoring public.

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

16:28-1.14 Route 33 including Old Route 33 and Route 33 Freeway

(a) The rate of speed designated for the certain part of State highway Route 33 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-viii. (No change in text.)

ix. Zone nine: 55 mph in East Windsor Township extending through Monroe Township, Millstone Township [and into Manalapan Township] to Millhurst Road (Route 527, milepost 24.1); thence

[x. Zone 10: 50 mph in Manalapan Township extending into Freehold Township to the Route 33 and Route U.S. 9 traffic circle (milepost 26.8); thence]

[xi. Zone 11: 40 mph in Freehold Township extending through Freehold Borough to 1,000 feet east of the Pennsylvania Railroad overpass in Freehold Township (milepost 28.9); thence]

**x. Zone 10:**

(1) **In Manalapan Township, Monmouth County:**

(A) **50 mph between Millhurst Road (Co. Rd. 527) and the Manalapan Township-Freehold Township line (mileposts 24.07 to 25.34); thence**

**xi. Zone 11:**

(1) **In Freehold Township, Monmouth County:**

(A) **50 mph between the Freehold Township-Manalapan Township line and Wemrock Road (mileposts 25.34 to 25.44); thence**

(B) **40 mph between Wemrock Road and Route U.S. 9 (mileposts 25.44 to 26.8); thence**

(C) **40 mph in Freehold Township extending into Freehold Borough to 1000 feet east of the Pennsylvania Railroad overpass in Freehold Township (mileposts 26.8 to 28.9); thence**

xii.-xvii. (No change.)

16:28-1.57 Route U.S. 30

(a) The rate of speed designated for the certain parts of State highway Route U.S. 30 described in this [section] subsection shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i.-iv. (No change in text.)

v. 45 miles per hour to a point 330 feet east of the center line of Clementon Road, Berlin Borough; thence

(1) **In Somerdale Borough, Camden County:**

(A) **30 mph school speed limit within the Our Lady of Grace Church school zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours; thence**

vi.-xxiv. (No change in text.)

16:28-1.66 Route 175

(a) The rate of speed designated for State highway Route 175 described [herein] in this subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

[1. For northbound traffic:

i. Zone 1: 35 mph within the corporate limits of the City of Trenton (mileposts 0.0 to 0.25).

2. For both directions of traffic:

i. Zone 2: 45 mph from the City of Trenton line to the intersection with West Upper Ferry Road, Ewing Township (mileposts 0.25 to 1.8); thence

ii. Zone 3: 40 mph to the intersection with the Delaware-Raritan Canal Feeder, Ewing Township (milepost 2.15); thence

iii. Zone 4: 50 mph to the northernmost terminus of Route 175 at Route 29, Ewing Township (milepost 2.9).]

1. For both directions of traffic:

i. **In Ewing Township, Mercer County:**

(1) **Zone 1: 45 mph between the City of Trenton-Ewing Township line and West Upper Ferry Road (mileposts 0.27 to 1.80); thence**

(2) **Zone 2: 40 mph between West Upper Ferry Road and the Delaware-Raritan Feeder Canal (mileposts 1.80 to 2.15); thence**

(3) **Zone 3: 45 mph between the Delaware-Raritan Feeder Canal and the northernmost terminus of Route 175 at Route 29 (mileposts 2.15 to 2.95).**

16:28-1.76 Route 15

(a) The rate of speed for the certain parts of State highway Route 15 described in this subsection shall be established and adopted as the maximum legal rate of speed[.]:

1.-3. (No change.)

4. For both directions of traffic in Sussex County:

i. In Sparta Township:

(A) Zone 7: [50 miles per hour from the northerly terminus of Route 181 extending into Lafayette Township to 500 feet north of Limecrest Road—Route 94 (milepost 16.8); thence] **50 mph between the northernmost intersection of Route 181 and the Sparta Township-Lafayette Township line (mileposts 14.17 to 16.16); thence**

ii. In Lafayette Township:

(A) **Zone 7:**

(1) **50 mph between the Lafayette Township-Sparta Township line and 350 feet north of the northernmost intersection of Father Johns Road (mileposts 16.16 to 16.35); thence**

(2) **35 mph between 350 feet north of the northernmost intersection of Father Johns Road and 500 feet north of Route 94-County Road 623 (mileposts 16:35 to 16:72); thence**

[(A)](B) (No change in text.)

iii. (No change.)

16:28-1.103 Route 91

(a) The rate of speed designated for State highway Route 91 described [herein below] in this subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat for both directions of traffic]:

[1. North Brunswick Township:

i. Forty-five mph between Route US 1 and 300 feet south of How's Lane: (mileposts 0. to 1.25);

ii. Forty mph between 300 feet south of How's Lane and the northerly North Brunswick Township-City of New Brunswick corporate line: (mileposts 1.25 to 1.3).

2. City of New Brunswick: 40 mph between the northerly North Brunswick Township-City of North Brunswick corporate line and the northerly terminus of Route 91 (Van Dyke Road): (mileposts 1.3 to 2.28).]

1. For both directions of traffic:

i. **In North Brunswick Township, Middlesex County:**

(1) **40 mph between Route U.S. 1 and the New Brunswick City-North Brunswick Township line (mileposts 0.00 to 1.31); thence**

ii. **In the City of New Brunswick, Middlesex County:**

(1) **40 mph between the North Brunswick Township-New Brunswick City line and Van Dyke Road (mileposts 1.31 to 2.31).**

16:28-1.116 Route 53

(a) The rate of speed designated for the certain parts of State highway Route 53 described in this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

[i. Forty-five mph from the southerly end of Route 53, near the D.L. and W. Railroad underpass, to Moraine Road; thence

ii. Forty mph to the center of Richwood Place; thence

iii. 30 mph to the end of Route 53 and the beginning of Route U.S. 46 at a point just east of Myers Avenue;

iv. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

i. **In Morris Plains Borough, Morris County:**

(1) **Zone 1: 45 mph between Route U.S. 202 and Drake Way (mileposts 0.00 to 1.09); thence**

(2) **Zone 2: 40 mph between Drake Way and the Morris Plains Borough-Parsippany Troy Hills Township line (mileposts 1.09 to 1.55); thence**

ii. **In Parsippany-Troy Hills Township, Morris County:**

(1) **Zone 1: 40 mph between the Parsippany-Troy Hills Township-Morris Plains Borough line and the Denville Township-Parsippany-Troy Hills Township line (mileposts 1.55 to 3.32); thence**

iii. **In Denville Township, Morris County:**

(1) **Zone 1: 40 mph between the Denville Township-Parsippany-Troy Hills Township line and the Prospect Place (mileposts 3.32 to 4.33); thence**

(2) **Zone 2: 30 mph between Prospect Place and Route U.S. 46 (mileposts 4.33 to 4.65).**

(b) (No change.)

16:28-1.118 Route 50 including Route U.S. 40 and 50

(a) The rate of speed designated for the certain parts of State highway [route number] **Route 50 and U.S. 40 and 50** described in

this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:
  - [i. 30 miles per hour from Route US 30, Egg Harbor City, to a point 100 feet south of the center line of the eastbound track of the West Jersey and Seashore Railroad; thence
  - ii. 40 miles per hour to the intersection of Belldonna Avenue; thence
  - iii. 50 miles per hour, to the intersection of Ninth Street, Mays Landing; thence
  - iv. 40 miles per hour to a point 200 feet north of the center line of Second Street; thence
  - v. 30 miles per hour to a point 200 feet west of the intersection of River Drive; thence
  - vi. 40 miles per hour to the intersection of Route US 40, Route 50 and Main Street; thence
  - vii. 50 miles per hour to a point 200 feet north of the center line of Tuckahoe; thence
  - viii. 40 miles per hour to the intersection of Route 47 at Tuckahoe; thence
  - ix. 30 miles per hour to a point 200 feet north of the intersection of Kendall Lane; thence
  - x. 40 miles per hour to the intersection of New Jersey Avenue; thence
  - xi. 50 miles per hour to a point 400 feet north of the intersection of Route US 9; thence
  - xii. 40 miles per hour to the intersection of Route US 9;
  - xiii. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]
- i. In Cape May County:
  - (1) In Upper Township:
    - (A) Zone 1: 40 mph between US 9 and New Bridge Road (mileposts 0.0 to 0.3); thence
    - (B) Zone 2: 50 mph between New Bridge Road and Pennsylvania Avenue (mileposts 0.3 to 6.14); thence
    - (C) Zone 3: 40 mph between Pennsylvania Avenue and Marshall Avenue (mileposts 6.14 to 6.33); thence
    - (D) Zone 4: 30 mph between Marshall Avenue and Mosquito Landing (mileposts 6.33 to 6.94); thence
    - (E) Zone 5: 40 mph between Mosquito Landing and the Corbin City-Upper Township line (mileposts 6.94 to 7.05); thence
  - ii. In Atlantic County:
    - (1) In the City of Corbin City:
      - (A) Zone 1: 40 mph between the Upper Township-Corbin City line and 100 feet north of the southernmost intersection of Main Street (Co. Rd. 611) (mileposts 7.05 to 7.13); thence
      - (B) Zone 2: 50 mph between 100 feet north of the southernmost intersection of Main Street (Co. Rd. 611) and the Estelle Manor City-Corbin City line (mileposts 7.13 to 9.42); thence
    - (2) In the City of Estelle Manor City:
      - (A) 50 mph between the Corbin City-Estelle Manor City line and the Weymouth Township-Estelle Manor City line (mileposts 9.42 to 17.35); thence
    - (3) In Weymouth Township:
      - (A) Zone 1: 50 mph between the Estelle Manor City-Weymouth Township line and 1,000 feet north of Grant Street (mileposts 17.35 to 18.26); thence
      - (B) Zone 2: 45 mph between 1,000 feet north of Grant Street and the Township of Weymouth-Hamilton Township line (mileposts 18.26 to 18.42); thence
    - (4) In the Township of Hamilton:
      - (A) Zone 1: 45 mph between the Weymouth Township-Hamilton Township line and the intersection of Route U.S. 40-Route N.J. 50 (mileposts 18.42 to 18.55); thence
      - (B) Zone 2: 40 mph between the intersection of Route U.S. 40-Route N.J. 50 and 200 feet south of River Road (mileposts 18.55 to 18.98); thence
      - (C) Zone 3: 30 mph between 200 feet south of River Road and 4th Street (mileposts 18.98 to 19.40); thence
      - (D) Zone 4: 35 mph between 4th Street and 10th Street (mileposts 19.40 to 19.73); thence

(E) Zone 5: 40 mph between 10th Street and 500 feet north of 11th Street (mileposts 19.73 to 19.88); thence

(F) Zone 6: 50 mph between 500 feet north of 11th Street and the Hamilton Township-Galloway Township line (mileposts 19.88 to 25.06); thence

(5) In the Township of Galloway:

(A) Zone 1: 50 mph between the Hamilton Township-Galloway Township line and Bella Donna Street (mileposts 25.06 to 25.55); thence

(B) Zone 2: 40 mph between Bella Donna Street and the Egg Harbor City-Galloway Township line (mileposts 25.55 to 25.94); thence

(6) In the City of Egg Harbor City:

(A) 30 mph between the Galloway Township-Egg Harbor City line and Route U.S. 30 (mileposts 25.94 to 26.08).

## INSURANCE

### (a)

#### DIVISION OF PROPERTY/LIABILITY

#### Flex Rate Percentage Calculations for Private Passenger Automobile Insurance

#### Proposed New Rules: N.J.A.C. 11:3-16A

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6, 17:29A-1 et seq., and 17:29A-44.

Proposal Number: PRN 1989-642.

Submit comments by January 3, 1990 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
New Jersey Department of Insurance  
20 West State Street  
CN 325  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The Department of Insurance ("the Department") proposes new rules in accordance with the automobile insurance reform laws P.L. 1988, c.156, that require the Department to annually set a Statewide average rate change ("flex rate") that cannot exceed the last published increase in the medical care services or the automobile maintenance and repair components of the Consumer Price Index, plus three percentage points, for liability and physical damage coverages respectively.

N.J.S.A. 17:29A-44 permits all insurers writing or transacting private passenger automobile insurance in the voluntary market in New Jersey and rating organizations authorized in New Jersey pursuant to N.J.S.A. 17:29A-3, to implement a flex rate filing on or after July 1, 1989.

The proposed new rules establish the methodology for determining the flex rate percentage increase for private passenger automobiles.

The proposed new rules also require the Commissioner of Insurance ("Commissioner") to annually issue an order establishing the allowable flex rate calculated.

A summary of the various provisions of the proposed new rules follows:

N.J.A.C. 11:3-16A.1 states the purpose and scope of the proposed new rules.

N.J.A.C. 11:3-16A.2 provides the definitions for the terms that are used in the proposed new rules.

N.J.A.C. 11:3-16A.3 provides the criteria for determining the flex rate percentage calculations for private passenger automobile insurance.

N.J.A.C. 11:3-16A.4 requires the Commissioner to issue an order annually establishing the allowable flex rate and how that flex rate shall apply to the specific coverages listed in this provision.

#### Social Impact

The flex rate will allow all insurers writing or transacting private passenger automobile insurance in the voluntary market to increase rates without prior approval of the Commissioner in an amount related to the increased costs of coverage based on inflation. The proposed new rules will assure that the allowable percentage increase is uniform among all

insurers. The proposed new rules prevent excessive increases in physical damage coverages for insurers that currently use rating plans that reflect cost increases.

#### Economic Impact

The economic impact of the proposed new rules on the consumer will depend on the consumer's coverage and insurance company. Car owners who have selected the verbal threshold option could see a lower percentage increase on the bodily injury portion of their premiums, whereas those consumers who have selected the zero threshold could see a larger percentage increase for the same coverage. The economic impact on insurers will be as set forth in the Social Impact above.

#### Regulatory Flexibility Analysis

The proposed new rules impose no reporting or recordkeeping requirements. Insurance companies authorized to transact private passenger automobile insurance, which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., wishing to increase rates under the flex rating system may do so only within the flex rate percentage established under this subchapter. As such use of the system involves no increased capital cost on the part of such insurance companies, no differentiation based upon business size is provided.

Full text of the proposal follows:

### SUBCHAPTER 16A. FLEX RATE PERCENTAGE CALCULATIONS FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE

#### 11:3-16A.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the methodology for determining the flex rate percentage increase for private passenger automobile insurance permitted by N.J.S.A. 17:29A-44.

(b) This subchapter shall apply to rates filed by:

1. All insurers writing or transacting private passenger automobile insurance in the voluntary market in this State;
2. All rating organizations authorized in this State; and
3. All coverages described herein, subject to the conditions stated for private passenger automobile insurance.

#### 11:3-16A.2 Definitions

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

"Commissioner" means the Commissioner of Insurance of the State of New Jersey.

"Flex rate" means a Statewide average rate change as set forth in N.J.S.A. 17:29A-44.

"Flex rate percentage" means the maximum rate change permitted by N.J.S.A. 17:29A-44 that is calculated and modified, if required, in accordance with this subchapter.

"Private passenger automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a.

#### 11:3-16A.3 Flex rate percentage calculations for private passenger automobile insurance

(a) The flex rate percentage shall be based upon the following:

1. For personal injury protection coverage, bodily injury and property liability coverage, the flex rate percentage shall be calculated from the last published increase in the medical care service components of the National Consumer Price Index (CPI), all urban consumers, U.S. City Average, plus three percentage points; and
2. For physical damage coverage, the flex rate percentage shall be calculated from the last published increase in the automobile maintenance and repair components of the National Consumer Price Index, U.S. City Average, plus three percentage points.

(b) The CPI used for determining the flex rate percentage may be calculated annually by using the factors set forth in (a) above by:

1. Fitting an exponential curve to a 12 month moving average starting in December and ending 14 months later in February of the current year. This method provides a stabilized yearly average of the month-to-month changes in the CPI;
2. Using the annual change from February of the previous year to February of the current year. This method produces a rate that

is responsive to recent market changes reflected by changes in the CPI; and

3. Averaging the two figures in (b)1 and 2 above. This calculation permits the Commissioner to utilize the strengths of both methods by striking a balance between stability and responsiveness.

(c) The flex rate percentage may be modified pursuant to N.J.S.A. 17:29A-44(d) if the Commissioner finds that the flex rate percentage as calculated in (b) above will produce rate levels that are excessive.

#### 11:3-16A.4 Establishment of the flex rate

(a) The Commissioner shall annually issue an order establishing the allowable flex rate.

1. The order issued by the Commissioner shall set forth the flex rate for the following coverages:

- i. Personal Injury Protection;
- ii. Bodily Injury Liability (Underinsured/Uninsured):
  - (1) Verbal Threshold; and
  - (2) Zero Threshold;
- iii. Property Damage Liability; and
- iv. Physical Damage:
  - (1) With model year rating; and
  - (2) Without model year rating.

2. If a modification has been made by the Commissioner, the order shall set forth the amount of and reason for the modification.

i. New Jersey currently has no actuarial data to compare bodily injury liability rates for the verbal threshold and zero threshold optional coverages. Therefore, the relative flex rate between the verbal and zero thresholds shall be based on the Department's examination of the rate of trends in states with no-fault or tort systems. States with no-fault systems would be the basis for data for the verbal threshold, and tort system states would be the basis for data for the zero threshold.

(1) If the Commissioner finds that the rate of trend is lower in no-fault states than in states using the tort system, the flex rate for the verbal threshold rate shall be set lower than the zero threshold flex rate.

ii. Individual classification rating factors (for example, territory, deductibles, increased limits, factors, age, etc.) shall be subject to prior approval and shall not be changed through the use of the flex rate.

(1) The purpose of flex rating is to permit insurers to increase their overall revenue. The use of flex rating was not intended to permit insurers to alter the relative premium paid by various classes of insureds without first obtaining prior approval by the Department.

iii. The Commissioner shall modify the flex rate for physical damage based on an insurer's or rating organization's use of the following rating systems:

(1) For insurers and rating organizations using both model year and vehicle series/symbol group rating systems, the flex rate shall be set at zero for physical damage. Both model year rating systems and vehicle series/symbol group rating systems provide for built-in premium increases from year to year and therefore already contain appropriate yearly premium increases. A flex rate increase in addition to the yearly automobile premium increases would result in rate levels that are excessive.

(2) For insurers and rating organizations using only vehicle series/symbol group rating systems, a partial flex rate shall be set forth by the Commissioner in an order to be issued annually. Vehicle series/symbol group rating systems provide some built-in premium increases from year to year and therefore are entitled to a portion of the flex rate increase as set forth by the Commissioner in an order.

(b) All insurers and rating organizations may implement the flex rate on a combined basis for both physical damage coverages. The overall flex rate for collision and comprehensive on a combined basis shall not exceed the physical damage flex rate pursuant to N.J.S.A. 29A-44(2).

**(a)****DIVISION OF PROPERTY-LIABILITY****Multi-tier and Good Driver Rating Plans****Proposed New Rules: N.J.A.C. 11:3-19**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; N.J.S.A. 17:1C-6(e); N.J.S.A. 17:29A-45 and 46.

Proposal Number: PRN 1989-643.

Submit comments by January 3, 1990 to:

Verice M. Mason, Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN-325  
Trenton, New Jersey 08625-0325

The agency proposal follows:

**Summary**

These proposed new rules implement N.J.S.A. 17:29A-45 and 17:29A-46 ("the Act"). These statutes are new sections of the automobile insurance law enacted as part of P.L. 1988, c.156 and effective November 14, 1989.

N.J.S.A. 17:29A-45 authorizes private passenger automobile insurers to file multi-tier rating plans for standard and nonstandard risks and good driver discount rating plans. Under prior law, the only multi-tier rating plans that were established in New Jersey consisted of a separate "preferred risk" company that was included among a group of affiliated companies. Several insurers currently provide good driver plans.

N.J.S.A. 17:29A-46 requires that insurers which implement or use multi-tier or good driver rating plans put in writing all underwriting rules applicable to each rate level and file those rules with the Commissioner of Insurance ("Commissioner") for prior approval. Once the plan is approved and becomes effective, the underwriting rules are to be applied uniformly and without exception so that the insurer will accept and insure, or renew, all applicants who qualify. The Act requires affiliated companies to establish separate, mutually exclusive underwriting rules so as to provide a multi-tier rating plan among such groups. It further requires individual insurance companies that establish multi-tier rating plans to ensure that the separate tiers are mutually exclusive.

The statute provides, as do these proposed rules, for the initial establishment of multi-tier rating plans as a percentage increase or decrease of the insurer's existing rate level. Future increases or decreases will require a separate examination of the data supporting the filed rates for each tier. Nevertheless, some data is required initially to demonstrate that the rates filed for a multi-tier rating plan are not excessive, inadequate or unfairly discriminatory. Therefore, these proposed rules provide for the filing of a worksheet, included as Exhibit A of the Appendix, to support the percentage increase or decrease.

The statute does not require that good driver rating plans be separately supported by rate level data, but may be a differential from the base rate level. Insurers which establish good driver plans, therefore, will not be required to establish separate levels based solely on the experience of those who qualify for the good driver plan. Nevertheless, the Department of Insurance ("Department") will require sufficient data to show that the difference is justified by experience and that the resulting rates are not excessive, inadequate or unfairly discriminatory. Therefore, insurers which establish or continue to use a good driver plan will likewise be required to complete the worksheet included in the Appendix as Exhibit A.

The Department expects that insurers will use multi-tier rating plans to create separate, higher rates for nonstandard risks. Multi-tier plans may not, however, be used to increase revenues by shifting a portion of the insurer's current population of insureds to a separate nonstandard company or a nonstandard tier and thus increasing the overall rate level. If a shift of current insureds to a higher rate level will occur, insurers filing multi-tier rating plans will be required to estimate the percentage increase that will result and file to adjust its base rates to prevent an increase in revenues.

Multi-tier rating plans and good driver plans must be based on clearly stated underwriting rules, which must be filed with and approved by the Commissioner prior to implementing the rating plan. These proposed rules, therefore, contain standards to be applied in the review and ap-

proval of an insurer's underwriting rules. These standards include statutory prohibitions that the underwriting rules not be based upon territory, but rather on relevant characteristics of the driver or vehicle insured. The standards further require that underwriting rules used to establish rating tiers or good driver discounts should not consider driver or vehicle characteristics that are present in the insurer's current classification plan for the tier. Underwriting rules shall be mutually exclusive so that the critical characteristics defining differences between standard/nonstandard and base/good driver rates shall not permit a risk to be eligible for both groups. This requirement does not prohibit basic underwriting rules that establish minimum standards for all insureds.

The Department recognizes that some insurers currently have different underwriting rules that distinguish between accepting new business and renewing current policies. Such underwriting rules serve the recognized purpose of promoting public acceptance in that an insured who has been claim-free for many years perceives unfairness if he or she is abruptly nonrenewed as the result of claims or violations that disqualify a new applicant to the insurer. These proposed rules, therefore, do not prohibit the use of standards that differentiate between new and renewal business to be used in connection with multi-tier and good driver plans.

These proposed rules provide standards for the use of multi-tier and good driver rating plans in connection with other statutes and rules that apply to automobile insurance. Specifically, these proposed rules contain provisions regarding the automobile insurance renewal rules, N.J.A.C. 11:3-8, and the rate filing requirements rules, N.J.A.C. 11:3-16, for informational, flex rate and prior approval filings. Amendments were repropoed to the nonrenewal rules set forth at N.J.A.C. 11:3-8 to comply with amendments to N.J.S.A. 17:29C-7.1 and N.J.S.A. 17:29A-46 and to make those rules compatible with these. Rate filing requirements rules were repropoed August 7, 1989 at 21 N.J.R. 2182(a). These proposed rules also contain provisions that relate to statutes providing for merit rating plan accident surcharges, N.J.S.A. 17:29A-35, and statutes regarding insurer excess profits, N.J.S.A. 17:29A-5.6 et seq.

Finally, special provisions are set forth regarding procedures. N.J.S.A. 17:29A-45b allows insurers to file multi-tier plans initially as a percentage increase or decrease from current base rates. Subsequent modifications require a rate filing either submitted for prior approval pursuant to N.J.S.A. 17:29A-14 and N.J.A.C. 11:3-16.5, or submitted as a flex rate increase pursuant to N.J.S.A. 17:29A-44 and N.J.A.C. 11:3-16.4. Since the underwriting rules for these rating plans require prior approval and the initial rates may be disapproved within 60 days, these proposed rules provide for participation in the approval process by the Division of Rate Counsel, Department of the Public Advocate, pursuant to N.J.S.A. 52:27E-18. Another provision gives insurers which currently employ good driver plans 90 days to file the items required by these proposed rules for establishment of the plan in accordance with the new statute.

Proposed N.J.A.C. 11:3-19.1 sets forth the purpose and scope of the subchapter.

Proposed N.J.A.C. 11:3-19.2 sets forth definitions of words and terms used throughout the subchapter.

Proposed N.J.A.C. 11:3-19.3 sets forth the requirements for filing multi-tier rating plans.

Proposed N.J.A.C. 11:3-19.4 sets forth the standards for approval of insurer underwriting guidelines.

Proposed N.J.A.C. 11:3-19.5 sets forth the requirements for filing a good driver rating plan.

Proposed N.J.A.C. 11:3-19.6 sets forth rules concerning the relationship of multi-tier and good driver rating plans with other statutes and rules.

Proposed N.J.A.C. 11:3-19.7 sets forth provisions regarding the initial and subsequent filings of multi-tier rating plans.

**Social Impact**

These proposed new rules set forth the filing requirements and standards to be applied to multi-tier and good driver rating plans which automobile insurers may choose to file. Since the option to file such plans has been established by statute, the primary social impact of these rules is to articulate clearly the standards to be applied by the Department in the review and approval of these plans, and set forth rules regarding the application of other statutes and rules to these rating plans.

These proposed rules also set forth standards for the approval of underwriting rules that determine the rating tier to which an insured will be assigned. The standards require that the underwriting rules must relate directly to the risk characteristics of the driver or vehicle insured. Underwriting rules that are improperly discriminatory are specifically prohibited. The Department expects that these rules will better ensure that risks are properly rated according to relevant characteristics.

#### Economic Impact

These proposed new rules will impact the Department and automobile insurers that choose to file these multi-tier and good driver rating plans. Such rating plans will economically affect insureds based upon the applicable plan standards and the premium levels. With respect to the Department, the economic impact results from enactment of the statute itself, which will increase the number of automobile insurance filings required to be reviewed by the Department. The Department will further be required to review and approve underwriting rules as part of each filing. This additional work will require additional staff.

With respect to insurers, it must be noted that these rating plans are optional with individual companies; groups are elsewhere required to make rate filings separately by individual company. Thus, an individual company insurer would make its own determination whether it is economically beneficial to proceed to file and implement a multi-tier or good driver rating plan. To the extent these proposed rules have an economic impact on that process, the standards for filing and approval are made clear.

#### Regulatory Flexibility Analysis

These proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Individual insurance companies authorized to write private passenger automobile insurance, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by these proposed new rules.

These proposed rules implement recent legislation that allows automobile insurers to file multi-tier and good driver rating plans. Because the establishment of such plans is optional with individual company insurers, however, these rules do not impose any requirements on small businesses. Nevertheless, they do provide reporting, recordkeeping and compliance requirements for those insurance companies that qualify as "small businesses" should they choose to establish such a rating plan.

These rules do not establish different compliance requirements for insurers that qualify as small businesses. Those insurers may need to obtain the services of actuarial consultants to comply with the filing requirements if those services are not currently available in-house. Establishing different compliance requirements for automobile insurance companies that qualify as "small businesses" would be inconsistent with the purpose of the rules in establishing minimum standards. Automobile insurance companies that qualify as "small businesses" may, of course, choose not to file these optional plans if they determine it is not in their economic interest to do so.

Full text of the proposal follows:

### SUBCHAPTER 16. MULTI-TIER AND GOOD DRIVER RATING PLANS

#### 11:3-19.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-45 and 17:29A-46 by establishing standards for multi-tier rating plans and good driver rating plans in the voluntary automobile insurance market. It further provides standards for approval of an insurer's underwriting guidelines that differentiate between risks for multi-tier rating plans and between base rate drivers and good drivers for good driver rating plans. It also sets forth rules concerning the effect of multi-tier and good driver rating plans with respect to other applicable automobile insurance statutes and rules.

(b) This subchapter applies to all insurers that are licensed and authorized to transact private passenger automobile insurance in the voluntary market and that choose to establish or to continue multi-

tier or good driver rating plans. It applies to affiliated companies which insure risks through different individual insurance companies.

#### 11:3-19.2 Definitions

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

"Affiliated companies" means two or more individual insurance companies that are authorized to transact private passenger automobile insurance business in New Jersey and that are under both common ownership and common management.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Good driver plan" means a rating system that provides a percentage or dollar difference from base rates to those insureds who qualify in accordance with the insurer's approved underwriting rules.

"Individual insurance company" means an insurance company licensed and authorized to transact private passenger automobile insurance business in New Jersey, regardless whether it is one of a group of affiliated companies.

"Insurer" includes a group of affiliated companies.

"Multi-tier rating plan" means a rating system used by an insurer that provides different base rates for different risks to those insureds who qualify in accordance with the insurer's approved underwriting rules. Different risks may be denominated, for example, as standard, nonstandard, preferred, substandard, etc.

"Public Advocate" means the Division of Rate Counsel of the New Jersey Department of the Public Advocate, established pursuant to N.J.S.A. 52:27E-16.

"Single tier rating plan" means one rating system used by an insurer for all its insureds, and may include a good driver plan.

#### 11:3-19.3 Multi-tier rating plans

(a) Insurers may file multi-tier rating plans that provide different rates for mutually exclusive risks. No insurer shall implement or use a multi-tier rating plan that has not been filed in accordance with N.J.S.A. 17:29A-45 and this subchapter.

(b) No insurer shall file, implement or use a multi-tier rating plan that increases the insurer's total revenue for its current population of insureds.

(c) An insurer may initially establish a multi-tier rating plan by filing with the Commissioner the following items:

1. A narrative description of the plan, which shall include:

- i. The percentage or dollar difference between the tiers;
- ii. Any variation of the difference by coverage;
- iii. The insurer's plan for determining upon renewal to which tier a risk will be assigned;

iv. A statement that estimates the percentage of the insurer's current population of insureds, if any, that will be transferred to its proposed nonstandard tier because they fail to meet the insurer's proposed underwriting rules for its nonstandard tier; and the insurer's plan for altering its current standard rates to preclude an increase in revenues from its current population of insureds; and

v. If the plan is submitted by a group of affiliated companies, the identity of all individual insurance companies in the group that transact private passenger automobile insurance business in New Jersey and the tier to be used by each;

2. A complete set of underwriting rules that set forth the standards of eligibility for each tier.

i. Underwriting rules shall conform to the standards set forth in N.J.A.C. 11:3-19.4.

ii. Each underwriting rule that determines to which tier a risk is assigned shall be supported by a completed copy of the worksheet set forth as Exhibit B of the Appendix to this subchapter, incorporated herein by reference;

3. A completed copy of the worksheet set forth as Exhibit A in the Appendix to this subchapter, incorporated herein by reference, for each tier of the plan and combined for all levels; and

4. Within 30 days of the date of approval of the underwriting rules or the effective date of the plan, manual rate pages for each tier.

(d) A group of affiliated companies may initially file a multi-tier rating plan with two or more tiers regardless of how many individual insurance companies are in the group.

(e) Any limitations on rates established by the provisions of N.J.S.A. 17:29A-36 shall be applied separately to each tier.

(f) After a multi-tier rating plan is established by an insurer, any rate level change in any tier shall be separately supported by a filing that conforms to the requirements of N.J.A.C. 11:3-16.

#### 11:3-19.4 Underwriting rules

(a) Underwriting rules shall be submitted on 8½ by 11 inch paper using one side of the page. Each page shall be consecutively numbered. The first page shall show the filer's individual company name, filer's identifying number for this filing, National Association of Insurance Commissioners (NAIC) company number(s) and NAIC group number. The underwriting rules' filing shall clearly identify the rate level (for example, standard/nonstandard; base rate/good driver; etc.) to which the underwriting rules will be applied. All tables shall be clearly labeled.

(b) No underwriting rule shall operate in such a manner as to assign a risk to a rating tier contrary to the following standards:

1. An underwriting rule shall be based upon the risk characteristics of the driver(s) and/or vehicle(s) insured.

2. No underwriting rule shall be based upon the territory in which an insured resides.

3. An underwriting rule shall contain a reasonable and demonstrable relationship between the risk characteristics and the hazards insured against.

4. Underwriting rules for a multi-tier rating plan shall be mutually exclusive, but this provision shall not prohibit minimum standards applicable to all tiers offered by an insurer. Underwriting rules for good driver plans shall specify what characteristics qualify the risk for the plan.

5. An underwriting rule shall not be based solely on driver or vehicle characteristics that are present in the insurer's classification plan, for example, age, sex, marital status or vehicle type and age used to determine symbol rating. This provision shall not prohibit an insurer from including all vehicles of a certain type (for example, high performance vehicles) in a single tier.

6. An underwriting rule shall contain specific, verifiable and convenient measurements. No underwriting rule shall be based on subjective guidelines such as "pride of ownership evident", "poor attitude", "unsatisfactory environment to conduct business", etc.

7. No underwriting rule shall be based on race, color, creed, national origin or ancestry.

8. No underwriting rule shall be based on whether the applicant or insured was previously insured as a substandard risk, was previously insured by a residual market mechanism, or whether another insurer declined to insure or terminate insurance.

9. No underwriting rule shall be based on whether the insured or a member of the insured's household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership, except that this provision shall not prohibit a rate discount.

10. No underwriting rule shall be based solely on the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer which limits all its insureds to one lawful occupation or profession, or to several related lawful occupations or professions.

11. No underwriting rule shall be based on whether the insured has changed employment in the recent past, except that this provision shall not preclude discounts to an insurer's employees or agents.

12. No underwriting rule shall be based on whether the insured is impaired by physical or mental disabilities, except those disabilities that impair the ability to operate an automobile safely and are supported by the written opinion of a licensed physician, and if a physical disability is not compensated for by corrective measures.

13. An underwriting rule shall not differentiate unfairly among risks.

14. A system of underwriting rules shall encourage insureds to control or avoid losses.

#### 11:3-19.5 Good driver plans

(a) An insurer may file a good driver rating plan that provides a percentage or dollar differential from base rates. Subject to the provisions of N.J.A.C. 11:3-19.7(d), no insurer shall implement or use a good driver plan that has not been filed in accordance with N.J.S.A. 17:29A-45 and this subchapter.

(b) Good driver plans may be filed for use in connection with both single tier and multi-tier rating plans.

(c) An insurer may establish a good driver plan by filing with the Commissioner the following items:

1. A narrative description of the good driver plan including the percentage or dollar discount from base rates. When submitted by an insurer that has filed a multi-tier rating plan, the narrative description shall identify all tiers and, if a group, the individual companies to which the good driver plan will apply. The narrative shall include the proposed effective date.

2. A complete set of underwriting rules that sets forth the standards of eligibility for the good driver plan.

i. The underwriting rules shall conform to the standards set forth in N.J.A.C. 11:3-19.4.

ii. Each underwriting rule that determines eligibility for a good driver plan shall be supported by a completed copy of the worksheet set forth as Exhibit B of the Appendix to this subchapter.

3. A completed copy of the worksheet set forth as Exhibit A of the Appendix to this subchapter for the base rate, the good driver rate and combined.

#### 11:3-19.6 Relationship to other rules

(a) An insurer which has implemented a multi-tier rating plan shall issue and renew its policies at the appropriate tier for which the risk qualifies in accordance with the insurer's approved underwriting rules. The transfer of a risk from one rate level to another within an insurer's multi-tier rating plan shall not be deemed to be a nonrenewal as provided by N.J.S.A. 39:6A-7 and N.J.A.C. 11:3-8 if the insurer complies with the provisions set forth below.

1. If the insured qualifies for a tier with lower rates, the insurer shall renew the insured at the lower tier in accordance with procedures set forth in N.J.A.C. 11:3-8.2.

2. If the insured qualifies for a tier with higher rates, the insurer shall renew the insured at the higher tier in accordance with procedures set forth in N.J.A.C. 11:3-8.2 after providing notice to the insured as follows:

i. Written notice shall be sent to the insured at least 60, but not more than 90, days before expiration of the policy.

ii. The written notice shall advise the insured that he or she no longer meets the insurer's approved underwriting rules for the rate level to which the insured was previously assigned.

iii. The notice shall set forth the specific underwriting rule that applies to the insured.

iv. The notice shall advise the insured of the specific facts upon which the insurer relies to determine that the insured no longer meets the standard of the underwriting rule.

v. The notice shall advise the insured of his or her right to contact other insurers to determine whether comparable insurance can be purchased elsewhere at less cost.

3. Nothing in this section shall impair the right of an insured voluntarily to cancel or refuse to renew its coverage with the insurer, or shall count such a voluntarily cancelled or nonrenewed policy as a nonrenewal for the purposes of N.J.A.C. 11:3-8.

(b) With respect to the rules concerning filing excess profit reports, N.J.A.C. 11:3-20 and 20A, data for each rate level of a multi-tier rating plan shall be maintained and reported separately. Data for a good driver plan shall be maintained and reported with the rate level to which the plan applies.

(c) With respect to any merit rating accident surcharge system provided by N.J.S.A. 17:29A-35, any rate surcharge shall be an equal dollar amount for all rate levels, including good driver plans, to which the surcharge applies. The dollar amount may vary in accordance with the type of coverage purchased.

(d) With respect to the rate filing requirements provided by N.J.A.C. 11:3-16, an insurer shall file the information required as set forth below:

1. With respect to informational filings required by N.J.A.C. 11:3-16.3, the filing shall be made as follows:

- i. Each rate level of a multi-tier rating plan shall require a separate filing.
- ii. A good driver plan shall be included in the filing for the rate level to which it applies.

2. With respect to flex rate filings made in accordance with N.J.A.C. 11:3-16.4, the filing shall be made as follows:

- i. Each rate level of a multi-tier rating plan shall require a separate filing.
- ii. A good driver plan shall be included in the filing for the rate level to which it applies; the filing shall also include a completed copy of the worksheet set forth as Exhibit A of the Appendix to this subchapter.

3. With respect to the prior approval filings made pursuant to N.J.A.C. 11:3-16.5, the filing shall be made as follows:

- i. Each rate level of a multi-tier rating plan shall require a separate filing.
- ii. A good driver plan shall be included in the filing for the rate level to which it applies; the filing shall also include a completed copy of the worksheet set forth as Exhibit A of the Appendix to this subchapter.

**11:3-19.7 Procedural provisions**

(a) An individual insurance company operating pursuant to a rating plan approved on or before November 14, 1989 may file a multi-tier rating plan in which the modification is expressed as a percentage increase or decrease of the existing rate level. An individual insurance company which did not have a rating plan approved on or before November 14, 1989 may file a multi-tier rating plan by complying with the provisions of N.J.A.C. 11:3-19.3 and N.J.A.C. 11:3-16.5 (rate filing requirements for prior approval filings) regardless whether it is one of a group of affiliated companies of which one or more companies has approved rates.

(b) Contemporaneously with filing a multi-tier or good driver rating plan with the Department, an insurer shall deliver a copy of the plan to the Public Advocate at the following address:

Department of the Public Advocate  
 Division of Rate Counsel  
 744 Broad Street  
 Newark, New Jersey 07102

1. The Public Advocate may intervene in the proceedings by filing notice with the Department within 10 days of date of receipt of the filing. A copy of the notice shall be contemporaneously sent to the insurer filing the plan.

2. The Public Advocate shall file with the Department its comments regarding the insurer's proposed rating plan and underwriting rules no later than 30 days after receipt of the filing. A copy of the comments shall be contemporaneously delivered to the insurer filing the plan.

3. The insurer may submit to the Department a response to the comments within 10 days of receipt. A copy shall be sent contemporaneously to the Public Advocate.

4. The decision of the Commissioner to approve or disapprove rates and the underwriting rule shall be based upon the documents submitted.

5. The Commissioner shall promptly notify the insurer whether the rating plan and underwriting rules have been approved or disapproved. A copy of the decision shall also be sent to the Public Advocate if it has filed a notice of its intention to intervene. Pursuant to N.J.S.A. 17:29A-45c, rates initially filed as a percentage increase or decrease of the existing rate level by an insurer which had rates approved on November 14, 1989, shall be deemed approved if not disapproved within 60 days.

(c) A multi-tier or good driver rating plan shall be disapproved if it results in rates that are unreasonable, inadequate or unfairly discriminatory; if the underwriting rules do not meet the standards set forth in N.J.A.C. 11:3-19.4; or if the insurer fails to submit the items required by N.J.A.C. 11:3-19.3 or 19.5 as applicable.

(d) All insurers that are using a previously approved good driver rating plan shall file with the Commissioner the items set forth in N.J.A.C. 11:3-19.5(c)1, 2 and 3 and no later than February 15, 1990, or 90 days after adoption of this subchapter, whichever is later.

**Exhibit A**

**FORM TO BE FILLED OUT IN JUSTIFICATION OF MULTI-RATING LEVELS PER PL 1988, CHAPTER 156, SECTION 6**

Company Name: \_\_\_\_\_

Company NAIC Number: \_\_\_\_\_

Coverage: \_\_\_\_\_

Rating Plan: \_\_\_\_\_

(1) Year	(2) Actual Earned Premium	(3) On-Level Factor	(4) = (2) * (3) Current Rate Level Earned Premium	(5) Incurred Losses & Loss Adjustment Expenses	(6) Devel- opment Factor	(7) = (5) * (6) Projected Ultimate Losses & Loss Adj. Expense	(8) Loss & Loss Adj. Expense Ratio	(9) Loss/ Premium Trend Factor	(10) = (8) * (9) Trended Loss & Loss Adj. Expense Ratio
1984									
1985									
1986									
1987									
1988									
Total/ Average	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX

Notes:

Complete separate exhibits for Bodily Injury Liability, Property Damage Liability, Personal Injury Protection, Uninsured Motorists, Comprehensive and Collision coverages. Also provide exhibits showing all Liability, all Physical Damage and all Coverages Combined.

Rating Plan should be filled out for standard risks, non-standard risks and combined. Furthermore, a breakdown of the good driver plan business should be provided, if applicable.

Accident year data must be used for BI, PD and PIP. Calendar year data may be used for comprehensive and collision only if accident year data are not available.

Supporting documentation must be provided for the factors set forth in Columns (2), (6) and (9).

An insurer which is not able to provide these data may submit other reliable information and calculations in support of the proposed provisions.

APPENDIX

Exhibit B

FORM TO BE FILLED OUT IN JUSTIFICATION OF UNDERWRITING RULES PER PL 1988, CHAPTER 156, SECTION 6

Company Name: \_\_\_\_\_

Company NAIC Number: \_\_\_\_\_

Coverage: \_\_\_\_\_

Underwriting Rule: \_\_\_\_\_

(1) Year	(2) Actual Earned Premium	(3) On-Level Factor	(4) = (2) * (3) Current Rate Level Earned Premium	(5) Incurred Losses & Loss Adjustment Expenses	(6) Devel- opment Factor	(7) = (5) * (6) Projected Ultimate Losses & Loss Adj. Expense	(8) Loss & Loss Adj. Expense Ratio	(9) Loss/ Premium Trend Factor	(10) = (8) * (9) Trended Loss & Loss Adj. Expense Ratio
1984									
1985									
1986									
1987									
1988									
Total/ Average	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX

Notes:

Complete separate exhibits for Bodily Injury Liability, Property Damage Liability, Personal Injury Protection, Uninsured Motorists, Comprehensive and Collision coverages. Also provide exhibits showing all Liability, all Physical Damage and all Coverages Combined.

Underwriting rule should be contained in one of the rating plans (standard, non-standard, good driver) being submitted for approval.

Accident year data must be used for BI, PD and PIP. Calendar year data may be used for comprehensive and collision only if accident year data are not available.

Supporting documentation must be provided for the factors set forth in Columns (2), (6) and (9).

An insurer which is not able to provide these data may submit other reliable information and calculations in support of the proposed provisions.

(a)

**DIVISION OF ACTUARIAL SERVICES****Examination of the Financial Experience of Private Passenger Automobile Insurers****Proposed New Rules: N.J.A.C. 11:3-31**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:23-1 et seq., 17:29A-1 et seq. and 17:29B-1 et seq.

Proposal Number: PRN 1989-644.

Submit comments by January 3, 1990 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

N.J.S.A. 17:23-1 et seq. provides that the Commissioner of Insurance (Commissioner) may make or cause to be made an examination of the assets, liabilities, methods of conducting business and all other affairs of any insurer authorized to transact business in this State. N.J.S.A. 17:29A-1 et seq. provides that property and casualty insurers shall file information relating to their loss and expense experience in order for the Commissioner to determine compliance with applicable statutory rate-making requirements. N.J.S.A. 17:29B-1 et seq. provides that the Commissioner shall have the power to examine and investigate the affairs of every insurer transacting business in this State to determine whether such insurer is engaging in any unfair method of competition or in any unfair or deceptive act or practice prohibited by N.J.S.A. 17:29B-1 et seq.

In order to evaluate more completely the data filed pursuant to these statutes and the financial experience of private passenger automobile insurers, the Department of Insurance (Department) proposes these new rules requiring all private passenger automobile insurers transacting business in this State to complete and file a financial data report on or before July 1 of each year, containing specified information required by and in the format of the exhibits appended to these rules, reflecting the insurer's financial experience for the two calendar years immediately preceding the date such financial data report is due. The information filed by insurers will enable the Department, among other things, to review the adequacy of rates, perform an analysis of these insurers' underwriting expenses and determine the financial impact of Unsatisfied Claim and Judgment Fund assessments and reimbursements on insurers and on the private passenger automobile market.

In addition, the information filed by insurers will be utilized to identify and evaluate the specific reasons underlying the high cost of providing statutorily mandated automobile insurance to the citizens of New Jersey so that legislative proposals and administrative responses may be developed to maximize insurer efficiency and to otherwise minimize the cost of providing these coverages.

While similar reports have been required by the Department in the past, these proposed rules will require this information to be filed annually.

Proposed N.J.A.C. 11:3-31.1 and 31.2 set forth the purpose and scope of the proposed new rules. Proposed N.J.A.C. 11:3-31.3 sets forth the definition of terms used in the subchapter. Proposed N.J.A.C. 11:3-31.4 requires and describes the filing of the financial data report. Proposed N.J.A.C. 11:3-31.5 prohibits insurers from making changes to the financial data report and provides specified exceptions to this prohibition for the purpose of conforming the report to the statutory annual statement and insurance expense exhibit. Proposed N.J.A.C. 11:3-31.6 describes the penalties for violation of this subchapter.

**Social Impact**

The impact of the proposed new rules is that private passenger automobile insurers will be required annually to file financial data reports containing the required information in the format of the exhibits appended to these rules. The Department, however, believes this impact to be minimal. Much of this information has been submitted to the Department in financial data reports previously required or is required for other statutory filings. Any additional information required by these proposed new rules can be readily provided by insurers.

The Department will benefit from the proposed new rules in that insurers will be fully apprised of the filing requirements and therefore will submit complete and accurate reports. The financial data reports required by the proposed rules will also enable the Department to evaluate the reasons for the high cost of automobile insurance in this State which may result in legislative or administrative action to reduce these costs, thus providing a potential benefit to the public.

**Economic Impact**

Insurers will be required to bear the costs of compiling and filing the information required by the proposed new rules. Any such costs should be minimal, however, since much of the information has been required in the past or is readily obtainable.

The Department will experience an economic impact in that it will be required to review the financial data reports filed by private passenger automobile insurers. Any such impact will be absorbed within the current budget. Potential benefit to the public may arise through the use of the information provided in formulating legislative or administrative action to reduce the high cost of automobile insurance.

**Regulatory Flexibility Analysis**

The proposed new rules may apply to "small business" as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

To the extent the new rules apply to "small businesses", they will be businesses transacting private passenger automobile insurance in this State. The reporting, recordkeeping or other compliance requirements are clearly and fully set forth in the proposed new rules. As with the previous filings of this report, the services of both accountants and actuaries will be required to comply with these rules. The initial and annual compliance costs would be those associated with compiling and filing the required information. To the extent that the new rules apply to "small businesses", they will impose a greater economic burden on "small businesses" in that they may have to devote proportionately more financial resources and staff to compiling and filing the data required. The Department, however, believes any such impact to be minimal since much of the information has been previously required or is readily obtainable.

The proposed new rules provide a mechanism to minimize their impact on insurers with little or no exposure in New Jersey in that insurers which have less than 150 car years of exposure in New Jersey during the two years immediately preceding the date the financial data report is due are exempt from filing the report for that year. The proposed new rules, however, provide no different compliance requirements specifically based on insurer size. These rules codify the filing requirement of annual financial data reports by private passenger automobile insurers. In order to ensure continued consistency in the review and evaluation of an insurer's financial experience and due to the minimal nature of any additional burden imposed, no differentiation in compliance requirements is provided based on insurer size.

Full text of the proposal follows:

**SUBCHAPTER 31. EXAMINATION OF THE FINANCIAL EXPERIENCE OF PRIVATE PASSENGER AUTOMOBILE INSURERS****11:3-31.1 Purpose**

This subchapter requires private passenger automobile insurers to complete and file financial data reports in order to evaluate more completely the financial data filed pursuant to N.J.S.A. 17:23-1 et seq., 17:29A-1 et seq. and 17:29B-1 et seq.

**11:3-31.2 Scope**

This subchapter applies to all insurers authorized to transact private passenger automobile insurance in this State.

**11:3-31.3 Definitions**

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

"Car year" means the unit of exposure equivalent to the insuring of one automobile for 12 months, two automobiles for six months each, three automobiles for four months, and so on.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Insurer" means an entity authorized or admitted to transact private passenger automobile insurance business in New Jersey. Where an insurer is part of an insurance holding company system, insurer

means each individual insurer within that insurance holding system. Insurer does not include the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq.

"Private passenger automobile insurance business" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2, excluding personal excess liability insurance and insurance on commercial vehicles.

11:3-31.4 Financial data report; filing requirements

(a) Each private passenger automobile insurer, except as provided at (e) below, shall annually file with the Commissioner a financial data report for the two calendar years immediately preceding the date the financial data report is due, containing the data and information required by and in the format of the exhibits appended to this subchapter and the instructions thereto, which exhibits and instructions are hereby incorporated by reference as part of these rules. Each insurer shall file this report so that it is received by the Commissioner not later than July 1 of each year.

(b) A separate financial data report shall be filed for each insurer and each insurer in an insurance holding company system. Each insurance holding company system shall file a separate combined financial data report for all insurers in its system.

(c) The data required to be reported in the exhibits shall be submitted on a 3.5 inch, double-sided high density disk, on a format to be prescribed by the Commissioner and presented in a Lotus 1-2-3 or compatible spread sheet.

(d) An officer of each insurer required to file a financial data report pursuant to this subchapter shall file a certification, in the format of Exhibit B appended to this subchapter, which is hereby incorporated by reference as part of these rules, signed by such officer and stating that the report is accurate and complete to the best of his or her knowledge. This certification shall be attached to the front of the financial data report submission.

(e) Any insurer having fewer than 150 car years of exposure for private passenger automobile insurance in New Jersey during the two calendar years immediately preceding the date the financial data report is due shall file a certification to that effect in lieu of all other requirements of this subchapter.

(f) All filings required by this subchapter shall be sent to:

New Jersey Department of Insurance  
Division of Property and Liability  
20 West State Street  
CN-325  
Trenton, New Jersey 08625  
Attention: Financial Data Reports

11:3-31.5 Changes to financial data report prohibited; exceptions

(a) No change shall be made to the financial data report, except as provided at (b), (c) and (d) below.

(b) For the sole purpose of conforming the financial data report to the statutory annual statement and statutory insurance expense exhibit, an insurer required to file a financial data report pursuant to this subchapter shall make any required changes to the sources of data that are contained in the financial data report. Each change made shall be listed in a separate letter accompanying the report showing the previous source of data and the source of data used in the report as changed.

(c) The exhibits appended to this subchapter are 1989 exhibits. Where exhibits for prior years or later years must be reported, an insurer shall submit exhibits which are substantially similar to the appended exhibits to report the prior years' or later years' data and which contain all information, including dates, adjusted accordingly.

(d) All references in the exhibits to the statutory annual statement and insurance expense exhibit are for 1988. For any year prior to 1988 an insurer shall use the corresponding source of data contained in that year's statutory annual statement or statutory insurance expense exhibit. If the data is not reported in the statutory annual statement or insurance expense exhibit, the insurer shall use its internal company data.

11:3-31.6 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

APPENDIX

Financial Data Report Instructions

One: General Instructions

- 1. In all exhibits, dollars are stated as rounded to the nearest thousand dollars. For example, \$10,321 is written as 10; and \$4,728 is written as 5.
2. Ratios and fractions are expressed as decimals and rounded to the third decimal place. For example, 3/10 is written as .300; and 2/3 is written as .667.
3. A ratio may be expressed in words as follows. The ratio of Item 1 to Item 2 may be written as "Ratio Item 1 divided by Item 2."
4. Where a three year sum is expressed as a ratio, the ratio required is the ratio of the three years' data and not the sum of the three ratios.
5. An "X" in the data portion of an exhibit means that no data is required to be entered.
6. "AS" refers to the 1988 statutory annual statement, and "IEE" refers to the 1988 statutory insurance expense exhibit.
7. "AIRE Charges" and "AIRE Compensation" mean, respectively, amounts paid to or received from the New Jersey Automobile Insurance Risk Exchange pursuant to N.J.S.A. 39:6A-22. These are reported in DOI Exhibit Seven.
8. "UCJF Assessments" means amounts paid by insurers to the Unsatisfied Claim and Judgement Fund pursuant to N.J.S.A. 39:6-63, and "UCJF Reimbursements" means amounts received by an insurer from the Unsatisfied Claim and Judgement Fund as a result of excess medical expense benefit payments by the insurer pursuant to N.J.S.A. 39:6-73.1. In DOI Exhibit A, UCJF Reimbursements are referred to as "Excess Medical Benefits."
9. For several of the Items in the various exhibits, the source of data, or the formula for calculating the data, or both, may be included in parentheses following the Item.

Two: DOI Exhibit A

- 1. DOI Exhibit A is to provide information with respect to the insurer's New Jersey private passenger auto insurance for the coverages and years indicated. "Private passenger auto insurance" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2, excluding personal excess liability insurance and insurance on commercial vehicles.
2. The sources of data for Item 1 for 1988 follows:
Liability ..... AS New Jersey Page 14 Line 19.2
PIP ..... AS New Jersey Page 14 Line 19.1
Physical Damage ..... AS New Jersey Page 14 Line 21.1
For years prior to 1988, see N.J.A.C. 11:3-31.5(d), herein.
3. The source of Item 1A is DOI Exhibit A Part Three.
4. With regard to Item 5 please note that the New Jersey Automobile Full Insurance Availability Act (see N.J.S.A. 17:30E-1 et seq.) which established the JUA was effective 01 January 1984.
5. Premiums, losses, and dividends for private passenger type commercial vehicles are to be listed in Item 7 as a "write in," but only if they are contained in Item 1, for loss data or dividend data, or Item 1B, for premium data, and then only the premiums, losses, and dividends not included in Items 2 through 6.
6. Provision is made for other "write in" exclusions in Items 8, 9, and 10. A filer may modify the exhibit to add more lines for exclusions if three lines are not sufficient. Where any write in exclusion is used, a written explanation as to what is listed as an exclusion, and why it is appropriate to list the exclusion, is to be provided on a piece of paper attached to Exhibit A.
7. Premiums, losses, and dividends for private passenger motor homes are NOT to be listed as exclusions.

Three: DOI Exhibit ONE

- 1. The source of data for DOI Exhibit One Part One is the IEE.
2. The general expenses and acquisition expenses shown on DOI Exhibit One Part Two, Sections One and Two, are the expenses that are related to the business the earned premium of which is shown in Item 1 of DOI Exhibit One Part Two Sections One and Two.
3. In DOI Exhibit One Part Two, Sections Three, Four-A, Four-B, Five, Six, and Seven, Item 3 refers to the dollars of written premium

**INSURANCE**

**PROPOSALS**

shown in Item 1 that are earned in the year stated in Item 3, and Item 8 refers to the dollars of written premium shown in Item 6 that are earned in the year stated in Item 8.

**Four: DOI Exhibit Three**

- 1. In Parts One and Two of DOI Exhibit Three, the loss adjustment expense shown in Items 7, 8 and 9 are the claim settlement expenses that are associated with the incurred losses shown in Item 6.

**Five: DOI Exhibit Five**

- 1. DOI Exhibit Five Part Three contains 10 Items which continue as Items 11 through 20 in DOI Exhibit Five Part Four.

**Six: DOI Exhibit Six**

- 1. In DOI Exhibit Six Parts One and Two, do not round Item 6 to the nearest thousand. It is not a dollar figure.

Financial Data Reports for New Jersey  
Private Passenger Auto

THESE EXHIBITS MUST BE SENT SO THAT THEY ARE RECEIVED BY THE DEPARTMENT OF INSURANCE  
By 01 July 1989

Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

DOI EXHIBIT A Part One  
Page 1 of 4

**Coverage:**

Please state: \_\_\_\_\_  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

Liability \_\_\_\_\_  
PIP \_\_\_\_\_  
Physical Damage \_\_\_\_\_

Total of above three coverages \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

Year: \_\_\_\_\_  
Calendar Year 1988 \_\_\_\_\_  
Calendar Year 1987 \_\_\_\_\_  
Sum of the two calendar years 1988 and 1987 \_\_\_\_\_

A separate DOI Exhibit A Part One is to be completed for each coverage and year listed above.

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

DOI EXHIBIT A Part One  
Page 2 of 4

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_  
Coverage \_\_\_\_\_  
Year \_\_\_\_\_

Col (1) Direct Premiums Written	Col (2) Direct Premiums Earned	Col (3) Direct Losses Paid
--	---	-------------------------------------

Item 1	Source: line _____ of Page 14	_____	_____	_____
Item 1A	UCJF Assessments	_____	_____	X
Item 1B	Item 1 minus Item 1A	_____	_____	X

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM ONE.

**Exclusions:**

Item 2	Excess Medical Benefits	X	X	_____
Item 3	Motorcycles	_____	_____	_____
Item 4	"Off Road" Vehicles	_____	_____	_____
Item 5	JUA Business	_____	_____	_____
Item 6	Excess/Umbrella Policies	_____	_____	_____

**Other Exclusions (list):**

Item 7	_____	_____	_____	_____
Item 8	_____	_____	_____	_____
Item 9	_____	_____	_____	_____
Item 10	_____	_____	_____	_____
Item 10A	Finance and Service Charges	_____	_____	X
Item 11	Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12	Financial Data (Item 1B minus Item 11)	_____	_____	_____

DOI EXHIBIT A Part One  
Page 3 of 4

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_  
Coverage \_\_\_\_\_  
Year \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

Col (4) Direct Losses Incurred	Col (5) Dividends on Direct Business	Col (6) Direct Unearned Premium Reserves
---	---	--

Item 1	Source: line _____ of Page 14	_____	_____	_____
Item 1A	UCJF Assessments	X	X	_____
Item 1B	Item 1 minus Item 1A	X	X	_____

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM ONE.

**PROPOSALS**

Interested Persons see Inside Front Cover

**INSURANCE**

Exclusions:				
Item 2	Excess Medical Benefits	_____	X	X
Item 3	Motorcycles	_____	_____	_____
Item 4	"Off Road" Vehicles	_____	_____	_____
Item 5	JUA Business	_____	_____	_____
Item 6	Excess/Umbrella Policies	_____	_____	_____
Other Exclusions (list):				
Item 7	_____	_____	_____	_____
Item 8	_____	_____	_____	_____
Item 9	_____	_____	_____	_____
Item 10	_____	_____	_____	_____
Item 10A	Finance and Service Charges	X	X	_____
Item 11	Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12	Financial Data (Item 1B minus Item 11)	_____	_____	_____
Item 12A	Refund of Excess Profits Included in Item 12, Col (5)	X	_____	X
Item 12B	All Other Dividends Included in Item 12, Col (5)	X	_____	X

DOI EXHIBIT A Part One  
Page 4 of 4

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_  
Coverage \_\_\_\_\_  
Year \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

(Col (7)  
Direct  
Losses  
Unpaid

Item 1	Source: line _____ of Page 14	_____
Item 1A	UCJF Assessments	X
Item 1B	Item 1 minus Item 1A	X

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM ONE.

Exclusions:				
Item 2	Excess Medical Benefits	_____		
Item 3	Motorcycles	_____		
Item 4	"Off Road" Vehicles	_____		
Item 5	JUA Business	_____		
Item 6	Excess/Umbrella Policies	_____		
Other Exclusions (list):				
Item 7	_____	_____		
Item 8	_____	_____		
Item 9	_____	_____		
Item 10	_____	_____		
Item 10A	Finance and Service Charges	X		
Item 11	Subtotal (Sum Items 2 through 10A)	_____		
Item 12	Financial Data (Item 1B minus Item 11)	_____		

DOI EXHIBIT A Part Two  
Page 1 of 3

Group Name \_\_\_\_\_ Coverage: \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_ Liability \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

Physical Damage \_\_\_\_\_  
  
Total of above three coverages \_\_\_\_\_

A separate DOI Exhibit A Part Two is to be completed for each coverage listed above.

DOI EXHIBIT A Part Two  
Page 2 of 3

Calendar Year 1986

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_  
Coverage \_\_\_\_\_

Col (1)	Col (2)	Col (3)
Direct	Direct	Direct
Premiums	Unearned	Losses
Written	Premium	Unpaid
	Reserve	

Item 1	Source: line _____ of Page 14	_____	_____	_____
Item 1A	UCJF Assessments	_____	_____	X
Item 1B	Item 1 minus Items 1A	_____	_____	X

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM ONE.

Exclusions:				
Item 2	Excess Medical Benefits	X	X	_____
Item 3	Motorcycles	_____	_____	_____
Item 4	"Off Road" Vehicles	_____	_____	_____
Item 5	JUA Business	_____	_____	_____
Item 6	Excess/Umbrella Policies	_____	_____	_____

Other Exclusions (list):				
Item 7	_____	_____	_____	_____
Item 8	_____	_____	_____	_____
Item 9	_____	_____	_____	_____
Item 10	_____	_____	_____	_____
Item 10A	Finance and Service Charges	_____	_____	X
Item 11	Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12	Financial Data (Item 1B through Item 11)	_____	_____	_____

DOI EXHIBIT A Part Two  
Page 3 of 3

Calendar Year 1985

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_  
Coverage \_\_\_\_\_

	Col (1) Direct Premiums Written	Col (2) Direct Unearned Premium Reserve	Col (3) Direct Losses Unpaid
Item 1 Source: line _____ of Page 14	_____	_____	_____
Item 1A UCJF Assessments	_____	_____	X
Item 1B Item 1 minus Item 1A	_____	_____	X

NOTE: LIST DATA IN EXCLUSIONS  
(ITEMS 2 THROUGH 10) ONLY IF  
THE DATA IS INCLUDED IN ITEM ONE.

Exclusions:			
Item 2 Excess Medical Benefits	X	X	_____
Item 3 Motorcycles	_____	_____	_____
Item 4 "Off Road" Vehicles	_____	_____	_____
Item 5 JUA Business	_____	_____	_____
Item 6 Excess/Umbrella Policies	_____	_____	_____
Other Exclusions (list):			
Item 7 _____	_____	_____	_____
Item 8 _____	_____	_____	_____
Item 9 _____	_____	_____	_____
Item 10 _____	_____	_____	_____
Item 10A Finance and Service Charges	_____	_____	X
Item 11 Subtotal (Sum Items 2 through 10A)	_____	_____	_____
Item 12 Financial Data (Items 1B minus Item 11)	_____	_____	_____

DOI EXHIBIT A Part Three  
Page One

UCJF Assessments

Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

	Calendar Year 1988	Calendar Year 1987	Calendar Year 1986
Item 1: Assessed during the calendar year	_____	_____	_____
Item 2: Assessed during the prior calendar year	_____	_____	_____
Item 3: UCJF Assessments Incurred [(3 x Item 1) minus (2 x Item 2)]	_____	_____	_____

Note:

Item 1 is the amount the insurer was informed by the UCJF that the insurer was assessed during the calendar year.

Item 2 is the amount the insurer was informed by the UCJF that the insurer was assessed during the prior calendar year.

Item 3 has to be reported on DOI Exhibit A Parts One and Two.

DOI EXHIBIT A Part Three  
Page Two

UCJF Assessments

Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

	Calendar Year 1985
Item 1: Assessed during the calendar year	_____
Item 2: Assessed during the prior calendar year	_____
Item 3: UCJF Assessments Incurred [(3 x Item 1) minus (2 x Item 2)]	_____

Note:

Item 1 is the amount the insurer was informed by the UCJF that the insurer was assessed during the calendar year.

Item 2 is the amount the insurer was informed by the UCJF that the insurer was assessed during the prior calendar year.

Item 3 is to be reported on DOI Exhibit A Parts One and Two.

DOI EXHIBIT A Part Four

Physical Damage Rating  
Questionnaire

Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

Does the filer use model year rating in its physical damage rating system?

Check one:

Yes \_\_\_\_\_

No \_\_\_\_\_

DOI EXHIBIT ONE Part One

A separate DOI Exhibit One Part One is to be completed containing data for each of the calendar years 1988 and 1987, and also for the sum of the two years' data, for a total of three DOI Exhibits.

BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS

Note:

Columns (1) and (3) show dollars in thousands.

Columns (2) and (4) show ratios to Net Earned Premium.

Data is from the statutory Insurance Expense Exhibit ("IEE"), columns 19.1, 19.2 (for liability) and column 21.1 (for physical damage).

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

Check one:

DOI EXHIBIT ONE Part Two  
Section One Page 2

Please state:

Group Name \_\_\_\_\_ Calendar Year 1988 \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_ Calendar Year 1987 \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

Sum of the two  
calendar years \_\_\_\_\_

Private Passenger Auto Liability      Private Passenger Auto Physical Damage

Col (1)    Col (2)    Col (3)    Col (4)

Net Earned Premium (IEE Line 2)      \_\_\_\_\_    1.000      \_\_\_\_\_    1.000  
Other Acquisition (IEE Line 6)      \_\_\_\_\_  
General Expenses (IEE Line 7)      \_\_\_\_\_  
Commission and Brokerage (IEE Line 5)      \_\_\_\_\_  
Taxes, Licenses, Fees (IEE Line 8)      \_\_\_\_\_  
Losses Incurred (IEE Line 3)      \_\_\_\_\_  
Loss Adjustment Expenses Incurred (IEE Line 4)      \_\_\_\_\_

DOI EXHIBIT ONE Part Two  
Section One Page 1

Check one:

Please state:  
Group Name \_\_\_\_\_ Liability \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_ PIP \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_ Physical Damage \_\_\_\_\_

BEFORE COMPLETING  
THE EXHIBITS  
PLEASE READ THE  
INSTRUCTIONS

Total of above  
three coverages \_\_\_\_\_

Direct General Expenses

Col (1)    Col (2)  
Calendar    Calendar  
Year        Year  
1988        1987

Item 1: Direct Premiums Earned (DOI Exhibit A, Part One, Page 2, Item 12, Col (2))      \_\_\_\_\_      \_\_\_\_\_  
Item 2: Direct General Expenses paid during calendar year      \_\_\_\_\_      \_\_\_\_\_  
Item 3: Direct General Expenses unpaid as of 31 December of the calendar year      \_\_\_\_\_      \_\_\_\_\_  
Item 4: Direct General Expenses unpaid as of 31 December of the prior calendar year      \_\_\_\_\_      \_\_\_\_\_  
Item 5: Direct General Expenses Incurred (Item 2 + Item 3 - Item 4)      \_\_\_\_\_      \_\_\_\_\_  
Item 6: Ratio Item 5 divided by Item 1      \_\_\_\_\_      \_\_\_\_\_

Check one:

Please state:  
Group Name \_\_\_\_\_ Liability \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_  
Company Name \_\_\_\_\_ Physical Damage \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

BEFORE COMPLETING  
THE EXHIBITS  
PLEASE READ THE  
INSTRUCTIONS

Total of above  
three coverages \_\_\_\_\_

Direct General Expenses

Calendar  
Year  
1986

Item 1: Direct Premiums Earned (DOI Exhibit A Part Two, Part 2 of 3, Col (1), Item 12 MINUS DOI Exhibit A, Part Two, Page 2 of 3, Col (2), Item 12 PLUS DOI Exhibit A, Part Two, Page 3 of 3, Col (2), Item 12)      \_\_\_\_\_  
Item 2: Direct General Expenses paid during calendar year      \_\_\_\_\_  
Item 3: Direct General Expenses unpaid as of 31 December of the calendar year      \_\_\_\_\_  
Item 4: Direct General Expenses unpaid as of 31 December of the prior calendar year      \_\_\_\_\_  
Item 5: Direct General Expenses Incurred (Items 2 + Item 3 - Item 4)      \_\_\_\_\_  
Item 6: Ratio Item 5 divided by Item 1      \_\_\_\_\_

DOI EXHIBIT ONE Part Two  
Section Two Page 1

Check one:

Please state:  
Group Name \_\_\_\_\_ Liability \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_  
Company Name \_\_\_\_\_ Physical Damage \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS

Total of above  
three coverages \_\_\_\_\_

Direct Other Acquisition Expenses

Col (1)    Col (2)  
Calendar    Calendar  
Year        Year  
1988        1987

Item 1: Direct Premiums Earned (DOI Exhibit A, Part One, Page 2, Item 12)      \_\_\_\_\_      \_\_\_\_\_  
Item 2: Direct Other Acq paid during calendar year      \_\_\_\_\_      \_\_\_\_\_  
Item 3: Direct Other Acq unpaid as of 31 December of the calendar year      \_\_\_\_\_      \_\_\_\_\_  
Item 4: Direct Other Acq unpaid as of 31 December of the prior calendar year      \_\_\_\_\_      \_\_\_\_\_  
Item 5: Direct Other Acq Incurred (Item 2 + Item 3 - Item 4)      \_\_\_\_\_      \_\_\_\_\_  
Item 6: Ratio Item 5 divided by Item 1      \_\_\_\_\_      \_\_\_\_\_

**INSURANCE**

DOI EXHIBIT ONE Part Two  
Section Two Page 2

Check one:

Please state:

Group Name \_\_\_\_\_ Liability \_\_\_\_\_  
 Group NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_  
 Company Name \_\_\_\_\_ Physical Damage \_\_\_\_\_  
 Company NAIC Number \_\_\_\_\_

**BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS**

Total of above  
three coverages \_\_\_\_\_

Direct Other Acquisition Expenses

Calendar  
Year  
1986

Item 1: Direct Premiums Earned  
(DOI Exhibit One, Part Two, Section One,  
Page 2, Item 1) \_\_\_\_\_  
 Item 2: Direct Other Acq paid during  
calendar year \_\_\_\_\_  
 Item 3: Direct Other Acq unpaid  
as of 31 December of the calendar year \_\_\_\_\_  
 Item 4: Direct Other Acq unpaid  
as of 31 December of the prior calendar year \_\_\_\_\_  
 Item 5: Direct Other Acq Incurred  
(Item 2 + Item 3 - Item 4) \_\_\_\_\_  
 Item 6: Ratio Item 5 divided by Item 1 \_\_\_\_\_

DOI EXHIBIT ONE Part Two  
Section Three

Check one:

Please state:

Group Name \_\_\_\_\_ Liability \_\_\_\_\_  
 Group NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_  
 Company Name \_\_\_\_\_ Physical Damage \_\_\_\_\_  
 Company NAIC Number \_\_\_\_\_

**BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS**

Total of above  
three coverages \_\_\_\_\_

Commission and Brokerage  
Fees Incurred

Calendar  
Year  
1988

Item 1: 1988 Direct Written Premium  
(DOI Exhibit A, Part One, Page 2, Item 12,  
Col (1)) \_\_\_\_\_  
 Item 2: Commission and Brokerage Fees  
that arise from the writing  
of policies, the premium of  
which is listed in Item 1 \_\_\_\_\_  
 Item 3: Dollars of 1988 Direct  
Written Premium that are  
earned in 1988 \_\_\_\_\_  
 Item 4: Ratio Item 3 divided by Item 1 \_\_\_\_\_  
 Item 5: Item 2 x Item 4 \_\_\_\_\_

**PROPOSALS**

Item 6: 1987 Direct Written Premium  
(DOI Exhibit A, Part One, Page 2, Item 12,  
Col (1)) \_\_\_\_\_

Item 7: Commission and Brokerage Fees  
that arise from the writing  
of policies, the premium of  
which is listed in Item 6 \_\_\_\_\_

Item 8: Dollars of 1987 Direct  
Written Premium that are  
earned in 1988 \_\_\_\_\_

Item 9: Ratio Item 8 divided by Item 6 \_\_\_\_\_

Item 10: Item 9 x Item 7 \_\_\_\_\_

Item 11: 1988 Commission and Brokerage Incurred  
(Item 10 + Item 5) \_\_\_\_\_

DOI EXHIBIT ONE Part Two  
Section Four—B

Check one:

Please state:

Group Name \_\_\_\_\_ Liability \_\_\_\_\_  
 Group NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_  
 Company Name \_\_\_\_\_ Physical Damage \_\_\_\_\_  
 Company NAIC Number \_\_\_\_\_

**BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS**

Total of above  
three coverages \_\_\_\_\_

Commission and Brokerage  
Fees Incurred

Calendar  
Year  
1986

Item 1: 1986 Direct Written Premium  
(DOI EXHIBIT A Part Two, Page 2, Item 12,  
Col (1)) \_\_\_\_\_

Item 2: Commission and Brokerage Fees  
that arise from the writing  
of policies, the premium of  
which is listed in Item 1 \_\_\_\_\_

Item 3: Dollars of 1986 Direct  
Written Premium that are  
earned in 1986 \_\_\_\_\_

Item 4: Ratio Item 3 divided by Item 1 \_\_\_\_\_

Item 5: Item 2 x Item 4 \_\_\_\_\_

Item 6: 1985 Direct Written Premium  
(DOI Exhibit A, Part Two, Page 3 of 3,  
Item 12, Col (1)) \_\_\_\_\_

Item 7: Commission and Brokerage Fees  
that arise from the writing  
of policies, the premium of  
which is listed in Item 6 \_\_\_\_\_

Item 8: Dollars of 1985 Direct  
Written Premium that are  
earned in 1986 \_\_\_\_\_

Item 9: Ratio Item 8 divided by Item 6 \_\_\_\_\_

Item 10: Item 9 x Item 7 \_\_\_\_\_

Item 11: 1986 Commission and Brokerage Incurred  
(Item 10 + Item 5) \_\_\_\_\_

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

DOI EXHIBIT ONE Part Two  
Section Five

Calendar  
Year  
1987

Check one:  
Please state:  
Group Name \_\_\_\_\_ Liability \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_  
Company Name \_\_\_\_\_ Physical Damage \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_  
Total of above  
three coverages \_\_\_\_\_  
Taxes, Licenses, Fees  
Fees Incurred \_\_\_\_\_

Item 1: 1987 Direct Written Premium  
(DOI Exhibit A, Part One, Page 2, Item 12,  
Col (1)) \_\_\_\_\_  
Item 2: Taxes, Licenses, and Fees  
that arise from the writing  
of policies, the premium of  
which is listed in Item 1 \_\_\_\_\_  
Item 3: Dollars of 1987 Direct  
Written Premium that are  
earned in 1987 \_\_\_\_\_  
Item 4: Ratio Item 3 divided by Item 1 \_\_\_\_\_  
Item 5: Item 2 x Item 4 \_\_\_\_\_  
Item 6: 1986 Direct Written Premium  
(DOI Exhibit A, Part Two, Page 2, Item 12,  
Col (1)) \_\_\_\_\_  
Item 7: Taxes, Licenses, and Fees  
that arise from the writing  
of policies, the premium of  
which is listed in Item 6 \_\_\_\_\_  
Item 8: Dollars of 1986 Direct  
Written Premium that are  
earned in 1987 \_\_\_\_\_  
Item 9: Ratio Item 8 divided by Item 6 \_\_\_\_\_  
Item 10: Item 9 x Item 7 \_\_\_\_\_  
Item 11: 1987 Taxes, Licenses, and Fees Incurred  
(Item 10 + Item 5) \_\_\_\_\_

BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS

Calendar  
Year  
1988

Item 1: 1988 Direct Written Premium  
(DOI Exhibit A, Part One, Page 2, Item 12,  
Col (1)) \_\_\_\_\_  
Item 2: Taxes, Licenses, and Fees  
that arise from the writing  
of policies, the premium of  
which is listed in Item 1 \_\_\_\_\_  
Item 3: Dollars of 1988 Direct  
Written Premium that are  
earned in 1988 \_\_\_\_\_  
Item 4: Ratio Item 3 divided by Item 1 \_\_\_\_\_  
Item 5: Item 2 x Item 4 \_\_\_\_\_  
Item 6: 1987 Direct Written Premium  
(DOI Exhibit A, Part One, Page 2, Item 12,  
Col (1)) \_\_\_\_\_  
Item 7: Taxes, Licenses, and Fees  
that arise from the writing  
of policies, the premium of  
which is listed in Item 6 \_\_\_\_\_  
Item 8: Dollars of 1987 Direct  
Written Premium that are  
earned in 1988 \_\_\_\_\_  
Item 9: Ratio Item 8 divided by Item 6 \_\_\_\_\_  
Item 10: Item 9 x Item 7 \_\_\_\_\_  
Item 11: 1988 Taxes, Licenses, and Fees Incurred  
(Item 10 + Item 5) \_\_\_\_\_

DOI EXHIBIT ONE Part Two  
Section Seven

Check one:  
Please state:  
Group Name \_\_\_\_\_ Liability \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_  
Company Name \_\_\_\_\_ Physical Damage \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_  
Total of above  
three coverages \_\_\_\_\_  
Taxes, Licenses, Fees  
Fees Incurred \_\_\_\_\_

BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS

DOI EXHIBIT ONE Part Two  
Section Six

Check one:  
Please state:  
Group Name \_\_\_\_\_ Liability \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_  
Company Name \_\_\_\_\_ Physical Damage \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_  
Total of above  
three coverages \_\_\_\_\_  
Taxes, Licenses, Fees  
Fees Incurred \_\_\_\_\_

Item 1: 1986 Direct Written Premium  
(DOI Exhibit A, Part Two, Page 2, Item 12,  
Col (1)) \_\_\_\_\_  
Item 2: Taxes, Licenses, and Fees  
that arise from the writing  
of policies, the premium of  
which is listed in Item 1 \_\_\_\_\_  
Item 3: Dollars of 1986 Direct  
Written Premium that are  
earned in 1986 \_\_\_\_\_  
Item 4: Ratio Item 3 divided by Item 1 \_\_\_\_\_  
Item 5: Item 2 x Item 4 \_\_\_\_\_  
Item 6: 1985 Direct Written Premium  
(DOI Exhibit A, Part Two, Page 3, Item 12,  
Col (1)) \_\_\_\_\_

BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS

**INSURANCE**

**PROPOSALS**

Item 7: Taxes, Licenses, and Fees that arise from the writing of policies, the premium of which is listed in Item 6 \_\_\_\_\_

Item 8: Dollars of 1985 Direct Written Premium that are earned in 1986 \_\_\_\_\_

Item 9: Ratio Item 8 divided by Item 6 \_\_\_\_\_

Item 10: Item 9 x Item 7 \_\_\_\_\_

Item 11: 1986 Taxes, Licenses, and Fees Incurred (Item 10 + Item 5) \_\_\_\_\_

**DOI EXHIBIT THREE Part One**

Premiums, Losses, Expenses  
Calendar Year 1988

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

Check one:  
Liability \_\_\_\_\_  
PIP \_\_\_\_\_  
Physical Damage \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

Total of above three coverages \_\_\_\_\_

**DOI EXHIBIT TWO**

New Jersey Expenses

Check one:  
Liability \_\_\_\_\_  
PIP \_\_\_\_\_  
Physical Damage \_\_\_\_\_  
Total of above three coverages \_\_\_\_\_

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

Col (1) 1988	Col (2) 1987	Col (3) Difference (= Col (1) - Col (2))
-----------------	-----------------	---

1) Direct Written Premiums (DOI EXHIBIT A, Part One Page 2, Item 12)	_____	X	X
2) Direct Unearned Premium Reserve at 12/31 (DOI EXHIBIT A, Part One, Page 3, Item 12, Col (1))	_____	_____	_____
3) Direct Earned Premiums (Item 1 minus Item 2, Col (3))	_____	X	X
4) Direct Paid Losses (DOI EXHIBIT A, Part One, Page 2, Item 12, Col (3))	_____	X	X
5) Direct Unpaid Losses at 12/31 (DOI EXHIBIT A, Part One, Page 4, Item 12)	_____	_____	_____
6) Direct Incurred Losses (Item 4 plus Item 5, Col (3))	_____	X	X
7) Direct Paid Loss Adjustment Expenses	_____	X	X
8) Direct Unpaid Loss Adjustment Expenses at 12/31	_____	_____	_____
9) Direct Incurred Loss Adjustment Expense	_____	X	X

**Column (1) Column (2)**

1) Direct Earned Premium (DOI EXHIBIT A, Part One, Page 2, Item 12, Col (2))	_____	100.0%
2) Direct Commission and Brokerage Fees Incurred (DOI EXHIBIT ONE, Part Two, Section Three for 1988, and Section Four-A for 1987)	_____	_____
3) Direct Other Acquisition, Field Supervision, Collection Fees Incurred (DOI EXHIBIT ONE, Part Two, Section Two, Page 1, Col (1) for 1988, and Col (2) for 1987)	_____	_____
4) Direct General Expenses Incurred (DOI EXHIBIT ONE, Part Two, Section One, Page 1, Col (1) for 1988 and Col (2) for 1987)	_____	_____
5) Direct Taxes, Licenses, Fees Incurred (DOI EXHIBIT ONE, Part Two, Section Five for 1988 and Six for 1987)	_____	_____
6) Direct Losses Incurred (DOI EXHIBIT A, Part One, Page 3, Item 12, Col (4))	_____	_____
7) Direct Loss Adjustment Expenses Incurred (DOI EXHIBIT THREE, Part One for 1988 and Part Two for 1987, Item 9)	_____	_____

**DOI EXHIBIT THREE Part Two**

Premiums, Losses, Expenses  
Calendar Year 1987

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

Check one:  
Liability \_\_\_\_\_  
PIP \_\_\_\_\_  
Physical Damage \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

Total of above three coverages \_\_\_\_\_

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**INSURANCE**

	Col (1) 1987	Col (2) 1986	Col (3) Difference (= Col (1) - Col (2))				
1) Direct Written Premiums (DOI EXHIBIT A, Part One Page 2, Item 12, Col (1))	_____	X	X	3) Direct Commission and Brokerage Fees Incurred (DOI EXHIBIT ONE Part Two, Item 11, Sections Three, Four-A, and Four-B for 1988, 1987, and 1986, respectively)	_____	_____	_____
2) Direct Unearned Premium Reserve at 12/31 (DOI EXHIBIT A, Part One, Page 3, Item 12, Col (6) for 1987, and Part Two, Page 2, Item 12, Col (2) for 1986)	_____	_____	_____	4) Direct Other Acquisition Expenses Incurred (DOI EXHIBIT ONE Part Two, Section Two, Page 1, Item 5, for 1988 and 1987, and Page 2, Item 5, for 1986)	_____	_____	_____
3) Direct Earned Premiums (Item 1 minus Item 2, Col (3))	_____	X	X	5) Direct General Expenses Incurred (DOI EXHIBIT ONE, Part Two, Section One, Page 1, Item 5 for 1988 and 1987, and Page 2 Item 5 for 1986)	_____	_____	_____
4) Direct Paid Losses (DOI EXHIBIT A, Part One, Page 2, Item 12, Col (3))	_____	X	X	6) Direct Taxes, Licenses, Fees Incurred (DOI EXHIBIT ONE Part Two Section Five, Item 11 for 1988, Section Six, Item 11 for 1987, Section Seven, Item 11, for 1986)	_____	_____	_____
5) Direct Unpaid Losses at 12/31 (DOI EXHIBIT A, Part One, Page 4, Item 12 for 1987, and Part Two, Page 2, Item 12, Col (3) for 1986)	_____	_____	_____	7) Prepaid Expenses (1/2 x (Item 4 + Item 5)) + (Item 6 + Item 3)	_____	_____	_____
6) Direct Incurred Losses (Item 4 plus Item 5, Col (3))	_____	X	X	8) Ratio, Item 7 divided by Item 2	_____	_____	_____
7) Direct Paid Loss Adjustment Expenses	_____	X	X	Note: Limit Item 8 to a maximum of 1.000.			
8) Direct Unpaid Loss Adjustment Expenses at 12/31	_____	_____	_____	9) Equity at 12/31 (Item 8 x Item 1)	_____	_____	_____
9) Direct Incurred Loss Adjustment Expense	_____	X	X	10) Change 1987 to 1988 Item 9 Col (1) minus Item 9 Col (2)	_____	X	X
				11) Change 1986 to 1987 Item 9, Col (2) minus Item 9, Col (3)	_____	X	X

**DOI EXHIBIT FOUR**  
Equity in the Unearned Premium Reserve

Please state: \_\_\_\_\_ Check one:

Group Name \_\_\_\_\_ Liability \_\_\_\_\_

Group NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_

Company Name \_\_\_\_\_ Physical Damage \_\_\_\_\_

Company NAIC Number \_\_\_\_\_ Total of above three coverages \_\_\_\_\_

**BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS**

	Col (1) 1988	Col (2) 1987	Col (3) 1986
1) Direct Unearned Premium Reserve at 12/31 (DOI EXHIBIT A, Part One, Page 3, Item 12, Col (6) for 1988 and 1987, and Part Two, Page 2, Item 12, Col (2) for 1986)	_____	_____	_____
2) Direct Written Premium (DOI EXHIBIT A, Part One, Page 2, Item 12, Col (1) for 1988 and 1987 and Part Two, Page 2, Item 12, Col (1) for 1986)	_____	_____	_____

**BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS**

**DOI EXHIBIT FIVE Part One**

Please state: \_\_\_\_\_

Group Name \_\_\_\_\_ Investment Income Data

Group NAIC Number \_\_\_\_\_ Countrywide Data

Company Name \_\_\_\_\_

Company NAIC Number \_\_\_\_\_

	Col (1) 1988	Col (2) 1987	Col (3)
1) Interest, Dividends, Real Estate Income (AS, Page 6, Part 1, Col 8, Line 15)	_____	X	X
2) Realized Capital Gains (AS, Page 6, Part 1A, Col 7, Line 11)	_____	X	X
3) Total, Item 1 plus Item 2	_____	X	X
4) Invested Assets (AS, Page 2, Line 8A, Col 1 for 1988, Col 2 for 1987)	_____	_____	X

**INSURANCE**

5) Average [1/2 x (Item 4 Col (1) + Item 4 Col (2))]	X	X	_____
6) Rate of Return Ratio Item 3, Col (1) divided by Item 5, Col (3)	X	X	_____
7) Agents Balances (AS, Page 2, Col 1, Line 9.1 plus Line 9.2 plus 9.3 plus Line 10 plus Line 11)	_____	X	X
8) Unearned Premium Reserve (AS, Page 3, Line 9, Col (1))	_____	X	X
9) Ratio Item 7 divided by Item 8	X	X	_____

**DOI EXHIBIT FIVE Part Two**

New Jersey Data

Please state:  
 Group Name \_\_\_\_\_  
 Group NAIC Number \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Company NAIC Number \_\_\_\_\_

Check one:  
 Liability \_\_\_\_\_  
 PIP \_\_\_\_\_  
 Physical Damage \_\_\_\_\_  
 Total of above three coverages \_\_\_\_\_

	Col (1) 1988	Col (2) 1987	Col (3)
10) Direct Prepaid Expenses (DOI Exhibit Four, Item 7, Col (1))	_____	X	X
11) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, Col (1))	_____	X	X
12) Ratio Item 10 divided by Item 11	X	X	_____
13) Direct Unearned Premium Reserve (DOI Exhibit A, Part One, Page 3, Item 12, Col (6))	_____	_____	X
14) Average [1/2 x (Item 13 Col (1) + Item 13 Col (2))]	X	X	_____
15) Investable Unearned Premiums [(1.000 - Item 9 - Item 12) x Item 14] Limit to a minimum of zero.	X	X	_____
16) Average Direct Unpaid Losses 1/2 x (DOI Exhibit Three, Part One, Item 5, Col (1) + Col (2))	X	X	_____
17) Average Direct Unpaid Loss Adjustment Expenses 1/2 x (DOI Exhibit Three Part One, Item 8, Col (1) + Col (2))	X	X	_____
18) Subtotal (Item 16 plus Item 17)	X	X	_____
19) Investable Reserves (Item 18 plus Item 15)	X	X	_____
20) Investment Income (Item 19 x Item 6)	X	X	_____

**PROPOSALS**

**BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS**

**DOI EXHIBIT FIVE Part Three**

Please state:  
 Group Name \_\_\_\_\_  
 Group NAIC Number \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Company NAIC Number \_\_\_\_\_

	Col (1) 1987	Col (2) 1986	Col (3)
1) Interest, Dividends, Real Estate Income (AS, Page 6, Part 1, Col 8, Line 15)	_____	X	X
2) Realized Capital Gains (AS, Page 6, Part 1A, Col 7, Line 11)	_____	X	X
3) Total, Item 1 plus Item 2	_____	X	X
4) Invested Assets (AS, Page 2, Line 8A, Col 1 for 1987 Col 2 for 1986)	_____	_____	X
5) Average [1/2 x (Item 4 Col (1) + Item 4 Col (2))]	X	X	_____
6) Rate of Return Ratio Item 3, Col (1) divided by Item 5, Col (3)	X	X	_____
7) Agents Balances (AS, Page 2, Col 1, Line 9.1 plus Line 9.2 plus Line 10 plus Line 11)	_____	X	X
8) Unearned Premium Reserve (AS, Page 3, Line 9, Col (1))	_____	X	X
9) Ratio Item 7 divided by Item 8	X	X	_____

**DOI EXHIBIT FIVE Part Four**

New Jersey Data

Please state:  
 Group Name \_\_\_\_\_  
 Group NAIC Number \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Company NAIC Number \_\_\_\_\_

Check one:  
 Liability \_\_\_\_\_  
 PIP \_\_\_\_\_  
 Physical Damage \_\_\_\_\_  
 Total of above three coverages \_\_\_\_\_

	Col (1) 1987	Col (2) 1986	Col (3)
10) Direct Prepaid Expenses (DOI Exhibit Four, Item 7, Col (2))	_____	X	X
11) Direct Written Premium (DOI Exhibit A, Part One, Page 2, Item 12, and Part Two, Page 2, Item 12)	_____	X	X
12) Ratio Item 10 divided by Item 11	X	X	_____

**PROPOSALS**

Interested Persons see Inside Front Cover

**INSURANCE**

13) Direct Unearned Premium Reserve (DOI Exhibit A, Part One, Page 3, Item 12, Col (6) for 1987, and Part Two, Page 2, Item 12, Col (2) for 1986)	_____	_____	X
14) Average [1/2 x (Item 13 Col (1) + Item 13 Col (2))]	X	X	_____
15) Investable Unearned Premiums [(1,000 - Item 9 - Item 12) x Item 14] Limit to a minimum of zero.	X	X	_____
16) Average Direct Unpaid Losses 1/2 x (DOI Exhibit Three, Part Two, Item 5, Col (1) + Col (2))	X	X	_____
17) Average Direct Unpaid Loss Adjustment Expenses 1/2 x (DOI Exhibit Three Part Two, Item 8, Col (1) + Col (2))	X	X	_____
18) Subtotal (Item 16 plus Item 17)	X	X	_____
19) Investable Reserves (Item 18 plus Item 15)	X	X	_____
20) Investment Income (Item 19 x Item 6)	X	X	_____

DOI EXHIBIT SIX Part One

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

Other Income  
Check one:  
Liability \_\_\_\_\_  
PIP \_\_\_\_\_  
Physical Damage \_\_\_\_\_  
Total of above three coverages \_\_\_\_\_

Col (1) 1988      Col (2)

1) Total Other Income (AS, Page 4, Line 13, Col (1))	_____	X
2) Aggregate Write In Deductions (AS, Page 4, Line 5, Col (1))	_____	X
3) Item 1 minus Item 2	_____	X
4) Direct Earned Premiums (DOI Exhibit Three, Part One Item 3, Col (1))	_____	X
5) Net Earned Premiums (AS, Page 4, Line 1, Col (1))	_____	X
6) Item 4 x Item 3	X	_____
7) Other Income Item 6 divided by Item 5	_____	X

DOI EXHIBIT SIX Part Two

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

Other income  
Check one:  
Liability \_\_\_\_\_  
PIP \_\_\_\_\_  
Physical Damage \_\_\_\_\_  
Total of above three coverages \_\_\_\_\_

Col (1) 1987      Col (2)

1) Total Other Income (AS, Page 4, Line 13, Col (2))	_____	X
2) Aggregate Write In Deductions (AS, Page 4, Line 5, Col (2))	_____	X
3) Item 1 minus Item 2	_____	X
4) Direct Earned Premiums (DOI Exhibit Three, Part Two Item 3, Col (1))	_____	X
5) Net Earned Premiums (AS, Page 4, Line 1, Col (2))	_____	X
6) Item 4 x Item 3	X	_____
7) Other Income Item 6 divided by Item 5	_____	X

DOI EXHIBIT SEVEN--Financial Result

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS

Please state:  
Group Name \_\_\_\_\_  
Group NAIC Number \_\_\_\_\_  
Company Name \_\_\_\_\_  
Company NAIC Number \_\_\_\_\_

Check one:  
Liability \_\_\_\_\_  
PIP \_\_\_\_\_  
Physical Damage \_\_\_\_\_  
Total of above three coverages \_\_\_\_\_

Col (1) 1988      Col (2) 1987      Col (3) Col (1) plus Col (2)

1) Direct Written Premiums (DOI Exhibit Three, Part One, Item 1 for 1988, and Part Two, Item 1 for 1987)	_____	_____	_____
2) Direct Earned Premiums (DOI Exhibit Three, Part One, Item 3, for 1988, and Part Two, Item 3, for 1987)	_____	_____	_____
3) Direct Losses Incurred (DOI Exhibit Three, Part One, Item 6, for 1988, and Part Two, Item 6, for 1987)	_____	_____	_____

**INSURANCE**

**PROPOSALS**

4) Direct Loss Adjustment Expenses Incurred (DOI Exhibit Three, Part One, Item 9 for 1988, and Part Two, Item 9 for 1987) \_\_\_\_\_

4A) Item 3 plus Item 4 \_\_\_\_\_

4B) Ratio Item 4A divided by Item 2 \_\_\_\_\_ X

5) Direct Underwriting Expense Incurred (DOI Exhibit Four, Item 3 plus Item 4 plus Item 5 plus Item 6, all Col (1) for 1988, and Col (2) for 1987) \_\_\_\_\_

6) Change in Equity in the UEPR (DOI Exhibit Four Item 10 for 1988; Item 11 for 1987) \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

**DOI EXHIBIT EIGHT**

Please state: Group Name \_\_\_\_\_ Equity in the Unearned Premium Reserve All Lines Combined

Group NAIC Number \_\_\_\_\_

Company Name \_\_\_\_\_

Company NAIC Number \_\_\_\_\_

	Col (1) 1988	Col (2) 1987
1) Net Written Premiums All Lines (IEE, Col (34), Line 1)	_____	_____
2) Commission and Brokerage All Lines (IEE, Col (34), Line 5)	_____	_____
3) Other Acquisition All Lines (IEE, Col (34), Line 6)	_____	_____
4) General Expenses All Lines (IEE, Col (34), Line 7)	_____	_____
5) Taxes, Licenses, Fees All Lines (IEE, Col (34), Line 8)	_____	_____
6) Prepaid Expenses (1/2 x [Item 3 + Item 4] + (Item 2 + Item 5))	_____	_____
7) Item 6 as a ratio to Item 1 Limit Item 7 to a maximum of 1.000.	_____	_____
8) Unearned Premium Reserve All Lines (AS, Page 3, Line 9, Col (1) for 1988, Col (2) for 1987)	_____	_____
9) Equity in the Unearned Premium Reserve (Item 7 x Item 8)	_____	_____

10) Average (1/2 x [Item 9, Col (1) + Item 9, Col (2)]) \_\_\_\_\_ X

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

**DOI EXHIBIT NINE**

Please state: Group Name \_\_\_\_\_

Group NAIC Number \_\_\_\_\_

Company Name \_\_\_\_\_ Restated Surplus

Company NAIC Number \_\_\_\_\_

	Col (1) 1988	Col (2) 1987
1) Stated Surplus (AS, Page 3, Line 26, Col (1) for 1988, Col (2) for 1987)	_____	_____
2) Excess of Statutory Over Statement Reserves (AS, Page 3, Line 15, Col (1) for 1988, Col (2) for 1987)	_____	_____
3) Reinsurance From Unauthorized Companies (AS, Page 3, Line 14, Col (1) for 1988, Col (2) for 1987; include only amounts deemed sound)	_____	_____
4) Non Admitted Assets (AS, Page 13, Exhibit 2, Col (2), sum of Lines 22 through 30; include only amounts deemed sound)	_____	_____
5) Equity in the Unearned Premium Reserve (DOI Exhibit Eight, Item 9, Col (1) for 1988, Col (2) for 1987)	_____	_____
6) Total of Items 1, 2, 3, 4 and 5	_____	_____
7) (Item 6, Col (1) + Item 6, Col (2)) x 1/2	_____	X

**DOI EXHIBIT TEN**

Allocation of Surplus

Please state: Group Name \_\_\_\_\_ Check one:

Group NAIC Number \_\_\_\_\_ Liability \_\_\_\_\_

Company Name \_\_\_\_\_ PIP \_\_\_\_\_

Company NAIC Number \_\_\_\_\_ Physical Damage \_\_\_\_\_

**BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE INSTRUCTIONS**

Total of above three coverages \_\_\_\_\_

	Col (1) 1988	Col (2) 1987	Col (3) Average
1) Average Direct Loss and Loss Adjustment Expense Reserves (DOI Exhibit Five Part Two, Item 18)	X	X	_____

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TREASURY-GENERAL**

2) Direct Unpaid Losses All Lines Countrywide (AS, Schedule T, Line 98, Col (7))	_____	_____	_____
3) Direct Unpaid Loss Adjustment Expenses (loss expense reserves that correspond to Item 2)	_____	_____	_____
4) Subtotal (Item 2 plus Item 3)	X	X	_____
5) Ratio Item 1 divided by Item 4	X	X	_____
6) Surplus (DOI Exhibit Nine, Item 6, Col (1) for 1988, Col (2) for 1987)	_____	_____	_____
7) First Surplus (Item 6, Col (3) x Item 5)	X	X	_____
8) Direct Earned Premium (DOI Exhibit Three Part One, Item 3 for 1988)	_____	X	X
9) Direct Earned Premium All Lines Countrywide (AS, Schedule T, Line 98, Col (3))	_____	X	X
10) Ratio Item 8 divided by Item 9	X	X	_____
11) Second Surplus (Item 10 x Item 6, Col (3))	X	X	_____
12) Average (1/2 x (Item 7 + Item 11))	X	X	_____
13) Ratio Item 8 divided by Item 12	X	X	_____

Note: Col (3) is the average of Cols (1) and (2), except for Items 1, 4, 5, 7, 8, 9, 10, 11, 12.

**DOI EXHIBIT ELEVEN**

Please state:  
 Group Name \_\_\_\_\_ Check one:  
 Group NAIC Number \_\_\_\_\_  
 Company Name \_\_\_\_\_ Liability \_\_\_\_\_  
 Company NAIC Number \_\_\_\_\_ PIP \_\_\_\_\_

**BEFORE COMPLETING  
THE EXHIBITS,  
PLEASE READ THE  
INSTRUCTIONS**

	1987	1988	Total
1) Direct earned premium (DOI Exhibit Seven, Item 2)	_____	_____	_____
2) Total Underwriting and Other (DOI Exhibit Seven, Item 11)	_____	_____	_____
3) Excess Profit Refund (DOI Exhibit Seven, Item 7)	_____	_____	_____
4) Other Dividends (DOI Exhibit Seven, Item 7A)	_____	_____	_____
5) Direct Unpaid Losses (DOI Exhibit Three Part One Item 5)	_____	_____	_____

6) Direct Unpaid Loss Adjustment Expenses (DOI Exhibit Three Part One Item 8)	_____	_____	_____
7) Subtotal (Item 5 plus Item 6)	_____	_____	_____
8) Item 7 times 0.090	_____	_____	_____
9) Subtotal Item 2 plus Item 8	_____	_____	_____
10) Ratio Item 9 divided by Item 1	_____	_____	_____
11) Subtotal Item 2 plus Item 3 plus Item 4	_____	_____	_____
12) Subtotal Item 11 plus Item 8	_____	_____	_____
13) Ratio Item 12 divided by Item 1	_____	_____	_____
14) Item 2 plus Item 4	_____	_____	_____
15) Subtotal Item 14 plus Item 8	_____	_____	_____
16) Ratio Item 15 divided by Item 1	_____	_____	_____

**EXHIBIT B**

**OFFICER CERTIFICATION**

I, \_\_\_\_\_, do hereby certify that I have  
 (please print)  
 reviewed the attached documents and find that they are accurate and  
 complete to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**TREASURY-GENERAL**

**(a)**

**DIVISION OF BUILDING AND CONSTRUCTION**

**Notice of Comment Period Extension**

**Consultant Selection Process**

**Proposed Amendments: N.J.A.C. 17:19-10**

Take notice that the Division of Building and Construction has extended the public comment period for the proposed amendments to the Consultant Selection Process Rules, N.J.A.C. 17:19-10, published in the October 2, 1989 New Jersey Register at 21 N.J.R. 3074(a), to December 15, 1989.

Submit comments by December 15, 1989 to:

Thomas H. Bush, Director  
 Division of Building and Construction  
 CN 235  
 Trenton, New Jersey 08625

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

### (a)

#### OFFICE OF THE COMMISSIONER

#### Organization of the Department of Community Affairs

#### Office of the Commissioner; Divisions

#### Adopted Amendment: N.J.A.C. 5:2-1.1

Adopted: November 1, 1989 by Anthony M. Villane, Jr., D.D.S.,  
Commissioner, Department of Community Affairs.

Filed: November 1, 1989 as R.1989 d.589.

Authority: N.J.S.A. 52:27D-3 and 52:14B-3 and 4.

Effective Date: November 1, 1989.

Expiration Date: April 10, 1994.

This amendment is organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and is effective upon filing.

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

#### 5:2-1.1 Office of the Commissioner; Divisions

##### (a) (No change.)

(b) The Office of the Commissioner includes the Commissioner, the Deputy Commissioner, two Assistant Commissioners, and the following subordinate offices and personnel who report either to the Commissioner or the Deputy Commissioner:

##### 1. Reporting to the Commissioner:

##### i. Chief of Staff [(including the Public Information Office)];

ii. [Office of the Municipal and County Ombudsman] **Director of Public Affairs** (including Internal Control, **the Office of the Municipal and County Ombudsman, the Public Information Office and Public Relations**);

##### iii.-iv. (No change.)

##### 2. Reporting to the Deputy Commissioner:

i. Director of Administration **(including Information Management Services, the Fiscal Office and the Office of Program Analysis)**;

ii. Director of [Personnel] **Human Resources (including offices of Personnel, Training and Labor Relations)**;

iii. Director of Planning (including the Bayshore Development Office **and the Office of Legislative Liaison**);

[iv. Director of Legislative Policy and Planning;] and  
Redesignate v. as iv. (No change in text.)

(b) The Division of Housing and Development consists of the Director's Office, **the Office of Planning and Operations**, and the following elements: Construction Code, Fire Safety, Housing Programs, and Inspection and Licensing.

##### 1.-4. (No change.)

**5. The Office of Planning and Operations is under the supervision of the Assistant Director for Planning and Operations.**

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

### (b)

#### DIVISION OF HOUSING AND DEVELOPMENT

#### Neighborhood Preservation Balanced Housing Program

#### Affordability Control Procedures

#### Adopted New Rules: N.J.A.C. 5:14-4

Proposed: August 7, 1989 at 21 N.J.R. 2153(a).

Adopted: October 30, 1989 by Anthony M. Villane, Jr., D.D.S.,  
Commissioner, Department of Community Affairs.

Filed: October 30, 1989 as R.1989 d.588, **with substantive changes**  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 52:27D-320.

Effective Date: December 4, 1989.

Expiration Date: December 1, 1990.

#### Summary of Public Comments and Agency Responses:

**COMMENT:** The proposal summary indicates that resale controls will be in effect "for at least 20 years" following the award of a loan or grant. However, the proposed language at N.J.A.C. 5:14-4.1, 5:14-4.10 and again in the Appendix notation indicates a Balanced housing funded unit will be controlled "for 20 years". The commenter has suggested that this implies controls cannot be for periods greater than 20 years without specific permission from the Department. The language should be consistent throughout the rule as "at least 20 years" (or 10 where applicable) to allow for control periods of greater length.

**RESPONSE:** The Department agrees. It has always been the intent that control periods be considered as minimum time periods. The wording has been changed to include "at least" throughout the adopted rules.

**COMMENT:** The Department should not increase the control period for owner-occupied rehabilitated units from six to 10 years, N.J.A.C. 5:14-4.5(a)1. This restriction will discourage low income homeowners from applying. The abatement of code violations does not greatly enhance the value of a home and the six year deferred loan is sufficient to protect the State.

**RESPONSE:** It is now widely assumed that remedial "abatement of code violations" is not sufficient to meet affordable housing goals. More extensive rehabilitation is encouraged to provide for long term habitability. This is consistent with the Council on Affordable Housing's requirement for an average per unit rehabilitation cost. The 10 year forgivable loan protects this increased investment.

**COMMENT:** N.J.A.C. 5:14-4.5(a)2 concerning beneficiaries in case of the death of the owner-occupant of a rehabilitated unit is inconsistent with N.J.A.C. 5:14-4.4(h)3 covering exempt transactions for sales units and could represent a true hardship to the beneficiary.

**RESPONSE:** Owner-occupied rehabilitated housing is not comparable to affordable sales units which are subject to long term deed restrictions on occupancy and limited equity increases. The only affordability control on owner-occupied rehabilitated housing is the second mortgage, which may or may not be fully recaptured within the 10 year control period and is forgiven thereafter. The rule was designed to exempt income-qualified beneficiaries, maintaining the eligible occupancy requirements of the Fair Housing Act for the 10 year period. If beneficiaries are not income eligible, the unit is no longer eligible and Balanced Housing funds can be reinvested in a replacement unit.

**COMMENT:** "Total monthly housing costs" includes in its definition "the monthly rental charge for an Affordable Housing rental unit". The definition does not specify that this includes a utility allowance although this is stated in N.J.A.C. 5:14-4.6 and it is a condition of the Balanced Housing contract.

**RESPONSE:** The Department agrees that formulas for establishing base rents including the utility allowance should be explained and has provided such guidance at N.J.A.C. 5:14-4.6(a). In addition, the definition of "base rent" has been expanded to include an allowance for utilities and the definition of "total monthly housing costs" has been eliminated because the term is not used in the rules.

COMMENT: The Department is urged to adopt a policy that insures rent affordability at a variety of income levels within the low and moderate income ranges because of the limitation of the number of households who can qualify under N.J.A.C. 5:14-4.6(a).

RESPONSE: The Department has refrained from adopting rules that conflict with Council on Affordable Housing Rules. The maximum base rent calculation is in this category. However, municipalities and developers always have the option to set rents at less than the maximum.

COMMENT: N.J.A.C. 5:14-4.6(a) suggests that households will not be referred to rental housing if they would have to pay more or less than 30 percent of their gross monthly income for rent.

RESPONSE: This is not the case and it is so stated by the use of "generally". However, the Department has provided new wording so as to avoid this interpretation.

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 4. AFFORDABILITY CONTROLS

##### 5:14-4.1 General provisions

(a) The purpose of the affordability control procedures is to provide the means for ensuring that housing units provided for low and moderate income households through a grant or loan agreement funded by the Neighborhood Preservation Balanced Housing Program, pursuant to N.J.S.A. 52:27D-321, remain affordable to and occupied by income eligible households for **\*at least\*** 20 years from the date initial restrictions encumber the unit unless a lesser \*[or greater]\* period of time has been approved by the Division of Housing and Development, Department of Community Affairs.

(b) In order to receive approval for a grant or loan from the Department of Community Affairs, Neighborhood Preservation Balanced Housing Program, a municipality must provide a plan for assuring that units remain affordable to and occupied by low and moderate income-eligible households for the prescribed time period. A municipality may adopt its own program subject to Department review and approval or it may contract with the Department to assume this responsibility. This subchapter shall apply in all cases where the municipality has elected to contract with the Department to administer the affordability controls. These rules will be used as a standard for the review and approval of any affordability control program designed and administered by a municipality as it pertains to the Neighborhood Preservation Balanced Housing Program.

(c) If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining part of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

##### 5:14-4.2 Definitions

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

"Adjusted rent" means the base rent for a rental unit adjusted by the Index.

"Affordable Housing Agreement" means the written agreement between an owner of an affordable housing unit and the Department that imposes restrictions on units developed with funding from the Neighborhood Preservation Balanced Housing Program to ensure that those housing units remain affordable to households of low and moderate income for a specified period of time.

"Applicant household" means a household that has submitted a Preliminary Application for an eligibility review.

"Assessments" means all taxes, levies, or charges, both public and private, including those charges by any condominium cooperative or homeowner's association as the applicable case may be, imposed upon the affordable housing unit.

"Base price" means the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

**\*\*\*Base rent**" means the charge **\*established\*** for a rental unit at the time the unit is first restricted by affordability controls\*, **including an allowance for tenant paid utilities\***.

"Certified household" means any eligible household whose total gross annual income has been verified, whose financial references have been approved and who has received certification as a low or moderate income-eligible household.

"Closing costs" means those costs of a real estate sale that are incurred by the buyer and seller at the time of sale including, but not limited to, attorney's fees, mortgage points, real estate transfer fee, and applicable real estate broker fees.

"Department" means the Department of Community Affairs.

"Eligible household" means a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate income pursuant to applicable guidelines, and whose name has been placed on a waiting list for affordable housing.

"First purchase money mortgagee" means the holder and/or assigns of the first purchase money mortgage and which must also be an institutional lender or investor, licensed or regulated by a state or the Federal government or an agency thereof.

"Foreclosure" means the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

"Gross annual income" means the total amount of a household's income from all sources including but not limited to salary, wages, interest, dividends, alimony, pensions, social security, disability, business income and capital gains, tips and welfare benefits. Generally, gross annual income will be based on income reported to the Internal Revenue Service (IRS).

"Household" means the person or persons occupying a housing unit.

"Index" means the measured percentage of change in the median income established for a household of four by geographic region using the uncapped median income estimates published periodically by the U.S. Department of Housing and Urban Development and approved for use by the New Jersey Council on Affordable Housing.

"Low income household" means a household whose gross annual income is equal to 50 percent or less of the median gross income established by geographic region and household size using median income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

"Moderate income household" means a household whose gross annual income is equal to more than 50 percent but less than 80 percent of the median gross income established by geographic region and household size using median income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

"Owner" means the title holder of record as same is reflected in the most recently dated and recorded deed for the particular affordable housing unit.

"Price differential" means the total amount of the unrestricted sales price that exceeds the maximum restricted resale price as calculated by the Index. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Department at the time a Notice of Intent to Sell has been received from the owner.

"Primary residence" means the unit wherein a certified household maintains continuing residence for no less than nine months each calendar year.

"Purchaser" means a certified household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

"Repayment lien" means the second mortgage document signed by the owner that is given to the Department as security for the payment of 95 percent of the price differential generated by the first non-exempt sale of an Affordable Housing sales unit at the time of closing and transfer of title of the property after the ending date established in the Affordable Housing Agreement.

"Renter" means a household who has been certified for an Affordable Housing unit for rent subject to the signing of a lease and the payment of any required security deposit.

"Resale price" means the base price as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

\*["Total monthly housing costs" means the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal, interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance. Total monthly housing costs shall also refer to the monthly rental charge for an Affordable Housing rental unit.]\*

#### 5:14-4.3 Affordable Housing Agreement

(a) An Affordable Housing Agreement (hereinafter "the Agreement") shall be signed and recorded with the recording office of the county in which the Balanced Housing unit/units (with the exception of Neighborhood Rehabilitation owner-occupied single family units and rental units covered by more restrictive Federal regulations) is/are located. The provisions of the Agreement shall constitute restrictive covenants running with the land with respect to the Balanced Housing units described and identified in the Agreement.

1. The Agreement shall set forth the terms, conditions, restrictions, and provisions applicable to the Balanced Housing units. The terms, conditions, restrictions and provisions of the instrument shall bind all purchasers and owners of the Balanced Housing units, their heirs, assigns and all persons claiming by, through or under heirs, assigns and administrators.

2. When a single Agreement is used to govern more than one Balanced Housing unit, the Agreement must contain a description of each unit governed by the Agreement and the ending date imposed on the unit.

3. This Agreement shall be executed by the Department and the owner or the then current title holder of record of the property upon which the Balanced Housing units are to be situated prior to its recording unless the municipality has an alternative affordability plan approved by the Department in which case the Agreement shall be executed by the grantee municipality and the owner.

(b) All deeds of conveyance from all owners to certified purchasers of Balanced Housing units shall include the following clause in a conspicuous place:

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT dated \_\_\_\_\_ which was filed in the office of the Clerk of \_\_\_\_\_ County in Misc. Book \_\_\_\_\_ at Page \_\_\_\_\_ on \_\_\_\_\_ and is also on file with the N.J. Department of Community Affairs."

1. Any master deed that includes a Balanced Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the master deed that differentiates the affordable unit from all other units covered in the master deed.

(c) The Affordable Housing Agreement shall list the following restrictions:

1. The owner of an Affordable Housing sales unit shall not sell the unit at a resale price greater than an established base price plus the allowable percentage of increase as determined by the Index applicable to the household size and the municipality in which the unit is located. The owner of an Affordable Housing rental unit shall not rent the unit at an adjusted rent that is greater than an established base rent plus the allowable percentage of increase as determined by the Index applicable to the household size and the municipality in which the unit is located.

2. The owner shall not sell or rent the Affordable Housing unit to anyone other than a purchaser or renter who has been certified utilizing the income verification procedures established by the Department to determine qualified low and moderate income-eligible households.

3. The owner of an Affordable Housing sales unit shall be obligated to pay 95 percent of the price differential generated at the first non-exempt sale of the Affordable Housing unit to the Department at the time of closing and transfer of title after the termination of

affordability controls in accordance with the terms of the repayment lien. For the purposes of this Agreement, price differential shall be the total amount of the unrestricted sales price (which shall be no less than a comparable fair market price established by the Department at the time a Notice of Intent to Sell has been received from the owner) that exceeds the maximum restricted resale price as calculated by the Index.

4. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and restrictions duly promulgated by the Department (N.J.A.C. 5:14) the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by low and moderate income-eligible households throughout the duration of the Agreement.

(d) The Affordable Housing Agreement shall include the following owner responsibilities:

1. Affordable Housing units which have not been previously approved as rental Affordable Housing units shall at all times remain the primary residence of the owner. The owner shall not rent such Affordable Housing unit to any party whether or not that party qualifies as a low or moderate income household without prior written approval from the Department.

2. Affordable Housing units designated as rental units shall at all times remain the primary residence of the renter and shall not be sublet to any party whether or not that party is qualified as a low or moderate income-eligible household without prior written approval from the Department.

3. All home improvements made to an Affordable Housing unit shall be at the owner's expense except that expenditures for any alteration that allows a unit to be resold or rented to a larger household size because of an increase capacity for occupancy shall be considered for a recalculation of base price or base rent. Owners must obtain prior approval for such alteration to qualify for this recalculation.

4. The owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

5. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, whether public and private, assessed against such unit, or any part thereof, as and when the same become due.

6. Owners of Affordable Housing units shall notify the Department in writing 60 days prior to a rental vacancy and 90 days for notification of an intent to sell the property. Owners shall not convey title or lease or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Department.

7. An owner shall request referrals of certified households from the pre-screened established waiting list maintained by the Department.

8. If no referrals are available, the owner may sell, transfer, convey or rent the property to an eligible household not referred by the Department. The proposed purchaser/renter must complete all required Household Eligibility forms and submit gross annual income information for verification to the Department for certification as an eligible sales/rental transaction.

9. At resale of an Affordable Housing sales unit, the owner must personally certify that all items of personal property which are not permanently affixed to the unit and were not included when the unit was originally purchased (for example, refrigerator, freezer, washer, dryer, dishwasher, carpet, drapes) have either been included in the maximum allowable resale price or sold to the purchaser at a reasonable price that has been approved by the Department at the time of signing the agreement to purchase. Such transfer of funds shall also be certified by the purchaser at the time of closing. In no event shall the purchase of personal property be made a condition of the unit resale.

10. The owner shall not permit any lien, other than the first purchase money mortgage, Department approved second mortgages and liens of the Department to attach and remain on the property for more than 60 days.

11. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the owner, in addition to paying any assessments required by the master deed of the condominium or by-laws of an association, shall further fully comply

with all of the terms, covenants or conditions of said master deed or by-laws, as well as fully comply with all conditions and restrictions of this Affordable Housing Agreement.

12. The owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and requirements duly promulgated by the Department (N.J.A.C. 5:14-4.3), for determining that a resale transaction is qualified for a certification of exemption or a hardship waiver.

13. The owner shall have responsibility for forwarding copies of all documents filed with the applicable county recording office to the Department after they have been signed, dated and recorded.

14. The owner shall be obligated to pay a service fee at the time of resale or at each new rental occupancy. The service fee for a sales unit shall be \$150.00 to be paid at closing from the seller's receipts. The service fee for a rental unit shall be in the amount of two percent of the vacant unit's current annualized rent to be paid at the time a lease agreement is signed by the owner.

#### 5:14-4.4 Sales units

(a) At initial sale, base prices for sales units shall be determined in accordance with contractual agreements approved by the Department at levels that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality. At initial sale, an Affordable Housing Agreement and a repayment lien shall be signed and recorded with the property deed. The purchaser shall forward a copy of all recorded documents to the Department.

(b) The base price will be indexed according to measured changes in the approved median income guide applicable to the municipality in which the unit is located. An owner who wishes to sell an affordable housing unit shall give written notice to the Department. A resale price shall be calculated using the approved Index and an estimated monthly mortgage payment shall be determined. The approved resale price shall not be established at a level lower than the last recorded purchase price.

(c) A household's estimated monthly mortgage payment, including principal, interest, taxes, insurance, and condominium or association fees when applicable, shall not exceed 28 percent of gross monthly income. Mortgage approval is the responsibility of the household. Certified households whose gross monthly income times 28 percent is not less than the estimated monthly mortgage payment and whose family size meets occupancy criteria will be referred to the owner for contract negotiations within 60 days of receipt of the initial notice. The Department reserves the right to waive this requirement if circumstances necessitate a higher percentage and the household concurs.

(d) A home improvement that increases the unit's size, making it suitable for occupancy by a larger household, may be approved by the Department for a resale price adjustment. The adjusted resale price shall not exceed the equivalent affordability range as determined for the larger household using the applicable median income guide. Additional allowances, unrelated to the maximum allowable resale price, for home improvements deemed necessary for maintaining the standard condition of an affordable housing unit may be approved by the Department.

(e) If no certified household has executed an agreement to purchase within 90 days of the Department's notification to the owner of an approved resale price and referral of potential purchasers, the owner may request that the unit be sold to a household that exceeds the income eligibility criteria established for that unit by submitting a written request for a hardship waiver to the Department, and a copy to the municipality wherein the unit is located.

(f) For approval of a hardship waiver, an owner must provide documentation to the Department that there has been a good faith effort to sell the unit to a certified household for 90 days and no certified household has signed an agreement to purchase the unit or that economic factors not related to household income, including, but not limited to, interest rates, taxes, or insurance, inhibit the ability of an income-eligible household to obtain a mortgage commitment for the unit.

1. Upon receipt of a request for a hardship waiver, the municipality in which the unit is located shall have first option to purchase the unit at the approved resale price and to hold and rent or convey it to a certified household. The municipality shall have 30 days in which to exercise this option.

(g) The Department shall approve or deny a hardship waiver in writing within 30 days of receipt of the request. A hardship waiver in recordable form shall be provided to the purchaser at the time of closing and filed with the deed and the Affordable Housing Agreement. The hardship waiver only applies to income eligibility restrictions for occupancy and is only valid for the designated resale transaction. It does not affect the resale price restriction. Future resales are subject to all deed restrictions concerning income eligibility and the indexed resale price.

1. If the Department denies a hardship waiver, an owner may file a written request to appeal within 15 days of receipt of the denial to the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625. If a written request has not been received within 15 days after the owner's receipt of the denial, the order of denial shall be final.

(h) The following title transactions shall be deemed exempt and the Department shall provide the owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

1. Transfer of ownership between husband and wife;
2. Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial decree of separation (but not including sales to third parties);
3. Transfer of ownership between family members by will or intestate succession;
4. Transfer of ownership through an Executor's deed to a Class A beneficiary; and
5. Transfer of ownership by court order.

(i) An exempt transfer of ownership does not terminate the resale restrictions or existing liens on the property. All liens must be satisfied in full prior to subsequent resale and all subsequent resale prices must be calculated using the income index in compliance with the terms of the Affordable Housing Agreement.

1. The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

(j) The owner shall notify the Department in writing of any proposed transaction that he or she wishes to have qualify as an exempt transaction. The owner shall supply the Department with all necessary documentation to demonstrate that the transaction qualifies as exempt. The Department may request additional documentation as it deems necessary. The Department shall approve or deny in writing a request for a certificate of exemption within 15 days of the receipt of the request.

1. If the Department denies the exemption, the owner may submit a written appeal within 15 days to the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the denial of the certificate of exemption shall be final.

2. A certificate of exemption shall be filed with the deed and the Affordable Housing Agreement at the time of title transfer.

#### 5:14-4.5 Owner-occupied Neighborhood Rehabilitation Projects

(a) Owner-occupied units in Neighborhood Rehabilitation Projects shall be restricted by a deferred loan agreement that is secured by a note and mortgage from the property owner to the Department of Community Affairs. The mortgage shall be subordinate to a senior mortgage and additional liens as identified at the time of the signing of the mortgage. An income-eligible owner-occupant who is the recipient of a deferred payment loan for rehabilitation of a standard unit shall be subject to the following restrictions:

1. If the owner-occupant (hereinafter known as the borrower) transfers title to the property, vacates the unit, or prepays the principal amount within 10 years from the date the unit has been declared in standard condition, the borrower shall pay the Department the original loan amount plus two percent interest calculated as simple interest annually.

2. In the event of the death of the owner-occupant prior to the end of the 10 year restricted period, the loan shall be due and payable at the two percent annual interest rate at the time of death unless the persons inheriting the property are income eligible and personally occupy the rehabilitated property. In this event the loan shall be due and payable under the same terms as above if the persons inheriting the property vacate, transfer title to the property, or pre-pay the loan any time thereafter until the end of the same ten year period.

3. If the property is sold for fair market value and the excess of the sales price over the costs associated with the sale, including the satisfaction of superior liens, is less than the amount owed to the Department, the Department shall waive repayment of all or a portion of the Balanced Housing loan. In this event, the Department shall review the proposed sales contract and may require an appraisal to confirm the sales price as fair market value.

4. After 10 years, the Department shall forgive the loan and cancel the note and mortgage without repayment.

(b) Rental units included in a Neighborhood Rehabilitation Project shall be subject to a 10 year Affordable Housing Agreement that shall limit the occupancy of the rental unit to an eligible low or moderate income household, limit rents to annual increases measured by the Index, and be filed in the office of the county recording officer.

(c) The deferred loan payment term and the 10 year Affordable Housing Agreement shall begin on the date the unit is determined to be in standard condition as verified by a municipal code enforcement officer.

#### 5:14-4.6 Rental units

(a) Initial rents shall be determined in accordance with contractual agreements approved by the Department at ranges that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality.

**\*1. The maximum allowable base rent shall be calculated so as to be affordable (30 percent of gross monthly income) to a household whose estimated total gross annual income is at 50 percent of the applicable median income for low income units or below 80 percent of the applicable median income for moderate income units. Maximum base rents shall be calculated to include a utility allowance for tenant paid utilities.\***

**2. In an occupied rental unit contained within a two-to-four unit owner-occupied rehabilitated structure, the maximum base rent shall be the greater of the current rent or 30 percent of the gross monthly income of the eligible household occupying the unit. The current rent (defined as the rent charged at the time of the municipality's application) shall not exceed the maximum allowable rent for a household at 50 percent of median for low income units or below 80 percent of median for moderate income units.\***

**3. In an unoccupied rental unit contained within a two-to-four unit owner-occupied rehabilitated structure, the maximum base rent shall be the greater of the last rent charged or 30 percent of the gross monthly income of the first household to occupy the unit following rehabilitation. If the last rent charged is unknown, the base rent shall be calculated so as not to exceed the maximum allowable rent for a household at 50 percent of median for low income units or below 80 percent of median for moderate income units.\***

**\*[1.]\*\*\*(b)\*** The Department shall generally refer households to units for which the monthly rental charge\*, including an allowance for utilities \*[shall not exceed]\*\*, is **approximately\*** 30 percent of their gross monthly income.

**\*[2.]\*\*\*(c)\*** At the time restrictions are initially placed on a rental unit, an Affordable Housing Agreement shall be signed and duly recorded. The owner shall forward copies of the recorded deed and the agreement to the Department for its files.

**\*[(b)]\*\*\*(d)\*** The landlord shall notify the Department of any impending vacancy in any restricted rental unit no less than 60 days before the unit is to become available.

**\*[(c)]\*\*\*(e)\*** The Department shall refer a list of certified households who meet income and bedroom size criteria for a vacant unit to a landlord for lease negotiations within 30 days of receipt of this notification. Landlords must select a certified household for occupan-

cy of an affordable rental unit. Final tenant selection shall be the responsibility of the landlord. However, no referred household shall be denied a lease for any reason that violates any applicable law.

**\*[(d)]\*\*\*(f)\*** A written lease shall be required in all restricted rental units. Final lease agreements will be the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law.

**\*[(e)]\*\*\*(g)\*** Rental charges may be adjusted at the annual anniversary date of the lease. Rent adjustments shall be determined by adjusting the base rent by the applicable Index. The Department shall notify all landlords of changes in the Index. The landlord shall submit a written request for rent adjustment approval to the Department when a rent adjustment is to be made. The Department shall promptly approve or disapprove all rent adjustment requests.

**\*[(f)]\*\*\*(h)\*** An owner of a restricted rental unit shall notify the Department in writing of an intent to transfer ownership of the property. A copy of the recorded deed shall be forwarded to the Department. The property shall be retained as affordable housing at resale subject to the Affordable Housing Agreement.

#### 5:14-4.7 Procedures for establishing eligibility for occupancy

(a) In order to be considered for an Affordable Housing unit, households shall submit a preliminary application to the Department. As completed preliminary applications are received, the Department shall review the applications for income eligibility and family size and in accordance with all applicable laws.

1. When the initial review indicates that an applicant household may be eligible, the name of the head of the household shall be placed on a waiting list. The Department will send a confirmation letter to the applicant.

(b) When the initial review indicates that an applicant household is income-ineligible, the applicant household shall be advised in writing and the preliminary application shall be denied. If an applicant household receives a determination of ineligibility, the applicant may submit a written request for a redetermination to the Department within 15 days of receipt of the denial. The request must set forth the basis for the claim of eligibility. The applicant household shall be required to produce documentation to support the claim at the time of redetermination. Written notice of the redetermination shall be given to the applicant by the Department.

1. If the applicant household receives a second notice of ineligibility, a written appeal may be filed with the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625, within 15 days of receipt of the notice of denial. If a written request has not been received within 15 days after the applicant household's receipt of this notice, the determination shall be final and the application shall be considered denied.

(c) As units become available, the Department shall notify eligible households who satisfy the income criteria and occupancy standards for an available unit and schedule them for a certification interview. At the certification interview, the household shall be requested to document all income for the purpose of qualifying for the required mortgage or rent payment. The certification process may also include a credit background report. Every household member 18 years of age or older who will live in the affordable unit and who receives income shall be required to provide verification of income. Verification may include, but is not necessarily limited to, any of the following:

1. A letter from the household member's employer stating an annualized current income figure of four consecutive paystubs dated within 120 days of the interview date;

2. A letter or appropriate reporting form verifying, without limitation, social security, unemployment, disability, pension or other benefits;

3. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant;

4. A copy of IRS Form 1040, 1040A, or 1040EZ, as applicable, and New Jersey State income tax returns for each of the three years prior to the date of interview;

5. Reports that verify income from bank accounts, securities, trust funds or other income-producing properties; or

6. Reports that verify assets that do not earn regular income such as non-income producing real estate and savings with delayed earnings provisions.

(d) Eligible households who are denied certification shall be notified in writing of the denial. This notice shall state the specific reason for the denial. If the eligible household disagrees with this finding it may file a written request for redetermination with the Department within 15 days of receipt of the notice. Eligible households shall be required to produce documentation to support their claim.

1. Eligible households who are again denied certification may file a written appeal with the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625 within 15 days of receipt of the denial. If a written request has not been received within 15 days of the household's receipt of this notice, the determination shall be final and the application considered denied.

(e) Only households approved by the Department as certified households shall have an opportunity to be considered for low and moderate income housing. Households who are certified shall be issued written certification that is valid for 120 days. Certification may be extended by the Department for one additional period of 120 days if a mortgage application has been made and the household has not received approval or denial. Households having received certification which expires shall be returned to the referral list and may be considered for future housing referrals.

(f) To the greatest extent possible, certified households shall be referred to available units using the following accepted standards for occupancy:

1. A maximum of two persons per bedroom;
2. Children of same sex in same bedroom;
3. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms; and
4. Children not in same bedroom with parents.

(g) In no case shall a household be referred to a unit that provides for more than one bedroom in excess of family occupancy requirements.

(h) The Department shall gather information on each assisted household's income, assets and household characteristics from time to time for purposes of program evaluation.

#### 5:14-4.8 Foreclosure

(a) A judgment of foreclosure in favor of or a deed in lieu of foreclosure to an institutional first mortgagee on any owner-occupied restricted unit shall result in a termination of affordability controls, except for the defaulting mortgagor who shall be forever subject to the restrictions with respect to the unit owned by him at the time of default.

1. All resale restrictions shall cease to be effective as of the transfer of title pursuant to foreclosure with regard to the first purchase money mortgagee or a lender in the secondary mortgage market including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, or the Government National Mortgage Association; or an entity acting on their behalf.

2. Affordability controls shall remain in effect in the event of any judgment of foreclosure on a rental unit, other than a rental unit in a one to four family rehabilitated owner-occupied dwelling.

(b) Nothing shall preclude the municipality in which the unit is located from purchasing the unit at the maximum permitted resale price and holding, renting or conveying it to a certified household. The municipality shall have 60 days after the unit is listed for sale in which to exercise this option. Failure of the financial institution to provide notice of a foreclosure action to the Department or the municipality shall not impair the financial institution's rights to recoup loan proceeds and shall create no cause of action against the financial institution.

(c) In the event of a foreclosure sale by a first purchase money mortgagee, any surplus funds exceeding the maximum allowable resale price, as calculated in accordance with the approved index, which remains after the amount required to pay and satisfy the first

purchase money mortgage including the costs of foreclosure and any previously approved second mortgages shall be paid to the Department as reimbursement for Neighborhood Preservation Balanced Housing Program Funding invested in the unit. Any remaining funds in excess of outstanding grants or loans shall be returned to the municipality.

#### 5:14-4.9 Violations, defaults and remedies

(a) Upon a violation of any of the provisions of the Affordable Housing Agreement by the owner of a Balanced Housing unit, the Department may give written notice to the owner specifying the nature of the violation and requiring a correction within a reasonable period of time as specified in the notice.

1. The owner shall be obligated to notify the Department that the violation has been corrected within the reasonable time period or that additional time is needed for the correction. The Department will grant additional time for good cause and notify the Owner that additional time has been granted.

2. If the owner does not forward written notification, as required, or correct the violation within the time specified, the Department may declare a default of the Agreement.

3. The interest of any owner may, at the option of the Department, be subject to forfeiture in the event of substantial breach of any of the terms, restrictions and provisions of the Agreement which remains uncured for the period of 60 days after service of the written notice of violation upon the owner by the Department.

4. The notice of violation shall specify the particular infraction and shall advise the owner that his or her right to continued ownership may be subject to forfeiture if such infraction is not cured within 60 days of receipt of the notice.

(b) If an owner makes any misrepresentation in connection with the purchase, rental, or sale of an affordable housing unit pursuant to the Agreement, the Department may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale, lease, or transfer in violation of the Agreement, or a declaration that a sale or transfer in violation of the Agreement is void, or for any other relief as may be deemed appropriate.

(c) The provisions of this section may be enforced by the Department by court action seeking a judgment which would result in the termination of the owner's equity or other interest in the unit. Any judgment shall be enforceable as if same were a judgment of default of the first money mortgage and shall constitute a lien against the particular Balanced Housing unit.

1. A court judgment of default shall obligate the owner to accept the first offer to purchase from any certified household, who has been referred to the owner by the Department, with such offer to purchase being no more than the maximum permitted resale price of the Balanced Housing unit as permitted by the terms and provisions of the Affordable Housing Agreement.

2. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of the Agreement until such time as title is conveyed to a new owner.

(d) In the event that the Balanced Housing unit is a rental unit, and the owner has leased such unit either for a rental charge in excess of that permitted by the Agreement or to a tenant who has not been certified by the Department, the Department shall have recourse to all legal remedies as stated above, including the recapture of surplus rents paid in excess of the maximum permitted Rental Charge.

#### 5:14-4.10 Length of restrictions

(a) The municipality shall provide contractual guarantees and procedures *\*[which]\* \*that\** will ensure that all units funded with Balanced Housing funds for low and moderate income households, with the exception of Neighborhood Rehabilitation 1-4 unit projects, shall remain affordable to such households from the date the initial restrictions encumber the unit until such time as stated below.

1. Sales units located in those municipalities listed in the Appendix to this *\*[sub]\*chapter*, incorporated herein by reference, shall remain affordable to low and moderate income households for *\*at least\** 10 years. At the first non-exempt sales transaction after *\*[10 years]\* \*the restricted period\**, the owner shall be entitled to the maximum allow-

able resale price as calculated by the index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

2. Sales units located in municipalities not listed in the Appendix shall remain affordable to low and moderate income households for **\*at least\*** 20 years. At the first non-exempt sales transaction after **\*[20 years]\* \*the restricted period\***, the owner shall be entitled to the maximum allowable resale price as calculated by the Index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

3. **\*[Ten]\* \*At least 10\*** years for rental units located in municipalities listed in the Appendix.

4. **\*[Twenty]\* \*At least 20\*** years for rental units located in municipalities not listed in the Appendix.

(b) For rental units created or rehabilitated with Balanced Housing funds, affordability controls shall remain in effect after the expiration date until the date on which a rental unit shall become vacant provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income.

(c) The affordability control periods established in (a) above shall begin as follows:

1. For sales units, on the date a certificate of occupancy is issued;
2. For rental housing containing two or more units, on the date of 50 percent occupancy, as determined by the Department or municipality administering controls; and
3. For single-family housing which is rented, on the date the unit is first occupied.

#### APPENDIX

Sales and rental units funded in municipalities listed below shall be subject to **\*at least\*** 10 year affordability controls. Sales and rental units funded in municipalities not listed below shall be subject to **\*at least\*** 20 year affordability controls.

Atlantic: None  
 Bergen: Lodi, Garfield  
 Burlington: Pemberton Tp.  
 Camden: Camden  
 Cape May: None  
 Cumberland: Vineland, Bridgeton  
 Essex: Belleville, Bloomfield, East Orange, Irvington, Montclair, Newark, Orange  
 Gloucester: Deptford  
 Hudson: Bayonne, Hoboken, Jersey City, North Bergen, Union City, Weehawken, West New York  
 Hunterdon: None  
 Mercer: Trenton  
 Middlesex: Carteret, New Brunswick, Perth Amboy  
 Monmouth: Asbury Park, Keansburg, Long Branch, Neptune  
 Morris: None  
 Ocean: Lakewood  
 Passaic: Passaic, Paterson  
 Salem: None  
 Somerset: None  
 Sussex: None  
 Union: Elizabeth, Hillside, Plainfield, Roselle  
 Warren: None

(a)

#### DIVISION OF HOUSING AND DEVELOPMENT

##### Uniform Fire Code

##### Fire Safety Plans; Casino Hotels

##### Adopted Amendment: N.J.A.C. 5:18-3.2

Proposed: September 18, 1989 at 21 N.J.R. 2845(b).

Adopted: November 3, 1989 by Anthony M. Villane, Jr., D.D.S.,  
 Commissioner, Department of Community Affairs.

Filed: November 6, 1989 as R.1989 d.593, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-198.

Effective Date: December 4, 1989.

Expiration Date: February 1, 1990.

##### Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Business and Industry Association (NJBIA), New Jersey Bell and AT&T point out that new paragraph F-315.5 (Training) is so phrased that it would apply to all employees of facilities required to have a fire safety plan, and not only to employees of hotel-casinos.

RESPONSE: While it might indeed be a good idea to have such a requirement, such was not, as indicated in the summary and impact statements, the intent of this proposed amendment and F-315.5 is therefore being changed accordingly on adoption.

COMMENT: NJBIA, AT&T and Trump Plaza Casino Hotel also say that the training requirements should apply only to employees with fire safety responsibilities and not to "all employees."

RESPONSE: In response, the Department states that the rule refers to "their duties and responsibilities under the plan," so that no employee will have to be given instruction with regard to anything that is not his or her duty or responsibility under the plan. Additional clarifying language has been added nonetheless.

COMMENT: Trump Plaza, Harrah's Marina Hotel Casino, Claridge Casino Hotel and the Casino Association of New Jersey also question the necessity of requiring that the person assigned to manage the Fire Safety Unit have no other responsibilities. The Casino Association states that the "interested Casino Control Commission personnel" do not believe the requirement to be necessary and did not know that it was to be included in the rule.

RESPONSE: This requirement was, in fact, recommended to the Department by the Casino Control Commission, which is concerned that a person with other duties, such as security, might be otherwise occupied in the event of a fire emergency. The Department is satisfied that this concern is reasonable in light of the potential for mass confusion in an emergency in a casino and that the requirement will not unreasonably burden the casino hotels. Furthermore, the Casino Control Commission has advised the Department that it "supports this proposal in its entirety."

COMMENT: Trump Plaza also believes that section F-319.1 should apply to large establishments other than casino hotels as well.

RESPONSE: The Department responds that Trump Plaza may well be right. However, the applicability of the proposal cannot be enlarged at the time of adoption and a new proposal would be required.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

##### 5:18-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

1.-2. (No change.)

3. Article 3 ("General Precautions Against Fire") is amended as follows:

i.-vi. (No change.)

vii. The following new sections F-315.0, F-315.1, F-315.1.1, F-315.1.2, F-315.1.3, F-315.1.4, F-315.1.5, F-315.2, F-315.2.1, F-315.3, F-315.4, and F-315.5 are added:

F-315-0 Fire Safety and Evacuation Plan

**ADOPTIONS**

F-315.1 General: A fire safety and evacuation plan shall be prepared as set forth in this section where required by Section F-315.1.1 through F-315.1.5.

F-315.1.1 Use Group R-1: All Use Group R-1 buildings.

F-315.1.2 Use Group I: All Use Group I buildings.

F-315.1.3 High rise buildings: All high rise buildings as defined in this Code.

F-315.1.4 (Reserved)

F-315.1.5 Casino: All buildings licensed as hotel casinos by the New Jersey Casino Control Commission pursuant to N.J.S.A. 5:12-1 et seq. (see also Section F-319.0).

F-315.2 Fire safety plan: The fire safety plan shall be approved by the fire official and shall be distributed by the owner to all tenants and employees. The plan shall contain the following:

- (1) The location of the nearest exits and fire alarms;
- (2) The procedures to be followed when a smoke or fire alarm sounds; and
- (3) The procedures to be followed in the event of fire or smoke.

F-315.2.1 Availability of plan: A copy of the fire safety plan shall be readily available at all times within the building. In hotel-casinos the plan shall be located in the Fire Command Center.

F-315.3 Evacuation plan: The evacuation plan shall be conspicuously posted on every floor for the occupants' use.

Exception: In R-1 Use Groups the evacuation plan shall be posted on the inside of each guest room door other than a door opening directly to the outside at grade level.

F-315.4 Maintenance: The fire safety and evacuation plan shall be maintained to reflect changes in the use and physical arrangement of the building.

F-315.5 Training: All **\*hotel-casino\*** employees **\*who are assigned duties under the plan\*** shall be periodically instructed and kept informed in respect to their **\*respective\*** duties and responsibilities **\*[under the plan]\***. Such training shall include the proper use of portable fire extinguishers and other manual fire suppression equipment. With respect to new staff members, such training shall be provided within 30 days of entrance to duty. With respect to existing staff, refresher training shall be provided at least annually and whenever a reassignment significantly alters an employee's duties and responsibilities under the plan.

viii.-x. (No change.)

xi. The following new sections F-319.0, F-319.1, F-319.2 and F-319.3 are added:

**Section F-319.0 Casino Fire Safety Programs**

F-319.1 General: Every establishment licensed as a hotel-casino by the New Jersey Casino Control Commission shall establish a Fire Safety Unit consisting of trained personnel who will be under the direct supervision of a manager or equivalent Director, whose sole responsibility shall be the operation of the Unit and the Fire Command Center. The manager or equivalent shall report directly to the Director of the Department under which the Fire Safety Unit is organized.

F-319.2 Responsibilities: The responsibilities of the Fire Safety Unit shall include the following:

- (1) Ensure continual manning of the Fire Command Center with certified hotel-casino personnel;
- (2) Develop and implement a comprehensive fire safety and evacuation plan;
- (3) Provide specialized training for all employees to assure compliance with the fire safety plan;
- (4) Familiarize all employees of the hotel-casino with the Fire Safety Plan and with the built-in fire detection and suppression systems in the casino and hotel;
- (5) Familiarize management and security employees with local fire department operations and procedures for various emergencies in the hotel-casino;
- (6) Provide training for employees on specific support functions to be performed to assist fire department personnel in an emergency;
- (7) Provide training for employees in early detection and proper evaluation of a fire emergency and the proper use of first aid, fire-fighting equipment and techniques;

**COMMUNITY AFFAIRS**

- (8) Provide training annually for all security personnel and Fire Safety Unit staff in cardiopulmonary resuscitation; and
- (9) Ensure the maintenance of the building and its fire protection features in compliance with the Uniform Construction Code and the Uniform Fire Code.

F-319.3 Fire Command Center: The Fire Command Center shall maintain a comprehensive log which shall include the following:

- (1) The name and signature of each employee on duty in the Fire Command Center along with the date and time of arrival and departure; and
- (2) A description of each incident occurring within the casino or hotel including the date, time, location and action taken. An incident shall include, but not be limited to, fire, alarm activation, trouble signal, fire protection equipment malfunction, and any unrecorded communication pertaining to fire or life safety which are made to or from the Fire Command Center.

4.-33. (No change.)

**(b)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Notice of Administrative Correction  
Uniform Construction Code  
Asbestos Hazard Abatement Subcode  
Inspections; Violations  
N.J.A.C. 5:23-8.8**

Take notice that the Department has discovered errors in the Asbestos Hazard Abatement Subcode at N.J.A.C. 5:23-8.8. The amendments proposed at 20 N.J.R. 1130(b), as adopted at 21 N.J.R. 1844(b), deleted, at a number of locations, the phrase "or another certified asbestos safety technician designated by the asbestos safety control monitor"; however, one instance was overlooked. The Department, at this time, is making a correction to eliminate the redundant term at N.J.A.C. 5:23-8.8(a)2ii, since every asbestos safety technician must be certified by the Department in order to meet the provisions of N.J.A.C. 5:23-8. This notice of administrative correction is published pursuant to the provisions of N.J.A.C. 1:30-2.7(a)3.

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

**5:23-8.8 Inspections; violations**

- (a) Pre-commencement inspections shall be conducted as follows:
  - 1. (No change.)
  - 2. The asbestos safety technician[,] shall ensure that:
    - i. (No change.)
    - ii. All workers shall present to the [Asbestos Safety Technician] **asbestos safety technician** [, or another certified asbestos safety technician designated by the asbestos safety control monitor,] a valid work permit issued by the New Jersey Department of Labor;
    - iii.-iv. (No change.)
  - 3.-4. (No change.)
  - (b)-(f) (No change.)

(a)

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

**Rent Increases**

**Effective Date of Increase**

**Adopted Amendment: N.J.A.C. 5:80-9.13**

Proposed: August 7, 1989 at 21 N.J.R. 2160(a).

Adopted: October 13, 1989 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Arthur J. Maurice, Executive Director/Secretary.

Filed: November 3, 1989 as R.1989 d.591, **without change**.

Authority: N.J.S.A. 55:14K-5g.

Effective Date: December 4, 1989.

Expiration Date: May 20, 1990.

**Summary of Public Comments and Agency Responses:**

Comments from three individuals/entities were received by the Agency. The substance of the comments with the Agency responses are as follows:

**COMMENT:** The commenter stated that the rents at their HUD subsidized project are increased through automatic annual adjustments approved by HUD. They indicated that it was their understanding that because they were a HUD subsidized project, they were exempt from the regulations' requirements.

**RESPONSE:** While the commenter is correct in that automatic annual adjustments are approved by HUD, they are mistaken regarding the applicability of this rule to their project. The rule applies to all projects. The rule recognizes the differences between subsidized and non-subsidized projects and sets forth the different procedures that are required for the particular type of project.

The amendment deals with the method for informing tenants of a rent increase. That method will be the same whether or not the project is subsidized and, accordingly, the amendment is applicable to all projects. As the commenter did not express any objections to or concerns over the amended section, Agency staff does not recommend any changes to the rule.

**COMMENT:** The two remaining commenters made recommendations for changing several sections of the subchapter. None of the comments, however, related to the proposed amendment changing the method for notifying tenants of a rent increase.

**RESPONSE:** The Agency's proposed amendment to the rent rule dealt only with the method for giving notice to tenants of a rent increase. No other changes to the rule were proposed by the Agency. As none of the comments objected to or pertained to the proposed amendment, Agency staff does not recommend any changes to the amended section.

With regard to the comments to the other sections of the subchapter, Agency staff will keep those comments on file and consider them during the readoption process for the chapter. The Agency is currently undertaking a review of all of its rules in order to re-adopt them prior to their scheduled expiration date of May 20, 1990.

**Full text of the adoption follows.**

5:80-9.13 Effective date of increase

The newly determined rent schedule shall be effective on the first day of the second full month following written notice to the tenants and other interested parties.

**ENVIRONMENTAL PROTECTION**

(b)

**DIVISION OF COASTAL RESOURCES**

**Notice of Administrative Correction**

**Freshwater Wetlands Protection Act Rules**

**Application for Letters of Interpretation**

**N.J.A.C. 7:7A-8.2**

**Take notice** that the Department of Environmental Protection has discovered an error in the text of N.J.A.C. 7:7A-8.2(c). The reference in that paragraph to "properties other than those discussed in (a) above" is incorrect. The reference should be to "(b) above"; subsection (a) contains no reference to specific property. This notice is published pursuant to N.J.A.C. 1:30-2.7(a)3.

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

7:7A-8.2 Application for letters of interpretation

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

(c) A request for a letter of interpretation for properties other than those discussed in [(a)] (b) above must be in writing and contain the following information:

1.-11. (No change.)

(d)-(i) (No change.)

(c)

**DIVISION OF ENVIRONMENTAL QUALITY**

**Control and Prohibition of Air Pollution by Volatile Organic Substances**

**Adopted Amendment: N.J.A.C. 7:27-16.3**

Proposed: July 17, 1989 at 21 N.J.R. 1960(a).

Adopted: November 6, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Filed: November 8, 1989 as R.1989 d.595, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.A.C. 13:1B-3 and N.J.S.A. 26:2C-1 et seq., particularly N.J.S.A. 26:2C-8.

DEP Docket Number: 028-89-06.

Effective Date: December 4, 1989.

Operative Date: January 7, 1990.

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 an amendment to N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances, hereafter referred to as subchapter 16, to establish a permit application date and a compliance date for the use of marine vapor recovery equipment. The provisions of this amendment 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 August 16, 1989 at the New Jersey Records Storage Center in Trenton, New Jersey, to provide interested parties the opportunity to present testimony on the proposed amendment. The comment period closed on August 31, 1989. The Department received written testimony from five persons, and three persons presented comments at the public hearing.

**COMMENT:** One commenter states that several delegations to a recent session of the Maritime Safety Committee of the International Maritime Organization (IMO) expressed concern that the United States is planning to develop and implement vapor recovery systems prior to consideration of adequate equipment safety and standardization by the IMO. Further, this commenter and another commenter state that Presi-

dent Bush's Clean Air Act Reauthorization bill contains provisions that would preempt state initiatives in this area until after the United States Environmental Protection Agency (USEPA), in consultation with the United States Coast Guard (USCG), develops technical standards for vapor recovery. Marine vapor control requires at least a coordinated national effort to insure uniform equipment and safety practices, if not an international accord.

**RESPONSE:** The USCG has the responsibility for the safety of marine operations within the United States. To fulfill this responsibility, the USCG is developing safety regulations that will apply to marine vapor recovery equipment. The safety regulations have been drafted and were published by the USCG in the October 6, 1989 Federal Register at 54 FR 41366. These regulations will supply a national framework for uniform equipment and safety practices. The use of marine vapor recovery systems has already occurred at several sites in the United States. Such systems provide a basis for technical standards.

The possible preemption of New Jersey's initiative for marine vapor recovery is not sufficient reason to discontinue State efforts.

**COMMENT:** Two commenters support the February 1991 compliance deadline for marine loading facilities as well as the December 1989 deadline for permit applications. These deadlines are fair and give marine loading facilities time to comply without unduly postponing the installation of this important control system. This is one step toward achieving better air quality. One commenter agrees that the controls will provide a significant air quality benefit.

**RESPONSE:** The Department has previously established the importance of the timely implementation of this control measure. The support of this measure and the schedule for implementing it are appreciated. However, because of the adoption date of this rule, the deadline for permit applications has been revised to January 19, 1990. This is to allow affected facilities sufficient time to prepare their permit applications.

**COMMENT:** In order to comply with the proposed permit application and compliance deadlines, the tug, barge and tanker industry will experience an economic burden. To ease this burden on the industry, much of which is owned by small businesses, the Department should allow retrofitting of all vapor recovery equipment when the vessels are scheduled for their required USCG inspection. One commenter estimates that for a worst case scenario the next scheduled drydock would be no later than February 1993. Based on this estimate, February 1993 should be the compliance date.

**RESPONSE:** The Department is not requiring vessels to apply for permits. Only on-shore facilities must apply for permits. After February 28, 1991, all vessels loaded with gasoline at affected facilities must have the necessary equipment to capture VOS vapors. A vessel can wait to retrofit the equipment during its next scheduled drydock and USCG inspection and take only cargos other than gasoline until the retrofit is completed. Therefore, the Department believes that only limited economic burden above the cost of installation of the necessary equipment has to be incurred.

Assuming that the USCG inspections of all vessels are randomly scattered over the next three years, at least one-third of all affected vessels will be retrofitted by February 1991 without adjusting the regular inspection date. According to information presented by several commenters, inspections are required twice every five years, so it is likely that up to one half of all affected vessels will be retrofitted by February 1991. Vessels which have the required equipment will have a competitive advantage when seeking employment after February 28, 1991. Facilities will be permitted to load only into vessels that capture vapor emissions after that date.

The February 1991 compliance date has been determined by the Department, in conjunction with the Court, to be imperative to achieve the necessary environmental benefit as soon as possible.

**COMMENT:** The Department has stated in an affidavit to the United States District Court, District of New Jersey (the Court), that it would be an unreasonable threat to the health and safety of the citizens of New Jersey to require implementation of these controls prior to USCG review and approval of the safety of control systems. Based on the information available to it, the Department stated that 18 months from the originally proposed compliance date, or until August 31, 1991, is required to allow for USCG approval and subsequent purchase, construction, installation and testing of equipment. The commenter states that development of the necessary equipment is a complex and extremely dangerous undertaking with a great potential for disaster. In support of this, the commenter submitted a study on the hazards of marine vapor recovery systems and a request for proposal for testing of large detonation arrestors. These

arrestors are a crucial safety component without which no system can be approved and installed, yet because manufacturers of this equipment do not intend to test large detonation arrestors until a market develops, the petroleum industry has had to step in and invest to get the testing started. It is possible this testing may reveal present technology is not sufficient and new systems will have to be developed in a short period of time. Further, there is a strong possibility these devices will not be generally available before February 1991. Because of the substantial safety concerns, the Department should be prepared to seek further relief from the Court to allow at least until August 31, 1991, for compliance.

**RESPONSE:** The Department does not have jurisdiction over the safety aspects of marine vapor recovery equipment. The USCG is responsible for the safety requirements. However, the Department is closely following the development of safety requirements by the USCG and the subsequent need for safety equipment. In pursuit of this, the Department has read the study submitted by this commenter and will continue to gather information on the status of other types of safety equipment.

In arguments presented to the Court, the Department stated that a compliance date of August 31, 1991, was reasonable. The plaintiffs argued that February 28, 1991, was reasonable. The judge found the arguments of the plaintiffs more compelling and established a compliance date of February 28, 1991. If information becomes available which indicates that this compliance date is infeasible, that information will be conveyed to the Court.

**COMMENT:** There will be engineering difficulties associated with retrofitting a large number of vessels in the time allowed. The availability and capacity of local shipyards to accomplish what is required is questionable. The need to go out of town to have a retrofit done will exacerbate the cost of doing so. Further, there are substantial financial, contractual and operational decisions necessary to accomplish retrofitting of all vessels while maintaining an adequate fleet in service to address market demand and to meet normal vessel maintenance schedules. Scheduling drydock, securing bids for retrofit, reserving or securing financing, and obtaining USCG approval may not be possible in the time allotted. There must be an additional six month period provided until August 31, 1991, to assure compliance without undue market disruption.

**RESPONSE:** It is not necessary for every vessel doing business in New Jersey to be retrofitted with vapor recovery equipment by February 1991, although the Department knows of no impediment to doing so. As long as no gasoline is loaded into a given vessel, the retrofit can wait until all the necessary pieces, including financing and approval, are in place. The Department estimates that one-third to one-half of all affected vessels will be retrofitted by February 1991 if the retrofitting is performed only during regularly scheduled drydocking. Such drydocking is scheduled to ensure an adequate fleet in service, so this would pose no additional burden.

Also, any vessel possessing the required equipment by February 1991 will have a competitive advantage, as all affected facilities must load gasoline into only such vessels as of that date. The Department does not believe there will be undue market disruption.

**COMMENT:** One commenter estimates that the control of gasoline vapors from marine loading will recover about 6.25 million gallons of gasoline, or about 18,000 tons of hazardous gasoline vapors, per year. If carbon adsorbers similar to those used in gasoline truck loading terminals are used by marine facilities, a large proportion of these vapors could be dumped in a concentrated form into the area surrounding the facility. This occurs because carbon adsorbers generally are sold without continuous monitors which record the product recovered and indicate that the equipment is meeting the required recovery standard, and they are undersized by 20 percent to 30 percent of the required capacity. Tests in California have shown that carbon adsorbers may lose 75 percent of their capacity in only three to four years. When the unmonitored equipment's carbon beds are not given time to regenerate, vapors pass through the beds without being adsorbed. This results in a concentrated release which could create a huge toxic nuisance, causing numerous potential legal liability problems. In addition to potential Department liability, operators of terminals could be liable, things such as real estate transactions could be affected, and local councilmen and civic officers could be enjoined for gross negligence for not passing ordinances dealing with the problem.

Because State and county administrators are unable to enforce promulgated rules, and testing of equipment on a continuous basis is too involved and complicated for the services of State or county governments, the following should be implemented. First, the small communities where terminals are located should pass a local ordinance on proper handling

of gasoline vapors expelled during loading operations. This ordinance should include fees to cover the cost of an independent licensed professional engineer to ensure that the pollution control equipment is properly sized and equipped with a continuous monitoring system, and for the engineer to regularly inspect and certify that the equipment is being operated properly at all times. Gasoline vapor recovery systems with monitoring equipment are readily available and, if the gasoline vapors are properly recovered, the value of the recovered gasoline will amply cover capital, operating, maintenance, and monitoring costs, and give a fair return on the investment for the equipment.

**RESPONSE:** The information the Department has indicates that 8,100 tons of gasoline vapors will be captured every year by the use of marine vapor recovery equipment, not the 18,000 tons cited by the commenter. The Department reviews applications for the installation and use of control equipment to ensure that the equipment is properly sized and will perform the job for which it is designed. The Department also performs periodic tests on selected control equipment to determine the actual efficiency. Odor complaints, which would occur if large amounts of gasoline vapor are being released in one spot, can be used as another indication of the efficiency of vapor control systems. The Department is able to enforce and will enforce this and all its other rules as is appropriate. The Department has no information indicating that carbon adsorbers are not being installed and operated properly; therefore, the additional safeguards suggested appear to be unnecessary.

As for local ordinances, the Department works with localities in the delegation of appropriate control functions and reviews ordinances related to air pollution control which local officials feel appropriate to verify that their provisions are at least as stringent as the Department's rules. Local bodies do have the power in appropriate circumstances to exercise their ordinance making powers and counties may enter into the program created by the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. The degree of local involvement in any particular area of control is dependent on the local official's degree of interest and a Departmental determination of whether the level of sophistication necessary in the area of control will be present at the local level. Many local authorities have established programs to deal with appropriate areas of air pollution control.

**COMMENT:** The court order containing the February 1991 compliance date was based on USCG promulgation of safety standards on schedule in February 1990. It is questionable if USCG rules will be completed by February 1990 and, even if they are, there is a significant possibility all technology necessary to comply with the USCG rules will not be available at that time. Further, with applications from a number of states to review at the same time, it may be difficult for the USCG to timely review applications even after rules are adopted. The 18 month extension to August 31, 1991 continues to be reasonable.

**RESPONSE:** The progress of the USCG safety regulations will be tracked by the Department, as well as the progress of USCG review of applications. If it becomes evident that, for reasons such as lack of necessary equipment or delay in the promulgation of USCG rules, the compliance date cannot be achieved, the Department will take appropriate action at that time.

**COMMENT:** While the proposal of this amendment outlines the anticipated costs of retrofitting vessels and annual costs associated with equipment maintenance, it does not adequately address the profound economic impact of the rule on independent gasoline transporters serving New York and New Jersey. The Booz-Allen report used by the Department highlights the direct impact on independent owner-operators in this industry. The cost to retrofit the ocean tank barge fleet represents approximately 10 percent of its current market value and the cost to retrofit the inland tank barge fleet 48 percent of its estimated current market value. The tank barge industry cannot generate sufficient funds to retrofit the entire fleet. Independents cannot show a sufficient cash flow projection to qualify for term bank loans which are their only means of financing the retrofit. These factors coupled with the fiercely competitive market with thin profit margin these companies operate in and the lost revenue which will result from the installation of these systems and disruption of the market require some flexibility in the rulemaking process.

**RESPONSE:** The technical aspects of this rule were adopted on December 30, 1989, and published in the New Jersey Register on February 6, 1989. At that time, questions concerning the overall costs of implementing marine vapor recovery in New Jersey were addressed. The only costs associated with this amendment are those incurred when a vessel is retrofitted on other than the regular drydock schedule.

There is some flexibility in complying with the rule. Vessels can exclusively load cargos of liquids other than gasoline and therefore, never need to install vapor control equipment, or vessels can wait until their next scheduled drydock to install the equipment and not load gasoline until then. In all, the Department does not anticipate the economic impact to be as great as estimated by the Booz-Allen report.

**COMMENT:** While the majority of companies cannot be classified as small businesses under the New Jersey Regulatory Flexibility Act, approximately 80 barges and four coastal tankers are independently owned, operated and engaged in the marine transport of gasoline. This is the majority of marine vessels servicing the Port District and New England area. These companies operate in a particularly fragile economic state and the proposed compliance schedule constitutes a significant financial and operational burden. As these independents own many of the smaller tugs and barges which are necessary in the Port District to navigate shallower draft channels, they will feel a disproportionate economic burden and commercial dislocation from the rule. Additionally, particular terminals or geographic locations will not be able to receive gasoline deliveries which will have a profound impact on the regional economy. The one year compliance time is unrealistic and will put many companies out of business.

**RESPONSE:** It is not necessary for every vessel owned by a given company to install vapor recovery equipment by the compliance date. All loading of gasoline into marine vessels must be done using vapor recovery equipment by that date. Any vessel not retrofitted by February 28, 1991, can continue to take on cargos other than gasoline. The Department estimates that between one-third and one-half of all affected vessels can be retrofitted during their normal drydocking. This should be a sufficient number to handle the demand. The rest can be retrofitted as their drydocking occurs. The USCG has estimated that all affected vessels could be retrofitted in eight months to one year, if necessary.

Also, there will be an economic incentive to perform the retrofit. Affected facilities will not be able to load gasoline into vessels which do not have the necessary equipment. This will create a demand for retrofitted vessels, making it more economically feasible to install vapor recovery piping.

Cost issues related to the installation of the necessary equipment were addressed in the original proposal of marine vapor recovery and the adoption of the technical aspects of the rule. These documents were published on August 1, 1988, and February 19, 1989 (see 20 N.J.R. 1866(a) and 21 N.J.R. 321(a)).

**COMMENT:** The Department should continue to monitor the development of safety devices, the progress of USCG's safety regulations, and compliance with this rule. If this is done when, as the commenter expects, circumstances require a revised compliance date, the Department should be prepared to join the commenter in seeking an amended compliance schedule from the Court.

**RESPONSE:** The Department will be monitoring USCG's progress and the progress on the development of safety equipment. Substantiated information obtained which demonstrates the February 28, 1991 compliance date to be infeasible will be brought to the attention of the Court.

**COMMENT:** It is inadvisable to require permit applications in 1989 in advance of final USCG rules. Unless no detail on control systems, including safety devices, is required, there is a good chance the applications will have to be substantially revised once the USCG rules come out. Industry should be allowed to focus efforts on completing design and testing of detonation arrestors and other safety devices rather than spending time prematurely on the application process. This requirement is not in the Court's order and should be eliminated.

**RESPONSE:** The Department is interested only in those aspects of the control equipment which affect the air pollution control efficiency. This would include data such as the size of the control equipment, the operating temperature of an incinerator, or the volume of the emission stream to be controlled. Such data are reviewed to ensure that, when installed, equipment will meet the standards established in the rule. Factors affecting air pollution control will most likely not be affected by safety equipment. There should not be a high degree of overlap between the equipment required by the Department for air pollution control and the equipment required by the USCG for safety.

The Department believes that receiving permit applications as early as possible will aid in compliance. In order to ensure sufficient time to finalize permit application submittals, the permit application deadline has been changed to January 19, 1990. The sooner applications are received, the sooner they can be reviewed and approved. The Department anticipates the review process will take 60 to 90 days. Once they are approved,

the facility can begin construction as soon as USCG approval is obtained. This should give facilities adequate time for the installation phase of implementation.

COMMENT: Many permits must be obtained before the necessary changes can be made. The Department should set up a separate group to streamline the permit approval process.

RESPONSE: The Division of Environmental Quality will do its best to ensure timely review of air permit applications. It will also encourage other divisions within the Department to process any other required permit applications in a timely manner. The permit application deadline has been established, in part, to help in the expeditious processing of applications from affected facilities. It has been revised to January 19, 1990, to ensure sufficient time for the preparation of applications.

COMMENT: The Department should indicate its enforcement plans in the event compliance deadlines are not met despite industry efforts to comply. When everything possible has been done to comply but technology, USCG rules, USCG approval of a particular system, or shipyard time is unavailable, vessel operators or terminals should not be penalized. A flexible approach to enforcement should be adopted.

RESPONSE: It is not possible to predict each noncompliance scenario and to indicate the Department's enforcement response for each hypothetical. The Department will review each instance of noncompliance on a case-by-case basis when determining what enforcement action to take for noncompliance with this rule.

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]\*):

#### 7:27-16.3 Transfer operations

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

(e) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any substance into any gasoline vapor laden delivery vessel or marine delivery vessel at a gasoline loading facility unless such facility is equipped with and operating a control apparatus in accordance with the following provisions:

1.-3. (No change.)

4. For facilities transferring or loading gasoline into marine delivery vessels, only (d) above, and (k) below, and the following shall apply:

i. Effective February 28, 1991, any facility with an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline into marine delivery vessels shall be equipped with and operating a vapor control system which reduces the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.

ii. Effective February 28, 1991, any facility loading 60,000 gallons (227,100 liters) of gasoline or greater into marine delivery vessels in a single day between May 1 and September 15 shall be equipped with and operating a vapor control system which reduces the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.

iii. Effective February 28, 1991, any marine delivery vessel receiving gasoline at a facility subject to the provisions of (e)4i or ii above shall have vapor collection piping and connections which route displaced vapors to the control apparatus.

5. For facilities subject to (e)4i or ii above, by \*[December 22, 1989]\* **January 19, 1990\***, the applicant shall submit to the Department a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" pursuant to the provisions of N.J.A.C. 7:27-8. This application shall demonstrate the equipment's ability to reduce the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.

(f)-(u) (No change.)

## (a)

### DIVISION OF ENVIRONMENTAL QUALITY

#### Air Civil Administrative Penalties and Adjudicatory Hearings

##### Adopted New Rules: N.J.A.C. 7:27A-3

Proposed: March 20, 1989 at 21 N.J.R. 729(a).

Adopted: November 6, 1989 by Christopher J. Daggett,

Commissioner, Department of Environmental Protection.

Filed: November 8, 1989 as R.1989 d.596, with **substantial and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2C-1 et seq., specifically N.J.S.A. 26:2C-19.

DEP Docket Number: 010-89-02.

Effective Date: December 4, 1989.

Operative Date: May 6, 1990.

Expiration Date: December 4, 1994.

#### Summary of Public Comments and Agency Responses:

A public hearing on this proposal was held at the Labor Education Center, Cook College, New Brunswick, New Jersey on May 3, 1989, to provide interested parties the opportunity to present testimony on the proposal. Testimony was given by one commenter and written comments were received from 10 other commenters prior to the close of comments on May 5, 1989.

COMMENT 1: Any increase in penalties carries with it a duty to increase the procedural due process rights of those who face penalties especially where the potential sanctions have risen to levels heretofore generally reserved for criminal law.

RESPONSE 1: Due process and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., requires that an aggrieved party receive a full and fair hearing to contest an administrative penalty assessment. N.J.A.C. 7:27A-3.4 provides for an adjudicatory hearing before and Administrative Law Judge at the request of the aggrieved party. The rules set forth a detailed procedure for requesting an adjudicatory hearing. The Department has determined that the process for a violator to request an administrative hearing is fully protective of procedural due process rights. The Legislature has established these penalties as civil penalties. It has established similar civil penalties in other environmental statutes such as the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., the Solid Waste Management Act N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. Additionally, the Legislature has established criminal penalties in addition to these civil penalties, where appropriate (see N.J.S.A. 58:10A-10).

COMMENT 2: The commenter is pleased that the Department is taking the first step required by procedural due process of law to provide clear and explicit guidelines for the imposition of air penalties, lest they be imposed arbitrarily or without apparent regard to the severity of the violation or the culpability of the alleged violator.

RESPONSE 2: The Department agrees with this comment. The Department believes that the rules provide clear and concise standards for the imposition of penalties. Penalties are not imposed arbitrarily and without regard for the severity of the violation. The penalty schedule is based on the premise that the most severe violation should receive the highest penalty. However, contrary to the inference that the Department should consider the culpability of a violator, the Department notes that the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. (Act), is a strict liability statute which does not require a finding of fault before liability is imposed.

COMMENT 3: The new rules are fatally flawed in several critical respects, causing the rules to be subject to collateral attack on due process and other legal and equitable grounds if adopted unchanged by the Department.

RESPONSE 3: The Department disagrees with this comment. The Department believes that these rules were properly proposed in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Rules for Agency Rulemaking, N.J.A.C. 1:30, and implement the legislative mandate of the amendment to the penalty section of the Air Pollution Control Act, N.J.S.A. 26:2C-19.

COMMENT 4: The Department has not described or weighed the economic, environmental, and small business impact of the proposed rules. The Department's claim that the rules "will have little economic impact upon persons complying with air pollution rules" is incorrect.

RESPONSE 4: As stated in the economic impact statement of the rule proposal, there will be little economic impact upon a person complying with the Act and the rules promulgated and permits issued pursuant to it. As stated in the environmental impact statement of the rule proposal, the deterrent effect of these rules should provide the regulated community with the strong incentive to conduct their activities in conformance with the Department's rules, thereby protecting the public health and welfare, and the natural resources of New Jersey. Additionally, and specifically by design, the imposition of penalties upon violators of the Act will have a severe adverse economic impact on the violators while at the same time improving the economic standing of persons complying with the rules. Secondly, as stated in the regulatory flexibility statement of the rule proposal, the rules will not impose any additional reporting, recordkeeping or other compliance requirements on small businesses.

COMMENT 5: The Department is ignoring the increased costs to all persons to negotiate air pollution permits which will enable the permittee to avoid these enormous, potentially confiscatory fines. Further, expenditures will be required to avoid noncompliance during operation, including the hiring of additional employees to monitor compliance and conduct third party audits, as well as adding fail safe equipment or substitution of new processes. These "avoidance costs" will affect everyone, violators and nonviolators alike. They will not be trivial, they must be considered, quantified and fully weighed.

RESPONSE 5: The Department assumes that all permittees are currently, and have been in the past, employing all necessary measures to avoid emission excursions and permit violations. The costs of applying for and receiving an air permit are certainly real and, in particularly complicated permits, substantial. However, the increased penalty liability to permittees for violations has been present since the 1985 amendments to Air Pollution Control Act increasing the civil penalty amounts. The Department believes that the codification into rules of the penalty amounts that have been in effect since 1985 will not increase these "avoidance costs."

COMMENT 6: The alleged violators are legitimate businesses and government authorities. They must provide essential public commodities and services, including pollution control through resource recovery. Therefore, they merit equal Department attention and concern before a decision is made on the proposed rulemaking.

RESPONSE 6: One of the purposes of these civil administrative penalty rules is to deter noncompliance by any permittee in the State of New Jersey. Therefore, both public agencies and private businesses need to provide the appropriate attention, personnel, and dollars to the operation of their facilities in order to decrease the likelihood of a violation. The Department has developed this regulatory scheme based on the severity of the violation, not on the type of business that incurs a violation.

COMMENT 7: The Department did not consider the increase in costs to the Department caused by more stringent permit negotiations and the likely rise in cost as permittees choose to contest steep fines instead of "pleading" to smaller fines. In this way, higher penalties can take away Department resources from other environmental areas, leading to "invisible" environmental costs in unrelated fields.

RESPONSE 7: The Department has not experienced an increase in cost in issuing permits because of the 1985 statutory amendments to the Air Pollution Control Act which increased the civil penalty amounts and does not expect time consuming negotiations resulting in "invisible" environmental costs as a result of the codification of statutory penalty amounts in place for the past four years. Furthermore, contrary to the comment that there will be a likely rise in costs to the Department as a result of these rules, the Department believes that fewer requests for hearings will result from penalty assessments since the rules provide clear notice to violators for what each violation will cost.

COMMENT 8: The Department should prepare a "basis and background document" to address fully the development and justification of the proposed penalty rules including environmental, social and economic affects.

RESPONSE 8: The Department disagrees with this comment. The rule proposal contains environmental, social, and economic impact statements and fully complies with all rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

COMMENT 9: The Department should have prepared a "regulatory flexibility statement", as the law requires, or explain in detail why no such statement was necessary.

RESPONSE 9: The commenter apparently has not read the entire proposal. The Department did prepare a regulatory flexibility statement for the proposed rules. It was published as part of the proposal in the New Jersey Register at 21 N.J.R. 730.

COMMENT 10: The numerical penalty schedules are unfair and inadequate especially for first offenses. The tables substitute an apparent mathematical certainty for a careful and individualized weighing of specific factors, guidelines and criteria which are central to rational decision making and adjudication.

RESPONSE 10: The rules are in response to a statutory change and the Department believes, as does the Legislature, that the higher penalties will be an important enforcement tool in deterring noncompliance. Furthermore, the Department has developed the rules according to the concept that the more severe violations should carry a higher penalty assessment. The Department, in establishing the penalty schedules, has already included the environmental and health effects of the violations and has established penalty amounts accordingly.

COMMENT 11: Many of these schedules are as facially arbitrary as the current policy method of imposing fines and penalties. For example, the factors the Department should consider in seeking to impose a penalty are the following:

1. The cause of the alleged violations;
2. Any reasonable basis for the violation;
3. When the alleged violations occur, such as "commissioning and debugging" of new or modified equipment or facilities which commonly occur during "start up" or "shake down"; and
4. The Department's actions demonstrating approval of, or acquiescence in, the challenged course of conduct.

RESPONSE 11: As to the cause of a violation, the Department has developed these rules in accordance with the concept that the most severe violations in terms of either the conduct of the violator and/or the harm to the environment or regulatory scheme should carry a higher civil administrative penalty. In regard to the reasonable basis of the violation, the Department thoroughly investigates a potential violation prior to issuing a notice of violation. As for "start-up" and "shakedown" provisions, these provisions are provided for in individual permits issued pursuant to N.J.A.C. 7:27-8 and are not part of this proposal. Furthermore, the Department's position on penalty assessments is that a violation of the Air Pollution Control Act shall result in a penalty assessment. Where the violator has an objection to determinations or actions taken by the Department, he or she is afforded the right to an adjudicatory hearing to raise any issues deemed appropriate as a defense to the civil administrative penalty assessment.

COMMENT 12: The penalties in general are significantly increased and bear little relationship to real environmental damage or harm.

RESPONSE 12: The penalties are in response to the 1985 statutory amendment to the Act which sets the amount of a penalty at \$10,000 for the first offense, up to \$25,000 for the second offense and up to \$50,000 for the third and each subsequent offense. As for the relationship of the penalty amounts to the environmental damage of a violation, the Department believes that environmental damage is only one factor to be considered in establishing the penalty amounts. As stated in the summary to the rules, other factors such as the frequency of offenses, potential or actual health impacts, the deterrent effect of the penalty, the consistency with other environmental programs' penalties were considered by the Department when establishing the penalty amounts.

COMMENT 13: The Department has reversed the presumption of "innocence" for an alleged violation. Throughout the proposed rules, the Department manifests an apparent conviction that any permittee charged with a violation of the Air Pollution Control Act is, therefore, guilty of the Department's charges unless or until the permittee can prove his or her innocence before a tribunal which ultimately reports back to the Department.

RESPONSE 13: The Legislative scheme established by N.J.S.A. 26:2C-19 requires the Department to determine that there is a violation before it imposes a penalty. The Department then issues a notice of penalty assessment. The violator then has a choice to make. He or she may admit to the violation and pay the penalty. Alternatively, he or she may elect to contest the penalty through the administrative hearing process where he or she may raise any defense deemed necessary to contest the penalty assessed. Only after this hearing, where guilt or innocence is established, is the penalty due.

COMMENT 14: Proposed N.J.A.C. 7:27A-3.2 defines "offense" as "each individual violation of the Act or of any permit issued pursuant thereto. Subsequent offenses are not conditioned upon prior conviction, final order or entry of judgment." In accordance with this, the Depart-

ment would allow itself to aggregate alleged violations of the same permit requirement, and to charge the permittee with a "first offense" (ten thousand dollar fine) for the first charge, a "second offense" (twenty-five thousand dollar fine) for the second charge, and a "third offense" (fifty thousand dollar fine) for the third charge, before the permittee receives notice of any violation or had his "guilt" adjudicated. I object to this Department policy and suggest that only upon prior conviction of an offense can the Department charge a permittee with a subsequent offense for purposes of invoking heavier penalties.

RESPONSE 14: The commenter is correct in his analysis of how the rules work. The penalty section of the Air Pollution Control Act, N.J.S.A. 26:2C-19, clearly states that "if the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense." The Legislature demonstrates its recognition of the fact that imposition of a substantial penalty and very substantial enhanced penalties are necessary to deter violations of this statute, which is intended to protect the public health, safety and welfare. Further, the Legislature chose to condition the enhanced penalties only upon prior "offenses." That is, the Legislature avoided conditioning the enhanced penalties for second and third offenses upon prior "convictions" or "entries of judgment" of violations. Certainly the Legislature must have been aware of the period of time required to obtain a judgment of conviction. Therefore, when it conditioned the enhanced penalties for subsequent offenses under the Act only upon the commission of prior offenses, it provided a realistic way to make deterrent use of the penalty section. The Department believes that these rules implement the statutory mandate. The Legislative scheme is further discussed in the response to comment 13 above.

COMMENT 15: The rules must recognize the duty to "sequester" conflicting functions in the Department. At a minimum, the Department must erect "a Chinese wall" around the separate law making (permit writing and rule making) functions, the enforcement functions (inspections and citations), and the judicial functions (the Commissioner) as the United States Environmental Protection Agency rules provide in comparable circumstances.

RESPONSE 15: All functions at the Department of Environmental Protection are presently separated as suggested by the commenter. Air permits are processed/issued by the Division of Environmental Quality's Engineering and Technology Element, enforcement of the permit is implemented by the Environmental Enforcement Element, and all appeal functions are administered by the Commissioner in accordance with the Administrative Procedure Act. These procedures are adopted in accordance with State law and, therefore, no comparison needs to be made to the Environmental Protection Agency rule.

COMMENT 16: An option which is far superior to the rules of sequestration being drafted and adopted is that the Department should utilize the courts for all judicial enforcement. The Air Pollution Control Act provides for this alternative approach at N.J.S.A. 26:2C-19(a). The Department would enter into the record its penalty enforcement policy in the same way that, pursuant to the Clean Water Act, the Environmental Protection Agency proffers its "civil penalty policy."

RESPONSE 16: The commenter is correct in stating that the Department may, in addition to following the Administrative Procedure Act process to resolve a contested case, initiate a proceeding in the Superior Court of New Jersey to recover a penalty. However, the statute also allows the Department to proceed administratively. The Department, in most cases, prefers to use the administrative remedy because it is usually a quicker and more efficient adjudicatory process.

COMMENT 17: Each time the rules use the general term "Department", a clear definition of who is intended must be set forth.

RESPONSE 17: The term "Department" is used because it is the Department which is acting. Each time a person is directed to submit material to, or contact someone at the Department, a specific contact person and/or address to whom the permittee should respond is provided.

COMMENT 18: The Department mistakenly believes that it has the authority to deny a request for a hearing to challenge an "air order" pursuant to N.J.A.C. 7:27A-3.4. If an alleged violator has timely filed a request for a hearing, the Department must grant the hearing request.

RESPONSE 18: The Department disagrees with this comment. According to the Administrative Procedure Act, an initial determination must be made by the Commissioner that a contested case exists. As for the information to be provided in a hearing request, the Commissioner needs a certain amount of information to decide whether a contested case exists. The Department may deny a hearing request if the requesting party does not fulfill the enumerated requirements of the hearing request

procedure. The Department believes that the information required by these rules to be submitted as part of a hearing request is both appropriate and reasonable.

COMMENT 19: The alleged violator should have an opportunity to cure before the Department denies the hearing request pursuant to N.J.A.C. 7:27A-3.4(c). To allow otherwise would be a deprivation of essential due process rights. The following substitute language should be incorporated in the rule "if the violator fails to include all the information required by (a) above, the Department shall notify the violator by certified mail (return receipt requested) of the deficiencies. If the Department doesn't receive the information requested within fifteen days after the receipt by the violator, of such subsequent notice, the Department may deny the hearing request."

RESPONSE 19: N.J.A.C. 7:27A-3.4(c) presently reads "If the violator fails to include all the information required by (a) above, the Department may deny a hearing request." The Department thanks the commenter for the suggested language. However, the Department believes that the present language provides the discretion needed to allow violators to perfect a hearing request.

COMMENT 20: A violation of an air permit is not by law a violation of the Air Pollution Control Act. While it is common procedure for the Department to characterize each alleged violation of an air permit as a violation of the Air Pollution Control Act, a close reading of the legislation discloses no basis for this "daisy chain" approach to law making.

RESPONSE 20: The Act at N.J.S.A. 26:2C-14, plainly states that "the order to cease the violation issued by the Commissioner and sent to the violator by certified mail or personnel service shall include a reference to the section of the statute, regulation, order, or permit condition violated." This explicit statutory authority makes a violation of a permit condition a violation of the Act. Thus, the Department is authorized to take enforcement action against a violation of a permit.

COMMENT 21: The commenter objects to being required to submit the information required by N.J.A.C. 7:27A-3.6 and 3.9. As a threshold matter the failure to provide adequate information to the Department requires a clear understanding of who at the Department has authority to demand the information. The Department should be authorized to demand information only from the authorized persons of the permittee, otherwise a harmless misstatement by a foreman to any Department employee could trigger allegations of material inaccuracies leading to stiff penalties and loss of reputation to the company.

RESPONSE 21: When the Department receives information, it will carefully review it before commencing an enforcement action. Also, the commenter should assume that an employee of the Department who requests information has authority to make such a request. As for a "harmless misstatement by a foreman", the violator is afforded the right to an adjudicatory hearing to raise any issues it deems appropriate as a defense to the civil administrative penalty assessment.

COMMENT 22: The mathematical scale of reduction which is proposed at N.J.A.C. 7:27A-3.10(f) is arbitrary and inflexible and as such the scale fails to address the actual behavior and culpability of the alleged violator. Worse, a maximum of "fifteen percent reduction" is permitted from the highest penalty for a fully mitigated violation; a maximum "ten percent reduction" is permitted for a partial correction; and if remediation is less than 10 percent, then no reduction is allowed. This rule is counterproductive, because it takes away the incentive for a violator to correct the violation. Penalties should be abated on a linear basis. Hence, a 90 percent abatement of the problem should translate into a 90 percent abatement of the penalty and so forth.

RESPONSE 22: The Department strongly disagrees with the comment that the reduction scale is arbitrary and capricious. One of the central goals of these rules is to deter noncompliance with the Air Pollution Control Act and its implementing rules. In regard to the 10 percent reduction, the commenter apparently misinterprets the rules. The rules state at N.J.A.C. 7:27-5.2(a) that if remedial measures were taken, a 15 percent reduction in penalty is available to the violator, if partial remedial measures are taken, a 10 percent reduction in penalty is available, and if no remedial measures are taken by the violator, then no reduction of the penalty will be available. If, as suggested by the commenter, the Department were to reduce a penalty linearly, violators would in essence pay a fee for their pollution. Again, the Department notes that the Act does not require a finding of culpability before imposing civil liability for a violation.

COMMENT 23: The most relevant factor in a penalty assessment, "the magnitude of the problem", is arbitrary and self-defeating. A numerical surrogate based upon the number of "complainants" fails as a

measure of the population affected, because a pollution release could affect large numbers but excite few if any complainants or an odor release could excite many complainants but have little effect. Would the public continue to cooperate with the Department after being subject to the judicial process?

RESPONSE 23: The number of complaints is just one of the factors which the Department uses to determine the effect on population. As air pollution is often detectable by the sense of smell, the number of complaints seems to be a reasonable method to ascertain the population affected by a release. The commenter is correct in the statement that a serious air pollution release may be undetectable; however, the Department believes that other enforcement mechanisms along with the increased penalty rules will deter these releases. As for the concern of the commenter about complainants being subject to the legal process, it is the experience of the Department that complainants are very helpful in prosecuting air violators.

COMMENT 24: The term "complainant" must be defined. The commenter suggests the following definition: complainant means any person, (residential household, corporation, association, society, firm or partnership) who registers a written complaint of the violations alleged with the Department.

RESPONSE 24: The term "complainant" is not a term of art as used in this proposal; therefore, a dictionary definition may be relied upon and the Department sees no need to further define the term as suggested by the comment.

COMMENT 25: The commenter agrees with proposed N.J.A.C. 7:27A-3.11 that a violator must forfeit any economic benefit gained by virtue of the violation. However, nowhere in the Air Pollution Control Act can any reference to a "forfeiture clause" be found. The Legislature could have considered such a policy and it is to the Legislature and not the rules that the Department must go with its understandable desire to establish such a policy. Even if the Act does permit such a policy through rule making, the policy proposed fails to provide the process or methodology for making the intrinsically individualized determinations of what constitutes "cost" and what constitutes forfeitable "profit."

RESPONSE 25: The Department disagrees with this comment. The impact of a civil administrative penalty as a deterrent is an important and legitimate goal of enforcement of the Act. In addition to the penalties assessed pursuant to one of the paragraphs in N.J.A.C. 7:27A-3.10(e), the Department may include as a civil administrative penalty, the economic benefit which the violator has or could realize as a result of non-compliance, or by delaying compliance so long as the total penalty is within the statutory maximums. The Department believes that this approach maximizes the impact of both of these provisions and implements the intent of the legislative amendment as well as relevant case law.

COMMENT 26: The commenter commends the Department's efforts to close a long standing gap in its rules.

RESPONSE 26: The Department appreciates this comment.

COMMENT 27: The commenter disagrees with the Department's institutionalizing current practices presently not sanctioned by the law, including the unfortunate tendency to categorize every person cited with alleged violations of the Act as guilty until proven innocent.

RESPONSE 27: Current penalty assessment policies are not the subject of these rules and are therefore not responded to here. Additionally, the Department is not institutionalizing any practices not sanctioned by law.

COMMENT 28: The commenter is requesting a copy of the hearing officer's report and an opportunity to reply to such report prior to any final Department action on the proposed penalty rules.

RESPONSE 28: The Department is providing the commenter with a copy of the hearing officer's report. Since the hearing officer's report is prepared as part of the adoption process, the report will not be made public until the rules are promulgated.

COMMENT 29: The proposed penalty policy should be withdrawn and rewritten to substitute specific criteria and guidelines for each phase of the fact finding and penalty assessment process.

RESPONSE 29: The Department disagrees with this comment. The rules concerning civil administrative penalty assessment follow the statutory language of the penalty section of the Act, N.J.S.A. 26:2C-19.

COMMENT 30: The schedule contained in N.J.A.C. 7:27A-3.10(e)11 is not a methodology for carefully and judiciously weighing the environmental or health consequences of incinerator failures and the individual culpability of each operator.

RESPONSE 30: The Department disagrees with this comment. As stated above, the Department establishes the schedules based on the theory that the most severe violations would be assessed the highest

penalties, and less severe violations would be assessed lower penalties. The Department believes this to be a reasonable implementation of the statute. As for the comment that the Department must make a determination of the culpability of an operator, the Act does not require the Department to determine the intent of the violator. The Legislature specifically stated in the statute that a violator "shall be liable". Therefore, the Department sees no need to determine the intent of a violator.

COMMENT 31: The commenter objects to the insertion of footnotes throughout the rules which put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate.

RESPONSE 31: These footnotes are presented for informational purposes and are intended to notify the violator and other persons of other enforcement actions available to the Department.

COMMENT 32: The stated goal of "consistency" is meritorious; however, the Department should strive for consistency with the governing law and the commenter sees no reason other than administrative convenience for promoting "consistency" with other laws such as water pollution.

RESPONSE 32: The proposed rules are consistent with the Air Pollution Control Act. Where possible, the rules are consistent with other environmentally protective statutory schemes such as the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., because the Department has found that the Water Pollution Control Act penalty provisions are an efficient and fair way for the Department to assess the substantial penalties authorized by the Legislature for violations of that Act. As such, the Department has used some of the same concepts contained in the Water Pollution Control Act penalties in these rules.

COMMENT 33: The commenter objects to the statement in the social impact statement which says "that the rules will have a positive social impact by encouraging compliance and discouraging non-compliance with the State Air Pollution Control Rules." This finding is more of an environmental than a social impact analysis and the Department gives no basis for this assertion.

RESPONSE 33: The basis for the quoted assertion is that a violator will be at risk of paying a much higher penalty for a violation. Since the penalty amounts are generally higher, these higher amounts will have an even greater deterrent effect on prospective violators. Therefore, a permittee will most likely try to avoid these higher penalties by limiting their air permit excursions. The deterrent effect of these higher penalty amounts will result in better compliance, cleaner air, and a positive social impact.

COMMENT 34: The proposed rules do not address the deeper problem of weighing the consequences of a Department enforced "shut down" against the impact of lesser fines.

RESPONSE 34: The purpose of the rules is to implement the penalty provisions of the Act. Compliance with the Air Pollution Control Act is the goal of the civil administrative penalties. The Legislature, when it amended the Act by raising the penalty amounts, did not require the Department to assess penalties only in the event that the violator has the ability to pay the penalty. The Legislature specifically states at N.J.S.A. 26:2C-19(a) that "if any person violates any of the provisions of this act" not "only the people who can afford to pay the penalty" shall be liable to a civil administrative penalty assessment. The Legislature has not directed that the Department determine if a violator has the ability to pay a penalty or whether the result of a substantial penalty assessed by the Department may result in a shutdown of a violating facility. The Department has found in its experience that unprofitable facilities pollute as much, if not more than, profitable facilities. In addition, other enforcement tools available to the Department such as revocation of a permit, injunctive relief, and criminal penalties will be used in conjunction with penalty assessments in the most serious cases. The criteria or consequences of these other enforcement tools are not discussed in these rules since they are not part of the proposal.

COMMENT 35: The commenter objects to the assumption by the Department that another "ratcheting" upward of financial penalties by itself will promote compliance or improve air quality.

RESPONSE 35: The Department's increase in the penalties is in response to the statutory amendment to the Air Pollution Control Act (see P.L. 1985, c.12).

COMMENT 36: The Department misapplies *State of New Jersey et al v. John Lewis*, 215 N.J. Super. 564 (App. Div. 1987), on which the Department relies for the principle that fines must take away the "profits made in connection with illegal pollution." The Department policy written without citation to any law would allow the Department to apply the proposed penalty policy in a blanket fashion. Additionally, the De-

## ADOPTIONS

partment has not established a process for making the distinctions recommended by the Court in the cited case.

RESPONSE 36: In *State of New Jersey et al v. John Lewis*, 215 N.J. Super. 564 (App. Div. 1987), the court clearly states that penalties must be assessed to deter others from polluting the environment. Furthermore, the court states "it should be clearly understood that violators can neither profit by such action nor escape responsibility for such acts." The Department agrees that the determination of the economic benefit derived from a violation must be done on a case by case basis where each violation must be weighed individually. The Department sets forth its legal authority for this principle in its answer to comment 27 above.

COMMENT 37: The Department must define with precision what is "a violation or an offense."

RESPONSE 37: The term "offense" is defined in the rules at N.J.A.C. 7:27A-3.2. Furthermore, the term "violation" is not a term of art as used in the rules; therefore, it is appropriate to rely on the dictionary definition of this term. Any failure to comply with any provision of the Act is a violation.

COMMENT 38: N.J.A.C. 7:27A-3.1(b) states that "each day during which a violation continues shall constitute an additional, separate, and distinct offense." This language is unclear, the Department needs to define what is a continuing violation. Is a 10-minute violation that straddles two days one or two offenses?

RESPONSE 38: The statute at N.J.S.A. 26:2C-19(b) states that "each day during which a violation continues shall constitute an additional, separate and distinct offense." The term "day" is not used as a term of art in these rules; therefore a dictionary definition must be relied upon. In reference to the hypothetical, the violation would be considered two offenses.

COMMENT 39: The commenter objects to the current Department "policy" of assessing penalties.

RESPONSE 39: The current "policy" of assessing civil administrative penalties is being superseded by the new rules.

COMMENT 40: Inspectors in the field should have the power and the duty to act as the representatives of the Department in assessing penalties and they should assess penalties immediately upon observing or discovering a violation.

RESPONSE 40: Field inspectors and field investigators inspect facilities and report violations. Factors enter into a penalty assessment which field investigators may not have immediate access to, including whether the violation is a first, second or third offense; the compliance history of the violator; and the current permit or certificate that the violator is operating under.

COMMENT 41: The commenter objects to the name "civil administrative penalty and administrative order." The action should be named "citation" or simply "allegation."

RESPONSE 41: The terms "civil administrative penalty" and "administrative order" follow the statutory language of the Act (see N.J.S.A. 26:2C-19).

COMMENT 42: The Department must reconsider the strongly held rule that all ambiguities are construed against the permittee, with no notice whatsoever to the permittee of the contrary. This policy is contrary to standard rules of contract and statutory construction encompassed in the case of *Matter of Community Medical Center*, 623 F.2d 864, upholding the principle that ambiguities in a contract will be construed against the drafter.

RESPONSE 42: It is not the Department of Environmental Protection's strongly held rule that all ambiguities are construed against the permittee.

COMMENT 43A: An air order becomes final "if no hearing is requested or on the twenty-first day following receipt of the air order by the alleged violator." The language should be amended to clarify how the 21 days are counted.

COMMENT 43B: When does the Department start counting the 20 days for filing a request for an adjudicatory hearing?

RESPONSE 43: The time for filing a hearing request is prescribed at N.J.S.A. 26:2C-14.1 and codified at N.J.A.C. 1:1-1.4. Specifically, the 20 calendar days for filing a hearing request start on the calendar day after a violator receives the order.

COMMENT 44: N.J.A.C. 7:27A-3.3(a)3 states that an Administrative Order and Notice of Civil Administrative penalty assessment shall "order such violation to cease." Only in a situation where the violation is of a continuing nature should such cease and desist order accompany the administrative order lest the constant repetition trivialize its meaning.

## ENVIRONMENTAL PROTECTION

RESPONSE 44: Pursuant to N.J.S.A. 26:2C-14, the Department is empowered at any time to order the violations to cease. Cease also means do not do it again, not simply stop a continuing release.

COMMENT 45: N.J.A.C. 7:27A-3.3(a)4 calls for the Department to specify the amount of the civil administrative penalty. In addition to specifying the amount, the Department should specify the basis for the penalty assessment.

RESPONSE 45: The bases for a penalty assessment are enumerated in the rules at N.J.A.C. 7:27A-3.3(a)1 and 2.

COMMENT 46: The commenter objects to the Department's requirement in N.J.A.C. 7:27A-3.3(b) that payment of the penalty is due "upon receipt by the violator of the air order or when an air order becomes a final order." The commenter recommends the "upon receipt" rule be deleted because no one will pay a substantial penalty upon receipt.

RESPONSE 46: The commenter misunderstands the above cited section. Penalties are due on the receipt by the violator of a final order or when an order becomes a final order. A final order may be obtained by the Department in a number of ways, all of which are enumerated in the cited section. Only upon the receipt of the final order are penalties due.

COMMENT 47: N.J.S.A. 26:2C-14.1 states that no air order becomes final until exhaustion of the cited person's remedies, including the right to an adjudicatory hearing.

RESPONSE 47: The commenter is correct. The Department has explicitly provided the right to an adjudicatory hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The procedures for requesting an adjudicatory hearing are set forth at N.J.A.C. 7:27A-3.4.

COMMENT 48: The commenter objects to the Department labeling the requesting permittee "the violator" throughout the proposed penalty rules.

RESPONSE 48: The Department is following the statutory language of the Act at N.J.S.A. 26:2C-19.

COMMENT 49: The desire "to deter further violations" could overwhelm all other factors in an assessment of a civil administrative penalty. Other factors pertinent to both deterrence and overall penalty assessment policy should be considered. For example:

1. Was the violation caused by an honest mistake?
2. Was the violation willful or intentional?
3. Even if willful or intentional, was the violation a product of reasonable engineering decision making?
4. Was the violation caused by a failure of equipment or vendor misrepresentation?
5. Did the violation occur during start up or shake down?
6. Does the facility utilize new, experimental or otherwise not fully commercial processes and equipment where failures are more likely?

RESPONSE 49: The Department disagrees with this comment. The rules concerning civil administrative penalties assessments follow the statutory language in the Act at N.J.S.A. 26:2C-19. The Act does not require a finding of negligence before imposing civil liability for a violation; nor does the Act contemplate the lack of negligence as a defense to such liability. Further, the "conduct" of the violator is not taken into consideration when calculating the amount of the penalty to be assessed. The statute sets forth a standard of strict liability for violations of the Act. Other factors the Department takes into account when assessing a penalty are discussed in response 12 above. Also, the Department assumes that all permittees are capable of meeting their permit limits at all times and under all circumstances. If a particular piece of equipment is defective or a vendor misrepresents a piece of equipment, the permittee is still responsible for compliance with the permit. Particular periods of start up and shake down are appropriate issues discussed in individual permits and are not a factor in determining the assessment of a civil administrative penalty. Finally, the choice of equipment which is capable of complying with permit limits is entirely the decision of the permittee. The Department will neither endorse nor inhibit the use of such equipment. However, the Department will aggressively enforce permit limitations regardless of the equipment in violation. Of course, the permittee may raise any defense it deems appropriate in an adjudicatory hearing on the penalty assessment.

COMMENT 50: A commenter questioned whether the Department should characterize a course of conduct that the Department overlooks over a period of time as a violation where the permittee might have reasonably relied on the Department's silence or acquiescence.

RESPONSE 50: Any failure to comply with the law is a violation of the law. As for the circumstances surrounding a violation, they may be

considered by the Department in determining the amount of the penalty and offered as a defense in an adjudicatory hearing on the penalty assessment.

COMMENT 51: The commenter objects to the use of the term "may" at N.J.A.C. 7:27A-3.6(d) and other similar sections. The commenter proposes that this term should be changed to an absolute "shall", where the Department shall look at an offense as a first offense if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

RESPONSE 51: The Department disagrees with this comment and believes that the law and the rules provide the flexibility needed to respond to differing circumstances.

COMMENT 52: It should be an absolute defense to any charge that a permittee has not submitted information to the Department, that the Department has the information already in its possession or the permittee reasonably believes the Department already possesses the information in question and so informs the Department.

RESPONSE 52: The regulatory program implemented by the Department pursuant to the Act requires anyone who emits pollutants into the air of this State to monitor that emission and submit the monitoring information to the Department for review and analysis. It is only through this self-monitoring mechanism that the Department is able to monitor compliance of the thousands of emissions to the air of this State. Without appropriate incentives on the part of permittees to make sure that the information submitted to the Department is error free, the Department would lose its ability to rely on this data. Also, if the Department must search through the files of the various divisions and bureaus for such information, the program would lose critical time and resources needed to respond to violations. As for the suggestion that the violator could use as an absolute defense the fact that the Department already possesses the requested information, the violator may raise any defense it deems necessary in an adjudicatory hearing on the penalty assessment.

COMMENT 53: The commenter objects to the use of the term "request" in N.J.A.C. 7:27A-3.9, because if penalties are a result of not submitting the requested information the request is not a request by the Department, it is a command.

RESPONSE 53: The Department will change the term from "request" to "require" to clarify the intent of this provision.

COMMENT 54: If penalties should attach at all, the information sought in N.J.A.C. 7:27A-3.9 must be set forth in detail, in writing, signed by a Department official with legal authority to demand such information.

RESPONSE 54: Information requested by the Department is essential to monitor the program. To the extent possible, all information requests are specific and reduced to writing. However, the commenter must assume any request for information from an employee of the Department is authorized by the Department.

COMMENT 55: The commenter objects to the term "permanent record." How long must a permittee hold and maintain information to count as a "permanent record" in order to avoid the potentially severe penalties of N.J.A.C. 7:27A-3.9(a)?

RESPONSE 55: The Department agrees with the comment and has changed the rule to require records to be maintained for five years.

COMMENT 56: Characterizing the penalties as "civil administrative" does not alter their fundamental character as criminal or quasi-criminal sanction.

RESPONSE 56: The penalty section of the Act, N.J.S.A. 26:2C-19, explicitly refers to the penalties as "civil administrative" and not "criminal" or "quasi-criminal."

COMMENT 57: While it is generally agreed that penalty provisions are per se loathsome and abhorrent, they are nonetheless recognized as a necessary deterrent in encouraging compliance with the State Air Pollution Control Act and rules.

RESPONSE 57: The Department thanks the commenter for the comment. However, the Department does not agree that penalty provisions are loathsome and abhorrent, but rather a necessary deterrent to ensure compliance.

COMMENT 58: The proposed penalty schedule at N.J.A.C. 7:27A-3.10 is extremely detailed and the Department is to be commended for its thoroughness in clearly establishing "the rules of the game".

RESPONSE 58: The Department thanks the commenter for the comment.

COMMENT 59: Notwithstanding the increase in penalties, the commenter is pleased with the Department's basic premise in outlining a specific penalty schedule.

RESPONSE 59: The penalty amounts follow the statutory requirements of the penalty section of the Act at N.J.S.A. 26:2C-19. The Department appreciates the comment.

COMMENT 60: The penalty schedule unfairly affects those facilities presently complying with the rules which already hold air pollution control permits, and even penalizes large facilities that have many stacks and permitted units.

RESPONSE 60: All permittees, including large facilities, are required to meet all permit conditions. They will be assessed civil administrative penalties for any violations of those permit conditions based on the severity of each individual violation and not on the basis of the size of the facility. Obviously, those facilities complying with the air rules and their permits will not be penalized.

COMMENT 61: The penalty schedule should be revised to provide for Departmental discretion and flexibility especially as it pertains to the daily accumulation of penalties for typographic and administrative errors. This would also allow it to address the problems of real environmental significance.

RESPONSE 61: The Department believes that the necessary flexibility has been incorporated in the rules. In addition to the flexibility in the rule, the Department possesses clear statutory authority to compromise any penalty assessment. Regarding the daily accumulation of penalties, the Department is following the statutory language at N.J.S.A. 26:2C-19. As for the importance to the program of error free data submissions, see response 52 above.

COMMENT 62: The general tone of the proposed rules allows no latitude for operation of a facility.

RESPONSE 62: As previously stated, the rules concerning the civil administrative penalty assessment follow the statutory language of N.J.S.A. 26:2C-19. Furthermore, the operation of a facility is controlled by the permit conditions, not the penalty provisions. Any violation of a permit is a violation of the Act and subject to civil administrative penalties.

COMMENT 63: The general intent of the proposed rules appears to be written from a position where fuel composition is extremely well defined which is not true of the waste to energy business.

RESPONSE 63: The intent of the proposed rules is to establish procedures for imposing penalties and penalty schedules regardless of the source of fuel.

COMMENT 64: The commenter disagrees with the daily accumulation of additional fines.

RESPONSE 64: Daily accumulation of fines is specifically mandated by the penalty section of the Air Pollution Control Act, N.J.S.A. 26:2C-19.

COMMENT 65A: Regarding N.J.A.C. 7:27A-3.9(b), each day should not necessarily result in another fine if the permittee is actively pursuing a program of acquiring the necessary information for the required reporting submission. Credit should therefore be given to any operator acting in "good faith" to provide such a report and the delay should not constitute "a separate and distinct offense."

COMMENT 65B: Incorrect information in a required file could cost the violator ten thousand dollars per day. The commenter objects to the magnitude of the penalty considering a paperwork error.

RESPONSE 65: As stated above, the daily accumulation of fines is specifically mandated by N.J.S.A. 26:2C-19. Where the Department requires information to be retained in a file as part of any permit or certificate, it is incumbent on the permittee to retain true, accurate and complete information; otherwise, the permittee shall be liable for a civil administrative penalty assessment. The Department relies on the accuracy and precision of the information retained by the permittee pursuant to the air permit and certificate. Without appropriate incentives on the part of the permittee to make sure that the information retained for the Department is error free, the Department would lose its ability to rely on this data. Considering the serious nature of these records, the Department has established penalty amounts accordingly. Furthermore, a violator may offer as a defense in an adjudicatory hearing on the penalty assessment any defense it feels appropriate.

COMMENT 66A: Odor violations, which are often a nuisance, are set at maximum penalty levels of \$10,000, \$25,000, and \$50,000. These amounts are excessive where as a result of one complainant who calls frequently a facility which is in compliance with all other permits could be penalized \$20,000 per call. Also, these complaints must be field verified by the Department.

COMMENT 66B: In regard to N.J.A.C. 7:27-11.3(d), it is not appropriate to assess a violation based on odors because odors as a violation are subjective.

RESPONSE 66: Odor violations are very serious violations of a facility's permit. Many times the only indication that a facility has exceeded its permit limitations is the detection of an odor. The Department has, therefore, set the penalty levels consistent with the serious nature of these violations. As a routine matter, odor violations are field verified either by local health department officials or Department personnel. An odor violation is not only a violation of a condition of many permits, it is also a violation of a specific rule, N.J.A.C. 7:27-5. The Department is comfortable in the appropriateness of assessing a penalty for a specific rule violation.

COMMENT 67: The intent of all items included in the proposed rules is to foster compliance with permit conditions. However, the fine values as listed appear to be directed toward generation of revenue for the State.

RESPONSE 67: As indicated above, the Legislature, in an amendment to the Air Pollution Control Act (see P.L. 1985, c.12), increased the maximum allowable civil administrative penalty for each violation of the Act. The increases in the civil administrative penalties set forth in the rule reflect this statutory increase.

COMMENT 68: These rules should contain an incentive program to reward the efforts of operators that are doing their best for compliance. Unfortunately, environmental excursions are not always clear cut as to fault or inaction and, for this very reason, the Department should be able to adjudicate the intent of each permittee and this ability should be reflected in the rules.

RESPONSE 68: The Department disagrees with this comment. As a condition of emitting pollution into the air of this State, a permittee has an obligation to comply with the regulatory program established pursuant to the Air Pollution Control Act and its permit to construct and certificate to operate programs. The statute contemplates no such reward for compliance with a permit obligation. The statute instead sets forth penalty requirements to deter noncompliance. As for a finding of fault suggested by this comment, again, neither the statute nor the applicable case law requires the Department to find a *mens rea* or intent as a condition of a violation. The Department believes all excursions of a permit are violations of the Act and subject to a penalty assessment.

COMMENT 69: The commenter objects to the sequencing of penalties. Penalties should apply to each permit or stack separately and individually and not be counted on a facility wide basis.

RESPONSE 69: As stated above, the sequencing of penalties is in accord with the statutory language of the penalty section of the Air Pollution Control Act, N.J.S.A. 26:2C-19.

COMMENT 70: The time period to get back to a first level penalty (five years) is too long. Two years without a violation should be sufficient to warrant a first level penalty. Also, each permitted unit at a facility should be counted separately for the purposes of establishing a first level penalty.

RESPONSE 70: The Department has chosen a five year period with no violations to warrant returning to a first level penalty because all operating certificates are issued for five years. Furthermore, N.J.S.A. 26:2C-19 states that any "person" who violates the Act will be penalized and not each individual permitted piece of equipment or control apparatus of the person. Therefore, the Department believes that the rules follow this statutory mandate.

COMMENT 71: The rules fail to recognize the need for routine planned maintenance of control equipment or control equipment that is downstream of continuously operated units.

RESPONSE 71: Routine planned maintenance of control equipment should be addressed in the permit issued pursuant to N.J.A.C. 7:27-8. Permit requirements are not proposed in these rules and are, therefore, not responded to here.

COMMENT 72: N.J.A.C. 7:27A-3.5(d) should be deleted. There is no need to establish minimum penalties because the Department has full latitude within the Act to levy either no penalty, the maximum penalty or a penalty between zero and the maximum.

RESPONSE 72: The Department disagrees with this comment. Zero penalties will not have a deterrent effect on violators. Once the Department has issued a notice of civil administrative penalty assessment, it is up to the violator to decide whether or not to contest the notice of civil administrative penalty assessment through an adjudicatory hearing or to pay the penalty. N.J.S.A. 26:2C-19 makes it very clear that zero penalties are not an effective enforcement tool under the Act.

COMMENT 73: N.J.A.C. 7:27A-3.10(e) states that the Department "shall determine" a civil administrative penalty amount. The commenter objects to the use of the term "shall" and suggests the term "may" since the Act provides for full discretion by the Department and that this discretion should be recognized in setting up penalty schedules.

RESPONSE 73: N.J.S.A. 26:2C-19 states that a violator shall be liable for a civil administrative penalty. Of course, the Department still retains its ability to exercise the appropriate enforcement discretion for violations of the Air Pollution Control Act.

COMMENT 74: Violations of the general permit code should not be additive to violations of another specific subchapter for the same stack or unit or event as proposed at N.J.A.C. 7:27A-3.10(e)8.

RESPONSE 74: The Department disagrees with this comment. The Air Pollution Control Act, N.J.S.A. 26:2C-19 states that a violation of any rule is a violation of the law. Therefore, in addition to a violation of a particular rule emission limitation, a person would also be in violation of his or her N.J.A.C. 7:27-8 certificate to operate. The Department believes that each violation of the law, rule, permit, certificate, or order should result in a civil administrative penalty.

COMMENT 75: In view of the Department's apparent goal to more than offset profits gained by alleged noncompliance with extraordinarily high penalties, the commenter believes the penalties are excessive when applied to the research and development business community.

RESPONSE 75: The Department developed the penalty schedule based on the severity of the violation, considering both the frequency of violation and the gravity of the violation, not on a type of facility the violator operates.

COMMENT 76: The additional costs of doing business in New Jersey due to excessive penalties must be seriously considered by the research and development community since air permit violations can often be subjective.

RESPONSE 76: As stated in the regulatory flexibility statement and economic impact statement, the proposed rules will not impose any additional cost on permittees in the State who stay in compliance with their permit. However, the rules will have significant impact on permittees who violate the Act. The Department believes that the deterrent effect of the increased penalties will result in better compliance by all permittees and that the impact on violators will discourage noncompliance. As for the subjective nature of air permit violations, the particular circumstances of any violation can be addressed in the adjudicatory hearing process.

COMMENT 77A: A stronger incentive for air pollution permit compliance and a more sensible approach would be for the Department to simplify its needlessly complex procedures for obtaining air pollution control permits as a first step to encouraging better compliance. Furthermore, it often takes months and frequently over a year to have air permit applications reviewed. These unreasonable delays are not without cost or other economic penalties to the regulated community.

COMMENT 77B: A reason for delays in the permit and certificate process is the Department's apparent trifling over removal of emissions that are in many cases, particularly in the chemical research and development facilities, already below the allowable exclusion rate or at a *de minimus* level.

COMMENT 77C: Hidden costs such as costs in waiting to have permit applications reviewed and approved are overlooked in the Department's economic impact statement.

RESPONSE 77: The Department is streamlining the air permit and certificate process. However, the issuing of air permits and certificates is not the subject of this rulemaking.

COMMENT 78A: The commenter requests that research and development facilities be exempt from the higher level of penalties proposed by the new rules.

COMMENT 78B: The commenter objects to the Department's regulatory flexibility statement which states that "these proposed new rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses." The Department has determined that in the assessment of a penalty it would not be appropriate to take into consideration the size of a business. If small businesses are exempt from the proposed penalty rules then the commenter requests that research and development facilities should be included in the exemption.

RESPONSE 78: As stated in the regulatory flexibility statement, the Department has determined that there is no correlation between a business's size and the frequency or severity of a violation. Also, the Department believes that a specific type of permit holder should not be exempt from the increased penalties since the Act provides for no such exemption.

COMMENT 79: If notice of a violation is given by personal service as allowed by N.J.A.C. 7:27A-3.3(a), it should be made to the individual with overall responsibility for the facility and should be followed by notice, by certified mail, return receipt requested.

RESPONSE 79: The Department is following the statutory language of N.J.S.A. 26:2C-14 which allows the Department the discretion of

servicing an administrative order either by personal service or certified mail. The Department sees no reason to serve a violator twice.

COMMENT 80: Given the detailed penalty schedules set forth in N.J.A.C. 7:27A-3.10, particularly N.J.A.C. 7:27A-3.10(e)5, N.J.A.C. 7:27A-3.5 is redundant and, therefore, unnecessary. This section should be deleted in its entirety. However, the mitigating factors set forth in N.J.A.C. 7:27A-3.5(d) should be added to N.J.A.C. 7:27A-3.10(e)5.

RESPONSE 80: N.J.A.C. 7:27A-3.5 and N.J.A.C. 7:27A-3.10 are not redundant. Each section is proposed for a particular purpose. N.J.A.C. 7:27A-3.5 is proposed for the general determination of a penalty for violations of the Act, any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued and includes mitigating factors by which a violator may have his or her penalty reduced. In contrast, each paragraph of N.J.A.C. 7:27A-3.10 establishes penalties for a particular section of the administrative code violated. The Department has weighed the factors in each section of the administrative code and established penalty amounts according to the potential or actual health effects, the deterrent effect needed and consistency with other environmental penalty laws. Therefore, the mitigating factors in N.J.A.C. 7:27A-3.5 are not applicable to the various paragraphs of N.J.A.C. 7:27A-3.10.

COMMENT 81: What is the Department's authority for the inspection penalty at N.J.A.C. 7:27A-3.7(b)? The penalty for first time violations under this subsection is too severe. The penalty should be three thousand rather than eight thousand dollars. This lower amount will provide the necessary deterrent to potential violators.

RESPONSE 81: The Department has, consistent with both the Federal and State constitutions, both general and specific statutory authority to investigate known or suspected sources of air pollution. Pursuant to N.J.S.A. 13:1D-9, the Department has authority to "enter 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 and regulations of the Department." Pursuant to N.J.S.A. 26:2D-9(d), the Department has a right "to enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of air pollution." Also, pursuant to N.J.S.A. 26:2D-19(b) "any person who violates the provision of this act or any code, rule, or regulation or order promulgated or issued pursuant to this act shall be liable to a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense." Therefore, a refusal to allow the Department to enter is a violation of the Act. Each day of this violation will trigger an additional penalty. As for the determination of the penalty amount, the Department believes that the refusal to allow entry is a serious offense because the immediate investigation and clean up of a pollution source is an extremely important part of the Department's duty to protect public health and the environment. The Department has, therefore, set the penalty amounts to reflect the seriousness of this violation.

COMMENT 82: The commenter objects to N.J.A.C. 7:27A-3.7 which purports to assess a penalty against regulated entities who refuse "lawful entry and inspection" of their premise. The amount of the penalty assessed for this offense, ranging from eight thousand to forty thousand dollars, seems to be unnecessarily high. Mitigating factors such as those in previous sections of the penalty rules should be incorporated in this section so that the penalty could be reduced because there are circumstances in which unsophisticated security personnel would prevent such entry and therefore cause their employers to incur fines of at least eight thousand dollars. Also, entry may be blocked for safety reasons, that is, lack of appropriate protective clothing or dangerous conditions at the plant site. Furthermore, there are serious constitutional concerns inherent in this sanction of warrantless entries in violation of the protections of the Fourth Amendment of the Constitution against such warrantless entries. This section in its presently written form is facially unconstitutional based on the following cases: *Marshall v. Barlows, Inc.*, 436 US 307, 98 S.Ct. 1816, 56 Lawyers Edition 2d 305 (1978) and *Hometown Cooperative Apartments v. City of Hometown*, 515 Fed Supp. 502, (1981) and *Freeman v. Blair*, 793 F.2d, 166.

RESPONSE 82: As stated above, the Department has clear statutory authority consistent with the United States Constitution and New Jersey Constitution to inspect any known or suspected source of pollution in this State. Furthermore, the Department has determined that it is not

necessary to amend the rules as suggested by the commenter and that the penalties as proposed are consistent with the Act. However, a violator may raise any issues it deems appropriate as a defense in an adjudicatory hearing to challenge the civil administrative penalty assessment for such violations.

COMMENT 83: Regarding N.J.A.C. 7:27A-3.8, the commenter does not believe that the Legislature intended the Department to be able to assess penalties for the failure to pay a fee. The failure to pay a fee poses no conceivable negative impact on the environment for which a penalty should be assessed. The Department has sufficient recourse if a fee is not paid, that is, it may refuse to review a permit application or may revoke a permit.

RESPONSE 83: Where a rule requires the payment of a fee, a permittee's failure to pay this fee would be a violation of the rule, therefore, a violation of the Act and properly the subject of a civil administrative penalty assessment. The commenter is correct in stating that the Department possesses other enforcement tools, such as revocation of a permit, which the Department will use in appropriate cases.

COMMENT 84: In regard to N.J.A.C. 7:27A-3.8, which establishes penalties for failure to pay fees required by rule, the additional penalty for each day is unreasonable when it is clear that administrative oversight is the cause of a violation. In such cases a determination by the Department should be allowed to establish if willful inaction is involved by the company.

RESPONSE 84: The Department disagrees with this comment. Daily accumulation of fines is specifically mandated by the penalty section of the Air Pollution Control Act, N.J.S.A. 26:2C-19. The Department believes this to be a reasonable implementation of the statute. As for the comment that the Department must make a determination of the culpability of a violator, the Air Pollution Control Act does not require the Department to show the intent of the violator. The Legislature specifically stated in the statute that a violator "shall be liable"; therefore, the Department sees no need to determine the intent of a violator.

COMMENT 85: In regard to N.J.A.C. 7:27A-3.10(e)8, the penalty assessment should be based on an "estimated actual emission rate" rather than an "estimated potential emission rate". Actual emission rates will more accurately reflect the basis for a penalty assessment, since potential emission rates are much too theoretical. Moreover, the 22.8 pounds per hour threshold is unexplained and apparently without basis.

RESPONSE 85: Most air pollution control permits issued pursuant to N.J.A.C. 7:27-8 are based on potential emissions. The commenter is correct in stating that actual emission rates would better reflect the basis for a penalty assessment. However, since actual emission rates are often difficult to ascertain, the Department believes that penalties based upon the same criteria as are incorporated in permits is reasonable and proper. A 22.8 pounds per hour threshold is used by the Department and the United States Environmental Protection Agency as a measurement of a facility's potential yearly emission rate.

COMMENT 86: The purpose of N.J.A.C. 7:27A-3.10(e)13 is unclear. Furthermore, the ambient air quality standards are general standards for air quality rather than specific requirements regarding air pollution sources.

RESPONSE 86: The Department disagrees with this comment. The ambient air quality standards are specific ambient air limitations as set forth in N.J.A.C. 7:27-13 and any excursions of these limitations subjects the violator to a civil administrative penalty assessment.

COMMENT 87: N.J.A.C. 7:27A-3.10(e) sets forth a first time penalty amount for the following violations which is too severe and inconsistent with the nature of the respective violation. The Department should establish more reasonable penalty amounts.

For violations of N.J.A.C. 7:27-16:

1. N.J.A.C. 7:27-16.2(a), the first offense for this violation should be \$500.00 rather than \$1,000;

2. N.J.A.C. 7:27-16.2(g), (h) and (i), the first offense for these violations should be \$1,000 rather than \$2,000;

3. N.J.A.C. 7:27-16.9(b) and (c), the first offense for these violations should be \$1,000 rather than \$2,000;

For violations of N.J.A.C. 7:27-17:

4. N.J.A.C. 7:27-17.6(c)2 and 3, the first offense for these violations should be \$1,000 rather than \$2,000; and

For violations of N.J.A.C. 7:27-23:

5. N.J.A.C. 7:27-23.5 and 23.6(a), the first offense for these violations should be \$3,000 rather than \$10,000.

RESPONSE 87: N.J.S.A. 26:2C-19 authorizes a penalty of not more than \$10,000 for the first offense. In accordance with the statute, the

## ADOPTIONS

## ENVIRONMENTAL PROTECTION

Department has developed the penalty amounts under the theory that the more severe violations should be assessed higher penalties. The Department has determined that the various penalties cited by the commenter are currently reasonable amounts for the violations cited and need not be adjusted.

COMMENT 88: N.J.A.C. 7:27A-3.11 (proposed as N.J.A.C. 7:27A-3.10(f)) appears unnecessary. The Department must clarify the purpose for the inclusion of this apparently all inclusive penalty schedule.

RESPONSE 88: The Department disagrees with this comment. As the proposed rule explicitly states, N.J.A.C. 7:27A-3.11 specifies penalties and mitigating factors for violations of N.J.S.A. 26:2C-19(e).

COMMENT 89: The time allocated for the submission of comments after the public hearing (two days) was too short to submit additional testimony.

RESPONSE 89: The public hearing, which was well advertised and held on May 3, 1989, unfortunately was attended by only one commenter. Due to the lack of participation at the public hearing and the need to implement the 1985 statutory amendment, the Department saw no need to delay this rule by further extending the comment period beyond the six weeks that had already been provided.

COMMENT 90: Even though the Department provides the regulated community the right to request an adjudicatory hearing in the rules at N.J.A.C. 7:27A-3.4, this notification simply of the right to appeal pursuant to the named sections of the rules would be rendered essentially meaningless to a large portion of the regulated community unfamiliar with the Administrative Code or the rule. Therefore, the rules should specifically impose upon the Department the burden to clearly set forth the requirements necessary to perfect an administrative appeal in the administrative order and notice of civil administrative penalty assessment.

RESPONSE 90: The Department believes that the requirements set forth in the rules at N.J.A.C. 7:27A-3.4(a) provide the violator with the information needed to perfect an adjudicatory hearing request. This information is also contained in all administrative orders issued.

COMMENT 91: If it is the intention of the Department to pursue the penalties under N.J.A.C. 7:27A-3.6(c)2, more direct notice ought to be given to the regulated community by including a reference to them above the signatures on the forms submitted, in much the same fashion as similar notices appear on the Environmental Responsibility Cleanup Act forms.

RESPONSE 91: N.J.S.A. 26:2C-19 states that "any person who violates the provisions of this act or any code, rule, regulation, or order promulgated or issued pursuant to this act shall be liable to a civil administrative penalty assessment." Where the Department requires information to be submitted as part of any permit or certificate it is incumbent on the permittee to submit true, accurate and complete information otherwise the permittee shall be liable for a civil administrative penalty assessment. The Department relies on the accuracy and precision of the information submitted by the permittee pursuant to the air permit and certificate. Without appropriate incentives on the part of the permittee to make sure that the information submitted to the Department is error free, the Department would lose its ability to rely on this data. Where standard Departmental forms are used, the Department is considering putting appropriate certifications on them. However, more specific notices may not be available since most of the results are not submitted on Department forms; rather, permittees use their own format to submit information.

COMMENT 92: N.J.A.C. 7:27A-3.6 establishes civil administrative penalties for submitting inaccurate or false information. N.J.A.C. 7:27A-3.6(a) and (b) impose penalties for submission of inaccurate or false information. However, N.J.A.C. 7:27A-3.6(c) expands the sphere of actionable offenses and imposes penalties not only for the submission of inaccurate or false information but also for "an act or omission". Does this mean that the penalties will be assessed for incomplete applications?

RESPONSE 92: Penalties will not be imposed for incomplete applications.

COMMENT 93: N.J.A.C. 7:27A-3.5(d) is unclear where it apparently gives the Department the right to assess a civil administrative penalty at the "midpoint" of three separately enumerated ranges.

RESPONSE 93: The term "midpoint" as used in these rules is not a term of art; therefore a dictionary definition may be relied upon. As for the purpose of N.J.A.C. 7:27A-3.5, see responses to comments 71 and 79.

COMMENT 94: The proposed rule should impose upon the Department the obligation to clearly set forth the provision pursuant to which the penalty is assessed. If a reduction formula has already been applied

to the penalties set forth in an administrative order and notice of civil administrative penalty assessment, the calculations involved should be included in the order.

RESPONSE 94: N.J.A.C. 7:27A-3.3(a) imposes on the Department the obligation to cite the "section of the Act, rule, administrative order, operating certificate, registration requirement or permit violated." In the sections of the rule which contain a reduction formula, the Department will incorporate these calculations in all penalties assessed. However, in the sections of the rule which have no reduction formula, the Department has already taken into account the circumstances of the violation and has set the penalties accordingly.

COMMENT 95: In order to thoroughly investigate any potential incident and to prepare an appropriate response to an administrative order, the Department must allow at least 45 days to request an adjudicatory hearing to contest an administrative order versus the proposed 20 days. N.J.A.C. 7:27A-3.4(b) should be changed accordingly.

RESPONSE 95: The time frame to request an adjudicatory hearing is established in the Act at N.J.S.A. 26:2C-14.1. The Department is following the statutory language and has no authority to expand the time frame as suggested by the commenter.

COMMENT 96: An offense should only be considered a second offense if the second offense occurs at the same source as the first offense. Further, the Department must be aware of the industrial environment, where there are many causes for a violation. The regulated community should be penalized only if the source of the second or subsequent offense is the same as the source of the first offense.

RESPONSE 96: The Department disagrees with this comment. N.J.S.A. 26:2C-19 states that "any person who violates the provisions of the act . . . shall be liable." The Department believes that the Air Pollution Control Act contemplates violations by persons and not particular permitted units owned by persons. If, as suggested by the commenter, the Department calculated offenses on a per unit basis, a violator could violate the Act once for each of his or her permitted units and still be subject to only a first level violation. The Department believes that this scenario is not consistent with the legislative intent of the Air Pollution Control Act.

COMMENT 97: The assessment of civil administrative penalties for the denial or inhibition of immediate lawful entry is impracticable. The Department must recognize the need for security and safety at industrial sites. Additionally, personnel on site are not necessarily prepared nor available to assist State personnel on site visits.

RESPONSE 97: As stated in response 81 above, the Department has, consistent with both the United States Constitution and the New Jersey Constitution, both general and specific statutory authority to investigate known or suspected sources of air pollution. Pursuant to N.J.S.A. 13:1D-9, the Department has authority to "enter 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 non-compliance with any codes, rules and regulations of the Department." Pursuant to N.J.S.A. 26:2C-9(d), the Department has a right "to enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of air pollution." Of course, the Department recognizes the need for safety and security at an industrial site. However, such concerns do not affect the Department's authority to access a site or the assessment of a penalty for improper denial. Since the denial of immediate entry to a facility would be a violation of the Act, the Department believes a penalty for these violations is reasonable and proper.

### Summary of Agency Initiated Changes:

1. N.J.A.C. 7:27A-3.10(f) has been recodified. It is now codified at N.J.A.C. 7:27A-3.11. This change should make the rule clearer.

2. At N.J.A.C. 7:27A-3.9(a), the word "requested" is changed to "required" to more closely follow the statutory language.

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]\*).

## CHAPTER 27A

## AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

## SUBCHAPTERS 1 AND 2. (RESERVED)

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES  
AND REQUESTS FOR ADJUDICATORY  
HEARINGS

## 7:27A-3.1 Scope and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., including violation of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense for each violation of each provision of the Act, or of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by the Act, or any other statute, in connection with the violation for which the assessment is levied.

## 7:27A-3.2 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 N.J.S.A. 26:2C-2 and in N.J.A.C. 7:27.

"Act" means the Air Pollution Control Act (1954), as amended, N.J.S.A. 26:2C-1 et seq.

"AAQS" means Ambient Air Quality Standards, as defined in N.J.A.C. 7:27-13.

"EHS" means Extraordinarily Hazardous Substance, as defined in N.J.A.C. 7:31-1.

"EOR" means Emission Offset Rule, as set forth in N.J.A.C. 7:27-18.

"NESHAPS" means National Emission Standards for Hazardous Air Pollutants, as set forth in 40 CFR 61.

"NSPS" means New Source Performance Standards, as set forth in 40 CFR 60.

"Offense" means each individual violation of the Act or of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto. Subsequent offenses are not conditioned upon a prior conviction, final order, or entry of judgment. In addition, a single administrative order and notice of civil administrative penalty assessment may relate to more than one offense.

"PSDAQ" means Prevention of Significant Deterioration of Air Quality, as set forth in 40 CFR 51.

"TVOS" means Total Volatile Organic Substances, as defined in N.J.A.C. 7:27-17.

"VOS" means Volatile Organic Substances, as defined in N.J.A.C. 7:27-16.

7:27A-3.3 Procedures for assessment and payment of civil  
administrative penalties

(a) In order to assess a civil administrative penalty under the Act, for violation of the Act or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act, the Department shall, by means of an administrative order and notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a civil

administrative penalty for more than one offense in a single administrative order and notice of civil administrative penalty assessment or in multiple administrative orders and notices of civil administrative penalty assessment. This Administrative Order and Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, administrative order, operating certificate, registration requirement or permit violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty to be imposed; and

5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:27A-3.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:27A-3.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of notice of such denial; or

3. If an adjudicatory hearing is conducted, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

7:27A-3.4 Procedures to request an adjudicatory hearing to contest  
an administrative order and notice of civil administrative  
penalty assessment and procedures for conducting  
adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the Department's findings of fact in the administrative order and notice of civil administrative penalty assessment stated in short and plain terms;

3. An admission or denial of each of the Department's findings of fact in the administrative order and notice of civil administrative penalty assessment. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the hearing request within 20 days after receipt by the violator of an administrative order and notice of civil administrative penalty assessment being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings shall be conducted 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.

## ADOPTIONS

## ENVIRONMENTAL PROTECTION

### 7:27A-3.5 Civil administrative penalty determination-general

(a) The Department may assess a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense against each violator who fails to comply with the Act, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each violation of any provision of the Act, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto shall constitute a separate and distinct offense.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(d) Notwithstanding the provisions of N.J.A.C. 7:27A-3.6 through 3.10, the Department may assess a civil administrative penalty for offenses described in this section at the midpoint of the following ranges:

1. \$3,000 to \$10,000 for the first offense;
2. \$15,000 to \$25,000 for the second offense; and
3. \$30,000 to \$50,000 for the third and each subsequent offense.

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

1. The compliance history of the violator;
2. The number, frequency and severity of the offense;
3. The measures taken by the violator to mitigate the effects of the current offense and to prevent future offenses;
4. The deterrent effect of the penalty; or
5. Other specific circumstances of the violator or offense.

(f) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

### 7:27A-3.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, registration, record, or other document submitted or maintained, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each day from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct offense.

(c) The Department shall determine the amount of the civil administrative penalty for offenses described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty, per act or omission, shall be in an amount of \$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and each subsequent offense; and
2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of \$2,000 for the first offense, \$4,000 for the second offense, and \$10,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

### 7:27A-3.7 Civil administrative penalty for failure to allow lawful entry and inspection

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

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, or place, except private residences, by any authorized Department representative, shall be an additional, separate and distinct offense.

(c) The amount of the civil administrative penalty for offenses described in this section shall be \$8,000 for the first offense, \$16,000 for the second offense, and \$40,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

### 7:27A-3.8 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty against each violator who fails to pay a fee when due.

(b) Each day a fee is not paid after it is due shall constitute an additional, separate and distinct offense.

(c) The amount of the civil administrative penalty for offenses described in this section shall be in an amount equal to the unpaid fee, up to a maximum of \$10,000 for the first offense, two times the unpaid fee up to a maximum of \$25,000 for the second offense, and three times the unpaid fee up to a maximum of \$50,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

### 7:27A-3.9 Civil administrative penalty for failure to provide information or test data or to maintain a permanent record of information or test data

(a) The Department may assess a civil administrative penalty against each violator who fails to provide the Department with smoke, emission, stack or any other information or test data **\*[requested]\* \*required\*** by the Department pursuant to the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto or who fails to maintain **\*[a permanent]\* \*for five years a\*** record of smoke, emission, stack or any other information or test data required to be kept pursuant to the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each day information or test data is not provided after it is due shall constitute an additional, separate and distinct offense. Each permanent record that is not maintained as required shall constitute an additional, separate and distinct offense.

(c) Notwithstanding N.J.A.C. 7:27A-3.10, the amount of the civil administrative penalty for offenses described in this section shall be \$5,000 for the first offense, \$10,000 for the second offense, \$30,000 for the third offense, and \$50,000 for the fourth and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

### 7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense for each violation of the Act or of any rule promulgated pursuant to the Act listed in (e) or (f) below.

(b) Each violation of each provision of the Act, or any rule promulgated pursuant thereto, shall constitute a separate and distinct offense.

**ENVIRONMENTAL PROTECTION**

**ADOPTIONS**

(c) Each day during which the violation continues shall constitute an additional, separate, and distinct offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Foot-

notes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1. (Reserved)

2. The violations of N.J.A.C. 7:27-2, Control and Prohibition of Open Burning, and the civil administrative penalty amounts for each violation are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-2.2	Small scale (up to 55 gallon drum or equivalent)	\$300	\$600	\$1,500	\$4,500
	Large Scale	\$2,000	\$4,000	\$10,000	\$30,000
	Material containing pesticides, dangerous materials and solvents	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-2.3(a)	Small scale (up to 55 gallon drum or equivalent)	\$200	\$400	\$1,000	\$3,000
	Large scale	\$2,000	\$4,000	\$10,000	\$30,000
	Material containing pesticides, dangerous materials and solvents	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-2.3(b)	Residential	\$100	\$200	\$500	\$1,500
	Commercial	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-2.3(c)	Residential	\$100	\$200	\$500	\$1,500
	Commercial	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-2.4	Not acting in accordance with permit	\$1,000	\$2,000	\$5,000	\$15,000

3. The violations of N.J.A.C. 7:27-3, Control and Prohibition of Smoke from Combustion of Fuel, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-3.2	Boiler capacity less than 200 x 10 <sup>6</sup> BTU	\$300 <sup>1</sup>	\$600 <sup>1</sup>	\$1,500 <sup>1</sup>	\$4,500 <sup>1</sup>
	Boiler capacity 200 x 10 <sup>6</sup> BTU or greater	\$1,000 <sup>2</sup>	\$2,000 <sup>2</sup>	\$5,000 <sup>2</sup>	\$15,000 <sup>2</sup>
N.J.A.C. 7:27-3.3	Marine Installations	\$400 <sup>3</sup>	\$800 <sup>3</sup>	\$2,000 <sup>3</sup>	\$6,000 <sup>3</sup>
N.J.A.C. 7:27-3.4	Mobile Sources	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-3.5	Stationary Engines	\$400 <sup>3</sup>	\$800 <sup>3</sup>	\$2,000 <sup>3</sup>	\$6,000 <sup>3</sup>
N.J.A.C. 7:27-3.6	Facilities and Equipment	\$1,000	\$2,000	\$5,000	\$15,000
	Records	\$400	\$800	\$2,000	\$6,000

<sup>1</sup>Double Penalty If Over One Ringlemann or 20% Opacity

<sup>2</sup>Double Penalty If Over Two Ringlemann or 40% Opacity

4. The violations of N.J.A.C. 7:27-4, Control and Prohibition of Particles from the Combustion of Fuel, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-4.2	Maximum Actual Emissions For less than 10 pounds per hour:				
	1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>

**ADOPTIONS**

**ENVIRONMENTAL PROTECTION**

2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-4.4	Sampling & Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000
	Operation	\$2,000	\$4,000	\$10,000	\$30,000

<sup>3</sup>Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

5. The violations of N.J.A.C. 7:27-5, Prohibition of Air Pollution, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-5.2(a)				

Maximum Penalty Per Violation	\$10,000 <sup>7</sup>	\$25,000 <sup>7</sup>	\$50,000 <sup>7</sup>	\$50,000 <sup>7</sup>
-------------------------------	-----------------------	-----------------------	-----------------------	-----------------------

The Maximum penalty may be reduced by applying the following factors:

(1) Remedial Measures Taken:

- (a) Yes —15% Reduction from Maximum
- (b) Partial —10% Reduction from Maximum
- (c) None — 0% Reduction from Maximum

(2) Magnitude of Problem

(a) Population Affected

- Less than three complainants —20% Reduction from Maximum
- Three to five complainants —15% Reduction from Maximum
- Six to ten complainants — 5% Reduction from Maximum
- Greater than 10 complainants — 0% Reduction from Maximum

(b) Nature of Air Contaminant:<sup>9</sup>

- Particulates & other air contaminants —15% Reduction from Maximum
- VOS or AAQS — 5% Reduction from Maximum
- EHS, TVOS or NESHAPS — 0% Reduction from Maximum

(c) Amount of Air Contaminant Emitted in Any One Hour

- Less than 22.8 pounds —15% Reduction from Maximum
- 22.8 pounds or greater — 0% Reduction from Maximum

(d) Area Covered (Air contaminant)

- Less than 1/2 square mile —15% Reduction from Maximum
- 1/2 square mile or greater — 0% Reduction from Maximum

(e) Off-site Property Damage

- No —15% Reduction from Maximum
- Yes — 0% Reduction from Maximum

<sup>7</sup>For instance, for the first offense, if the violator takes remedial measures to reduce or eliminate the violation, the Department may reduce \$1,500 (15%) from the maximum penalty. Further, if there are less than three complainants related to the violation the Department may reduce an additional \$2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOS, AAQS, EHS, TVOS, or NESHAPS the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than 1/2 square mile, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Therefore, the maximum reduction for the first offense penalty of \$10,000 would be \$9,500 (95%) resulting in an assessed penalty of \$500.00.

<sup>9</sup>VOS (N.J.A.C. 7:27-16)                      TVOS (N.J.A.C. 7:27-17)  
 EHS (N.J.A.C. 7:31-1)                      NESHAPS (40 CFR 61)  
 AAQS (N.J.A.C. 7:27-13)

6. The violations of N.J.A.C. 7:27-6, Control and Prohibition of Particles from Manufacturing Processes, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-6.2(a)					
CLASS					
Maximum Actual Emissions					
For less than 10 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard		\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard		\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
For 10 pounds through 22.8 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard		\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard		\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
For greater than 22.8 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard		\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard		\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-6.2(d)	All	\$500 <sup>2</sup>	\$1,000 <sup>2</sup>	\$2,500 <sup>2</sup>	\$7,500 <sup>2</sup>
N.J.A.C. 7:27-6.4	Monitoring	\$2,000	\$4,000	\$10,000	\$30,000
	Records	\$500	\$1,000	\$2,500	\$7,500
	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-6.5(a)	Variance	\$2,000 <sup>8</sup>	\$4,000 <sup>8</sup>	\$10,000 <sup>8</sup>	\$30,000 <sup>8</sup>

<sup>2</sup>Double Penalty If Over Two Ringlemann or 40% Opacity  
<sup>3</sup>Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)  
<sup>8</sup>Revoke Variance Under N.J.A.C. 7:27-6.5

7. The violations of N.J.A.C. 7:27-7, Control and Prohibition of Air Pollution from Sulfur Compounds, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-7.2(a)					
CLASS					
Maximum Actual Emissions					
For less than 10 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$2,000 <sup>4</sup>	\$4,000 <sup>4</sup>	\$10,000 <sup>4</sup>	\$30,000 <sup>4</sup>

**ADOPTIONS**

**ENVIRONMENTAL PROTECTION**

2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>4</sup>	\$8,000 <sup>4</sup>	\$20,000 <sup>4</sup>	\$50,000 <sup>4</sup>
3. Greater than 50 percent over the allowable standard	\$8,000 <sup>4</sup>	\$16,000 <sup>4</sup>	\$40,000 <sup>4</sup>	\$50,000 <sup>4</sup>
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 <sup>4</sup>	\$12,000 <sup>4</sup>	\$30,000 <sup>4</sup>	\$50,000 <sup>4</sup>
2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>4</sup>	\$16,000 <sup>4</sup>	\$40,000 <sup>4</sup>	\$50,000 <sup>4</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>4</sup>	\$20,000 <sup>4</sup>	\$50,000 <sup>4</sup>	\$50,000 <sup>4</sup>
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 <sup>4</sup>	\$16,000 <sup>4</sup>	\$40,000 <sup>4</sup>	\$50,000 <sup>4</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>4</sup>	\$20,000 <sup>4</sup>	\$50,000 <sup>4</sup>	\$50,000 <sup>4</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>4</sup>	\$20,000 <sup>4</sup>	\$50,000 <sup>4</sup>	\$50,000 <sup>4</sup>

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-7.2(d), (h) and (j)	Records	\$500	\$1,000	\$2,500	\$7,500
	Monitoring	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-7.2(n)	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000

<sup>4</sup>Per Air Contaminant Exceeding Allowable Standard Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

8. The violations of N.J.A.C. 7:27-8, Permits and Certificates, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(a)	Estimated Potential Emission Rate				
	1. Less than 10 pounds per hour	\$200 <sup>5</sup>	\$400 <sup>5</sup>	\$1,000 <sup>5</sup>	\$3,000 <sup>5</sup>
	2. Ten through 22.8 pounds per hour	\$600 <sup>5</sup>	\$1,200 <sup>5</sup>	\$3,000 <sup>5</sup>	\$9,000 <sup>5</sup>
	3. Greater than 22.8 pounds per hour	\$1,000 <sup>5</sup>	\$2,000 <sup>5</sup>	\$5,000 <sup>5</sup>	\$15,000 <sup>5</sup>
	4. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, and TVOS <sup>5</sup>	\$2,000	\$4,000	\$10,000	\$30,000

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(b)	Estimated Potential Emission Rate				
	1. Less than 10 pounds per hour	\$200 <sup>5</sup>	\$400 <sup>5</sup>	\$1,000 <sup>5</sup>	\$3,000 <sup>5</sup>
	2. Ten through 22.8 pounds per hour	\$600 <sup>5</sup>	\$1,200 <sup>5</sup>	\$3,000 <sup>5</sup>	\$9,000 <sup>5</sup>
	3. Greater than 22.8 pounds per hour	\$1,000 <sup>5</sup>	\$2,000 <sup>5</sup>	\$5,000 <sup>5</sup>	\$15,000 <sup>5</sup>
	4. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, and TVOS <sup>5</sup>	\$2,000	\$4,000	\$10,000	\$30,000

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(d)	All	\$100	\$200	\$500	\$1,500

**ENVIRONMENTAL PROTECTION**

**ADOPTIONS**

CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(e)1					
<b>CLASS</b>					
Maximum Actual Emissions:					
For less than 10 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$2,000 <sup>4</sup>	\$4,000 <sup>4</sup>	\$10,000 <sup>4</sup>	\$30,000 <sup>4</sup>
2. From 25 through 50 percent over the allowable standard		\$4,000 <sup>4</sup>	\$8,000 <sup>4</sup>	\$20,000 <sup>4</sup>	\$50,000 <sup>4</sup>
3. Greater than 50 percent over the allowable standard		\$8,000 <sup>4</sup>	\$16,000 <sup>4</sup>	\$40,000 <sup>4</sup>	\$50,000 <sup>4</sup>
From 10 pounds through 22.8 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$6,000 <sup>4</sup>	\$12,000 <sup>4</sup>	\$30,000 <sup>4</sup>	\$50,000 <sup>4</sup>
2. From 25 through 50 percent over the allowable standard		\$8,000 <sup>4</sup>	\$16,000 <sup>4</sup>	\$40,000 <sup>4</sup>	\$50,000 <sup>4</sup>
3. Greater than 50 percent over the allowable standard		\$10,000 <sup>4</sup>	\$20,000 <sup>4</sup>	\$50,000 <sup>4</sup>	\$50,000 <sup>4</sup>
For greater than 22.8 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$8,000 <sup>4</sup>	\$16,000 <sup>4</sup>	\$40,000 <sup>4</sup>	\$50,000 <sup>4</sup>
2. From 25 through 50 percent over the allowable standard		\$10,000 <sup>4</sup>	\$20,000 <sup>4</sup>	\$50,000 <sup>4</sup>	\$50,000 <sup>4</sup>
3. Greater than 50 percent over the allowable standard		\$10,000 <sup>4</sup>	\$20,000 <sup>4</sup>	\$50,000 <sup>4</sup>	\$50,000 <sup>4</sup>

CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(e)1 or (e)2					
<b>CLASS</b>					
Emissions					
1. Less than 10 pounds per hour		\$800 <sup>5</sup>	\$1,600 <sup>5</sup>	\$4,000 <sup>5</sup>	\$12,000 <sup>5</sup>
2. From 10 through 22.8 pounds per hour		\$1,200 <sup>5</sup>	\$2,400 <sup>5</sup>	\$6,000 <sup>5</sup>	\$18,000 <sup>5</sup>
3. Greater than 22.8 pounds per hour		\$2,000 <sup>5</sup>	\$4,000 <sup>5</sup>	\$10,000 <sup>5</sup>	\$30,000 <sup>5</sup>
4. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, and TVOS <sup>6</sup>		\$3,000	\$6,000	\$15,000	\$45,000

<sup>4</sup>Per Air Contaminant Exceeding Allowable Standard—Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

<sup>5</sup>Based on Permit, if Applicable, or if Not, Estimate of Air Contaminant with Greatest Emission Rate Without Controls

<sup>6</sup>NSPS (40 CFR 60) EOR (N.J.A.C. 7:27-18)  
 NESHAPS (40 CFR 61) TVOS (N.J.A.C. 7:27-17)  
 PSDAQ (40 CFR 51) EHS (N.J.A.C. 7:31-1)

9. The violations of N.J.A.C. 7:27-9, Control and Prohibition of Air Pollution from Sulfur Dioxide caused by the Combustion of Fuel, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-9.2(a)	Storage/Sale by User	\$500	\$1,000	\$2,500	\$7,500
	Supplier	\$5,000	\$10,000 <sup>3</sup>	\$25,000 <sup>3</sup>	\$50,000 <sup>3</sup>
N.J.A.C. 7:27-9.2(b)	User less than 20 x 10 <sup>6</sup> BTU	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
	User 20 x 10 <sup>6</sup> BTU or more	\$2,000	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-9.2(d)	Mathematical Combination	\$2,000	\$4,000	\$10,000	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-9.2(e)	Facility By-Products	\$2,000	\$4,000	\$10,000	\$30,000 <sup>3</sup>

<sup>3</sup>Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

**ADOPTIONS**

**ENVIRONMENTAL PROTECTION**

10. The violations of N.J.A.C. 7:27-10, Sulfur in Solid Fuels, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-10.2(a)	Storage/Sale by User	\$500	\$1,000	\$2,500	\$7,500
	Supplier	\$5,000	\$10,000 <sup>3</sup>	\$25,000 <sup>3</sup>	\$50,000 <sup>3</sup>
N.J.A.C. 7:27-10.2(b)	User less than 200 x 10 <sup>6</sup> BTU	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
	User 200 x 10 <sup>6</sup> BTU or greater	\$2,000	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-10.2(e)	User less than 200 x 10 <sup>6</sup> BTU	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
	User 200 x 10 <sup>6</sup> BTU or greater	\$2,000	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-10.2(f)	User less than 200 x 10 <sup>6</sup> BTU	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
	User 200 x 10 <sup>6</sup> BTU or greater	\$2,000	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>

<sup>3</sup>Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

11. The violations of N.J.A.C. 7:27-11, Incinerators, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-11.2(a)	Multiple Chamber	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-11.2(c)	Single Fuel-Fed	\$1,000	\$2,000	\$5,000	\$15,000

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-11.3(a)1	Maximum Actual Emissions For less than 10 pounds per hour:				
	1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
	2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	From 10 pounds through 22.8 pounds per hour:				
	1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	For greater than 22.8 pounds per hour:				
	1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-11.3(a)2	Maximum Actual Emissions For less than 10 pounds per hour:				
	1. Less than 25 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>

**ENVIRONMENTAL PROTECTION**

**ADOPTIONS**

3. Greater than 50 percent over the allowable standard From 10 pounds through 22.8 pounds per hour:	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
1. Less than 25 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard For greater than 22.8 pounds per hour:	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
1. Less than 25 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-11.3(b)	Smoke	\$1,000 <sup>3</sup>	\$2,000 <sup>3</sup>	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-11.3(c)	Unburned Waste or Ash	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-11.3(d)	Odors	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C.7:27-11.3(e)1	Monitoring (Density of Smoke) Records	\$2,000 \$500	\$4,000 \$1,000	\$10,000 \$2,500	\$30,000 \$7,500
N.J.A.C. 7:27-11.3(e)2	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-11.5(b)	Certificate Operating Procedures	\$50 \$100	\$100 \$200	\$250 \$500	\$750 \$1,500

<sup>3</sup>Double Penalty If Over Two Ringelmann or 40% Opacity

<sup>3</sup>Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

12. The violations of N.J.A.C. 7:27-12, Prevention and Control of Air Pollution Emergencies, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-12.4(a) and (b)	Standby Plan	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-12.4(d)	Availability	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-12.4(e)	Failure to Submit	\$3,000	\$6,000	\$15,000	\$45,000
N.J.A.C. 7:27-12.5(a)1	Alert	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-12.5(a)2	Warning	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-12.5(a)3	Emergency	\$10,000	\$25,000	\$50,000	\$50,000

13. The violations of N.J.A.C. 7:27-13, Ambient Air Quality Standards, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-13.3(a)1 or 2	Primary	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-13.3(b)1 or 2	Secondary	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-13.4(a)1 or 2	Primary	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-13.4(b)1, 2 or 3	Secondary	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-13.5(a)1 or 2	Primary	\$5,000	\$10,000	\$25,000	\$50,000
	Secondary	\$5,000	\$10,000	\$25,000	\$50,000

**ADOPTIONS**

**ENVIRONMENTAL PROTECTION**

N.J.A.C. 7:27-13.6(a)	Primary	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-13.6(b)	Secondary	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-13.7	Primary	\$5,000	\$10,000	\$25,000	\$50,000
	Secondary	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-13.8	Primary	\$5,000	\$10,000	\$25,000	\$50,000
	Secondary	\$5,000	\$10,000	\$25,000	\$50,000

14. The violations of N.J.A.C. 7:27-14, Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles, and the civil administrative penalty amounts for each violation, per vehicle, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-14.3(a)	Passenger Vehicle Registration	\$100	\$200	\$500	\$1,500
	Commercial Vehicle Registration	\$200	\$400	\$1,000	\$3,000
	Property Owner	\$200	\$400	\$1,000	\$3,000

15. The violations of N.J.A.C. 7:27-15, Control and Prohibition of Air Pollution from Gasoline-fueled Motor Vehicles, and the civil administrative penalty amounts for each violation, per vehicle, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-15.5(a)	Owner of less than three vehicles	\$400	\$800	\$2,000	\$6,000
	All others (e.g. Fleet, Motor Vehicle Dealer & Repair/Service Center)	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-15.5(b)	Passenger Vehicle Registration	\$500	\$1,000	\$2,500	\$7,500
	Commercial Vehicle Registration	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-15.5(c)	Sale	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-15.6(a)	Passenger Vehicle Registration	\$100	\$200	\$500	\$1,500
	Commercial Vehicle Registration	\$200	\$400	\$1,000	\$3,000
	Property Owner	\$200	\$400	\$1,000	\$3,000

16. The violations of N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances (VOS), and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.2(a)	External Surface	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(b)	Control Apparatus	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(c)	Vapor Control System	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(d)	Gauging/Sampling	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.2(g)	Floating Roof	\$2,000	\$4,000	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(h)	Seal-Envelope	\$2,000	\$4,000	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(i)	Second Seal	\$2,000	\$4,000	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-16.2(k)	Retrofit Notification	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.2(l)	Roof Openings	\$600	\$1,200	\$3,000 <sup>3</sup>	\$9,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(a)	Submerged Fill	\$600	\$1,200	\$3,000 <sup>3</sup>	\$9,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(c)	Transfer of Gasoline	\$600	\$1,200	\$3,000 <sup>3</sup>	\$9,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(d)	Transfer of Gasoline (Delivery)	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(e)1	15,000 gallons or less per day	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(e)2	Greater than 15,000 gallons per day	\$5,000	\$10,000	\$25,000 <sup>3</sup>	\$50,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(f)1	VOS Emission	\$600	\$1,200	\$3,000 <sup>3</sup>	\$9,000 <sup>3</sup>
N.J.A.C. 7:27-16.3(f)2	Overfill and Spillage	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>

**ENVIRONMENTAL PROTECTION**

**ADOPTIONS**

N.J.A.C. 7:27-16.3(h)2	Records Availability	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.3(i)1	Pressure Testing	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.3(i)2 and (3)	Certification Display	\$100	\$200	\$500	\$1,500
N.J.A.C. 7:27-16.3(j)	Transfer Pressure	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(k)	Leaking Components	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(m)	Vapor-Tight Delivery Vessel	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(q)	Transfer/Loading	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(r)1	Permit	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-16.3(r)2	Construction	\$800	\$1,600	\$4,000	\$12,000
N.J.A.C. 7:27-16.3(s)1	Permit	\$200	\$400	\$1,000	\$3,000
N.J.A.C. 7:27-16.3(s)2	Construction	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-16.4(a)	Tank Lids	\$500	\$1,000	\$2,500	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(b)	Unheated Surface Cleaner 25 square feet or less	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(c)	Unheated Surface Cleaner greater than 25 square feet	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(d)	Heated Tank	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(e)	Vapor Surface Cleaner	\$1,500	\$3,000	\$7,500 <sup>3</sup>	\$22,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(f)	Unheated Conveyorized Surface Cleaner	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(g)	Heated Conveyorized Surface Cleaner	\$1,500	\$3,000	\$7,500 <sup>3</sup>	\$22,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(h)	Conveyorized Vapor Surface Cleaner	\$2,000	\$4,000	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(i)	Oil-Water Separator	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(j)	Written Instructions	\$200	\$400	\$1,000	\$3,000 <sup>3</sup>
N.J.A.C. 7:27-16.4(k)	Training Program	\$500	\$1,000	\$2,500	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(l)	Copies of Instructions	\$300	\$600	\$1,500	\$4,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(m)	Submittal	\$300	\$600	\$1,500	\$4,500 <sup>3</sup>
N.J.A.C. 7:27-16.4(n)	Notification	\$200	\$400	\$1,000	\$3,000 <sup>3</sup>

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
----------	-------------	-------------	-------------	---------------------------------

N.J.A.C. 7:27-16.5(a)

**CLASS**

**Maximum Actual Emissions**

For less than 10 pounds per hour:

1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>

From 10 pounds through 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

For greater than 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

**ADOPTIONS**

**ENVIRONMENTAL PROTECTION**

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.5(b)				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
From 10 pounds to 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.5(e)				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.5(f)				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>

**ENVIRONMENTAL PROTECTION**

**ADOPTIONS**

3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
----------	----------------	----------------	----------------	---------------------------------------

N.J.A.C. 7:27-16.5(g)

**CLASS**

**Maximum Actual Emissions**

For less than 10 pounds per hour:

1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>

For 10 pounds through 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

For greater than 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
----------	----------------	----------------	----------------	---------------------------------------

N.J.A.C. 7:27-16.5(h)

**CLASS**

**Maximum Actual Emissions**

For less than 10 pounds per hour:

1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>

For 10 pounds through 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

For greater than 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
----------	----------------	----------------	----------------	---------------------------------------

N.J.A.C. 7:27-16.6(a)

**CLASS**

**Maximum Actual Emissions**

For less than 10 pounds per hour:

1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
---	----------------------	----------------------	-----------------------	-----------------------

**ADOPTIONS**

**ENVIRONMENTAL PROTECTION**

2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.6(d)	Leaks (Per Leak)	\$300	\$600	\$1,500 <sup>3</sup>	\$4,500 <sup>3</sup>
N.J.A.C. 7:27-16.6(e)	Leaks (Per Leak)	\$300	\$600	\$1,500 <sup>3</sup>	\$4,500 <sup>3</sup>
N.J.A.C. 7:27-16.6(f)	Emission Testing Program	\$5,000	\$10,000	\$25,000 <sup>3</sup>	\$50,000 <sup>3</sup>
N.J.A.C. 7:27-16.6(g)	Emission Testing Program	\$3,000	\$6,000	\$15,000 <sup>3</sup>	\$45,000 <sup>3</sup>
N.J.A.C. 7:27-16.6(h)	Emission Testing Program	\$3,000	\$6,000	\$15,000 <sup>3</sup>	\$45,000 <sup>3</sup>
N.J.A.C. 7:27-16.6(i)1	Log	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.6(i)2	Reports	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.6(k)	Sealing Device	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.6(l)	Annual Monitoring	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-16.7	Cutback and Emulsified Asphalts	\$1,000	\$2,000	\$5,000	\$15,000

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.8(a)	Maximum Actual Emissions				
	For less than 10 pounds per hour:				
	1. Less than 25 percent over the allowable standard	\$2,000 <sup>3</sup>	\$4,000 <sup>3</sup>	\$10,000 <sup>3</sup>	\$30,000 <sup>3</sup>
	2. From 25 through 50 percent over the allowable standard	\$4,000 <sup>3</sup>	\$8,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	3. Greater than 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	From 10 pounds through 22.8 pounds per hour:				
	1. Less than 25 percent over the allowable standard	\$6,000 <sup>3</sup>	\$12,000 <sup>3</sup>	\$30,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	2. From 25 through 50 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	For greater than 22.8 pounds per hour:				
	1. Less than 25 percent over the allowable standard	\$8,000 <sup>3</sup>	\$16,000 <sup>3</sup>	\$40,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	2. From 25 through 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>
	3. Greater than 50 percent over the allowable standard	\$10,000 <sup>3</sup>	\$20,000 <sup>3</sup>	\$50,000 <sup>3</sup>	\$50,000 <sup>3</sup>

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.8(b)	Filtration Emissions	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.8(c)1	Leaking Equipment	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.8(c)2	Open Containers	\$500	\$1,000	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-16.9(a)	Information	\$300	\$600	\$1,500	\$4,500

**ENVIRONMENTAL PROTECTION**

**ADOPTIONS**

N.J.A.C. 7:27-16.9(b)	Monitoring	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-16.9(c)	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000

<sup>3</sup>Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

17. The violations of N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-17.2	Asbestos Surface Coating	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-17.3(a)	Registration	\$500 <sup>3</sup>	\$1,000 <sup>3</sup>	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-17.3(c)	Remedial Measures	\$500 <sup>3</sup>	\$1,000 <sup>3</sup>	\$2,500 <sup>3</sup>	\$7,500 <sup>3</sup>
N.J.A.C. 7:27-17.3(d)	Implementation	\$1,000 <sup>3</sup>	\$2,000 <sup>3</sup>	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-17.3(e)	Resubmittal	\$1,000 <sup>3</sup>	\$2,000 <sup>3</sup>	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-17.4(a)	Discharge Criteria	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-17.4(b)	Aerodynamic Downwash	\$1,000	\$2,000	\$5,000 <sup>3</sup>	\$15,000 <sup>3</sup>
N.J.A.C. 7:27-17.5(a)	Written Instructions	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.5(b)	Training Program	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.5(c)	Copies of Instructions	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.5(d)	Submittal	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.5(e)	Notification	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.6(a)	Tests (Asbestos)	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-17.6(c)1	Information (TVOS)	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-17.6(c)2	Monitoring (TVOS)	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-17.6(c)3	Sampling and Testing Facilities (TVOS)	\$2,000	\$4,000	\$10,000	\$30,000

<sup>3</sup>Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

18. through 22. (Reserved)

23. The violations of N.J.A.C. 7:27-23, Architectural Coatings, and the civil administrative penalty amounts for each violation are as set forth in the following table:

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-23.3(a)				
CLASS				
Per Gallon or any part thereof:				
1. Less than 25 percent over the allowable standard	\$300	\$600	\$1,500	\$4,500
2. From 25 through 50 percent over the allowable standard	\$600	\$1,200	\$3,000	\$9,000
3. Greater than 50 percent over the allowable standard	\$1,000	\$2,000	\$5,000	\$15,000

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-23.4(a)				
CLASS				
Per Unit—Eight pounds or any part thereof:				
1. Less than 25 percent over the allowable standard	\$300	\$600	\$1,500	\$4,500
2. From 25 through 50 percent over the allowable standard	\$600	\$1,200	\$3,000	\$9,000
3. Greater than 50 percent over the allowable standard	\$1,000	\$2,000	\$5,000	\$15,000

**ADOPTIONS**

**ENVIRONMENTAL PROTECTION**

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-23.5	Manufacturer	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-23.6(a)	Manufacturer	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-23.6(b)	Distributor	\$4,000	\$8,000	\$20,000	\$50,000

24. (Reserved)

25. The violations of N.J.A.C. 7:27-25, Volatility, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-25.3	Less than 15,000 gallon tank capacity	\$2,000	\$4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity	\$4,000	\$8,000	\$20,000	\$50,000
	From 50,000 up to 500,000 gallon tank capacity	\$8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-25.4(a)	Test/Document	\$1,000	\$2,000	\$5,000	\$15,000
	Records	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-25.4(b)	Records	\$500	\$1,000	\$2,500	\$7,500

\*[(f) The Department shall determine the amount of the civil administrative penalty for violations described in this section on the basis of the provision violated and the frequency of the violation as follows:

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.S.A. 26:2C-19(e)				
Maximum Penalty Per Violation	\$10,000'	\$25,000'	\$50,000'	\$50,000'

The Maximum penalty may be reduced by applying the following factors:

1. Remedial Measures Taken:

- (a) Yes —15% Reduction from Maximum
- (b) Partial —10% Reduction from Maximum
- (c) None — 0% Reduction from Maximum

2. Magnitude of Problem

- (a) Population Affected
  - Less than three complainants —20% Reduction from Maximum
  - Three to five complainants —15% Reduction from Maximum
  - Six to ten complainants — 5% Reduction from Maximum
  - Greater than 10 complaints — 0% Reduction from Maximum
- (b) Nature of Air Contaminant<sup>o</sup>
  - Particulates & other air contaminants —15% Reduction from Maximum
  - VOS or AAQS — 5% Reduction from Maximum
  - EHS, TVOS or NESHAPS — 0% Reduction from Maximum
- (c) Amount of Air Contaminant Emitted in Any One Hour
  - Less than 22.8 pounds —15% Reduction from Maximum
  - 22.8 pounds or greater — 0% Reduction from Maximum
- (d) Area Covered (Air Contaminant)
  - Less than 1/2 square mile —15% Reduction from Maximum
  - 1/2 square mile or greater — 0% Reduction from Maximum
- (e) Off-site Property Damage
  - No —15% Reduction from Maximum
  - Yes — 0% Reduction from Maximum]\*

\*[<sup>1</sup>For instance, for the first offense, if the violator takes remedial measures to reduce or eliminate the violation, the Department may reduce \$1,500 (15%) from the maximum penalty. Further, if there are less than three complainants related to the violation the Department may reduce an additional \$2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOS, AAQS, EHS, TVOS, or NESHAPS the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than 1/2 square mile, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Therefore, the maximum reduction for the first offense penalty of \$10,000 would be \$9,500 (95%) resulting in an assessed penalty of \$500.00.]\*

\*[<sup>2</sup>VOS (N.J.A.C. 7:27-16) TVOS (N.J.A.C. 7:27-17)  
 EHS (N.J.A.C. 7:31-1) NESHAPS (40 CFR 61)\*  
 AAQS (N.J.A.C. 7:27-13)

**\*7:27A-3.11 Civil administrative penalty for violations of N.J.S.A. 26:2C-19(e)**

(a) The Department shall determine the amount of the civil administrative penalty for violations in this section on the basis of the provision violated and the frequency of the violation as follows:

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.S.A. 26:2C-19(e)				
Maximum Penalty Per Violation	\$10,000 <sup>1</sup>	\$25,000 <sup>1</sup>	\$50,000 <sup>1</sup>	\$50,000 <sup>1</sup>
The Maximum penalty may be reduced by applying the following factors:				
1. Remedial Measures Taken:				
(a) Yes	—15% Reduction from Maximum			
(b) Partial	—10% Reduction from Maximum			
(c) None	— 0% Reduction from Maximum			
2. Magnitude of Problem				
(a) Population Affected				
Less than three complainants	—20% Reduction from Maximum			
Three to five complainants	—15% Reduction from Maximum			
Six to ten complainants	— 5% Reduction from Maximum			
Greater than 10 complaints	— 0% Reduction from Maximum			
(b) Nature of Air Contaminant <sup>2</sup>				
Particulates & other air contaminants	—15% Reduction from Maximum			
VOS or AAQS	— 5% Reduction from Maximum			
EHS, TVOS or NESHAPS	— 0% Reduction from Maximum			
(c) Amount of Air Contaminant Emitted in Any One Hour				
Less than 22.8 pounds	—15% Reduction from Maximum			
22.8 pounds or greater	— 0% Reduction from Maximum			
(d) Area Covered (Air Contaminant)				
Less than 1/2 square mile	—15% Reduction from Maximum			
1/2 square mile or greater	— 0% Reduction from Maximum			
(e) Off-site Property Damage				
No	—15% Reduction from Maximum			
Yes	— 0% Reduction from Maximum			

<sup>1</sup>For instance, for the first offense, if the violator takes remedial measures to reduce or eliminate the violation, the Department may reduce \$1,500 (15%) from the maximum penalty. Further, if there are less than three complainants related to the violation the Department may reduce an additional \$2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOS, AAQS, EHS, TVOS, or NESHAPS the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than 1/2 square mile, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Therefore, the maximum reduction for the first offense penalty of \$10,000 would be \$9,500 (95%) resulting in an assessed penalty of \$500.00.

<sup>2</sup>VOS (N.J.A.C. 7:27-16) TVOS (N.J.A.C. 7:27-17)  
 EHS (N.J.A.C. 7:31-1) NESHAPS (40 CFR 61)\*  
 AAQS (N.J.A.C. 7:27-13)

7:27A-[3.11]\*\*3.12\* Economic benefit component of a civil administrative penalty

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying with or by delaying compliance with the requirements of the Act, or any rule, administrative order, operating certificate or permit issued pursuant thereto. If the total economic benefit was derived from more than one offense, the total economic benefit amount may be apportioned among the offenses from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$10,000 for the first offense, no greater than \$25,000 for the second offense, and no greater than \$50,000 for the third offense and each subsequent offense.

**HUMAN SERVICES**

(a)

**DIVISION OF ECONOMIC ASSISTANCE**

**Notice of Administrative Change**

**Designation of the "Division of Public Welfare" as the "Division of Economic Assistance"**

**N.J.A.C. 10:80 Organization of the Division of Public Welfare**

**N.J.A.C. 10:81 Public Assistance Manual**

**N.J.A.C. 10:82 Assistance Standards Handbook**

**N.J.A.C. 10:83 Service Programs for Aged, Blind, or Disabled Individuals**

**N.J.A.C. 10:87 Food Stamp Manual**

**N.J.A.C. 10:89 Home Energy Assistance Handbook**

**N.J.A.C. 10:90 Monthly Reporting Policy Handbook**

**N.J.A.C. 10:109 Ruling Number 11**

Take notice that P.L. 1989, c.88 changed the name of the Division of Public Welfare (DPW) in the Department of Human Services to the Division of Economic Assistance (DEA). All references to DPW at N.J.A.C. 10:80, 81, 82, 83, 87, 89, 90, and 109 are, by this notice, changed to DEA. These changes will be incorporated into the text of the New Jersey Administrative Code.

**CORRECTIONS**

(b)

**STATE PAROLE BOARD**

**Notice of Administrative Correction**

**Parole Board Rules**

**Board Panel Action; Schedule of Future Parole**

**Eligibility Dates for Adult Inmates**

**N.J.A.C. 10A:71-3.19**

Take notice that the State Parole Board has discovered an error in the text of N.J.A.C. 10A:71-3.19(b)3. As originally promulgated by the Board in 1980 as N.J.A.C. 10A:71-3.19(b)2, this paragraph provided that young adult inmates serving a sentence for a crime contained in category D as defined in N.J.A.C. 10A:71-3.3 shall serve 16 additional months (see R.1980 d.226). Effective May 6, 1985, this provision was recodified as paragraph (b)3, with no textual change (see 16 N.J.R. 3391(a) and 17 N.J.R. 1096(a)). However, in the incorporation of the change into the New Jersey Administrative Code by the 5-20-85 update, the text of former paragraph (b)3 was retained, and the text of paragraph (b)2 was deleted rather than recodified. This notice, published pursuant to N.J.A.C. 1:30-2.7, corrects that error.

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

10A:71-3.19 Board panel action; schedule of future parole eligibility dates for adult inmates

(a) (No change.)

(b) Upon determining to deny parole to a young adult inmate, a two-member young adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1.-2. (No change.)

3. Except as provided herein, a young adult inmate serving a sentence for a crime contained in category [E or F] D as defined in N.J.A.C. 10A:71-3.3 shall serve [10] 16 additional months.

4.-6. (No change.)

(c)-(i) (No change.)

**INSURANCE**

(c)

**DIVISION OF ACTUARIAL SERVICES**

**Notice of Administrative Correction**

**Long-Term Care Insurance**

**Policy Practices, Provisions and Prohibitions**

**N.J.A.C. 11:4-34.6**

Take notice that the Department of Insurance has discovered an error in the text of the adopted new rule N.J.A.C. 11:4-34.6 as published in the November 6, 1989 New Jersey Register at 21 N.J.R. 3465(a). In paragraph (g)2, the word "organic" should precede the term "brain disease" in the text added upon adoption. This language was adopted by the Department (see R.1989 d.571) and erroneously omitted from the adoption publication. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (additions indicated in boldface thus):

11:4-34.6 Policy practices, provisions and prohibitions

(a)-(f) (No change.)

(g) No policy shall be delivered or issued for delivery in this State as long-term care insurance, if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except in the case of the following:

1. (No change.)

2. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease or any other organic brain disease such as senile dementia;

3.-6. (No change.)

(h)-(i) (No change.)

**LAW AND PUBLIC SAFETY**

(d)

**DIVISION OF CONSUMER AFFAIRS**

**STATE BOARD OF NURSING**

**Temporary Work Permits; Employment**

**Adopted Amendments: N.J.A.C. 13:37-2.3, 3.5 and 4.4**

Proposed: June 19, 1989 at 21 N.J.R. 1648(b).

Adopted: October 30, 1989 by the Board of Nursing,

Marjorie Blomberg, R.N., President.

Filed: November 6, 1989 as R.1989 d.592, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:11-24(d)(19).

Effective Date: December 4, 1989.

Expiration Date: February 11, 1990.

The State Board of Nursing afforded all interested parties an opportunity to comment on the proposed amendments to N.J.A.C. 13:37-2.3, 3.5 and 4.4, relating to permissible nursing employment for the unlicensed graduate nurse, graduate practical nurse and foreign nurse graduate. The official comment period ended on July 19, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on June 19, 1989 at 21 N.J.R. 1648(b). Announcements were also forwarded to the Star Ledger, the Trenton Times, the N.J. State Nurses' Association, the N.J. League for Nursing, the N.J. Society of Nursing, the N.J. Hospital Association, the Licensed Practical Nurse Association, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Nursing, Room 508, 1100 Raymond Boulevard, Newark, New Jersey 07102.

**Summary of Public Comments and Agency Response:**

**COMMENTS:** The New Jersey Hospital Association commended the Board of Nursing on the proposed amendments, but added that clarification was needed in relation to the employment of the graduate professional or practical nurse by a home health agency. An ambiguity appeared to exist since home health nursing care is delivered in the patient's home, not in the patient care unit of a health care facility.

The Visiting Nurse Association of Somerset Hills requested similar clarification, but asked the Board to include the model of supervision provided in certified home health agencies. The Association stated that "supervision in certified home health agency settings is provided by qualified public health nurses and involved on-site, phone and in-office contact on regular and ongoing basis . . . there is intermittent, but not a continuous physical presence of a registered professional nurse with the graduate nurse."

**RESPONSE:** The Board of Nursing has clarified the language of the three amendments by adding "or home" after "patient care unit." The Board's intent is to require the physical presence of a registered nurse in the patient care unit, whether it is a health care facility or the patient's home. The Board, in its considered judgment, believes that intermittent personal supervision or supervision by telephone is insufficient where the services of a graduate professional nurse or graduate practical nurse are called for.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

13:37-2.3 Examinations; temporary work permits

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

(i) A graduate professional nurse who holds a temporary work permit may be employed by a licensed acute care facility, long-term care facility or home health agency. All graduate professional nurses employed in these facilities or agencies shall work under the direct supervision of a registered professional nurse. For the purposes of this subsection, "direct supervision" means the physical presence of a registered professional nurse within the patient care unit **\*or home\***.

(j) A graduate professional nurse who holds a temporary work permit shall not render nursing services within or while employed by private employment agencies or physicians' or dentists' offices, nor shall such services be rendered as an independent practitioner or private duty nurse.

13:37-3.5 Examinations; temporary work permits

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

(i) A graduate practical nurse who holds a temporary work permit may be employed only by a licensed acute care facility, long-term care facility or home health agency. All graduate practical nurses employed in these facilities or agencies shall work under the direct supervision of a registered professional nurse. For the purposes of this subsection, "direct supervision" means the physical presence of a registered professional nurse within the patient care unit **\*or home\***.

(j) A graduate practical nurse who holds a temporary work permit shall not render nursing services within or while employed by private employment agencies or physicians' or dentists' offices, nor shall such services be rendered as a private duty nurse.

13:37-4.4 Examinations; temporary work permits

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

(i) For the purpose of rendering nursing services, a graduate professional nurse or a graduate practical nurse who holds a temporary work permit may be employed only by a licensed acute care facility, long-term care facility or home health agency. All graduate professional nurses and graduate practical nurses employed in these facilities or agencies shall work under the direct supervision of a registered professional nurse. For the purposes of this subsection, "direct supervision" means the physical presence of a registered professional nurse within the patient care unit **\*or home\***.

(j) A graduate professional nurse or a graduate practical nurse who holds a temporary work permit shall not render professional or practical nursing services within or while employed by private employment agencies or physicians' or dentists' offices, nor shall such services be rendered as an independent practitioner or private duty nurse.

## TRANSPORTATION

(a)

### DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT

#### BUREAU OF MAINTENANCE SUPPORT

##### Permits

##### Permits for Driveways (Access); Street Intersection

##### Adopted Amendments: N.J.A.C. 16:41-2.2, 2.3, 2.4, 7.1, 7.2, and 7.3

Proposed: October 2, 1989 at 21 N.J.R. 3063(a).

Adopted: November 8, 1989 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: November 8, 1989 as R.1989 d.594, **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. 27:1A-5, 27:1A-6, 27:7A-11, and 27:7A-17.

Effective Date: December 4, 1989.

Expiration Date: July 28, 1992.

**Summary of Public Comments and Agency Responses:**

The Department of Transportation received comments to the proposed amendments from three agencies.

N.J.A.C. 16:41-2.4(a)

**COMMENT:** Municipalities should be exempt from, or receive reduced rates for, driveway access permits, because they are nonprofit entities serving the public and political subdivisions of the State.

**RESPONSE:** The Department agrees with this comment and has added a new category called "government driveways," which shall be charged fees which are significantly lower than equivalent private developments.

N.J.A.C. 16:41-2.4(r)

**COMMENT:** Fee waivers for low or moderate income housing units to be constructed pursuant to the Fair Housing Act, P.L. 1985 c.222 (N.J.S.A. 52:27D-301), or under court settlement, were questioned as being inconsistent with current typical requirements being imposed by the courts or reached by agreements, and as being confusing in application. It was suggested that a proportionate share of the access fee be waived for all low and moderate income units built under Fair Housing Act rules or settlements regardless of project size, inclusionary component, or development corporation registration.

**RESPONSE:** The Department has modified the proposed amendments in accordance with the suggested changes such that upon receipt of certification by the municipal approval authority that a particular development includes at least a 20 percent set-aside, a 20 percent reduction in fee will be granted. This modification will provide the Department with the necessary assurances that the development has a bona fide low and moderate income unit component, and will simplify calculations which would have been required under the amendments as proposed.

**ADOPTIONS**

N.J.A.C. 16:41-2.4(g)

COMMENT: Any application fees paid should be considered as a credit against any agreement reached in lieu of the issuance of a permit.

RESPONSE: The Department intended to operate as such, and accordingly, this has been made explicit in the rule.

N.J.A.C. 16:41-7.2(a)

COMMENT: The amendment to this provision which requires that the applicant seek the county/town engineer and planning board secretary or chairman's signature on the street intersection development plans prior to submittal to the Department was questioned as having the potential to delay submissions. An alternative proposed was that the county/town engineer sign the permit application form, which would list all engineering documents by page and revision date, and that the Department require signed submission of plans prior to the issuance of the permit. It was suggested that this would produce a greater benefit to the local officials and the Department.

RESPONSE: The Department agrees and has changed the amended rule upon adoption to provide for the recommendation.

N.J.A.C. 16:41-7.2(c)

COMMENT: A concern was raised that, with respect to that part of the rule which states that Department may return municipal applications if it is determined that a new street is based on a development, it could potentially be in conflict with the recently enacted Transportation Development District Act of 1989, P.L. 1989, c.100, (N.J.S.A. 27:1C-1).

RESPONSE: The Department appreciates this concern, but is of the view that this section of the rule as originally proposed is permissive not mandatory, and therefore not in need of a change. Prudent administration thereof will avoid unnecessary rejection of applications where Transportation Development Districts exist.

**General Comments**

COMMENT: Time frames are not included in rule proposal.

RESPONSE: Under provisions of the recently enacted State Highway Access Management Act, P.L. 1989 c.32, (N.J.S.A. 27:7-89), the Department is precluded from operating under conditions of a proposed highway access code prior to the time it is adopted, and accordingly, is bound to operate under existing time frames. While the Department anticipates some time savings based on ongoing internal management efforts, it was deemed inappropriate to put time frames into the proposed amendments, which are intended to recoup costs currently be borne by the permit application review process.

COMMENT: What guarantee exists that additional revenues from these fee increases will be directed back to the Department of Transportation, to address costs associated with permit application reviews?

RESPONSE: As noted in the proposal, current appropriation act language allows for revenues in excess of \$600,000 collected from highway access permits to be returned to the Department as appropriated revenues. No absolute guarantee is capable of being implemented in this rule proposal, but the Department believes that it is reasonable to expect that revenues from these fee increases will be restricted for purposes of permit application reviews.

COMMENT: The proposal does not contain cost data.

RESPONSE: An internal analysis was performed, and it supports the Department's view that the increases sought are sufficient to meet current costs incurred in reviewing access permit applications.

COMMENT: Significant reduction in processing time should be seen as a result of these fee increases.

RESPONSE: The Department is, and has been working independently, on streamlining internal review procedures, and anticipates some concomitant improvement in processing times. However, it is important to note that the fee increases proposed were set at such a level which were designed to meet existing review costs, that is, not to provide for additional staff to review permits. Therefore, while the internal management effort underway will likely shorten some review time required, the fee increases proposed cannot be expected, alone, to result in significant efficiencies.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

**16:41-2.2 Authority**

(a) (No change.)

(b) In this connection, attention is directed to N.J.S.A. 27:7-44.1 which provides as follows:

1. (No change.)

**TRANSPORTATION**

2. Any person guilty of any violation of this section shall be liable to a fine not exceeding \$100.00 for each such day's violation, and the costs of prosecution, to be recovered by a civil action in the name of the State before any court of competent jurisdiction, by the commissioner. Said fines shall be paid into the State Treasury to the credit of the funds available for construction, maintenance and repair of roads. Any such violation may be removed from any State highway as a trespass by a civil action brought by the commissioner in the superior court. The court may proceed in the action in a summary manner or otherwise."

(c) (No change.)

**16:41-2.3 Definitions**

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

\*"Government driveway" means an exclusive entrance or driveway serving a State, municipal, county or public school facility.\*"

"Major" and "major development" means an entrance or driveway serving shopping centers, business establishments, manufacturing plants, parking and/or sales lots, truck terminals, gasoline stations, churches, recreational areas, subdivisions, housing projects and similar establishments where the expected traffic volume warrants design review by the Major Permits Unit as shown in Tables A through J, incorporated herein by reference as Appendix A.

"Minor" and "minor development" means an entrance or driveway serving shopping centers, business establishments, manufacturing plants, parking and/or sales lots, truck terminals, gasoline stations, churches, recreational areas, subdivisions, housing projects and similar establishments where the expected traffic volume does not warrant design review by the Major Permits Unit as specified in Tables A through J.

**16:41-2.4 Permit provisions**

(a) Any person, before constructing one or more driveways entering on any State highway in New Jersey; or intending to reconstruct, change or modify any existing driveway; or intending to expand or change the use of property with existing access to a State highway; or proposing to construct sidewalk, curbing or any related work within the limits of highway right-of-way must apply to and obtain a permit from the New Jersey Department of Transportation.

(b) The Department retains the right to determine the final classification of the types of permit requested (Note—applications for street intersections must comply with the requirements of N.J.A.C. 16:41-7.)

1. Types of permits are:

i. through ii. (No change.)

\*iii. Government driveway\*;

\*[iii.]\* \*iv.\* Minor and minor development;

\*[iv.]\* \*v.\* Major with planning review.

(c) through (g) (No change.)

(h) The fee schedule is as follows:

	Application Fee	Permit Fee
1. Private Driveway	\$35.00	\$15.00
2. Combined Residence and Business	\$75.00	\$25.00
3. Government driveway	\$150.00	\$50.00
*[3.]* *4.* Minor and Minor Development	\$265.00	\$85.00
*[4.]* *5.* Major	\$3,750	\$1,250
*[5.]* *6.* Major with Planning Review	\$9,000	\$3,000
*[6.]* *7.* Extension fee includes:		
i. Private driveway		\$10.00;
ii. All other access		\$20.00;
*[7.]* *8.* Concept review	\$500.00	

(i) through (l) (No change.)

(m) All applications must be accompanied by the appropriate fee based on the submitted documentation. Additional applications may be required upon Departmental review and possible recommended changes.

**TRANSPORTATION**

**ADOPTIONS**

(n) through (p) (No change.)

(q) Subsequent to receiving an Access Permit Application and associated application fee, the New Jersey Department of Transportation at its discretion may enter into a contractual agreement with the developers of large projects in lieu of the issuance of a permit. The agreement would generally be concerned with major developments involving roadway improvements to be phased over an extended period of time. Supporting documentation will comply with the requirements for permit applications. **\*Any fee paid shall be considered as a credit against the total payment required by the agreement.\***

(r) Upon receipt of the required application fee **\*and affidavit as described herein\*** and **\*upon\*** Department approval for the requested highway access, the permit fee will be waived for applicants **\*[registered under the laws of New Jersey as non-profit corporation and]\*** providing low or moderate income housing units to be constructed pursuant to the Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.) or under court settlement. The permit fee will be **\*[waived only if more than 25 percent of]\*** **\*reduced by 20 percent where an affidavit from the municipal approving authority is received with the application, which certifies to the Department that\*** the development [is affordable housing units. The proportion shall be determined by comparing the land area to be developed for affordable housing units, exclusive of common and roadway areas, to the total area.] **\*contains at least a 20 percent set-aside for low and moderate income housing, pursuant to the Fair Housing Act P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.) or under court settlement.\***

16:41-2.20 Violations

(a) (No change.)

(b) Any person guilty of any violation shall be liable to a fine not exceeding \$100.00 for each such day's violation and the costs of prosecution to be recovered by a civil action in the name of the State before any court of competent jurisdiction, by the Commissioner. (See N.J.A.C. 16:41-2.2.)

**SUBCHAPTER 7. STREET INTERSECTION**

16:41-7.1 Permit application

The New Jersey Department of Transportation requires that a permit must be obtained prior to intersecting State highways with

new streets or revisions of existing streets. Applications are to be made by the borough, township, or county engineer by Application Form "APPLICATION FOR HIGHWAY OCCUPANCY".

16:41-7.2 Application requirements

(a) Any application requesting a permit for street intersections must be accompanied by:

**\*1. A completed application form signed by the borough, township, or county engineer whomever might be involved, and also the secretary or chairperson of the planning board, if such board exists. The form shall reference all accompanying engineering documents by title, page number, and revision date;\***

**\*[1.]\*2.\*** Eight copies of a plan with the intersection enlarged at a scale of 1 inch = 30 feet **\*and\*** showing profile, if a development is involved. The intersection plans are to show such details as curb, gutter, sidewalk, curb radii and drainage structures, if any. The development plans **\*[shall]\*** **\*may\*** be signed **\*at the time of application, and shall be signed\*** by the borough, township or county engineer, whomever might be involved, and also the secretary or **\*[chairman]\*** **\*chairperson\*** of the planning board, if such board exists **\*prior to the Department's issuance of a permit.\***

**\*[2.]\*3.\*** A copy of the resolution accepting the street, if one is available.

(b) (No change.)

(c) If a local government seeks permission for street access to a State highway based on a major development, the request should be submitted by the local government and developer jointly as a Highway Access Permit application under the provisions of N.J.A.C. 16:41-2. The Department reserves the right to return any application for a Street Intersection Permit to the local government if NJDOT determines such application is based on a major development.

16:41-7.3 Fee schedule

(a) The fee schedule is:

1. Application fee:
  - i. (No change.)
  - ii. Improvement of a street: \$5.00.
2. Permit fee:
  - i. (No change.)
  - ii. Improvement of a street: \$25.00.

**APPENDIX A**

**TABLE A**

**Type Of Permit and Review Determination**

Type Of Improvement: APARTMENT COMPLEXES (All Types), CONDOMINIUMS, MOBILE HOMES, PUD'S, RETIREMENT COMMUNITIES, HOUSING DEVELOPMENTS (Detached & Townhouses).

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL UNITS	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes or LESS	100 Or LESS	MINOR	NO	NO
	MORE Than 100	MAJOR	YES	NO
4 Lanes Or MORE	300 Or LESS	MINOR	NO	NO
	MORE Than 300	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL UNITS	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes OR LESS	12,500 Or LESS	350 Or LESS	MAJOR	YES	NO
		351 Or MORE	MAJOR	YES	YES
	12,501 Or MORE	175 Or LESS	MAJOR	YES	NO
		176 Or MORE	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	750 Or LESS	MAJOR	YES	NO
		751 Or MORE	MAJOR	YES	YES
	30,001 Or MORE	375 Or LESS	MAJOR	YES	NO
		376 Or MORE	MAJOR	YES	YES

**TABLE B**  
 Type Of Permit and Review Determination  
 Type Of Improvement: HOTELS/MOTELS

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL ROOMS	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes or LESS	85 Or LESS	MINOR	NO	NO
	MORE Than 85	MAJOR	YES	NO
4 Lanes Or MORE	250 Or LESS	MINOR	NO	NO
	MORE Than 250	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL ROOMS	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	335 Or LESS	MAJOR	YES	NO
		336 Or MORE	MAJOR	YES	YES
	12,501 Or MORE	168 Or LESS	MAJOR	YES	NO
		169 Or MORE	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	720 Or LESS	MAJOR	YES	NO
		721 Or MORE	MAJOR	YES	YES
	30,001 Or MORE	360 Or LESS	MAJOR	YES	NO
		361 Or MORE	MAJOR	YES	YES

TABLE C

Type Of Permit and Review Determination

Type Of Improvement: WAREHOUSES, INDUSTRIAL PARKS, And FLEXPSPACE

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	25,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 25,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	60,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 60,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	57,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 57,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	28,500 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 28,500 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	122,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 122,000 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	61,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 61,000 sq. ft.	MAJOR	YES	YES

**TABLE D**  
 Type Of Permit and Review Determination  
 Type Of Improvement: GENERAL OFFICE BUILDINGS

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	30,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 30,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	70,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 70,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	65,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 65,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	40,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 40,000 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	140,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 140,000 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	85,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 85,000 sq. ft.	MAJOR	YES	YES

**TABLE E**  
 Type Of Permit and Review Determination  
 Type Of Improvement: **MEDICAL OFFICE BUILDINGS**

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	9,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 9,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	28,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 28,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	60,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 60,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	30,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 30,000 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	128,600 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 128,600 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	64,300 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 64,300 sq. ft.	MAJOR	YES	YES

**TABLE F**  
 Type Of Permit and Review Determination  
 Type Of Improvement: EDUCATIONAL INSTITUTIONS

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL EST. ENROLLMENT	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	250 students Or LESS	MINOR	NO	NO
	MORE Than 250 students	MAJOR	YES	NO
4 Lanes Or MORE	700 students Or LESS	MINOR	NO	NO
	MORE Than 700 students	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL EST. ENROLLMENT	TYPE Of PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	1,310 students Or LESS	MAJOR	YES	NO
		MORE Than 1,310 students	MAJOR	YES	YES
	12,501 Or MORE	655 students Or LESS	MAJOR	YES	NO
		MORE Than 655 students	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	2,800 students Or LESS	MAJOR	YES	NO
		MORE Than 2,800 students	MAJOR	YES	YES
	30,001 Or MORE	1,400 students Or LESS	MAJOR	YES	NO
		MORE Than 1,400 students	MAJOR	YES	YES

**TABLE G**  
 Type Of Permit and Review Determination  
 Type Of Improvement: HOSPITALS

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	40,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 40,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	100,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 100,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes OR LESS	12,500 Or LESS	185,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 185,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	92,500 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 92,500 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	396,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 396,000 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	198,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 198,000 sq. ft.	MAJOR	YES	YES

TABLE H  
Type Of Permit and Review Determination  
Type Of Improvement: SHOPPING CENTERS AND RETAIL STORE(S)

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	20,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 20,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	60,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 60,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	60,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 60,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	30,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 30,000 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	127,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 127,000 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	75,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 75,000 sq. ft.	MAJOR	YES	YES

**TABLE I**  
Type Of Permit and Review Determination  
Type Of Improvement: RESTAURANTS, FAST FOOD, And  
CONVENIENCE STORES AND GASOLINE/FUEL STATIONS

2-WAY TRAFFIC VOLUME IN VEHICLES PER DAY IS	TYPE OF PERMIT	REVIEWS	
		DESIGN	PLANNING
Less Than 500 Vehicles Per Day	MAJOR	YES	NO
500 Vehicles Per Day Or Less	MAJOR	YES	Design Unit Request

**TABLE J**  
Type Of Permit and Review Determination  
Type Of Improvement: ARENAS, THEATERS, MUSEUMS,  
AUDITORIUMS

2-Way Traffic Volume Of LESS Than 500 Vehicles Per Day			
IF THE PROPOSED ADDITIONAL NUMBER OF SEATS IS	TYPE OF PERMIT	REVIEWS	
		DESIGN	PLANNING
1,000 Seats Or LESS	MINOR	NO	NO
MORE Than 1,000 Seats	MAJOR	YES	NO
2-Way Traffic Volume Of 500 Vehicles or More Per Day			
IF THE PROPOSED ADDITIONAL NUMBER OF SEATS IS	TYPE OF PERMIT	REVIEWS	
		DESIGN	PLANNING
1,000 Seats Or LESS	MAJOR	YES	NO
MORE Than 1,500 Seats	MAJOR	YES	YES

**TREASURY-GENERAL**

(a)

**DIVISION OF PENSIONS**

**Public Employees' Retirement System**

**Readoption: N.J.A.C. 17:2**

**Adopted Repeal: N.J.A.C. 17:2-6.15**

Proposed: August 21, 1989 at 21 N.J.R. 2439(a).  
Adopted: November 6, 1989 by the Board of Trustees, Public Employees' Retirement System, Janice Nelson, Secretary.  
Filed: November 8, 1989 as R.1989 d.597, **without change**.  
Authority: N.J.S.A. 43:15A-17.  
Effective Date: November 8, 1989, Readoption; December 4, 1989, Repeal.  
Expiration Date: November 8, 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. 17:2.

**OTHER AGENCIES**

(b)

**CASINO CONTROL COMMISSION**

**Rules of the Games**

**Procedure for Dealing of Cards**

**Insurance Wagers**

**Adopted Amendments: N.J.A.C. 19:47-2.6 and 2.9**

Proposed: August 21, 1989 at 21 N.J.R. 2441(a).  
Adopted: November 2, 1989 by the Casino Control Commission, Walter N. Read, Chair.  
Filed: November 2, 1989 as R.1989 d.590, **without change**.  
Authority: N.J.S.A. 5:12-63c and 5:12-70f.  
Effective Date: December 4, 1989.  
Expiration Date: April 28, 1993.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** The Division of Gaming Enforcement supports the proposed amendments to N.J.A.C. 19:47-2.6 and 2.9.  
**RESPONSE:** Accepted.

**Full text** of the adoption follows.

**ADOPTIONS**

**OTHER AGENCIES**

19:47-2.6 Procedure for dealing cards

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

(f) After two cards have been dealt to each player and the appropriate number to the dealer, the dealer shall, beginning from his left, announce the point total of each player. As each player's point total is announced, such player shall indicate whether he wishes to double down, split pairs, stand or draw, as provided for by this chapter.

(g)-(n) (No change.)

19:47-2.9 Insurance wagers

(a) (No change.)

(b) An insurance bet may be made by placing on the insurance line of the layout an amount not more than half the amount staked on the player's initial wager, except that a player may bet an amount in excess of half the initial wager to the next unit that can be wagered in chips, when because of the limitation of the value of chip denominations, half the initial wager cannot be bet. All insurance wagers shall be placed immediately after the second card is dealt to each player and prior to any additional cards being dealt to any player at the table.

(c)-(d) (No change.)

\_\_\_\_\_

# EMERGENCY ADOPTION

## HUMAN SERVICES

### (a)

#### DIVISION OF ECONOMIC ASSISTANCE

#### General Assistance Manual

#### Emergency Assistance Shelter

#### Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 10:85-4.6

Emergency Amendment Adopted: October 27, 1989 by William Waldman, Acting Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): November 8, 1989.

Emergency Adoption Filed: November 13, 1989 as R.1989 d.598.

Authority: N.J.S.A. 44:8-111(d).

Emergency Amendment Effective Date: November 13, 1989.

Emergency Amendment Expiration Date: January 12, 1990.

Concurrent Proposal Number: PRN 1989-655.

Submit comments by January 3, 1990 to:

Marion E. Reitz, Director  
Division of Economic Assistance  
CN 716  
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance for filing, prior to the emergency period expiration, by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

#### Summary

The emergency adopted and concurrently proposed amendment at N.J.A.C. 10:85-4.6(b)1i sets forth the regulatory text for eligibility and granting of Emergency Assistance (EA) to address the special housing needs of those individuals who suffer from a diagnosis-based Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Positive with symptoms and those who are terminally ill. The amendment provides for an extension of EA, beyond the five-month time limit, to those individuals in order that they may maintain residence in temporary housing. The amended rule will also provide for the continuation or initial granting of EA, in addition to the regular grant of assistance, in order that shelter costs in permanent housing can be met during the application processing period for SSI or other statutory benefits. The treatment accorded this "critical population" is in keeping with the decision reached by the Supreme Court of New Jersey on August 1, 1989 in *Floyd Williams, et al., v. Department of Human Services and Sam Jimperson, et al., v. Department of Human Services* (Docket No. A-181). That decision upheld Departmental rules set forth at N.J.A.C. 10:85-4.6 which provide for a five-month expiration period for General Assistance/Emergency Assistance beneficiaries with the understanding, however, that innovative programs will be established to assist this population in dealing with problems of homelessness.

#### Social Impact

The continuation of Emergency Shelter Assistance for individuals diagnosed as having AIDS/HIV Positive with symptoms and for those who are terminally ill will provide that segment of the population with

ongoing interim resources pending receipt of benefits under the Federally administered SSI program or receipt of other statutory benefits.

The Department estimates that the General Assistance (GA) AIDS/HIV Positive with symptoms and the terminally ill population represents about 20 percent of the EA recipient caseload. The Department, therefore, anticipates that implementation of the amended provisions will reduce by approximately 20 percent the number of individuals who would otherwise require assistance through non-EA programs.

#### Economic Impact

There are approximately 750 GA program based EA recipients who are maintained in hotel/motel arrangements and other paid shelter. The amended rule is expected to reduce the number of such persons maintained in such arrangements at expenditure levels considerably in excess of established fair market rental rates for a similarly situated and critically impacted population. The Department's best estimate is that this population may require three to four months of additional assistance at an average cost of approximately \$950.00 per individual per month for temporary housing. The cost would be significantly less in permanent housing.

#### Regulatory Flexibility Statement

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

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**):

#### 10:85-4.6 Emergency grants

(a) (No change.)

(b) Standards for emergency grants are:

1. Emergency shelter: The authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed the two calendar months following the month in which the state of homelessness first becomes known to the municipal welfare department. Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.

**i. The temporary time period identified at (b)1 above, as well as the period set forth as an incremental extension time frame at (b)1vii below, shall not apply to EA recipients who have been medically diagnosed as having Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Positive with symptoms and those who are terminally ill.**

**ii. In order to enable individuals medically diagnosed as having Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Positive with symptoms, and those who are terminally ill, to maintain or secure residence in a permanent housing arrangement, funds shall be authorized, based on the most reasonable housing rates available, to supplement their regular grants of assistance, until such time as they qualify for SSI and/or similar statutory benefits pursuant to filing of application as stipulated at N.J.A.C. 10:85-8.3.**

Recodify i.-vi. as iii.-viii. (No change in text.)

2.-4. (No change.)

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

# PUBLIC NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the Evesham Township (Kings Grant Sewage Treatment Plant) sewer service area located in Burlington County. This area was mapped as part of the Kings Grant Service Area, but was not included in the Evesham Township Wastewater Management Plan (WMP). This amendment would include this area in the Evesham Township WMP.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, 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 persons 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. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

### DIVISION OF WATER RESOURCES

#### Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt the Camden County Municipal Utilities Authority (CCMUA) Atlantic Basin Wastewater Management Plan (WMP) and would also amend the Mullica River Basin portion of the existing Winslow Township WMP. The Atlantic Basin WMP proposes the expansion of CCMUA's sewer service area to include all of Chesilhurst Borough. In addition, the WMP proposes the transfer of 1.2 million gallons of wastewater out of the Mullica River Basin (from Winslow Township, Waterford Township, and Chesilhurst Borough) to be treated at the CCMUA Delaware #1 wastewater treatment facility.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, 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 persons 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. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

### DIVISION OF WATER RESOURCES

#### Petition for Rulemaking Surface Water Quality Standards Reclassifying to Less Restrictive Uses Tidal Portion of Morses Creek

Take notice that the New Jersey Department of Environmental Protection (Department) is soliciting public comments regarding a petition from Exxon Company, U.S.A. (Exxon) for a determination of the legality of the existing classification of the tidal portion of Morses Creek and a reclassification of the tidal portion of Morses Creek for less restrictive uses in accordance with N.J.A.C. 7:9-4.10. The tidal portion of Morses Creek is currently classified as SE-3 waters, N.J.A.C. 7:9-4.15(c) Table 3. The tidal portion of Morses Creek is a tributary to the Arthur Kill. The portion of Morses Creek of interest is located in Linden, Union County, and is fed by waters originating in Roselle Borough, Union County. The tidal portion of Morses Creek begins immediately downstream of Dam No. 2, located on property owned by Exxon, and continues to the confluence with the Arthur Kill. Exxon is petitioning for reclassification to less restrictive uses, which would thereby remove four of the current designated uses in N.J.A.C. 7:9-4.12(f), these being: (1) secondary contact recreation; (2) maintenance and migration of fish populations; (3) migration of diadromous fish; and (4) maintenance of wildlife.

Exxon has submitted documents in support of their position which are available as the public record for this petition. Exxon conditionally applied for a reclassification of the designated use of Morses Creek in January of 1985, pending the outcome of a hearing to decide whether or not an earlier classification for the tidal portion of Morses Creek, TW-4(a), still applied to the waters. The designated uses for the TW-4(a) classification included: (1) industrial; and (2) other reasonable uses. To date, the hearing on the appropriateness of the TW-4(a) classification has not been held. At the request of the Department, Exxon submitted a revised application for reclassification of the tidal portion of Morses Creek in September, 1985, in order to comply with the reclassification procedures in N.J.A.C. 7:9-4.10, adopted in 1985.

The purpose of this notice is to solicit public comment on Exxon's petition. If the Department decides that Exxon's petition should be granted, it will develop a new classification and new criteria appropriate for the remaining designated uses. The Department would then formally propose amendments to N.J.A.C. 7:9-4.12 and hold a public hearing on the proposed amendments. If the Department decides to deny the petition, a notice to that effect would be published in the New Jersey Register.

A public hearing on this petition will be held on:

January 30, 1990 from 3:30 P.M. until 5:30 P.M.,  
and then again from 7:00 P.M. until the close  
of testimony, at:  
Linden City Hall  
Planning Board Room  
301 North Wood Avenue  
Linden, New Jersey 07036

Interested persons may submit written comments on Exxon's petition by February 5, 1990 to:

Steven P. Lubow  
Bureau of Water Quality Standards and Analysis  
Division of Water Resources  
Department of Environmental Protection  
CN 029  
Trenton, New Jersey 08625

Complete copies of the submittal in support of the reclassification petition may be examined at the following locations:

Library of Science and Medicine, Rutgers University, New Brunswick, NJ;  
Linden Public Library, Main Branch, Linden, NJ;  
Roselle Public Library, Roselle, NJ;  
New Jersey State Library, Trenton, NJ; and  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. No. 9  
Quakerbridge Road  
Trenton, NJ

## (a)

**DIVISION OF COASTAL RESOURCES****Notice of Availability of Grants  
Flood Control Bond Grants Program**

Take notice that, in compliance with P.L. 1987, c.7 (N.J.S.A. 52:14-34.4), the Department of Environmental Protection hereby announces the availability of the following State grant funds:

**A. Name of program:** Flood Control Bond Grants Program. Authority: Emergency Flood Control Bond Act, P.L. 1978, c.78, and Emergency Flood Control Bond Act Rules, N.J.A.C. 7:23.

**B. Purpose:** The purpose of the Flood Control Bond Grants Program is to distribute grants to municipalities and counties for the acquisition, development, construction and maintenance of flood control facilities. Grants awarded under this program can be for up to 50 percent of the cost of a flood control project.

**C. Amount of money in the program:** The Department has determined that approximately \$2,500,000 is available for new flood control bond grants.

**D. Who may apply for grant funds:** Any municipality or county of New Jersey may apply for a grant under this program.

**E. Qualifications needed by an applicant to be considered for the program:** To be eligible for financial assistance under this program, the applicant must meet the eligibility criteria set forth at N.J.A.C. 7:23-2.3.

**F. Procedure for potential applicants:** The procedure for awarding grants under the Flood Control Bond Grants Program is governed by the Emergency Flood Control Bond Act Rules at N.J.A.C. 7:23, particularly N.J.A.C. 7:23-2.5.

**G. Address of the Official receiving the application:** Applications for flood control bond grants may be requested from:

Clark D. Gilman, P.E., Chief  
Flood Plain Management Section  
Division of Coastal Resources  
CN 401  
Trenton, N.J. 08625

Attention: Flood Control Bond Grant Application Deadline—  
June 1, 1990

**H. Deadline by which applications must be submitted:** Applications for funding must be submitted by June 1, 1990.

**I. Date by which applicant shall be notified of preliminary approval or disapproval:** Generally, the Department will notify an applicant of preliminary approval or disapproval within 90 days from the application deadline. However, this time frame may change based on the number of applications and whether the applications are complete when received by the Department. The Department will, under any circumstance, notify all applicants of preliminary approval or disapproval no later than June 1, 1991.

## (b)

**DIVISION OF PARKS AND FORESTRY****Notice of Public Hearing  
Proposed Deer Hunt at Monmouth Battlefield State  
Park**

Take notice that the New Jersey Department of Environmental Protection (NJDEP) has proposed a three-day controlled deer hunt for Monmouth Battlefield State Park. The purpose of the hunt is to control the deer population in the Park. The hunt is proposed to be conducted on January 19, 20 and 27, 1990.

This notice is being given to advise the public that a nonadversarial public hearing will be held by NJDEP to solicit comments on the proposed hunt. The hearing will be held on Monday, December 11, 1989 from 7:30 P.M. to 10:30 P.M. at the Monmouth Battlefield State Park Visitor Center, Manalapan, New Jersey.

Persons wishing to make oral presentations are asked to reserve a five-minute time period by telephoning Mark Pitchell, Superintendent, Monmouth Battlefield State Park, (201) 462-9616, by 12:00 noon Monday, December 11, 1989. Presenters should bring a copy of their remarks to the hearing for use by NJDEP. The hearing record will be kept open for three days following the date of the public hearing so that additional written testimony can be received. Submit written comments by Thursday, December 14, 1989 to:

Frank F. Guidotti, Assistant Director  
State Park Service  
CN 404  
Trenton, NJ 08625

**LAW AND PUBLIC SAFETY**

## (c)

**STATE BOARD OF MEDICAL EXAMINERS****Petition for Rulemaking  
Physician Assistants****N.J.A.C. 13:35**

Petitioner: Stanley S. Bergen, Jr., M.D., President, University of Medicine and Dentistry of New Jersey.

Authority: N.J.S.A. 52:14B-4(f).

Take notice that on October 10, 1989, petitioner filed a petition with the State Board of Medical Examiners requesting the Board to promulgate rules and regulations to authorize the practice of physician assistants within the State of New Jersey.

The petition follows:

"1. Petitioner Stanley S. Bergen, Jr., M.D., President, University of Medicine and Dentistry of New Jersey, with its principal office at 30 Bergen Street, Newark, New Jersey 07107-3007, respectfully petitions the New Jersey Board of Medical Examiners, pursuant to N.J.S.A. 52:14B-4(f), to promulgate rules and regulations authorizing the practice of physician assistants within the State of New Jersey.

2. The New Jersey Board of Medical Examiners has been granted the authority to promulgate these regulations by its enabling statute, N.J.S.A. 45:9-1 et seq.

3. The bases for the petition are as follows:

(a) Physician assistants currently practice in 49 states and the District of Columbia, providing services in all medical settings. Numerous studies have demonstrated that physician assistants provide cost-effective, high quality health care to the population they serve. In New Jersey, there are, and will continue to be, medically underserved populations, particularly in such institutions as prisons, long-term health care facilities, mental institutions and certain hospitals specializing in both primary and specialty care. Inner-city clinic populations and drug dependency clinics are also currently underserved in this state. If authorized to practice, physician assistants, working as members of the medical team, will enhance services provided by physicians, improve communications and provide the already overburdened nursing staff with reliable support.

(b) The constrictions on financing graduate medical education, with an almost certain decline in residency programs, coupled with the increasing pressure to restrict a resident's working hours, threaten the quality of health care for a hospitalized population which is marked by a severity of illness, perhaps greater than any in the past. Physician assistants would provide an effective and cost-efficient remedy to this ever increasing problem of understaffing.

(c) New Jersey has one of the largest graying populations in the nation. Under Part B of Medicare, physician assistants are the only non-physicians who are reimbursable for physician delegated health care services. The reimbursement rates accorded physician assistants are 15% to 35% less than those for physicians, with mandatory assignment and payment to the physician assistant's employer. Allowing physician assistants to aid in the care of the elderly will contribute to an equitable and cost-efficient distribution of medical services for this population.

(d) New Jersey ranks fourth in the nation with the number of diagnosed AIDS cases. Elsewhere, physician assistants are employed ex-

tensively to provide care for AIDS patients. The utilization of physician assistants for this patient population would provide both continuity of care and increased cost-effectiveness for a disease which is expected to cost as much as 24 billion dollars by 1991.

(e) The University of Medicine and Dentistry of New Jersey jointly sponsors with Rutgers University one of the finest educational programs for physician assistants in the nation. The strength of this program is validated by the high ranking it has earned among other accredited programs. It has consistently ranked among the top three programs in the country both in relation to full passage of the National certification examination and in the attainment by our graduates of averaged higher scores than those from other programs. In fact, during the last four years, the program has not fallen below number two in the country. Thus, there is a pool of highly competent physician assistants available to service the needs of this state.

(f) In 1986, Health Commissioner Molly Joel Coye formed the Cardiac Services Task Force. The Task Force was directed to examine the current status of cardiac services in this state and recommend methods for improving the provision of these services. In its final report, the Task Force concluded that total costs for cardiac services in New Jersey were higher than those of surrounding states and observed that New Jersey is the only state that does not permit physician assistants to function. Recognizing that elsewhere in the nation physician assistants have been utilized in the delivery of cardiac services, the Task Force recommended that physician assistants be incorporated into New Jersey's cardiac services program as a means of reducing the cost of these services in the state.

(g) In 1987, a public hearing was held before the Plan Development and Implementation Committee of the Statewide Health Coordinating Council (SHCC) concerning the utilization of physician assistants. Lengthy testimony was provided by representatives from both supporting and opposition groups. Following this hearing, the Committee voted in support of the practice of physician assistants and subsequently SHCC recommended their utilization in New Jersey.

4. Based upon the aforesaid authority and for the reasons set forth herein, Petitioner respectfully petitions the New Jersey State Board of Medical Examiners to authorize the practice of physician assistants in New Jersey and to promulgate regulations governing their practice. In response to the Board's invitation of July 26, 1989, Petitioner submits the proposed regulations appended hereto.

WHEREFORE, Petitioner requests that the New Jersey Board of Medical Examiners promulgate rules authorizing the practice of physician assistants and provide regulations for the governance of this practice within 30 days pursuant to N.J.S.A. 52:14B-4(f)."

Petitioner's proposed regulations are on file at the office of the Board of Medical Examiners. Interested persons may obtain a copy of the proposed regulations by writing to Charles Janousek, Executive Director, Board of Medical Examiners, 28 West State Street, Room 604, Trenton, New Jersey 08608.

After due notice, this petition will be considered by the State Board of Medical Examiners in accordance with the provisions of N.J.S.A. 52:14B-4(f).

**TREASURY-GENERAL**

**(a)**

**DIVISION OF BUILDING AND CONSTRUCTION**

**Architect-Engineer Selection**

**Notice of Assignments—Month of October 1989**

Solicitation of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated October 1, 1989.

The following assignments have been made:

DBC#	PROJECT	A/E	CCE
A570	Soils Investigation Bank Street Parking Garage Trenton, NJ	Lippincott Eng.	\$11,201
A313	Wall Mural Dept. of Transportation Office Building Trenton, NJ	Richard Anuszkiewicz	\$70,000 Services
A313	Suspended Sculpture Dept. of Transportation Office Building Trenton, NJ	Keith Sonnier	\$70,000 Services
E160	Structural Study Library for the Blind & Handicapped Trenton, NJ	Blackburn Eng.	\$6,000 Services
M716	Renovation to Wastewater Treatment Plant Hagedorn Center for Geriatrics Glen Gardner, NJ	Keller & Kirkpatrick	\$350,000
M748	Optical Fiber & Concrete Sculpture Rehabilitation/Recreation/ Admin. Facility Vineland, NJ	Clyde Lunds	\$69,200 Services
T184	Acrylic Painting on Canvas Dept. of Transportation Office Building Trenton, NJ	Peter Stroud	\$15,000 Services
T184	Wall Murals Dept. of Transportation Office Building Trenton, NJ	A. Robert Birmelin	\$40,000 Services
S207	Sculpture Motor Vehicle Inspection Facility Winslow Twp., NJ	Richard Jeffries	\$27,000 Services
C424	Roof Monitoring/Inspection Services Building #2 Trenton State Prison Trenton, NJ	Roof Maintenance Systems	\$17,125 Services
M1014	Roof Monitoring/Inspection Services Hospital New Lisbon, NJ	Roof Maintenance Systems	\$17,125 Services
M772	Asbestos Removal Woodbridge Diagnostic Center Woodbridge, NJ	Contamination Control Engineering	\$3,014 Services
A510-12	CPM Services Asbestos Abatement 11th, 12th, 13th Floors NJ Dept. of Labor Building Trenton, NJ	Gaudet Assoc.	\$16,600 Services
C421	Modular Units Northern State Prison, Newark Riverfront State Prison, Camden	Capriotti Vining Rudzinski	\$10,500,000
P636	Nature Interpretive Center Washington Crossing State Park Mercer County, NJ	Ronald Schmidt & Assoc.	\$750,000
<b>COMPETITIVE PROPOSALS</b>			
	Ronald Schmidt & Assoc.	\$109,280 Lump Sum	
	Lammy & Giorgio, PA	\$122,925 Lump Sum	
	The Ives Group	\$135,216 Lump Sum	
S264	New Service Core Delanco Motor Vehicle Facility Burlington County, NJ	Lisiewski Group, AIA	\$550,000

**TREASURY-GENERAL**

**PUBLIC NOTICES**

**COMPETITIVE PROPOSALS**

	Lisiewski Group, AIA	\$52,420 Lump Sum	
	Lammy & Giorgio, PA	\$57,025 Lump Sum	
	Kolbe & Poconi, PA	\$64,750 Lump Sum	
	Armstrong Jordan Pease, AIA	\$71,500 Lump Sum	
C418	New Sallyport & Loading Dock Albert C. Wagner Correctional Facility Bordentown, NJ	Cody Eckert & Assoc., PA	\$234,000

**COMPETITIVE PROPOSALS**

Cody Eckert & Assoc., PA	\$25,750 Lump Sum
Vaughn Organization, PC	\$35,700 Lump Sum
Thomas W. Kocubinski, AIA	\$42,000 Lump Sum
O'Connor Group	<u>\$49,170 Lump Sum</u>

# EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

## OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:13A	4/3/94
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

## N.J.A.C.

N.J.A.C.	Expiration Date
3:21	2/2/92
3:22	5/12/94
3:23	7/6/92
3:24	8/18/94
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:32	10/1/93
3:33	9/18/94
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

## PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

### AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	1/17/94
2:3	8/21/94
2:5	8/21/94
2:6	9/3/90
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:33	3/6/94
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	7/31/94
2:90	6/24/90

## N.J.A.C.

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

## COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:15	5/1/94
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/89
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	10/27/93
5:51	9/1/93

### BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	5/1/94
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91

N.J.A.C.	Expiration Date
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/5/94

N.J.A.C.	Expiration Date
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/16/93
7:22	1/5/92
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:37	Exempt
7:38	9/18/90
7:45	2/6/94

**DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A**

N.J.A.C.	Expiration Date
5A:2	5/20/90

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	4/10/94
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	8/14/94
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93
6:79	11/25/92

**ENVIRONMENTAL PROTECTION—TITLE 7**

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:17	4/7/91

**HEALTH—TITLE 8**

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:18	11/6/94
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:31C	1/20/92
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	7/17/91
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/17/94
8:33H	7/19/90
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43H	8/21/94
8:43I	3/21/93

N.J.A.C.	Expiration Date
8:44	11/2/93
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	9/29/94
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	8/19/93
8:71	2/17/94

N.J.A.C.	Expiration Date
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	1/19/94
10:85	1/30/90
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	5/15/94
10:99	2/19/90
10:109	3/17/91
10:120	8/21/91
10:121	3/13/89
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:122B	9/10/89
10:123	7/29/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

### HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	5/20/90
9:15	8/21/94

### HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	8/21/94
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	8/25/94
10:66	12/15/93

### CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:19	8/21/94
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

### INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92

N.J.A.C.	Expiration Date
11:15	10/26/94
11:16	2/3/91
11:17	4/18/93

N.J.A.C.	Expiration Date
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	2/11/90
13:38	10/7/90
13:39	6/19/94
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94

### LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	8/14/94
12:35	8/5/90
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	9/22/94
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

### COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

### LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	6/17/90
13:18	4/1/90
13:19	8/18/94
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	5/26/94
13:24	9/27/94
13:25	3/18/90

### PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:10-6	9/5/91
14:11	1/27/92
14:17	4/24/94
14:18	7/29/90

### ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

**STATE—TITLE 15**

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

**TRANSPORTATION—TITLE 16**

N.J.A.C.	Expiration Date
16:1	8/5/90
16:1A	6/16/94
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:13	5/7/89
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	11/20/94
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:49	3/18/90
16:51	4/6/92
16:53	7/17/94
16:53A	4/15/90
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

**TREASURY-GENERAL—TITLE 17**

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94

**N.J.A.C.**

17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

**Expiration Date****TREASURY-TAXATION—TITLE 18****N.J.A.C.**

18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

**Expiration Date****OTHER AGENCIES—TITLE 19****N.J.A.C.**

19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:10	9/5/94
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	8/24/94
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

**Expiration Date**

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the October 2, 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 SEPTEMBER 18, 1989**

**NEXT UPDATE: SUPPLEMENT OCTOBER 16, 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	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. 2949 and 3046	December 5, 1988	21 N.J.R. 1599 and 1762	June 19, 1989
20 N.J.R. 3047 and 3182	December 19, 1988	21 N.J.R. 1763 and 1934	July 3, 1989
21 N.J.R. 1 and 88	January 3, 1989	21 N.J.R. 1935 and 2148	July 17, 1989
21 N.J.R. 89 and 224	January 17, 1989	21 N.J.R. 2149 and 2426	August 7, 1989
21 N.J.R. 225 and 364	February 6, 1989	21 N.J.R. 2427 and 2690	August 21, 1989
21 N.J.R. 365 and 588	February 21, 1989	21 N.J.R. 2691 and 2842	September 5, 1989
21 N.J.R. 589 and 658	March 6, 1989	21 N.J.R. 2843 and 3042	September 18, 1989
21 N.J.R. 659 and 810	March 20, 1989	21 N.J.R. 3043 and 3204	October 2, 1989
21 N.J.R. 811 and 954	April 3, 1989	21 N.J.R. 3205 and 3330	October 16, 1989
21 N.J.R. 955 and 1036	April 17, 1989	21 N.J.R. 3331 and 3584	November 6, 1989
21 N.J.R. 1037 and 1178	May 1, 1989	21 N.J.R. 3585 and 3688	November 20, 1989
21 N.J.R. 1179 and 1474	May 15, 1989	21 N.J.R. 3689 and 3812	December 4, 1989
21 N.J.R. 1475 and 1598	June 5, 1989		

N.J.A.C. CITATION	ADMINISTRATIVE LAW—TITLE 1	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
1:1-3.3	Return of transmitted cases	21 N.J.R. 3207(a)		
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)		
1:1-14.11	Transcripts of OAL hearings	21 N.J.R. 3587(a)		
1:1-19.2	Withdrawal of request for hearing or defense raised	21 N.J.R. 3589(a)		
1:6A	Special education hearings	21 N.J.R. 2693(a)		
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		

**Most recent update to Title 1: TRANSMITTAL 1989-5 (supplement August 21, 1989)**

AGRICULTURE—TITLE 2	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
2:2-3.3	Tuberculin testing of cattle	21 N.J.R. 3333(a)	
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)	
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)	
2:34-2	Equine Advisory Board rules	21 N.J.R. 2151(a)	
2:76-6.16	Farmland Preservation Program: easement purchase evaluation criteria	21 N.J.R. 2152(a)	R.1989 d.537 21 N.J.R. 3294(a)

**Most recent update to Title 2: TRANSMITTAL 1989-7 (supplement August 21, 1989)**

BANKING—TITLE 3	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
3:1-6.1, 6.2, 7.1, 7.2, 7.4, 7.5, 9.6	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510 21 N.J.R. 3082(a)
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)	
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)	
3:13-3.2	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510 21 N.J.R. 3082(a)
3:17-2.1, 2.2, 3.9, 6.1, 6.2, 6.6, 6.10, 7.1	Consumer Loan Act rules	21 N.J.R. 2399(a)	R.1989 d.511 21 N.J.R. 3083(a)
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)	
3:18-10.1	License fees	21 N.J.R. 2401(a)	R.1989 d.509 21 N.J.R. 3083(a)
3:19-1.7	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510 21 N.J.R. 3082(a)
3:23-2.1	License fees	21 N.J.R. 2401(a)	R.1989 d.509 21 N.J.R. 3083(a)
3:24-1.2	Check cashing business standards: administrative correction concerning corporate applications		21 N.J.R. 3448(a)
3:28	Bookkeeping and accounting by savings and loan associations	21 N.J.R. 3336(a)	
3:38-1.1, 1.2	License fees	21 N.J.R. 2401(a)	R.1989 d.509 21 N.J.R. 3083(b)
3:38-1.8	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510 21 N.J.R. 3082(a)

**Most recent update to Title 3: TRANSMITTAL 1989-5 (supplement September 18, 1989)**

CIVIL SERVICE—TITLE 4	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)	
4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)	R.1989 d.569 21 N.J.R. 3448(b)
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)	
4:2-16.1, 16.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)	
4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)	R.1989 d.569 21 N.J.R. 3448(b)
4:3-16.1, 16.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)	

**Most recent update to Title 4: TRANSMITTAL 1988-4 (supplement July 17, 1989)**

PERSONNEL—TITLE 4A	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:1-4.1	Delegation approval in local service	21 N.J.R. 1766(a)	R.1989 d.569 21 N.J.R. 3448(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4A:3-2.2	Designation of SES positions: administrative correction	_____	_____	21 N.J.R. 3295(a)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:3-4.17, 4.21	Compensation: State service	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:3-38	Intermittent employees in State service: leave entitlements	21 N.J.R. 3337(a)		
4A:4-1.11	Vacancy Review Board: State service	21 N.J.R. 3337(a)		
4A:4-2.1, 2.15, 3.4, 5.5	Promotional examinations; eligible lists	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:4-2.3, 2.9, 2.15, 5.2, 6.3-6.6, 7.3	Selection and appointment	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4A:6-1.2, 1.3, 1.9, 2.4	Intermittent employees in State service: leaves and holiday pay	21 N.J.R. 3337(a)		
4A:6-1.5	Sick leave: State service	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:8	Layoffs	21 N.J.R. 3340(a)		
4A:10-1.1	Information requested of appointing authority	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:10-2.2	Vacated position and permanent appointment	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)

**Most recent update to Title 4A: TRANSMITTAL 1989-2 (supplement July 17, 1989)**

**COMMUNITY AFFAIRS—TITLE 5**

5:2-1.1	Department organization	Exempt	R.1989 d.578	21 N.J.R. 3658(a)
5:2-1.1	Department organization	Exempt	R.1989 d.589	21 N.J.R. 3740(a)
5:12	Homelessness Prevention Program	21 N.J.R. 2845(a)		
5:14-4	Neighborhood Preservation Balanced Housing Program: affordability controls	21 N.J.R. 2153(a)	R.1989 d.588	21 N.J.R. 3740(b)
5:18	Uniform Fire Code	21 N.J.R. 3344(a)		
5:18-1.4, 1.5, 2.4A, 2.5, 2.7, 2.8, 4.1, 4.7, 4.9, 4.11, 4.13	Uniform Fire Code inspection, safety and enforcement provisions	21 N.J.R. 2431(a)	R.1989 d.556	21 N.J.R. 3453(a)
5:18-2.6, 2.7, 2.11, 2.18, 3.2, 4.9, 4.18	Uniform Fire Code: administrative corrections	_____	_____	21 N.J.R. 3085(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-2.8	Uniform Fire Code: life hazard use registration fees and permit fees	21 N.J.R. 2126(a)	R.1989 d.513	21 N.J.R. 3084(a)
5:18-3.2	Uniform Fire Code: casino hotel fire safety plan	21 N.J.R. 2845(b)	R.1989 d.593	21 N.J.R. 3746(a)
5:18A	Fire Code Enforcement	21 N.J.R. 3344(a)		
5:18A-2.6	Fire Code Enforcement: fee collection remittance	21 N.J.R. 2126(a)	R.1989 d.513	21 N.J.R. 3084(a)
5:18A-3.3	Duties of fire officials	21 N.J.R. 2431(a)	R.1989 d.556	21 N.J.R. 3453(a)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18A-4.9	Fire Code Enforcement: administrative correction	_____	_____	21 N.J.R. 3085(a)
5:18B	High Level Alarms	21 N.J.R. 3344(a)		
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:22	Exemptions from local property taxation	21 N.J.R. 3345(a)		
5:23-1.4	Uniform Construction Code: underground storage tank compliance	21 N.J.R. 3345(b)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)	R.1989 d.550	21 N.J.R. 3458(a)
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.5	Uniform Construction Code: educational facility use group	21 N.J.R. 2783(a)	R.1989 d.555	21 N.J.R. 3460(a)
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.15	UCC: plumbing subcode	21 N.J.R. 3346(a)		
5:23-4.3	UCC: assumption of local enforcement powers	21 N.J.R. 2436(a)	R.1989 d.551	21 N.J.R. 3460(b)
5:23-4.5, 4.19, 4.20	UCC enforcing agencies: standardized forms; remittance of training fees	21 N.J.R. 3346(b)		
5:23-4.17	Dedication of fee revenue for UCC enforcement	21 N.J.R. 3348(a)		
5:23-4.17, 4.18, 4.19, 4.20	Uniform Construction Code: municipal and departmental fees	21 N.J.R. 2127(a)	R.1989 d.512	21 N.J.R. 3086(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-8.8	Asbestos hazard abatement subcode: administrative correction	_____	_____	21 N.J.R. 3747(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:26-2.3, 2.4	Planned real estate development full disclosure: registration and exemption fees	21 N.J.R. 2127(a)	R.1989 d.512	21 N.J.R. 3086(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)	R.1989 d.526	21 N.J.R. 3295(b)
5:29-1, 2.2	Landlord registration form for one and two-unit rental dwellings	21 N.J.R. 3349(a)		
5:31	Local authorities	21 N.J.R. 3046(a)		
5:33	Urbanaid program	21 N.J.R. 3046(b)		
5:35	State aid for planning local effectiveness program	21 N.J.R. 3046(b)		
5:52-1	Volunteer coaches' safety orientation and training skills programs: minimum standards	21 N.J.R. 2159(a)		
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts	21 N.J.R. 1509(b)	R.1989 d.524	21 N.J.R. 3090(a)
5:80-9.13	Housing and Mortgage Finance Agency: notice of rent increases	21 N.J.R. 2160(a)	R.1989 d.591	21 N.J.R. 3748(a)
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)		
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)	R.1989 d.534	21 N.J.R. 3295(c)
5:92-12 App.	Uniform deed restrictions and liens: controls on affordability	21 N.J.R. 1988(a)	R.1989 d.527	21 N.J.R. 3091(a)
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

Most recent update to Title 5: TRANSMITTAL 1989-8 (supplement August 21, 1989)

#### MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

#### EDUCATION—TITLE 6

6:3-1.18	Certification of school business administrators	21 N.J.R. 2915(a)		
6:7	Evaluation of building principals in State-operated districts	21 N.J.R. 3352(a)		
6:8-9	Elementary and secondary school summer sessions	21 N.J.R. 2441(c)		
6:11-4.3, 8.2, 8.4, 8.5	Certification of bilingual and ESL teachers	21 N.J.R. 2721(a)		
6:11-5.1-5.7, 7.2	Provisional certification of first-year teachers	21 N.J.R. 2717(a)		
6:11-6.1, 6.2	Certification of nursery teachers	21 N.J.R. 3209(a)		
6:11-10.4, 10.10, 10.11, 10.14	Certification of school business administrators	21 N.J.R. 2915(a)		
6:20-2	Local district bookkeeping and accounting	21 N.J.R. 2919(a)		
6:20-2A	Double entry bookkeeping and GAAP accounting	21 N.J.R. 2919(a)		
6:21	Pupil transportation	21 N.J.R. 2724(a)		
6:22-1.1, 1.3, 1.4, 1.7, 1.8, 2.5	Private school and State facilities for handicapped pupils	21 N.J.R. 3210(a)		
6:24-5.4	Tenure charges against persons within Human Services, Corrections and Education	21 N.J.R. 1939(b)	R.1989 d.553	21 N.J.R. 3461(a)
6:26	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:27	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:31	Bilingual education	21 N.J.R. 2443(a)		
6:70	Library network services	21 N.J.R. 1940(a)	R.1989 d.572	21 N.J.R. 3462(a)

Most recent update to Title 6: TRANSMITTAL 1989-8 (supplement September 18, 1989)

#### ENVIRONMENTAL PROTECTION—TITLE 7

7:1G	Worker and Community Right to Know	21 N.J.R. 1944(a)	R.1989 d.544	21 N.J.R. 3478(a)
7:1G-3.2	Worker and Community Right to Know: administrative correction concerning environmental survey	_____	_____	21 N.J.R. 3482(a)
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)	R.1989 d.566	21 N.J.R. 3482(b)
7:2-11.12	Designation of West Pine Plains to Natural Areas System: extension of comment period	21 N.J.R. 2240(b)		
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)		
7:5C	Endangered Plant Species Program	21 N.J.R. 2847(a)		
7:7A-2.7(d)1, 2	Preliminary municipal approvals exemption: notice of rule invalidation	_____	_____	21 N.J.R. 3482(c)
7:7A-2.7(f)	Transition area exemption: notice of rule invalidation	_____	_____	21 N.J.R. 3482(d)
7:7A-8.2	Freshwater wetlands protection: administrative correction	_____	_____	21 N.J.R. 3748(a)
7:10	Safe Drinking Water Act	21 N.J.R. 1945(a)	R.1989 d.514	21 N.J.R. 3098(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14A-1.8	NJPDES fee schedule for permittees and applicants	21 N.J.R. 3590(a)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)	R.1989 d.517	21 N.J.R. 3099(a)
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:19	Water supply allocation permits	21 N.J.R. 3594(a)		
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	21 N.J.R. 2849(a)		
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)	R.1989 d.567	21 N.J.R. 3483(a)
7:25-12	Surf clam management	21 N.J.R. 3214(a)		
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-1.13, 8.15	Hazardous waste management: exclusion or exemption from rules; discarded commercial chemicals	21 N.J.R. 3219(a)		
7:26-5	Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings	21 N.J.R. 2734(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioactive mixed wastes	21 N.J.R. 1053(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)		
7:26-16.5, 16.13	Solid and hazardous waste operations: licensing of individuals	21 N.J.R. 2275(a)	R.1989 d.586	21 N.J.R. 3658(b)
7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)	R.1989 d.595	21 N.J.R. 3748(c)
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)	R.1989 d.568	21 N.J.R. 3488(a)
7:27-23.2-23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)	R.1989 d.596	21 N.J.R. 3751(a)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		
7:50-2.11, 4.2, 4.3, 4.5, 4.53, 4.62, 4.66, 5.2, 5.13, 5.23, 5.24, 5.28, 5.43, 5.44, 5.47, 6.65, 6.154, 6.156	Pinelands Comprehensive Management Plan	21 N.J.R. 3381(a)		

**Most recent update to Title 7: TRANSMITTAL 1989-9 (supplement September 18, 1989)**

**HEALTH—TITLE 8**

8:18	Catastrophic Illness in Children Relief Fund Program	21 N.J.R. 1781(a)	R.1989 d.557	21 N.J.R. 3501(a)
8:19-2	Newborn biochemical screening	21 N.J.R. 3633(a)		
8:20	Birth defects registry	21 N.J.R. 3636(a)		
8:23	Veterinary public health	21 N.J.R. 3274(a)		
8:31-30	Health care facility construction: plan review fee (recodify as 8:31-1)	21 N.J.R. 2447(a)		
8:31A-9.1	SHARE hospital reimbursement: labor proxies	21 N.J.R. 2922(a)		
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.22	Hospital reimbursement: standard costs per case	21 N.J.R. 3275(a)		
8:31B-3.23	Hospital reimbursement: emergency room patients	21 N.J.R. 3275(b)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B-3.27	Hospital reimbursement: capital facilities formula allowance	21 N.J.R. 3278(a)		
8:31B-3.51	Hospital reimbursement: Schedule of Rates notification appeal and review	21 N.J.R. 3278(b)		
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on	21 N.J.R. 2448(a)		
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on: extension of comment period	21 N.J.R. 3279(a)		
8:31B-4.38-4.40	Hospital reimbursement: uncompensated care	21 N.J.R. 2449(a)		
8:31B-4.62	Hospital reimbursement: MICU services	21 N.J.R. 2453(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-5.3	Diagnosis Related Groups: administrative correction	_____	_____	21 N.J.R. 3297(a)
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3279(b)		
8:31B-7.10	Uncompensated Care Trust Fund: debt recovery through tax rebate and refund set-off	21 N.J.R. 2923(a)		
8:31C-1.2, 1.3, 1.4, 1.6, 1.12, 1.17	Residential alcoholism treatment facilities: rate setting and reimbursement	21 N.J.R. 2454(a)	R.1989 d.558	21 N.J.R. 3505(a)
8:33F	End-Stage Renal Disease (ESRD) services: certification of need	21 N.J.R. 2923(b)		
8:33I-1.2, 1.3, 1.5	Megavoltage radiation oncology units: need review	21 N.J.R. 3640(a)		
8:33L-1.2, 2.1, 2.2, 2.4, 2.6, 2.7	Home health agency services	21 N.J.R. 2455(a)	R.1989 d.559	21 N.J.R. 3506(a)
8:39-7.4, 17.4, 25.2, 39.3	Long-term care facilities: enforcement of staffing requirements	_____	_____	21 N.J.R. 3663(a)
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:39-44	Respite care services	21 N.J.R. 2924(a)		
8:42A-13.3	Alcoholism treatment facilities: administrative corrections	_____	_____	21 N.J.R. 3172(a)
8:43B-1-17	Hospital licensing standards (repeal)	21 N.J.R. 2925(a)		
8:43B-18	Anesthesia (recodify to 8:43G-6)	21 N.J.R. 2925(a)		
8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)	R.1989 d.560	21 N.J.R. 3509(a)
8:43E-4.5	Child and adolescent acute psychiatric beds: need formula	21 N.J.R. 2459(a)	R.1989 d.561	21 N.J.R. 3514(a)
8:43F	Adult day health care facilities: standards for licensure	21 N.J.R. 3385(a)		
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35	Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care	21 N.J.R. 2926(a)		
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-4	Hospital licensure: patient rights	21 N.J.R. 2160(a)		
8:43G-6	Anesthesia	21 N.J.R. 2925(a)		
8:43G-7	Hospital licensure: cardiac services	21 N.J.R. 2162(a)		
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)		
8:43G-9	Hospital licensure: critical and intermediate care	21 N.J.R. 2167(a)		
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)		
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)		
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)		
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)		
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)		
8:43G-15	Hospital licensure: medical records	21 N.J.R. 2171(a)		
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)		
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)		
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)		
8:43G-19.35-19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)		
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)		
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)		
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)		
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)		
8:43G-28	Hospital licensure: radiology	21 N.J.R. 2174(a)		
8:43G-30.13-30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-32, 34	Hospital licensure: same-day stay; surgery	21 N.J.R. 2177(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)		
8:52-4.6	Local boards of health: basic educational program concerning HIV infection	21 N.J.R. 2696(a)	R.1989 d.574	21 N.J.R. 3663(b)
8:52-6.3, 6.4	Local boards of health: cardiovascular disease services; health services for older adults	21 N.J.R. 3282(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)	R.1989 d.543	21 N.J.R. 3516(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:65-10.1	Controlled Dangerous Substances: addition to Schedule I	_____	_____	21 N.J.R. 3297(b)
8:66	Intoxicated Driving Program/Intoxicated Driver Resource Center	21 N.J.R. 3283(a)		
8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379	21 N.J.R. 2108(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a))	21 N.J.R. 1790(a)	R.1989 d.573	21 N.J.R. 3664(a)
8:71	Interchangeable drug products	21 N.J.R. 3292(a)		

**Most recent update to Title 8: TRANSMITTAL 1989-9 (supplement September 18, 1989)**

#### HIGHER EDUCATION—TITLE 9

9:2-14	Student immunization requirements	21 N.J.R. 3605(a)		
9:4-1.3, 1.9, 1.10, 2.1-2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:7-4.2	Garden State Scholarships: academic requirements	21 N.J.R. 3408(a)		
9:9-11.1	Guaranteed Student Loan Program: institution compliance	21 N.J.R. 1962(a)	R.1989 d.519	21 N.J.R. 3173(a)
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)		

**Most recent update to Title 9: TRANSMITTAL 1989-5 (supplement September 18, 1989)**

#### HUMAN SERVICES—TITLE 10

10:11-1	Instructional staff tenure	21 N.J.R. 2849(b)		
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63	Long Term Care Services Manual	21 N.J.R. 2752(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:69A-1.2, 6.2	Pharmaceutical Assistance to Aged and Disabled: income standards	21 N.J.R. 3047(a)		
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:80-83, 87, 89, 90, 109	Division of Economic Assistance: administrative change	_____	_____	21 N.J.R. 3777(a)
10:85	General Assistance Manual	21 N.J.R. 3221(b)		
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:85-4.6	Emergency shelter assistance for individuals with AIDS/HIV positive with symptoms and for terminally ill	Emergency (expires 1-12-90)	R.1989 d.598	21 N.J.R. 3790(a)
10:87-12.1, 12.2, 12.3, 12.4, and 12.7	Food Stamp Program: Tables I, II, III, IV, and VII	Emergency (expires 11-21-89)	R.1989 d.533	21 N.J.R. 3316(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:121	Adoption of children	21 N.J.R. 3048(b)		
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		

**Most recent update to Title 10: TRANSMITTAL 1989-9 (supplement September 18, 1989)**

#### CORRECTIONS—TITLE 10A

10A:2-7	Inmate restitution for damaged or destroyed property	21 N.J.R. 3408(b)		
10A:4-6, 6.3, 6.4	Inmate discipline: chronic violator procedure	21 N.J.R. 3240(a)		
10A:5-3.1, 3.2	Administrative segregation	21 N.J.R. 3409(a)		
10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)		
10A:16-2.9	Infirmary care	21 N.J.R. 969(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:16-5.2, 5.6	Medical and health services: guardianship of an adult inmate	21 N.J.R. 2851(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:18-6.4	Employee visits with incarcerated relatives	21 N.J.R. 3410(a)		
10A:22-2.6	Release of confidential inmate or parolee records	21 N.J.R. 3411(a)		
10A:22-4	Expungement or sealing of inmate records	21 N.J.R. 2852(a)	R.1989 d.582	21 N.J.R. 3665(a)
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)		
10A:31	Adult county correctional facilities: public hearing	21 N.J.R. 3411(b)		
10A:71	Parole Board rules	21 N.J.R. 3411(c)		
10A:71-3.19	Parole Board rules: administrative correction			21 N.J.R. 3777(b)

**Most recent update to Title 10A: TRANSMITTAL 1989-8 (supplement September 18, 1989)**

**INSURANCE—TITLE 11**

11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)		
11:1-5.2	Cancellation and nonrenewal of fire and casualty coverage	21 N.J.R. 3240(b)		
11:1-10.7	Foreign and alien property and casualty insurers: appeals regarding admission denials	21 N.J.R. 3418(a)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-26	Insurer profitability information: annual publication	21 N.J.R. 2181(a)	R.1989 d.538	21 N.J.R. 3297(a)
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:1-28	Formation of property and casualty insurance corporation or reciprocal insurance exchange	21 N.J.R. 3607(a)		
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:2-3.1, 3.12	Credit life and credit accident and health insurance premium rates	21 N.J.R. 3052(a)		
11:2-17.10	Property/liability claims settlements: administrative correction			21 N.J.R. 3666(a)
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-26	Insurers' annual audited financial reports	21 N.J.R. 3054(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:3-1	Commercial Automobile Insurance Plan	21 N.J.R. 3613(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
11:3-10.4	Adjustment of losses: administrative correction			21 N.J.R. 3173(b)
11:3-15.3, 15.5, 15.7-15.10	Automobile insurance: Coverage Selection Form	21 N.J.R. 3244(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 2182(a)		
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 3422(a)		
11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:3-30	Motor vehicle self-insurance	21 N.J.R. 2876(a)	R.1989 d.584	21 N.J.R. 3666(a)
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, App.; 23, App.	Sixty five-and-older health insurance coverage	21 N.J.R. 2877(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-32	Health service corporations: notice of increased rates	21 N.J.R. 973(b)	R.1989 d.522	21 N.J.R. 3173(c)
11:4-33	Life insurers: excess interest reserve adjustment	21 N.J.R. 1308(a)	R.1989 d.523	21 N.J.R. 3175(a)
11:4-34	Long-term care insurance	21 N.J.R. 1964(a)	R.1989 d.571	21 N.J.R. 3465(a)
11:4-34.6	Long-term care insurance: administrative correction			21 N.J.R. 3777(c)
11:5-1.16	Real estate contracts: "agreement to honor" provision	21 N.J.R. 2438(b)	R.1989 d.539	21 N.J.R. 3299(a)
11:5-1.28	Approval real estate schools: pre-proposal	21 N.J.R. 1641(a)		
11:13-1.2, 1.3	Farm-owners insurance	21 N.J.R. 1641(b)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commercial lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
11:15	Hospital workers' compensation: group self-insurance	21 N.J.R. 1817(a)	R.1989 d.585	21 N.J.R. 3668(a)
11:16-2	Reports to National Automobile Theft Bureau	21 N.J.R. 2901(a)	R.1989 d.583	21 N.J.R. 3668(b)
11:17A, 17B, 17C, 17D	Insurance producer conduct: marketing; commissions and fees; funds management; administrative penalties	21 N.J.R. 1317(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:18-1	Medical Malpractice Reinsurance Recovery Fund surcharge	21 N.J.R. 2698(a)		
<b>Most recent update to Title 11: TRANSMITTAL 1989-9 (supplement September 18, 1989)</b>				
<b>LABOR—TITLE 12</b>				
12:15-1.3-1.7	Unemployment Compensation and State Plan Temporary Disability: 1990 rates	21 N.J.R. 2700(a)	R.1989 d.565	21 N.J.R. 3535(a)
12:40-1	Worker Adjustment and Retraining Notification (WARN) procedures	21 N.J.R. 3630(a)		
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-3	Vocational rehabilitation services: vehicle modification requirements	21 N.J.R. 2213(b)	R.1989 d.564	21 N.J.R. 3535(b)
12:46-12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:90	Boilers, pressure vessels and refrigeration	21 N.J.R. 3247(a)		
12:100	Safety and health standards for public employees	21 N.J.R. 2224(a)	R.1989 d.536	21 N.J.R. 3299(b)
12:100-4.2, 10, 17	Safety standards for firefighters	21 N.J.R. 1090(a)		
12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)		
12:235-1.6	Workers' Compensation: 1990 maximum rates	21 N.J.R. 2701(a)	R.1989 d.563	21 N.J.R. 3545(a)
<b>Most recent update to Title 12: TRANSMITTAL 1989-7 (supplement September 18, 1989)</b>				
<b>COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A:10-1, 2 (17:13, 17:14)	Small businesses, urban development enterprises; minority and female subcontractor participation	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
12A:10-2.6	Registration as minority or female business: administrative correction	_____	_____	21 N.J.R. 3674(b)
12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		
12A:55	Solar energy systems criteria for sales and use tax exemptions: extension of comment period	21 N.J.R. 1969(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		
<b>Most recent update to Title 12A: TRANSMITTAL 1989-6 (supplement September 18, 1989)</b>				
<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:18-2, 10	Motor Vehicles: Unsatisfied Claim and Judgment Fund rules (repeal)	21 N.J.R. 3432(a)		
13:20-1	Division of Motor Vehicles: enforcement officer rules	21 N.J.R. 1500(b)	R.1989 d.518	21 N.J.R. 3176(a)
13:20-3	Repeal (see 13:24)	21 N.J.R. 2460(a)	R.1989 d.542	21 N.J.R. 3299(c)
13:22	Repeal (see 13:62)	21 N.J.R. 3646(a)		
13:24	Emergency vehicle equipment	21 N.J.R. 2460(a)	R.1989 d.542	21 N.J.R. 3299(c)
13:30-1.2, 2.18, 8.1	Board of Dentistry licensure and registration fees	21 N.J.R. 2466(a)	R.1989 d.581	21 N.J.R. 3670(a)
13:30-8.2, 8.11	Parenteral conscious sedation in dental practice	21 N.J.R. 3060(a)		
13:30-8.3	Use of general anesthesia in dental practice	21 N.J.R. 3062(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	21 N.J.R. 2226(a)		
13:35	Board of Medical Examiners rules	21 N.J.R. 2226(b)	R.1989 d.532	21 N.J.R. 3307(a)
13:35-6.2	Pronouncement and certification of death	21 N.J.R. 1969(b)		
13:35-6.5	Standards for patient records in medical practice	21 N.J.R. 3253(a)		
13:35-8.18	Hearing aid dispensers: continuing education	21 N.J.R. 1648(a)	R.1989 d.548	21 N.J.R. 3474(a)
13:36	State Board of mortuary science	21 N.J.R. 1971(a)	R.1989 d.540	21 N.J.R. 3474(b)
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:37-2.3, 3.5, 4.4	Nursing practice: temporary permit holders	21 N.J.R. 1648(b)	R.1989 d.592	21 N.J.R. 3777(d)
13:38-1.2	Practice of optometry: unlawful advertising	21 N.J.R. 2467(a)	R.1989 d.552	21 N.J.R. 3475(a)
13:44C-3.2	Audiology and speech language pathology: licensure	21 N.J.R. 2702(a)	R.1989 d.579	21 N.J.R. 3670(b)
13:44C-4	Provisional licensure as audiologist or speech-language pathologist (repeal)	21 N.J.R. 3433(a)		
13:44C-7.2	Audiology and speech language pathology: practice exemptions	21 N.J.R. 2702(a)		
13:45A-16.2	Home improvement contracts: written requirement	21 N.J.R. 3433(b)		
13:45A-25.2	Sellers of health club services: registration fee	21 N.J.R. 3657(a)		
13:47-14.3	Rental or use of premises for bingo games	21 N.J.R. 2233(a)	R.1989 d.562	21 N.J.R. 3475(b)
13:47A-10	Registration of securities	21 N.J.R. 2903(a)		
13:61	State Police: boat safety course	21 N.J.R. 3434(a)		
13:62	Motor vehicle race tracks	21 N.J.R. 3646(a)		
13:70-3.40	Horse racing: admittance of children to race track	21 N.J.R. 1972(a)	R.1989 d.547	21 N.J.R. 3475(c)
13:70-29.19	Thoroughbred racing: elimination from place and show wagering	21 N.J.R. 3254(a)		
13:71-5.18	Harness racing: admittance of children to race track	21 N.J.R. 1972(b)	R.1989 d.546	21 N.J.R. 3476(a)
13:71-27.18	Harness racing: elimination from place and show wagering	21 N.J.R. 3255(a)		
13:75-1.6	Violent crimes compensation	21 N.J.R. 2910(a)		
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		
<b>Most recent update to Title 13: TRANSMITTAL 1989-9 (supplement September 18, 1989)</b>				

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>PUBLIC UTILITIES—TITLE 14</b>				
14:0	Telecommunications for deaf: pre-proposal concerning Statewide 24-hour dual party relay center	21 N.J.R. 1653(a)		
14:3-3.2	Customer's proof of identity	21 N.J.R. 2004(a)		
14:3-3.6	Utility service discontinuance	21 N.J.R. 1650(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	21 N.J.R. 1650(b)		
14:3-4.7	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
14:3-7.5	Return of customer deposits	21 N.J.R. 1652(a)		
14:3-7.13	Late payment charges	21 N.J.R. 1652(b)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	21 N.J.R. 2702(b)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9-3.3	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
14:10-5	InterLATA telecommunications carriers	21 N.J.R. 3631(a)		
14:11-7.2, 7.6-7.9	Solid waste uniform tariff	21 N.J.R. 2704(b)		

**Most recent update to Title 14: TRANSMITTAL 1989-3 (supplement September 18, 1989)**

#### ENERGY—TITLE 14A

14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)		
14A:6-2	Business Energy Improvement Program	21 N.J.R. 2005(a)		
14A:8	Energy Facility Review Board	21 N.J.R. 2009(a)		
14A:11	Reporting by energy industries of energy information	21 N.J.R. 2009(b)		
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		

**Most recent update to Title 14A: TRANSMITTAL 1989-2 (supplement July 17, 1989)**

#### STATE—TITLE 15

**Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)**

#### PUBLIC ADVOCATE—TITLE 15A

**Most recent update to Title 15A: TRANSMITTAL 1989-1 (supplement July 17, 1989)**

#### TRANSPORTATION—TITLE 16

16:1A-1.3	Filing of rulemaking petitions	21 N.J.R. 2233(b)	R.1989 d.525	21 N.J.R. 3312(a)
16:5	Right-of-way acquisitions	21 N.J.R. 2713(a)	R.1989 d.576	21 N.J.R. 3671(a)
16:21A	Bridge Rehabilitation and Improvement Bond Act rules	21 N.J.R. 2716(a)	R.1989 d.577	21 N.J.R. 3674(a)
16:23	Public hearings and route location approval	21 N.J.R. 2913(a)		
16:24-1	Public utility rearrangement agreements	21 N.J.R. 3435(a)		
16:25-1.1, 1.7, 2.2, 7A, 13	Installation of fiber optic cable along limited access highways	21 N.J.R. 2234(b)		
16:28A-1.7, 1.10, 1.21, 1.34, 1.41, 1.57, 1.61, 1.85, 1.93, 1.110	Restricted parking and stopping along U.S. 9, Route 20, U.S. 30, Routes 49 and 77, U.S. 206, U.S. 9W, Route 161, U.S. 322, and Route 91	21 N.J.R. 3256(a)		
16:30-3.6	Cars-only shoulder lanes along U.S. 1 in West Windsor	Emergency (expires 11-21-89)	R.1989 d.535	21 N.J.R. 3317(a)
16:30-10.10	Mid-block crosswalk on Route 15 in Lafayette Township	21 N.J.R. 3258(a)		
16:31-1.3	Left turns on U.S. 46 in Mount Olive	21 N.J.R. 3437(a)		
16:41-2.2, 2.3, 2.4, 7.1, 7.2, 7.3	Highway access driveways and intersections: permit and application fees	21 N.J.R. 3063(a)	R.1989 d.594	21 N.J.R. 3778(a)
16:41A-1.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 3.1, 3.2, 3.3, 3.15, 3.19, 3.20, 4.2, 4.4, 5.2, 5.4, 6.1, 6.4, 7.1	Outdoor Advertising Tax Act rules	21 N.J.R. 2237(a)	R.1989 d.531	21 N.J.R. 3312(b)
16:44-1.1	Contract administration: prequalification committee	21 N.J.R. 2240(a)	R.1989 d.530	21 N.J.R. 3314(a)
16:44-5.1	Construction services: receipt of bids	21 N.J.R. 3437(b)		
16:44-5.5	Contract administration: verification of bid calculations	21 N.J.R. 2239(a)	R.1989 d.529	21 N.J.R. 3314(b)
16:46-1, 2	Drawbridge operations; reimbursed highway safety lighting	21 N.J.R. 2468(a)	R.1989 d.549	21 N.J.R. 3476(b)
16:50	Railroad transportation hearings	21 N.J.R. 3258(b)		
16:52	Provision of transportation services to elderly and handicapped	21 N.J.R. 3258(b)		
16:53-3.40, 6.11	Autobus specifications: rear view video cameras	21 N.J.R. 3259(a)		
16:53A	Bus Operating Assistance Program (repeal)	21 N.J.R. 3633(a)		
16:53D-1.1	Zone of rate freedom: 1990 percentage maximums	21 N.J.R. 2914(a)		
16:77-1	Use or occupancy of NJ TRANSIT-owned property	21 N.J.R. 3259(b)		

**Most recent update to Title 16: TRANSMITTAL 1989-9 (supplement September 18, 1989)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>TREASURY-GENERAL—TITLE 17</b>				
17:2	Public Employees' Retirement System	21 N.J.R. 2439(a)	R.1989 d.597	21 N.J.R. 3788(a)
17:2-5.13	Public Employees' Retirement System: lump-sum service purchases	21 N.J.R. 1820(b)	R.1989 d.516	21 N.J.R. 3176(b)
17:4-5.7	Police and Firemen's Retirement System: lump-sum service purchases	21 N.J.R. 1821(a)	R.1989 d.515	21 N.J.R. 3176(c)
17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:12	Purchase Bureau rules	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
17:13 (12A:10-1)	Goods and services contracts for small businesses, urban development enterprises and micro businesses	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
17:14 (12A:10-2)	Minority and female subcontractor participation in State construction contracts	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
17:14-1.6	Registration as minority or female business: administrative correction	_____	_____	21 N.J.R. 3674(b)
17:16-17.3	Investment limitations: administrative correction	_____	_____	21 N.J.R. 3556(a)
17:16-46, 47, 48, 49	State Investment Council: Common Pension Fund D; international diversification; currency exchange contracts	21 N.J.R. 3262(a)		
17:16-46.1, 46.5	Common Pension Fund D: administrative correction and extension of comment period	21 N.J.R. 3438(a)		
17:19-1.2	Classification of bidders on State projects	21 N.J.R. 3265(a)		
17:19-3.2	Debarment from State public works contracting	21 N.J.R. 3272(a)		
17:19-3.2	Debarment from State public works contracting: extension of comment period	21 N.J.R. 3439(a)		
17:19-10	Consultant selection procedures for State project assignments	21 N.J.R. 3074(a)		
17:19-10	Consultant selection procedures for State project assignments: extension of comment period	21 N.J.R. 3438(b)		
17:27-2.1, 5.2, 7.3	Affirmative action in public contracts	21 N.J.R. 3439(b)		

Most recent update to Title 17: TRANSMITTAL 1989-8 (supplement September 18, 1989)

**TREASURY-TAXATION—TITLE 18**

18:7-8.10	Corporation Business Tax: administrative correction concerning airline revenues	_____	_____	21 N.J.R. 3477(a)
18:7-11.3	Corporation Business Tax: effect of deficiency notice	21 N.J.R. 3079(a)		
18:7-11.8, 13.3, 13.8	Corporation Business Tax: refund procedures	21 N.J.R. 1503(b)	R.1989 d.508	21 N.J.R. 3177(a)
18:12A-1.6	Local property tax appeals: administrative correction	_____	_____	21 N.J.R. 3674(c)
18:24-1.4, 12.5	Sales and Use Tax: receipts	21 N.J.R. 1107(a)		
18:26-2.12	Transfer Inheritance and Estate Tax: renunciation or disclaimer	21 N.J.R. 1822(a)		

Most recent update to Title 18: TRANSMITTAL 1989-5 (supplement August 21, 1989)

**TITLE 19—OTHER AGENCIES**

19:3-1.1-1.4, 1.6	Hackensack Meadowlands District: subdivision, zoning and permit fees	21 N.J.R. 2949(a)		
19:4-2.2, 4, 5.10, 6.16, 6.18	Hackensack Meadowlands District zoning	21 N.J.R. 3441(a)		
19:4-6.24, 6.25	Hackensack Meadowlands District: penalties, entry and inspection	21 N.J.R. 2949(a)		
19:4-6.28	Zoning change in North Arlington and Lyndhurst	21 N.J.R. 3445(a)		
19:9-1.9	Turnpike Authority: "out-of-service" signs on school buses	21 N.J.R. 3272(b)		
19:9-6	Turnpike Authority: petitions for rules	21 N.J.R. 2440(a)	R.1989 d.580	21 N.J.R. 3675(a)
19:20-2	Sports and Exposition Authority: use of facilities	21 N.J.R. 887(b)		
19:25-10.8	Reporting requirements of continuing political committees	21 N.J.R. 3273(a)		
19:25-15.28	Public financing of general election for Governor: administrative correction	_____	_____	21 N.J.R. 3179(a)
19:25-15.29	Coordinated expenditures in general election for Governor	21 N.J.R. 2673(a)	R.1989 d.545	21 N.J.R. 3477(b)
19:61-3.2	Executive Commission on Ethical Standards: subpoena for witnesses	21 N.J.R. 1507(b)	R.1989 d.521	21 N.J.R. 3179(b)
19:61-3.2, 5.5	Subpoena for witnesses; rulemaking petitions: extension of comment period	21 N.J.R. 2441(b)		
19:61-5.5	Rulemaking petitions	21 N.J.R. 1508(a)	R.1989 d.520	21 N.J.R. 3179(c)

Most recent update to Title 19: TRANSMITTAL 1989-8 (supplement September 18, 1989)

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:41-7.2B	Reporting of proposed foreign gaming operations	21 N.J.R. 129(b)		
19:41-8.6	Withdrawal of application for licensure	21 N.J.R. 130(a)		
19:45-1.1, 1.9, 1.9A, 1.15	Transportation expense reimbursement to patrons	21 N.J.R. 2953(a)		
19:45-1.1, 1.25	Slot machine payoffs by casino check; special slot tokens	21 N.J.R. 2954(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:45-1.11	Casino organization	21 N.J.R. 3446(a)		
19:45-1.12	Gaming supervision	21 N.J.R. 3080(a)		
19:46-1.12	Minibaccarat table layout	21 N.J.R. 3446(b)		
19:47-2.6, 2.8	Blackjack surrender rule	21 N.J.R. 3447(a)		
19:47-2.6, 2.9	Insurance wagers in blackjack	21 N.J.R. 2441(a)	R.1989 d.590	21 N.J.R. 3788(b)
19:53-1.5	Employment of minority and female workers	21 N.J.R. 1823(a)	R.1989 d.528	21 N.J.R. 3314(c)

**Most recent update to Title 19K: TRANSMITTAL 1989-8 (supplement September 18, 1989)**



# OFFICE OF ADMINISTRATIVE LAW PUBLICATIONS

(Subscription rates effective November 1, 1989)

## NEW JERSEY ADMINISTRATIVE CODE

- FULL SET (INCLUDES ALL TITLES BELOW) ..... \$1500
- INDIVIDUAL TITLES (CIRCLE TITLES DESIRED)\*
- 1. Administrative Law ..... \$ 65
- 2. Agriculture ..... \$ 65
- 3. Banking ..... \$ 65
- 4A. Personnel (formerly Civil Service) ..... \$ 65
- 5. Community Affairs (two volumes) ..... \$130
- 5A. Military and Veterans' Affairs ..... \$ 65
- 6. Education (two volumes) ..... \$130
- 7. Environmental Protection (five volumes) ..... \$325
- 8. Health (four volumes) ..... \$260
- 9. Higher Education ..... \$ 65
- 10. Human Services (four volumes) ..... \$260
- 10A. Corrections ..... \$ 65
- 11. Insurance ..... \$ 65
- 12. Labor (two volumes) ..... \$130
- 12A. Commerce, Energy and Economic Development ..... \$ 65
- 13. Law and Public Safety (four volumes) ..... \$260
- Volume C (Alcoholic Beverage Control and  
    Amusement Games Rules) only ..... \$ 65
- 14/14A. Public Utilities/Energy ..... \$ 65
- 15. State ..... \$ 65
- 15A. Public Advocate ..... \$ 65
- 16. Transportation (two volumes) ..... \$130
- 17. Treasury-General ..... \$ 65
- 18. Treasury-Taxation (two volumes) ..... \$130
- 19. Other Agencies: Expressway Authority,  
    Hackensack Meadowlands Commission,  
    Highway Authority, Turnpike Authority,  
    Public Employment Relations Commission,  
    Sports and Exposition Authority, Election Law  
    Enforcement Commission, Economic Development  
    Authority, Public Broadcasting Authority,  
    Executive Commission on Ethical Standards,  
    Atlantic County Transportation Authority  
    (two volumes) ..... \$130
- 19K. Casino Control Commission ..... \$ 65

(Prices are in U.S. dollars and include first year of updated replacement pages.)

New Jersey Register (one year, 24 issues)

By second class mail, \$90

By first class mail, \$180

## NEW JERSEY ADMINISTRATIVE REPORTS

- I. Full Set of NJAR. Eleven hardbound volumes and quarterly update service for one year. Hardbound volumes include a table of contents for the volume. Quarterly looseleaf update service includes a cumulative listing of statutes cited; cumulative listing of rules cited; cumulative topical index, and cumulative listing of cases reported ..... \$400
- II. Looseleaf Update Service Only: Quarterly update service and bound volume(s) of decisions issued in quarterly service for one year. Cumulative indices ..... \$200/year
- III. Individual Hardbound Volumes (1-11) can be purchased separately. Each volume has a table of contents ..... \$45/volume (specify volume or volumes desired)

Prepayment is required  
for all subscriptions.

Please return form with your payment to:

OAL Publications  
Quakerbridge Plaza, Bldg. 9  
CN 049  
Trenton, New Jersey 08625

Name and Delivery Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Billing Address, if different:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number \_\_\_\_\_

Amount Enclosed \_\_\_\_\_

\*If you want multiple copies of a Title, please specify on the "Amount Enclosed" line. Example: \$130 (two copies, Title 1).