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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: APRIL 15, 1991
 See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MAY 20, 1991

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **July 17, 1991**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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Adoptions	July 15
August 19 issue:	
Proposals	July 22
Adoptions	July 29
September 3 issue:	
Proposals	August 5
Adoptions	August 12

NEW JERSEY REGISTER

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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 32(1991)
Hudson River Waterfront Development Committee
Designation of Commissioner of Commerce and
Economic Development as Chairperson

Issued: May 23, 1991.

Effective: May 23, 1991.

Expiration: Indefinite.

WHEREAS, Executive Order No. 53 created the Hudson River Waterfront Development Committee; and

WHEREAS, the purpose of this Committee was to develop a program to promote and encourage waterfront development; and

WHEREAS, the designation of the Commissioner of Commerce and Economic Development as Chairperson of the Committee will aid in the direction of the Committee toward the purpose for which it was established;

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

1. Section (1) of Executive Order No. 152 is hereby amended as follows:

"1. There is hereby created a Hudson River Waterfront Development Committee composed of thirteen (13) members as follows:

a. The Chief of the Governor's Office of Policy and Planning or his designee;

b. The Commissioner of Transportation or his designee;

c. The Commissioner of Commerce and Economic Development who shall act as Chairperson of the Committee;

d. The Commissioner of Environmental Protection or his designee;

e. The Commissioner of Community Affairs or his designee;

f. A representative of the Port Authority of New York and New Jersey; and

g. Seven other members to be appointed by the Governor."

2. Sections 2 through 8 of Executive Order No. 53 are to remain in effect as originally issued.

3. This Order shall take effect immediately.

RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Nonpublic Records

Proposed Amendment: N.J.A.C. 3:3-2.1

Authorized By: Jeff Connor, Commissioner, New Jersey

Department of Banking.

Authority: N.J.S.A. 17:1-8.1; 47:1A-2.

Proposal Number: PRN 1991-329.

Submit comments by July 17, 1991 to:

Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

Pursuant to the "Right to Know Law," N.J.S.A. 47:1A-1 et seq., all public records which are required by law to be made, maintained or kept on file by a State agency are open to public inspection and copying unless designated as nonpublic by statute or regulation. These records must be disclosed under this law regardless of the purpose for which the records will be used. In order to protect confidential and other sensitive records from being disclosed to a person who will use these records for an improper purpose, the Department of Banking recently adopted a rule defining which records are not appropriate for disclosure under the Act (see adoption of N.J.A.C. 3:3-2 in this Register).

Based on comments received incident to the proposal of that rule, the Department proposes an amendment to exempt personal information contained in any report, filing or record held by the Department. The personal information exempted includes the home address, home telephone number, social security number, salary and pension of an employee, officer, director or other person such as an attorney affiliated with a financial institution.

The Department did not intend by these rules to imply that records not exempted were necessarily public records. Rather, the Department sought only to exempt certain types of documents which may be deemed public records under the Right to Know Law. A new provision is proposed to codify this intent.

Social Impact

The proposed rule would help to protect confidential and other sensitive records from being disclosed to a person who will use these records for an improper purpose.

Economic Impact

The proposed rule may have a positive economic impact on licensees and depositories by shielding the confidential business practices such persons submit to the Department. The proposed rule would prevent competitors from having easy access to such records.

Regulatory Flexibility Analysis

It is not anticipated that the proposed rule would impose any recordkeeping, reporting or compliance requirements on small businesses. Instead, it defines which documents the Department is not required to reveal incident to the Right to Know Law. Accordingly, a regulatory flexibility analysis is not required.

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

3:3-2.1 Nonpublic records

(a) Throughout the Department of Banking, the following shall not be deemed to be public records pursuant to the Right to Know Law, N.J.S.A. 47:1A-1 et seq.:

1.-6. (No change.)

7. Information regarding individual institutions obtained pursuant to surveys conducted by the Department; [and]

8. Personnel or pension records of an individual employed by the Department, except that the following shall be deemed public records:

i. An individual's name, title, position, salary, payroll record, length of service in the Department and in the government, date of separation from government service and the reason therefor, and the amount and type of pension he or she is receiving; and

ii. Data contained in information which discloses conformity with specific experimental, educational or medical qualifications required for government employment or for receipt of a public pension, but in no event shall detailed medical or psychological information be released[.]; and

9. Personnel or pension records of an employee, officer, director or other person affiliated with a financial institution, such as the residence address, residence telephone number, salary or social security number, when such information is contained in any report, filing or record held by the Department.

(b) The fact that a document is not listed in (a) above shall not be construed as evidence that the document is a public record for purposes of the Right to Know Law, N.J.S.A. 47:1A-1 et seq.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Control and Prohibition of Air Pollution by Volatile Organic Substances

Proposed Amendments: N.J.A.C. 7:27-8.1, 8.2, 8.11; 16; 17.1, 17.3 through 17.9; 23.2, 23.3, 23.5, 23.6; 25.2; 7:27A-3.2, 3.10, 3.11; 7:27B-3.1, 3.2, 3.4 through 3.12, 3.14, 3.15, 3.17 and 3.18

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 26:2C-1 et seq., Specifically N.J.S.A. 26:2C-8.

Proposal Number: PRN 1991-330.

DEP Docket Number: 022-91-05.

A public hearing concerning this proposal will be held on:

July 17, 1991, at 10 A.M.
Trenton & Mercer County
Memorial Building Commission
War Memorial Building
West Lafayette and John Fitch Way
Ball Room
Trenton, New Jersey 08625

Submit written comments by August 1, 1991 to:

Samuel A. Wolfe, Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

Copies of this notice and of the proposed amendments are being deposited and will be available for inspection during normal office hours until August 1, 1991, at:

Atlantic County Health Department
301 South Shore Road, Room 437B
Northfield, New Jersey 08225
Middlesex County Air Pollution Control Program
280 Hobart Street, Room #518
Perth Amboy, New Jersey 08861
Warren County Health Department
108 West Moore Street
Hackettstown, New Jersey 07840

New Jersey Department of Environmental Protection
Division of Environmental Quality
401 East State Street, Second Floor
Trenton, New Jersey 08625

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Northern Regional Office
1259 Route 46
Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Southern Regional Office
20 East Clementon Road, 3rd Floor North
Gibbsboro, New Jersey 08026

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Metropolitan Regional Office
2 Babcock Place
West Orange, New Jersey 07052

New Jersey Department of Environmental Protection
Bureau of Enforcement Operations
Central Regional Office
Horizon Center, Building 300
Route 130
Robbinsville, New Jersey 08691

These amendments will become operative 60 days after adoption by the Commissioner (See N.J.S.A. 26:2C-8).

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing amendments to N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances (Subchapter 16). Subchapter 16 establishes standards and requirements for equipment, control apparatus, and source operations which may release volatile organic emissions to the atmosphere. Additionally, the Department is proposing related amendments to N.J.A.C. 7:27-8, Permits and Certificates (Subchapter 8); N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances (Subchapter 17); N.J.A.C. 7:27-23, Prevention of Air Pollution from Architectural Coatings and Consumer Products (Subchapter 23); N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels (Subchapter 25); N.J.A.C. 7:27A-3, Civil Administrative Penalties and Requests for Adjudicatory Hearings (the Penalty Code); N.J.A.C. 7:27B-3, Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations (Air Test Method 3).

Volatile organic compounds in the ambient air, in the presence of sunlight and oxides of nitrogen, participate in the formation of ozone. Ozone is a known respiratory irritant. In addition, ozone has been demonstrated to retard the growth of plants and to cause foliar damage, effects which may significantly reduce the yield of important food crops. Ozone also may cause degradation of paint, plastics, textiles and rubber. Consequently, the 1970 amendments to the Federal Clean Air Act mandated that the United States Environmental Protection Agency (EPA) establish a National Ambient Air Quality Standard (NAAQS) for ozone which would be protective of human health. Further, it mandated that, if the ambient air quality in any state failed to achieve this standard, the state must submit a State Implementation Plan (SIP) that would contain commitments to implement control measures that would enable the standard to be achieved.

The EPA established a maximum one-hour average of 0.12 parts per million, not to be exceeded more than once per year, as the NAAQS for ozone. The 1977 amendments to the Federal Clean Air Act established December 31, 1987, as the deadline by which conformance with the ozone standard was to be achieved. In 1983 the State of New Jersey revised its State Implementation Plan for ozone, including additional strategies designed to enable the State to achieve conformance with the ozone standard by the 1987 deadline.

As volatile organic compounds (VOC) are precursors to the formation of ground-level ozone, the control strategies included in New Jersey's ozone SIP for reducing ground-level ozone concentrations were primarily strategies directed toward the prevention and control of VOC emissions. However, despite the State's efforts to promulgate and implement control strategies pursuant to the ozone SIP, as of December 31, 1987, the air quality in New Jersey had not achieved conformance with the NAAQS for ozone. In 1988, ambient ozone concentrations exceeded the standard

on 45 days between May and September; in 1989 the standard was exceeded on 18 days; and in 1990 on 22 days.

On May 26, 1988, the EPA Region II Administrator informed New Jersey's governor that one of the next steps that would be required of the State toward the achievement of the ozone standard would be to amend the State VOC-control rule to make it consistent with and at least as stringent as federal Control Technology Guidelines (CTGs) and other federal VOC policies and requirements. Subsequently, in a June 14, 1988 letter the EPA identified specified deficiencies in N.J.A.C. 7:27-16 (Prohibition and Control of Pollution from Volatile Organic Substances). The EPA identified an additional deficiency in this rule in a January 3, 1991 letter to the Department. The primary intent of these amendments to N.J.A.C. 7:27-16 is to address these EPA-identified deficiencies.

Specifically, these amendments would make the following changes to address the EPA-identified deficiencies:

1. **Revise the definition of "VOS"**—The term "volatile organic substances" or "VOS" set forth in the N.J.A.C. 7:27-16.1 would be changed to "volatile organic compounds" or "VOC" to be consistent with EPA terminology. The definition of this term would also be revised to be compatible with EPA's definition of VOC. These revisions would provide for the removal of the 0.02 pounds per square inch vapor pressure cut-off set forth in the previously promulgated VOS definition. No change would be made in the list of chemical species exempted from the term. Seven compounds (methyl chloroform, ethane, 1,1,1-trichloroethane, dichlorotrifluoroethane (HCFC-123), tetrafluoroethane (HFC-134a), dichlorofluoroethane (HCFC-141b), and chlorodifluoroethane (HCFC-142b)), although included in the list of compounds exempted in the federal definition of "VOC", would not be exempted in the definition of "VOC" proposed herein as they are not exempted in the promulgated definition of "VOS". Revisions would also be made throughout Subchapter 16 and in N.J.A.C. 7:27-8, 17, and 23; N.J.A.C. 7:27A-3; and N.J.A.C. 7:27B-3 to change usage of the term "VOS" uniformly to "VOC".

Another associated change would be the replacement of the term "toxic volatile organic substances" or "TVOS" set forth in N.J.A.C. 7:27-17.1 with the term "toxic substance" or "TXS" previously promulgated in N.J.A.C. 7:27-8, to eliminate this additional reference to volatile organic substances. Also, revisions consistent with this associated change would be made in N.J.A.C. 7:27-17, 23, and 25; in N.J.A.C. 7:27A-3; and in N.J.A.C. 7:27B-3, in order to make uniform usage of these terms throughout the code.

2. **Add record keeping requirements**—Record keeping provisions would be added to N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), and 16.8(g) to ensure that records are maintained for storage tanks, transfer operations, surface coating and graphics operations, petroleum solvent dry-cleaning operations and other source operations which emit VOC. These record keeping provisions are intended to be sufficiently specific to determine whether a source operation complies with applicable requirements.

Additionally, at the proposed N.J.A.C. 7:27-16.9(a) the requirement would be established to maintain such records for five years and to make the records available to the Department or the EPA, upon request.

At N.J.A.C. 7:27-16.9(b) a provision to allow alternate record keeping is proposed. Persons who wish to carry out alternate record keeping would be allowed to submit a request to do so to the Department. To be approved, these alternate records must be at least as effective as those set forth in the rule in documenting that the source is in compliance with applicable requirements.

3. **Strengthen verification of conformance with CTG requirements for the transfer of gasoline into storage tanks**—Specification would be added to N.J.A.C. 7:27-16.3(c)4 to require that any vapor recovery system, other than a vapor balance system, concentration vent, or a drilled cap, used to reduce the displaced air-vapor mixture by at least 90 percent by volume is subject to verification by testing. Such required testing would be performed when the ambient temperature exceeds 80 degrees Fahrenheit. This would ensure conformance with the reasonably available control technology (RACT) requirements set forth in the relevant Design Criteria Document during the temperature conditions when exceedances of the ozone standard must frequently occur.

4. **Specify method for averaging surface coating formulations**—At proposed N.J.A.C. 7:27-16.5(a)2 a formula would be included to clarify how to calculate the maximum allowable daily weighted mean of the VOC content of the surface coating formulations. This formula would be applicable when more than one surface coating formulation is used in an individual surface coating operation.

5. **Specify method to be used to determine the required efficiency of control apparatus serving surface coating operations**—Provision would be added at N.J.A.C. 7:27-16.5(a)3 to establish that determinations of efficiency of control include capture efficiency, as well as control efficiency. In proposed subparagraph 3.ii a formula would be provided to calculate overall control efficiency of control apparatus serving a surface coating operation. This formula determines emissions on a solids applied basis, pursuant to the surface coating CTG.¹ Further, to ensure that the required level of control efficiency is attainable, subparagraph 3.i establishes 90 percent efficiency as the maximum RACT requirement. At proposed N.J.A.C. 7:27-16.5(a)3.iii, a method is specified to average the daily emissions from an individual coating operation, served by VOC control apparatus, which applies more than one surface coating formulation. Specifically, the total actual emissions per day must be less than the sum of the maximum allowable emissions of each surface coating formulation as calculated by the solids applied equation to show conformance with the RACT requirement.

Additionally, the definition of "surface coating operation" would be revised to clarify that emissions from drying and curing processes, as well as those from the coating application process itself, are included in determinations of the emissions from the surface coating operation. This revised definition would clarify that a single "surface coating operation" ends, except in the case of a web surface coating operation, with the drying or curing of a coating. Any subsequent coatings applied constitute separate surface coating operations. A web surface coating operation ends at the final "take-up" roll. Each surface coating operation must individually be in conformance with relevant emissions limits.

6. **Require nationally consistent standards**—In Table 3B, referenced at N.J.A.C. 7:27-16.5(e), the category "high performance architectural coating" and its associated standards would be deleted, as EPA has found no justification for allowing more lenient standards for these coatings than the standard set for all types of extreme performance coatings in the applicable CTG.⁴

An associated change would be the deletion of the definition of "high performance architectural coating" as the term would no longer be used in this rule.

7. **Specify methods for achieving acceptable verification of transfer efficiency**—Revision is made at N.J.A.C. 7:27-16.5(h)1 and 2 to specify how compliance with transfer efficiency limitations is to be determined.

8. **Eliminate "bubble" provisions**—To eliminate differences between State requirements and the EPA's Emissions Trading Policy and to achieve conformance with all applicable air pollution control requirements by each source operation individually, the revisions to N.J.A.C. 7:27-16.6(c)4-6 would specify that the Department will no longer, as of the effective date of the amendments, approve applications for the mathematical combination of VOC emissions from more than one source operation (i.e., "bubble" permits). Furthermore, pursuant to proposed paragraphs 16.6(c)4-6, any approval previously issued by the Department of a "bubble" permit would expire two years from the effective date of these amendments.

Associated changes in the rule language would also be made at N.J.A.C. 7:27-16.5(a) and at N.J.A.C. 7:27-8.11.

9. **Discontinue allowance of seasonal shutdown of control apparatus**—To eliminate differences between Federal and State requirements and to ensure the use of any installed control apparatus throughout the year, the seasonal shutdown provisions previously promulgated at N.J.A.C. 7:27-16.11(d) would be deleted. No seasonal shutdown variances are currently effective.

10. **Require EPA approval of variances and access to records**—So that EPA may continue to ensure consistency with national standards, the requirement to obtain EPA approval, as well as State approval, would be established at N.J.A.C. 7:27-16.3(c)5 when control apparatus other than that specified in the rule is to be used; at N.J.A.C. 7:27-16.5(d) and (e) and at N.J.A.C. 7:27-16.9(f) when a test or monitoring procedure other than one specified in a rule is to be used; and at N.J.A.C. 7:27-16.10 when approval of a technology variance from an air pollution control requirement is sought.

Additionally, N.J.A.C. 7:27-16.9(a), (c) and (d) would require persons responsible for source operations to make records, test data, and other information available to the EPA, as well as the Department, upon request. Paragraphs 16.9(d) and (e) would establish that EPA, as well as the Department, has the authority to test, and that the persons responsible for the source operation have the responsibility to assist the EPA, as well as the Department, in the conduct of such testing.

In addition to these "SIP Deficiency" revisions to N.J.A.C. 7:27-16, a number of additional changes are proposed to the rule. Several changes

would affect the applicability of the rule. Revisions to N.J.A.C. 7:27-16.2(m) would make railroad tank cars used at a facility for more than 30 consecutive days subject to the same VOC standards and requirements as stationary storage tanks. Revisions to N.J.A.C. 7:27-16.3(h)1 would require gas stations which now have an average monthly throughput of 10,000 gallons or greater of gasoline to install Stage II vapor recovery control apparatus, even if their throughput was below 10,000 gallons a month or the station was not in operation during the originally promulgated September 1, 1986 to August 31, 1987, period. Consequently, a new compliance schedule is proposed at N.J.A.C. 7:27-16.3(v) for gasoline stations which become subject to the vapor recovery system requirement.

Some proposed revisions are made to limit the broadening of the scope of the rule. At N.J.A.C. 7:27-16.2(a)1, (b), (m) and (n) and at 16.3(a) and (m), a 0.02 pounds per square inch vapor pressure limit would be added to preclude regulation of solids and liquids of low volatility due to the removal of the vapor pressure limit in the definition of the term "VOC". At N.J.A.C. 7:27-16.4, the proposed term "solvent" would replace "VOS" to preclude the regulation of open top tanks and surface cleaners that contain aqueous solutions with no associated VOC emissions, due to the removal of the vapor pressure limit in the definition of "VOC".

Other changes would be made to clarify the rule. In N.J.A.C. 7:27-16.1 the definition of "surface coating formulation" would be revised to clarify that the term includes protective, functional or decorative films impregnated into, as well as applied to the surface of, a substrate. At N.J.A.C. 7:27-16.2(a)1, (c) and (m) the adjective "maximum" would be added to modify the word "capacity" to make clear that these provisions apply to the upper limit of the capacity. At N.J.A.C. 7:27-16.2(m) and 16.3(a) the more precise phrase "30 days" would be used in place of "one month". In N.J.A.C. 7:27-16.5, including in the titles and headings in Tables 3A through 3E, revisions would be made to clarify that the limits established are VOC content limits. In N.J.A.C. 7:27-16.8(f), a new provision is proposed in order to verify through record keeping that the consumption of petroleum solvents in dry cleaning operations meet the standards of the section. In N.J.A.C. 7:27-16.9(g), hourly emissions limits would be clarified as any "consecutive" 60 minute period. In N.J.A.C. 7:27-16.10(c), approval of a variance would be clarified as being valid for up to three "consecutive" years.

Changes are proposed eliminate redundancy in the code. N.J.A.C. 7:27-16.11(a), (b) and (c) would be deleted as they are duplicative of provisions promulgated in N.J.A.C. 7:27-8. A number of changes are proposed to correct punctuation or typographical errors or to use a consistent style for format, syntax, grammar, or use of terms. Also the word "equipment" would be changed to "device" in the definition of the term "equipment" in N.J.A.C. 7:27-16.1, in order to avoid using a word to define itself.

In order to be technically consistent, in the footnote to Table 1 and 1A in N.J.A.C. 7:27-16.2, "70°" would be changed to "standard conditions".

In order to be consistent with the requirements for applications established in N.J.A.C. 7:27-8, N.J.A.C. 7:27-16.10(b) would establish that applications for variances, pursuant to N.J.A.C. 7:27-16.10(a), are subject to the certification requirements set forth in N.J.A.C. 7:27-8.24; and N.J.A.C. 7:27-16.10(f) would establish that any applicant who is aggrieved by a departmental decision on an application for a variance may request an adjudicatory hearing pursuant to N.J.A.C. 7:27-8.12.

Additionally, some changes are proposed to achieve more consistent definition of terms throughout the air pollution control code. The definitions of thirteen terms in N.J.A.C. 7:27-16.1 including "air contaminant," "control apparatus," "conveyorized surface cleaner," "Department," "equipment," "facility," "liquid particles," "person," "source operation," "stack or chimney," "standard conditions," "storage tank," and "surface cleaner", would be revised to be consistent with the definitions promulgated in N.J.A.C. 7:27-8. The definition of the term "gasoline" in N.J.A.C. 7:27-16.1 would be revised to be consistent with definition promulgated in N.J.A.C. 7:27-25. The definition of the term "Reid vapor pressure" in N.J.A.C. 7:27-16.1 would be revised to be consistent with proposed revisions to N.J.A.C. 7:27-25. Five new terms are proposed to be added to N.J.A.C. 7:27-16.1; "certificate," "operating certificate," "temporary operating certificate," "EPA," and "permit" which have been previously promulgated in N.J.A.C. 7:27-8. Two new definitions, "solvent" and "exempt organic substance," are proposed in N.J.A.C. 7:27-16.1 to support new terms proposed for use in 16.4 and 16.5. A new definition, "ASTM," is proposed in N.J.A.C. 7:27-23 and 7:27B-3, consistent with the definition of this term proposed for inclusion in N.J.A.C.

7:27-25. Associated changes are proposed in N.J.A.C. 7:27-8.1, 17.1 and 23.2; N.J.A.C. 7:27A-3; and N.J.A.C. 7:27B-3 to ensure that terms set forth in these amendments to N.J.A.C. 7:27-16.1 are defined consistently in these other rules.

New penalty schedules at N.J.A.C. 7:27A-3 are proposed to support proposed provisions of N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), 16.8(f), 16.8(g) and 16.9(a).

Persons subject to this subchapter who fail to conform with its requirements may be subject to administrative consequences, such as denial or revocation of approval of a permit or certificate pursuant to N.J.A.C. 7:27-8.6 and 10. Such persons may also be subject to civil penalties in accordance with N.J.A.C. 7:27A-3 and criminal penalties pursuant to N.J.S.A. 2C-28.3.

¹See Office of Air Quality Planning and Standards, USEPA Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, May 25, 1988.

²Office of Air Quality Planning and Standards, USEPA "Design Criteria to Stage I Vapor Control Systems Gasoline Service Stations," Research Triangle Park, North Carolina, November 1975.

³Memorandum, Tyler, Director CPDD, EPA. VOC Equivalency Calculations—Clarification of Requirements. March 9, 1984; and Memorandum, Rhoads, Director CPDD, EPA. Procedure to Calculate Equivalency with the CTG Recommendations for Surface Coating. May 5, 1980; and Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture. EPA-450/2-77-032. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. December 1977. OAQPS No. 1.2-086.

⁴Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products. EPA-450/2-78-015. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, June 1978. OAQPS No. 1.2-101; and Guidance to State and Local Agencies in Preparing Regulations to Control Volatile Organic Compounds from Ten Stationary Source Categories, EPA-450/2-004, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. June 1978. OAQPS No. 1.2-101; and Federal Register, Volume 54, No. 102, May 30, 1989, p. 22915; Federal Register, Volume 54, No. 22, February 3, 1989, p. 5449; and Federal Register, Volume 55, No. 77, April 20, 1990 p. 14972; and Federal Register, Volume 55, No. 187, September 26, 1990, p. 39270.

Social Impact

Subchapter 16 regulates and controls the emissions of VOC, which are part of the pollutant "soup" that reacts to form ground-level ozone in the outdoor atmosphere. The EPA has established a health-based National Ambient Air Quality Standard hourly average of 0.12 parts per million for ozone. This has been exceeded every summer since the subchapter went into effect. Attainment of this standard will have a positive social impact by alleviating the effects of exposure on the inhabitants and environment of New Jersey to ozone concentrations above the standard.

Exposure to ozone in concentrations greater than the NAAQS may cause a decrease in pulmonary function in humans, as evidenced by chest pain, coughing and wheezing, and result in lung damage. Ozone also increases the ability of an inhaled, infection virus to survive within the lungs. In addition to the adverse effect on the lungs' ability to resist infections, laboratory studies have also shown that ozone accelerates the lungs' aging process.

New Jersey's exceedance of the ozone NAAQS is a serious public health concern. A reduction of the ambient ozone in New Jersey will produce a corresponding reduction of respiratory problems associated with exposure to the current ambient ozone concentration. The amendments being proposed will ensure greater effectiveness of this rule in controlling VOC emissions from commercial and industrial sources and the subsequent reduction in ozone concentrations.

Economic Impact

The proposed amendments will result in a variety of economic benefits and costs, as discussed in more detail below.

For affected surface coating or graphic arts operations, compliance can be achieved either by using coating formulations which comply with the VOC limit or by add-on control apparatus. The costs incurred will depend upon the choice for control. Switching to water-based coatings may result in decreased costs since the formulations are nonflammable and may have a lower purchase price. Cleanup and waste disposal costs may also be reduced. The capital cost of control equipment, installation charges, and annual operating cost would vary with the facility's flue gas volume flow

rate and the VOC content of the ink or coating. Add-on controls will likely be more costly than reformulation. The most commonly used add-on controls are thermal oxidation and carbon absorption.

The record keeping requirements included in these proposed amendments would impose costs on the persons responsible for operating the sources subject to these requirements. The Department estimates that these costs range between \$120.00 and \$3,700 annually for each source operation, depending upon the source category. The \$120.00 estimate is for record keeping for a storage tank. The \$3,700 estimate is for record keeping for a surface coating operation or a manufacturing operation which emits VOC. Persons who would not conform with the proposed record keeping requirements would be subject to the penalties proposed at N.J.A.C. 7:27A-3. However, the ready availability of the required information should alleviate certain monitoring and enforcement costs incurred by the EPA and the Department.

Persons who manufacture high performance architectural coatings may be subject to costs of reformulation, and persons who use non-conforming high performance architectural coatings may be subject to additional control costs. However, persons who manufacture and use other types of high performance architectural coatings have been subject to equivalent costs for several years.

The elimination of the provisions authorizing "bubble" permits would impact only those sources included in existing bubbles with emissions exceeding allowed limits and which are not controlled or are controlled inadequately. The Department estimates that approximately 77 sources will have to be brought into compliance or shut down. The costs involved will vary depending on the method chosen to achieve single-source compliance. The Department anticipates that the 14 facilities will collectively reduce their VOC emissions, as a result of the deletion of the "bubble" provisions by over 2000 tons per year at costs that may range from \$2,000 to \$6,000 per ton.

Facilities which use railroad tank cars as long-term storage tanks will incur emission control costs for these tank cars similar to the cost of controlling any other storage tank. Railroad tank cars exposed to the rays of the sun and used for VOC storage at a facility for more than 30 days would be required to be painted white. The Department estimates that the painting of each railroad tank car would cost approximately \$1,000. Railroad tank cars generally have a capacity between 10,000 and 25,000 gallons. Railroad tank cars would be required to have a conservation vent if they have a maximum capacity greater than 10,000 gallons but not greater than 40,000 gallons, and store at a facility for 30 days or more VOC having a vapor pressure greater than or equal to 11.5 pounds per square inch absolute at 70 degrees Fahrenheit. Railroad tank cars also would be required to have a conservation vent if they have a maximum capacity greater than 20,000 gallons but not greater than 45,000 gallons, and store at a facility for 30 days or more VOC having a vapor pressure between 10.5 and 11.5 pounds per square inch absolute at 70 degrees Fahrenheit. The Department estimates that the cost of installing a conservation vent is between \$600 and \$900.

Certain gas stations which now have an average monthly throughput of over 10,000 gallons of gasoline, but which did not have this throughput level during the originally promulgated September 1, 1986, to August 31, 1987, period would have to incur the costs of installing Stage II vapor control apparatus. In 1987, the Department estimated the approximate capital cost for equipment and installation and the approximate annual operating cost, in 1985 dollars, for Stage II vapor control apparatus for facilities with monthly throughputs of 10,000 and 200,000 gallons of gasoline. The capital cost was projected to be \$7,000 and \$18,000, respectively, and the annual operating cost was projected to be \$300 and \$1,600, respectively.

To the extent that these amendments contribute to reducing the occurrence of elevated ambient ozone levels, they would contribute to preventing the adverse effects that result from such high ozone concentrations. The protection of public health and the prevention of injury to crops, ecosystems, and materials thus accorded is a positive economic contribution.

The proposed amendments also include administrative changes and clarifications from which the Department expects no significant economic impact.

Environmental Impact

The rule amendments set forth in this proposal will have a positive environmental impact. Certain of the changes proposed will themselves result in the reduction of the emission of VOC, which is a precursor to the formation of ambient ozone. Additionally, addressing the EPA-identified deficiencies, as is done herein, is part of a larger process of im-

plementing the SIP for ozone. The final objective of this plan is the attainment in New Jersey of the NAAQS for ozone.

Elevated ozone concentrations not only pose threats to public health; they also injure plants and damage materials. Foliar damage to sensitive plants is one of the earliest and most obvious manifestations of ozone injury in the environment. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in the ambient ozone concentration will help relieve damage to plants and, thereby, improve agricultural productivity and support healthier growth of both natural vegetation and ornamental planting. Due to its oxidizing ability, ozone also degrades rubber, textiles, dyes and paints. Natural rubbers and synthetic polymers become hard or brittle at a faster rate by oxidation at elevated ozone concentrations than by oxidation by atmospheric oxygen. Attainment of the ozone ambient air quality standard is expected to mitigate the increased rate of degradation of natural and man-made materials.

Although the administrative changes and clarifications included in these amendments may establish no new emission control requirements, they may foster greater compliance with the rule. For example, the record keeping requirements may strengthen facilities' self-monitoring and voluntary compliance and also facilitate compliance monitoring and enforcement by the Department and EPA. Clarification of testing requirements and methods of determining control efficiency should reduce failure to conform with intended requirements due to ambiguities in the rule.

Deletion of the "high performance architectural coating category" in Table 3B will result in some reduction of emissions from the application of coatings on aluminum architectural extrusions and panels. Establishing a date for the expiration of "bubble" permits and requiring thereafter each individual source included in these bubbles to comply with promulgated standards or cease operation will result in substantial emission reductions; the 14 facilities with bubble permits currently in effect are expected, on an average, to reduce their emissions by 150 tons per year. This is substantially greater than 25 tons of VOC per year definition of a major source for serious ozone nonattainment areas. Some additional VOC emission reductions should also be achieved by requiring railroad tank cars used at a facility as storage tanks to meet applicable storage tank emission control requirements. New gas stations and some gas stations which are increasing in their throughput may, due to the change in the 12-month period by which applicability of the vapor recovery provisions are determined, be required to install Stage II vapor control apparatus and thereby reduce their emission of VOC.

These proposed amendments therefore can be expected to prevent and control the emission of VOC and help protect the environment from the adverse effects caused by exposure to elevated ozone concentrations.

Regulatory Flexibility Analysis

In proposing those few amendments that may result in an increased cost to some small businesses in New Jersey, the Department has considered the need to protect the environment and human health against any economic impact of the amendments on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 16:14B-1 et seq. These would include small businesses which have storage tanks, transfer operations, surface coating and graphic arts operations, petroleum solvent dry cleaning operations, and other types of operations subject to the provisions of Subchapter 16. These operations would be required to keep records pursuant to the proposed provisions of N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), and 16.8(g). Also, gasoline service stations which now have an average monthly throughput of over 10,000 gallons, but which did not have this average monthly throughput during the period of September 1, 1986, to August 31, 1987, would be required to install Stage II control apparatus. This requirement would apply to those service stations which were not in operation or which have increased their average monthly throughputs since the period of September 1, 1986 to August 31, 1987. Another affected group would be small businesses which operate surface coating source operations that apply surface coating formulations subject to the "high performance architectural coating" standard set forth in Table 3B in N.J.A.C. 7:27-16.5. Such operations would be required to use surface coating formulations which comply with the more stringent "extreme performance coating" standard or to install control apparatus. However, none of the 14 facilities to which mathematical combination of source gases (or "bubble") permits have been issued are small businesses, and the Department anticipates that the expiration of the permit approvals for "bubbled" sources would have no impact on small businesses.

In preparing these amendments, the Department has determined that the effect of the amendments on affected small business is reasonable.

No exemption from coverage can be provided if the full effect of these amendments is to be achieved. Also, most of these proposed amendments are required by the Federal Clean Air Act and were identified by EPA as deficiencies in Subchapter 16. Failure to adopt these amendments could subject New Jersey to economic sanctions which would affect both small and large businesses.

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

CHAPTER 27 [BUREAU OF] AIR POLLUTION CONTROL

7:27-8.1 Definitions

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

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This term includes, but is not limited to, [equipment] a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Mathematical combination" means the summation, pursuant to N.J.A.C. 7:27-16.6, of the air contaminant emissions from two or more stacks or chimneys and the regulation of those emissions as if they came from the same sources venting through a single stack or chimney.]

"Source operation" means any process or any identifiable part thereof [having the potential] that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere.

"Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of materials by using VOC solvents in liquid or vapor state.

"Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emissions limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which evaporates from the coating during the application and drying phase. This term does not include: methane, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), and chloropentafluoroethane (CFC-115).

"Volatile organic substances" or "VOS" means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances defined as volatile organic substances in N.J.A.C. 7:27-16.1.]

7:27-8.2 Applicability

(a) New or altered equipment and control apparatus for which a permit and an operating certificate are required, pursuant to the provisions of N.J.A.C. 7:27-8.3, include:

1.-8. (No change.)

9. Stationary storage tanks which have a capacity of 2,000 gallons or greater and which are used for the storage of [volatile organic substances] VOC having a vapor pressure or sum of partial pressures of 0.02 pounds per square inch absolute (1 millimeter of mercury) or greater at standard conditions;

10.-14. (No change.)

15. Waste or water treatment equipment which may emit air contaminants, including, but not limited to, air stripping equipment,

eration basins, and surface impoundments. A permit is not required for:

i. Any water treatment equipment if the concentration of each TXS included in N.J.A.C. 7:27-17 does not exceed 100 parts per billion by weight and the total concentration of [VOS] VOC does not exceed 3,500 parts per billion by weight;

- ii.-iv. (No change.)
16.-17. (No change.)
(b) (No change.)

7:27-8.11 Service fees

(a) Any person subject to the provisions of this subchapter shall submit with each application for a permit, an operating certificate or a renewal thereof, [or a mathematical combination,] or with a request for an amendment or a banking service, as an integral part thereof, a non-refundable base service fee in accordance with the Base Fee Schedule.

(b) Prior to taking final action on any application for a permit, an operating certificate or renewal thereof, [or a mathematical combination,] on any request for an amendment or a banking service, the Department will invoice each applicant for any additional fees due to the Department, assessed in accordance with the Base Fee Schedule and the Supplementary Fee Schedule. The applicant shall submit any fees so assessed to the Department within 60 days of receipt of the invoice.

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

A. BASE FEE SCHEDULE

Table with 3 columns: ACTIVITY, BASIS, AMOUNT. Rows include 1.-5. (No change.), 6. Mathematical Combination (Bubble), a. Engineering Review, b. Implement Public Comment Requirement.

B. SUPPLEMENTARY FEE SCHEDULE

(No change.)

SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC [SUBSTANCES] COMPOUNDS

7:27-16.1 Definitions

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

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases [which are discharged into the outdoor atmosphere].

"Certificate" means either an operating certificate or a temporary operating certificate.

"CFR" means the Code of Federal Regulations.

"Conservation vent" means any valve designed and use to reduce evaporation losses of [VOS] any VOC by limiting the amount of air admitted to, or vapors released from, the vapor space of a closed storage vessel.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Conveyorized surface cleaner" means a surface cleaner [in] through which the parts to be cleaned are moved [through the] by means of a continuous, automatic system.

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

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device capable of causing the emission of an air contaminant [into] either directly or indirectly to the outdoor atmosphere, and any stack[,], or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This [shall include equipment] term includes, but is not limited to, a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Exempt organic substance" means an organic substance which is one of the chemical compounds specifically not included in the term "volatile organic compound" or "VOC" as defined in this section.

"Facility" means the combination of all structures, buildings, equipment, storage [vessels] tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

"Freeboard chiller" means a heat exchanger mounted on a surface cleaner freeboard to provide a chilled air layer immediately above the [VOS] VOC vapor space to reduce [VOS] VOC emissions.

"Freeboard height" means [1. The] the vertical distance from either the [VOS] VOC liquid level to the lip of an unheated open top surface cleaner; 2. The vertical distance] or from the interface of the [VOS] VOC vapor with the air to the lip of a vapor surface cleaner.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenated blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater and used as an automotive fuel.

[High performance architectural coating" means a fluoropolymer resin-based coating which meets the Architectural Aluminum Manufacturers Association, Publication Number 605.2-85; "Voluntary Specifications for High Performance Organic Coatings on Architectural Extrusions and Panels" and is applied to aluminum extrusions or panels.]

"Liquid particles" means particles which have volume but are not of rigid shape [and which, upon collection, tend to coalesce and create uniform homogeneous films upon the surface of the collecting media].

"Operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2, which is valid for a period of five years from the date of issuance, unless sooner revoked by the Department.

"Particles" means any material, except uncombined water, which exists [in a finely divided form] as liquid particles or solid particles at standard conditions.

"Permit" means a "Permit to Construct, Install or Alter Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2.

"Person" means corporations, companies, associations, societies, firms, partnerships, and joint stock companies, as well as individuals, and [also shall include] all political subdivisions of this State or any agencies or instrumentalities thereof.

"Petroleum distillate" means any mixture of [VOS] VOC produced by condensing vapors of petroleum during distillation, including, but not limited to, naphthas, aviation gasoline, motor gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum solvents.

"Receiving vessel" means any vessel into which a [VOS] VOC is introduced including, but not limited to, storage tanks, delivery vessels, and manufacturing process vessels.

"Reid vapor pressure" or "RVP" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees centigrade (°C)) as measured by [the standard test method set forth in the American Society for Testing and Materials (ASTM) Designation D 323 or approved equivalent] "Method 1—Dry RVP Measurement Method" or "Method 2—Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other test method approved in advance in writing by the Department and the EPA.

"Seal-envelope combination" means a barrier to the passage of [VOS] VOC vapors between a floating roof and the inner surface of a storage vessel wall, consisting of a seal which maintains constant contact with the wall as the floating roof rises and descends with the level of the stored [VOS] VOC, and a membrane, diaphragm, fabric, or blanket, known as an envelope, which spans the gap between the floating roof and the seal and which is vapor-tight.

"Source operation" means any [manufacturing] process[,] or any identifiable part thereof[, emitting an] that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere [through one or more stacks or chimneys].

"Stack or chimney" means a flue, conduit or opening designed, constructed or utilized for the purpose of emitting any air [contaminants] contaminant into the outdoor atmosphere.

"Standard conditions" means[, or shall be,] 70 degrees Fahrenheit (°F) (21.1 degrees centigrade (°C)) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"Storage tanks" means any tank, reservoir, or vessel which is a container for liquids or gases, wherein [no]:

1. No manufacturing process, or part thereof, other than filling or emptying takes place; and
2. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or the chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the temperature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

"Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of [non-porous or non-absorbent] materials by using [VOS] VOC solvents in liquid or vapor state.

"Surface coating formulation" means the material used to form a protective, functional, or decorative film including, but not limited to, paint, varnish, ink, [and] or adhesive, applied to [a solid surface in order to achieve a finished coating] or impregnated into a substrate.

"Surface coating formulation as applied" or "coating as applied" means the volume, in gallons or liters, of any surface coating formulation used in a surface coating operation, including any diluents or thinners added.

"Surface coating operation" means the application [and solidification] of [a] one or more surface coating [formulation] formulations, using one or more coating applicators, together with any associated drying or curing areas. A single surface coating operation ends after drying or curing and before other surface coating formulations are applied. For any web coating line, this term means an entire coating application system, including any associated drying ovens or areas between the supply roll and take-up roll, that is used to apply surface coating formulations onto a continuous strip or web.

"Temporary operating certificate" means a "Certificate to Operate Control Apparatus or Equipment" issued by the Department pursuant to the Air Pollution Control Act of 1954, specifically N.J.S.A. 26:2C-9.2, which is valid for a period not to exceed 90 days.

"Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which evaporates from the coating during the application and drying phase. This term does not include, methane, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), and chloropentafluoroethane (CFC-115).

["Volatile organic substances," herein abbreviated VOS, means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners which have vapor pressures or sums of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions; and, in the case of surface coating formulations, includes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2 trichloro-1,2,2 trifluoroethane, 1,2 dichloro-1,1,2,2 tetrafluoroethane, and chloropentafluoroethane.]

7:27-16.2 Storage of volatile organic [substances] compounds

(a) General provisions are:

1. No person shall cause, suffer, allow or permit the storage of [a VOS] any VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch absolute (1 millimeter of mercury) or greater at standard conditions in any stationary storage tank having a maximum capacity [greater than] of 2,000 gallons (7,570 liters) or greater exposed to the rays of the sun unless the external surface of the tank is painted and maintained white.

2. (No change.)

(b) No person shall cause, suffer, allow or permit the storage of a [VOS] any VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch absolute (1 millimeter of mercury) or greater at standard conditions in any stationary storage tank having a maximum capacity of 10,000 gallons (37,850 liters) or greater unless such stationary storage tank is equipped with control apparatus as determined in accordance with the procedures for using Table I or as approved by the Department as being equally or more effective in preventing the emission of a [VOS] VOC into the outdoor atmosphere.

PROCEDURE FOR USING TABLE I

- | | |
|---------|---|
| Step 1: | Determine the vapor pressure at standard conditions in pounds per square inch absolute of the [VOS] VOC to be stored. |
| Step 2: | (No change.) |
| Step 3: | (No change.) |
| Step 4: | (No change.) |
| Step 5: | (No change.) |

TABLE I

DETERMINANTS OF TYPE CONTROL APPARATUS REQUIRED FOR STORAGE OF VOLATILE ORGANIC [SUBSTANCES] COMPOUNDS

(No change.)

*[VOS] Any VOC which [have] has a vapor pressure of 0.02 pounds per square inch absolute at [70°F shall be] standard conditions is included in this line.

(c) No person shall cause, suffer, allow, or permit the storage of [a VOS] any VOC having a vapor pressure of greater than 13.0 pounds per square inch absolute (672 millimeters of mercury) at the actual temperature existing at or near the liquid surface in any stationary storage tank having a maximum capacity of 1,000 gallons (3,785 liters) or greater unless such tank is equipped with a vapor control system to reduce the rate of [VOS] the VOC emissions to the outdoor atmosphere by at least 90 percent by weight of the process emission rate.

(d) No person shall cause, suffer, allow, or permit the storage of [a VOS] any VOC in any stationary storage tank subject to the provisions of either (b) above in Ranges II and III or (c) above and equipped with gauging and/or sampling systems unless such systems are vapor-tight except when gauging or sampling is taking place.

(e) The provisions of (b) or (c) above shall not apply to a stationary storage tank in Range II located underground at a depth of no less than eight inches (20.3 centimeters) below the surface measured to the highest point of the tank shell, or installed in other manner approved by the Department as being equally or more effective in preventing the emission of [VOS] any VOC into the outdoor atmosphere.

(f) The provisions of (a) above shall apply to any storage tank:
1. (No change.)

2. Equipped with a vapor control system reducing by at least 98 percent the weight of [VOS] VOC emissions to the outdoor atmosphere.

(g) Any stationary storage tank in Range III as determined from Table 1, constructed or installed on or after December 17, 1979, shall be provided with a double seal floating roof or other control apparatus approved by the Department as being equally or more effective in preventing the emission of [VOS] any VOC into the outdoor atmosphere.

(h) No person shall cause, suffer, allow, or permit the storage of [a VOS] any VOC in any stationary storage tank equipped with an external floating roof, unless:

1. Prior to June 15, 1990, any such storage tank having a maximum capacity of 40,000 gallons (151,400 liters) or greater is equipped with control apparatus as determined in accordance with the procedure for using Table 1A or as approved by the Department as being equally or more effective in preventing the emission of [VOS] any VOC into the outdoor atmosphere.

2. As of June 15, 1990, and continuously thereafter, any such storage tank containing a [VOS] VOC having a vapor pressure of 1.0 pounds per square inch absolute (50 millimeters of mercury) or greater at standard conditions and having a maximum capacity of 20,000 gallons (75,700 liters) or greater is equipped with a double seal-envelope combination or equipment approved by the Department as being equally or more effective in preventing the emission of [VOS] any VOC into the outdoor atmosphere. For the secondary seal, the gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the seal and the tank wall shall not exceed 1.0 square inch per foot (6.5 square centimeters per 0.3 meters) of tank diameter.

Procedure for Using Table 1A

- Step 1: Determine the vapor pressure at standard conditions in pounds per square inch absolute of the [VOS] VOC to be stored.
- Step 2: (No change.)
- Step 3: (No change.)
- Step 4: (No change.)
- Step 5: (No change.)
- Step 6: (No change.)

TABLE 1A

DETERMINANTS OF REQUIREMENTS FOR SECOND SEAL RETROFITS ON EXTERNAL FLOATING ROOF STORAGE TANKS CONTAINING VOLATILE ORGANIC [SUBSTANCES] COMPOUNDS

(No change.)

*[VOS] Any VOC which [have] has a vapor pressure of 0.02 pounds per square inch absolute at [70°F shall be] standard conditions is included in this line.

(i) Prior to June 15, 1990, no person shall cause, suffer, allow, or permit the storage of [a VOS] any VOC having a vapor pressure of greater than 1.5 pounds per square inch absolute (75 millimeters of mercury) at standard conditions in any stationary storage tank having a maximum capacity of greater than 40,000 gallons (151,400 liters) and equipped with an external floating roof having a vapor-mounted primary seal unless such tank is equipped with a second seal-envelope combination. The gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the secondary seal and the tank wall shall not exceed 1.0 square inch per foot of tank diameter (6.5 square centimeters per 0.3 meters of tank diameter).

(j)-(k) (No change.)

(l) No person shall cause, suffer, allow, or permit the storage of [VOS] any VOC in any stationary storage tank equipped with an external floating roof unless all openings in such roof, excluding emergency roof drains, are covered when not in active use.

(m) Any delivery vessel, [excluding a railroad tank car,] used at a facility for storing [VOS] any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions for more than [one month] 30 consecutive days shall be considered a stationary storage tank for the purposes of this Section.

(n) Any person responsible for the emission of any VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions from any storage tank pursuant to this section shall maintain, for each tank, records specifying each VOC stored, the vapor pressure of each VOC at standard conditions, the annual throughput of each VOC, and the dates on which the tank is used to store each VOC.

7:27-16.3 Transfer operations

(a) No person shall cause, suffer, allow, or permit the transfer of any [VOS] VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions into any receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater [total capacity] unless such transfer is made through a submerged fill pipe or by other means approved by the Department as being equally or more effective in preventing the emission of [VOS] any VOC into the outdoor atmosphere during transfer. By no later than December 31, 1986, such submerged fill pipe shall be permanently affixed to any underground storage tank of 2,000 gallons (7,570 liters) or greater total capacity into which gasoline is transferred.

(b) (No change.)

(c) No person shall cause, suffer, allow, or permit the transfer of gasoline from any delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater [capacity] unless such storage tank is equipped with and operating one of the following controls:

- 1. A vapor balance system with all atmospheric vents positively closed during transfer; [or]
- 2. A vapor balance system with a conservation vent adjusted to remain closed during transfer; [or]
- 3. A vapor balance system with a drilled cap on the atmospheric vent, the drilled hole not to exceed ¼ inch (6.4 millimeters) in diameter; [or]
- 4. A vapor control system which reduces by no less than 90 percent by volume the air-vapor mixture displaced during the transfer of gasoline and which demonstrates to the satisfaction of the Department achievement of this control efficiency through testing performed when the ambient air temperature is 80 degrees Fahrenheit (°F) (27 degrees centigrade (°C)) or greater; or
- 5. A floating roof or equivalent approved by the Department and the EPA.

(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. (No change.)
2. Facilities loading more than 15,000 gallons (56,775 liters) of gasoline per day shall be equipped with and operating a vapor control system which:
 - i. Prevents [VOS] VOC emissions to the outdoor atmosphere from exceeding the maximum allowable emissions as determined from Table 2; or
 - ii. Reduces the total VOC emissions [of VOS] to the outdoor atmosphere by no less than 90 percent by weight.

TABLE 2

EMISSION STANDARDS FOR GASOLINE LOADING FACILITIES LOADING MORE THAN 15,000 GALLONS (56,775 LITERS) PER DAY

Concentration of [VOS] VOC in Gas Displaced from Delivery Vessel, Volume Percent	Maximum Allowable Emissions per Volume Unit Loaded
(No change.)	(No change.)

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 VOC 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 VOC emissions [of VOS] to the outdoor atmosphere by no less than 95 percent by weight.
 - iii. (No change.)
5. For facilities subject to (e)4i or ii above, by 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 VOC emissions [of VOS] to the outdoor atmosphere by no less than 95 percent by weight.
 - (f) Unless in compliance with (g), (h), (r), (s), (t), and (u) below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline vapor laden vehicular fuel tank unless the transfer is made using a vapor control system that is approved by the Department and that is designed, operated, and maintained so as:
 1. To prevent [VOS] VOC emissions to the outdoor atmosphere by no less than 95 percent by weight at all gasoline dispensing facilities except those facilities exempted in (g) below; and
 2. (No change.)
 - (g) (No change.)
 - (h) Any person subject to the provisions of (f) above shall comply with the following provisions:
 1. The average monthly throughput shall be based on the average of the monthly throughputs between September 1, 1986, and August 31, 1987, or during the most recent twelve months of operation, whichever is greater; and
 2. (No change.)
 - (i)-(j) (No change.)
 - (k) No person shall cause, suffer, allow, or permit [VOS] any VOC to be emitted into the outdoor atmosphere during a transfer of gasoline, subject to the provisions of (c), (d), (e), and (f) above, from leaking components of vapor control systems or delivery vessels being loaded or unloaded if:
 - 1.-2. (No change.)

- (l) (No change.)
 - (m) No person shall cause, suffer, allow, or permit the transport of any [VOS] VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater [total capacity] unless such vessel is vapor-tight at all times [which] while containing [VOS] any VOC except:
 - 1.-3. (No change.)
 - (n)-(u) (No change.)
 - (v) Notwithstanding the provisions of (r) above, any person responsible for an existing gasoline dispensing facility which had not previously been required to install a vapor recovery system pursuant to (f) above and which has an average monthly throughput, as determined by (h) above, of greater than 10,000 gallons as of, or after, the effective date of these amendments shall comply with the following schedules:
 1. Within 3 months of exceeding the average monthly throughput of 10,000 gallons, the applicant, pursuant to the provisions of N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;
 2. Within 9 months of exceeding the average monthly throughput of 10,000 gallons, construction of the equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter, Control Apparatus or Equipment" shall commence; and
 3. Within 18 months of exceeding the average monthly throughput of 10,000 gallons, compliance with (f) above shall be achieved.
 - (w) Any person responsible for any gasoline loading facility subject to (e)1, 2, or 3 above shall maintain the following records:
 1. On a daily basis, record the total quantity, in gallons or liters, loaded into delivery vessels at the facility;
 2. On a continuous basis or at a frequency approved by the Department in writing:
 - i. For any thermal oxidizer used to control the emission of VOC, record the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; or
 - ii. For any control apparatus using carbon or other adsorptive material, record the concentration of the total VOC, measured as methane, in the flue gas emitted to the outdoor atmosphere; or, on a daily basis, the date and time the carbon or other adsorptive material used in any control apparatus is regenerated or replaced; and
 3. Upon the request of the Department and at the frequency specified by the Department, record any other operating parameter relevant to the prevention or control of air contaminant emissions from the facility.
- 7:27-16.4 Open top tanks and surface cleaners
- (a) No person shall cause, suffer, allow, or permit the use of [VOS] any VOC in [any] an unheated or heated open top tank unless such tank is covered by a lid which protects the [VOS] VOC vapors from drafts and diffusion when the tank is not in active use.
 - (b) No person shall cause, suffer, allow, or permit the use of [VOS] any VOC in [any] an unheated open top surface cleaner having a top opening of more than six square feet (0.56 square meters) but not more than 25 square feet (2.3 square meters) unless such cleaner:
 1. Has a visible high-level liquid mark which shall not be exceeded by the contained [VOS] VOC; [and]
 2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid [VOS] VOC returns into the surface cleaner [VOS] VOC bath; [and]
 3. Is devoid of any flushing wand which produces [VOS] any VOC droplets or mist or which delivers a stream of [VOS] any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge); [and]
 4. Is devoid of any agitating system which causes splashing of [VOS] the VOC; and
 5. (No change.)
 - (c) No person shall cause, suffer, allow, or permit the use of [VOS] any VOC in [any] an unheated open top surface cleaner having a top opening of more than 25 square feet (2.3 square meters) unless such cleaner:

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1. Has a visible high-level liquid mark which shall not be exceeded by the contained [VOS] VOC; [and]

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid [VOS] VOC returns into the surface cleaner [VOS] VOC bath; [and]

3. Is devoid of any flushing wand which produces [VOS] any VOC droplets or mist or which delivers a stream of [VOS] any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge); [and]

4. Is devoid of any agitating system which causes splashing of [VOS] the VOC; and

5. Blocks drafts from contact with [VOS] VOC vapors by:
i.-ii. (No change.)

(d) No person shall, cause, suffer, allow, or permit the use of [VOS] any VOC in [any] a heated open top tank which is operated at a temperature lower than the boiling point of such [VOS] VOC unless such tank:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained [VOS] VOC; [and]

2. Is devoid of any agitating system which causes splashing of [VOS] the VOC; [and]

3. Is devoid of any flushing wand which produces [VOS] any VOC droplets or mist or which delivers a stream of [VOS] any VOC under line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge); [and]

4. Blocks drafts from contact with [VOS] VOC vapors by:
i. (No change.)

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens[.]; and

5. Has a thermostat or approved equivalent which automatically maintains the [VOS] solvent temperature below the boiling point.

(e) No person shall cause, suffer, allow, or permit the use of [VOS] any VOC in [any] an open top vapor surface cleaner unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained liquid [VOS] VOC; [and]

2. Is equipped with a rack or mechanism for ensuring that all of the draining liquid [VOS] VOC returns into the surface cleaner [VOS] VOC bath; [and]

3. Is devoid of any flushing wand which produces [VOS] any VOC droplets or mist or which delivers a stream of [VOS] any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge); [and]

4. Is devoid of any agitating system which causes splashing of [VOS] the VOC; [and]

5. Blocks drafts from contact with [VOS] VOC vapors by:
i. (No change.)

ii. Having a freeboard ratio of 0.5 or greater, and being separated from other activities, and from open windows and doors by means of walls or screens[.];

6. Has a visible high-level vapor mark which shall not be exceeded by the [VOS] VOC; [and]

7. Is free from the influence of any local exhaust ventilation system unless such ventilation system collects at least 80 percent by volume of the [VOS] VOC vapors leaving the cleaner, and reduces the vapors collected by at least 85 percent by volume; [and]

8. Is free from the influence of any positive pressure source located within 20 feet (6.1 meters) of the tank rim unless the cleaner is equipped with and operates a means of collecting at least 80 percent by volume of the [VOS] VOC vapors leaving the cleaner, and reduces the vapors collected by at least 85 percent by volume; [and]

9. Is operated with a condenser having heat removal capacity equal to or greater than the heat input rate into the liquid [VOS] VOC bath; [and]

10. Is equipped with a device which automatically shuts off the heat input to the [VOS] VOC if the temperature above the condensing surfaces or the temperature of the condensate exceeds the manufacturer's specifications; and

11. (No change.)

(f) No person shall cause, suffer, allow, or permit the use of [VOS] any VOC in [any] an unheated conveyerized surface cleaner unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained [VOS] VOC; [and]

2. Is devoid of any flushing wand which produces [VOS] any VOC droplets or mist or which delivers a stream of [VOS] any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge); [and]

3. Is devoid of any agitating system which causes splashing of [VOS] the VOC; [and]

4. Is protected from drafts when not in active use by the installation of covers over the conveyor inlet and conveyor outlet ports and over any other openings; [and]

5.-6. (No change.)

(g) No person shall cause, suffer, allow, or permit the use of [VOS] any VOC in [any] a conveyerized heated surface cleaner which is operated at a temperature lower than the boiling point of such [VOS] VOC, unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained [VOS] VOC; [and]

2. Is devoid of any flushing wand which produces [VOS] any VOC droplets or mist or which delivers a stream of [VOS] any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge); [and]

3. Is devoid of any agitating system which causes splashing of [VOS] the VOC; [and]

4. Has a thermostat or approved equivalent which automatically maintains the [VOS] VOC temperature below the boiling point; [and]

5. Is protected from drafts when not in active use by the installation of covers over the conveyor inlet and conveyor outlet ports and over any other openings; [and]

6. (No change.)

7. Is equipped with a vapor control system by February 1, 1987, which reduces the total VOC emissions [of VOS] from the cleaner by at least 85 percent by volume.

(h) No person shall cause, suffer, allow, or permit the use of [VOS] any VOC in [any] a conveyerized vapor surface cleaner unless such cleaner:

1. Has a visible high-level liquid mark which shall not be exceeded by the contained liquid [VOS] VOC; [and]

2. Is devoid of any flushing wand which produces [VOS] any VOC droplets or mist or which delivers a stream of [VOS] any VOC under a line pressure in excess of 15 pounds per square inch gauge (776 millimeters of mercury gauge); [and]

3. Is devoid of any agitating system which causes splashing of [VOS] the VOC; [and]

4. Is operated with a condenser having heat removal capacity equal to or greater than the heat input rate into the liquid [VOS] VOC bath; [and]

5. Is equipped with a device which automatically shuts off the heat input to the [VOS] VOC if the temperature above the condensing surfaces or the temperature of the condensate exceeds the manufacturer's specifications; [and]

6. Is protected from drafts when not in active use by the installation of covers over the conveyor inlet and conveyor outlet ports and over any other openings; [and]

7. (No change.)

8. Is equipped with:

i. (No change.)

ii. A vapor control system which reduces the total VOC emissions [of VOS] from the cleaner by at least 85 percent by volume.

(i) No person shall cause, suffer, allow, or permit the use of any oil-water separator unless such separator is covered with a lid while containing [VOS] any VOC. Sections of oil-water separators containing essential powered mechanical devices operating above the liquid level are not subject to this requirement.

(j) No person shall cause, suffer, allow, or permit the use of [VOS] any VOC in [any] an open top tank or surface cleaner unless such use follows written operating, inspection and maintenance instructions prepared in accordance with guidelines issued by the Department.

(k)-(n) (No change.)

(o) The provisions of (a) above shall not apply to:

1. (No change.)

2. Open top tanks used in a waste water treatment system, provided the [VOS] VOC emitted from such tanks does not exceed a concentration of 5,000 parts per million by volume measured at any point above the liquid surface at the height of the tank lip.

7:27-16.5 Surface coating and graphic arts operations

(a) [General provisions for surface coating operations are as follows:]

[1.] No person shall cause, suffer, allow, or permit [VOS emissions from a surface coating operation to exceed the maximum allowable hourly emission rate as determined by multiplying the maximum allowable emissions per volume of coating, minus water, as set forth in Tables 3A, 3B, 3C or 3E of this section, times the volume of coating, minus water, applied per hour.] **the use of any surface coating operation unless:**

1. The VOC content of any surface coating formulation as applied does not exceed the maximum allowable VOC content as specified in Table 3A, 3B, 3C, 3D or 3E; or

2. No person shall cause, suffer, allow, or permit VOS emissions from a surface coating operation included in a mathematical combination of source gases pursuant to N.J.A.C. 7:27-16.6(c) to exceed the maximum allowable hourly emissions rate as determined by the following equation:

$$\text{Allowable} = \frac{[1 - y/d] (z) (x)}{[1 - x/d]}$$

where x = maximum allowable emissions per volume of coating (minus water), pounds per gallon, lb/gal (kilograms per liter, kg/l)

d = density of VOS of the applied surface coating formulation, lb/gal (kg/l)

y = VOS content of the applied surface coating formulation (minus water), lb/gal (kg/l)

z = volume of coating (minus water) applied per hour, gal/hr (l/hr)

[3.]2. If more than one [product] surface coating formulation subject to the same maximum allowable VOC content limit as set forth in the applicable table [is manufactured on] is applied by a single surface coating [line, a weighted daily mean of the emissions can be calculated to demonstrate compliance.] operation, the daily weighted mean of the VOC content of the coatings as applied does not exceed the maximum allowable VOC content as set forth in Table 3A, 3B, 3C, 3D or 3E, as calculated using the following equation:

$$\text{Daily mean VOC content} = \frac{\sum_{i=1}^n (c_i) (v_i)}{\sum_{i=1}^n (v_i)}$$

where n = number of coatings, subject to the same maximum allowable VOC content standard, applied in one day;

i = subscript denoting an individual surface coating formulation;

c_i = maximum actual VOC content per volume of each coating (minus water) applied in one day, in pounds per gallon or kilograms per liter; and

v_i = volume of each coating (minus water) applied in one day, in gallons or liters;

3. If the surface coating operation is served by VOC control apparatus:

i. The control apparatus prevents no less than 90 percent by weight of the VOC content in the surface coating formulation as applied each

hour from being discharged directly or indirectly into the outdoor atmosphere;

ii. The control apparatus results in an hourly VOC emission rate no greater than the maximum allowable hourly rate calculated in accordance with the following equation:

$$\text{Maximum allowable hourly rate} = (1 - y/d) (z) (x)/(1 - x/d)$$

where x = maximum allowable VOC content per volume of coating (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 3A, 3B, 3C, 3D, or 3E of this section;

d = density of the VOC of the applied surface coating formulation in pounds per gallon or (lb/gal) kilograms per liter (kg/l);

y = VOC content of the applied surface coating formulation (minus water) in pounds per gallon (lb/gal) or kilograms per liter (kg/l); and

z = volume of the coating (minus water) applied per hour in gallons per hour (gal/hr) or liters per hour (l/hr); or

iii. For a surface coating operation that applies more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in the applicable table, the control apparatus collects and prevents VOC from being discharged into the outdoor atmosphere so that the actual daily emissions are less than the allowable daily emissions as calculated below:

$$\text{Actual daily emissions} = (1NcNd) (\text{VOC}_a) (V)$$

where: VOC_a = daily mean VOC content of the surface coating formulations as calculated by 2 above;

V = total daily volume of the surface coating formulations, as applied;

Nc = capture efficiency, i.e. the ratio of the VOC collected by the control apparatus to the VOC in the surface coating formulations as applied, as determined by a method approved by the Department and EPA; and

Nd = destruction efficiency of the control apparatus, i.e. the ratio of the VOC prevented from being discharged into the outdoor atmosphere to the VOC collected by the control apparatus, as determined by a method approved by the Department and EPA; and

$$\text{Allowable daily emissions} = (1 - \text{VOC}_a/d) (V) (x)/(1 - x/d)$$

where: x = maximum allowable VOC content per volume of coating (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table 3A, 3B, 3C, 3D, or 3E of this section;

d = density of the VOC of the applied surface coating formulations in pounds per gallon (lb/gal) or kilograms per liter (kg/l);

V = total daily volume, in gallons or liters, of the surface coating formulations (minus water) as applied per day; and

VOC_a = daily mean VOC content of the applied surface coating formulations as calculated by 2 above; or

4. Until two years from the effective date of these amendments, the surface coating operation is included in a mathematical combination of sources which was approved by the Department prior to the effective date of these amendments, pursuant to N.J.A.C. 7:27-16.6(c)4-6.

[4. The provisions of 2 above shall become effective immediately upon promulgation for any surface coating operation included in a

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mathematical combination of source gases for which the maximum allowable hourly emission rate is greater when calculated by 2 above than when calculated by 1 above.]

(b) (No change.)

(c) The provisions of (a) and (b) above and (f), (g), and (h) below shall not apply to any individual surface coating or graphic arts operation in which the total surface coating formulations containing [VOS] VOC are applied:

1.-3. (No change.)

(d) Any person responsible for any automobile or light duty truck surface coating operation [subject to the emission standards specified in Table 3A pertaining to spray prime and spray topcoat surface coating formulations] may, as an alternative to [the maximum allowable emissions] complying, pursuant to (a) above, with the content limits set forth in Table 3A, comply with the provisions of Table 3C pertaining to spray prime and spray topcoat surface coating formulations, provided that the transfer efficiency of the spray coating operation is determined in accordance with a method approved by the Department and the EPA.

TABLE 3A
MAXIMUM ALLOWABLE [EMISSIONS] VOC CONTENT IN COATINGS
FOR AUTOMOBILE AND LIGHT DUTY TRUCK
SURFACE COATING OPERATIONS

Type of Operation	Maximum Allowable [Emissions] VOC Content Per Volume of Coating (Minus Water)		Final Compliance Date
	Pounds Per Gallon	Kilograms Per Liter	
(No change.)	(No change.)	(No change.)	(No change.)

TABLE 3B
MAXIMUM ALLOWABLE [EMISSIONS] VOC CONTENT IN COATINGS
FOR MISCELLANEOUS SURFACE COATING OPERATIONS

Type of Operation	Maximum Allowable [Emissions] VOC Content per Volume of Coating (minus water)	
	Pounds per Gallons	Kilograms per Liter
Group I		
Can Coating		
Sheet basecoat	2.8	0.34
Two-piece can exterior		
Two- & three-piece can interior body spray, two-piece and exterior	4.2	0.51
Side-seam spray	5.5	0.66
End sealing compound	3.7	0.44
Coil Coating	2.6	0.31
Fabric Coating	2.9	0.35
Vinyl Coating	3.8	0.45
Paper Coating	2.9	0.35
Metal Furniture Coating	3.0	0.36
Magnet Wire Coating	1.7	0.20
Large Appliance Coating	2.8	0.34
Miscellaneous Metal Parts and Products		
Clear coating	4.3	0.52
Air-dried coating	3.5	0.42
Extreme performance coating	3.5	0.42
[High performance architectural coating	5.9	0.71]
All other coatings	3.0	0.36
Flat Wood Paneling		
Printed hardwood plywood panels and particleboard panels	2.7	0.32
Natural finish hardwood plywood	3.3	0.40
Hardboard panels	3.6	0.43
Group II		
Leather Coating	5.8	0.70
Urethane Coating	3.8	0.45
Tablet Coating	5.5	0.66
Glass Coating	3.0	0.36

TABLE 3C
 ALTERNATIVE MAXIMUM ALLOWABLE [EMISSIONS] VOC CONTENT IN COATINGS
 WITH MINIMUM TRANSFER EFFICIENCIES REQUIRED
 FOR SPRAY COATING OPERATIONS

Maximum Allowable [Emissions] VOC Content per Volume of Coating (minus water)	Minimum Transfer Efficiency Required
(No change.)	(No change.)

TABLE 3D
 MAXIMUM ALLOWABLE [EMISSIONS]
 VOC CONTENT IN COATINGS
 FOR GRAPHIC ARTS [SOURCES] SOURCE OPERATIONS

Basis	Control Criterion
For formulations that contain water[:]:	Maximum Allowable volume percent [VOS] VOC in volatile fraction of coatings ([VOS] VOC plus water) as applied[, maximum]. Volume Percent 25.0
or	
For formulations that do not contain water[:]:	[The] Maximum Allowable [emissions] VOC Content per volume of formulation (minus water) Pounds per Gallon 2.9 Kilograms per Liter 0.35

TABLE 3E
 MAXIMUM ALLOWABLE [EMISSIONS] VOC CONTENT IN COATINGS
 FOR WOOD FURNITURE SURFACE COATING OPERATIONS

Type of [Operation] Surface Coating Formulation (No change.)	Maximum Allowable [Emissions] VOC Content per Volume of Coating (minus water) (No change.)
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(e) Any person [subject to emission standards specified in Table 3B, Group I pertaining to] **responsible for any metal furniture [coating] or large appliance surface coating operation** may, as an alternative to complying with the applicable maximum allowable VOC content limits per volume of coating (minus water) set forth in Group I of Table 3B, pursuant to (a)1 above, apply to the Department for an alternative maximum allowable [emission rate] VOC content limit per volume of coating, provided [the owner or operator] such person can demonstrate to the [Department's] satisfaction of the Department and the EPA that the surface coating [formulations are] formulation is applied at a transfer efficiency of greater than 60 percent.

(f) Any person [subject to an emission limitation] **responsible for a rotogravure, flexographic, or fabric printing source operation** may, as an alternative to complying with the requirements set forth in Table 3D [who reduces VOS emissions by means other than reformulation of the surface coating formulation shall comply with the following requirements], pursuant to (a)1 above, install and use control apparatus to serve the source operation which:

1. [Collect] Collects at least 75 percent by volume of the source gas emitted from a rotogravure printing operation and [prevent] prevents from being discharged into the outdoor atmosphere at least 90 percent by volume of the [VOS] VOC collected on an hourly basis; [or]
2. [Collect] Collects at least 70 percent by volume of the source gas emitted from a flexographic printing operation and [prevent] prevents from being discharged into the outdoor atmosphere at least 90 percent by volume of the [VOS] VOC collected on an hourly basis; or
3. [Collect] Collects at least 70 percent by volume of the source gas emitted from a fabric printing operation and [prevent] prevents from being discharged into the outdoor atmosphere at least 90 percent by volume of the [VOS] VOC collected on an hourly basis.

(g) [Any] **Notwithstanding the provisions of (a)3.ii and (a)4 above,** any person [subject to the emission limitations] **responsible for a tablet coating operation that uses a surface coating formulation that does not comply with the maximum allowable VOC content limits per volume of coating (minus water)** set forth in Table 3B, Group II [for tablet coating who reduces VOS emissions by means other than reformulation of the surface coating formulation], shall [reduce the total emissions of VOS to the outdoor atmosphere by] **install and use control apparatus which prevents** no less than 90 percent by weight [on an hourly basis] of the VOC content in the surface coating formulation as applied each hour from being discharged directly or indirectly into the outdoor atmosphere.

(h) Any person [subject to an emission limitation set forth in Table 3E] **responsible for a wood furniture surface coating operation** shall comply with the following requirements:

1. At a facility emitting less than 50 tons (45.36 megagrams) of [VOS] VOC per year, each surface coating formulation specified in Table 3E shall be applied [at an average transfer efficiency of 40 percent or greater] using airless, air-assisted airless, or heated airless spray techniques, or another application method approved by the Department and the EPA as having a transfer efficiency of at least 40 percent; or
2. At a facility emitting 50 tons (45.36 megagrams) of [VOS] VOC or greater per year, [the combination of all] each surface coating [formulations] formulation specified in Table 3E shall be applied [at an average transfer efficiency of 65 percent or greater] using airless, air-assisted airless, heated airless, electrostatic spray techniques, or flat line processes, or another application method approved by the Department and the EPA as having a transfer efficiency of at least 65 percent.

(i) Any person **responsible for an automobile or light duty truck surface coating operation** subject to [an emission limitation] a VOC

content limit for custom topcoating or refinishing set forth in Table 3A of this section shall comply with the following schedule:

1.-4. (No change.)

(j) Any person responsible for a surface coating operation subject to [(a)2 above or an emission limitation] a VOC content limit set forth in Table 3B, Group II for leather coating, urethane coating, tablet coating, glass coating; in Table 3D for fabric or urethane printing operations; or in Table 3E for wood furniture coating, shall comply with the following schedule:

1.-4. (No change.)

(k) (No change.)

(l) Any person responsible for the emission of any VOC from any surface coating operation subject to this section applying only surface coating formulations which are subject to and conform with the applicable VOC content limit set forth in Table 3A, 3B, 3C, 3D, or 3E shall maintain records of the VOC content of each surface coating formulation (minus water) as applied, in pounds of VOC per gallon of coating or kilograms of VOC per liter of coating; the percent by weight of any exempt organic substance; and the daily volume of each surface coating formulation applied.

(m) Any person responsible for any surface coating operation, which is subject to this section and which uses one or more surface coating formulations which do not conform with the applicable VOC content limit set forth in Table 3A, 3B, 3C, 3D, or 3E, shall maintain the following records:

1. On a daily basis, specification of the following for each surface coating formulation as applied:

- i. The number of hours applied;
- ii. The volume applied;
- iii. The density of the formulation;
- iv. The density of the VOC in the formulation;
- v. The percent by weight of VOC in the formulation;
- vi. The percent by weight of any exempt organic substance in the formulation; and
- vii. The percent by weight of any water in the formulation;

2. For any surface coating operation that has a thermal oxidizer used to control the emission of VOC, record on a continuous basis or at a frequency approved in writing by the Department the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere;

3. For any surface coating operation that has a control apparatus using carbon or other adsorptive material to control the emission of VOC:

- i. Record on a continuous basis or at a frequency approved in writing by the Department the concentration of the total VOC, measured as methane, in the flue gas emitted to the outdoor atmosphere; or
- ii. Record the date and time the carbon or other adsorptive material used in the control apparatus is regenerated or replaced; and maintain any other information required to document whether the control apparatus is being used and maintained in accordance with the manufacturer's recommended procedures. The manufacturer's recommendations for use and maintenance are to be readily available on the operating premises, and the person responsible for the surface coating operation shall provide these to the Department upon request; and

4. Upon the request of the Department and at the frequency specified by the Department, record any other operation parameter relevant to the prevention or control of air contaminant emissions from the surface coating operation or control apparatus.

7:27-16.6 Source operations other than storage tanks, transfers, open top tanks, surface cleaners, surface coaters and graphic arts operations

(a) No person shall cause, suffer, allow, or permit [VOS] any VOC to be emitted into the outdoor atmosphere from any source operation not subject to the provisions of N.J.A.C. 7:27-16.2, 16.3, 16.4, 16.5, 16.7, and 16.8, of this subchapter, in excess of the maximum allowable emission rate as determined in accordance with the procedures for using Table 4.

Procedure for Using Table 4

1. Determine the vapor pressure at standard conditions in pounds per square inch absolute of the [VOS] VOC emitted from the source operation.

2. Determine the percent by volume of the [VOS] VOC in the source gas emitted from the source operation. Whenever dilution gas is added to the source gas from a source operation, the source gas shall be considered to have the gas discharge rate and composition prior to such dilution, in accordance with the following:

i. If the source operation discharges under a ventilation hood, concentration of [VOS] VOC and the flow rate of the source gas may be measured or otherwise determined in the duct connecting the hood to the inlet of the ventilation fan.

ii. If the emissions and ventilation air are conveyed through ducts from the source operation to the outdoor atmosphere with no interruption, the concentration of [VOS] VOC and the rate of the source gas are to be determined inside the ducts.

iii. For all other source operations including, but not limited to, evaporation from steps in chemical manufacturing processes, the concentration of [VOS] VOC and the rate of the source gas shall be measured at a point no farther than six inches (15 centimeters) downstream from the point at which the vapors leave the process equipment.

3. From Table 5, find the source gas range classification by selecting the appropriate line for the vapor pressure as determined in Step 1 and the appropriate column for the percent [VOS] VOC as determined in Step 2.

4. (No change.)

5. The maximum allowable emission rate shall be the pounds (kilograms) per hour (or per batch cycle hour) equivalent to the percent of the process emissions shown in Column 2 or:

i. (No change.)

ii. As of June 15, 1990, and continuously thereafter, the Exclusion Rate shown in Column 4, whichever is greater.

TABLE 4

MAXIMUM ALLOWABLE HOURLY VOC EMISSIONS [FOR VOS] FROM SOURCE OPERATIONS

(No change.)

TABLE 5

DETERMINATIONS OF CONTROLS REQUIRED FOR PROCESS SOURCE GASES

Concentration of [Organic Substance] VOC by Volume, Percent

(No change.)

(b) The provisions of (a) above shall not apply to a source gas in Range A or B discharged into the outdoor atmosphere through a local exhaust ventilation system whose intake is located within six inches (15 centimeters) of the point at which the source gas is discharged to an internal work space, provided such exhaust ventilation system:

1. (No change.)

2. Is equipped with a vapor control system which prevents from being discharged into the outdoor atmosphere at least 85 percent by volume of the [VOS] VOC collected, on an hourly basis.

(c) For the purpose of this section:

1.-3. (No change.)

4. Until two years from the effective date of these amendments, the [The] provisions of [c(3)] 3 above may apply to source gases which are mathematically combined, providing approval [is] for such a mathematical combination of sources has been obtained from the Department prior to the effective date of these amendments;[. Application for such approval shall be made to the Department in writing and shall include:

i. The identification and vapor pressure at standard conditions of each VOS; and

ii. The concentration by volume and emission rate of each VOS in each source gas; and

iii. The volumetric discharge flow rate and temperature of each source gas.]

5. [The] As of the effective date of these amendments, the Department [may] shall not approve [such] any mathematical combining of source gases [provided]:

i. All source operations from which the source gases are emitted are under the control of, or operated by, one person; and

ii. The sum of the emission rates of the separate source gases does not exceed the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. 7:27-16.5(a), (f), (g) and (h), and 16.6(a) and (b). The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table 4, Column 3 or Column 4;

iii. No source gas stream in Range H having a process emission greater than 1,000 lb/hr (453.6 kilograms/hr) shall be included; and

iv. The proposal involves only active source operations; and

v. Calculations of the allowable and actual hourly combined emission rates are based on the uninterrupted operation at normal production rates of all included source operations. If the same equipment is used for manufacturing more than one product, the source operation having the highest actual emission rate must be included; and

vi. The emissions from any included source subject to Federal New Source Performance Standards does not exceed the allowable emission under those standards; and

vii. The source gases do not contain VOS regulated under National Emission Standards for Hazardous Air Pollutants; and

viii. The application of Lowest Achievable Emission Rate technology to a source operation as required under any applicable Emission Offset Rule or Regulation is not circumvented by the use of emission reduction credits; and

ix. Emission reductions to less than the allowable emission rates are not used simultaneously as credit for an emission offset and for the achievement of the limitation allowable by combining source gases.; and

6. Any approval of a permit or certificate issued by the Department authorizing the demonstration of compliance through a mathematical combination of sources pursuant to N.J.A.C. 7:27-16.6(c)4 shall expire two years from the effective date of these amendments. Any person who, as a result of this expiration, must alter any equipment or control apparatus in order to operate in conformance with any requirement of this subchapter shall do so in accordance with the following schedule:

i. Within 180 days of the effective date of these amendments, apply to the Department for a permit to carry out the alteration; and

ii. Within two years from the effective date of these amendments, comply with the requirements of this Chapter and with any provisions or conditions set forth in any alteration permit issued which authorizes the alteration of the equipment or control apparatus.

(d) No person shall cause, suffer, allow, or permit [VOS] VOC to be emitted from leaking flange gaskets, manhole gaskets, measuring instrument connections, sight glass connections, and other sealed connections, joints, and fittings not involving moving parts.

(e) No person shall cause, suffer, allow, or permit [VOS] VOC to be emitted from leaking valve bonnets, pump packings, compressor packings, and other seals surrounding moving parts:

1.-2. (No change.)

(f) (No change.)

(g) The owner or operator of a natural gas/gasoline processing plant shall develop and initiate an emission testing program for equipment leaks subject to the provisions of (d) and (e) above. The program shall apply to only that equipment in contact with a substance that is 1.0 percent by weight or greater [VOS] VOC and shall include the following provisions:

1.-7. (No change.)

(h) The owner or operator of a synthetic organic chemical or polymer manufacturing facility shall develop and initiate an emission program for equipment leaks subject to the provisions of (d) and (e) above. The program shall apply only to that equipment in contact with a substance that is 10 percent by weight or greater [VOS] VOC and that is used to produce greater than 1,100 tons per year (1,000 megagrams per year) of a synthetic organic chemical or polymer and shall include the following provisions:

1.-7. (No change.)

(i)-(j) (No change.)

(k) After July 1, 1982, for a petroleum refinery, and after July 1, 1987, for a natural gas/gasoline processing plant or a synthetic organic chemical [and] or polymer manufacturing [facilities] facility, no owner or operator shall install or operate a valve, except for safety pressure relief valves, at the end of a pipe or line containing [VOS] VOC unless the pipe or line is sealed with a second valve, a blind flange, a plug or a cap. The sealing device may be removed only when a sample is being taken or during maintenance operations.

(l) (No change.)

(m) Any person responsible for a source operation subject to (a) above shall maintain the following records for each source operation:

1. For each different kind of batch or continuous process for which the source operation is used:

i. Record the following information determined in accordance with the Procedure for Using Table 4 in (a) above; the chemical name and vapor pressure of each VOC used, the percent concentration by volume of VOC in the source gas, the volumetric gas flow rate, the source gas range classification, and the maximum allowable emission rate; also record the maximum actual emission rate and maintain the calculations and any test data used to determine the actual emission rate for each process; and, if the source operation is used for more than one process, record the dates on which the source operation is used for each process; or

ii. Conduct a "worst case" analysis of the source operation which demonstrates that, under "worst case" operating conditions that maximize the potential VOC emission rate, the VOC emission rate of the source operation is in compliance with this section; and maintain process records sufficient to demonstrate whether the VOC emission rate of the source operation from actual operations does not exceed the potential VOC emission rate under "worst case" conditions;

2. For any source operation that has a thermal oxidizer used to control the emission of VOC, record on a continuous basis or at a frequency approved in writing by the Department the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the thermal oxidizer;

3. For any source operation that has a control apparatus using carbon or other adsorptive material used to control the emission of VOC;

i. Record on a continuous basis or at a frequency approved in writing by the Department the concentration of the total VOC, measured as methane, in the flue gas emitted to the outdoor atmosphere; or

ii. Record the date and time the carbon or other adsorptive material used in the control apparatus is regenerated or replaced; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the control apparatus and any other information required to document whether the control apparatus is being used and maintained in accordance with the manufacturer's recommended procedures. The manufacturer's recommendations for use and maintenance are also to be readily available on the operating premises, and the person responsible for the source operation shall provide these to the Department upon request; and

4. Upon the request of the Department and at the frequency specified by the Department, record any other operating parameter relevant to the prevention or control of air contaminant emissions from the source operation or control apparatus.

7:27-16.7 Cutback and emulsified asphalts

(a) No person shall cause, suffer, allow, or permit the use of cutback asphalt or emulsified asphalt containing [VOS] any VOC unless:

1. The material is applied during the periods of January 1 through April 15 or October 15 through December 31; [or]

2. The use is solely as a penetrating prime coat; [or]

3. The emulsified asphalt contains no greater than eight percent [VOS] VOC by volume and is used for mixed-in-place construction; [or]

4. (No change.)

5. The user can demonstrate that there are no emissions of [VOS] VOC from the asphalt under conditions of normal use.

7:27-16.8 Petroleum solvent dry cleaning operations

(a) No person shall cause, suffer, allow, or permit [VOS] any VOC emissions to the outdoor atmosphere from a petroleum solvent dry cleaning dryer unless such dryer is:

1. Equipped with a vapor control system which prevents [VOS] VOC emissions from exceeding 7.7 pounds (3.5 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned; or

2. (No change.)

(b) No person shall cause, suffer, allow, or permit [VOS] any VOC emissions to the outdoor atmosphere from a petroleum solvent filtration system unless:

1. The [VOS] VOC content in all filtration wastes is reduced to no more than 2.2 pounds (1.0 kilograms) per 220 pounds (100 kilograms) dry weight of articles dry cleaned, before disposal, and exposure to the outdoor atmosphere; or

2. (No change.)

(c) No owner or operator of a petroleum solvent dry cleaning facility shall cause, suffer, allow, or permit [VOS] any VOC to be emitted into the outdoor atmosphere from:

1. (No change.)

2. Containers of [VOS] VOC or [VOS-laden] VOC-laden waste standing open to the outdoor atmosphere.

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

(f) The total amount of any VOC consumed by a petroleum solvent dry cleaning operation in each calendar year shall not exceed 9.9 pounds per 220 pounds of dry weight of articles cleaned.

(g) Any person responsible for the emission of any VOC from a petroleum solvent dry cleaning operation subject to this section shall maintain a monthly record setting forth the chemical name of the VOC used in the operation, the volume of VOC consumed in the operation, and the dry weight of articles cleaned.

7:27-16.9 Emission information, record keeping and [tests] testing

(a) Any person subject to any record keeping provision of this subchapter shall maintain the required records for a period of no less than five years and shall make those records available upon the request of the Department or the EPA, or any duly authorized representative of the Department or the EPA.

(b) Any person who owns or operates a source operation subject to any record keeping requirement set forth in this subchapter may submit a request in writing to the Department for approval to maintain records other than those specified at N.J.A.C. 7:27-16.2(n), 16.3(w), 16.5(l), 16.5(m), 16.6(m), or 16.8(g). The Department and EPA may approve any such request if the person demonstrates to the satisfaction of the Department and EPA that the alternate records to be maintained are at least as effective in documenting that the source is operating in compliance with the applicable requirements.

[(a)](c) Any person responsible for the emission of [VOS] VOC shall, upon request of the Department, the EPA, or any duly authorized representative of the Department or the EPA, provide information relating to the location, rate, duration, composition, and properties of the effluent and such other information as the Department may prescribe.

[(b)](d) Any person responsible for the emission of [VOS] VOC shall, upon request of the Department, the EPA, or any duly authorized representative of the Department or the EPA, provide facilities and necessary equipment for determining the quantity and identity of [VOS] any VOC emitted into the outdoor atmosphere and shall conduct such [tests] testing using N.J.A.C. 7:27B-3 or another method [methods] approved by the Department and the EPA. Test data shall be recorded in a permanent log at such time intervals as specified by the Department and shall be maintained for a period of not less than two years and shall be available for review by the Department, the EPA, or any duly authorized representative of the Department or the EPA.

[(c)](e) Any person responsible for the emission of [VOS] VOC shall, upon request of the Department, provide sampling facilities and testing facilities exclusive of instrumentation and sensing devices

as may be necessary for the Department to determine the nature and quantity of [VOS] the VOC being emitted into the outdoor atmosphere. During such testing by the Department, the equipment and all components connected, or attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

[(d)](f) All testing and monitoring pursuant to the provisions of this subchapter shall be conducted using N.J.A.C. 7:27B-3 or another method [methods] approved by the Department and the EPA.

(g) Hourly emissions limits apply to any consecutive 60 minute period, and testing performed to verify compliance shall be based on a 60 minute period during which the equipment or control apparatus is used and operated under conditions acceptable to the Department and consistent with the operational parameters and limits set forth in any permit or certificate in effect.

7:27-16.10 Variances

(a) Whenever a person responsible for the emission of [VOS] any VOC believes that advances in the art of control for the kind and amount of [VOS] VOC emitted have not developed to a degree which would enable the requirements of this subchapter to be attained, [he] such person may apply to the Department in writing for a variance, setting forth [his reasons] any reason and [justifications] justification therefor.

(b) Any person submitting an application for a variance to the Department is subject to the certification requirements set forth at N.J.A.C. 7:27-8.24.

(c) The Department may issue a variance which shall be valid for a period not to exceed three consecutive years from the date of issuance and may be renewed upon application to the Department setting forth reasons and justifications for its continuation.

(d) Variances issued under the provisions of this section shall be conditional [on the] upon:

1. [compliance] Compliance with any requirements which the Department [deems to be necessary] sets forth as conditions of approval; and

2. Approval by the EPA as a revision to the State Implementation Plan.

(e) Variances may be revoked at any time at the discretion of the Department.

[(b)](f) Any [person] applicant aggrieved by the denial or revocation by the Department of a variance [authorized] allowed under the provisions of this section [may, upon application made within 15 days after notice of such denial or revocation, be entitled to a hearing before the Department upon at least 15 days written notice. Within 30 days after the close of such hearing the Department shall issue a notice amending, affirming or rescinding its previous action] may request an adjudicatory hearing pursuant to N.J.A.C. 7:27-8.12.

[7:27-16.11 Permit to construct and certificate to operate]

(a) No person shall construct or install any new equipment, or any new control apparatus, or alter any existing equipment or control apparatus from which VOS are emitted into the outdoor atmosphere without first having obtained a "Permit to Construct, Install or Alter Control Apparatus or Equipment" from the Department, in accordance with the provisions of N.J.A.C. 7:27-8.

(b) No person shall use or cause to be used any new or altered equipment, or any new or altered control apparatus from which VOS are emitted into the outdoor atmosphere without first having been obtained a "Certificate to Operate Control Apparatus or Equipment" from the Department, in accordance with the provisions of N.J.A.C. 7:27-8.

(c) No person shall use or cause to be used any equipment or control apparatus from which VOS are emitted into the outdoor atmosphere unless all components connected, or attached to, or serving the equipment, including control apparatus, are functioning properly and are in use in accordance with any relevant "permit to Construct, Install or Alter Control Apparatus or Equipment" and

any relevant "Certificate to Operate Control Apparatus or Equipment."

(d) Any "Permit to Construct, Install, or Alter Control Apparatus or Equipment" approved by the Department for control apparatus operated for purposes of compliance with this subchapter may contain a provision for the temporary discontinuance of the operation of said control apparatus during the months of November, December, January, February, and March. Approval of such provisions shall be conditional upon factors including, but not limited to, the nature of the pollutant, the energy consumption of the control apparatus and the potential for violating the provisions of Subchapter 5 of this chapter.]

7:27-16.[12]11 Applicability

(a) Whenever persons, equipment, control apparatus or [VOS] any VOC subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter will apply.

(b) Whenever a [VOS] VOC subject to the emission rate provisions of this subchapter is also subject to the emission rate provisions of any other subchapters of this chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

7:27-16.[13]12 Exceptions

(a) (No change.)

(b) The provisions of this subchapter shall not apply to the VOC emissions [of VOS] from the following source operations:

1.-7. (No change.)

SUBCHAPTER 17. CONTROL AND PROHIBITION OF AIR POLLUTION BY TOXIC SUBSTANCES

7:27-17.1 Definitions

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

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases [which are discharged into the outdoor atmosphere].

"CFR" means the Code of Federal Regulations.

"Control apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

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

"Equipment" means any device capable of causing the emission of an air contaminant [into] either directly or indirectly to the outdoor atmosphere, and any stack[,] or chimney, conduit, flue, duct, vent or similar device connected or attached to, or serving the equipment. This [shall include equipment] term includes, but is not limited to, a device in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater and used as an automotive fuel.

"Liquid particles" means particles which have volume but are not of rigid shape [and which upon collection tend to coalesce and create uniform homogeneous films upon the surface of the collecting media].

"Person" means corporations, companies, associations, societies, firms, partnerships, and joint stock companies, as well as individuals, and [also shall include] all political subdivisions of this State or any agencies or instrumentalities thereof.

"Reid vapor pressure" or "RVP" means the absolute vapor pressure of a petroleum product in pounds per square inch (kilopascals) at [100° F] 100 degrees Fahrenheit (°F) (37.8 [°C] degrees centigrade (°C)) as measured by [the standard test method

set forth in the American Society for Testing and Materials (ASTM) Designation D 323 or approved equivalent] "Method 1-Dry RVP Measurement Method" or "Method 2-Herzog Semi-Automatic Method" promulgated at 40 CFR 80, Appendix E; or any other equivalent test method approved in advance in writing by the Department and the EPA.

"Source operation" means any [manufacturing] process[,] or any identifiable part thereof[, emitting an] that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere [through one or more stacks or chimneys].

"Stack or chimney" means a flue conduit or opening designed, constructed, [and/or] or utilized for the purpose of emitting any air [contaminants] contaminant into the outdoor atmosphere.

"Standard conditions" means [or shall be] 70 degrees Fahrenheit (°F) (21.1 degrees centigrade (°C)) and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"Storage tank" means any tank, reservoir, or vessel which is a container for liquids or gases, wherein [no]:

1. No manufacturing process, or part thereof, other than filling or emptying takes place; and

2. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or the chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the temperature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

"Surface cleaner" means a device to remove unwanted foreign matter from the surfaces of [non-porous or non-absorbent] materials by using [VOS] VOC solvents in the liquid or vapor state.

"Surface coating formulation" means the material used to form a protective, functional, or decorative film including, but not limited to, any architectural coating, paint, varnish, ink [and] or adhesive [to be applied to a solid surface] applied to or impregnated into a substrate.

"Surface coating operation" means the application [and solidification] of [a] one or more surface coating [formulation] formulations, using one or more coating applicators, together with any associated drying or curing areas. A single surface coating operation ends after drying or curing and before other surface coating formulations are applied. For any web coating line, this term means an entire coating application system, including any associated drying ovens or areas between the supply roll and take-up roll, that is used to apply surface coating formulations onto a continuous strip or web.

"Toxic [volatile organic] substance" [, herein abbreviated as TVOS,] or "TXS" means a substance listed in Table 1 of this subchapter.

"Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which evaporates from the coating during the application and drying phase. This term does not include: methane, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), and chloropentafluoroethane (CFC-115).

["Volatile organic substances," herein abbreviated as VOS, means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners, excluding methane, which have vapor pressures or partial pressures of organic substances of 0.02 pounds

per square inch absolute (1.0 millimeter of mercury) or more measured at standard conditions; and in the case of surface coating formulations, includes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase.]

7:27-17.3 Storage, transfer, and use of toxic [volatile organic] substances

(a) No person shall cause, suffer, allow or permit any [TVOS] TXS listed in Table 1 to be emitted from any source operation, storage tank, or transfer operation into the outdoor atmosphere unless such equipment and operation is registered with the Department within six months of the effective date of this subchapter. Such registration shall include information relating to vessel sizes, transfer rates, emission rates, operating procedures and other information required by the Department and shall be made on forms provided by the Department.

(b) In cases where the Department determines that the equipment or operating procedures as described in the registration do not represent advances in the art of control for the types and kinds of [TVOS] TXS emitted, the Department will so notify the registrant.

(c) Within three months of such notification, the registrant must advise the Department of measures to be taken for reducing the [TVOS] TXS emissions to a rate or concentration equivalent to advances in the art of control and the schedule for completing such measures.

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

TABLE 1

TOXIC [VOLATILE ORGANIC] SUBSTANCES

- Benzene (Benzol)
- Carbon tetrachloride (Tetrachloromethane)
- Chloroform (Trichloromethane)
- Dioxane (1,4-Diethylene dioxide)
- Ethylenimine (Aziridine)
- Ethylene dibromide (1,2-Dibromoethane)
- Ethylene dichloride (1,2-Dichloroethane)
- 1,1,2,2-Tetrachloroethane (sym Tetrachloroethane)
- Tetrachloroethylene (Perchloroethylene)
- 1,1,2-Trichloroethane (Vinyl trichloride)
- Trichloroethylene (Trichlorethene)

7:27-17.4 Discharge of toxic [volatile organic] substances

(a) No person shall cause, suffer, allow or permit any [TVOS] TXS to be emitted from any source operation into the outdoor atmosphere unless such discharge is:

1.-3. (No change.)

(b) No person shall cause, suffer, allow or permit the emission of a [TVOS] TXS into the outdoor atmosphere from a system, equipment, or control apparatus not approved by the Department as being effective in preventing aerodynamic downwash.

7:27-17.5 Operating instructions

(a) No person shall cause, suffer, allow or permit the use of [TVOS] TXS in any open top tank or surface cleaner unless such use is in conformity with written operating, inspection and maintenance instructions prepared in accordance with guidelines issued by the Department.

(b)-(f) (No change.)

7:27-17.6 Emissions information and tests

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

(c) Any person responsible for the emission of [TVOS] TXS shall, upon request of the Department, provide:

1. (No change.)

2. Facilities and necessary equipment for determining the quantity and identity of [TVOS] TXS emitted into the outdoor atmosphere and shall conduct such tests using methods approved by the Department. Test data shall be recorded in a permanent log at such time intervals as specified by the Department and shall be maintained for a period of not less than two years and shall be available for review by the Department.

3. Sampling facilities and testing facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to determine the nature and quantity of [TVOS] TXS being emitted into the outdoor atmosphere. During such testing by the Department, the equipment and all components connected, or attached to, or serving the equipment shall be used and operated under normal routine operating conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

7:27-17.7 Permit to construct and certificate to operate

(a) No person shall construct or install any new equipment, or any new control apparatus, or alter any existing equipment or control apparatus from which [TVOS] TXS are emitted into the outdoor atmosphere without first having obtained a "Permit to Construct, Install or Alter Control Apparatus or Equipment" from the Department, in accordance with the provisions of subchapter 8 (Permits and Certificates) of this chapter.

(b) No person shall use or cause to be used any new or altered equipment, or any new or altered control apparatus from which [TVOS] TXS are emitted into the outdoor atmosphere without first having obtained a "Certificate to Operate Control Apparatus or Equipment" from the Department, in accordance with the provisions of subchapter 8 (Permits and Certificates) of this chapter.

(c) No person shall use or cause to be used any equipment or control apparatus from which [TVOS] TXS are emitted into the outdoor atmosphere unless all components connected, or attached to, or serving the equipment, including control apparatus, are functioning properly and are in use in accordance with any relevant "Permit to Construct, Install or Alter Control Apparatus or Equipment" and any relevant "Certificate to Operate Control Apparatus or Equipment."

7:27-17.8 Applicability

(a) (No change.)

(b) Whenever persons, equipment, control apparatus or [TVOS] TXS subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter will apply.

(c) Whenever a [TVOS] TXS subject to the provisions of this subchapter is also subject to the provisions of any other subchapters of this chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

7:27-17.9 Exceptions

(a) (No change.)

(b) The provisions of this subchapter shall not apply to any [TVOS] TXS which:

1.-3. (No change.)

SUBCHAPTER 23. [VOLATILE ORGANIC SUBSTANCES IN] PREVENTION OF AIR POLLUTION FROM ARCHITECTURAL COATINGS AND CONSUMER PRODUCTS

7:27-23.2 Definitions

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

"ASTM" means the American Society for Testing and Materials.

"Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any

coalescing or other agent which evaporates from the coating during the application and drying phase. This term does not include: methane, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), and chloropentafluoroethane (CFC-115).

["Volatile organic substance" or "VOS" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances defined as a volatile organic substance in N.J.A.C. 7:27-16.]

7:27-23.3 Architectural coatings

(a) No person shall sell, offer for sale, hold for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating manufactured after January 1, 1990, for Group I coatings and after February 28, 1990, for Group II coatings which contains more than the applicable VOC content limit [of VOS] per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(b) Effective February 28, 1993, no person shall sell, offer for sale, provide or hold for sale within New Jersey any architectural coating which contains more than the applicable VOC content limit [of VOS] per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(c) For a specific architectural coating to which more than one [VOS] VOC content limit in Table 1 is applicable, or for any architectural coating which has anywhere on the coating container, on any sticker or label affixed thereto, or in any sales or advertising literature, any indication that more than one [VOS] VOC content limit in Table 1 is applicable, the most stringent limit is applicable.

(d) (No change.)

(e) (No change.)

(f) Table 1 contains the [VOS] VOC content limits for architectural coatings:

TABLE 1
[VOS] VOC CONTENT LIMITS
FOR ARCHITECTURAL COATINGS

Type of Architectural Coating	Maximum Allowable [VOS] VOC Content Per Volume Of Coating Excluding Water	
	POUNDS PER GALLON	KILOGRAMS PER LITER
GROUP I (No change.)	(No change.)	(No change.)
GROUP II		
Fire retardant coating		
opaque	4.2	0.50
all others	7.1	0.85
Flat architectural coating	2.1	0.25
High heat resistant coating	5.4	0.65
Lacquer	5.7	0.68
Multicolored coating	5.0	0.60
Quick-dry primer, sealer, undercoater	4.2	0.50
Shellac		
clear	6.1	0.73
pigmented	4.6	0.55
Sign paint	3.8	0.45
Stain		
semitransparent	[4.5]4.6	0.55
opaque	2.9	0.35
Tile-like glaze coating	4.6	0.55
Varnish	3.8	0.45
Waterproofing sealer	5.0	0.60
All other architectural coatings	2.1	0.25

7:27-23.5 Labeling requirements

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3, the following shall apply:

1. (No change.)

2. The label on any side of the container except the bottom shall include a statement which specifies the maximum pounds of [VOS] VOC in a gallon of architectural coating as produced by that manufacturer, excluding water and any colorant added to tint bases and after any recommended thinning. For architectural coatings manufactured after August 9, 1991, this statement shall be prominent and in print no smaller than 0.08 inches (two millimeters or eight point) in size.

(b) (No change.)

(c) For labeling purposes only, terms other than [VOS] VOC may be used provided that the volatile organic content level cited on the label is an accurate reflection of [VOS] the VOC content of the coating, as defined in this subchapter.

(d) (No change.)

7:27-23.6 Administrative requirements

(a) (No change.)

(b) Each manufacturer of a consumer product which contains greater than five percent by weight [VOS] VOC and is sold for use in New Jersey shall maintain calendar year records indicating the types of products containing greater than five percent by weight [VOS] VOC produced by that manufacturer for sale in New Jersey, the number of units produced, the [VOS] VOC content by weight per unit and percent weight, and the approximate number of units sold in New Jersey. Within a given product category variations of products that have [VOS] VOC contents within a range of five percent by weight may be combined for the purpose of [recordkeeping] record keeping, provided the maximum weight percent and maximum weight per unit within the product category is recorded. Upon the request of the Department, the manufacturer shall submit, within 90 days of the request, a report on forms obtained from the Department about products sold in New Jersey containing greater than five percent by weight [VOS] VOC. Records sufficient to provide the above information shall be maintained by each manufacturer for five years after each calendar year for which the data is collected.

SUBCHAPTER 25. CONTROL AND PROHIBITION OF AIR POLLUTION BY VEHICULAR FUELS

7:27-25.2 Definitions

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

... "Petroleum distillate" means any mixture of volatile organic [substances] compounds produced by a refining process, including, but not limited to, naphthas, aviation gasoline, motor vehicle gasoline, kerosene, diesel oil, domestic fuel oil, and petroleum products.

CHAPTER 27A
AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

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 defined in N.J.S.A. 26:2C-2 and in N.J.A.C. 7:27.

... ["TVOS"] TXS means [Total Volatile Organic Substances, as defined] a substance listed as a toxic substance in N.J.A.C. 7:27-17.

"Volatile organic compound" or "VOC" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes,

petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which evaporates from the coating during the application and drying phase. This term does not include: methane, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), and chloropentafluoroethane (CFC-115).

["VOS" means Volatile Organic Substances, as defined in N.J.A.C. 7:27-16.]

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

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

(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. Footnotes 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.-4. (No change.)

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	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-5.2(a) Maximum Penalty Per Violation	\$10,000	\$25,000 ⁷	\$50,000 ⁷	\$50,000 ⁷
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 ⁹				
Particulates and other air contaminants				
[VOS] VOC or AAQS	—15% Reduction from Maximum			
EHS, [TVOS] TXS, or NESHAPS	— 5% Reduction from Maximum			
	— 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			

⁷For 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] VOC, AAQS, EHS, [TVOS] TXS, 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.

⁹[VOS] VOC (N.J.A.C. 7:27-16)

EHS (N.J.A.C. 7:31-1)

AAQS (N.J.A.C. 7:27-13)

[TVOS] TXS (N.J.A.C. 7:27-17)

NESHAPS (40 CFR 61)

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6.-7. (No change.)
 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

N.J.A.C. 7:27-8.3(a)

CLASS

Estimated Potential Emission Rate

	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
1. Less than 10 pounds per hour	\$200 ^s	\$400 ^s	\$1,000 ^s	\$3,000 ^s
2. Ten through 22.8 pounds per hour	\$600 ^s	\$1,200 ^s	\$3,000 ^s	\$9,000 ^s
3. Greater than 22.8 pounds per hour	\$1,000 ^s	\$2,000 ^s	\$5,000 ^s	\$15,000 ^s
4. Regulated pursuant to NSPS, NESHAPS PSDAQ, EOR, EHS, and [TVOS] TXS ^s	\$2,000	\$4,000	\$10,000	\$30,000

Citation

N.J.A.C. 7:27-8.3(b)

CLASS

Estimated Potential Emission Rate

	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
1. Less than 10 pounds per hour	\$200 ^s	\$400 ^s	\$1,000 ^s	\$3,000 ^s
2. Ten through 22.8 pounds per hour	\$600 ^s	\$1,200 ^s	\$3,000 ^s	\$9,000 ^s
3. Greater than 22.8 pounds per hour	\$1,000 ^s	\$2,000 ^s	\$5,000 ^s	\$15,000 ^s
4. Regulated pursuant to NSPS, NESHAPS PSDAQ, EOR, EHS, and [TVOS] TXS ^s	\$2,000	\$4,000	\$10,000	\$30,000

Citation

N.J.A.C. 7:27-8.3(d) through (e)1
 (No change.)

Citation

N.J.A.C. 7:27-8.3(e)1 or (e)2

CLASS

Emissions

	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
1. Less than 10 pounds per hour	\$800 ^s	\$1,600 ^s	\$4,000 ^s	\$12,000 ^s
2. From 10 through 22.8 pounds per hour	\$1,200 ^s	\$2,400 ^s	\$6,000 ^s	\$18,000 ^s
3. Greater than 22.8 pounds per hour	\$2,000 ^s	\$4,000 ^s	\$10,000 ^s	\$30,000 ^s
4. Regulated pursuant to NSPS, NESHAPS PSDAQ, EOR, EHS, and [TVOS] TXS ^s	\$3,000	\$6,000	\$15,000	\$45,000

^sPer Air Contaminant Exceeding Allowable Standard—Revoke Certificate to Operate Under N.J.A.C 7:27-8 (if applicable)

^sBased on Permit, if Applicable, or if Not, Estimate of Air Contaminant with Greatest Emission Rate Without Controls

^sNSPS (40 CFR 60)

NESHAPS (40 CFR 61)

PSDAQ (40 CFR 51)

EOB (N.J.A.C. 7:27-18)

[TVOS] TXS (N.J.A.C. 7:27-17)

EHS (N.J.A.C. 7:31-1)

9.-15. (No change.)

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Interested Persons see Inside Front Cover

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16. The violations of N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic [Substances (VOS)] **Compounds**

(**VOC**), and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.2(a)	External Surface	\$1,000	\$2,000	\$5,000 ¹	\$15,000 ¹
N.J.A.C. 7:27-16.2(b)	Control Apparatus	\$1,000	\$2,000	\$5,000 ¹	\$15,000 ¹
N.J.A.C. 7:27-16.2(c)	Vapor Control System	\$1,000	\$2,000	\$5,000 ¹	\$15,000 ¹
N.J.A.C. 7:27-16.2(d)	Gauging/Sampling	\$500	\$1,000	\$2,500 ¹	\$7,500 ¹
N.J.A.C. 7:27-16.2(g)	Floating Roof	\$2,000	\$4,000	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-16.2(h)	Seal-Envelope	\$2,000	\$4,000	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-16.2(i)	Second Seal	\$2,000	\$4,000	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-16.2(k)	Retrofit Notification	\$500	\$1,000	\$2,500 ¹	\$7,500 ¹
N.J.A.C. 7:27-16.2(l)	Roof Openings	\$600	\$1,200	\$3,000 ¹	\$9,000 ¹
N.J.A.C. 7:27-16.2(n)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.3(a)	Submerged Fill	\$600	\$1,200	\$3,000 ¹	\$9,000 ¹
N.J.A.C. 7:27-16.3(c)	Transfer of Gasoline	\$600	\$1,200	\$3,000 ¹	\$9,000 ¹
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 per day	\$1,000	\$2,000	\$5,000 ¹	\$15,000 ¹
N.J.A.C. 7:27-16.3(e)2	Greater than 15,000 gallons per day	\$5,000	\$10,000	\$25,000 ¹	\$50,000 ¹
N.J.A.C. 7:27-16.3(f)1	[VOS] VOC Emission	\$600	\$1,200	\$3,000 ¹	\$9,000 ¹
N.J.A.C. 7:27-16.3(f)2	Overfill and Spillage	\$1,000	\$2,000	\$5,000 ¹	\$15,000 ¹
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. 7:27-16.3(w)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.4(a)	Tank Lids	\$500	\$1,000	\$2,500	\$7,500 ¹
N.J.A.C. 7:27-16.4(b)	Unheated Surface Cleaner 25 square feet or less	\$500	\$1,000	\$2,500 ¹	\$7,500 ¹
N.J.A.C. 7:27-16.4(c)	Unheated Surface Cleaner greater than 25 square feet	\$1,000	\$2,000	\$5,000 ¹	\$15,000 ¹
N.J.A.C. 7:27-16.4(d)	Heated Tank	\$1,000	\$2,000	\$5,000 ¹	\$15,000 ¹
N.J.A.C. 7:27-16.4(e)	Vapor Surface Cleaner	\$1,500	\$3,000	\$7,500 ¹	\$22,500 ¹
N.J.A.C. 7:27-16.4(f)	Unheated ConveyORIZED Surface Cleaner	\$1,000	\$2,000	\$5,000 ¹	\$15,000 ¹
N.J.A.C. 7:27-16.4(g)	Heated ConveyORIZED Surface Cleaner	\$1,500	\$3,000	\$7,500 ¹	\$22,500 ¹
N.J.A.C. 7:27-16.4(h)	ConveyORIZED Vapor Surface Cleaner	\$2,000	\$4,000	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-16.4(i)	Oil-Water Separator	\$500	\$1,000	\$2,500 ¹	\$7,500 ¹
N.J.A.C. 7:27-16.4(j)	Written Instructions	\$200	\$400	\$1,000	\$3,000 ¹
N.J.A.C. 7:27-16.4(k)	Training Program	\$500	\$1,000	\$2,500	\$7,500 ¹
N.J.A.C. 7:27-16.4(l)	Copies of Instructions	\$300	\$600	\$1,500	\$4,500 ¹
N.J.A.C. 7:27-16.4(m)	Submittal	\$300	\$600	\$1,500	\$4,500 ¹
N.J.A.C. 7:27-16.4(n)	Notification	\$200	\$400	\$1,000	\$3,000 ¹

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Citation

N.J.A.C. 7:27-16.5(a) through (h)
(No change.)

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.5(l)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.5(m)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500

Citation

N.J.A.C. 7:27-16.6(a)
(No change.)

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.6(d)	Leaks (Per Leak)	\$300	\$600	\$1,500 ³	\$4,500 ³
N.J.A.C. 7:27-16.6(e)	Leaks (Per Leak)	\$300	\$600	\$1,500 ³	\$4,500 ³
N.J.A.C. 7:27-16.6(f)	Emission Testing Program	\$5,000	\$10,000	\$25,000 ³	\$50,000 ³
N.J.A.C. 7:27-16.6(g)	Emission Testing Program	\$3,000	\$6,000	\$15,000 ³	\$45,000 ³
N.J.A.C. 7:27-16.6(h)	Emission Testing Program	\$3,000	\$6,000	\$15,000 ³	\$45,000 ³
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. 7:27-16.6(m)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.7	Cutback and Emulsified Asphalts	\$1,000	\$2,000	\$5,000	\$15,000

Citation

N.J.A.C. 7:27-16.8(a)
(No change.)

Citation	Class	First Offense	Second Offense	Third Offense	Fourth 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 ³	\$7,500 ³
N.J.A.C. 7:27-16.8(c)2	Open Containers	\$500	\$1,000	\$2,500 ³	\$7,500 ³
N.J.A.C. 7:27-16.8(f)	Total Emissions	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.8(g)	Record Keeping	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.9(a)	Records Availability	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.9[(a)](c)	Information	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-16.9[(b)](d)	Monitoring	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-16.9[(c)](e)	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000

³Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

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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	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-17.2 through 17.6(a) (No change.)					
N.J.A.C. 7:27-17.6(c)1	Information ([TVOS] TXS)	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-17.6(c)2	Monitoring ([TVOS] TXS)	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-17.6(c)3	Sampling Testing Facilities ([TVOS] TXS)	\$2,000	\$4,000	\$10,000	\$30,000

18.-25. (No change.)

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 provisions violated and the frequency of the violations as follows:

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.S.A. 26:2C-19(e)				
Maximum Penalty Per Violation	\$10,000 ¹	\$25,000 ¹	\$50,000 ¹	\$50,000 ¹
The Maximum penalty may be reduced by applying the following factors:				
1. (No change.)				
2. Magnitude of Problem				
(a) (No change.)				
(b) Nature of Air Contaminants ²				
Particulates & other air contaminants		—15% Reduction from Maximum		
[VOS] VOC or AAQS		— 5% Reduction from Maximum		
EHS, [TVOS] TXS or NESHAPS		— 0% Reduction from Maximum		
(c)-(e) (No change.)				

¹For 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] VOC, AAQS, EHS, [TVOS] TXS, 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.

²[VOS] VOC (N.J.A.C. 7:27-16)
EHS (N.J.A.C. 7:31-1)
AAQS (N.J.A.C. 7:27-13)

[TVOS] TXS (N.J.A.C. 7:27-17)
NESHAPS (40 CFR 61)

CHAPTER 27B

SAMPLING AND ANALYTICAL PROCEDURES

SUBCHAPTER 3. AIR TEST METHOD 3: SAMPLING AND ANALYTICAL PROCEDURES FOR THE DETERMINATION OF VOLATILE ORGANIC [SUBSTANCES] COMPOUNDS FROM SOURCE OPERATIONS

7:27B-3.1 Definitions

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

“ASTM” means the American Society for Testing and Materials.

“Combustion gas” means air which contains less than two ppm of equivalent carbon or methane and is used to support the combustion of [Volatile Organic Substances] VOC in the sample gas.

“Gas chromatograph-flame ionization detector (GC-FID)” means a gas chromatograph instrument equipped with a flame ionization detector and a suitable column to separate the [VOS] VOC. The flame ionization detector must have a heating system capable of preventing any condensation of the sample gas. The flame ionization detector must be capable of meeting or exceeding by demonstration the manufacturer’s specifications.

“Gasoline” means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater and used as an automotive fuel.

“Laboratory standard calibration gases” means three gas mixtures each containing known concentrations of each of the [VOS] VOC in the source gas (except trace components) in the same matrix, if possible, as will be sampled. One mixture is to have greater than, one mixture is to be approximately equal to, and one mixture is to have less than the expected concentration of [VOS] VOC in the source gas. These gases can be certified to \pm two percent by the manufacturer or produced locally by approved techniques if the concentration is confirmed by an independent analysis. The standards must be stable in the matrix and container over their period of use.

“Pure component standards” means a gas mixture consisting of only one [VOS] VOC in an inert gas. A separate mixture is required for each [VOS] VOC suspected in the sources gas.

“Reid vapor pressure” or “RVP” means the absolute vapor pressure of a petroleum product [at 100°F (37.8°C) as measured by the standard test method set forth in the American Society for Testing and Materials (ASTM) Designation D323-79 (N.J.A.C. B-3.18, Reference 3) or approved equivalent pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e)] in pounds per square inch (kilopascals) at 100 degrees Fahrenheit (°F) (37.8 degrees Centigrade (°C)) as measured by “Method 1-Dry RVP Measurement Method” or “Method 2-Herzog Semi-Automatic Method” promulgated at 40 CFR 80, Appendix E; or any other test method approved in advance in writing by the Department and the EPA.

[“Source” or “source operations”] “Source operation” or “Source” means any process[,] or any identifiable part [of a process, emitting an] thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere [through one or more stacks or chimneys].

“Standard conditions” means 70 degrees Fahrenheit (°F) (21.1 degrees centigrade (°C)) and one atmosphere pressure (14.7 [psia] pounds per square inch absolute or 760 [mm Mercury or 29.92 inches Mercury] millimeters of mercury).

“Surface coating formulation” means the material used to form a protective, functional, or decorative film including, but not limited to any architectural coating, paint, varnish, ink, [and] or adhesive, applied to [a solid surface in order to achieve a finished coating] or impregnated into a substrate.

“Volatile organic compound” or “VOC” means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances that participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by approved test methods. This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which evaporates from the coating during the application and drying phase. This term does not include: methane, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114), and chloropentafluoroethane (CFC-115).

[“Volatile organic substance” (VOS) means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners which have vapor pressures or sums of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions; and, in the case of surface coating formulations, includes any coalescing or other agent, regardless, of vapor pressure, which evaporates from the coating during the drying phase: but, does not include methane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2 trichloro-1,2,2 trifluoroethane, 1,2 dichloro-1,1,2,2 tetrafluoroethane, and chloropentafluoroethane.]

7:27B-3.2 Sampling and analytical protocol: acceptable test methods

(a) When N.J.A.C. 7:27-8, 7:27-16, [or] 7:27-17, or 7:27-23 requires a source emissions test, the applicant shall submit a written protocol to the Department at least 30 days prior to the date of the test, to the following address:

Chief, Bureau of Technical Services
[Section]
Division of Environmental Quality
Department of Environmental Protection
CN 411

380 Scotch Road
Trenton, New Jersey [08628] 08625-0411

(b)-(h) (No change.)

(i) For determining the quality and quantity of [VOS] VOC from source operations, the prescribed test procedures shall be as follows:
1. For a single known [VOS] VOC: Procedures for the Direct Measurement of [VOS] VOC Using a Flame Ionization Detector or a Photoionization Detector or a Non-Dispersive Infrared Analyzer (N.J.A.C. 7:27B-3.7).

2. For a mixture of known [VOS] VOC in known proportion: Procedures for the Direct Measurement of [VOS] VOC Using a Flame Ionization Detector, a Photoionization Detector or a Non-Dispersive Infrared Analyzer (N.J.A.C. 7:27B-3.7).

3. For a mixture of known [VOS] VOC in unknown proportions: Procedures for the Direct Measurement of [VOS] VOC Using a Gas Chromatograph with Flame Ionization Detector or other suitable detector (N.J.A.C. 7:27B-3.8).

4. For a mixture containing unknown [VOS] VOC: A procedure has not been included in the test methods, but an analysis using a gas chromatograph with a mass spectrometer will be required and conducted in accordance with established procedures by a qualified

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operator. Prior to any such test, the Department must receive and approve a written protocol from the operator.

5. For a known or unknown [VOS] VOC in a stack where condensation is present, isokinetic sampling will be required. A procedure has not been included in these test methods, but sampling using an approved modified particulate train will be required, which shall be submitted for Departmental review pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

(j) (No change.)

(k) Whenever a volume flow rate must be determined to establish mass emission rates of [VOS] VOC or for any other reason, the methods prescribed in N.J.A.C. 7:27B-1, AIR TEST METHOD 1 (N.J.A.C. 7:27B-3.18 Reference 1), or other flow determining method[,] which shall be submitted for Departmental review pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

7:27B-3.4 Sampling facilities

(a) The following sampling facilities shall be provided by the party responsible for the emissions:

1.-3. (No change.)

4. Any other facilities exclusive of instrumentation and sensing devices as may be necessary for the Department to accurately determine the emissions of [VOS] VOC from the source operation; and 5.-6. (No change.)

7:27B-3.5 Source operations and applicable test methods

The following chart sets forth the applicable test methods, shown by section designation, for the various source operations that are regulated by N.J.A.C. 7:27-8, 7:27-16, [and] 7:27-17, and 7:27-23:

Source Operation	Applicable Test Methods						
	Vapor Pressure	Efficiency of Control Apparatus	Leaks From Source	Emissions From Source	[VOS] VOC Content	Leak Tightness of Delivery Vessel	Recovered Solvent Flow Rate
Storage of [VOS] VOC	3.6	3.7 3.8 3.9	3.14				
Transfer Operations	3.6	3.16	3.15	3.11		3.13	
Open Top Tanks and Surface Cleaners	3.6	3.7 3.8 3.9		3.7 3.8 3.9			
Surface Coating Operations		3.7 3.8 3.9		3.7 3.8 3.9	3.10		
Source Operations Other than Storage Tanks, Open Top Tanks and Surface Outers	3.6	3.7 3.8 3.9	3.14	3.7 3.8 3.9			
Cutback and Emulsified Asphalt					3.12		
Petroleum Solvent Dry Cleaners				3.7 3.8 3.9	3.17		3.17

7:27B-3.6 Procedures for the determinations of vapor pressures of a single known [VOS] VOC or mixtures of known and/or unknown [VOS] VOC

(a) The vapor pressure of a single known [volatile organic substance] VOC shall be determined as follows:

1. The vapor pressure of certain single known [VOS] VOC may be found in the following, or other sources which shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e), and may be used provided the vapor pressure was measured and the [VOS] VOC was certified by the manufacturer or by the National Bureau of Standards as being of or equivalent to research grade.

i.-v. (No change.)

2. In the absence of the referenced data above, the vapor pressure of the single [VOS] VOC may be determined by the following methods:

i. [ASTM Designation D 323-79, "Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method)"] "**Method 1-Dry RVP Measurement Method**" or "**Method 2-Herzog Semi-Automatic Method**" promulgated at 40 CFR 80, Appendix E; or any other test Method approved in writing by the Department and the EPA, (N.J.A.C. 7:27B-3.18, Reference 3). This method may be used only if the sensitivity of the pressure measuring device is sufficient for the vapor pressure level. The results must be converted to and reported as the true vapor pressure at standard conditions (N.J.A.C. 7:27B-3.18, Reference [3] 5); or

ii. (No change.)

(b) The vapor pressures of mixtures of known [volatile organic substances] VOC in known proportions shall be determined as follows:

1. Data on partial pressure for certain mixtures of [VOS] VOC are published in the International Critical Tables and in scientific journals. The vapor pressure of a mixture which has been reported in such sources will be acceptable provided the source is documented by a reprint which shall be submitted for review by the Department, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

2. The vapor pressure may also be determined by the method set forth in (a)2i[,] above. The Reid method is [specific for] **applicable to volatile crude oil and volatile nonviscous petroleum products [but is adaptable to] and other mixtures of [VOS] VOC.** For petroleum and petroleum distillates, refer to American Petroleum Institute (API) Bulletin 2517, "Selecting the Proper Nomograph" (N.J.A.C. 7:27B-3.18, Reference 5). The Reid vapor pressure can be converted to true vapor pressure at standard conditions. For mixtures other than petroleum and petroleum distillates, the resulting Reid vapor pressure may be converted to true vapor pressure at standard conditions using Table 1.

TABLE 1

CONVERSION OF REID VAPOR PRESSURES TO TRUE VAPOR PRESSURES

Reid Vapor Pressure Psia	True Vapor Pressure Psia
1	0.5
2	1.1
3	1.7
4	2.3
5	2.9
6	3.6
7	4.2
8	4.8
9	5.5
10	6.1
11	6.7
12	7.4
13	8.0
14	8.6
14.7	9.0

NOTE: Straight-line interpolation is to be used for intermediate values. Applicable for [volatile organic substance(s)] VOC other than petroleum and petroleum distillates.

(c) The vapor pressure of mixtures of known and/or unknown [volatile organic substance] VOC shall be determined as follows:
1.-3. (No change.)

7:27B-3.7 Procedures for the direct measurement of volatile organic [substances] **compounds** using a flame ionization detector (FID), a photoionization detector (PID) or a non-dispersive infrared analyzer (NDIR)

(a) The method in this section is applicable for the determination of the concentration and the mass emission rate of a known [VOS] VOC or a mixture of known [VOS] VOC in known proportions in systems with constant emissions and flow rates. For the same circumstances as described above, the procedures specified in N.J.A.C. 7:27B-3.8 or 3.9 may be used in place of this method. Any other alternative test method shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) (No change.)

(c) The following is a summary of this method:

1. The instrument is calibrated with standard gas mixtures to establish the instrument response to the [VOS] VOC being analyzed. A representative sample of the source gas is drawn into the instrument under conditions which prevent any condensation of the source gas and which remove particulate matter. The response is recorded at specific intervals during the test period, and the true concentration of the [VOS] VOC is calculated from previously determined response factors. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sampling period, and the mass emission rate of the [VOS] VOC is calculated and reported as pounds per hour.

2. (No change.)

(d) The following is a list of equipment used in this method:

1.-4. (No change.)

5. Detector: a total hydrocarbon analysis instrument having a flame ionization, a photoionization or a non-dispersive infrared detector and a sampling system capable of preventing any condensation of the sample gas. The detector must be capable of meeting or exceeding the manufacturer's specifications by demonstration, preferably by the manufacturer, and the other specifications listed below:

i. Linearity: the instrument response to the [VOS] VOC being measured shall not deviate from linearity by more than five percent of the full scale value of the range being used.

ii.-iv. (No change.)

6.-10. (No change.)

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation shall be conducted to establish certain basic information including, but not limited to: sampling location; stack temperature and pressure; stack gas moisture content; approximate particulate concentrations; composition of the gases; and the identification and approximate concentrations of the [VOS] VOC to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available.

2.-3. (No change.)

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each [VOS] VOC and calculate a weighted average molecular weight if more than one [VOS] VOC is present.

2. Calculate the total gas flow rate from the source in SCFM (70°F and 1 atm) including the contribution of the [VOS] VOC and any moisture present.

3. (No change.)

4. Calculate the concentration of [VOS] VOC as the standard as follows:

C ([VOS] VOC as std.) = Instrument Response × RF
 5. Calculate the emission rate in lbs/hr. expressed as the laboratory standard calibration gas.

$$\frac{\text{lbs. [VOS] VOC}}{\text{hr}} = \frac{\text{Avg. C ppm ([VOS] VOC as std.)} \times \text{SCFM} \times \text{MW (std.)} \times 60 \text{ (min/hr)}}{387 \times 10^6}$$

Where:

C ppm (std) = the concentration in ppm of the standard mixture.

Avg. C ppm ([VOS] VOC as std.) = average parts per million of [VOS] VOC over the test period as laboratory standard calibration gas.

MW (std) = molecular weight of laboratory calibration standard (pounds per pound-mol).

SCFM = cubic feet per minute at 70°F and 1 atm emitted from the source operation.

387 = molar volume at standard conditions in cubic feet per pound-mol.

RF = response factor for [VOS] VOC.

NOTE: This formula is based upon the assumption that both the standards and the sample have been passed through the same sampling system and are diluted by the same amount.

(g) The test report shall include the following information submitted on the required reporting forms in Appendix B (any alternative reporting form shall be submitted to the Department for review prior to use pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1.-7. (No change.)

8. The emission rate measured in lbs/hr of each [VOS] VOC for each test;

9.-10. (No change.)

7:27B-3.8 Procedures for the direct measurement of volatile organic [substances] compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

(a) The method in this section is applicable for the determination of the concentrations and the mass emission rates of any known [VOS] VOC in unknown proportions in systems with constant emissions and flow rates. For the same circumstances as described above, the procedure specified in N.J.A.C. 7:27B-3.9 may be used in place of this method. Any other alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

(b) This method is based upon the following principles:

1. Gas chromatography, whereby [VOS] VOC are separated by passing an inert gas stream containing a known volume of the sample gas or a standard gas through a column containing a suitable stationary phase and/or a solid support; and

2. Ionization produced when each [VOS] VOC in the gas sample as eluted from the [gap] gas chromatography is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gas resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the [VOS] VOC. Any alternative detector shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(c) The following is a summary of this method:

1. The GC-FID is calibrated with standard gas mixtures containing each [VOS] VOC being measured to establish the calibration curves and retention times. A representative sample is drawn into the gas sampling loop under conditions which prevent any condensation of the sample gas and which remove particulate matter. The sample is injected into the GC, [and] the responses and retention

times of the individual [VOS] VOC are recorded on a strip chart recorder, and the peak areas of each [VOS] VOC [is] are measured. The peaks are identified from the established retention times. The concentration of each [VOS] VOC is determined by referring to the calibration curve. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sampling period, and the mass emission rate of the [VOS] VOC is calculated and reported as pounds per hour.

2. (No change.)

3. In situations where safety considerations, location, or number of sample points prohibit direct analysis at the [VOS] VOC source, the samples are collected in accordance with the method prescribed in N.J.A.C. 7:27B-3.9 and transported to the GC-FID for analysis.

(d) (No change.)

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation(s) shall be conducted to establish certain basic information including, but not limited to: sampling location; stack temperature and pressure; stack gas moisture content; approximate particulate concentration; composition of the gases[,] and the identification and approximate concentrations of the [VOS] VOC to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available.

2. The instrument shall be calibrated as follows:

i. (No change.)

ii. The operating parameters of the instrument, such as column selections, temperatures, carrier gas flow rate, and chart speed, shall be established for the [VOS] VOC to be measured[,] and verified in the laboratory prior to actual sampling. The conditions selected should produce baseline separation of the individual [VOS] VOC peaks, if possible, but in no case should the height of the valley between the two peaks measured from the baseline to the lowest point in the valley be greater than 30 percent of the height of the shorter of the two peaks. More than one set of conditions may be necessary for complete resolution;

iii.-vii. (No change.)

viii. Repeat steps iv through vii for each calibration gas until two consecutive analyses agree within five percent. The corresponding peak areas for each [VOS] VOC shall then be averaged;

ix. (No change.)

x. Draw a straight line through the points to establish a calibration curve for each [VOS] VOC. Calculate the unknown [VOS] VOC concentrations from their peak areas by reading from the appropriate calibration curve or by multiplying the peak area by the slope of the calibration curve. Extrapolation beyond the calibrated range is not acceptable.

xi. (No change.)

3. (No change.)

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each [VOS] VOC.

2. Calculate the total gas flow rate from the source operation(s) in SCFM (70°F and 1 atm) including the contribution of the [VOS] VOC and any moisture present.

3. Record the individual concentrations (C ppm) and determine the average concentration (C) of each [VOS] VOC in ppm (avg. C ppm) for each test run from the calibration curves.

4. Calculate the emission rate in lbs/hr of each [VOS] VOC as follows:

$$\frac{\text{lbs [VOS] VOC}}{\text{hr}} = \frac{\text{Avg. C ppm ([VOS] VOC) } \times \text{SCFM}}{\text{MW ([VOS] VOC) } \times \text{SCFM}} \times \frac{1}{387 \times 10^6}$$

Where:

Avg C ppm ([VOS] VOC)	=	average parts per million of [VOS] VOC over the test period.
MW ([VOS] VOC)	=	molecular weight of [VOS] VOC (pounds per pound-mol).
SCFM	=	cubic feet per minute at 70°F and 1 atm emitted from the source operation.
387	=	molar volume at standard conditions in cubic feet per pound-mol.

NOTE: This formula is based upon the assumption that both the standards and the sample have been passed through the same sampling system and diluted by the same amount.

5. Calculate the total emission rate in lbs/hr of the [VOS] VOC by totaling the individual [VOS] VOC calculated in (f)4 above.

(g) The test report shall include the following information submitted on the required reported form in Appendix C (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27-3.2(c) and (e)):

1.-8. (No change.)

9. The emission rate measured in lbs/hr of each [VOS] VOC for each test;

10.-11. (No change.)

7:27B-3.9 Procedures for the sampling and remote analysis of known volatile organic [substances] **compounds** using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

(a) The method in this section is applicable for the determination of the concentration and the mass emission rates of known [VOS] VOC from a source where it is not practical to conduct a direct analysis at the source or in systems where the flow rates are not constant. For the same circumstances as described above, any other alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the following principles:

1. The reduction of the moisture and [VOS] VOC levels in the source gas by condensation or dilution:

2. (No change.)

3. Gas chromatography whereby [VOS are] **each VOC** is separated by passing an inert gas stream containing a known volume of the sample gas or standard gas through a column containing a stationary phase and/or a solid support; and

4. Ionization produced when each [VOS] VOC in the sample gas as eluted from the gas chromatograph is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the [VOS] VOC. Any alternative detector shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(c) The following is a summary of this method:

1. A representative sample from the source is drawn at a constant rate through a heated sample line to a series of condensers in an ice bath where the moisture and condensable [VOS] VOC are removed, or to a dilution system which reduces the concentration of the source gas by a known amount with hydrocarbon-free air. The dry sample gas is collected in a Tedlar or equivalent sampling bag which, along with any collected condensate, is transported to the GC-FID for analysis.

2. The GC-FID is calibrated with standard gas mixtures of each [VOS] VOC being measured to establish the calibration curve and retention times. Representative portions of any condensate and the bag sample are injected separately into the calibrated GC-FID. The responses and retention times of the individual [VOS] VOC are recorded on a strip chart recorder, and the peak areas of each [VOS] VOC are measured. The peaks are identified from the established retention times. The concentration of each [VOS] VOC is determined by referring to the calibration curve. The total gas flow rate, moisture content, and the average molecular weight of the gas are determined during the sample period, and the mass emission rate of the [VOS] VOC is calculated and reported as pounds per hour.

3. (No change.)

(d) The following is a list of equipment used in this method:

1.-14. (No change.)

15. Condensor ([VOS] VOC): a system as specified in (e)3 below for collecting condensable [VOS] VOC and moisture from the source gas consisting of: a probe, three midget impingers (two containing ten ml. of distilled water and one dry, all three immersed in an ice bath), a pump, and a dry gas meter all connected in series;

16.-17. (No change.)

18. Charcoal tube: A drying tube filled with activated charcoal with glass wool plugs in both ends to absorb organic vapors from the vented sample gas and to prevent the release of [VOS] VOC into the work area:

19. (No change.)

20. Sparger module: a sparge-desorb module to strip [VOS] VOC from the impinger condensate and trap the [VOS] VOC on a suitable absorbant.

(e) The procedure for this section shall be as follows:

1. A presampling survey of the source operation(s) must be conducted to establish certain basic information including, but not limited to: sampling location, stack temperature and pressure, stack gas moisture content, approximate particulate concentration, composition of the gases, and the identification and approximate concentrations of the [VOS] VOC to be analyzed. It may be necessary to take samples for analysis to acquire any information that is not readily available;

2. The instrument shall be calibrated as follows:

i. (No change.)

ii. The operating parameters of the instrument, such as[:] column selections, temperatures, carrier gas flow rate, and chart speed, must be established for the [VOS] VOC to be measured, and verified in the laboratory prior to the actual sampling. The conditions selected should produce baseline separation of the individual [VOS] VOC peaks, if possible, but in no case should the height of the valley between the peaks measured from the baseline to the lowest point in the valley be greater than 30 percent of the height of the shorter of the two peaks. More than one set of conditions may be necessary for complete resolution;

iii.-vii. (No change.)

viii. Repeat steps iv through vii for each calibration gas until two consecutive analyses agree within five percent. The corresponding peak areas for each [VOS] VOC shall then be averaged.

ix. (No change.)

x. Draw a straight line through the points to establish a calibration curve for each [VOS] VOC. Calculate the unknown [VOS] VOC concentrations from their peak areas by reading from the appropriate calibration curve or by multiplying the peak area by the slope of the calibration curve. Extrapolation beyond the calibrated range is not acceptable.

xi. (No change.)

3. Sampling shall be conducted as follows when using a condenser system:

i.-xi. (No change.)

PROPOSALS

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ENVIRONMENTAL PROTECTION

xii. Rinse the probe, all connecting lines through the impingers and the impingers with an appropriate solvent. The rinse solution and impinger collect shall be placed in an opaque leak-proof container for later analysis. The container should be filled to minimize loss of [VOS] VOC in the headspace.

xiii.-xvi. (No change.)

4.-5. (No change.)

6. The condensation trap shall be analyzed as follows:

i.-ii. (No change.)

iii. Sparge the sample into an appropriate trap for a minimum of ten minutes with an inert gas. Thermally desorb the [VOS] VOC from the trap onto the GC column and analyze the [VOS] VOC employing the same instrument conditions used during the calibration procedures. Measure the area under each [VOS] VOC peak. Save the sparged solution;

iv.-vi. (No change.)

(f) The calculations shall be performed as follows:

1. Establish the molecular weight of each [VOS] VOC from the literature.

2. Calculate the total gas flow rate from the source operations in SCFM (70° and 1 atm) including the [VOS] VOC and any moisture present.

i.-ii. (No change.)

3. (No change.)

4. Bag Sample: Determine the concentration (C) of each [VOS] VOC in ppm (C_{ppm} [VOS] VOC) by using the calibration curves developed in (e)2x[,] above and the area of each [VOS] VOC. If the sample is collected using a dilution system, the concentrations shall be corrected by the dilution factor (Df) as determined by the following formula:

$$Df = \frac{\text{ml/min dilution gas} + \text{ml/min source gas}}{\text{ml/min source gas}}$$

5. Condensate and rinse: Convert the calibration curves used in (e)2x[,] above from ppm vs. area to microgram (ugm) vs. area. Determine the concentration (C) of each [VOS] VOC in the condensate and rinse in ppm (C_{ppm} [VOS] VOC) in the vapor phase from the [VOS] VOC peak areas and the calibration curves using the following formula:

$$C_{ppm} [VOS] VOC = \frac{(\text{Area}) (\text{slope}) \times V_c \times 24.1}{V_j \times MW ([VOS] VOC) \times V_g}$$

Where:

Area = area of [VOS] VOC peak (area units).

Slope = slope of calibration curve (ugm/area unit).

V_c = Condensate Volume (millimeters).

V_j = injection volume (millimeters).

V_g = Volume of gas [ampled] **sampled** (liters).

MW [VOS] VOC = molecular weight of [VOS] VOC (gram per gram mol).

24.1 = molar volume at standard conditions in liters per gram mol.

6. Determine the total concentration (c) of each [VOS] VOC in the source gas in ppm (C_{ppm}) by summing the results of each [VOS] VOC from 4 and 5[,] above;

7. Calculate the emission rate in lbs/hr of each [VOS] VOC as follows:

$$\frac{\text{lbs. [VOS] VOC}}{\text{hr}} = \frac{C_{ppm} ([VOS] VOC) \times SCFM}{387 \times 10^6} \times MW ([VOS] VOC) \times 60 \text{ min/hr}$$

Where:

C_{ppm} ([VOS] VOC) = sum of bag sample and condensate concentrations in part per million of each [VOS] VOC.

MW ([VOS] VOC) = molecular weight of [VOS] VOC (pounds per pound-mol).

SCFM = cubic feet per minute at 70°F and 1 atm emitted from the source operation (dry if impingers used; wet if no impingers used).

387 = molar volume at standard conditions in cubic feet per pound-mol.

8. Calculate the total emission rate of [VOS] VOC in lb/hr by totaling the emission rates of each individual [VOS] VOC as calculated in 6 above.

(g) The test report shall include the following information submitted on the required reporting forms listed in Appendices D and E (any alternative reporting forms shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

1.-8. (No change.)

9. The emission rate measured in lbs/hr of each [VOS] VOC for each test;

10.-11. (No change.)

7:27B-3.10 Procedures for the determination of volatile organic [substances] compounds in surface coating formulations

(a) The method in this section is applicable for the determination of the [VOS] VOC contained in formulations used in surface coating operations. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the determination of the amount of [VOS] VOC and water, if present, in a surface coating formulation, the density of the surface coating formulation, and the density of the volatile fraction of the surface quality.

(c) The procedure for this section shall be as follows:

1. Completely fill a container with a representative sample of the surface coating formulation to be analyzed. Seal the container so that the [VOS] VOC present will not escape; and

2. (No change.)

(d) The coating samples shall be analyzed as follows:

i. Class I surface coatings shall be analyzed as follows:

i. (No change.)

ii. Determine the VOC content [of the VOS] by using the procedure specified in ASTM Designation D 2369-81, "Standard Method of Test for Volatile Content of Coatings" (N.J.A.C. 7:27B-3.18, Reference 8);

iii. Calculate the [VOS] VOC content in kg/L as follows:

$$[VOS]VOC \text{ kg/L} = \frac{W_1 - W_2 (DM) \times \text{kg} \times 1000\text{ml}}{S \times 1000 \text{ gm} \times L}$$

Where:

W₁ = weight of dish + sample (gm)

W₂ = weight of dish + sample after heating (gm)

DM = density of coating (gm/ml)

S = sample weight (gm)

L = liters

iv. Sources included in a mathematical combination regulated by N.J.A.C. 7:27-16.5(a) shall be analyzed as follows:

- (1) (No change.)
- (2) Calculate the density of the [VOS] VOC fraction in gm/ml as follows:

$$D([\text{vos}]\text{VOC}) = \frac{W}{V}$$

Where:

- W = weight of the volatile fraction
- V = volume of the volatile fraction

- (3) Convert density [VOS] VOC from gm/ml to lb/gal as follows:

$$D([\text{VOS}]\text{ VOC}) \text{ lb/gal} = 8.345 D([\text{VOS}]\text{ VOC}) \text{ gm/ml}$$

2. Class II surface coatings shall be analyzed as follows:

i.-ii. (No change.)

iii. Determine the VOC content [of the VOS] by using the procedure specified in ASTM Designation D2369-81, "Standard Method of Test for Volatile Content of Coatings" (N.J.A.C. 7:27B-3.18, Reference 8);

iv. Calculate the [VOS] VOC content in kg [VOS] VOC per liter of coating less water as follows:

$$^c[\text{VOS}]\text{ VOC kg/L} = \frac{(W_1 - W_2 - [0.1] \text{ 0.01 PS})}{D_H} \frac{D_m \times \text{kg} \times 1000\text{ml}}{S \times 1000 \text{ gm} \times L}$$

Where:

- W₁ = weight of dish + sample (gm)
- W₂ = weight of dish + sample after heating (gm)
- P = percentage of water (%)
- D_m = density of coating (gm/ml)
- D_H = density of water (gm/ml)
- S = sample weight (gm)
- L = liters

Convert [VOS] VOC content from kg/l to lb/gal as follows:

$$^c[\text{VOS}]\text{ VOC} \frac{\text{lb}}{\text{gal}} = \frac{^c[\text{VOS}]\text{ VOC kg} \times 8.345}{L}$$

v. Sources included in a mathematical combination shall be analyzed as follows:

(1)-(2) (No change.)

- (3) Calculate the density of the [VOS] VOC in gm/ml.

$$D([\text{VOS}]\text{ VOC}) \text{ gm/ml} = \frac{(1-P) w(\text{mix}) D(w) D(\text{mix})}{D(w) W(\text{mix}) - P W(\text{mix}) D(\text{mix})}$$

Where:

- P = percentage of water (%)
- W(mix) = weight of the volatile fraction (gm)
- D(mix) = density of the volatile fraction (gm/ml)
- D(w) = density of water (gm/ml)

- (4) (No change.)

7:27B-3.11 Procedures for the determination of volatile organic [substances] **compounds** emitted from transfer operations using a flame ionization detector (FID) or a non-dispersive infrared analyzer (NDIR)

(a) The procedure in this section is applicable for the determination of the mass emission of [VOS] VOC rates from the transfer or loading of gasoline. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon one of the following two principles:

1. Flame Ionization, which involves ionization produced when the [VOS] VOC in the sample is combusted in a hydrogen flame. The ions and electrons formed in the flame enter an electrode gap, decrease the gap resistance, and thus permit a current flow in an external circuit. The resulting current is proportional to the instantaneous concentration of the [VOS] VOC; or

2. (No change.)

(c) The following is a summary of this method:

1. The instrument is calibrated with a propane or butane calibration gas to establish the response of the instrument. A representative sample of the [VOS] VOC is drawn into the detector and the instrument response is recorded on a strip chart recorder. The total gas flow rate and the volume of gasoline pumped [is] are determined for each five minute period. The mass emission rate of [VOS] VOC is calculated as propane, and the results are summed for each five minute period and reported as either percent control efficiency or pounds of [VOS] VOC per 10,000 gallons of gasoline transferred.

2.-3. (No change.)

(d) (No change.)

(e) The procedure for this section shall be as follows:

1.-4. (No change.)

5. For the determination of [VOS] VOC concentration at the exhaust vent, procedures outlined in N.J.A.C. 7:27B-3.7 shall be used. The calibration gas shall be either propane or butane.

6.-7. (No change.)

8. An emission testing interval shall consist of each five-minute period during the performance test. For each interval:

i. (No change.)

ii. The volume discharged and the average [VOS] VOC concentration in the exhaust vent shall be determined, as specified in the appropriate test method. The average [VOS] VOC concentration shall correspond to the volume measurement and shall be adjusted by the sampling system response time.

9.-10. (No change.)

(f) The calculations shall be performed as follows:

1. Calculate the mass emitted during each testing interval as follows:

$$\frac{\text{lbs } [\text{VOS}]\text{ VOC}}{\text{Less interval}} = \frac{\text{C ppm (as std)} \times 5 \text{ min [=]} \times \text{SCFM} \times [\text{Mol. Wt}] \text{ MW (std)}}{387 \times 10^6}$$

Where:

- C ppm (as std) = parts per million of [VOS] VOC as standard (propane or butane).
- MW (std) = molecular weight of standard (propane or butane).
- SCFM = Cubic feet per minute at 70°F and 1 atm emitted by the source.
- 387 = Molar volume at standard conditions in cubic feet per pound-mol.

2. Calculate the total [VOS] VOC emitted during the test period by summing the lbs. [VOS] VOC per each test interval as calculated in 1 above.

3. Calculate the efficiency of the emission control system as follows:

$$\% \text{ Efficiency} = \frac{(\text{lbs/test inlet} - \text{lbs/test outlet}) \times 100}{(\text{lbs/test inlet})}$$

4. Calculate the total emission rate of the [VOS] VOC in lbs per 10,000 gallons of gasoline transferred as follows:

$$\frac{\text{lbs } [\text{VOS}]\text{ VOC}}{10,000 \text{ gallons}} = \frac{\text{lbs } [\text{VOS}]\text{ VOC} \times 10,000}{\text{gallons of gasoline transferred}}$$

(g) The test report shall include the following information submitted on the required reporting form found in Appendix B (any alternative reporting form shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c) and (e)):

- 1.-8. (No change.)
- 9. Concentration of [VOS] VOC in gas displaced from delivery vessel, volume percent, if required;
- 10.-11. (No change.)

7:27B-3.12 Procedures for the determination of volatile organic [substances] compounds in cutback and emulsified asphalts

(a) The method in this section is applicable for the determination of [VOS] VOC in cutback or emulsified asphalts. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

- (b) (No change.)
- (c) The procedure for this section shall be as follows:
 - 1.-2. (No change.)
 - 3. The calculations shall be performed as follows:
 - i. Calculate the sample volume from the sample weight and its density using the following formula:

$$\text{volume of sample (cc)} = \frac{\text{sample grams} \times \text{density gms/cc}}{\text{density gms/cc}}$$

- ii. Calculate and report the [VOS] VOC distillate as a volume percent of the total sample using the following formula:

$$\text{Volume \%} = \frac{\text{Volume [VOS] VOC distillate} \times 100}{\text{Volume Sample}}$$

7:27B-3.14 Procedures for the direct detection of fugitive volatile organic [substances] compound leaks

(a) The method in this section is applicable for the detection of fugitive [volatile organic substances] VOC leaks. Any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the detection of [volatile organic substances] VOC leaks from individual sources by a portable instrument. The instrument detector type is not specified but shall meet the performance criteria of (d)4 below. This procedure is intended to locate and classify leaks only and shall not be used to measure mass emission rates from individual sources.

- (c)-(e) (No change.)

7:27B-3.15 Procedures for the direct detection of fugitive volatile organic [substances] compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector

(a) The method in this section is applicable for the detection of fugitive [volatile organic substances] VOC leaks from gasoline tank trucks and vapor collection systems. For the same circumstances as described above, any alternative test method shall be submitted to the Department for review pursuant to N.J.A.C. 7:27B-3.2(c), (d) and (e).

(b) This method is based upon the detection of [volatile organic substances] VOC leaks from individual sources by a portable instrument. The instrument detector type is not specified but must meet the performance criteria of N.J.A.C. 7:27B-3.14(d)4. This procedure is intended to locate and classify leaks only and shall not be used as a measure of mass emission rates from individual sources.

- (c)-(e) (No change.)

7:27B-3.17 Procedures for the determination of volatile organic [substances] compounds emitted from petroleum solvent dry cleaning operations

(a) The method in this section is applicable for the determination of the final recovered solvent flow rate at the completion of the

recovery cycle[,] and the [volatile organic substances] VOC content in all filtration waste. For the same circumstances as described above, any alternative method shall be submitted to the Department for review, pursuant to N.J.A.C. 7:27B-3.2(c), (d), and (e).

- (b)-(c) (No change.)
- (d) The procedure for this section shall be as follows:
 - 1. (No change.)
 - 2. The solvent content in filtration waste shall be determined as follows:
 - i.-iv. (No change.)
 - v. Report the results as mass of [VOS] VOC per mass of dry weight of articles dry cleaned in [(kilograms per kilogram)].

7:27B-3.18 Test methods and sources incorporated by reference

(a) The following sources and test methods are incorporated by reference in this subchapter:

- 1.-2. (No change.)
- [3. ASTM Designation D323-79, Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method), American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103 (\$4.00).]

3. Code of Federal Regulations, Title 40, Part 80, Appendix E—"Method 1—Dry RVP Measurement Method" and "Method 2—Herzog Semi-Automatic Method" are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

- 4.-16. (No change.)

Editor's Note: In addition to the above text, Appendices A through H were filed with these rules, but not reproduced herein. Further information regarding these Appendices may be obtained by contacting: [Herbert Wortreich, Deputy Director, Division of Environmental Quality, CN 027, Room 1109, Trenton, New Jersey 08625.]

**Bureau of Technical Services
Division of Environmental Quality
Department of Environmental Protection
CN 411 (380 Scotch Road)
Trenton, New Jersey 08625-0411**

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Extended Eligibility for Newborns

Proposed Amendments: N.J.A.C. 10:72-2.5 and 3.4

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

Authority: N.J.S.A. 30:4D-3i, 30:4D-7, 7a, b, and c; 4603 of P.L. 101-508, cited as 1902(e) of the Social Security Act, codified as 42 U.S.C. 1396a(e).

Agency Control Number: 91-P-9.

Proposal Number: PRN 1991-335.

Submit comments by July 17, 1991 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The proposed amendments related to the Federal legislation cited above requiring expansion of eligibility for newborns who are children of Medicaid eligible women. Current policy provides that after a baby is born to a Medicaid recipient, the mother must apply for Medicaid coverage for the child and have a redetermination of eligibility during the 60-day period following the birth of her baby. Health services rendered to the child during the first 60 days after birth can be billed on the mother's Medicaid number, or, as soon as the child's own number has been issued, on the child's number. The child becomes eligible for Medicaid benefits for one year, providing that the mother remains Medicaid-eligible during that period and that the child remains in the household of the mother.

Eligibility criteria for low-income pregnant women have been established at more inclusive levels than those applied to other recipients, in order to provide health care for the mothers and their unborn children considered to be at risk. The present extension of Medicaid coverage to newborns is a further development of that concern. The expanded eligibility provides for minimum coverage of 60 days after the child's birth to a maximum of one year, depending upon the mother's continued eligibility, or alternatively, upon her potential eligibility, if she were pregnant. Another condition attached to this extension of eligibility is that the child remain in the household of the mother. There is one exception: if a presumptively eligible woman should be determined ineligible for the month in which the child is born, the newborn is not eligible for Medicaid.

The proposed amendments relate to text at N.J.A.C. 10:72-2.5(a)1 and 10:72-3.4(a)3, the New Jersey Care . . . Special Medicaid Programs Manual. At N.J.A.C. 10:72-2.5(a)1, the requirement that the newborn's eligibility be determined prior to the expiration of the 60-day post-natal period is being deleted, and at N.J.A.C. 10:72-3.4(a)3, the changed text sets forth: (1) the ineligibility of a child born to a presumptively eligible woman determined ineligible for Medicaid for the month in which the child was born, and (2) the extension of coverage to newborns whose mothers would be eligible were they pregnant.

A companion proposal has been submitted by the Division of Economic Assistance (DEA) and is published in the May 20, 1991 New Jersey Register at 23 N.J.R. 1657(a).

Social Impact

The proposed amendments impact on newborns by enabling access to Medicaid services for up to one year after birth without requiring the mother to complete an application or to have eligibility redetermined.

The proposed amendments could impact on providers, because a valid Medicaid Eligibility Identification Card must still be presented showing a person number for the infant after the expiration of the 60-day period when services could be billed under the mother's identification number. The more significant impact of the proposed amendments is that the amendments will expedite the providers' access to payment, because eligibility for the majority of newborns does not require the submission of an application for the receipt of benefits. This simplified processing of eligibility will alleviate any application processing problems which have occurred previously.

The proposed amendments will impact on the county welfare agencies who must identify and establish eligibility records for affected newborns. The numbers of newborns requiring application for benefits will be reduced due to the proposed eligibility changes. Thus, in the majority of newborn cases, the issuance of the infant's identification card will be expedited.

Economic Impact

Little or no economic impact is anticipated due to the proposed amendments. Most of the newborns who are described as eligible under the provision of the amendments would have been eligible under the current definition of eligibility. The difference lies in the reduction of paperwork and recipient effort, in that no longer is the mother required to complete a new application for Medicaid coverage and a redetermination of eligibility during the 60-day period following the birth of the baby. The proposed amendments enable the child to have continued Medicaid coverage up to the age of one year, provided that the mother would remain eligible under the eligibility criteria for pregnant women. No projection has been made of how many additional children, if any, will be covered for Medicaid under the new eligibility definition.

Regulatory Flexibility Statement

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose no reporting, recordkeeping or other compliance requirements on small businesses; neither the recipients nor the governmental agency administering the program qualifies as a small business as defined under the Act. Therefore, a regulatory flexibility analysis is not required. The proposed amendments and rules govern a public assistance program designed to certify eligibility for the New Jersey Medicaid programs.

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

10:72-2.5 Redetermination of eligibility

(a) Eligibility for Medicaid under this chapter shall be redetermined, including a face-to-face interview and the completion of a new application form, as follows:

1. For a pregnant woman, eligibility need not be redetermined until the birth of her child. Upon the birth of the child, [eligibility should be redetermined prior to the expiration of the 60-day period following the birth to determine on-going eligibility for the newborn.] **the newborn shall remain eligible for a period of not less than 60 days from his or her birth and up to one year, so long as the mother remains eligible, or would remain eligible if pregnant, and the child resides with her, whether or not application has been made.**

2. For the eligibility of children, **other than newborns**, eligibility must be redetermined no later than six months following the month of initial eligibility or the last redetermination.

3. (No change.)

(b) (No change.)

10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1.-2. (No change.)

3. The child born to a woman eligible under the provisions of this chapter **(except to a presumptively eligible pregnant woman who has subsequently been found ineligible for the month the child was born)** shall remain eligible for a period of not less than 60 days from his or her birth ([] and up to [a period of] one year, so long as the mother remains eligible for Medicaid[]), **or would remain eligible if pregnant**, whether or not application has been made, if the child lives with his or her mother. [Eligibility of the newborn will be determined without regard to income for the 60-day period following the child's birth.]

4.-8. (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Medical and Health Services

Commitment for Psychiatric Treatment

Proposed New Rules: N.J.A.C. 10A:16-13

Authorized By: William H. Fauver, Commissioner, Department of Corrections and Allan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1B-6; 30:1B-10; and 30:4-82.2.

Proposal Number: PRN 1991-323.

Submit comments by July 17, 1991 to:

Elaine W. Ballai, Esq.

Supervisor, Standards Development Unit

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules establish the policies and procedures by which inmates, who are assigned to a housing unit other than the Capital Sentence Unit and need emergency and non-emergency psychiatric treatment, are evaluated and admitted to the Forensic Hospital if they are 18 years of age or older or if they are juveniles who have been assigned adult status by a sentencing court. The proposed new rules provide policies and procedures by which inmates, who are assigned to the Capital Sentence Unit (C.S.U.) and need emergency and non-emergency psychiatric treatment, are evaluated and given treatment within the New Jersey State Prison in lieu of transfer to the Forensic Psychiatric Hospital. The new rules are being proposed by the Department of Corrections at this time in order to codify the most recent agreement between the New Jersey Department of Corrections and the New Jersey Department of Human Services which establishes the process by which the Department of Human Services provides psychiatric treatment for inmates who are under the jurisdiction of the Department of Corrections.

Social Impact

The proposed new rules will facilitate the psychiatric treatment of adult inmates within the Forensic Psychiatric Hospital or the Capital Sentence Unit. It is anticipated that the clearly expressed criteria for evaluating the need for psychiatric treatment or commitment will assist both agencies in determining whether commitment is necessary and expedite transfer to the Forensic Psychiatric Hospital.

In addition, provision for the in-house psychiatric treatment of Capital Sentence (C.S.U.) inmates will insure that these inmates receive appropriate professional treatment while maintaining the security of their unique sentencing status.

Economic Impact

The proposed new rules will have no significant economic impact over and above the expenditure of previously budgeted funds by both the New Jersey Department of Corrections and the New Jersey Department of Human Services for staffing their respective facilities.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposal does not impose reporting, record keeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impact on inmates, the New Jersey Department of Corrections, the New Jersey Department of Human Services, the Forensic Psychiatric Hospital and the local Mental Health Screening Units, and have no affect on small businesses.

Full text of the proposal follows:

CHAPTER 16 MEDICAL AND HEALTH SERVICES

SUBCHAPTER 12. (RESERVED)

SUBCHAPTER 13. COMMITMENT FOR PSYCHIATRIC TREATMENT

10A:16-13.1 Purpose and Scope

(a) The purpose of this subchapter is to provide for mental health services in State-owned or operated correctional facilities.

(b) This subchapter shall be applicable to all inmates assigned to correctional facilities within the Division of Adult Institutions or the Juvenile Medium Security Facility who are 18 years of age and older or juveniles who have been assigned adult status by the sentencing court.

10A:16-13.2 Definitions

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

"Department of Human Services" means the New Jersey Department of Human Services.

"Forensic Psychiatric Hospital" means the Forensic Psychiatric Hospital which is administered by the New Jersey Department of Human Services in Trenton, New Jersey.

"Licensed physician" means a person who has a valid and current license to practice medicine in the State of New Jersey (see N.J.A.C. 10A:16-2.4).

"Psychiatrist" means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology and has a valid and current license to practice medicine in the State of New Jersey (see N.J.A.C. 10A:16-2.4).

"Screening Service" as defined in N.J.S.A. 30:4-27.2z.

10A:16-13.3 Psychiatric commitments

(a) Prior to considering the commitment of an inmate to the Forensic Psychiatric Hospital, the Chief Mental Health professional of the parent correctional facility shall have exhausted all reasonable means towards managing the inmate's psychiatric symptoms within the correctional facility.

(b) The management of the inmate symptoms shall include, but not be limited to, encouraging the inmate to take prescribed medication which has controlled said symptoms in the past.

(c) Sentenced adult inmates, inmates who are assigned to the Juvenile Medium Security Facility who are 18 years of age and older, or juveniles who have been assigned adult status by the sentencing court, shall be hospitalized at the Forensic Psychiatric Hospital when:

1. They require psychiatric hospitalization;
2. They are assigned to housing units other than the Capital Sentence Unit;
3. They meet the admission, mental illness and security criteria set forth in N.J.A.C. 10A:16-13.4, 13.5 and 13.6; and
4. The appropriate commitment documents have been processed in accordance with the procedures outlined in this subchapter.

10A:16-13.4 Admission criteria

In order to be admitted to the Forensic Psychiatric Hospital, an inmate must exhibit symptoms or behavior from the categories of criteria listed in N.J.A.C. 10A:16-13.5 and 13.6.

10A:16-13.5 Mental illness criteria

(a) In order to meet the mental illness criteria for commitment to the Forensic Psychiatric Hospital, the inmate must exhibit one or more of the following:

1. Hallucinations (visual or auditory);
2. Delusions motivating or commanding patient to harm self or others or to perform dangerous behavior;
3. Acute psychotic episodes or acute exacerbation of psychotic symptoms from previously diagnosed psychosis (recent onset within 10 days);
4. Bizarre behavior, agitation, psychomotor retardation or depression markedly interfering with daily function, which causes severe subjective distress or is grossly socially unacceptable;
5. Total body rigidity or immobility (catatonia);
6. Severe and disabling anxiety; and/or
7. Disabling thought disorder.

10A:16-13.6 Security criteria

(a) In order to meet the security criteria for commitment to the Forensic Psychiatric Hospital, the inmate must be a danger to self, others or property as evidenced by one or more of the following:

1. A suicide attempt within the past seven days;
2. Persistent suicide ideation;
3. Assaultive/harmful behavior;
4. Verbal threats to harm others;
5. Arson;
6. Self-mutilative behavior or threats;
7. Hallucinations (visual or auditory);
8. Delusion motivating or commanding patient to harm self or others or to perform dangerous behavior; and/or
9. Paranoid hallucinations/delusions so severe that patient is unable to perform basic care needs, such as:

- i. Eating;
- ii. Drinking; and/or
- iii. Personal hygiene.

10. Severe psychiatric condition unresponsive to treatment with medication (at least three weeks duration) and admitted for intensive medication trial;

11. Problems which require special treatment procedures such as seclusion/restraint in a maximum security treatment setting;

12. Psychiatric problems, which require close supervision due to associated medical conditions when the medical condition is stabilized and the psychiatric problems outweigh strictly medical intervention; and/or

13. Psychiatric decompensation due to medication refusal while in a State correctional facility.

10A:16-13.7 Regular commitment of adult inmates to the Forensic Psychiatric Hospital

(a) Copies of the appropriate forms shall be used when the inmate, who is assigned to a housing unit other than the Capital Sentence Unit (C.S.U.), is being committed to the Forensic Psychiatric Hospital.

(b) Form DHS-C4 APPLICATION FOR TEMPORARY COMMITMENT shall be used for the commitment of an inmate(s) and shall be completed and signed by the Superintendent or Acting Superintendent.

(c) Two practicing physicians, one of whom must be a licensed psychiatrist, shall each complete a CLINICAL/SCREENING CERTIFICATE OF INVOLUNTARY COMMITMENT OF MENTALLY ILL ADULTS Form.

(d) The physician and psychiatrist who complete the two CLINICAL/SCREENING CERTIFICATE OF INVOLUNTARY COMMITMENT OF MENTALLY ILL ADULTS Forms may not be related by blood or marriage to the inmate, nor be the director, chief executive officer or proprietor of any institution for the care and treatment of the mentally ill to which certification for admission of the inmate is being made.

(e) The TEMPORARY ORDER FOR COMMITMENT Form shall be signed by the Superintendent or his or her designee and shall be presented, by a representative of the sending correctional facility, to a judge for signature. After the judge has signed the Temporary Order, the Temporary Order shall be taken together with the certifications, and the inmate to the Forensic Psychiatric Hospital.

(f) In all cases, the Forensic Psychiatric Hospital shall be contacted prior to transporting an inmate to that facility for a psychiatric examination or for admission.

(g) The originals of the completed forms DHS-C4 APPLICATION FOR TEMPORARY COMMITMENT, CLINICAL/SCREENING CERTIFICATE OF INVOLUNTARY COMMITMENT OF MENTALLY ILL ADULTS, and TEMPORARY ORDER FOR COMMITMENT shall be left with the Forensic Psychiatric Hospital and the psychiatric facility shall file these documents for the final hearing. The correctional facility shall maintain a copy of all these completed forms in the inmate's medical folder.

(h) The correctional facility shall receive notice of the final hearing but it will not be necessary for a correctional facility staff member to attend unless the attorney representing the State indicates that attendance is necessary.

10A:16-13.8 Psychiatric treatment in the Capital Sentence Unit (C.S.U.)

(a) Inmates assigned to the Capital Sentence Unit (C.S.U.) at the New Jersey State Prison shall receive psychiatric treatment at the New Jersey State Prison in accordance with the New Jersey Department of Corrections and the New Jersey Department of Human Services agreement pursuant to said inmates.

(b) Form DHS-C4 APPLICATION FOR TEMPORARY COMMITMENT shall be completed and signed by the Superintendent of the New Jersey State Prison.

(c) Two practicing physicians, one of whom must be a licensed psychiatrist, shall each complete a CLINICAL/SCREENING CERTIFICATE OF INVOLUNTARY COMMITMENT OF MENTALLY ILL ADULTS Form.

(d) The physician and psychiatrist who complete the two CLINICAL/SCREENING CERTIFICATE OF INVOLUNTARY COMMITMENT OF MENTALLY ILL ADULTS Forms may not be related by blood or marriage to the inmate, nor be the director, chief executive officer or proprietor of any institution for the care and treatment of the mentally ill to which certification for admission of the inmate is being made.

(e) The TEMPORARY ORDER FOR COMMITMENT Form for inmates assigned to the Capital Sentence Unit (C.S.U.) shall be presented to a judge for signature. After the judge has signed the Temporary Order, the inmate will receive psychiatric treatment within the New Jersey State Prison.

(f) The originals of the completed DHS-C4 APPLICATION FOR TEMPORARY COMMITMENT, CLINICAL/SCREENING CERTIFICATE OF INVOLUNTARY COMMITMENT OF MENTALLY ILL ADULTS and the TEMPORARY ORDER FOR COMMITMENT Forms shall be used by the New Jersey State Prison to file for the final hearing.

10A:16-13.9 Screening service commitment of adult inmates

(a) Copies of the appropriate forms shall be used when an adult inmate, who is assigned to a housing unit other than the Capital Sentence Unit (C.S.U.), is being transferred to the Forensic Psychiatric Hospital for emergency psychiatric treatment.

(b) Form DHS-C4 APPLICATION FOR TEMPORARY COMMITMENT shall be used for the commitment of the inmate and shall be completed and signed by the Superintendent or Acting Superintendent. A clear delineation of the treatment efforts the correctional facility has attempted and the current behavior of the inmate which justifies admission for treatment shall be included in information provided on Form DHS-C4.

(c) In a situation involving an inmate assigned to a housing unit other than the Capital Sentence Unit (C.S.U.) and the unavailability of a psychiatrist to complete a Clinical/Screening Certificate, the following procedures shall be utilized as appropriate:

1. If the local Division of Mental Health and Hospitals' (D.M.H.&H.) designated Screening Service has been approved for this purpose by the D.M.H.&H.'s Division Director, the correctional staff shall contact that Screening Service pursuant to N.J.S.A. 30:4-27.1 et seq. (Screening Law). The Screening Service shall provide a screening evaluation either at the correctional facility or the Screening Service site. If the inmate meets the commitment standard, the Screening Service shall complete the Clinical/Screening Certificate and the New Jersey Department of Corrections shall transport the inmate to and from the Screening Service and to the Forensic Psychiatric Hospital, if necessary, or

2. If the local D.M.H.&H.'s designated Screening Service has not been approved for this purpose by the D.M.H.&H.'s Division Director, the correctional staff shall contact the Forensic Psychiatric Hospital prior to transporting the inmate to that hospital for screening. A physician employed by the Department of Corrections shall complete a Clinical/Screening Certificate and the Application for Temporary Commitment shall be completed and signed by the Superintendent or Acting Superintendent. Both of these documents shall accompany the inmate when transported to the Forensic Psychiatric Hospital. Correctional staff shall wait at the Forensic Psychiatric Hospital while the inmate is being screened. If the inmate meets the commitment standard, a psychiatrist employed by the Forensic Psychiatric Hospital shall complete the Clinical/Screening Certificate and correctional staff shall obtain a Temporary Court Order to finalize the involuntary commitment. The inmate shall remain in custody at the Forensic Psychiatric Hospital while the Temporary Court Order is being secured but not be admitted as an involuntarily committed patient until the court issues a Temporary Court Order.

(d) The TEMPORARY ORDER FOR COMMITMENT form shall be presented, by a representative of the sending correctional facility, to a judge for signature. After the judge has signed the Temporary Order, the Temporary Order shall be taken together with the certifications to the Forensic Psychiatric Hospital.

(e) In all cases, the Forensic Psychiatric Hospital shall be contacted prior to transporting an inmate to that facility for admission.

(f) The originals of the completed forms DHS-C4 APPLICATION FOR TEMPORARY COMMITMENT, CLINICAL/SCREENING CERTIFICATE OF INVOLUNTARY COMMITMENT OF MENTALLY ILL ADULTS, and TEMPORARY ORDER FOR COMMITMENT shall be left with the Forensic Psychiatric Hospital and the psychiatric facility shall file these documents for the final hearing. The correctional facility shall maintain a copy of all these forms on file.

(g) The correctional facility shall receive notice of the final hearing, but it will not be necessary for a correctional facility staff member to attend unless the attorney representing the State indicates that attendance is necessary.

10A:16-13.10 Listing of local mental health screening services

The Office of Institutional Support Services shall maintain an up-to-date listing of designated local mental health screening services, approved to perform inmate screenings, which shall be available to all correctional facilities within the Department of Corrections.

10A:16-13.11 Commitment of inmates under eighteen years of age

(a) Whenever an inmate under eighteen years of age is in need of involuntary commitment, the procedures contained in Pressler, N.J. Court Rules, Rule 4:74-7k, shall be followed. Screening service referrals for such inmates are not permitted.

(b) In conjunction with (a) above, the procedures outlined in N.J.A.C. 10A:16-13.7 shall be utilized for inmates under eighteen years of age with the exception of the forms. The APPLICATION FOR TEMPORARY COMMITMENT, CERTIFICATE FOR INVOLUNTARY COMMITMENT OF MINORS (DHS-AI-Rev. 6/89) and the TEMPORARY ORDER FOR INVOLUNTARY COMMITMENT OF A MINOR shall be utilized for such commitments.

10A:16-13.12 Transportation

(a) Transportation to and from the Forensic Psychiatric Hospital shall be provided by the New Jersey Department of Corrections.

(b) Inmates in the Forensic Psychiatric Hospital requiring transportation for court appearances or medical transfer to outside medical facilities shall be provided with a New Jersey Department of Corrections escort coordinated by the Office of Central Medical/Transportation, Department of Corrections.

(c) Within 48 hours of the Forensic Psychiatric Hospital notification of the sending correctional facility that the inmate has been discharged, the New Jersey Department of Corrections shall transport the inmate to the sending correctional facility.

10A:16-13.13 Forms

(a) The following forms related to psychiatric transfers shall be reproduced by each correctional facility from originals that are available by contacting the New Jersey Department of Human Services, Division of Mental Health and Hospitals, or the Office of Institutional Support Services (O.I.S.S.), Health Services Unit, New Jersey Department of Corrections.

1. DHS-C4 APPLICATION FOR TEMPORARY COMMITMENT;
2. CLINICAL/SCREENING CERTIFICATE OF INVOLUNTARY COMMITMENT OF MENTALLY ILL ADULTS;
3. TEMPORARY ORDER FOR COMMITMENT;
4. CERTIFICATE FOR INVOLUNTARY COMMITMENT OF MINORS; and
5. TEMPORARY ORDER FOR INVOLUNTARY COMMITMENT OF A MINOR.

LABOR

(a)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Waiver of Executive Order No. 66(1978)

Vocational Rehabilitation Services

N.J.A.C. 12:51

Take notice that the Vocational Rehabilitation Services rules, N.J.A.C. 12:51, were due to expire June 30, 1991, pursuant to the sunset provisions of Executive Order No. 66(1978). Although the Department of Labor intends to readopt these rules, with technical amendments, the rules would expire before this could be accomplished.

The standards and requirements that are set forth in these rules help rehabilitation facilities to provide quality services and to establish operation accountability. Such standards are necessary in order to comply with federal and State legislation regarding facility improvement and are used as a basis for establishing the approval of assistance grants. They are also applicable in the determination of the eligibility of a facility to vend its services to the New Jersey Division of Vocational Rehabilitation Services and the New Jersey Commission for the Blind and Visually Impaired.

Due to the important purposes served by the standards defined in this chapter, and it being imperative that no lapse in the rules occur, Governor James J. Florio, on May 20, 1991, as Governor of the State of New Jersey and by the authority vested in him by Executive Order No. 66(1978) be waived for N.J.A.C. 12:51, and the expiration date for the rules be extended for a period from June 30, 1991, to and including December 31, 1991.

COMMERCE AND ECONOMIC DEVELOPMENT

(b)

URBAN ENTERPRISE ZONE AUTHORITY

Discretionary Extension of 50 Percent Sales Tax

Exemption to Urban Enterprise Zone Municipalities

Proposed Amendment: N.J.A.C. 12A:121-1.2

Proposed New Rules: N.J.A.C. 12A:121-2

Authorized By: James N. Albers, Chairman, Urban Enterprise Zone Authority.

Authority: N.J.S.A. 52:27H-60 et seq., specifically N.J.S.A. 52:27H-65a and e.

Proposal Number: PRN 1991-326.

Submit comments by July 17, 1991 to:

S. Charles Garofalo, Administrator
 New Jersey Urban Enterprise Zone Program
 New Jersey Department of Commerce and Economic Development
 20 West State Street, CN 821
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

New rules are being proposed to implement the New Jersey Urban Enterprise Zone program, pursuant to N.J.S.A. 52:27H-60 et seq., as amended by P.L. 1988, ch. 93. These rules are promulgated by the New Jersey Urban Enterprise Zone Authority (UEZA), which is given responsibility for implementing the Act and associated programs. The purpose of these rules is to establish standards for the extension of the 50 percent sales tax exemption to existing urban enterprise zone municipalities which currently do not have the exemption as part of that municipality's urban enterprise zone benefit package. P.L. 1988, ch. 93 provided that the UEZA, in its discretion, could extend this benefit to

other existing urban enterprise zone municipalities. The granting of the benefit is conditioned on a requirement that such a granting would not have any adverse economic impact upon any other urban enterprise zone.

Some key provisions of the proposed rules include:

1. Application standards for municipalities seeking the 50 percent sales tax exemption (see N.J.A.C. 12A:121-2.3); and
2. Standards of evaluation of a municipal application seeking the 50 percent sales tax exemption (see N.J.A.C. 12A:121-2.4).

Social Impact

The social impact of these rules should be positive in nature. The 50 percent sales tax exemption is a key component of business benefits in the Urban Enterprise Zone program, which provides great benefits to those companies which utilize the benefit. If the UEZA determines that there will be no detriment to other urban enterprise zones, then positive social impacts could include increased business activity, and greater growth in employment to those municipalities which do not currently enjoy this benefit. In addition, with the extension of this benefit, municipalities will receive a portion of the reduced sales taxes collected in their urban enterprise zone, for the purpose of increased public services and for other public purposes.

Economic Impact

The economic impact of these rules is mixed, in that the State will lose revenues from the granting of the 50 percent sales tax exemption to other urban enterprise zone municipalities. However, the State may recover all or part of this loss of revenues by increased economic activity and increased employment in these zones. Ascertaining whether the State will have a net gain or loss of revenues has to be determined on a case-by-case basis.

Municipalities extended this benefit should realize a positive economic impact by increased economic activity in their zones.

Regulatory Flexibility Statement

No provision of these rules places a specific requirement upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While there is an effect on small businesses, in that any business, small or large, which is located in an Urban Enterprise Zone would benefit from a lower sales tax on its products, all requirements related to the receipt of benefits are placed upon the applying municipality.

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

12A:121-1.2 Definitions

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

...

SUBCHAPTER 2. DISCRETIONARY EXTENSION OF 50 PERCENT SALES TAX EXEMPTION TO URBAN ENTERPRISE ZONE MUNICIPALITIES

12A:121-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement P.L. 1983, ch. 303, as amended by P.L. 1988, ch. 93, the New Jersey Urban Enterprise Zones Act, and to specifically implement provisions pertaining to the discretionary power of the UEZA to extend the 50 percent sales tax exemption to those urban enterprise zone municipalities which do not currently have such a benefit.

(b) The Act provides for the establishment of the UEZA, which is to designate certain areas of the State as Urban Enterprise Zones (UEZ's). The Act also provides that the UEZA exercise continuing review and supervision of the implementation of zone development plans.

(c) Applications and questions concerning a UEZ should be directed to:

Urban Enterprise Zone Program
New Jersey Department of Commerce and
Economic Development
20 West State Street, CN 829
Trenton, New Jersey 08625-0829

12A:121-2.2 Zone municipality application for 50 percent sales tax exemption

(a) Each application for the 50 percent sales tax exemption shall be accompanied by a certified resolution of the governing body of the municipality supporting the application.

(b) Each application for the 50 percent sales tax exemption shall be accompanied by a benefit statement prepared by the municipality or its agent. The benefit statement shall include, but is not limited to:

1. The number of permanent fulltime jobs to be created in the municipality and the existing UEZ if the exemption were to be granted;
2. The increase in the valuation of real property in the municipality and the existing UEZ if the exemption were granted;
3. The extent to which the granting of the exemption would contribute to the economic and social revitalization of the municipality and the existing UEZ;
4. Any other information the UEZA deems relevant or necessary for the purpose of evaluation of the municipal application.

(c) Each application for the 50 percent sales tax exemption shall be accompanied by an analysis of the impact on the other UEZ's in the State of New Jersey if the exemption were granted. The impact analysis shall include, but is not limited to:

1. An analysis of whether the exemption would have an effect on the valuation of UEZ municipalities;
2. An analysis of whether the exemption would have an effect on the social and economic revitalization of other UEZ municipalities;
3. An analysis of whether the exemption would have an effect on the growth of businesses in other UEZ municipalities;
4. An analysis of the increase or decrease of State Tax and other revenues to be created if the exemption were to be granted.

12A:121-2.3 Time for municipal application for 50 percent sales tax exemption

An existing New Jersey Urban Enterprise Zone municipality may apply to the UEZA at any time for the 50 percent sales tax exemption.

12A:121-2.4 Evaluation of 50 percent sales tax exemption municipal application

(a) The Administrator shall evaluate each municipal application for the 50 percent sales tax exemption, considering the following factors:

1. The probability that the granting of the exemption will create permanent fulltime new jobs in the applying municipality;
2. The probability that the granting of the exemption will increase the valuation of real property in the applying municipality;
3. The probability that the granting of the exemption will contribute to the economic and social revitalization of the applying municipality;
4. The probability that the granting of the exemption will significantly increase the economic activity of the applying municipality;
5. The probability that the granting of the exemption will increase the capital expenditures to be undertaken by qualified zone businesses in the applying municipality;
6. The social and economic impact that the granting of the exemption will have on other State of New Jersey Urban Enterprise Zone municipalities; and
7. The extent to which the granting of the exemption will further the purposes and intent of the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq.

(b) After the evaluation is completed, the Administrator shall forward to the UEZA the following items for their review:

1. The evaluation of the application completed by the Administrator;
2. The application and accompanying documents submitted by the municipality; and
3. Any written comments received from interested parties concerning the application of the municipality for the exemption.

(c) The UEZA shall, within 120 days from the completion of the evaluation by the Administrator, review the application of a municipality for the 50 percent sales tax exemption and advise the municipality that:

1. The application has been approved;
2. The application has been denied; or
3. The application remains under consideration pending receipt of additional specified information.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

State Board of Medical Examiners Hearing Aid Dispensers Examining Committee Fee Schedule; Reinstatement Fee

Proposed Amendments: N.J.A.C. 13:35-8.9 and 8.17

Authorized By: Patricia A. Royer, Director, Division of
Consumer Affairs.

Authority: N.J.S.A. 45:9A-7.

Proposal Number: PRN 1991-342.

Submit written comments by July 17, 1991 to:

Morris W. Eugene, Assistant Executive Director
State Board of Medical Examiners
Hearing Aid Dispensers Examining Committee, Room 602
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

In order to cover increased examination and program costs associated with the administration of the Hearing Aid Dispensers Examining Committee, the Committee is proposing to increase its examination, endorsement and biennial registration fees as set forth in N.J.A.C. 13:35-8.17. These fee increases are necessary to prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to cover its expenses.

Amendments are also proposed to reflect a determination of the Division of Consumer Affairs to amend the fee schedules of the professional boards which it regulates in order to more accurately and specifically identify the actual elements for which a Board incurs expenses and in order to create within the Division a uniform method of assessing and collecting fees. In that regard, the following separate fees have been established: application fee; duplicate or replacement of biennial registration certificate; and preparation of certification papers for applicants to other states. In addition, this proposal designates an initial license fee and, for the benefit of individuals who apply for initial licensure during the second year of a biennial renewal period, pro-rates that amount on an annual basis; the endorsement fee has been similarly pro-rated.

The temporary license fee, which remains unchanged, has been separated into two components for clarification purposes: "temporary licenses" (issued in accordance with N.J.S.A. 45:9A-16(a)) and "training permits" (issued in accordance with N.J.S.A. 45:9A-16(b)). The fee for renewal or extension of temporary licenses and training permits also remains unchanged.

This proposal also establishes a \$100.00 reinstatement fee to be paid by licensees who seek to renew their registrations later than 61 days after the expiration of the biennial registration deadline. The \$25.00 late fee established pursuant to N.J.A.C. 13:35-8.9 (incorrectly listed in the present fee schedule as a "reinstatement fee") has been included in this subsection for clarification purposes. Amendments to N.J.A.C. 13:35-8.9(c) have been made to explain how and when the late fee and the reinstatement fee will be assessed. A further amendment to subsection (c) deletes language regarding notification to licensees who do not respond to the computerized notice for renewal that the license will be suspended unless the renewal and late fees are received within 30 days. However, N.J.S.A. 45:9A-15 continues to provide authority for the Committee to suspend, upon notice to the licensee, the license or certificate of any person who fails to have his or her license or certificate renewed.

Finally, this proposal establishes new subsections N.J.A.C. 13:35-8.17(b) and (c) to clarify when an examination fee will be refunded or credited toward the next scheduled examination.

Social Impact

The proposed fee increases, which will affect all applicants as well as current licensees and permit holders, are necessary to enable the Committee to meet the responsibilities imposed upon it by the Legislature in regard to regulating persons engaged in the practice of hearing aid dispensing, thereby ensuring the protection of the consumer.

Economic Impact

The proposed amendments to the Committee's fee schedule will impact upon all applicants for licensure and training permits as well as all current

licensees in that they will be required to pay increased examination and licensing fees. In instances where licensees seek to renew their registrations later than 61 days after the expiration of the biennial registration deadline, the proposal also establishes a \$100.00 reinstatement fee to be paid by licensees. However, higher expenses of the Committee and an increase in the cost per examination charged by the National Institute for Hearing Instruments Studies necessitate the proposed amendments. The fee increases will prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to cover its expenses. It is unlikely that the proposed fee increases would necessitate an increase in charges to the consumer, since as a business expense these fees are reasonable. In accordance with N.J.S.A. 45:1-3.2, the sums to be raised are estimated not to exceed the amount required.

Regulatory Flexibility Analysis

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

The proposed amendments to N.J.A.C. 13:35-8.9 and 8.17 will apply to all applicants and to the approximately 400 currently registered hearing aid dispensers. Compliance requirements consist of paying increased examination and licensing fees in a timely manner. There are no reporting or recordkeeping requirements, and no professional services are needed in order to comply. Compliance requirements as set forth in the proposed amendments are to be applied consistently, and the Committee has established no differential standards based upon business size. The fee increases are necessary to enable the Committee to avoid operating at a loss, and the fees have been at the lowest amount that will cover the Committee's operating expenses.

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

13:35-8.9 Notification to the Committee; [suspension of license for] failure to renew

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

(c) Every licensee who does not respond to the computerized notice for renewal of his or her registration [will be notified by certified mail that unless the renewal fee plus a late fee of \$25.00 is received within 30 days, his or her license will be suspended in accordance with N.J.S.A. 45:9A-15.] **prior to the renewal deadline but who files a renewal application within 60 days after the expiration of the biennial registration period shall be assessed a late fee of \$25.00. Thereafter, licensees who seek to renew their registrations shall be assessed a reinstatement fee of \$100.00.**

1.-3. (No change.)

(d) (No change.)

13:35-8.17 Fee schedule

(a) The fee schedule for the Hearing Aid Dispensers Examining Committee of the State Board of Medical Examiners, in the Division of Consumer Affairs of the Department of Law and Public Safety, shall be as follows:

1. Application fee: \$20.00 (non-refundable)

[1.] **2. Temporary licenses: \$50.00**

3. Training permits: \$50.00

[2.] **4. Examination: [\$50.00]**

i. Written: \$50.00

ii. Practical: \$25.00

[3.] **Licensure after passing the examination: \$50.00]**

5. Initial Registration Fee:

i. During the first year of a biennial renewal period: \$110.00

ii. During the second year of a biennial renewal period: \$55.00

[4.] **Endorsement fee: \$100.00]**

6. Endorsement:

i. Review of credentials: \$30.00

ii. Endorsement fee:

During the first year of a biennial renewal period: \$110.00

During the second year of a biennial renewal period: \$55.00

[5.] **7. Biennial registration renewal: [\$80.00] \$110.00**

[6.] **Temporary License Renewal:]**

8. Renewal or Extension of Temporary License and Training Permit: \$20.00

9. Late fee: \$25.00

[7.] **Reinstatement: \$25.00]**

10. Reinstatement, Biennial Registration: \$100.00

11. Duplicate or replacement of biennial registration certificate: \$25.00

12. Preparation of certification papers for applicants to other states: \$25.00

(b) The Committee will refund the examination fee only if the application is rejected by the Committee or withdrawn by the applicant within 14 days after the Committee's receipt of the application.

(c) An applicant who fails to sit for an examination for which payment has been submitted may, one time only, have the fee credited toward the next scheduled examination. If the applicant fails to sit for such next scheduled examination, the fee will be forfeited.

(a)

STATE BOARD OF CHIROPRACTIC EXAMINERS

Practice Identification

Proposed New Rule: N.J.A.C. 13:44E-2.6

Authorized By: The State Board of Chiropractic Examiners,

Charles Bender, D.C., President.

Authority: N.J.S.A. 45:9-41.23(h).

Proposal Number: PRN 1991-328.

Submit written comments by July 17, 1991 to:

Jay Church, Executive Director

State Board of Chiropractic Examiners

Post Office Box 45004

Newark, New Jersey 07102

The agency proposal follows:

Summary

The State Board of Chiropractic Examiners, which has recently assumed responsibility for the practice of chiropractic in New Jersey, is proposing a new rule, N.J.A.C. 13:44E-2.6, entitled "Practice Identification." Subsection (a) requires licensees to identify themselves for professional purposes in a manner clearly indicating the chiropractic profession and advises licensees of the terms which may be used to do so. While the proposed new rule contains provisions similar to those provided by the Board of Medical Examiners, which previously regulated the practice of chiropractic in New Jersey, it differs from the latter in requiring that the identifying term appear immediately adjacent to the full name of the licensee.

Subsection (b) of the proposed new rule is intended to address the confusion and ambiguity which results from a string of letters appearing immediately after the name of the licensee. This rule would permit the use of such letters in immediate conjunction with the name of the licensee only if the letters represent an earned academic professional degree. However, unlike the Medical Board rule, which permits a listing of abbreviations of memberships in non-profit professional societies, this proposed new rule prohibits the use, in immediate conjunction with the licensee's name, of letters representing non-academic degrees or professional society memberships. Such letters may appear elsewhere, but not in immediate conjunction with the name.

Social Impact

In requiring the use of standardized identifying terms immediately adjacent to a licensee's name and in limiting the use of letters which may follow a licensee's name to letters representing earned academic degrees, the proposed new rule should alleviate consumer confusion and enable the consumer to more readily identify members of the chiropractic profession. The proposed new rule will also benefit licensees, in that they will be clearly advised of the Board's requirements in connection with practice identification.

Economic Impact

No economic impact on any group or person is anticipated as a result of the proposed new rule, which merely provides guidance to chiropractic licensees as to the manner in which they are to identify themselves for professional purposes.

Regulatory Flexibility Analysis

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

The proposed new rule will apply to all of the approximately 2,800 current licensees of the Board of Chiropractic Examiners. Compliance with the rule involves no reporting or recordkeeping requirements, nor does it require the retention of professional services. There are no initial capital costs or other costs of compliance. The proposed new rule merely advises licensees of the manner in which they are to identify their practices for professional purposes. Since the intent of the rule is to create uniformity in the profession with regard to practice identification and to avoid consumer confusion, the proposed new rule must be applied uniformly without differentiation as to size of practice.

Full text of the proposed new rule follows:

13:44E-2.6 Practice identification

(a) A licensee of the Board of Chiropractic Examiners shall be identified for professional purposes (office identification, stationery, professional cards, signature on insurance claim forms, education, advertising, indoor and outdoor signs, etc.) in a manner clearly indicating the chiropractic profession immediately adjacent to the full name of the licensee by using the term chiropractor, doctor of chiropractic, chiropractic physician, or the abbreviation D.C. as the degree actually conferred by a professional college.

(b) The use of any letters in immediate conjunction with the name of a licensee shall be deemed a representation of an earned academic professional degree. Any such degree shall have been conferred by an educational institution authorized to do so by the appropriate higher education authorities in its state of domicile. The use of any letters which represent non-academic degrees or certifications or abbreviations of membership in professional societies and associations shall not be used in immediate conjunction with the name of the licensee.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

State Police Retirement System

Methods of Repayment

Proposed Amendment: N.J.A.C. 17:5-4.3

Authorized By: Board of Trustees, State Police Retirement

System; Michael Weik, Secretary.

Authority: N.J.S.A. 53:5A-30h.

Proposal Number: PRN 1991-324.

Submit comments by July 17, 1991 to:

Peter J. Gorman, Esq.

Administrative Practice Officer

Division of Pensions

CN 295

Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposal deletes the portion of the rule dealing with methods of repayment regarding purchases of service credit within the State Police Retirement System that states that certain purchases must be liquidated by age 55. The elimination of this portion of the rule is an attempt to treat all purchases of service credit throughout all of the State-administered retirement systems in a comparable manner.

Social Impact

The proposed amendment will affect present and future members of the State Police Retirement System who are over 55 years of age and are purchasing service credit. If this portion of the rule is not deleted, such persons will have to complete such purchases within two years of the purchase or by age 55, regardless of when they retire.

Economic Impact

The proposed amendment will not have any serious adverse effect upon the public or the retirement system. It may ease a financial burden of the purchase, since the member will now have a longer period to complete the total purchase of such service credit.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions only impact upon public employers and/or public employees, this amendment will not have any effect upon small business.

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

17:5-4.3 Methods of repayment

(a) Methods of repayment include **the following**:

1.-2. (No change.)

3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years[. Compulsory and temporary service purchases must be liquidated by age 55; if such person has attained the age of 55 or more at the time of purchase, two years will be specified];

4. (No change.)

(a)

OFFICE OF THE STATE TREASURER**Public Employee Charitable Fund-Raising Campaign**

Proposed Amendments: N.J.A.C. 17:28-2.4, 2.6, 2.7, 2.8, 3.2, 3.4, 4.6

Proposed Repeal: N.J.A.C. 17:28-3.3

Proposed New Rule: N.J.A.C. 17:28-1.5

Authorized By: Douglas C. Berman, State Treasurer.

Authority: N.J.S.A. 52:14-15.9c1 and N.J.S.A. 52:18A-30.

Proposal Number: PRN 1991-331.

Submit comments by July 17, 1991 to:

Steven B. Frakt
Special Assistant to the State Treasurer
State House
CN 002
Trenton, New Jersey 08625-0002

The agency proposal follows:

Summary

The Public Employee Charitable Fund-Raising Campaign is a voluntary fund-raising campaign conducted annually among public employees of the State who may authorize their contributions to be deducted from their paychecks. The campaign is governed by a steering committee consisting of the fund-raising organizations whose applications have been approved for inclusion in the campaign. The campaign is managed by a campaign manager selected by the steering committee.

In order to promote a more efficient and effective campaign, and to provide assurance to public employees as to the charitable nature and purpose of the participating organizations and agencies, the proposed amendments clarify various administrative and operational aspects of the campaign, provide more specific guidance as to the conduct of the campaign, and require more detailed information from applicants. The specific provisions of this proposal are as follows:

Proposed new rule N.J.A.C. 17:28-1.5 clarifies that charitable solicitations at State work sites can only be undertaken as part of the unified campaign; that the campaign is to be conducted in an equitable manner; that a charitable agency cannot participate as both an affiliated and an unaffiliated agency; and that the State will not assume any of the responsibilities of the Campaign Steering Committee.

Proposed amendments to N.J.A.C. 17:28-2.4 provide that the campaign manager shall remain in office until the election of a successor; specify the administrative requirements for the position of campaign manager; and clarify that the Campaign Steering Committee may establish a grievance procedure.

Proposed amendments to N.J.A.C. 17:28-2.6(a) change the application deadline for charitable fund-raising organizations from December 1 to the date specified in the annual public notice of application.

Proposed amendments to N.J.A.C. 17:28-2.6(b) provide that the current Campaign Steering Committee, rather than the State Treasurer,

notifies the applicants of their eligibility or ineligibility as a member of the Campaign Steering Committee for the following campaign.

Proposed amendments to N.J.A.C. 17:28-2.7 extend the deadline for appeals from 10 to 15 days and add the chairman of the Campaign Steering Committee as a member of the appeal panel.

Proposed amendments to N.J.A.C. 17:28-2.8 require additional documentation as part of the application for a fund-raising organization, including a copy of IRS form 990, evidence of registration as a charity under New Jersey law, a copy of the annual audit, and various affirmations regarding the nature of the organization and its affiliated charities.

Proposed N.J.A.C. 17:28-3.2 revises the application and appeals procedure for unaffiliated agencies in the manner similar to proposed N.J.A.C. 17:28-2.6 and 17:28-2.7 for charitable fund-raising organizations.

N.J.A.C. 17:28-3.3 is proposed for repeal. The certification of an affiliated charitable agency is to be included in proposed N.J.A.C. 17:28-2.8.

Proposed N.J.A.C. 17:28-3.4 requires additional documentation as part of the application for an unaffiliated charitable agency similar to the information required for fund-raising organizations under proposed N.J.A.C. 17:28-2.8.

Proposed N.J.A.C. 17:28-4.6 provides that an employee's pledge/designation card shall be valid only for the year of the campaign.

Social Impact

The proposed amendments and proposed new rule will improve the administration and operation of the Public Employee Charitable Fund-Raising Campaign. This will enhance the access of charitable organizations and agencies to the public workplace and will afford State employees a broad avenue of expression in designating recipients of their charitable contributions.

Economic Impact

The proposed amendments and proposed new rule will have no economic impact on State finances, nor will they subject charitable organizations and agencies to any additional administrative costs. The proposals only clarify application procedures and campaign operations. In any event, the charitable campaign is run on a voluntary basis and the modest administrative costs of the campaign are deducted from contributions. It should be noted that, to the extent that the campaign operates more efficiently and effectively, it may encourage greater charitable giving by State employees.

Regulatory Flexibility Analysis

As defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the term "small business" may apply to some charitable agencies wishing to participate in the Public Employee Charitable Fund-Raising Campaign. The only requirements imposed on such agencies relate to the application process, the documentation for which should be maintained by the agency in the normal course of operation. The Department anticipates no capital costs need be expended or professional services engaged by small businesses to comply with these rules. Therefore, no differentiation in the application process based upon business size is provided.

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

17:28-1.5 General provisions

(a) **No charitable agency or charitable fund-raising organization shall engage in any direct solicitation activity at the work site of State employees, except as a participant in a Campaign and in accordance with N.J.A.C. 17:28.**

(b) **No charitable agency shall participate in a Campaign as both an affiliated and an unaffiliated agency.**

(c) **All activities of the Campaign shall be conducted in a manner that promotes a unified solicitation on the behalf of all participants. While it is permissible to individually identify the fund-raising organizations or charitable agencies in the Campaign for informational purposes, no person affiliated with the Campaign shall engage in any Campaign activity that is construed to either advocate or criticize any specific fund-raising organization or charitable agency.**

(d) **No State official or employee shall assume the duties and responsibilities of the Campaign Steering Committee, the Campaign Steering Committee Chairman, or the Campaign Manager. In the event of the inability of the Committee to function, or a continuing vacancy in the position of Chairman or Manager, the State Treasurer reserves**

the right to cancel the Campaign. The State Treasurer shall designate a State employee coordinator to assist the Campaign Steering Committee.

17:28-2.4 Duties of Campaign Steering Committee

(a) The Campaign Steering Committee shall:

1. Elect a Chairman to conduct the meetings of the Campaign Steering Committee, who shall serve for one year and until the election of a successor, and who shall be eligible for re-election;

2. (No change.)

3. Elect and oversee a Campaign Manager, who shall demonstrate to the satisfaction of the Campaign Steering Committee the administrative, financial, technical and management capability to organize, publicize and operate an extensive fund-raising campaign in an efficient and equitable manner in accordance with N.J.A.C. 17:28;

4. (No change.)

5. Establish policies and procedures for the operation and administration of the Campaign, including the hearing of any grievances concerning the operation and administration of the Campaign.

17:28-2.6 Membership procedure

(a) The State Treasurer shall publish in the New Jersey Register a Public Notice of application for charitable fund-raising organizations wishing to participate on the Campaign Steering Committee at least 30 days prior to the application due date. These applications are due [in the Office of the State Treasurer by December 1] by the close of business on the date and at the location specified in the notice.

(b) Within [10] 30 days of the close of the application due date, the [State Treasurer] current Campaign Steering Committee, through the State employee coordinator, shall notify each applicant of its eligibility or ineligibility for the Campaign Steering Committee. In cases of ineligibility, the notice shall set forth the reason for such ineligibility.

17:28-2.7 Appeal procedure

(a) Any charitable fund-raising organization receiving notice of ineligibility shall have [10] 15 days from receipt of such notice to file an appeal and to submit to the State Treasurer any additional information [addressing any deficiencies in the application].

(b) Within [10] 30 days of receipt of any additional information, the State Treasurer shall convene a special appeal panel consisting of the chairman of the Campaign Steering Committee, the representative of the various labor unions representing State employees and [of] the representative of the executive branch of State government to review the charitable fund-raising organization's [application] appeal and any additional documentation or information submitted by the charitable fund-raising organization [to address any deficiency in the application as determined by the State Treasurer].

(c) The special appeal panel shall conduct its review [within 10 days and in that time] in a timely manner and shall make its [recommendation] decision in writing to the State Treasurer regarding the eligibility of the charitable fund-raising organization to participate on the Campaign Steering Committee. The State Treasurer shall in a timely manner adopt, modify or reject the decision of the panel. The State Treasurer's action shall be final.

[(d) The State Treasurer shall have five days from receipt of the recommendation of the special appeal panel to review the recommendation and supplemental application materials, make his or her final determination regarding the eligibility of the charitable fund-raising organization to participate on the Campaign Steering Committee, and notify the organization of his or her decision. The decision of the State Treasurer shall be final.]

17:28-2.8 Application form [organization] for charitable fund-raising organizations

(a) (No change.)

(b) In addition to a completed application form, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. 52:14-15.9a, 15.9b, and 15.9c, an Internal Revenue Service Letter of Determination or other proof from the Internal Revenue Service that the applicant:

i. Is exempt from [federal] Federal income tax under section 501(c)(3) of the Internal Revenue Code;

ii.-iii. (No change.)

2. With respect to the requirements set forth in N.J.S.A. 52:14-15.9[c7]e, annual financial reports which demonstrate that the organization raised, in each of its two fiscal years preceding its application to participate in a Campaign, at least \$35,000 from individual citizens of New Jersey; [and]

3. With respect to N.J.S.A. 52:14-15.9[c7]f, annual financial reports which demonstrate that the organization raised at least \$60,000 and distributed that sum among a minimum of 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State Campaign[.];

4. A copy of the organization's Internal Revenue Service form 990 for each of the organization's two fiscal years preceding its application;

5. Documentary evidence that the organization is registered or exempt from registration pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971" (P.L. 1971, c. 469; N.J.S.A. 45:17A-1 et seq.);

6. A copy of the organization's independent auditor's report for each of the organization's two fiscal years preceding its application;

7. A copy of the organization's annual report for each of the organization's two fiscal years preceding its application;

8. A statement affirming that the organization is directed by a governing body whose members have no material conflict of interest in their service on the governing body, and a list of the members of the governing body and the identification of its officers;

9. A list of the affiliated charitable agencies to which the organization gave funds in its two fiscal years prior to the application and a list of the agencies to which it expects to give funds received in the Campaign, and a description of the health, welfare or human care services that each provides;

10. A statement affirming that each of the organization's affiliated charitable agencies is:

i. Registered pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971" (P.L. 1971, c. 469; N.J.S.A. 45:17A-1 et seq.), except for an agency exempt from registration under the law; and

ii. Engaged in the provision of health, welfare or human care services; and

11. A statement affirming that the organization will be represented at meetings of the Campaign Steering Committee and providing the name of the representative.

(c) (No change.)

(d) Those wishing to receive an application can do so by making a request either orally or in writing to Charities Registration, Division of Consumer Affairs, [100 Raymond Blvd., Room 518] P.O. Box 254, Newark, New Jersey [07102] 07101, (201) 648-4704.

(e) Charitable fund-raising organizations, which were found eligible [by the State Treasurer] to participate on the Campaign Steering Committee for Campaign immediately prior to the Campaign being applied for, shall be required only to submit to the State Treasurer its most recent [financial] information which shall specifically [address] update the requirements of [(b)2 and 3] subsection (b) above.

(f) (No change.)

17:28-3.2 Application procedure

(a) (No change.)

(b) The application procedure for charitable agencies is as follows:

1. The State Treasurer shall publish in the New Jersey Register a Public Notice of application for charitable agencies wishing to participate in the Campaign at least 30 days prior to the application due date. These applications are due [in the Office of the State Treasurer by December 1] by the close of business on the date and at the location specified in the notice. The [State Treasurer, in conjunction with the] current Campaign Steering Committee shall review the applications.

2. Within [10] 30 days of the close of the application due date, the [State Treasurer] Campaign Steering Committee, through the State

employee coordinator, shall notify each agency of its eligibility or ineligibility to participate in the Campaign. In cases of ineligibility, the notice shall set forth the reasons for such ineligibility.

3. Any charitable agency receiving notice of ineligibility shall have [10] 15 days from receipt of such notice to file an appeal and to submit to the State Treasurer any additional information [addressing any deficiencies in the application].

4. Within [10] 30 days of receipt of any additional information, the State Treasurer shall convene a [meeting] special appeal panel consisting of the Chairman of the Campaign Steering Committee, the representative of the various labor unions representing State employees and the representative of the executive branch of State government to review the charitable agency's [application] appeal and any documentation or information submitted by the charitable agency [to address any deficiency in the application as determined by the State Treasurer and the Campaign Steering Committee].

5. The special appeal panel shall conduct its review [within five days and in that time] in a timely manner and shall make its [recommendation] decision in writing to the State Treasurer regarding the eligibility of the charitable agency to participate in the Campaign, and shall notify the charitable agency of its decision. The State Treasurer shall in a timely manner adopt, modify or reject the decision of the panel. The State Treasurer's action shall be final.

[6. The State Treasurer shall have five days in which to review the recommendation of the special appeal panel and the supplemental application materials, make his or her final determination as to the eligibility of the charitable agency to participate in the Campaign and notify the agency of his or her decision. The decision of the State Treasurer shall be final.]

17:28-3.3 [Application form/affiliated charitable agency] (Reserved)

[Affiliated Charitable agencies wishing to participate in the Campaign shall be certified as affiliated by their charitable fund-raising organization.]

17:28-3.4 Application form/unaffiliated charitable agency

(a) (No change.)

(b) In addition to a completed application form, the applicant must submit:

1. With respect to the requirements set forth in N.J.S.A. 52:14-15.9a, [b, and c], 15.9b and 15.9c an Internal Revenue Service Letter of Determination or other proof from the Internal Revenue Service that the applicant:

i. Is exempt from [federal] Federal income tax under section 501(c)(3) of the Internal Revenue Code;

ii. Qualifies for tax deductible contributions under section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code; and

iii. Is not a private foundation as defined in section 509(a) of the Internal Revenue Code; [and]

2. With respect to the requirements set forth in N.J.S.A. 52:14-15.9c7e, annual financial reports which demonstrate that the agency raised, in each of its two fiscal years preceding its application to participate in a Campaign, at least \$15,000 from individual citizens of New Jersey[.];

3. A copy of the agency's Internal Revenue Service form 990 for each of the agency's two fiscal years preceding its application;

4. Documentary evidence that the agency is registered or exempt from registration pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971" (P.L. 1971, c. 469; N.J.S.A. 45:17A-1 et seq.);

5. A copy of the agency's independent auditor's report for each of the agency's two fiscal years preceding its application;

6. A copy of the agency's annual report for each of the agency's two fiscal years preceding its application;

7. A statement affirming that the agency provides health, welfare or human care services within New Jersey, and a description of the services; and

8. A statement affirming that the agency is directed by a governing body whose members have no material conflict of interest in their service on the governing body, and a list of the members of the governing body and the identification of its officers.

(c) (No change.)

(d) Those wishing to receive an application can do so by making a request either orally or in writing to Charities Registration, Division of Consumer Affairs, [1100 Raymond Blvd., Room 518] P.O. Box 254, Newark, New Jersey [07102] 07101, (201) 648-4704.

(e) Unaffiliated charitable agencies, which were found eligible by the State Treasurer to participate in the Campaign immediately prior to the Campaign being applied for, shall be required only to submit to the State Treasurer its most recent [financial] information which shall specifically [address] update the requirements of [(b)2] subsection (b) above.

(f) (No change.)

17:28-4.6 Designated contribution

(a) Employees may designate, on a Campaign pledge/designation card, their contribution to a specific charitable fund-raising organization and/or charitable agency, and/or may select the undesignated option. Designated contributions through the payroll deduction or in cash shall be a minimum contribution of \$.50 per week (\$1.00 per pay period, \$26.00 per year) per organization or agency designated. The minimum contribution requirement shall be met for each additional organization or agency designated.

(b) A Campaign pledge/designation card shall be valid only for the calendar year of the campaign. An employee who wishes to participate in a subsequent Campaign must file a new Campaign pledge/designation card valid for the subsequent Campaign.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Abatement of Penalty and Interest

Proposed Amendment: N.J.A.C. 18:2-2.7

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

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1991-332.

Submit comments by July 17, 1991 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269

Trenton, New Jersey 08646-0269

The agency proposal follows:

Summary

The Division of Taxation proposes to amend N.J.A.C. 18:2-2.7 to explain the procedure to be used in requesting an abatement of penalty and interest and the criteria used by the Division in reviewing and making determinations on such requests.

N.J.S.A. 54:49-11 provides: "If the failure to pay any such tax when due is explained to the satisfaction of the director, he may remit or waive the payment of the whole or any part of any penalty for deficiency assessments made pursuant to R.S. 54:49-6. In all other cases the director may remit or waive the payment of any part of any penalty and may remit or waive the payment of any interest charge in excess of the rate of three percentage points above the prime rate compounded daily." The amendment establishes factors which will be considered in requests for abatements in different kinds of cases at various stages in their appeal.

Social Impact

The proposed amendment will have a positive social impact by clearly setting out the factors which the Division will consider in evaluating requests for abatements of penalties and interest. Implementation of these amendments will benefit the public by providing clarification of the Division's policies related to abatements of penalties and interest.

Economic Impact

The proposed amendment may eliminate points of possible confusion regarding abatements of penalties and interest by the Division. The

amendment may increase revenue by enhancing taxpayer compliance and by eliminating the need for litigation regarding whether the Division properly considered requests for abatements. Expenses for administrative and legal fees may be reduced for taxpayers and tax administrators by implementing the amendment pursuant to the statute.

Regulatory Flexibility Analysis

The proposed amendments impose compliance requirements on all taxpayers, whether or not they are small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements include the substantiation of written affirmations in support of the request for abatement and examples of acceptable submissions. The requirements contained in the proposed amendments will regulate the submission of information to be used by the Division in determining whether an abatement of penalty and interest should be granted to a taxpayer. Any taxpayer who is assessed a penalty and interest by the Division has the option of filing with the Division a request for abatement of such penalty and interest. The Division requires, in accordance with the applicable statutes, information sufficient to provide a basis for determining whether an abatement should be granted. The specification, in these amendments, of that information can be expected to make the process more cost-effective for all taxpayers who choose to request an abatement. The taxpayers, whether or not they are small businesses, who elect to engage the services of professionals in their request for abatement, such as attorneys and tax accountants, will be benefitted by the specification in the amendments.

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

18:2-2.7 Abatement of penalty and interest

(a) If the failure to pay any tax when due or the failure to file any return is explained to the satisfaction of the Director, he may abate the payment of the whole or any part of any penalty and may abate the payment of any interest charge in excess of the rate of one-half of one percent per month from the due date to October 1, 1975, and three-quarters of one percent per month from October 1, 1975, to the date of payment (N.J.S.A. 54:49-11) or December 8, 1987, whichever is earlier. On and after December 9, 1987 the Director may abate the payment of any interest charge in excess of the rate of three percentage points above the prime rate compounded daily to the date of payment on the entire existing liability including any tax, penalty, and/or accumulated interest charges. [The Director will take no action under this section unless the taxpayer submits, in writing, a full and complete satisfactory explanation as to the reason why the tax was not paid when due.]

(b) An abatement will be considered if the taxpayer can show reasonable cause for failure to file any return or pay any tax when due and makes full payment of the taxes due. All of the facts alleged as a basis for reasonable cause for failure to timely file a return or for failure to timely pay or pay over any tax due must be affirmatively shown in a written statement, containing a declaration that it is made under penalties of perjury, made by the taxpayer or other person against whom the penalty or penalties have been assessed or are assessable. Where the taxpayer or other person is unable to provide such statement or does not have a personal knowledge of such facts, a showing of reasonable cause may be made on behalf of the taxpayer or other person by an individual with a personal knowledge of such facts. In determining whether reasonable cause exists, in addition to an evaluation of such facts, the taxpayer's previous compliance record with respect to all of the taxes imposed may be taken into account.

(c) The following exemplify grounds for reasonable cause, where clearly established by or on behalf of the taxpayer or other person.

1. The death or serious illness of the taxpayer or a partner, officer, director, shareholder, employee or other representative of the taxpayer or such individual's unavoidable absence from the usual place of business, which precluded timely compliance, may constitute reasonable cause provided that:

i. In the case of the failure to file any return, the applicable return is filed; or

ii. In the case of the failure to pay or pay over any tax, such amount is paid or paid over, within a justifiable period of time after the death, illness or absence. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer or such other person liable

for penalty, as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case. Substantiation may be required by the submission of third-party verification in the form of, for example, doctor's reports and hospital insurance carrier reports.

Example: It was established that illness incapacitated the owner of a small business concern during the period of delinquency. The taxpayer further established that no other person had access to sufficient information which would enable such person to timely file the delinquent return and pay over the tax due. The return was filed and the tax due was paid over within a justifiable period of time after the owner returned to work. This constitutes reasonable cause for failure to file the return and for failure to pay the tax due.

2. The destruction of the taxpayer's or the taxpayer's representative's place of business or business records by a fire or other documented casualty, which precluded timely compliance, may constitute reasonable cause provided that:

i. In the case of the failure to file any return, the return is filed; or

ii. In the case of the failure to pay or pay over any tax, such amount is paid or paid over, within a justifiable period of time after the casualty has taken place. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer or such other person liable for penalty, as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case. Substantiation may be required by the submission of third-party verification in the form of, for example, police accident reports and insurance claims and settlements.

Example: The place of business, together with the business records and the tax return, of a corporate taxpayer were destroyed by a documented casualty immediately prior to the date prescribed for filing the return and paying over the tax due. Within a justifiable period of time after the casualty took place the records of the taxpayer were reconstructed, a return was filed and the tax due was paid over. This constitutes reasonable cause for failure to file the return and for failure to pay the tax due.

3. The inability, for reasons beyond the taxpayer's control, to timely obtain and assemble essential information required for the preparation of a complete return, despite the exercise of reasonable efforts, may constitute reasonable cause provided a return is timely filed and the tax is timely paid or paid over on that portion of the tax liability which can be ascertained. The relevant facts affecting that portion of the tax liability which cannot be ascertained must be fully disclosed with the timely filed return and when such liability is ascertained, and where applicable collected, an amended return must be immediately filed together with any additional tax due.

Example: Due to an inability to obtain certain records, a taxpayer was unable for reasons beyond its control to determine its proper tax liability prior to the prescribed date for paying its tax. The taxpayer timely filed a return and paid the tax due on that portion of the tax liability which was ascertainable. Attached to the return was a rider which explained in detail why the proper tax liability could not be determined prior to the due date. When the records in question were obtained and assembled, an amended return was immediately filed and the additional tax due was paid. This constitutes reasonable cause for failure to pay the tax due.

4. A pending conference with the Division of Taxation, or a pending action or proceeding for judicial determination may constitute reasonable cause, until the time in which the taxpayer has exhausted its administrative or judicial remedies, as applicable, for a taxable period or periods the return or returns for which are due subsequent to the commencement of the conference proceeding, or the commencement of the judicial action or proceeding provided that:

i. The action or proceeding involves a question or issue affecting whether or not the individual or entity is required to file a return and pay tax;

ii. The action or proceeding is not based on a position which is frivolous; and

iii. The facts and circumstances for such taxable period or periods are identical or virtually identical to those of the taxable period or periods covered by the action or proceeding.

Example: An individual is awaiting a determination, after a hearing, of the Tax Court of New Jersey regarding whether or not such individual was required to file a return and collect and remit tax in a prior taxable period. The petition on the matter to the Tax Court was filed prior to the due date for the return for the current taxable period. The facts and circumstances for the current taxable period are identical to those of the period covered by the petition. The individual's position is arguable and has merit based on case law or other recognized legal authority. This constitutes reasonable cause for failure to file a return and for failure to pay the tax due for the current period.

5. Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. Ignorance of the law, however, will not be considered as a basis for reasonable cause.

Example 1: A manufacturer with production facilities throughout New Jersey has established an accrual accounting system to record purchases subject to use tax. The manufacturer, as the result of his first sales and use tax audit, owes additional use tax because of occasional misclassification of office supplies and equipment. After a review of a written statement, submitted by the taxpayer, containing all of the facts alleged as a basis for reasonable cause, it was determined that the taxpayer had made reasonable efforts to account for its use tax liabilities, that the understatement of tax was unintentional and that the manufacturer had otherwise substantially complied with the law. The audit findings established that willful neglect did not occur and reasonable cause existed. Therefore, penalty and interest in excess of the statutory minimum will be waived.

Example 2: A vendor who operates a large restaurant business has an accounting system which is devised in such a way that the tax to be remitted each quarter is based on the accumulated taxable sales. An overcollection test was performed on the guest checks which disclosed occasional miscalculation of tax by vendor's staff which resulted in an understatement of the tax due and paid. The taxpayer submitted a written statement containing all of the facts alleged as a basis for reasonable cause. The understatement of the tax due was not considered substantial, taking into account the size of the operation, volume of sales and an otherwise sound accounting system. The audit findings established that willful neglect did not occur and that reasonable cause existed. Therefore, the penalty and interest in excess of the statutory minimum would be waived.

(d) A failure to pay will be considered to be due to reasonable cause, to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if he paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of his tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of income (or other amounts) he could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, for example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of his assets and anticipated income will be insufficient to pay his tax, has not exercised ordinary business care and prudence in providing for the payment of his tax liability. Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of his tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay his tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if he made reasonable efforts to conserve sufficient assets in marketable form to satisfy his tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

1. In determining whether reasonable cause and good faith exist, the most important factor to be considered is the extent of the taxpayer's

effort to ascertain the proper tax liability. In addition to any relevant grounds for reasonable cause as exemplified in (c) above, circumstances that indicate reasonable cause and good faith with respect to the substantial understatement or omission of tax, where clearly established by or on behalf of the taxpayer, may include the following:

- i. An honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer;
- ii. A computational or transcriptional error;
- iii. The reliance by the taxpayer on any written information, professional advice or other facts provided such reliance was reasonable and the taxpayer had no knowledge of circumstances which should have put the taxpayer upon inquiry as to whether such facts were erroneous; or
- iv. The filing of an amended return which shows an additional amount of taxes due or which adequately discloses the tax treatment of an item which should have been adequately disclosed with the original return, provided the amended return is filed prior to the time the taxpayer is first contacted by the Division of Taxation concerning an audit or an examination of the return.

2. In determining if the taxpayer exercised ordinary business care and prudence in providing for the payment of his tax liability, consideration will be given to the nature of the tax which the taxpayer has failed to pay. Thus, for example, facts and circumstances which, because of the taxpayer's efforts to conserve assets in marketable form, may constitute reasonable cause for nonpayment of income taxes may not constitute reasonable cause for failure to pay over trust fund taxes such as sales and gross income withholding taxes.

(e) The provisions of this section shall apply to the extent pertinent where any taxpayer substantially understates the amount of taxes required to be shown on the return and such understatement or omission was due to reasonable cause and not due to willful neglect. Reasonable cause and the absence of willful neglect may be determined to exist only where the taxpayer has acted in good faith.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT Condominium Association Governing Board Meetings

Proposed New Rules: N.J.A.C. 5:20

Authorized By: Melvin R. Primas, Jr., Commissioner,
Department of Community Affairs.

Authority: N.J.S.A. 46:8B-13.

Proposal Number: PRN 1991-327.

Submit comments by July 17, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On March 6, 1991, Governor Florio signed into law P.L. 1991, c.48 (N.J.S.A. 46:8B-13 et seq.) This act requires that all meetings of the governing board of a condominium association, except working sessions at which no binding votes are taken, be open to all unit owners, and that the by-laws provide procedures for giving all unit owners adequate notice of such meetings. The Act will become effective on September 6, 1991, six months after enactment. In the interim, the Department of Community Affairs is required to provide condominium associations with "guidelines" for amending or supplementing their by-laws so as to comply properly with the requirements of the statute.

The guidelines set forth in this chapter are patterned upon the requirements for municipalities established by the Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.). The notice requirement may be satisfied by posting the notice of the time and place of the meeting where it is accessible at all times to all unit owners, by sending notice of the meeting

to two newspapers, and by filing the notice with the person who administers the business office of the condominium. This must be done at least 48 hours prior to the meeting, although provision is made for emergency meetings to be held when it is not possible to give advance notice. Provision is also made for an annual notice schedule that will obviate the need for notice of each meeting in most cases.

The Department is proposing the guidelines as administrative rules because they: (1) are intended to have wide coverage encompassing a large segment of the regulated public, (2) are intended to be applied generally and uniformly, (3) are designed to operate prospectively, (4) prescribe a legal standard that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statute, (5) reflect administrative policy that was not previously expressed in any official and explicit agency determination, adjudication or rule, and (6) reflect a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. (See *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313 (1984).)

Social Impact

The Department believes that the proposed guidelines, based as they are upon procedures that have worked reasonably for municipalities, will provide the notice required by statute, thereby allowing interested condominium unit owners to exercise their right to attend governing board meetings, with a minimal burden upon the association.

Economic Impact

The Department does not expect there to be any significant economic impact upon condominium associations as a result of the notice procedures. The cost of preparing, posting and sending out two copies of a brief notice is unlikely to be a major item in any association's budget. It is possible that some associations will find it necessary to install bulletin boards in common areas.

Regulatory Flexibility Statement

Most, if not all, condominium associations would qualify as "small businesses" based upon the number of their employees. These proposed rules would impose a minimal burden, and there is no need or basis for special rules for "small businesses." Moreover, the statute characterizes these "guidelines" as "model by-law provisions suggested or recommended for adoption." The statute does not give the Department authority to take action against any association that does not incorporate them into its by-laws, so there is no real regulatory power to be exercised with flexibility.

Full text of the proposal follows:

CHAPTER 20 MEETINGS OF THE GOVERNING BOARD OF A CONDOMINIUM ASSOCIATION

SUBCHAPTER 1. GENERAL GUIDELINES

5:20-1.1 Open meetings

(a) If the by-laws of a condominium association provide that any of the powers and duties of the association be exercised through a governing board elected by the membership of the association, or through officers of the association responsible to and under the direction of such a governing board, all meetings of that governing board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance of all unit owners.

(b) The provisions of (a) above notwithstanding, the governing board may exclude or restrict attendance at those meetings, or portions of meetings, at which any of the following matters are to be discussed.

1. Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;
2. Any pending or anticipated litigation or contract negotiations;
3. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or
4. Any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the association.

(c) At each meeting required to be open to all unit owners, minutes of the proceedings shall be taken and copies of those minutes shall be made available to all unit owners before the next open meeting.

5:20-1.2 Notice requirements

(a) The by-laws of any condominium association in which any of the powers and duties of the association are exercised through a governing board, or through officers responsible to and under the direction of a governing board, shall provide for the giving of adequate notice to unit owners of the time and place of all meetings required to be open to all unit owners.

(b) The "adequate notice" required by this section shall mean written notice, at least 48 hours in advance, giving the time, date, location and, to the extent known, the agenda of any regular, special, or rescheduled meeting, other than a conference or working session at which no binding votes are to be taken, which notice shall be:

1. Posted prominently in at least one place on the condominium property that is accessible at all times to all unit owners;
2. Mailed, telephoned, telegraphed, or hand delivered to at least two newspapers that have been designated by the governing board or by the association to receive such notices because they have the greatest likelihood of informing the greatest number of unit owners; and
3. Filed with the person responsible for administering the business office of the association.

(c) At least once each year, within 7 days following the annual meeting of the association, the governing body shall post, and maintain posted throughout the year at the place or places at which notices are posted pursuant to (b)1 above, mail to the newspapers to which notices are sent pursuant to (b)2 above, and file with the person responsible for administering the business office of the association, a schedule of the regular meetings of the governing body to be held during the succeeding year.

1. Such schedule shall contain the location of each meeting, if known and the time and date of each meeting. In the event that such schedule is thereafter revised, the governing body, within 7 days following the revision, shall post, mail and submit such revision in the manner set forth in this subsection.

2. If the location of a meeting is set forth in the schedule, additional notice of the meeting pursuant to (b) above shall not be required.

(d) In the event that a meeting of the governing body is required in order to deal with matters of such urgency and importance that delay for the purpose of providing 48 hours advance notice would be likely to result in substantial harm to the interests of the association, and provided that the meeting is limited to discussion or and acting with respect to such matters of urgency and importance, notice of the meeting shall be deemed to be adequate if it is provided as soon as possible following the calling of the meeting by posting, delivering and filing written notice of the meeting in the manner set forth in (b) above.

(a)

DIVISION OF HOUSING AND DEVELOPMENT Uniform Construction Code; Barrier Free Subcode Proposed Amendments: N.J.A.C. 5:23-7.3 and 7.11

Authorized By: Melvin R. Primas, Jr., Commissioner,

Department of Community Affairs.

Authority: N.J.S.A. 52:27D-119.

Proposal Number: PRN 1991-334.

Submit comments by July 17, 1991 to:

Michael L. Tickin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department plans to adopt both the U.S. Department of Housing and Urban Development (HUD) Guidelines being promulgated pursuant to the amendments to the Federal Fair Housing Act and the regulations being promulgated by the U.S. Department of Justice pursuant to the

Americans with Disabilities Act as the standards for making buildings accessible to the disabled in New Jersey. Until such time as both of these sets of regulations are published in final form, the Department will continue to enforce the Barrier Free Subcode (N.J.A.C. 5:23-7). Accordingly, the following amendments are made to clarify the Department's intent with respect to two provisions of the Barrier Free Subcode which have been misinterpreted.

N.J.A.C. 5:23-7.3(a)2 is amended to clarify that only "townhouse-style" units may qualify for exemption under this section. The Department has become aware that this exemption has been misinterpreted to include multistory buildings, some of which are served by elevators, in which each unit also has an exterior stair or a stair leading directly to the exterior. Under the provisions of the Federal Fair Housing Act Amendments and the HUD Guidelines implementing that law, as in the Barrier Free Subcode, only townhouse units are exempt.

N.J.A.C. 5:23-7.11(a) is amended to clarify that the construction of adaptable entrances to dwelling units is an option available for entrances which serve only one dwelling unit and which are not more than 24 inches above grade level. All other entrances to dwelling units which are covered by the provisions of this subchapter must be made accessible. This change is made in response to an Appellate Division decision (*DIAL, Inc. et al v. New Jersey Department of Community Affairs*, Docket No. A-0480-90T5) and is an interim measure, pending the adoption of the Federal guidelines. The requirements for the construction of both adaptable and accessible entrances are contained in the subchapter.

Social Impact

These amendments will clarify the Department's intent with regard to making certain types of residential buildings accessible to the disabled. Because the requirements themselves remain unchanged, the primary impact should be to correct confusion that seems to have existed about exactly what is required.

Economic Impact

Those units currently qualifying, inappropriately, for exemptions provided under the Federal Fair Housing Act amendments, the HUD guidelines and the rules and regulations established in accordance with these documents, may no longer be considered exempt. This clear ineligibility for exemption may have an economic impact on those units previously considered, improperly, eligible. However, the actual impact cannot be addressed, due to the variety of circumstances surrounding each instance. The unambiguous application of this requirement, however, may provide an expanded market for the property owner.

Regulatory Flexibility Analysis

Because the Barrier Free Subcode applies to all public buildings, regardless of whether they are constructed or owned by small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., there is no legal basis for any differential treatment of small businesses. Also, as stated above, since these amendments only clarify requirements that have been in place for some time, there is no additional burden that will result from the adoption of these amendments.

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

5:23-7.3 Exemptions

(a) The following are exempt from the provisions of this subchapter:

1. (No change.)
2. Buildings or projects of Use Group R-2 or R-3 **comprised of townhouse units** [which have dwelling units] arranged for sale [each of which has a separate entrance directly from the exterior] shall be exempt. **For the purpose of applying this exemption, a "townhouse unit" shall be defined as a single-family dwelling unit attached to at least one other such unit which has two or more stories of living space exclusive of the basement and attic and which has its primary entrance directly from exterior grade.** A dwelling unit shall be deemed to be "arranged for sale" if it is located on a separate lot or is part of a condominium project for which a Master Deed has been filed and which has been approved for registration as a planned real estate development by the Department at the time that the building permit is issued.
 - i. (No change.)
 3. through 7. (No change.)

5:23-7.11 Use Group R-2 and R-3

(a) Buildings of Use Group R-2 or R-3, which are not exempted by N.J.A.C. 5:23-7.3, shall be made accessible to handicapped persons as follows:

1. (No change.)
2. The route of travel to each unit in an elevator serviced building shall be accessible. The route of travel to each first or grade level unit in a non-elevator serviced building shall be accessible except as specified in N.J.A.C. 5:23-7.3(a)[.], **except:**
 - i. **Where an entrance and/or entrance platform serves one unit only and is at or not more than 24 inches above grade level, it may be constructed as adaptable. If it is made adaptable, it shall meet the following criteria:**
 - (1) **The door(s) shall meet the requirements of N.J.A.C. 5:23-7.40 through 7.49;**
 - (2) **If a level platform entrance is provided, it shall have minimum dimensions of five feet by five feet; and**
 - (3) **Construction documents for the unit shall also include a design for the future modification of the entrance to provide accessibility. Any level platform(s) or ramp(s) included in the design shall meet provisions of N.J.A.C. 5:23-7.24;**
 - 3.-5. (No change.)
 6. Where an entrance and/or platform serves two or more units, it shall be made accessible. Where an entrance and/or entrance platform serves one unit only and is at, or not more than 24 inches above, grade level, it shall be constructed as accessible or adaptable. If it is made adaptable, it shall meet the following criteria:
 - i. The door(s) shall meet N.J.A.C. 5:23-7.40 through 5:23-7.49;
 - ii. If a level platform entrance is provided, it shall have minimum dimensions of five feet by five feet;
 - iii. Construction documents for the unit shall also include a design for the future modification of the entrance to provide accessibility. Any level platform(s) or ramp(s) included in the design shall meet provisions of N.J.A.C. 5:23-7.24.]

(a)

**DIVISION OF LOCAL GOVERNMENT SERVICES
Property Tax and Mortgage Escrow Account
Transactions**

Proposed New Rules: N.J.A.C. 5:33-4

Authorized By: Melvin R. Primas, Jr., Commissioner, New Jersey Department of Community Affairs.

Authority: N.J.S.A. 17:16F-15.

Proposal Number: PRN 1991-336.

Submit comments by July 17, 1991 to:

Marc Pfeiffer
Office of Administrative and Local Government Research
Division of Local Government Services
CN 803
Trenton, New Jersey 08625-0803

The agency proposal follows:

Summary

The Department of Community Affairs proposes new rules concerning mortgage escrow accounts and property tax payments. The mortgage escrow accounting statute was created through P.L. 1990, c.69. (N.J.S.A. 17:16F-5 et seq. and amended by P.L. 1991, c.116., adopted April 19, 1991)

A mortgage escrow account is an account into which a property owner (mortgagor) has agreed with his or her mortgage loan holder (mortgagee) to pay monthly amounts, along with the principal and interest due on the mortgage loan. The mortgagor has also agreed that payments for property tax, homeowners' insurance, and other expenses are to be made by the mortgagee or its agent that services the escrow account, or pays property taxes (servicing organization).

The proposed rulemaking has four purposes:

1. To require specific documentation to be issued by and submitted to parties affected by mortgage escrow account transactions. Such documentation includes forms to be used by the mortgagor to give the municipal tax collector permission to forward property tax bills to the

servicing organization. Transfer of responsibility for the escrow account, notice of tax sale, and requests and appeals being made by parties to escrow account transactions have been incorporated in forms that will assist in standardizing procedures.

2. To clarify responsibilities in interactions between municipal tax collectors and servicing organizations. Time requirements are established and specifically assigned to various organizations so that the parties are formally notified for timely payment of taxes and other bills.

In addition, the mortgagor will receive notice from the mortgagee if the escrow account is charged a penalty for late payment, and the mortgagor will receive a delinquent notice from the tax collector if the taxes are delinquent.

3. To provide homeowners with safeguards if their property becomes subject to tax sale because the servicing organization fails to pay the property tax.

Thirty days from the date on the tax sale notice, the property owner can pay the delinquent taxes and interest, and notify the company that he or she will not send any more payments to the escrow account, only pay principal and interest on the mortgage loan, and will pay the property taxes, insurance, and other bills that were previously paid from the account. If the property owner does this, he or she must send the company copies of the paid bills, at least once a year. The servicing organization must send the property owner any balance in the escrow account within 10 days of receiving the first copy of a paid tax bill.

4. To clarify tax collector practices relating to property tax procedures, in general, regarding use of substitute tax bills and tax stubs for payment.

Social Impact

Adoption of the proposed rules should standardize and speed up the administration of escrow accounts as it pertains to municipal tax collection offices, taking into account the wide variety of tax office operations. Recordkeeping in tax offices is still done by hand in ledgers in some small municipalities, while larger municipalities have sophisticated, fast computer systems.

Clarity provided by the procedures in the proposed rules will help the mortgagee and the mortgagor, as well as the tax collector. Of particular importance to the home owner (mortgagor) of delinquent property taxes, all three will be kept better informed through standardized documentation.

Compliance with time requirements will assist the three main parties involved in escrow account transactions in meeting their own deadlines.

Economic Impact

The proposed amendments and new rules should have a positive economic impact on institutions regulated by the Department. In particular, administrative improvements in clarifying and speeding up procedures should offset initial outlays for new forms and procedures. This undeterminable cost will be incurred by banks, savings and loan associations, and other organizations servicing mortgage escrow accounts. There will be no cost to local government, as any changes in documentation and tax office procedures are also improvements.

Regulatory Flexibility Analysis

Most of the institutions affected by these proposed rules are small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules initially increase administrative costs to these businesses, and these increases are mainly costs for new forms and procedures. Therefore, there is no need to devise less expensive administrative procedures for small businesses, or to provide for small businesses, or to provide for any other differential treatment in these rules.

Full text of the proposed new rules follows:

SUBCHAPTER 4. MORTGAGE ESCROW ACCOUNT TRANSACTIONS

5:33-4.1 Authority

This subchapter is adopted under the authority of P.L. 1990, c.69, Section 16, N.J.S.A. 17:16F-15 et seq.

5:33-4.2 Definitions

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

"Director" means the Director of the Division of Local Government Services.

"Duplicate copy" shall have the meaning defined in N.J.S.A. 17:16F-16.

"Mortgagee" means the holder of a mortgage loan.

"Mortgage escrow account or Escrow account" means an account maintained under a mortgage loan agreement, whether incorporated into the agreement or as part of a separately executed document, whereby: the mortgagor is obligated to make periodic payment to the mortgagee, or the mortgagee's agent, for taxes, insurance premiums, or other charges with respect to the real property which secures the mortgage loan, and the mortgagee or the mortgagee's agent is obligated to make payments for taxes, insurance premiums, or other charges with respect to the real property which secures the mortgage loan.

"Original tax bill" shall have the following meaning defined in N.J.S.A. 54:4-64.

"Mortgage loan," "mortgagor," "property tax processing organization," and "purchasing servicing organization" have the meanings defined in N.J.S.A. 17:16F-15.

"Replacement bill" shall mean a property tax bill, with stub, made or generated by a mortgagee, servicing organization, or tax processing organization to serve as a replacement to an original tax bill and used in accordance with this subchapter.

"Selling servicing organization and servicing organization" shall have the meaning defined in N.J.S.A. 17:16F-15.

"Tax delinquency" or "delinquency" shall mean delinquency defined in N.J.S.A. 54:4-67.

"Tax sale" shall mean a tax sale as defined in N.J.S.A. 54:5-19 et seq.

"Tax collector" shall mean the properly designated tax collector of the taxing district in which the mortgagor's property is located.

5:33-4.3 Forms for mortgage escrow account transactions

(a) The following forms shall be used in compliance with this subchapter:

FORM TITLE	FORM #
Initial Tax Authorization Notice	ME-1
Escrow Account Transaction Notice	ME-2
N.J. Request for Duplicate Tax Bill	ME-3
Notice Regarding Sale of Municipal Lien	ME-4
Request for Review	ME-5

(b) Single, reproducible copies of forms ME-1 through ME-5 are available to interested parties at no cost. They may be obtained from the Mortgage Escrow Program, Division of Local Government Services, CN 803, Trenton, N.J. 08625-0803.

(c) Users are urged to reproduce these forms for business use. A company name may be inserted in lieu of the "New Jersey Department of Community Affairs, Division of Local Government Services" block in the upper left hand corner on the Initial Tax Authorization Notice, and Escrow Account Transaction Notice. Users are urged to preprint appropriate information on all forms. Any other changes must have the prior approval of the Director.

5:33-4.4 Use of initial tax authorization notice

(a) An Initial Tax Authorization Notice (ME-1) shall be used by all mortgagees, servicing organizations, or property tax processing organizations establishing or maintaining mortgage escrow accounts as the initial authorization by a mortgagor to the tax collector to send the original tax bill to the mortgagee or the mortgagee's servicing organization pursuant to N.J.S.A. 54:4-64.

(b) The notice, with original signatures of the mortgagor, shall be mailed or otherwise delivered to the tax collector, with a copy delivered to the mortgagor, the mortgagee, and the servicing organization (if any).

5:33-4.5 Escrow account transactions

(a) A selling servicing organization or mortgagee and a purchasing servicing organization shall both notify the tax collector not more than 45 days after the actual date, or not less than 10 days prior to the date the next payment of property taxes is due, whichever is earlier, of a sale, assignment, or transfer of a mortgage escrow account by filing an Escrow Account Transaction Notice (ME-2). The form shall be used as follows:

1. The original of the notice prepared by the current mortgage holder or the selling servicing organization shall be mailed or

otherwise delivered to the tax collector with a copy delivered to the mortgagor, the mortgagee, and the new servicing organization;

2. The original of the notice prepared by the new servicing organization shall be mailed or otherwise delivered to the tax collector with a copy delivered to the mortgagor, and to the property tax processing organization, if any;

3. In the case of a property owner making final satisfaction of a mortgage, the section noted "Property Sold or Property Owner Satisfaction of Mortgage" shall be completed, with a copy sent to the municipal tax collector and the property owner; and

4. In the case of a property sale, the section noted "Property Sold or Property Owner Satisfaction of Mortgage" shall be completed, with a copy sent to municipal tax collector and the property owner.

(b) The purchasing servicing organization shall issue corrected coupon or payment books, if such are used, and other such information as noted in N.J.S.A. 17:16F-17 to the mortgagor.

(c) To ensure that original tax bills are properly maintained, the following procedures shall be followed:

1. In the case of a mortgage sale, the holder of the tax bill shall forward the tax bill, with stub, to the new mortgagee or property tax servicing organization.

2. In the case of a property sale, the holder of the tax bill shall forward the tax bill, with stub, to the municipal tax collector.

5:33-4.6 Payment of property tax bills

(a) Payment of property tax bills shall be made with the stub from either an original tax bill, a duplicate tax bill, or a replacement tax bill. The tax bill itself does not need to be presented for payment when a proper stub is used.

(b) When a receipt for payment sent through the mail is requested, the payor shall provide a self-addressed stamped envelope for the return of the receipt.

5:33-4.7 Use of replacement tax bills

(a) A replacement property tax bill shall include a stub (similar to the original bill) containing at least the block and lot number, street address, name of the property owner, the amount of tax due, and indication of which quarterly installment is being paid.

(b) A replacement tax bill may be used, subject to the following conditions (see N.J.S.A. 17:16F-19):

1. The replacement bill may be used for the first payment on the tax bill when the collector fails to issue a tax bill or duplicate tax bill within the statutory time required; and

2. When a payment is made with a replacement bill, the tax collector shall forward the original bill (if not previously forwarded) or a duplicate tax bill (without charge) when the original tax bill was not properly issued by the tax collector. The tax collector shall send the original or duplicate tax bill (as the case may be) to the payor so the subsequent tax payments can be paid in a timely manner.

(c) A replacement bill may not be used if the tax rate has not been set or until two weeks after the extended tax duplicate has been received by the tax collector.

5:33-4.8 Notice regarding the sale of municipal liens

A tax collector shall include the "Notice Regarding the Sale of Municipal Liens" (ME-4) with tax sale notices when property taxes are paid through a mortgage escrow account.

5:33-4.9 Request for duplicate tax bills; appeals of requests

(a) Requests for a duplicate tax bill, other than those requested through submission of a Initial Tax Authorization Notice (ME-1), shall be sent to the municipal tax collector on the "N.J. Request for Duplicate Tax Bill" form (ME-3).

(b) Upon request of a proper request from a mortgagee, servicing organization, or property tax processing organization, a tax collector shall deliver an original or duplicate bill within 15 days.

(c) A proper request shall be submitted on a form approved by the Director (ME-1 or ME-3) and shall be submitted subject to the following:

1. The form shall be filled out entirely and correctly;
2. The form shall be accompanied by the correct payment;
3. The requester shall have been authorized to receive a bill by the mortgagor; and

4. Compliance with the request is not unduly burdensome, in terms of timeliness or quantity, on the workload and efficient operation of the tax collector's office.

(d) If a tax collector determines that a request for an original or a duplicate tax bill is not proper, a tax collector may ask the Director to review the appropriateness of the request, as follows:

1. The tax collector shall complete the "Request for Review" form (ME-5);

2. The "Request for Review" form shall be accompanied by all necessary explanations and documentation, including correspondence, and the reasons why the tax collector has determined the request to be improper. A copy of the form and the documentation shall be sent to the requesting party;

3. The party requesting the original or duplicate tax bill shall have the right to submit, in writing, any correspondence or other materials disputing the tax collector's reasons and justifying why it should receive the tax bill, to the Director and the tax collector within 30 days of receipt of notification from the tax collector; and

4. Upon receipt of the request, the Director will make a determination or will conduct a hearing prior to deciding this matter. A written decision will be rendered by the Director to the appropriate parties within forty-five days of the initial request or prior to the next tax payment due date.

(e) The time limit for response to written or other requests made for a duplicate tax bill made within the 10 calendar days prior to the established due dates for payment of taxes, or during a grace period approved by the municipality, shall be suspended until after the due date or the end of the grace period, whichever is later.

5:33-4.10 Appeals for reimbursement of amount paid for a duplicate copy of a tax bill

(a) If a mortgagee, servicing organization, or property tax processing organization wishes to appeal the charges required for a duplicate copy of a tax bill, it may request the Director to direct the tax collector to make a refund of an amount paid for a duplicate copy of a tax bill in accordance with the following procedure:

1. The requestor shall make the request on the "Request for Review" form (ME-5);

2. The submission shall include all necessary explanations and documentation, including correspondence and the reasons why the charges are believed to be improper. A copy of the form and documentation shall be sent to the tax collector;

3. The tax collector shall have the right to submit, in writing, any correspondence or other materials disputing the requestors reasons and justifying why the charges should be sustained within 30 days of receipt of the Request for Review; and

4. Upon receipt of all documentation, the Director will make a determination or will conduct a hearing prior to deciding this matter. A written decision will be rendered by the Director to the appropriate parties within 45 days of the initial request.

(b) The Director may authorize a refund from the municipality for any reason described below:

1. No tax bill was mailed by the tax collector to either the property owner or his authorized agent;

2. The tax collector or staff lost or destroyed bills previously submitted during the payment and did not return the same when the proper self-addressed stamped envelope was provided;

3. The tax collector failed or refused to provide information to the Director within thirty days of a request for the same;

4. By error of the tax office personnel, the bank code was removed;

5. The tax collector did not mail the duplicate bill within fifteen days of receipt of a written request; or

6. Any other reason as determined to be appropriate by the Director.

HEALTH**(a)****DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT****Certificate of Need: Megavoltage Radiation Oncology Units****Proposed Readoption: N.J.A.C. 8:33I**

Authorized By: Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.
Proposal Number: PRN 1991-339.

Submit comments by July 17, 1991 to:

John J. Gontarski, Chief
Health Systems Review Program, Room 604
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The readoption being proposed seeks to maintain current megavoltage policy as contained in the existing rules which are scheduled to expire on September 15, 1991, pursuant to Executive Order No. 66 (1978). The regulatory history of these rules is summarized below.

On October 6, 1977, the Department of Health established rules to govern the planning, certification of need, and designation requirements for megavoltage services. Following a comprehensive planning effort, a system of regionalization for megavoltage services was established involving the establishment of regional programs Statewide to provide appropriate volumes of treatment services at each site to maintain the proficiency of the treatment team.

The purpose of the rules remains the establishment of a means for the Department to:

1. Promote delivery of the highest quality of care to all patients requiring oncology services;
2. Maximize utilization of highly trained megavoltage personnel and facilities;
3. Promote cost effectiveness throughout the system; and
4. Emphasize a coordinated, cooperative and multi-disciplinary approach to oncology services.

The proposed rules establish minimum criteria for the establishment of a megavoltage radiation oncology service. The rules were readopted with amendments in 1986. A major megavoltage policy initiative was undertaken in 1984 which emphasized the promotion of multiple megavoltage unit programs that could offer oncology patients equipment capable of providing a full range of photon and electron beam energies as opposed to the promotion of multiple single unit programs in the State. These amendments also prohibited the establishment of new megavoltage programs in an effort to encourage multiple unit services Statewide. Subsequent amendments in 1986 and 1989 were adopted in order to continue this regionalized approach. The amendments of 1989 established waiver criteria which permitted the evaluation of a limited number of new megavoltage programs in areas where serious access problems to existing programs could be documented by certificate of need applicants.

Through the application of the Statewide policies contained in these rules, the vast majority of the State's single unit megavoltage programs have gained certificate of need approval to become multiple unit programs. In addition, megavoltage equipment providing a full range of treatment energy levels with both photon and electron capability have been developed and received widespread use during this period.

The megavoltage radiation oncology rule being proposed for readoption at this time contains the following major sections:

N.J.A.C. 8:33I-1.1 is a definition section. No changes have been proposed upon readoption.

N.J.A.C. 8:33I-1.2 is a utilization requirements section. No changes have been proposed upon readoption.

N.J.A.C. 8:33I-1.3 is a new megavoltage programs criteria section. No changes have been proposed upon readoption.

N.J.A.C. 8:33I-1.4 is a personnel standards section. No changes have been proposed upon readoption.

N.J.A.C. 8:33I-1.5 is a general criteria section. No changes have been proposed upon readoption.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs. . . ."

The New Jersey State Health Plan recognizes that the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by assuring an adequate patient volume for hospitals offering these expensive services, and by containing the rising costs of health care services.

The Department believes the rules, readopted without change, will remain effective in addressing their established goal of promoting a higher quality of care for oncology patients in a cost effective manner.

Economic Impact

The rules were established to address both quality of care and cost-effectiveness goals. Through implementation of these rules to date, delivery of high-cost megavoltage radiation oncology services have been regionalized in New Jersey. The economic impact of these rules has thus been to produce initial cost efficiencies in the system of megavoltage oncology services through improving utilization of high-cost services. These rules would continue to permit additional services only where there is documentation of sufficient unmet need to warrant the initiation of an efficient new megavoltage service without negatively impacting existing providers in the region.

Regulatory Flexibility Analysis

Facilities affected by these rules consist, at this time, of hospitals with more than 100 beds. These hospitals typically employ well over 100 full-time employees. It is possible, however, that smaller entities that are not specifically affiliated with hospitals will be considered as megavoltage radiation oncology providers under these rules. The requirements contained in these rules do require personnel to perform a limited number of recordkeeping and reporting functions. Such requirements do not necessitate the dedication of staff and should not be considered overly burdensome to the applicants that might be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In proposing the readoption without change of these rules, the Department has had to balance the economic impact of added personnel costs with the need to provide a safe and effective health care service. The Department has determined that to minimize the economic impact of this proposed rule would endanger public health and safety and, therefore, no exception from coverage is provided.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:33I.

(b)**DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT****Certificate of Need: Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) Services****Proposed Amendments: N.J.A.C. 8:33J-1.1, 1.3 and 1.6****Proposed Repeal and New Rule: N.J.A.C. 8:33J-1.2**

Authorized By: Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.
 Proposal Number: PRN 1991-338.

Submit comments by July 17, 1991 to:
 John J. Gontarski, Chief
 Health Systems Review, Room 604
 New Jersey Department of Health
 CN 360
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Health, in conjunction with the Health Care Administration Board (HCAB), is proposing amendments to the existing rules for Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) services. The Department has reviewed the existing rules and has determined that significant amendments are necessary in order to properly review additional MRI services in the State. The Department therefore is proposing amendments and a new rule which will modify existing State policy and replace and/or modify existing standards and contained in the rules at N.J.A.C. 8:33J.

The original NMR/MRI rules, adopted in 1984, permitted the approval of a maximum of eight NMR/MRI demonstration sites throughout the State and established a demonstration period of a maximum of two years for the evaluation of this imaging modality. New MRI rules were subsequently adopted in 1989 which permitted the Department to consider additional MRI services in the State based on a newly developed need methodology that reflected clinical developments that had expanded the applications for MRI imaging. The proposed amendments and new rule are intended to further refine the MRI need methodology to reflect added clinical applications for this technology and to allow additional services to be approved to meet the expanded Statewide need for this imaging modality. The amendments and new rule being proposed establish the following minimum standards and criteria for the provision of MRI services:

1. Minimum areawide need criteria for the establishment of new or replacement MRI equipment at N.J.A.C. 8:33J-1.3.
2. Deletes the minimum population base for the establishment of a new MRI service at N.J.A.C. 8:33J-1.2.
3. Adds new subsections at N.J.A.C. 8:33J-1.6(b) and (c) providing priority to applicants that are major teaching hospitals or applicants that are a consortium of hospitals seeking to jointly share the MRI modality.
4. Adds a subsection at N.J.A.C. 8:33J-1.3(f) clarifying the requirements for applicants that are already a party to an existing certificate of need approved MRI provider in the State as part of a joint venture.
5. Adds a subsection at N.J.A.C. 8:33J-1.1(d) that defines the geographic or health service areas that are to be the basis for future MRI need analysis.

Social Impact

Nuclear Magnetic Resonance or Magnetic Resonance Imaging (NMR/MRI) represents a unique imaging modality that is based on the reaction of atomic nuclei to magnetic fields and radiofrequency signals. By detecting signals from resonating nuclei, images of an anatomical area are constructed for diagnostic purposes. Since various tissues produce signals of differing intensity, MRI equipment is able to differentiate between normal and abnormal tissue. As is the case with any imaging modality, however, the quality and reliability of the images being produced are largely dependent on the skill and expertise of the operator of the equipment. At this stage of MRI technology, MRI imaging is predominantly an outpatient service, with approximately 75 percent of patients scanned at the State's demonstration sites undergoing their procedures on an outpatient basis.

NMR/MRI has demonstrated its ability to supply diagnostic information that is unavailable from other existing imaging modalities (for example, CT, ultrasound). MRI equipment does not use ionizing radiation and gives every indication of being safe at the magnetic field strengths currently approved for diagnostic imaging by the Federal Drug Administration (FDA). There are contraindications for MRI use because of the attraction of ferromagnetic objects both outside the body (that is, projectile effect) and inside the body (for example, pacemakers, aneurysm clips) to the relatively large magnetic field that surrounds the MRI unit.

Several clinical studies, including the completion of the New York State MRI demonstration project, have concluded that MRI can significantly reduce the demand for CT scanning of the brain, brain stem, and spine. Several other applications of MRI technology, including cardiac studies and spectroscopy, remain in the developmental stage. In many instances,

MRI is used to supplement information previously gathered by ultrasound or CT scanning.

The Department recognizes the profound impact this technology may have on the health care delivery system. Therefore, it is looking to have this service develop through an orderly and rational process that is responsive to the real needs (in terms of quality, cost, and access) of the State's population. The proposed MRI criteria contained in these proposed amendments and new rule will permit the NMR/MRI planning process to proceed with the evaluation of additional community need for MRI imaging services that is consistent with clinical applications of this modality that have been demonstrated both in New Jersey and throughout the nation.

Economic Impact

The economic impact of NMR/MRI services is largely dependent on the ability of the imaging modality to provide clinically useful information compared to other existing imaging modalities. While the clinical applications of MRI imaging continue to increase, the full utility of this modality has not yet been fully determined. The average annual operating cost of an MRI facility, according to data compiled by the New York demonstration project, was \$950,000.

NMR/MRI has the potential to replace a number of standard diagnostic procedures, including those that are invasive and require brief hospital stays (for example, myelograms). The New York MRI demonstration project estimated a cost saving of from \$568.00 to \$763.00 per patient (currently undergoing myelogram procedures) should MRI replace myelograms and contrast-enhanced CT as the procedure of choice in the diagnosis of disc disease.

The NMR/MRI unit is estimated to cost from \$975,000-\$2.3 million, depending on the type of magnet (that is, permanent, resistive, superconducting) and its field strength (for example, .15-2.0 tesla). Appropriate site selection and facility renovation can cost a facility an additional \$200,000 to \$500,000 or more depending on the capabilities desired. The productive life of the NMR/MRI unit is estimated to be approximately five years.

These proposed amendments and new rule are intended to evaluate the need for additional MRI services in New Jersey based on demonstrated need, while at the same time minimizing duplicative services that would jeopardize the cost effectiveness of both new and existing MRI providers.

Regulatory Flexibility Analysis

The proposed amendments and new rule will, at this time, be applicable to hospitals which employ well over 100 employees. It is possible, however, that smaller entities that are not specifically affiliated with hospitals will be considered as MRI providers under this chapter. The amendments and new rule merely reinforce the original MRI rules, which were enacted to establish the demonstration projects for NMR/MRI. The requirements contained in the amendments and new rule require personnel to perform a number of functions at an MRI facility in order to provide a safe and effective MRI service. Recordkeeping, reporting and evaluation requirements are being proposed by the amendments and new rule. Such recordkeeping and data reporting will not require dedicated staff and should not be considered overly burdensome to the applicants that may be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In proposing these amendments and new rule, which include recordkeeping and data reporting requirements, the Department has had to balance the economic impact of added personnel costs with the need to provide a safe and effective health care service. The Department has determined that to minimize the economic impact of these proposed amendments would endanger public health and safety and therefore no exemption from coverage is provided.

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

8:33J-1.1 Introduction

(a) (No change.)

(b) Given the [limited] **expanding** use of MRI's in clinical settings to date; the need for further research to achieve a better understanding of the range of MRI's clinical applications; the diagnostic categories for which MRI is most suited; the type of MRI systems most appropriate for given clinical settings and applications; the costs and cost impacts of MRI service delivery; and the extent to which costs can be expected to be outweighed by improvements in medical diagnoses and medical outcomes, [and] **an** incremental and re-

gionalized approach to the initiation of MRI's services in the State continues to be warranted.

(c) This chapter identifies Department of Health policy to guide the introduction of additional MRI services in New Jersey [over and above the eight approved MRI demonstration sites previously gaining certificate of need approval under the former MRI demonstration rules at N.J.A.C. 8:33J]. This [chapter] subchapter is intended to guide future planning and review activities for MRI services in New Jersey on a case-by-case basis.

(d) For the purposes of this subchapter, usage of the term health service area is intended to refer to the geographic area of the State that has been designated as a health service area pursuant to P.L. 93-641 and amendments thereto. The geographic areas for each of these health service areas is as follows:

1. Health Service Area I: Bergen and Passaic Counties;
2. Health Service Area II: Essex, Morris, Union, Sussex and Warren Counties;
3. Health Service Area III: Hudson County;
4. Health Service Area IV: Hunterdon, Mercer, Middlesex, Monmouth, Ocean, and Somerset Counties;
5. Health Service Area V: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties.

8:33J-1.2 [Minimum Population Base] Regional MRI Distribution

[The minimum population base for each magnetic resonance imaging (MRI) service will be one MRI unit for each 420,000 population within a health service area.] The need for MRI services will be determined on a health service area basis, utilizing the most recent annual CT procedures at certificate of need approved services located within each health service area as released by the Department's Center for Health Statistics, with MRI need resulting from the use of the methodology specified in N.J.A.C. 8:33J-1.3.

8:33J-1.3 [Minimum Utilization Standards] MRI Need Methodology

(a) Each applicant for magnetic resonance imaging (MRI) services must provide written documentation that a projected minimum volume of 2500 patient procedures per unit, per year shall be achieved within two years of initiation of the service. Projected utilization must be based on the applicant's documentation of CT exams of the central nervous system (CNS), since MRI has been shown to be a valuable diagnostic tool for studies of the CNS. Projected MRI utilization will be calculated as follows:

$$A = \text{Projected MRI studies of CNS patients} = \\ (\text{CT exams of CNS} \times .55) - (.10 \text{ CT exams of CNS}) \\ B = \text{Projected MRI studies of non-CNS patients} = (.10 \times A) \\ \text{Total Projected MRI exams} = A + B$$

(a) The following areawide need methodology must be followed to determine the number of MRI units required to meet the community need in the health service area:

AREAWIDE CT VOLUME - 15 percent = A = MRI candidates less unsuitable candidates (that is, patients with device implants, motion problems).

$$A \times .60 \text{ (percentage of Central Nervous System Exams Expected)} = B$$

$$B \times .55 = C \text{ (percentage of patients obtaining CT exams of CNS considered candidates for MRI).}$$

$$C \times .30 \text{ (allowance for MRI studies not associated with the CNS)} = D$$

$$C + D = E \text{ (Areawide MRI procedure need)}$$

$$E/4,000 \text{ (capacity per MRI unit)} = \text{Areawide MRI unit need}$$

(b)-(e) (No change.)

(f) Any applicant that is currently a party to the certificate of need approved MRI service must, at a minimum, provide the following information:

1. The applicant's intention to either remain a party to the existing approved MRI service or sever that relationship must be specifically documented in the application;

2. Should the applicant intend to remove itself as a party to the existing MRI service, a transfer of ownership application must be filed (by the entity that has been granted the certificate of need) prior to or simultaneously with the certificate of need application for the new MRI service; and

3. The extent that existing referral patterns to the existing approved MRI service will be altered by the proposed new MRI service.

8:33J-1.6 Competitive areawide criteria

(a) (No change.)

(b) Applicants that are major teaching hospitals are to be given priority consideration for MRI services, provided they are in conformance with all other requirements of this subchapter.

(c) Applicants that represent a consortium composed exclusively of hospitals are to be given priority consideration for MRI services, provided they are in conformance with all other requirements of this subchapter.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Bed Need Methodology for Adult Comprehensive Rehabilitation Services

Proposed Amendment: N.J.A.C. 8:33M-1.6

Authorized By: Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8. Proposal Number: PRN 1991-337.

Submit comments by July 17, 1991 to:

John Gontarski, Chief
Health Systems Services
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 8:33M, the Rehabilitation Hospital Policy Manual, was first adopted in June 1989. Since that time, questions have arisen about the language contained in N.J.A.C. 8:33M-1.6(c)4 and 5, which is used to compute the adult bed need. The adult bed need methodology or formula is used to determine the number of adult comprehensive rehabilitation beds which are projected to be needed in a future target year.

When the current methodology was originally developed by the Department's Rehabilitation Hospital Advisory Committee and Department staff, all preliminary calculations of adult bed need entailed use of: (1) Statewide percentages of patients submitted from acute care hospitals to rehabilitation hospitals and (2) Statewide average lengths of rehabilitation hospital stay. However, the word "Statewide" was not included in the reference to these two factors in N.J.A.C. 8:33M-1.6(c)4 and 5. This omission has created some confusion about how the rule should be interpreted and, consequently, how the bed need should be computed.

In proposing the amendment of N.J.A.C. 8:33M-1.6, it is the Department's aim to eliminate confusion about the method to be used in computing the need for adult comprehensive rehabilitation beds. But furthermore, as a result of analyzing alternative approaches to computing bed need, the Department intends to introduce a more straightforward and sensitive methodology for accurately determining comprehensive rehabilitation bed need. The formula proposed herein does away with the current, cumbersome reliance upon diagnosis-specific rates of acute care hospital utilization and diagnosis-specific rates of admission to rehabilitation hospitals from acute care hospitals. It is more sensitive than the existing methodology, in that it is based upon patient origin data.

The Department hereby proposes the following substantive changes to N.J.A.C. 8:33M-1.6:

1. Insertion of a provision in N.J.A.C. 8:33M-1.6(c)2i to address a problem encountered in attempting to accurately compute regional bed need: a number of individuals residing in the southern part of the northern planning region of the State apparently choose to receive rehabilitation hospital care at a particular facility which is conveniently located near the northern border of the central New Jersey region. The facility in question is licensed for 74 beds; approximately 45 percent of its patients are residents of counties in the northern region. While this facility accounts for an unusually large amount of the State's inter-regional migration, it is recognized that virtually all of New Jersey's rehabilitation hospitals treat some patients who are residents of other planning regions.

Consequently, the determination has been made to address this problem by computing the net amount of patient migration into each regional service area. The computed number of beds will then be used to adjust each region's final, projected bed need (see N.J.A.C. 8:33M-1.6(c)4x).

2. Insertion of a provision in N.J.A.C. 8:33M-1.6(c)3i to identify the type of information required by the Department in order to implement the proposed new bed need methodology.

3. Deletion of N.J.A.C. 8:33M-1.6(c)4 and 5, eliminating the current methodology used for computing adult bed need.

4. Addition of a new subsection at N.J.A.C. 8:33M-1.6(c)4, detailing the proposed new methodology for computing adult bed need. The 10-step method entails the computation of age-specific, county-specific rates of actual rehabilitation hospital use. For counties with unusually low rates of utilization, Step 3, contained in subparagraph (c)4iii, requires the calculation and substitution of minimum acceptable rates of utilization. The latter adjustment is intended to improve the availability of and access to rehabilitation hospital care in areas that may be undeserved. The methodology also entails the use of Statewide, age-specific average lengths of stay. In Steps 6 and 7, proposed in subparagraphs (c)4vi and vii, the projected number of patient days is computed for each county and is then adjusted to allow for 85 percent occupancy. The number of beds needed in each region is the result of summing the bed need for those counties located in each planning region. Step 9, proposed in subparagraph (c)4ix, describes an approach to factoring in the number of beds needed to accommodate non-New Jersey patients who are admitted to New Jersey's rehabilitation hospitals.

5. The replacement of N.J.A.C. 8:33M-1.6(d), to clarify the process for determining the number of beds that can be added to highly occupied rehabilitation hospitals in regions where there is no documented bed need. The proposed new paragraph identifies the method to be used in computing the number of beds to be added, basing the increase exclusively on the facility's occupancy of its comprehensive rehabilitation beds during the 12 month period prior to filing the certificate of need application. It differs from the existing policy, which bases allowable bed increases on projected, future utilization at a particular facility. The latter approach has been problematic for the Department, in that applicants have attempted to use this provision to increase their licensed complement of comprehensive rehabilitation beds by as much as 56 percent. Thus, existing rehabilitation hospitals could conceivably make use of the current provision to add such a large number of beds that the bed need formula will never show a net need for the region. In this way, new rehabilitation providers would be precluded from ever getting approved. It is the Department's position that small bed increases should be permitted in order to prevent overcrowding at existing facilities; however, the addition of these beds should not have the ultimate effect of precluding approval of new rehabilitation hospitals that might benefit the public by improving the geographical distribution of beds throughout New Jersey.

Social Impact

It is anticipated that the proposed amendment will have a positive social impact. Deletion of the current methodology for computing adult rehabilitation hospital bed need will eliminate the confusion which was created by its ambiguous wording. The proposed, new methodology is patient origin-based. Through the use of age-specific, county-specific patient origin data, the Department will be able to readily identify particular areas of the State that may be underserved for rehabilitation hospital care. New rehabilitation facilities can thus be targeted for development in such areas, thereby improving access to care for New Jersey residents.

Economic Impact

It is not anticipated that the proposed amendment will have a significant economic impact on any State agency or department. Furthermore, the new planning/certificate of need requirements should not have any appreciable effect on the cost of rehabilitation hospital care. The bed need methodology proposed in N.J.A.C. 8:33M-1.6(c)4 is intended to assure that rehabilitation hospital care will be available to the extent that it is needed in New Jersey. Thus a goal of planning is to see that there is neither an under-supply nor an over-supply of rehabilitation hospital beds which, in either case, could have a deleterious impact on New Jersey health care consumers and/or service providers. For example, an over-supply of rehabilitation hospital beds would result in low occupancy rates at the facilities, thereby increasing unit costs of care and potentially threatening the fiscal viability of the institutions.

Regulatory Flexibility Statement

Certificate of need applicants that will be affected by these amendments may include some small businesses that employ fewer than 100 persons, such as real estate development companies or consulting firms. However, the proposed amendment does not impose any additional recordkeeping, reporting, or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments merely modify the current requirement by which the need for adult rehabilitation hospital beds is determined for certificate of need purposes. As such, the amendment will apply to all certificate of need applicants for rehabilitation hospital beds; but they should not require small businesses to utilize any additional professional services in order to comply with their specific terms.

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

8:33M-1.6 Requirements for expansion and new construction

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

(c) New comprehensive rehabilitation beds shall be approved only in regional service areas where there is a documented, projected bed need.

1. (No change.)

2. For the purpose of computing bed need, the Department shall maintain [an inventory of approved] **separate inventories of approved pediatric and adult comprehensive rehabilitation beds for each regional service area identified in (b) above**, and these beds shall be subtracted from the projected number of beds needed in each **respective regional service area**. Approved comprehensive rehabilitation beds shall include those that are authorized and licensed as described in N.J.A.C. 8:33M-1.1(e) and all comprehensive rehabilitation beds that receive certificate of need approval.

i. **In order to address the ongoing pattern of migration of adult patients residing in one regional service area to rehabilitation hospitals located in a different regional service area within New Jersey, the net amount of inter-regional migration shall be calculated for each regional service area as follows:**

$$\text{Patient Days of Patients Migrating into Region A from Region B} - \text{Patient Days of Patients Migrating into Region B from Region A} = X;$$

If "X" is a positive number:

$$\frac{X}{365 \text{ days}} = \text{Net number of Beds for Persons Migrating into Region A from Region B}$$

The net number of beds calculated above shall then be subtracted from the inventory of approved, adult beds for regional service area "A" and added to the inventory for regional service area "B", each time that the adult rehabilitation bed need is calculated. The Department shall make publicly available the most recent analysis of net inter-regional migration, as described herein, each time that adult comprehensive rehabilitation bed need projections are issued.

3. Need projections shall be computed using the most recent available data from [acute care hospitals (Uniform Bill-Patient Summary data maintained by the Health Research and Educational Trust of New Jersey), rehabilitation facilities (rehabilitation hospital utilization date—discharge abstracts, which are submitted by all facilities to the Department of Health),] **licensed rehabilitation hospitals, both freestanding and non-freestanding in accordance with N.J.A.C. 8:33M-1.1(b)**, and the New Jersey Department of Labor (population projections).

i. **Rehabilitation hospitals, both freestanding and non-freestanding, shall submit utilization data to the Department of Health for each calendar year on an annual basis or more frequently, if requested. Data shall include a breakdown of the number of patients and patient days for the reporting period, according to the age and county of residence of patients.**

[4. The need methodology for rehabilitation beds for adult patients shall include the following factors:

i. The projected population for four age groups (that is, 20-44, 45-64, 65-74, and 75+) for each of the three regions (that is, north, central, south);

ii. The rate of New Jersey acute care discharges per population for each age group for each of eight diagnostic categories that are likely to require comprehensive rehabilitation (that is, amputation, arthritis, brain/head injury, hip fracture and replacement, back pain, multiple sclerosis, spinal cord injury, and stroke/hemiplegia);

iii. The percentage of discharged acute care cases that are treated in rehabilitation facilities for each of the eight categories listed in (c)4ii above;

iv. The projected number of rehabilitation cases by diagnosis for the target year;

i. STEP 1: For Each Region, Each Age Group, Each Diagnostic Category:

$$\frac{\text{Current acute hospital cases}}{\text{Current estimated population}} \times \frac{\text{Projected Population, Target Year}}{\text{Projected Acute Care Cases for Target Year}} = \text{Projected Acute Care Cases for Target Year}$$

ii. STEP 2: For Each Region, Each Diagnostic Category:

$$\frac{\text{Sum of Projected Acute Care Cases for All Specified Age Groups, Target Year} \times \frac{\text{Percentage of Patients Admitted to Rehab, Current Year}}{365 \text{ Days} \times 85\% \text{ Desired Occupancy}} \times \text{Average Rehab Length of Stay, Current Year}}{365 \text{ Days} \times 85\% \text{ Desired Occupancy}}$$

iii. STEP 3: For Each Region:

$$\frac{\text{Sum of Rehab Cases for All Specified Age Groups for Eight Diagnostic Categories, Target Year} \times \frac{\text{Percentage of "Other" Diagnoses Rehab, Cases, Current Year}}{365 \text{ Days} \times 85\% \text{ Desired Occupancy}} \times \text{Average Rehab Length of Stay, "Other" Diagnoses}}{365 \text{ Days} \times 85\% \text{ Desired Occupancy}}$$

iv. STEP 4: For Each Region

$$\text{Results of Step 2} + \text{Results of Step 3} - \text{Current Regional Bed Supply} = \text{Projected Bed Need, Target Year]$$

4. The need for adult comprehensive rehabilitation beds shall be calculated in the following manner:

i. STEP 1: For each county, for the age group 20 to 44, 45 to 64, 65 to 74, and 75 and over, the number of county residents who actually occupied licensed comprehensive rehabilitation beds in facilities located in New Jersey during the time period for which the most recent data are available shall be divided by the concurrent, age-specific population of the respective county;

ii. STEP 2: For the State as a whole, for the age groups 20 to 44, 45 to 64, 65 to 74, and 75 and over, the total number of New Jersey residents who actually occupied licensed comprehensive rehabilitation beds in facilities located in New Jersey shall be divided by the total population for the specified age groups for the concurrent year;

iii. STEP 3: A minimum acceptable rate of patients per population shall be set for each age group identified in (c)4i above. The set minimum figure shall be that rate which is 20 percent less than the statewide average rate computed for each age group, in accordance with (c)4ii above;

iv. STEP 4: In order to project the number of patients expected to need inpatient comprehensive rehabilitation care in the target year, the rate of patients for each age group for each county, as computed in (c)4i above, shall be multiplied by the age-specific, county-specific population that is projected for the target year. However, if the age-specific, county-specific rate of comprehensive rehabilitation bed utilization computed in accordance with (c)4i above is below the applicable minimum rate computed in accordance with (c)4iii above, then this minimum acceptable rate shall be substituted for the actual age-specific, county-specific rate;

v. STEP 5: Using the most recent data available to the Department of Health, the statewide average length of stay in licensed comprehensive rehabilitation beds for the age groups 20 to 44, 45 to 64, 65 to 74, and 75 and over, shall be computed by dividing the total number of New Jersey comprehensive rehabilitation patient days utilized by each age group during the reporting period in question by the total number of New Jersey rehabilitation patients for each respective age group;

vi. STEP 6: In order to project the number of patient days expected in the target year, the age-specific, county-specific projected number of patients computed in accordance with (c)4iv above shall be multiplied

v. The average length of rehabilitation stay for each of eight diagnoses and for an "all other" category;

vi. An adjustment factor to allow for a number of "other" rehabilitation cases, which are those patient with diagnoses other than the eight aforementioned categories; and

vii. An adjustment factor to allow for 85 percent occupancy of comprehensive rehabilitation facilities.

5. The adult bed need formula is computed as follows:

by the age-specific, statewide average length of stay computed in accordance with (c)4v above;

vii. STEP 7: The projected number of patient days for all age groups, computed in accordance with (c)4vi above, shall be summed for each county. In order to allow for 85 percent occupancy of comprehensive rehabilitation beds in the target year, the projected number of patient days for each county shall then be divided by .85;

viii. STEP 8: The projected number of patient days for each county, computed in accordance with (c)4vii above, shall be divided by 365 to yield the projected number of comprehensive rehabilitation beds needed by county residents in the target year. The projected number of beds needed by each region shall then be computed by summing the number of comprehensive rehabilitation beds required for each of the counties in each respective region;

ix. STEP 9: In order to take into account those comprehensive rehabilitation beds in New Jersey rehabilitation hospitals which are utilized by non-New Jersey residents and by patients whose residency is unknown, the number of patient days utilized by non-New Jersey residents and by patients of unknown origin at all rehabilitation hospitals located in each region during the most recent year for which data are available shall be summed. The latter number, computed for each region, shall then be divided by (365 × .85). The resulting, region-specific number of beds shall then be added to the number of beds needed in each particular region, computed in accordance with (c)4viii above; and

x. STEP 10: To arrive at the net number of beds needed in each region in the target year, the inventory of approved comprehensive rehabilitation beds in each region, determined in accordance with (c)2 above, shall be subtracted from the respective region's bed need, computed in accordance with (c)4viii and ix above.

Recodify 6. as 5. (No change in text.)

[(d) In regions where there is no net, projected bed need according to the methodologies described in (c) above, the Department may give consideration to approving certificate of need applications for additional beds at rehabilitation hospitals that offer documentation of an occupancy rate in excess of 90 percent for a period of at least 12 months immediately prior to filing the application, providing that the applicant meets all other applicable requirements of this chapter including the minimum facility size requirements specified in N.J.A.C. 8:33M-1.5. The applicant shall only be approved for that

number of beds which can be expected to result in an 85 percent annual occupancy rate during the twelve month period following licensure of the proposed, additional beds. The applicant shall submit documentation, to the satisfaction of the Department of Health, that patients' average length of stay at the hospital does not substantially exceed the statewide average for a comparable patient population.]

(d) In regions where there is no net projected bed need according to the methodologies described in (c) above, the Department may give consideration to approving certificate of need applications for small numbers of additional comprehensive rehabilitation beds to be located at the site of existing rehabilitation hospitals with high occupancy rates.

1. In order to receive consideration for approval in accordance with (d) above, rehabilitation hospitals shall be in compliance with all other

applicable requirements of this chapter and shall submit documentation, to the satisfaction of the Department of Health, that patients' average length of stay in the licensed comprehensive rehabilitation beds does not substantially exceed the Statewide average for a comparable patient population.

2. The maximum number of beds that may be added in accordance with (d) above shall be the difference between a facility's total, licensed comprehensive rehabilitation bed complement and that number which results from multiplying the facility's total, licensed comprehensive rehabilitation bed complement by the annual occupancy rate in those beds for the 12 month period prior to filing the application, and dividing this product by .85. The formula for this calculation shall be as follows:

$$\text{Maximum Comprehensive Rehab Bed Addition} = \left(\frac{\text{Licensed Comprehensive Rehab Bed Complement} \times \text{Annual Occupancy Rate in Licensed Comprehensive Rehab Beds}}{.85} \right) - \text{Licensed Comprehensive Rehab Bed Complement}$$

3. In no case shall the bed increase approved in accordance with (d) above exceed the difference between a facility's total, licensed comprehensive rehabilitation bed complement and that number which results from multiplying the facility's total, licensed comprehensive rehabilitation bed complement by an occupancy rate of 100 percent and dividing this product by .85.

(e)-(i) (No change.)

veterinarians engaged in exotic and zoo activities, who would be required to use a safe for the storage of these substances, and to complete a small amount of paperwork.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will not impose significant changes in recordkeeping or other compliance requirements on small businesses. Although the special class of exotic animal and zoo veterinarians are "small businesses" as defined by the Act, the paperwork and/or expenses involved in the special licensing, recordkeeping, security or purchase of a safe will be minimal.

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

(a)

**DIVISION OF ALCOHOLISM AND DRUG ABUSE
Controlled Dangerous Substances; Schedule II
Carfentanil, Etorphine Hydrochloride,
Diprenorphine**

**Proposed Amendments: N.J.A.C. 8:65-2.4, 2.5, 6.6,
6.13 and 6.16**

Authorized By: Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health.

Authority: N.J.S.A. 24:21-9.

Proposal Number: PRN 1991-148.

Submit comments by July 17, 1991 to:
Lucius A. Bowser, R.P., M.P.H.
Chief, Drug Control Program
CN 362
Trenton, NJ 08625-0362
(609-984-1308)

The agency proposal follows:

Summary

The Department of Health proposes to amend the Controlled Dangerous Substances rules at N.J.A.C. 8:65 to set forth the special handling of three very potent Schedule II substances: Carfentanil, Etorphine Hydrochloride and Diprenorphine. The amendments will bring N.J.A.C. 8:65 into conformity with the Federal regulations, cited at 21 C.F.R. 1305 for these three substances. The amendments change the way Carfentanil, Etorphine Hydrochloride and Diprenorphine are controlled by special licensing, ordering, and recordkeeping procedures. These amendments would affect about six to 10 veterinarians in this State who may use these substances in quieting exotic and zoo animals.

Social Impact

It is anticipated that the proposed amendments will have a beneficial impact on the practice of veterinary medicine and the general public. The proposed amendments would place greater controls over the security and the ordering of these substances to prevent them from being handled by untrained veterinarians in the handling of exotic and zoo animals. This is a very specialized type of practice, for which special registration is required. The proposed amendment would confirm that the veterinarian is specifically licensed to use these strong and potent drug substances.

Economic Impact

These proposed amendments would not impose any economic impact on the public, licensed veterinarian or the Department except for those

8:65-2.4 Other security controls for non-practitioners

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

(g) Before the initial distribution of **carfentanil**, etorphine hydrochloride, and/or diprenorphine to any person, the registrant must verify that the person is authorized to handle the substance(s) by contacting the Drug Enforcement Administration.

8:65-2.5 Physical security controls for practitioners

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

(e) [Etorphine] **Carfentanil**, **etorphine** hydrochloride and diprenorphine shall be stored in a safe or steel cabinet equivalent to a U.S. Government Class V security container.

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

8:65-6.6 Procedure for executing order forms

(a) (No change.)

(b) Only one item shall be entered on each numbered line. There are [ten] **10** lines on each order form. If one order form is not sufficient to include all items in an order, additional forms shall be used. **Order forms for carfentanil, etorphine hydrochloride and diprenorphine shall list only these substances.** The total number of items ordered shall be noted on that form in the space provided.

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

8:65-6.13 Preservation of order forms

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

(d) **The supplier of carfentanil, etorphine hydrochloride and diprenorphine shall maintain order forms for these substances separately from all other forms and records required to be maintained by the registrant.**

8:65-6.16 Special procedure for filling certain order forms

(a) The purchaser of **carfentanil**, etorphine hydrochloride or diprenorphine shall submit copy 1 and 3 of the order form to the supplier and retain copy 3 in his or her own files.

(b) The supplier, [if he determines] **upon determining** that the purchaser is a veterinarian engaged in zoo and exotic animal practice, wildlife management programs and/or research and authorized by the D.E.A. to handle these substances, shall fill the order in accordance with the procedures set forth in [Section] **21 C.F.R. 1305.09** except that:

1. Order forms for **carfentanil**, etorphine hydrochloride and diprenorphine shall only contain these substances in reasonable quantities; and
2. (No change.)

INSURANCE

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing; Activities for Which a Person Must be Licensed as an Insurance Producer or Registered as a Limited Insurance Representative

Proposed Amendment: N.J.A.C. 11:17A-1.3

Authorized By: Samuel F. Fortunato, Commissioner,
Department of Insurance.
Authority: N.J.S.A. 17:22A-1 et seq., 17:22A-3, 17:22A-17c,
17:22A-23(e), 17:22A-24, 17:1C-6(e).
Proposal Number: PRN 1991-340.

Submit comments by July 17, 1991 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625-1325

The agency proposal follows:

Summary

The Commissioner of Insurance, on December 6, 1989, adopted new rules (N.J.A.C. 11:17A) relating to standards of conduct for insurance producers and limited insurance representatives including activities for which a person must be licensed as an insurance producer or registered as a limited insurance representative. The new rules were effective on January 2, 1990, and published at 22 N.J.R. 30(b).

One of the new rules, N.J.A.C. 11:17A-1.3, under the heading "Who must be licensed; exceptions," provided that:

"(e) Salaried officers or employees of insurers authorized to do business in this State and who solicit, negotiate or effectuate insurance in the name of and on behalf of the insurer, for compensation of any type, shall have secured licensure producer, or registration as a limited insurance representative, as appropriate, on or before January 1, 1991."

Adoption of this provision generated a significant amount of controversy within the insurance industry, since it represented a marked departure from previous regulatory licensing requirements relative to officers and employees of insurers. The Department received numerous written comments from interested persons.

In order to allow time for further deliberation and possible proposal of other amendments to subsection (e), the Department, at 22 N.J.R. 3444(a), extended the time allowed for compliance from January 1, 1991 to January 1, 1992.

The Department proposes to further amend subsection (e) by adding language which is intended to clarify the Department's intent: that the licensing requirement will apply to insurer officers or employees whose job responsibilities include solicitation, negotiation and effectuation of insurance contracts on behalf of their employer; but not to officers or employees whose job responsibilities do not include participation in the solicitation, negotiation and effectuation of insurance contracts. (The Department recognizes that, while in some instances, for example, an underwriter or actuary may participate incidentally in the solicitation, negotiation and effectuation of an insurance contract, such activity occurs in a context that does not require licensing for the protection of the insured.) The Department believes that the added language is consistent with the legislative intent of N.J.S.A. 17:22A-3, the underlying statute.

The Department also proposes that the time allowed for compliance be further extended from January 1, 1992 to October 1, 1992. This will allow auto insurers time to adjust during depopulation of the Market Transition Facility (MTF) which will be occurring through September

30, 1992. Thereafter, the Automobile Insurance Plan (AIP) will come into existence and auto insurers will no longer be required to depopulate the residual market. The Department does not believe this licensing requirement should take effect during this period of transition.

Finally, the Department proposes that the word "Salaried" in the first sentence of subsection (e) be deleted, since the criteria for determining whether one must be licensed is based on the nature of one's job activity and not on the type of compensation.

Social Impact

The proposed amendment clarifies which officers and employees of insurers must be licensed as insurance producers or limited insurance representatives. The determining factor is whether one's job responsibilities include the solicitation, negotiation and effectuation of insurance contracts as defined elsewhere in the rules. If so, he or she must be licensed accordingly. The Department does not intend that this requirement apply to those officers and employees of insurers whose involvement in this regard is merely incidental to their job responsibilities.

Economic Impact

The proposed clarifying language will reduce considerably the cost anticipated by insurers in complying with the requirements of N.J.A.C. 11:17A-1.3(e), since a number of officers or employees previously thought to be in need of licensing no longer fall within that category. The anticipated licensing burden to be assumed by the Department is also reduced.

Regulatory Flexibility Analysis

The Department believes that few, if any, insurers subject to the proposed amended rule are "small businesses" as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Additionally, the amended rule imposes no undue burden or adverse economic impact upon insurers which may qualify as "small businesses." Because the proposed amendment is of a clarifying nature, no additional reporting, recordkeeping or other compliance requirements are imposed on small businesses. Therefore, no differential provisions applicable to small businesses have been provided in these rules.

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

11:17A-1.3 Who must be licensed; exceptions

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

(e) [Salaried officers] **Officers** or employees of insurers authorized to do business in this State and who solicit, negotiate or effectuate insurance in the name of and on behalf of the insurer, for compensation of any type, shall have secured licensure as an insurance producer, or registration as a limited insurance representative, as appropriate, on or before [January] **October 1, 1992. This requirement shall apply to insurer officers or employees whose employment duties include the solicitation, negotiation and effectuation of insurance contracts on behalf of their employer. This requirement shall not apply to insurer officers or employees whose participation in the solicitation, negotiation and effectuation of insurance contracts is incidental to their employment duties.**

STATE

(b)

DIVISION OF ARCHIVES AND RECORDS MANAGEMENT

Records Retention

Proposed Readoption with Amendments: N.J.A.C. 15:3

Authorized By: Joan Haberle, Secretary of State.
Authority: N.J.S.A. 47:3-15.
Proposal Number: PRN 1991-333.

Submit comments by July 17, 1991 to:
Joan Haberle, Secretary of State
Department of State
315 West State Street, CN 300
Trenton, N.J. 08625

The agency proposal follows:

Summary

N.J.A.C. 15:3, the rules of the Division of Archives and Records Management, has been evaluated by the Department of State and, with some minor changes, has been found to be appropriate, reasonable and suited to the purpose for which it was originally promulgated. In accordance with the provisions of Executive Order Number 66(1978), N.J.A.C. 15:3 will expire on July 7, 1991. The Department is proposing that the chapter be readopted, with amendments. The contents of the chapter are as follows:

Subchapter 1 contains the Purpose, Scope and Definitions.

Subchapter 2 contains the requirements which apply to State records management, including records retention procedures, destruction procedures, microfilm and microfiche requirements, and use of State Archives.

Subchapter 3 contains the requirements which apply to the public records of local governmental agencies, including records retention procedures, destruction procedures, microfilm and microfiche requirements, and audit requirements.

The title of the chapter has been changed to Records Management, to more accurately reflect the contents.

Material previously contained in the Foreword has been deleted and a new rule, entitled Purpose and Scope, has been added. No other changes are being proposed at this time.

Social Impact

The proposed readoption continues in effect the rules governing records retention for State and local public records. The public at large benefits from the standardized and efficient preservation and maintenance of State and local records. Without the proper preservation of documents important to many, such as the State Constitution, and documents important to individuals, such as the records of municipal government, many parts of State and local government would become unable to serve the needs of the public.

Economic Impact

Efficiency and consistency are the two primary goals of State's record management system. The centralization of records retention aids in these goals, as does the standardization provided for by these rules. The maintenance of an efficient records management system may also decrease the cost to individuals and groups for research required to locate information. The rules are structured to provide the most effective means of maintaining records at the least cost to the taxpayer.

Regulatory Flexibility Statement

The rules in N.J.A.C. 15:3 apply to procedures for the retention and destruction of public records in State and local government. Since there are no requirements placed on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., no regulatory flexibility analysis is required.

Full text of the rule proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 15:3.

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

CHAPTER 3

[DIVISION OF ARCHIVES AND HISTORY AND] RECORDS MANAGEMENT

[FOREWORD]

[Permanent records of the State are maintained by the Division of Archives and History. Its collections include more than 10,000 cubic feet of permanent State records, as well as the three constitutions of the State and New Jersey's copy of the Bill of Rights. The Division carries on an extensive program of microfilming State records and supervises retention and disposal programs for State, county and local government records. Disposal of records is authorized by a State Records Committee which is established in the Department of State and consists of the State Treasurer, the Attorney General, the State Auditor, the Director of the Division of Local Government Services and the Head of the Division of Archives and History, or their designated representatives.]

SUBCHAPTER 1. [DEFINITIONS] GENERAL PROVISIONS

15:3-1.1 Purpose and scope

The Division of Archives and Records Management is charged with the responsibility for establishing the framework for the management of public records in a systematic and comprehensive fashion. This chapter encompasses all public entities at the State, county and local government levels, including subdivisions thereof.

15:3-[1.1]1.2 [Words and phrases defined] **Definitions**
(No change in text.)

TRANSPORTATION

(a)

BUREAU OF ACCESS AND DEVELOPMENT IMPACT ANALYSIS

State Highway Access Management Code

Notice of Correction; Public Hearings

Proposed Amendment: N.J.A.C. 16:41-2

Reproposed New Rules: N.J.A.C. 16:47

Take notice that the rulemaking at 23 N.J.R. 1525(a) contains the proposed amendment of N.J.A.C. 16:41-2, not, as incorrectly shown in the heading, the reproposed repeal.

Take further notice that the Department of Transportation is correcting the announcement of hearings contained in the reproposal in the May 20 issue of the New Jersey Register at 23 N.J.R. 1525(a). The Department will hold five hearings to seek public comment on the reproposed repeal and new rules, as follows:

Monday, July 8, 1991, from 2:00 P.M. to 5:00 P.M., at:

Matawan Borough Municipal Building
150 Main Street
Matawan, New Jersey

Tuesday, July 9, 1991, from 3:00 P.M. to 8:00 P.M., at:

DOT Headquarters Multipurpose Room
1035 Parkway Ave.
Trenton, N.J.

Thursday, July 11, 1991, from 2:00 P.M. to 5:00 P.M., at:

Paterson Municipal Building
111 Broadway
Paterson, N.J.

Wednesday, July 17, 1991, from 3:00 P.M. to 8:00 P.M., at:

Cherry Hill Municipal Building
820 Mercer Street
Cherry Hill, N.J.

Thursday, July 18, 1991, from 3:00 P.M. to 8:00 P.M., at:

New Brunswick Public Library
78 Bayard Street
New Brunswick, N.J.

All testimony offered at these sessions will be recorded and will become part of the official public record of the Highway Access Code rulemaking. Persons testifying at the hearing should present a written transcript for inclusion in the record. All presentations offered at these sessions will be limited to five minutes.

Take further notice that the formulae represented in the proposal at N.J.A.C. 16:47-3.5(b)2 and 3 were incorrect. The correct formulae are as follows:

16:46-3.5 Unsignalized access points

(a) (No change.)

(b) The vehicular use limitations to be included as a condition of the permit for a nonconforming lot shall be determined as follows:

1. (No change.)

2. For urban State highway segments, the highest A.M., P.M., or Saturday permissible peak-hour vehicular trips for the direct access between the lot and the State highway shall be determined using the following formula:

$$V = 50 + \left(\frac{L + R}{2 \times S} \right)^2 \times A \times 100$$

$$\begin{aligned} L_{\max} &= S \\ R_{\max} &= S \\ A_{\max} &= 3.0 \end{aligned}$$

3. For rural State highway segments, the highest A.M., P.M., or Saturday permissible peak-hour vehicular trips for the direct access between the lot and the State highway shall be determined using the following formula:

$$V = 50 + \left(\frac{L + R}{2 \times S} \right)^2 \times A \times 70$$

$$\begin{aligned} L_{\max} &= S \\ R_{\max} &= S \\ A_{\max} &= 2.0 \end{aligned}$$

4.-5. (No change.)

(c)-(i) (No change.)

Take further notice that portions of the text of N.J.A.C. 16:47-4.30 and the text of N.J.A.C. 16:47-4.31 and 4.32 were incorrectly placed after Appendix B in the proposal. The correct text follows:

16:47-4.30 Traffic impact studies for major access and concept review applications

(a) A traffic impact study is required for concept review applications reviewed by the Bureau of Access and Development Impact Analysis and major access applications with a planning review. The study shall be [performed] **completed and sealed** by a New Jersey licensed professional engineer or professional planner [and include the following]:

[1. A] (b) **A traffic impact study shall include a narrative summary** as follows:

[i.]1. The narrative summary should be in the beginning of the report and should indicate the size and type of development and the proposed access plan. It should [also] **either** indicate that the access points are in conformance with the Access Code **or refer to the waiver request accompanying the application.**

[ii.]2. The narrative summary should establish that the LOS standards set forth in N.J.A.C. 16:47-4.24 through 4.29 are met. If they are not met, the narrative summary [must support] **shall evaluate and provide detailed justification for** the applicant's proposals.

[iii.]3. Figures should show the location of the [development] lot and access points.

[iv.]4. Any [highway improvements] **fair-share financial contributions determined** necessary to mitigate traffic impacts according to [the Department's guidelines should] N.J.A.C. 16:47-4.34 **shall** be generally [stated] **described** and illustrated. [Included must be the applicant's position with regard to these improvements. The entity responsible for each improvement shall be noted.]

[v.]5. Any improvements not required [to meet Department guidelines] **by these rules**, but desired by the applicant, should be presented along with facts indicative of their workability.

[vi.]6. Issues raised at the pre-application conference [should] **shall** be addressed in summary form.

[2. A] (c) **A traffic impact study shall include a project description**, including the following:

[i.]1. The applicant and project name;

[ii.]2. A location map;

[iii.]3. A project description **based on sizes and land use types which are** [using quantities] compatible with those **land uses listed** in the Institute of Transportation Engineers [(ITE) 4th Edition] **publication entitled Trip Generation, 4th edition**, [or a] superseding edition **or other uses listed by the Department. For land uses not listed in this source or when an applicant believes these uses are not representative, the Department may accept alternative evidence of representative uses;**

[iv.]4. Unique functional or operational activities which relate to atypical trip making activity [(such as ridesharing participation, bus intercept areas, [or] recreational use facilities)], **or travel demand management plans pursuant to N.J.A.C. 16:47-4.39;**

[v.]5. Project phasing identifying the year of development activities per phase and proposed access plans;

[vi.]6. A transportation system inventory, which is a description of the physical, functional and operational characteristics of the study area highway system and, where appropriate, local transit service. The description should provide, where pertinent, data on:

[(1)]i. Peak-hour volumes;

[(2)]ii. Number of lanes;

[(3)]iii. Cross section;

[(4)]iv. Intersection [signalization] **traffic signals** and configuration;

[(5)]v. [Signal] **Traffic signal** progression;

[(6)]vi. Percentage of heavy trucks;

[(7)]vii. Grades;

[(8)]viii. Adjacent [driveway] **access point** locations;

[(9)]ix. Jurisdiction;

[(10)]x. Transit route; and

[(11)]xi. Transit frequency

[vii.]7. [Joint] **Shared** access agreements; and

[viii.]8. Proposed transportation improvements.

[3.](d) **A traffic impact study shall include a traffic analysis.** Extensive documentation is required for the Department to review and accept the traffic volumes presented in a traffic analysis. The logic and calculations that produce these volumes must be shown.

[i.]1. For trip generation, **applicants shall use** the Institute of Transportation Engineers [(ITE) trip-generation rates are the standard.] **publication entitled Trip Generation, 4th edition, superseding edition, or superseding rates adopted by the Department. For land uses not listed in this source or when an applicant believes these rates are not representative, the Department may accept alternative evidence of representative rates.** The rates shall be summarized in tabular form for each analysis time period and indicate size, type, and appropriate ITE land use code. [Other trip generation rates may be used with adequate documentation only if no ITE data exists for the land use. The documentation must cite specific locations and describe in detail the land use. Facts supporting the use of rates from these locations must be supplied.] The applicant must seek prior approval from the Department [on] **or request a waiver for trip generation rates other than [ITE] those specified above. The documentation must cite specific locations and describe the land use in detail. Facts supporting the use of rates from these locations must be supplied.**

[(1)]i. The peak-hour traffic analysis must identify site, roadway, and coincidental peak-hour conditions, and the beginning and end of the peak-hour used. **It shall show the combination of site and background traffic which causes the most critical impacts.** The peak-hour will generally be the A.M. and P.M. weekday **highway** peak-hours. The Department may, depending on project characteristics, consider other peak-hours, such as Saturday afternoon or evening.

[(2)]ii. For mixed-use developments, internal trips should be addressed in the trip distribution section.

[ii.]2. For trip distribution, the procedure and rationale [should] **shall** be documented. Trip [making and travel patterns] **tables** for each [site must] **land use on the lot shall** be shown. [The distribution for each land use shall be shown graphically and presented as a percentage of the total.] **The documentation shall tie the trip table to the data source, such as U.S. Census Journey to Work, marketing studies, or employment data.** Where existing travel patterns are used for all or a component of the site's traffic, an explanation is required as to why the expected patterns are likely to replicate these existing patterns.

[iii.]3. The traffic assignment [should] **shall** follow logically from the trip distribution. Any special conditions must be explained.

[(1)]i. Peak-hour traffic volumes covering the analysis area [must] **shall** be depicted graphically. They must identify site generated, primary, passby, and total traffic. [Any credits or reductions for passby trips or mixed-use developments must be supported.]

ii. **Entering and exiting traffic shall be routed on public roadways and the applicant's lot. Routing on any other lot shall meet the requirements of N.J.A.C. 16:47-3.12(m).**

[iv.]4. Support [will have to] **shall** be provided for any [pass-by] credits or reductions for passby trips or mixed-use developments [used].

Included [must] **shall** be an explanation of how these trips are being captured and a demonstration that the existing traffic volume is high enough to support the rates used.

[(1)]j. Because of the highly judgmental nature of passby trips, it is important to discuss them at the pre-application conference. An agreement on the rates or an agreement on the approach can be reached at the conference.

[v. The Bureau of Access and Development Impact Analysis maintains a file of developments for which the trip generation, distribution, and assignment have been approved. Data from this bank may be used with documentation limited to a citation of the source. Submittals must conform to the following standards:

(1) Information from each development must appear on a different sheet;

(2) Trip distribution must be displayed in either graphic or tabular form. (8 1/2 inch x 11 inch preferred, 11 inch x 17 inch maximum); and

(3) Traffic assignment must be graphically displayed, with passby credits shown.]

5. The study locations shall be established pursuant to N.J.A.C. 16:47-4.36.

[4. The following concerns the travel demand management plan:

i. The Department encourages applicants to submit a travel demand management plan (TDM) to reduce vehicle miles of travel to and from the site and to seek active participation from a Transportation Management Association serving its area to act as an advisor to the site development plan.

ii. A transportation demand management plan contains specific strategies which focus on reducing travel, especially peak period travel. It is a plan of action that attempts to use the existing transportation infrastructure more efficiently. The strategies that can be implemented at a worksite are TDM strategies.

(1) Any mode share adjustments to site generated vehicular activity shall be justified and documented. The projected vehicle miles of travel to and from the site may be reduced if the site is located within one-quarter mile of an existing public transportation service, such as public bus line, rail transit, commuter railroad station, or passenger ferry (waterborne) service. The availability of adequate and convenient service to areas of prospective employee, tenant, and customer origins and destinations must be substantiated.

(2) The goals of a TDM plan are to reduce traffic congestion, air pollution, energy consumption, and the costs of commuting to work. The objectives are to increase the number of commuters arriving at work by carpool, vanpool, bus, train, and bicycles and to increase the number of commuters who work with a variable hour schedule or work from home. These objectives are accomplished by implementing any of the following array of strategies to change commuting behavior:

- (A) Buspool;
- (B) Carpool;
- (C) Compressed work week program;
- (D) Employee transportation coordinator or ridesharing coordinator;
- (E) Four-forty schedule or four-day work week;
- (F) Local ridesharing agency;
- (G) Nine-eighty schedule;
- (H) Ridesharing;
- (I) Satellite office;
- (J) Telecommuting;
- (K) Monitoring;
- (L) Transportation demand management;
- (M) Transportation management associates;
- (N) Vanpool; and/or
- (O) Alternative work arrangement programs.

(3) The travel demand management plan should include a traffic reduction program which will specify the measures the company will take to reduce total peak period and concentration of trips. The plan for each unit may include:

- (A) Facilitating employee use of mass transit;
- (B) Facilitating employee use of rideshare/vanpool program;
- (C) Establishing alternative work hours/flex-time program;

- (D) Encouraging non-vehicular work trips;
- (E) Consolidating carrier services;
- (F) Working with transit providers to establish new service; and/or

(G) Establishing self-contained services to minimize the need for travel for nonwork trips, such as postal services, food services, and internal convenience shopping facilities.

(4) The TDM plan may include the following measures, which are applicable to the site:

- (A) Preferred parking for rideshare/vanpool participants;
- (B) Construction of sufficient number of transit shelters;
- (C) Round trip shuttle service between the site and either a train station or remote parking facilities;
- (D) Establishment of in-house or third-party rideshare or vanpool program;

(E) Information center to coordinate rideshare or vanpool efforts among smaller businesses within a complex; and/or

(F) Access and safety programs for pedestrians and bicyclists.

(5) If the applicant incorporates a travel demand management plan, than the applicant shall provide the Department with annual status follow-up reports.

(6) The applicant may include a travel demand management program designed to encourage residents' use of ridesharing programs and mass transit. Such measures could include provision of vanpool or park and ride parking lots or building shelters at public transportation pick up points. If the applicant incorporates such measures, then follow-up status reports could be required.]

(e) A traffic impact study may include a travel demand management plan. This is an optional plan as set forth in N.J.A.C. 16:47-4.39.

[(7) Traffic](f) **Highway traffic** volumes shall be prepared for the build year [and tenth year thereafter,] or such other years as may be appropriate due to project phasing or programmed highway improvements. [The Department will provide background annual growth rates for highways under State jurisdiction, exclusive of other specifically proposed developments. The Department will also provide annual growth rates for other roadways to be addressed in the analysis. Other major developments must be specifically addressed. Documentation of traffic volumes generated by these developments must conform to the standards. These developments will be enumerated in Department's transmittal of background growth rates.] **The traffic volumes shall be determined by applying background traffic growth rates, prepared pursuant to N.J.A.C. 16:47-4.38, to traffic counts, obtained pursuant to N.J.A.C. 16:47-4.37. The traffic volumes shall represent the traffic volumes anticipated on the date the access is to open.**

(g) The traffic impact study shall include a capacity analysis.

[(A)]1. The 1985 Highway Capacity Manual (HCM) is the standard for capacity analysis. The use of other procedures must be justified and documented. Capacity work sheets must be provided as an appendix to the traffic impact study. The Department will accept calculations performed using computer software based on the HCM. The Department preference is for McTrans software. The Bureau of Access and Development Impact Analysis [must] **shall** approve the use of other software. Any deviation from the HCM accepted values [must] **shall** be fully documented. **Default values shall not be used when actual values are reasonably available or obtainable.**

[(B)]2. Capacity analysis [must] **shall** be performed at each access point for the lot and [adjacent intersections or any other location as necessary within the analysis area.] **the study locations identified in N.J.A.C. 16:47-4.36.** [Identification of specific locations and the need to discuss the] **The interaction of conflicting traffic movements [will] shall be [products of the pre-application conference] addressed in the traffic impact study.**

[(C)]3. Impacts should be evaluated with and without development traffic and with and without any proposed transportation improvements for the build years [and the tenth year after the final improvement]. For phased developments, no-build analyses for latter phases are not to include traffic and improvements from earlier phases of the development.

[(D) The Department encourages reduced vehicle miles of travel (VMT) to and from the site, particularly during peak periods. Ac-

cordingly, the applicant should set a goal, or target, for such VMT reduction. For example, under the array of strategies described above under (a)4iii(1), the target may be to increase vehicle occupancy from the normal traffic generation of a particular development to at least 1.4 occupants per vehicle. It is the responsibility of the applicant to propose a workable plan to accomplish this.]

[(E) Alternate]4. **Alternate** access availability [should] shall be addressed. [If the existing roadway configuration will not support build traffic, as measured by violation of level of service (LOS) standards, in either the build year or the tenth year, then roadway improvements sufficient to meet LOS standards must be identified.]

[(F)]5. The no-build analysis of future years [should] shall be based on traffic signal timing [that] which is possible with the existing traffic signal hardware and will be appropriate for the future year no-build traffic volumes. [The applicant can only take credit for changes in timing facilitated by improvements that the applicant proposes to make.] **The build analysis may use traffic signal timing changes which are possible with the existing traffic signal hardware and comply with the standards for progression pursuant to N.J.A.C. 16:47-4.21(a)6.**

[(G)]6. Summary tables [should] shall show, as appropriate to the type of analysis, volume, number of lanes, green time, volume to capacity ratio, delay, LOS, and reserve capacity for each lane group or movement **on each approach**. These tables [should] shall facilitate comparison of build and no-build conditions, [or] and of existing and improved configurations **based on the LOS standards. Sample summary tables are shown in Appendix M, incorporated herein by reference.**

7. **A fair share analysis prepared pursuant to N.J.A.C. 16:47-4.34 shall be included.**

[(8) The analysis area should extend to any point on the adjacent system that could be significantly impacted. The limits must be defined preliminarily through a pre-application conference. Locations for traffic counts will also be established at that time.

(A) Traffic counts should be shown by 15-minute intervals over a period long enough to establish a peak hour. During this period there should be no conditions such as detours, accidents, or inclement weather that could affect traffic volumes. Traffic counts should not be taken on or near holidays or other special events when traffic may not be representative of average daily traffic.

(B) Traffic counts performed outside the seasonal peak period must be adjusted to the peak period. Traffic count data taken within the previous 12 months is required. All count material should be attached to the Traffic Impact Study as an appendix. The Department may require evidence of proper calibration of automatic traffic recorder (ATR) equipment.

(C) Once AM, PM, and Saturday peak hours are established, the same times for the peak hours should be used at every location analyzed in an application.]

16:47-4.31 Design [exceptions] standards

[(a) The design of all highway improvements must conform to design standards. Any deviation from those standards shall be designated as a design exception. A design exception may be approved when it can be shown that the exception is justified due to existing social, economic, and environmental constraints.

[(b)](a) For improvements made to all State highways, except interstate highways, Department design standards shall apply. [Work must conform to the] **These standards are set forth in the American Association of State Highway Transportation Officials (AASHTO) publication "A Policy on Geometric Design of Highway and Streets,"**[,] incorporated herein by [reference] **reference**, and the ["NJDOT] **New Jersey Department of Transportation Design Manual—Roadway**["] and the ["NJDOT] **New Jersey Department of Transportation Design Manual—Bridges and Structures**["]. In the case of a discrepancy, the [NJDOT] **Department** manual will govern over the AASHTO publication.

[(c)](b) For interstate highways, the design standards are defined in the AASHTO publication "A Policy on Design Standards Interstate System,"[,] incorporated herein by reference. All new improvements shall conform to these standards. However, if it proves to be infeasible to do so, the improvements shall be designed to the

interstate standards that were in effect at the time of the original interstate construction.

[(d) The complete procedure for the preparation of design exceptions can be found in the NJDOT publication "Procedural Manual for the Preparation of Design Exceptions". The publication is available from the Bureau of Design Standards.]

16:47-4.32 Appeal process

(a) The appeal process for minor permits is as follows:

1. The applicant shall submit a written request for reconsideration to the Regional Maintenance Office within 30 days of a notice of rejection [of] **or unacceptable permit** conditions. **The request shall include reasons for the appeal.** Within seven days of receipt, the Regional Maintenance Office shall forward the request to the Regional Director, with pertinent documents, and advise the applicant of this action.

2. Within 10 days of receipt of the reconsideration request, the Regional Director will determine whether to grant the reconsideration request. If the request is granted, the Regional Director will schedule a meeting, **within 30 days**, with the applicant and provide the applicant with an opportunity to present additional information in support of the application.

3. The Regional Director shall render a decision in writing within 15 days of the meeting and so notify the applicant. If the Regional Director denies the applicant's request for reconsideration or if the applicant does not agree with the decision of the Regional Director, the applicant may[, within 15 days,] submit an appeal to the Assistant Commissioner, [Construction] **Construction and Maintenance, within 15 days.**

4. The Assistant Commissioner, Construction and Maintenance, shall schedule an informal hearing within 10 days of his or her receipt of the applicant's appeal. At the hearing, the applicant will be accorded an opportunity to present further information justifying the acceptance of the access plan.

5. **In reaching the final agency decision, the Assistant Commissioner, Construction and Maintenance, shall consider the criteria set forth in the Act and these rules, the lot owner's right of reasonable access to the general system of streets and highways in the State and the public's right and interest in a safe and efficient highway system.** The Assistant Commissioner, Construction and Maintenance, shall render the final agency decision, with reasons, within 10 days of the informal hearing and so notify the applicant in writing.

(b) The appeal process for all major permits, concept reviews, and developer agreements shall be as follows:

1. The applicant shall submit a written request for reconsideration to the Major Permits Unit within 30 days of a notice of rejection or **unacceptable permit** conditions. **The request shall include reasons for the appeal.** Within seven days of receipt, The Major Permits Unit shall forward the request to the Regional Design Engineer, with pertinent documents, and advise the applicant of this action.

2. Within 10 days of receipt of the reconsideration request, the Regional Design Engineer will determine whether to grant the reconsideration request. If the request is granted, the Regional Design Engineer will schedule a meeting **within 30 days** with the applicant and provide the applicant with an opportunity to present additional information in support of the application.

3. The Regional Design Engineer shall render a decision in writing within 15 days of the meeting and so notify the applicant. If the Regional Design Engineer denies the applicant's request for reconsideration or if the applicant does not agree with the decision of the Regional Design Engineer, the applicant may[, within 15 days,] submit an appeal to the Assistant Commissioner, Design and Right-of-way, **within 15 days.**

4. The Assistant Commissioner, Design and Right of Way, shall schedule an informal hearing within 10 days of his or her receipt of the applicant's appeal. At the hearing, the applicant will be accorded an opportunity to present further information justifying the acceptance of the access plan.

5. **In reaching the final agency decision, the Assistant Commissioner, Design and Right of Way, shall consider the criteria set forth in the Act and these regulations, the lot owner's right of reasonable access to the general system of streets and highways in the State and the**

public's right and interest in a safe and efficient highway system. The Assistant Commissioner, Design and Right of Way, shall render the final agency decision, with reasons, within 10 days of the informal hearing and so notify the applicant in writing.

Written comments may be submitted by July 19, 1991 to:

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

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations Petitions for Rulemaking

Proposed Amendment: N.J.A.C. 19:4-6.27

Proposed New Rules: N.J.A.C. 19:3A-1.3 and 19:4-6.29 and 6.30

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
 Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i), and N.J.A.C. 19:4-6.27.
 Proposal Number: PRN 1991-341.

A public hearing concerning this proposal will be held on July 8, 1991 at or after 7:30 P.M. at:

Hackensack Meadowlands Development Commission
 One DeKorte Park Plaza
 Lyndhurst, New Jersey 07071

Submit written comments by July 17, 1991 to:
 Thomas R. Marturano, P.E., P.P., Acting Chief Engineer
 Hackensack Meadowlands Development Commission
 One DeKorte Park Plaza
 Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The Administrative Procedure Act ("the Act"), at N.J.S.A. 52:14B-4(f), authorizes interested persons to petition a State agency "to promulgate, amend or repeal any rule." The Act also directs State agencies to "prescribe the form for the petition and the procedure for the submission, consideration and disposition" of any such petition. N.J.A.C. 1:30-3.6(d) also requires that each agency prescribe by rule the form of a petition and the procedures for its submission. The Hackensack Meadowlands Development Commission (HMDC) proposes the following rulemaking petition procedures in order to satisfy this mandate.

Proposed new rule N.J.A.C. 19:3A-1.3 provides that all petitions must be in writing and contain the substance or nature of the rulemaking which is requested, the reasons for the request and the petitioner's interest in the request, and reference to the authority of the agency to take the requested action.

Within 15 days of receipt of a petition, the HMDC will file a notice stating the name of the petitioner and the nature of the request, with the Office of Administrative Law for publication in the New Jersey Register.

The proposed new rule further requires that the agency take action on the petition within 30 days of its receipt. The action taken by the HMDC may consist of either a denial of the petition: action upon the petition, which may include the initiation of a formal rulemaking proceeding; or referral of the matter for further deliberation.

Proposed new rules N.J.A.C. 19:4-6.29 and 6.30 describe, respectively, additional requirements for petitions for a zoning amendment to the Official Zoning Map (rezoning) and for amendment to the District Zoning Regulations. The proposed amendment to N.J.A.C. 19:4-6.27 further describes the HMDC's responsibilities with respect to rulemaking.

Social Impact

The proposed new amendment and new rules will have a positive impact on the public by establishing procedures for the filing and consideration of rulemaking petitions, thus allowing public initiation of possible changes to the Commission's rules.

Economic Impact

No direct economic impact on the general public is expected to result. Although the proposed amendment and new rules codify current policies and practices in terms of submittals, the fee for rezonings is already part of the regulations. This fee, or portion thereof, may be waived pursuant to N.J.A.C. 19:3-1.6. There will be no fee associated with petitions to amend HMDC District Regulations.

Regulatory Flexibility Statement

The proposed amendment and new rules would apply to any member of the public seeking amendment, promulgation or repeal of HMDC rules, including "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Under the proposed amendment, a small business will have to file rulemaking petitions in accordance with the requirements of this rule. The compliance requirements imposed upon those filing petitions are administrative in nature, the provision of necessary documentation and information to HMDC. Since this documentation and information is necessary for proper review of the petition, lesser requirements cannot be imposed based upon petition business size.

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

19:3A-1.3 Petitions for rulemaking

(a) Unless otherwise provided in the rules of the Hackensack Meadowlands Development Commission, this section shall constitute the Commission's requirements for the disposition of all requests for rulemaking pursuant to N.J.S.A. 52:14B-4(f).

1. For additional requirements relating to petitions for a zoning amendment to the Official Zoning Map, also known as a rezoning, see N.J.A.C. 19:4-6.29.

2. For additional requirements relating to petitions for an amendment to the District Zoning Regulations, N.J.A.C. 19:4, see N.J.A.C. 19:4-6.30.

(b) Any interested person may petition the Hackensack Meadowlands Development Commission to promulgate new rules, or to amend or repeal any of its existing rules. Such petition shall be filed with the Office of the Chief Engineer, in writing, and signed by the petitioner. The petition shall state clearly and concisely:

1. The substance or nature of the rulemaking which is requested;
 2. The reasons for the request and the petitioner's interest in the request;

3. The statutory authority under which the Hackensack Meadowlands Development Commission may take the requested action; and

4. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

(c) Petitions for the promulgation, amendment or repeal of a rule by the Hackensack Meadowlands Development Commission shall be sent by certified mail and shall be addressed to:

Hackensack Meadowlands Development Commission
 One DeKorte Park Plaza
 Lyndhurst, New Jersey 07071
 Attention: Office of the Chief Engineer

(d) Any document submitted to the Hackensack Meadowlands Development Commission that is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further agency action. The document shall be returned to sender with a deficiency explanation.

(e) Upon receipt of a petition for rulemaking, the following shall occur:

1. The petition shall be dated, stamped and logged;
 2. A notice of petition shall be prepared and filed within 15 days of receipt with the Office of Administrative Law in compliance with N.J.A.C. 1:30-3.6(a).

(f) Prior to any action taken by the Hackensack Meadowlands Development Commission pursuant to this Section, the Office of the Chief Engineer shall review the petition and prepare a preliminary analysis

with recommendations thereon which shall be submitted to the Executive Director and the Commissioners.

(g) Within 30 days following receipt of a petition, the Office of the Chief Engineer shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b).

(h) In accordance with N.J.A.C. 1:30-3.6(c), the Commission's action on a petition may include:

1. Denial of the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referral of the matter for further deliberations, the nature of which shall be specified and which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

19:4-6.27 Amendments

(a) These regulations, including the official zoning map forming a part hereof, may be amended, in whole or in part, from time to time, pursuant to such procedures and requirements as are imposed by law and the general rules of the Commission.

(b) Upon approval by the Commission for filing of a pre-proposal or proposal, or approval as a result of a referral for further deliberation to file a pre-proposal or proposal the Commission must submit a notice to the New Jersey Register. A minimum period of 30 days is required from the date of publication in the New Jersey Register to receive public comment. The Commission may require a public hearing for which a minimum of 15 days notice must be provided from the time the notice appears in the New Jersey Register.

(c) Upon conclusion of the public comment period, the Hackensack Meadowlands Municipal Committee will be granted a maximum 45 day period within which to submit comments to the Commission.

(d) Upon review of the comments and recommendation by the Office of the Chief Engineer, the Commission shall render a decision which must be filed with the Office of Administrative Law for inclusion in the New Jersey Register. The adoption of any zoning amendment is not valid until published in the New Jersey Register.

19:4-6.29 Petitions for zoning amendment to Official Zoning Map (rezoning)

(a) In addition to the requirements of N.J.A.C. 19:3A-1.3, all petitions for a zoning amendment to the Official Zoning Map, also known as rezoning, shall include:

1. A project location map, in triplicate, of the lots, drawn to scale and showing the actual dimensions of the lots. The map shall include:
 - i. The existing zoning and land use of the adjacent properties;
 - ii. Location of public right-of-ways, water courses, traffic circulation, points of ingress and egress, including access streets;
 - iii. Existing structures and land uses on-site; and
 - iv. Other such information as may be reasonably required;
2. A description of the rezoning being requested including the location of the property (block, lot and municipality), existing zoning, and proposed zoning;

3. The basis for the rezoning request including, but not limited to, a statement as to why the site cannot be developed in accordance with the existing zoning of the Hackensack Meadowlands Development Commission;

4. The full name and address of the petitioner;
5. The petitioner's interest in the request, including any relevant organization affiliation or economic interest; and
6. Other such information as may be deemed necessary by the Office of the Chief Engineer.

(b) All petitions for rezonings are subject to a filing fee as indicated at N.J.A.C. 19:3-1.2(a)8. This fee, or portion thereof, may be waived pursuant to N.J.A.C. 19:3-1.6.

19:4-6.30 Petitions for amendment to District Zoning Regulations

(a) In addition to the requirements of N.J.A.C. 19:3A-1.3, all petitions for an amendment to the District Zoning Regulations, N.J.A.C. 19:4, shall include:

1. The existing text proposed to be amended;
2. The proposed amendment to the District Zoning Regulations;
3. The reasons for the request, including a report indicating why the existing text is no longer appropriate and the proposed amendment is necessary. The report must be signed and sealed by a licensed Professional Engineer, Professional Planner or Registered Architect, depending on the nature of the request;
4. The full name and address of the petitioner;
5. The petitioner's interest in the request, including any relevant organization affiliation or economic interest; and
6. Other such information as may be deemed necessary by the Office of the Chief Engineer.

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Representation by Non-lawyers

Adopted Amendment: N.J.A.C. 1:1-5.4.

Proposed: April 15, 1991 at 23 N.J.R. 1053(a).
Adopted: May 20, 1991 by Jaynee LaVecchia, Director, Office of Administrative Law.
Filed: May 22, 1991 as R.1991 d.296, **without change**.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: June 17, 1991.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

1:1-5.4 Representation by non-lawyers; authorized situations, applications, approval procedures

(a) (No change.)

(b) The non-lawyer applicants in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. (No change.)

2. A written Notice of Appearance/Application on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; in Civil Service cases, where a union representative seeks to represent a State, county or local government employee; where a non-lawyer seeks to represent a party in a special education hearing; where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of Public Welfare, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.

i. For non-lawyer employees seeking to represent a State agency, the Notice shall include a statement that the non-lawyer is an employee of the State agency he or she seeks to represent; his or her position at the agency; his or her supervisor at the agency; his or her supervisor's position, business address and telephone number; and an explanation of his or her special expertise or experience in the matter in controversy. The Notice shall also contain a statement indicating that the employee has been assigned to represent the agency in the case and that the Attorney General will not provide legal representation.

ii.-viii. (No change.)

BANKING

(b)

OFFICE OF REGULATORY AFFAIRS

Savings and Loan Associations, Savings Banks, Conversions

Adopted Amendments: 3:1-2.25 and 2.26; 3:32-1.11

Adopted New Rules: N.J.A.C. 3:6-8 and 3:32-2

Proposed: April 1, 1991 at 23 N.J.R. 929(b).
Adopted: May 15, 1991 by Jeff Connor, Commissioner, Department of Banking.

Filed: May 21, 1991 as R.1991 d.294, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1991, c.42, effective February 26, 1991; N.J.S.A. 17:9A-333; and 17:12B-226.

Effective Date: June 17, 1991.

Expiration Dates: N.J.A.C. 3:1, January 4, 1996.
N.J.A.C. 3:6, March 1, 1996.
N.J.A.C. 3:32, October 3, 1993.

Summary of Public Comments and Agency Responses:

The Department received two comments from the following trade groups which represent savings banks and savings and loan associations:

- 1. Gustav J. Schlaier, Director, Legal Department, New Jersey Council of Savings Institutions.
- 2. James R. Silkensen, Executive Vice President, New Jersey Savings League.

A summary of comments and responses follows:

COMMENT: There were technical changes in the law (P.L. 1991 c.42) prior to adoption which should be incorporated into these rules. In particular, the law provides that an institution may convert "by organizing and transferring its assets and liabilities." Prior to this change, the bill provided that an institution could convert "with the same force and effect as though originally incorporated" as that type of institution.

RESPONSE: The Department agrees that these technical changes should be made upon adoption, and it has done so.

COMMENT: The proposal requires that the converting institution provide the Department with a completed form from the New Jersey State Police requesting criminal history record information for each director, and financial projections for the converted institution for the next three years. These requirements are expensive and burdensome, and are unnecessary for institutions which have been in existence for many years, have undergone examinations and have been regulated by the Department.

RESPONSE: When considering a charter conversion, the authorizing statute requires the Commissioner to consider whether the directors possess the qualifications, experience and character required for the duties and responsibilities with which they will be charged. One critical step in this review is a criminal check. Accordingly, the Department deems this application requirement to be necessary.

In addition, the authorizing statute requires the Commissioner to consider whether the proposed conversion will result in an institution which will satisfy all capital maintenance requirements, and whether the interests of depositors and creditors, and the public generally, will be jeopardized by the proposed conversion. To make an informed decision, the Department feels it is necessary to have financial projections for the next three years. An institution which has no projected profitability, for example, may not be an appropriate candidate for a conversion. Such an institution may not project to meet capital maintenance requirements, and its conversion may not be in the public interest.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

3:1-2.25 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

1.-9. (No change.)

10. For filing an application for conversion:

i. From a mutual to a stock association \$3,500.00

ii. From a savings bank to an association \$10,000.00

11.-22. (No change.)

(b) (No change.)

3:1-2.26 Fees; State associations

(a) Every State association shall pay to the Commissioner the following fees:

1.-3. (No change.)

4. Application for a conversion:

i. From a mutual to a stock association \$3,500.00

ii. From an association to a savings bank \$10,000.00

- 5.-21. (No change.)
 (b) (No change.)

SUBCHAPTER 8. CONVERSIONS OF SAVINGS BANKS

3:6-8.1 Definitions

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

"Capital stock association" shall have the meaning ascribed to it in N.J.S.A. 17:12B-244.

"Capital stock savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-8.1.

"Mutual savings bank" means any savings bank organized pursuant to N.J.S.A. 17:9A-1 et seq. without capital stock.

"Savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-1.

"State association" and "mutual association" shall have the meanings ascribed to those terms in N.J.S.A. 17:12B-5.

3:6-8.2 Authorization for conversion

(a) Any mutual savings bank may apply to the Commissioner to convert itself to a mutual association *[with the same force and effect as though originally incorporated as a mutual association]* ***by organizing and transferring its assets and liabilities to a newly-chartered mutual association***, and any capital stock savings bank may apply to the Commissioner to convert itself to a capital stock association *[with the same force and effect as though originally incorporated as a capital stock association]* ***by organizing and transferring its assets and liabilities to a newly-chartered capital stock association***.

(b) Before applying to the Commissioner for a conversion pursuant to (a) above, the savings bank shall obtain a resolution of the savings bank's board of directors indicating that the conversion is advisable and in the best interests of the members or shareholders.

(c) After the board of directors has adopted a resolution, a meeting of the members or stockholders shall be held upon not less than 10 days' written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the members or shareholders shall vote on whether the savings bank shall convert to an association. An affirmative vote of at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

3:6-8.3 Application for conversion

(a) An application for a conversion from a savings bank to an association shall contain the following:

1. A certified copy of the resolution of the board of directors authorizing the conversion;
2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, containing the following information:
 - i. The total number of votes eligible to be cast;
 - ii. The total number of votes represented in person or by proxy at the special meeting;
 - iii. The total number of votes cast in favor and against each matter; and
 - iv. The percentage of votes cast in favor and against each matter.
3. A certificate of incorporation for the new association;
4. Biographical information for each of the incorporators and/or directors on forms approved by the Commissioner;
5. A completed form from the New Jersey State Police requesting criminal history record information for each director and/or incorporator, along with a cashier's check, certified check or money order for the applicable amount, payable to the State Police, stapled to the front of each form;
6. A copy of the savings bank's most recent quarterly financial report;
7. Financial projections for the converted associations for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year;
8. Copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or, if no

application or approval is required, a statement or opinion of counsel to that effect; and

9. The application fee for the conversion.

CHAPTER 32

CONVERSIONS OF ASSOCIATIONS

3:32-1.11 Fees; conversion from mutual to capital stock association

An application fee as set forth in N.J.A.C. 3:1-2.26 shall accompany every application for the conversion of a mutual association to a capital stock association.

SUBCHAPTER 2. CONVERSION OF AN ASSOCIATION TO A SAVINGS BANK

3:32-2.1 Definitions

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

"Capital stock association" shall have the meaning ascribed to it in N.J.S.A. 17:12B-244.

"Capital stock savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-8.1.

"Mutual savings bank" means any savings bank organized pursuant to N.J.S.A. 17:9A-1 et seq. without capital stock.

"Savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-1.

"State association" and "mutual association" shall have the meanings ascribed to those terms in N.J.S.A. 17:12B-5.

3:32-2.2 Authorization for conversion

(a) Any mutual association may apply to the Commissioner to convert itself to a mutual savings bank *[with the same force and effect as though originally incorporated as a mutual savings bank]* ***by organizing and transferring its assets and liabilities to a newly-chartered mutual savings bank***, and any capital stock association may apply to the Commissioner to convert itself to a capital stock savings bank *[with the same force and effect as though originally incorporated as a capital stock savings bank]* ***by organizing and transferring its assets and liabilities to a newly-chartered capital stock savings bank***.

(b) Before applying to the Commissioner for a conversion pursuant to (a) above, the association shall obtain a resolution of the association's board of directors indicating that the conversion is advisable and in the best interests of the members or shareholders.

(c) After the board of directors has adopted a resolution, a meeting of the members or stockholders shall be held upon not less than 10 days' written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the members or shareholders shall vote on whether the association shall convert to a savings bank. An affirmative vote of at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

3:32-2.3 Application for conversion

(a) An application for a conversion from an association to a savings bank shall contain the following:

1. A certified copy of the resolution of the board of directors authorizing the conversion;
2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, containing the following information:
 - i. The total number of votes eligible to be cast;
 - ii. The total number of votes represented in person or by proxy at the special meeting;
 - iii. The total number of votes cast in favor and against each matter; and
 - iv. The percentage of votes cast in favor and against each matter.
3. A certificate of incorporation for the new savings bank;
4. Biographical information for each of the incorporators and/or directors on forms approved by the Commissioner;
5. A completed form from the New Jersey State Police requesting criminal history record information for each director and/or in-

corporator, along with a cashier's check, certified check or money order for the applicable amount, payable to the State Police, stapled to the front of each form;

6. A copy of the association's most recent quarterly financial report;

7. Financial projections for the converted savings bank for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year;

8. Copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or, if no application or approval is required, a statement or opinion of counsel to that effect; and

9. The application fee for the conversion.

(a)

DIVISION OF REGULATORY AFFAIRS

Nonpublic Records

Adopted New Rule: N.J.A.C. 3:3-2

Proposed: February 4, 1991 at 23 N.J.R. 253(a).

Adopted: May 9, 1991 by Jeff Connor, Commissioner.

Department of Banking.

Filed: May 14, 1991 as R.1991 d.287, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1; 47:1A-2.

Effective Date: June 17, 1991.

Expiration Date: January 11, 1995.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons:

1. Royal E. Fliedner, President, Shadow Lawn Savings Bank, SLA.
2. James R. Silksen, Executive Vice President, New Jersey Savings League.
3. Beatrice D'Agostino, President, New Jersey Savings Bank.
4. David M. Prugh, President, Somerset Savings Bank.
5. Barry J. Zadworny, Senior Vice President, Roma Savings Bank, SLA.

COMMENT: The provision which exempts from mandatory disclosure memoranda or other correspondence between the Department of Banking and the Office of the Attorney General, and all memoranda within the Department of Banking concerning advice given by the Office of the Attorney General, is overly broad and would cover many communications which are of public interest and which should be made public. Interpretations of statutes by the Office of the Attorney General have the force of "a de facto regulation" of the Department, and should therefore be made public and available to all interested parties.

When the Office of the Attorney General interprets applicable statutes or regulations, it is acting in its constitutional capacity as the chief legal officer of the State. The client in those cases is, in a very real sense, the people of the State of New Jersey. Further, the rule is unnecessary since Evidence Rule 26 is sufficient to cover communications regarding ongoing litigation and other matters pertaining to communications within the scope of the privilege.

RESPONSE: The Department is not aware of any law which requires it to maintain records of Attorney General advice. Accordingly, this advice appears not to be subject to disclosure under the Right to Know Law, N.J.S.A. 47:1A-1 et seq. (the "Act"). In addition, the Department agrees with the commentator that much of this advice would be protected pursuant to attorney-client privilege. The Department nevertheless proposed this exemption to ensure confidentiality.

The Department does not agree that advice of the Attorney General has the force of a de facto regulation. Such advice interprets existing law and recommends action by the Department either in litigation or otherwise. To the extent that this advice recommends major policies or offers policy alternatives, the Department sets forth these policies by regulation.

There are instances where advice is not appropriate for regulation, but it is important for the industry to know the Department's position. In those instances, the Department will make such advice available to the public after consultation with the Office of the Attorney General. The

publication of such advice may take the form of a formal opinion or a notice in the New Jersey Register. As an alternative, the Department will make certain opinions available to the public upon request.

In this way, it is hoped that the need for confidentiality will be balanced with the public's right to know of positions taken by the Department.

COMMENT: The Department should broaden the parameters of N.J.A.C. 3:3-2.1(a)1 to afford protection to the subsidiaries and holding companies of financial institutions which are examined by the Department.

RESPONSE: The Department agrees that examination information concerning subsidiaries and holding companies of financial institutions should not be subject to disclosure. In fact, the Department considers subsidiaries to be financial institutions within the exemption. Nevertheless, to clarify this point, the Department has specifically referred to them in the adoption.

COMMENT: N.J.A.C. 3:3-2.1(a)6 should be clarified so as to specify cease and desist orders, supervisory agreements and other regulatory agreements.

RESPONSE: The Department believes that the public has the right to learn that it is taking action against an institution. This is consistent with N.J.S.A. 52:14B-3(3), which requires agencies to make available for public inspection all final orders, decisions and opinions. However, much of what is contained in these orders is obtained from examinations, and is therefore confidential. For example, concerning banks, N.J.S.A. 17:9A-264 makes examination information confidential. Accordingly, the Department will edit such documents before disclosure to remove confidential information.

COMMENT: Several commenters indicated that it would pose a great potential competitive and internal problem to all financial institutions to publish the names, addresses, salaries and pension information of individuals affiliated and working for financial institutions. This information is personal and confidential information which need not be deemed public information. Treating the salaries and private residential addresses as public information raises concerns that this information could fall into the hands of a person with ill intent, and could increase the possibility that they would be the subjects of crime.

RESPONSE: The Department agrees that personal information concerning directors, officers and employees of regulated institutions should not be subject to disclosure pursuant to the Right to Know Law. That is why the Department in the proposal excluded the incorporators' financial statements. To ensure that this information is not subject to disclosure because it is contained in some other report or filing, the Department in a concurrent proposal filed with this adoption has excluded such information contained in any report, filing or record held by the Department. (See the proposal in this Register.)

COMMENT: The Department should include "call reports" filed by institutions in the list of documents deemed to be nonpublic. Some of the information contained in these reports filed by associations is personal in nature, and not suitable for public disclosure.

RESPONSE: The portion of call reports which show the financial condition of the institution are deemed by the Department to be public information. It is necessary that the public have available some measure of the institution's financial health. However, the Department agrees that it is inappropriate to reveal personal information. To remedy this, as indicated above, the Department has submitted a concurrent proposal exempting from disclosure the portion of call reports which reveal personal information.

COMMENT: The reference to surveys conducted by the Department is vague. If the provision is intended to cover branch field surveys performed in connection with a branch office application, then it is appropriate to treat such a document as nonpublic. However, if the Department conducts, for example, consumer loan interest rate survey, the public should have access to it.

RESPONSE: In the proposal, the Department did not intend to exempt branch field surveys. The Department does not view these to be public records subject to disclosure.

Rather, the proposal was intended to exempt responses by individual institutions to survey questionnaires. Final tabulations of survey results, which do not reference specific responses, are typically made public. In fact, one of the purposes of such surveys is to provide the public with information on the industry as a whole. The proposed rule is amended on adoption to clarify this intention.

COMMENT: Business plans are vital documents on which the Commissioner bases his decision in new charter applications. Interested parties need access to the business plan for the purpose of shaping objections

which comply with the procedural rules. In fact, the Department's rules require charter applicants to deliver copies of all supportive data, including business plans, to prospective objectors.

RESPONSE: The Department agrees that these records must be provided to prospective objectors. Objectors need this information to formulate a credible objection, and the Department views this as a proper use for this information. The Act, in contrast, requires that this information be revealed regardless of the motives of the person seeking disclosures. As noted in the Summary to the proposal at 23 N.J.R. 253(a), these records should be shielded from competitors as much as possible. Accordingly, the Department retains this exemption.

Note that N.J.A.C. 3:3-2.1(a)8 has been changed upon adoption to clarify the reference to "individual".

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 2. NONPUBLIC RECORDS

3:3-2.1 Nonpublic records

(a) Throughout the Department of Banking, the following shall not be deemed to be public records pursuant to the Right to Know Law, N.J.S.A. 47:1A-1 et seq.:

1. Documents obtained or prepared incident to an examination or audit of a financial institution, ***its holding institution or its subsidiary*** and any examination or audit report;

2. Business plans and incorporators' financial statements filed in connection with a charter or license application, and all materials the Department receives or prepares incident to an application by a financial institution or other person to make a leeway or other investment;

3. Complaint files maintained by the Department;

4. Memoranda or other correspondence between the Department and the Office of the Attorney General, and all memoranda within the Department concerning advice given by the Office of the Attorney General;

5. Documents obtained pursuant to an ongoing investigation by the Department of a financial institution or other person, when disclosure would be inimical to the public interest;

6. Memoranda of understanding between the Department and a financial institution;

7. Information ***regarding individual institutions*** obtained pursuant to surveys conducted by the Department; and

8. Personnel or pension records of an individual ***employed by the Department***, except that the following shall be deemed public records:

i. An individual's name, title, position, salary, payroll record, length of service in the Department and in the government, date of separation from government service and the reason therefor, and the amount and type of pension he or she is receiving; and

ii. Data contained in information which discloses conformity with specific experimental, educational or medical qualifications required for government employment or for receipt of a public pension, but in no event shall detailed medical or psychological information be released.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Public School Facilities

Adopted Amendments: N.J.A.C. 5:23-3.11A and 4.2

Proposed: April 15, 1991 at 23 N.J.R. 1084(a).

Adopted: May 23, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: May 24, 1991 as R.1991 d.309, **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. 52:27D-124.

Effective Date: June 17, 1991.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

There was no public comment. However, a member of the Code Advisory Board recommended that it be made clear that an application made for plan review by a construction official other than the construction official of the municipality is made to that other construction official in his official capacity as head of an enforcing agency. That this understanding of the statute must be correct is evident from the fact that a construction official, unless he is also the building subcode official, the electrical subcode official, and the fire protection subcode official and the plumbing subcode official, must have any plan reviewed by all of these officials before he can release it. It is therefore not possible for a construction official to review plans in an individual capacity, without the assistance of other members of the enforcing agency. Therefore, in adopted N.J.A.C. 5:23-4.2(b)2i, "a licensed State construction official" has been changed to "a construction official of an enforcing agency." In addition, terms have been clarified in adopted N.J.A.C. 5:23-4.2(b)2ii.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks ***[thus]***).

5:23-3.11A Enforcement activities reserved to other State agencies

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

(c) The Department of Education shall ensure that the following types of projects comply with the Department of Education, Bureau of Facility Planning Services' rules at N.J.A.C. 6:22 and that the projects meet the standards for educational adequacy therein:

1. New school buildings;

2. Additions to existing school buildings;

3. Alterations changing the total number of units, size or type of any instructional space;

4. Alterations changing office space that require alterations to instructional space;

5. Alterations to locker, weight or game rooms, or to field houses with locker facilities;

6. Alteration of athletic fields or tracks and field areas;

7. Installations of mobile units; or

8. Any site or building change or alteration for the purpose of making the site and school barrier-free pursuant to N.J.A.C. 5:23-7 and accessible to the handicapped pursuant to section 504 of the Federal Rehabilitation Act of 1973.

(d) (No change.)

(e) The State Department of Education, or the municipal code enforcing agency providing construction code plan approval, shall be responsible for enforcing the following Uniform Construction Code enhancements in public school buildings:

1.-4. (No change.)

5. An automatic fire detection system shall be installed in all new buildings of use group E (educational), as designated in the BOCA National Building Code/90 Section 1016.4.1 and in accordance with applicable National Fire Protection Association standards. The system shall utilize:

i.-iv. (No change.)

6. Manual fire alarm boxes, in addition to BOCA/90 Section 1016.3 requirements as amended, shall be provided in the natural path of escape from fire, near each exterior door from the corridor, kitchen, heater room and other exterior exits that are required to serve 50 or more persons. Additional fire alarm boxes shall be located in the main office, stage, at each stairway entrance from a corridor or place of assembly and near one exterior exit in each section of a place of assembly. It shall not be necessary to traverse more than 200 feet of unobstructed horizontal distance on the same floor in order to reach a fire alarm box.

7.-8. (No change.)

5:23-4.2 Matter covered; exceptions

(a) (No change.)

(b) Rules concerning exceptions are:

- 1. (No change.)
- 2. Department of Education:

i. When final plans for the construction or alteration of a public school facility have been submitted to the Department of Education, and approved under the standards for facility adequacy set forth at N.J.A.C. 6:22, and have been submitted for review to, and released by, a ***[licensed State]*** construction official ***of an enforcing agency***, such plans shall also be filed with the enforcing agency of the municipality in which the public school is located.

ii. The enforcing agency shall have the right to inspect any construction or alteration of a public ***school*** facility for the purpose of advising the board of education of the school district in which the public school facility is being constructed and the Commissioner of Education of any violations of the standards for facility adequacy set forth at N.J.A.C. 6:22; the educational enhancements ***requirements*** set forth at N.J.A.C. 5:23-3.11A(d); or any other provision of the State Uniform Construction Code. The advice of the enforcing agency shall be binding upon the district board of education, except that an appeal to the Department of Education shall be available to the district board of education.

- (c) (No change.)

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code
Licensing**

**Adopted Amendments: N.J.A.C. 5:23-5.3, 5.15, 5.20
and 5.23**

Proposed: April 15, 1991 at 23 N.J.R. 1085(a).
Adopted: May 23, 1991, by Melvin R. Primas, Jr., Commissioner,
Department of Community Affairs.
Filed: May 24, 1991, as R.1991 d.308, **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. 52:27D-124.
Effective Date: June 17, 1991.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The various BOCA model codes are incorrectly cited as "Basic/National" rather than by their current designation of "National." The term "class categories," the meaning of which the commenter finds to be unclear, is used in place of "use groups."

RESPONSE: The text has been corrected to indicate the current names of the model codes. "Class categories," however, refers to Class I, Class II and Class III structures and the term is, therefore, not synonymous with "use group."

COMMENT: The elimination of the Fire Protection R.C.S. license will require 729 individuals to upgrade their licenses. A large number of structures are being built that require only an R.C.S. license for plan review and inspection. Thirty municipalities now classified as Class III will be forced to upgrade their enforcing agencies to Class II because of this change. This will place an undue economic burden on them.

RESPONSE: As the proposal states, the Fire Protection R.C.S. license was an interim measure intended to allow people with fire code experience to begin working in Fire Subcode enforcement. It is now in the public interest to upgrade the requirements for fire protection inspectors. All current Fire Protection R.C.S. inspectors will have ample opportunity to get additional training and qualify for the I.C.S. license. There will not be any inevitable increase in costs for municipalities that go from Class III to Class II because: one, most of them are Class III only because their fire protection subcode official only has an R.C.S. license and, two, they will not necessarily have to pay more money to their fire protection subcode official or inspectors because they have upgraded their licenses to I.C.S. in order to remain employed.

Summary of Agency-Initiated Changes:

The Department, in the proposal published in the New Jersey Register at 23 N.J.R. 1085(a), amended the hours and subject matter of the course for Building Inspectors, deleting material from the H.H.S. level of the

course and adding it to the R.C.S. and I.C.S. levels, where it can be utilized earlier by the inspectors. The amendment to N.J.A.C. 5:23-5.20(d)3ii did not correctly reflect this change on proposal, but has been changed on adoption. The total number of contact hours of instruction required, 60, has not been changed.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

5:23-5.3 Types of licenses

- (a) (No change.)
- (b) Rules concerning classification of code enforcement officials are:

1. Technical licenses: Subject to the requirements of this subchapter, persons may apply for, and may be licensed in, the following specialties:

- i.-ii. (No change.)
- iii. Fire protection inspector: Fire protection inspectors are authorized to carry out field inspection and plan review work pursuant to regulations subject to the limitations specified herein.

- (1)-(2) (No change.)
- (3) Fire protection inspector with a specialty in residential and small commercial structures (R.C.S.): Fire protection inspectors R.C.S. are authorized to review plans for structures in class III and to carry out field inspection activities for structures in classes I, II and III. This license will no longer be available after July 31, 1991, and all licenses issued on or before that date shall cease to be valid after July 31, 1993.

- iv.-v. (No change.)
- 2.-4. (No change.)

5:23-5.15 Fire protection inspector R.C.S. requirements

- (a) Issuance of the fire protection inspector RCS license will be discontinued after July 31, 1991. All licenses issued on or before that date shall cease to be valid after July 31, 1993.
- (b) (No change in text.)
- (c) A candidate for a license as a fire protection inspector R.C.S. shall also meet the following requirements prior to application:

- 1. (No change.)

5:23-5.20 Standards for educational programs

- (a) (No change.)
- (b) This subsection covers the organizational, administrative, and operational functions that support the code enforcement educational programs.

- 1.-2. (No change.)
- 3. Admission, retention and evaluation policies and practices:
 - i. (No change.)
 - ii. Grading: An institution shall have evaluation procedures, including a mid-term and final examination, to assess the quality of its students when they complete programs and, at the very least, establish and apply pass/fail criteria.

- iii.-iv. (No change.)
- 4.-6. (No change.)
- (c) (No change.)
- (d) Each course of study shall consist of a planned pattern of instruction and experiences designed to meet the standards specified herein.

1. Building inspector R.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for a license as building inspector R.C.S.:

i. Subject areas: The program shall provide at least 60 contact hours of instruction. It shall ensure technical competencies in the following subject as it applies to class III buildings as established in N.J.A.C. 5:23-3:

- (1) (No change.)
- ii. The texts that are used in teaching this course shall include, but not be limited to, the BOCA ***[Basic/]***National Building Code, the BOCA ***[Basic/]***National Mechanical Code and the CABO One & Two Family Dwelling Code.

2. Building inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as a building inspector I.C.S.:

- i. (No change.)
- ii. Subject requirements: The program shall consist of two major subjects as specified below and shall provide at least 45 contact hours of instruction in each subject. It shall ensure technical competencies in the following areas as they apply to class II buildings as established in N.J.A.C. 5:23-3.
- iii. (No change.)
- iv. Subject 2, Plan review and field inspection:
 - (1) Area 1, Uniform Construction Code: Organization and content of Uniform Construction Code regulations, including the barrier free subcode and organization and content of the building subcode; basic classification of structures into class categories.
 - (2)-(3) (No change.)
 - v. The texts used in teaching this course shall include, but not be limited to, the BOCA ***[Basic/]*National Building Code**, the BOCA ***[Basic/]*National Mechanical Code** and the BOCA ***[Basic/]*National Energy Conservation Code**.
- 3. Building inspector H.H.S.: The following standards apply to programs designed to satisfy the educational requirements for licensure as building inspector H.H.S.:
 - i. (No change.)
 - ii. Subject requirements: The program shall consist of ***[three]* *two*** major subjects as specified below and shall provide at least ***[20]* *30*** contact hours of instruction in each subject. It shall ensure technical competencies in the following subject areas as they apply to class I and all other structures as established in N.J.A.C. 5:23-3.
 - iii. (No change.)
 - iv. Subject 2, Advanced mechanical systems: Requirements for and the design principals involved in the various types of heating, ventilating and air conditioning systems found in class I structures, with particular emphasis on procedures ensuring adequacy of installation, including fire protection requirements for such systems.
 - *[vi.]* *v.*** The texts used in teaching this course shall include, but not be limited to, the BOCA ***[Basic/]*National Building Code**, the BOCA ***[Basic/]*National Mechanical Code** and the BOCA ***[Basic/]*National ***Energy*** Conservation Code**.
- 4. Electrical inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as an electrical inspector I.C.S.:
 - i.iii. (No change.)
 - iv. The texts used in teaching this course shall include, but not be limited to, the National Electrical Code (NEC).
- 5. Electrical inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as an electrical inspector H.H.S.:
 - i. (No change.)
 - ii. Subject requirements: The program shall consist of one major subject as specified below and shall provide at least 45 hours of instruction in this subject. It shall ensure technical competencies in the following as it applies and class I and all other structures as established in N.J.A.C. 5:23-3.
 - (1) Subject 1, Advanced electrical systems design: The procedures, methods and calculations necessary to check the design, material, and installation practices for the more complex systems which characterize class I buildings, with particular attention being paid to the hazardous uses identified in article 4 of the building subcode and the hazardous (classified) locations identified in the electrical subcode.
 - iii. The texts used in this course shall include, but not be limited to, the National Electrical Code (NEC).
- 6. Fire protection inspector ***[.]*** I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as a fire protection inspector I.C.S.:
 - i. Subject requirements: The program shall consist of two major subjects as specified below and shall provide at least 60 contact hours of instruction in each subject. It shall ensure technical competencies in the following subjects as they apply to class II and class III as established in N.J.A.C. 5:23-3.
 - ii. Subject 1, Plan review and field inspection:
 - (1) Area 1, Uniform Construction Code:

- (A) Organization and content of the Uniform Construction Code. N.J.A.C. 5:23; organization and content of the fire protection subcode.
- (B) Fundamental knowledge of the fire protection subcode's background purpose, history, place in local government structure and relation to construction code enforcement programs at other levels of government.
- (C) Basic classification of structures into class categories.
- (2) Area 2, Systems design: Systems design and installation practices required by the Uniform Construction Code and/or its referenced standards for active and passive fire suppression; understanding of fire detection and fire alarm systems sufficient to permit the review of plans to determine the adequacy of the systems.
- (3) Area 3, Plan Review:
 - (A) Basic fire protection requirements; height and area limitations; fire resistance ratings of structural components; arrangement, sizing and protection of means of egress; flame spread and smoke generated requirements; combustibility of materials; and requirements for installation of fire detection; alarm and suppression systems; chimneys, flues and vents; and heating equipment and appliances.
 - (B) Methods of systematic plans analysis: The information pertaining to structural, architectural, mechanical, fire protection and electrical features of a building that must be shown on the plans to ensure compliance with the requirements of the Uniform Construction Code.
 - (C) Analysis methods needed to ensure that fire protection elements of buildings depicted on plans do in fact conform to code requirements.
 - (4) Area 4, Materials: Testing methods, agencies and test verification procedures incorporated in the code for combustibility, flame spread, and smoke generation requirements and fire resistance ratings.
- iii. Subject 2, Fire protection systems:
 - (1) Area 1, Fire protection:
 - (A) Systems design and installation practices required by the code and/or its referenced standards for active and passive fire suppression; fire detection and fire alarm systems sufficient to permit the adequacy of systems designed to be checked through plan reviews and field inspections.
 - (2) Area 2, Electrical installations:
 - (A) An understanding of the material requirements found in the electrical code, including the ability to recognize approved material and an understanding of the standards and test methods which lead to such approval.
 - (B) An understanding of the proper installation methods of all approved materials, leading to an ability to ensure that all materials are installed in accordance with proper methods.
 - (3) Area 3, Fire prevention:
 - (A) The relationship of fire prevention codes that regulate the use and occupancy of buildings and fire protection codes that regulate their construction; the fire prevention code provisions; enforcement procedures and objectives including the protection of places of assembly; the fire prevention code and its enforcement that will ensure an understanding of the manner in which those fire hazards not regulated by the construction code can be regulated in the interest of public safety and fire protection generally.
 - (4) Area 4, Field inspection:
 - (A) The use of basic inspection tools and test methods.
 - (B) The construction process and the points at which inspections must be made.
 - (C) Field inspection and controlled inspection techniques necessary to ensure that the materials installed at the construction site are of the same strength and quality as assumed by the design calculations and that they are installed in the manner required to achieve and preserve that strength.
 - (D) Basic inspection report writing, including the preparation of violation notices and required inspection record keeping.
- iv. The texts used in teaching this course shall include, but are not limited to, the ***[following:]* BOCA ***[Basic/]* National Building Code**, ***the* BOCA ***[Basic/]* National Mechanical Code**, ***the* CABO One & Two Family Dwelling Code**, National Electrical Code (NEC) and the National Standard Plumbing Code.****

ADOPTIONS

7. Fire protection inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for a license as a fire ***protection*** inspector H.H.S.:

i. (No change.)

ii. Subject requirements: The program shall consist of one major subject as specified below and shall provide at least 60 contact hours of instruction. It shall ensure technical competencies in the following areas as they apply to class I and all other structures as established in N.J.A.C. 5:23-3.

iii. (No change.)

iv. The texts used in teaching this course shall include, but not be limited to, the BOCA ***[Basic/]*National Building Code**, the BOCA ***[Basic/]*National Mechanical Code**, the National Electrical Code (NEC) and the National Standard Plumbing Code.

8. Plumbing inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for a license as a plumbing inspector I.C.S.:

i. (No change.)

ii. Subject 1, System design:

(I)-(3) (No change.)

iii. Subject 2, Plan review and inspection methods and procedures:

(1) Area 1, Uniform Construction Code:

(A)-(C) (No change.)

(D) Organization and content of the Barrier Free Subcode;

(E) Basic classification of structures into class types;

(F) Fundamental knowledge of the plumbing subcode's background, purpose, history, place in local government structure and relation to code enforcement programs at other levels of government.

iv. (No change.)

v. Area 3, Public health requirements:

(1) Knowledge of New Jersey Health Law and Code, including prior approval requirements.

vi. The texts used in teaching this course shall include, but not be limited to, the National Standard Plumbing Code, the BOCA ***[Basic/]*National Mechanical Code**, the BOCA ***[Basis/]*National Energy Conservation Code** and the CABO One & Two Family Dwelling Code.

9. Plumbing inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as a plumbing inspector H.H.S.:

i. (No change.)

ii. Subject requirements: The program shall consist of two major subjects as specified below and shall provide at least 60 hours of instruction in these subjects. It shall ensure technical competencies in the following as it applies to class I and all other structures as established in N.J.A.C. 5:23-3:

(1) Subject 1, Advanced plumbing system design: Plumbing system design component that will ensure the technical competence necessary to check the systems design and installation for the large and complex systems that characterize class I buildings, including pumps, pressure tanks and other such plumbing installation required.

(2) Subject 2, Advanced mechanical systems: Requirements for, and the design principals involved in, the various types of heating, ventilating and air conditioning systems found in class I structures.

iii. The texts used in teaching this course shall include, but not be limited to, the National Standard Plumbing Code, the BOCA ***[Basic/]*National Mechanical Code**, and the BOCA ***[Basic/]*National Energy Conservation Code**.

Recodify existing 11.-14. as 10.-13. (No change in text.)

5:23-5.23 Examination requirements

(a) Examinations shall be held, at least twice annually, to establish eligibility for the following license specialties: building inspector R.C.S., building inspector I.C.S., building inspector H.H.S., electrical inspector I.C.S., electrical inspector H.H.S., fire protection inspector I.C.S., fire protection inspector H.H.S., plumbing inspector I.C.S., plumbing inspector H.H.S., elevator inspector and inplant inspector.

1. In instances where more than one license level within a given subcode area requires the successful completion of one or more examination modules, award of the higher level license specialty will be dependent upon successful completion of the educational program

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in accordance with N.J.A.C. 5:23-5.20 and the examination module(s) required for the lower level license, or possession of the applicable lower level license.

2. Applicants for licenses listed above shall demonstrate competence by successful completion of the relevant examination modules of the National Certification Program for Construction Code Inspector administered by the Educational Testing Service for the Department.

(b) Requirements for specific licenses are as follows:

1.-5. (No change.)

6. Examination requirements for fire protection inspector I.C.S.:

i. Successful completion of examination modules 3B-Fire Protection General and 4A-Mechanical 1 and 2 Family.

7. (No change.)

Recodify existing 9.-12. as 8.-11. (No change in text.)

Recodify existing (b)-(e) as (c)-(f). (No change in text.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding Houses

Administration and Enforcement

Adopted Amendment: N.J.A.C. 5:27-1.3

Proposed: April 1, 1991 at 23 N.J.R. 932(b).

Adopted: May 13, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: May 16, 1991 as R.1991 d.288, **without change**.

Authority: N.J.S.A. 55:13B-4.

Effective Date: June 17, 1991.

Expiration Date: May 2, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

5:27-1.3 Administration and enforcement

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

(c) The local enforcing agency, as the term is defined in N.J.A.C. 5:18, authorized to enforce the Uniform Fire Code in each municipality is hereby designated as the agent of the Bureau for the purpose of inspecting existing buildings in order to enforce all provisions of the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., and the Uniform Fire Code, N.J.A.C. 5:18, applicable to rooming and boarding houses.

1.-3. (No change.)

4. Every licensee shall keep valid proof of compliance with the Uniform Fire Code on the premises and shall make it available to representatives of the Bureau upon request.

(b)

DIVISION ON AGING

Congregate Housing Services Program

Income, Program Costs, and Service Subsidy

Formula

Adopted Amendment: N.J.A.C. 5:70-6.3

Proposed: April 1, 1991 at 23 N.J.R. 934(a).

Adopted: May 15, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: May 21, 1991 as R.1991 d.295, **without change**.

Authority: N.J.S.A. 52:27D-188.

Effective Date: June 17, 1991.

Expiration Date: July 9, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

- 5:70-6.3 Income, program costs and service subsidy formula
 (a)-(d) (No change.)
 (e) Service subsidies for eligible program participants will be provided in accordance with the following formula:
1. (No change.)
 2. The following STEP II shall be operative from January 1, 1991 through December 31, 1991:
 - D.I. of \$0.00 to \$181.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)
 - D.I. of \$182.00 to \$304.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)
 - D.I. of \$305.00 to \$428.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)
 - D.I. of \$429.00 to \$551.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)
 - D.I. of \$552.00 to \$675.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)
 3. The following STEP II shall be operative from January 1, 1992 through December 31, 1992:
 - D.I. of \$0.00 to \$191.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)
 - D.I. of \$191.01 to \$320.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)
 - D.I. of \$320.01 to \$451.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)
 - D.I. of \$451.01 to \$581.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)
 - D.I. of \$581.01 to \$711.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)
- (f) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Sewage Infrastructure Improvement Act Grants Water Pollution Control Act

Adopted New Rules: N.J.A.C. 7:22A-1.7 and 7:22A-4 Adopted Amendments: N.J.A.C. 7:22A-1.1, 1.2, 1.3, 1.4, 3.1, and Appendix A; N.J.A.C. 7:14-8.1, 8.2 and 8.5

Proposed: September 17, 1990 at 22 N.J.R. 2870(a).

Adopted: May 24, 1991 by Scott A. Weiner, Commissioner,
Department of Environmental Protection.

Filed: May 24, 1991 as R.1991 d.307, with substantive and
technical changes not requiring additional public notice and
comment (see N.J.A.C. 1:30-4.3), and with the amendments to
N.J.A.C. 7:8 not adopted at this time.

Authority: (as to N.J.A.C. 7:22A) N.J.S.A. 58:25-23 et seq.,
58:10A-1 et seq., 58:11A-1 et seq., 13:1D-1 et seq., 40:55D-93
et seq., P.L. 1989, ch. 181 and P.L. 1990, c.28.

DEP Docket Number: 028-90-08.

Effective Date: June 17, 1991.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (Department) is adopting new rules at N.J.A.C. 7:22A-1.7, 7:22A-4, amendments to N.J.A.C. 7:22A-1.1, 1.2, 1.3, 1.4, 3.1 and Appendix A, and N.J.A.C. 7:14-8.1, 8.2 and 8.5. Two public hearings were held on the proposal, one on October 10, 1990 and one on October 12, 1990. The Department received written comments from seven individuals and/or organizations and oral comments from seven individuals and/or organizations.

Amendments to the New Jersey stormwater management rules at N.J.A.C. 7:8 were included in the proposal document. However, comments received on the amendments to the New Jersey stormwater management rules are still being reviewed and these amendments will be adopted by September 1, 1991. This adoption notice contains the new rules under the Sewage Infrastructure Improvement Act, amendments to the existing rules under the Sewage Infrastructure Improvement Act, and amendments to the civil administrative penalty provisions of the New Jersey Water Pollution Control Act.

The following is a list of those persons or organizations that made either written or oral comments directly related to the proposed rules (oral and written comments were received from some commenters):

Alexander M. Churchill, Alexander M. Churchill Associates
 William G. Dressel, Jr., N.J. State League of Municipalities
 Robert D. Forsyth, Bay Pointe Engineering Associates, Inc.
 Ellen Gulbinsky, Authorities Association of New Jersey
 Michael D. Biehl, Borough of Little Silver
 Lester W. Jargowsky, Monmouth County Board of Health
 John Fairheller, Jr., Walker, Previti, Holmes and Associates
 Bill Simmons, Monmouth County Health Department
 Cindy Zipf, Clean Ocean Action
 Richard E. Garnett, Township of Brick
 Thomas M. Murphy, URISA
 Alan Avery, Ocean County Planning Department

The following is a summary of the comments received by the Department on the proposed rules and amendments:

1. COMMENT: The Sewage Infrastructure Improvement Act (SIIA) currently mandates that interconnections and cross-connections discovered in municipal stormwater systems must be eliminated by February 1991. The proposed amendments would allow the New Jersey Department of Environmental Protection (Department) to use penalty provisions under the Water Pollution Control Act (WPCA) to enforce requirements and deadlines of the SIIA. One commenter's understanding is that under the WPCA the Department must enforce all rules and regulations and the Department has no discretionary power when imposing penalties. Therefore, the commenter feels that every municipality required to prepare a stormwater map will be fined for any interconnections or cross-connections in its system beginning February 1991. The commenter requests that this deadline be changed to allow municipalities to meet the regulations in a reasonable amount of time. Another commenter asked whether a municipality that cannot implement this program due to lack of resources would be exposed to the enforcement and fines of the Clean Water Enforcement Act (CWEA).

RESPONSE: The February 3, 1991 deadline is a statutory deadline which may not be waived by these rules. As to the commenter's concerns that fines will be assessed against municipalities for interconnections and cross-connections found during the final mapping, the Department does have the ability under the WPCA to assess penalties for violations. The Department recognizes that municipalities were unable to comply with the SIIA because of the delay in the promulgation of these rules. Therefore, the Department will use discretion when assessing penalties for violations of the SIIA. Only when a municipality fails to prepare a final map or fails to correct the problems will the Department look towards the penalty provisions of the WPCA.

The Department does have discretion under the WPCA to assess civil administrative penalties. The CWEA does modify the Department's discretion to assess civil administrative penalties; however, only certain violations of effluent limitations or violations of discharge reporting are subject to the mandatory minimum penalty provisions of the CWEA. The enactment of the CWEA does not circumvent the existing penalty provisions under the WPCA. These existing penalty provisions may be used by the Department against any municipality that fails to follow the requirements of the SIIA.

2. COMMENT: One commenter felt that there is not sufficient funding to complete the work required. The commenter felt that preparing the final map in a year is a massive undertaking for the municipalities involved.

RESPONSE: There has been \$5.535 million allocated in grant money for municipalities to complete the final mapping requirements of the SIIA. The Department recognizes that the funding provided under the SIIA may not be sufficient to fund all of the requirements of the Act. However, the Department, in choosing the factors for the funding formula, has attempted to insure that this limited funding is equitably distributed to each municipality based on need. Additionally, the SIIA calls for the Department to provide grant funding in an amount up to 90 percent of the total project costs. The funding provided by the Act was to assist municipalities with the costs of the project and not to totally fund the work.

The deadline established for completing the final map was based on the original timeframe in the SIIA. The SIIA requires municipalities to prepare and adopt a final map within a year of the development of standards for the mapping by the Department. In accordance with N.J.A.C. 7:22A-4.2, municipalities are required to adopt a final map on or before 12 months after the effective date of these rules (that is, on or before June 17, 1992) or before the deadline established in the final mapping grant agreement, whichever comes later.

3. COMMENT: One commenter asked why the \$2.8 million dedicated to quarterly monitoring of outfalls and nonpoint source abatement planning was eliminated by the Department. The commenter is concerned that for many municipalities this will mean that the monitoring will not be done.

RESPONSE: The \$2.8 million was never dedicated to fund quarterly monitoring; rather, there was a proposal at one time to fund both quarterly monitoring and nonpoint source pollution abatement planning with the \$2.8 million. However, because of the significance of the nonpoint source planning phase of the Act and the benefits that will be received from this planning, the Department has made the decision to use the limited funding for nonpoint source abatement planning efforts.

4. COMMENT: One commenter felt that the amount of floatables entering the bay and ocean would be reduced significantly by mandating screening and routine removal of floatables from combined sewer overflows.

RESPONSE: The proposed rules, N.J.A.C. 7:22A-4, only apply to municipalities in Atlantic, Cape May, Monmouth and Ocean counties. The municipalities in these counties do not have combined stormwater and sanitary sewer systems. Therefore, floatables from combined sewers are not addressed in these rules. It should be noted that the Department has established provisions in N.J.A.C. 7:22A-6.2 which provide grants for the reduction of solids and floatables from combined sewer overflow points.

5. COMMENT: One commenter felt that more emphasis should be given to nonpoint source pollution, such as fertilizers and road runoff. The commenter stated that they have found that interconnections alone do not usually represent a significant amount of the total bacteria and other pollutants entering the surface water and closing beaches.

RESPONSE: The SIIA also requires municipalities to take appropriate measures to abate nonpoint source pollution, and the Department is currently in the process of developing rules to implement this requirement. These rules are scheduled to be proposed by the end of the 1991 calendar year. The Department feels that the mapping, which will identify pollution problems associated with sanitary and stormwater sewer systems, is an essential component of the SIIA. Also, as required by N.J.A.C. 7:22A-4.5(e)2, municipalities must identify possible nonpoint sources of pollution responsible for the contamination of stormwater. Municipalities will then use the information collected in the inventory, preliminary and final mapping phases to develop nonpoint source pollution plans.

6. COMMENT: One commenter requested a clarification of the term "salt waters." The commenter wanted to know if brackish waters are included in this term.

RESPONSE: "Salt waters" is defined in N.J.A.C. 7:22A-1.4 as waters having salinities generally greater than 3.5 parts per thousand at mean high tide.

7. COMMENT: One commenter felt that the definition of interconnection needs to be clarified. The commenter felt that an interconnection could be any inlet downgrade from a manhole rim. The commenter stated that an unattainable situation would be created if the municipality had to map all these.

RESPONSE: Interconnection is defined in N.J.A.C. 7:22A-1.4 as a non-physical connection of a sanitary sewer system with a stormwater sewer system, and interconnections may include, but not be limited to, leaks, flows, or overflows from the sanitary sewer system into the

stormwater sewer system or vice versa. All inlet structures downgrade of a manhole rim would not have to be mapped. Only those structures where a problem has been located pursuant to N.J.A.C. 7:22A-4.5 must be included on the final map.

8. COMMENT: Two commenters felt that some sort of incentives should be set at the municipal level to encourage the utilization of either the geographic information systems (GIS) or land information systems to handle the information gathered during the final mapping. One commenter also felt that this would give the municipalities involved a strong basis to develop an accurate mapping base that can be utilized for other projects in the future.

RESPONSE: The Department agrees with the commenters that the GIS is a valuable tool in developing an accurate mapping base. Furthermore, the preliminary mapping requirements were structured so that the data could be easily entered into the GIS. Unfortunately, a lot of time and effort will be required to enter the data collected under the final mapping phase into the GIS. Municipalities are able to use their grant money to utilize the GIS; however, this funding is limited and it is more likely that it will be used to complete the mapping requirements. The Department encourages the use of the GIS and would be willing to provide technical assistance to any municipality that wants to utilize the GIS for this project.

9. COMMENT: One commenter stated that the proposed rules require the mapping of the entire stormwater system, all sanitary sewer manholes and all previously mapped sanitary sewer lines. Also, all mapped features are to be identified relative to pipe length, diameter, grades and type. Given this immense task, the commenter suggests that this rule state that sanitary sewer manholes and previously mapped sanitary sewer lines be plotted only when they are within a reasonable distance (say 100 feet) of a stormwater system discharging to surface water. The commenter felt that this would eliminate a great deal of manpower for a municipality with a large sanitary sewer system and only a limited stormwater system.

RESPONSE: The rule at N.J.A.C. 7:22A-1.4 includes the definition of a stormwater sewer system as "the designed features within a municipality which collect, convey, channel, hold, inhibit or divert the movement of stormwater." Not all municipalities have a stormwater sewer system consisting of an extensive pipe network; however, these municipalities may have other means of diverting stormwater to surface waters and these diversions are considered part of a stormwater sewer system. A leaking sanitary system has the potential to pollute surface waters by contamination runoff diverted to such waters through pipes, channels, ditches, etc. Therefore, it is necessary for the municipalities to understand the infrastructure of both their stormwater sewer system and their sanitary sewer system. The majority of the mapping requirements for the sanitary sewer system include previously mapped features and does not require the municipality to perform any additional mapping of this system. The Department requires the mapping of sanitary sewer manholes because traditionally many problems have stemmed from contamination of stormwater from overflowing manholes.

10. COMMENT: One commenter stated that the proposed rules require elevations of streets, sewer inverts, manhole rims and inlet structures, if known, as well as arrows indicating the flow direction in the pipe. The commenter felt that these requirements appear redundant and suggested that the stormwater and sanitary sewer lines be labeled with flow direction arrows only. The commenter felt that this would provide the information normally needed while significantly reducing the amount of field and office work required for compliance.

RESPONSE: These requirements are not redundant in that the direction of flow does not indicate whether a feature is above or below another feature. Knowing whether a sanitary pipe is above or below a stormwater pipe is important when identifying problems. Additionally, the municipality only has to include this information when it is known, requiring little effort on behalf of the municipality to provide this information.

11. COMMENT: One commenter felt that the accuracy required in the mapping, particularly for N.J.A.C. 7:22A-4.3(f)1, should be clarified in reference to the use of the North American Datum of 1983.

RESPONSE: The Department agrees with the commenter about clarifying the accuracy requirements in reference to the North American Datum. The rules in N.J.A.C. 7:22A-4.3(d) have been modified to provide clarification of the standards that must be followed during the final mapping, including the requirement that the State plane coordinate system be utilized in the final mapping. Also, either the North American Datum of 1927 or 1983 may be employed during the mapping project. The Department will note in the rules that the North American Datum

of 1983 will be required to be used after December of 1992. Additionally, municipalities will have to indicate which datum they utilized during the final mapping.

Also, the mapping standards have been clarified to expel any confusion that may have occurred due to the lack of explanation in the proposal. The Department felt that the maps would be developed by professionals, and as a result, would follow standard mapping procedures. However, the commenter noted that this may not always be the case. In order for the final maps to be utilized and updated, the base maps used in the final mapping must meet standards that are recognized nationally. Therefore, N.J.A.C. 7:22A-4.3(e) requires that all base maps used in developing the final map shall meet National Map Accuracy Standards. Additionally, N.J.A.C. 7:22A-4.3(f) requires that all base maps be certified by a licensed land surveyor or a certified photogrammatrist. The accuracy requirements for features delineated on the final map have been changed from within 25 feet to within 10 feet. The map scale for the final mapping will be no larger than one inch = 100 feet and no smaller than one inch = 400 feet; therefore, an accuracy of within 10 feet is more appropriate for this mapping. Also, N.J.A.C. 7:22A-4.3(h) requires that a licensed professional, such as a professional engineer or planner, certify that the final mapping meets the accuracy standards.

N.J.A.C. 7:22A-4.3(c) requires any affected municipality that utilized a digital process for developing the final map to submit to the Department a copy in digital form. The digital copy can be transferred into the State GIS so that this information can be utilized on a broader scale. Additionally, N.J.A.C. 7:22A-4.3(g) requires the affected municipalities to submit any new Global Positioning Satellite observation to the Department. This will allow individuals to use these observations for future mapping projects.

12. COMMENT: One commenter suggested that where a number of outfalls discharge to surface waters of the same classification, a note be provided on the plan instead of unnecessarily duplicating information at each outfall.

RESPONSE: If a number of outfalls discharge to surface waters of the same classification, the entire discharge area may be delineated to indicate the classification of the receiving waters rather than identifying the classification at each outfall as required in N.J.A.C. 7:22A-4.3(j)2. However, for the priority listing developed in accordance with N.J.A.C. 7:22A-4.4, the classification of each outfall must be specified.

13. COMMENT: One commenter felt that marinas and available pumpout facilities should be delineated on the final maps, since marinas do constitute a source of fecal coliform in waters around them. Additionally, the commenter felt that racetracks as well as any other sources of sewage should be included on the final map.

RESPONSE: The final map allows municipalities to understand the infrastructure of their stormwater sewer system and their sanitary sewer system, the impact of these systems on one another, and the quality of the stormwater discharges to the surface waters in the State. During the mapping process, municipalities are required to identify nonpoint sources of pollution causing bacteria contamination of stormwater. In cases where the municipality finds a problem, and is unable to correlate that problem to an interconnection or cross-connection the municipality will be required, by N.J.A.C. 7:22A-4.5(e)2, to identify possible nonpoint sources causing the contamination. At that time, municipalities will be identifying marinas, racetracks, and other sources of contamination.

14. COMMENT: One commenter stated that the proposed rules require the delineation of all lots presently served by individual sewage disposal systems or cesspools. The commenter felt that in certain municipalities, where substantial areas are designated for use of subsurface sewage disposal system, the delineation of existing subsurface systems would be a tremendous task and could not be completed practically. The commenter strongly suggested that when an area of nonpoint contamination has been isolated, in accordance with proposed N.J.A.C. 7:22A-4.5(e)2, then subsurface sewage disposal systems be delineated within that isolated area. The commenter also suggested that these be added to the final map each year in conjunction with the required annual mapping update.

RESPONSE: The Department considers subsurface disposal systems to be a component of the municipal sanitary sewer system, and therefore must be included on the final map. Additionally, subsurface sewage disposal systems pose a threat of contamination to surface waters from human sources. It should be noted that the rules in N.J.A.C. 7:22A-4.3(j)7 require only the delineation of areas serviced by subsurface disposal systems and not a delineation of the actual subsurface system. The Department feels that areas serviced by subsurface disposal systems, because

they are part of the sanitary system and have the potential to contaminate stormwater, should be identified on the final map.

15. COMMENT: One commenter stated that the proposed rules, in N.J.A.C. 7:22A-4.3(e)8, require the final map to locate all industrial establishments, hazardous waste facilities, solid waste facilities and recycling centers. The commenter felt that a clarification regarding what constitutes an industrial establishment should be included in this rule. Also, the commenter felt that to avoid a massive amount of field and office work, the existing industrial establishments be shown on the final map only when located within an identified area of non-point contamination.

RESPONSE: The initial investigative monitoring is being performed to identify excessive levels of bacteria in stormwater. Industrial facilities may be causing contamination of stormwater; however, this contamination may not be limited to bacteria but may include other pollutants. Because of the nature of industrial facilities, hazardous waste facilities, solid waste facilities and recycling centers, and the potential problems that could arise from these types of facilities, the Department feels that it is essential that these facilities be located on the final map for future reference by the municipalities. However, to add clarity to this requirement, the rule in N.J.A.C. 7:22A-4.3(j)8 has been modified to require municipalities to identify, within industrial areas, those industries that have the greatest potential to contaminate stormwater.

16. COMMENT: One commenter suggested that in N.J.A.C. 7:22A-4.6(c) the following items be added: Item 5, "Location of Sample," if taken upstream of a submerged outfall or as part of an investigation into a positive bacterial sample; and Item 6, identification of the sample as either "wet-weather" or "dry-weather."

RESPONSE: The Department agrees that the location of samples other than those taken at the outfalls and the identification of the samples as either "wet weather" or "dry weather" samples will add clarity to the data collected. The Department has amended the rule in N.J.A.C. 7:22A-4.6(c) to include these items.

17. COMMENT: One commenter felt that the fecal coliform test using the A1 method would be more appropriate for monitoring in 7:22A-4.6. Total coliform requires three days laboratory time. The commenter stated that mandating total coliform analyses will cause a three day time lag on results during the upstream survey. The commenter suggested that the total coliform and enterococcus sampling be made optional for upstream sampling, as the A1 fecal coliform is sufficient for determining interconnections and A1 fecal coliform results are available in 24 hours.

RESPONSE: The Department feels that fecal coliform and enterococcus levels alone will be acceptable indicators for identifying interconnections and cross-connections. Sample analysis for fecal coliform and enterococcus will be sufficient for investigating the stormwater pipes to identify sources of contamination. Total coliform levels will not provide any additional information during the investigative sampling; therefore, the use of total coliform during this sampling has been made optional in N.J.A.C. 7:22A-4.6.

However, total coliform must be tested for when performing the initial sampling at the outfall during final mapping in accordance with N.J.A.C. 7:22A-4.5(c)1 and quarterly outfall monitoring in accordance with N.J.A.C. 7:22A-4.8. Sampling for total coliform is still necessary at the end of the pipe. Total coliform is used as a bacterial indicator in setting standards for shellfish growing areas. These standards must be considered when determining if the discharge from the stormwater outfall has excessive bacteria levels.

18. COMMENT: One commenter stated that N.J.A.C. 7:22A-4.7(a) defines contamination as exceeding 200 counts/100 ml fecal coliform or 35 counts/100 ml enterococcus. Based on the commenter's experience, every pipe will need an upstream survey. Instead, the commenter suggested that with a fecal coliform reading of 200 counts/100 ml the Department should then mandate street sweeping and catch basin cleaning. The commenter felt that a fecal coliform reading of 200 counts/100 ml suggests a non-point problem which should be abated by applying the measures suggested above.

RESPONSE: The investigative monitoring is being done so that municipalities can identify water quality problems caused by bacterial contamination, whether it originates from a point source or a nonpoint source. The rules are designed to require municipalities to locate and correct the sources of contamination. This will assist municipalities in understanding the root of their problems and to establish programs to correct these problems. The Department agrees that steps have to be taken to address nonpoint source pollution, such as street sweeping and catch basin cleaning. However, the Department supports identifying possible sources of pollution and addressing these sources accordingly.

As a means of determining excess levels of bacteria, the Department is incorporating the surface water quality criteria. In order to determine if a discharge from an outfall is causing a violation of the State water quality standards an analysis of the amount of flow from the outfall, the water quality of the discharge and the mixing potential of the receiving water would have to be performed. Given the large number of stormwater outfalls, performing such an analysis for each outfall would be impracticable. The Department attempted to establish more reasonable standards for the stormwater discharges; however, at this time there is not enough scientific evidence to support the use of an alternative standard. Therefore, the Department must use the best standards available and these are the surface water quality criteria.

19. COMMENT: When determining excessive levels of bacteria identified through the monitoring, one commenter felt that there should be two standards, one for dry weather and one for wet weather. The commenter stated that a fecal coliform count of 900 counts/100 ml in dry weather should be mandated for an upstream survey. The commenter felt that a wet weather standard should be determined by mandating dilutions for wet weather samples and then determining a realistic "background" number. The commenter stated that it will most likely be in the thousands. The commenter felt that mandating dilutions will aid in the prioritization of investigations.

RESPONSE: The Department was unable to establish a standard that would be indicative of background levels of bacteria counts in stormwater. At this time, there is not enough scientific support for standards other than the water quality criteria that is already in place.

20. COMMENT: One commenter felt that any source of human fecal material into the water whether it's above 70 counts/100 ml or below 70 counts/100 ml needs to be controlled. The commenter would like to see any sewage traced back to its source and controlled.

RESPONSE: The Department agrees that any source of human fecal contamination should be located and corrected. However, unless the viral indicator test is approved in time for its use in the final mapping, the bacterial sampling will not distinguish between a human source and an animal source. The Department is using the surface water quality criteria to determine excessive levels of contamination. These standards are developed with respect to the protection and enhancement of surface water resources in the State.

21. COMMENT: Two commenters stated that in most townships the public health department is responsible for the monitoring of bacteria in public waters. The commenters asked what role the health department will take under the newly proposed rules. Will they be responsible for enforcement? Will they be responsible for sampling and monitoring of public waters?

RESPONSE: Municipalities may contract with the county health department or other county health agency to prepare the final map or perform monitoring under the SIIA. However, the SIIA was specific in that the municipalities are responsible for fulfilling the requirements of the SIIA. This responsibility can not be passed on to the county health department or other county health agency.

22. COMMENT: One commenter stated that the Health Department and the water and wastewater authorities play very large roles in the management of stormwater and sanitary sewer systems, yet both were ignored in the newly proposed rules. The commenter felt that both the Health Department and the authorities can play a very crucial part in the proper management of stormwater discharges. The commenter felt that the newly proposed rules should not limit the management of stormwater discharges solely to municipalities.

RESPONSE: The SIIA specifically delegates the responsibility for preparing the final map to the municipalities. However, the municipalities will have to work with the Health Department and the water and wastewater authorities in obtaining the necessary information to complete the mapping requirements. The Department is confident that the Health Department and the water and wastewater authorities will assume their appropriate roles in this effort.

23. COMMENT: One commenter suggested that all sampling should be done and investigations completed prior to instituting quarterly monitoring. The commenter felt that the monitoring is an appropriate follow-up activity once the outfalls are investigated and abatement has commenced. The commenter suggested that all sampling be completed within one year of the adoption of the final map, and that quarterly monitoring begin three months after all sampling is completed.

RESPONSE: Municipalities have the option of completing all of their investigative sampling within one year. However, because the sampling is dependent upon weather conditions the Department feels that

municipalities may be unable to complete the investigative sampling in the limited time period of one year. Therefore, the Department is allowing the municipalities up to three years to complete this work. The SIIA requires that municipalities begin quarterly monitoring once the final map is adopted. Because this is a legislative mandate, the Department has to follow this timeframe. The Department does provide for overlap by allowing municipalities to grab only one sample from outfalls that are being sampled to fulfill investigative and quarterly monitoring requirements during the same time period.

24. COMMENT: One commenter questioned whether laboratories could handle all the samples required to be taken under the rules. The commenter felt that these samples would have to be analyzed in a timely fashion and during a large rainstorm there could be conceivably 2,000 samples submitted to the lab for analysis.

RESPONSE: The Department has considered this issue and is confident that the laboratories are aware of the situation and are preparing to provide the necessary capabilities to handle the analysis of the samples under the SIIA. Therefore, laboratories will insure that sufficient personnel and equipment is available to manage this work. Also, municipalities are required to grab samples within the first 30 minutes of a storm event which would limit the number of samples that will be taken to the laboratories.

25. COMMENT: Two commenters stated that ongoing monitoring of the stormwater outfall pipes is potentially very costly and would not be necessary if cross-connections are not found during the final mapping. One commenter felt that the Department did not fully consider the economic or personnel constraints that the newly proposed rules will have on all the affected municipalities. One commenter stated that if a municipality has 300 outfalls, and the cost to monitor those outfalls is \$30.00 per outfall, a \$30,000 burden will be placed on the municipality.

RESPONSE: The quarterly monitoring is to identify any future problems that might arise. Therefore, even if cross-connections and interconnections are identified and corrected during the final mapping this does not negate the possibility of future cross-connections and interconnections from occurring. These situations are what the quarterly monitoring is designed to identify and correct. The Department realizes that the quarterly monitoring will place a burden on the municipalities involved; however, quarterly monitoring is a statutory mandate of the SIIA.

26. COMMENT: The commenters also noted that New Jersey municipalities are operating under "Municipal Cap Law" which imposes a 4.5 percent limit on increases in spending in 1991. One commenter felt that if the State forces a municipality to incur a cost, the State should be obligated to reimburse that cost. The commenter also felt that the State is not justified in abdicating its responsibility for funding this monitoring just because local governments must comply with this mandate forever. The commenter fails to see how the Department comes to draw such a conclusion.

RESPONSE: There are exemptions to the State imposed limit on increases in spending in 1991 imposed by the "Municipal Cap Law." The "Municipal Cap Law" specifically states that "if a municipality provides matching funds in order to receive State funds the amount of the match which is required by law or agreement to be provided by the municipality shall be excepted." The Department is providing grants to complete the majority of this project, and the municipality is required to provide at least 10 percent of the project costs to receive grant funding. Therefore, the requirements for which grant funding is made available are exempt under the "Municipal Cap Law."

27. COMMENT: One commenter felt that the magnitude of the quarterly sampling is beyond comprehension and that there should be some other more viable way to come up with a solution. This commenter suggested an ambient level of sampling. Also, another commenter asked if the Department feels that the quarterly monitoring of every stormwater outfall discharging to salt water will be extremely burdensome for the municipalities involved. If the Department believes that this will be a difficult requirement to meet then the commenter wants to know why the Department has not gone to the Legislature to request an amendment in this area.

RESPONSE: The Department considered ambient monitoring, but this monitoring would have to occur at each outfall on a quarterly basis. This type of monitoring would not be beneficial to the municipalities and would require the same amount of effort as monitoring the discharge from the outfalls. Additionally, there is a strong ambient monitoring program established in the coast. When a problem is identified during this ambient monitoring, it would be more useful to know exactly which outfall is causing the contamination so that the problem can be located and cor-

rected. The Department recognizes the burden that the quarterly monitoring will place on the municipalities involved. However, in order to fulfill the requirements of the SIIA the quarterly monitoring will remain a part of these rules.

28. COMMENT: Two commenters feel that if samples must be collected within the first 30 minutes of a storm event, as required in N.J.A.C. 7:22A-4.6(f), the number of samples collected during a given storm event would be rather limited. One commenter stated that mobilizing the required manpower to accomplish meeting the 30 minute deadline would be a mammoth task. Additionally, one commenter feels that this is compounded by the fact that access to some outfalls, such as those through bulkheads into lagoons, may be far less accessible. Also, the commenter stated that the number of rainfalls occurring during regular working hours may be limited during a given quarter, requiring overtime for the personnel responsible for collecting these samples. If the 30 minute requirement is necessary to obtain representative samples, the commenter recommends that the on-going monitoring of outfalls to saline waters be required on a semi-annual basis. The commenter feels that this would allow a more reasonable time frame for obtaining samples while providing a substantial data base. The commenter feels that this would also substantially reduce the cost of monitoring for the municipalities. Finally, the commenter suggested that a twice a year monitoring program would allow more time to perform follow-up investigations on outfalls testing positive for bacteria.

RESPONSE: The 30 minute time frame is necessary in order to insure that the municipalities are collecting samples that are representative of the first flush of pollutants from the stormwater system. This is consistent with the Environmental Protection Agency's guidance set forth in their stormwater permitting regulations. Because of the enormity of this task, the Department has given the municipalities three years to complete the investigative sampling.

In regard to quarterly monitoring, there is a stipulation in the rules that in the event that there is not sufficient rainfall to produce flow from any given outfall during the scheduled quarterly monitoring period, the municipality may perform the monitoring during the next storm event that produces sufficient flow. If municipalities are unable to collect samples at all of the outfalls discharging to salt waters during a quarter because of weather conditions, the municipality may perform monitoring on those outfalls in the next quarter.

29. COMMENT: One commenter requested a clarification as to wet weather versus dry weather sampling. The commenter was not sure as to whether the Department wants wet weather tests or dry weather tests or both during a quarter.

RESPONSE: If the outfall is discharging during dry weather, as defined by the regulation, the municipality must monitor this outfall during both dry weather and wet weather conditions. If there is a problem with the dry weather flow, this will be identified in the dry weather sample; however, the dry weather sample will not indicate a problem caused by wet weather conditions. Therefore, to insure that a problem caused by wet weather conditions is identified the municipality must also monitor during these conditions.

30. COMMENT: Three commenters felt that instead of sampling every outfall that discharges to salt water, the Department should take a look at existing data and prioritize areas for initial mandated sampling, having the across-the-board sampling kick in at a later date.

RESPONSE: The Department agrees this is a valid approach; however, the SIIA is specific in that all outfalls discharging to salt waters shall be monitored on a quarterly basis. The Department has clarified the quarterly monitoring requirements in N.J.A.C. 7:22A-4.8 by having municipalities prioritize the quarterly monitoring using the priority system developed for the investigative sampling. If weather conditions do not permit the municipality to sample all of the outfalls in one quarter, prioritizing the monitoring will insure that outfalls in the most environmentally sensitive areas will be monitored first.

31. COMMENT: One commenter had a concern regarding the formula in the proposed regulation that is used to determine grant awards, in particular how the municipality will be able to calculate the maximum grant amount allowable when the certain factors are unknown.

RESPONSE: In the application package for the final mapping grants, the Department will be providing each affected municipality with an approximate grant amount. This grant amount will be calculated using data for all 94 municipalities eligible to receive a grant under the final mapping regulations. If for some reason a municipality does not apply for grant money then the grant amount of all applicant municipalities will be adjusted accordingly.

32. COMMENT: One commenter felt that the Department should have accounted for the age of the town as a factor in the distribution of the grant money.

RESPONSE: The age of a town may or may not indicate a problem with that town's sanitary and stormwater sewer infrastructure. The Department chose factors that have been shown to be associated with problems from stormwater and sanitary sewer systems, such as extensive development.

33. COMMENT: One commenter had a question about the formula for the allocation of funds. The commenter felt that the formula as it is written would allocate 162 percent of the funds beyond the minimum grant amount.

RESPONSE: The Department agrees with the commenter that the funding formula, as written, would allocate over 100 percent of the funds beyond the minimum grant amount. It was always the Department's intent to allocate the money based on road mileage, development data, and population of the affected municipality compared to all affected municipalities. This was inherent in the formula set forth in the proposal; however, due to an error in transcription, the formula allocated a greater amount of money than what is available. Corrections to the error made in the funding formula have been incorporated into the rule in N.J.A.C. 7:22A-4.10; this formula allocates 100 percent of the money available among all affected municipalities.

Summary of Hearing Officer Recommendations and Agency Response:

Garry Chalofsky, Acting Chief of the Bureau of Water Quality Planning in the Division of Water Resources, served as the hearing officer at both the October 10 and the October 12, 1990 public hearings. After reviewing the testimony given at the public hearings, Acting Chief Chalofsky felt that the responses to this testimony and the subsequent changes made to the regulations to address the concerns raised by the public should be accepted as set forth in the Summary of Public Comments and Agency Responses for this adoption.

A copy of the record of the public hearing is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 14 WATER POLLUTION CONTROL ACT

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.1 Authority and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., including violation of any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant to the Water Pollution Control Act, and for violations of the Water Supply and Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq., the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). This subchapter shall also govern the procedure for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

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

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.9, have the following meanings unless the context clearly indicates otherwise:

"Any rules issued pursuant to the Water Pollution Control Act" means, but is not limited to, the following rules:

ADOPTIONS

Industrial Survey Project, N.J.A.C. 7:1F;
Freshwater Wetlands, N.J.A.C. 7:7A;
Stormwater Management, N.J.A.C. 7:8;
Water Pollution Control, N.J.A.C. 7:9;
Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A;
Safe Drinking Water Act, N.J.A.C. 7:10;
Flood Hazard Area Control, N.J.A.C. 7:13;
Water Pollution Control Act, N.J.A.C. 7:14;
The New Jersey Water Pollution Control Act, N.J.A.C. 7:14A;
Statewide Water Quality Management Planning, N.J.A.C. 7:15;
Regulations Governing Laboratory Certification and Standards of Performance, N.J.A.C. 7:18; and
Sewage Infrastructure Improvement Act Grants, N.J.A.C. 7:22A.

...

7:14-8.5 Civil administrative penalty determination

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

(e) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major shall include:

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

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation set forth in a permit or administrative order as follows:

(1) By more than 50 percent for a hazardous pollutant; or

(2) By more than 100 percent for a non-hazardous pollutant; or

iii. Any violation which seriously deviates from a requirement of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

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

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation set forth in a permit or administrative order as follows:

(1) By 26 to 50 percent for a hazardous pollutant; or

(2) By 51 to 100 percent for a non-hazardous pollutant; or

iii. Any violation which substantially deviates from a requirement of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; substantial deviation shall include, but not be limited to, those violations which are in substantial contravention of the requirement or which substantially impair or undermine the operation or intent of the requirement.

3. (No change.)

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

**CHAPTER 22A
SEWAGE INFRASTRUCTURE
IMPROVEMENT ACT GRANTS**

SUBCHAPTER 1. GENERAL PROVISIONS

7:22A-1.1 Purpose

(a) This chapter prescribes the rules of the Department for the distribution of grant moneys to affected municipalities and other local government units to implement the requirements of the Act. The purpose of the rules is to prevent, control and abate water pollution caused by the discharge of untreated sewage and point and nonpoint source pollutants from stormwater sewer systems and combined sewer systems.

(b) (No change.)

ENVIRONMENTAL PROTECTION

7:22A-1.2 Scope

(a) This chapter shall constitute the rules governing the Department's implementation of the Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

(b)-(c) (No change.)

(d) Any affected municipality may apply to the Department for a grant to prepare a preliminary map and inventory of their stormwater sewer system or prepare a final map in accordance with N.J.A.C. 7:22A-4.

(e) (No change.)

7:22A-1.3 Construction of rules

This chapter shall be liberally construed to permit the Department to discharge its statutory functions under the Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

7:22A-1.4 Definitions

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

...

"Cesspool" means a type of covered pit as defined in N.J.A.C. 7:9A-2.1.

...

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

...

"Excessive bacteria level" means a bacteria level above the standards set forth in N.J.A.C. 7:22A-4.7.

...

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

...

"Hazardous waste facility" means a facility used for treating, storing, or disposing of hazardous waste as defined in N.J.A.C. 7:26-1.4.

"Individual subsurface sewage disposal system" means a type of septic system as defined in N.J.A.C. 7:9A-2.1.

"Industrial establishment" means any place of business or real property as defined in N.J.A.C. 7:26B-1.3.

"Industrial pollutants" means any non-domestic pollutants, including but not limited to, those pollutants regulated under Section 307(a), (b) or (c) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. and any amendments thereto.

...

"NJPDES" means the "New Jersey Pollutant Discharge Elimination System" as defined in N.J.A.C. 7:14A-1.9.

"Nonpoint source" means a contributing factor to water pollution as defined in N.J.A.C. 7:14A-1.9.

"Person" means an individual, corporation, company, partnership, firm, association, political subdivision of this State and any state, Federal or interstate agency, or an agent or employee thereof.

...

"Pollutant" means the same definition of pollutant at N.J.A.C. 7:14A-1.9.

...

"Recycling center" means a facility designed to process recyclable materials as defined in N.J.A.C. 7:26-1.4.

...

"Solid waste facility" means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste but shall not include a recycling center.

...

"Viral indicator test" means an analytical methodology using the F+ RNA coliphages to distinguish between human and non-human contamination by serotyping the phages detected.

...

7:22A-1.7 Enforcement

(a) Failure by any person to comply with any requirement of the Act including, but not limited to, a violation of any rule, grant agreement, license, permit, or administrative order may result in a penalty assessed by the Department in accordance with N.J.A.C. 7:14-8 or any other enforcement action provided in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

(b) Any municipality or public entity controlling or operating a stormwater sewer system with an unpermitted interconnection or cross-connection may bring an action in their name to require the elimination of these connections to their stormwater sewer systems in accordance with the penalty provisions of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

SUBCHAPTER 3. PRELIMINARY MAPPING AND INVENTORY

7:22A-3.1 Applicability

(a) All affected municipalities shall adopt a final map as required by N.J.S.A. 58:25-25 and N.J.A.C. 7:22A-4.

(b) To facilitate the preparation of a final map, any affected municipality may apply to the Department for a grant to prepare a preliminary map and inventory. As required by N.J.A.C. 7:22A-4.2(c), all affected municipalities shall prepare and submit a preliminary map in accordance with N.J.A.C. 7:22A-3.10 and 3.11, regardless of whether they received a grant to prepare a preliminary map and inventory.

SUBCHAPTER 4. FINAL MAPPING AND MONITORING REQUIREMENTS

7:22A-4.1 Applicability

(a) All affected municipalities shall prepare and adopt a final map of their stormwater sewer and sanitary sewer system and perform monitoring of their stormwater in accordance with the requirements of this subchapter.

(b) Affected municipalities may apply for a grant to satisfy the final mapping requirements of this subchapter. However, if for any reason an affected municipality does not receive a grant, the affected municipality is not relieved of the requirement to comply with this subchapter.

7:22A-4.2 Reporting requirements

(a) ***[Within 12 months of the effective date of this subchapter]*** ***On or before June 17, 1992*** or within the timeframe established in an executed final mapping grant agreement, whichever comes later, all affected municipalities shall submit a copy of the final map, adopted by the governing body of the affected municipality and prepared in accordance with N.J.A.C. 7:22A-4.3, to the Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625. The affected municipality shall submit any other submittals required by N.J.A.C. 7:22A-4.3 at the time of submittal of the final map.

(b) Within 12 months of the submittal of the final map in (a) above and yearly thereafter, all affected municipalities shall submit updated portions of the final map in accordance with N.J.A.C. 7:22A-4.3(l), to the Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625.

(c) ***[Within four months of the effective date of this subchapter]*** ***On or before October 17, 1991***, all affected municipalities which did not receive a grant for preliminary mapping shall submit the information required under N.J.A.C. 7:22A-3.10 and 3.11 to the Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625.

(d) ***[Within four months of the effective date of this subchapter]*** ***On or before October 17, 1991***, all affected municipalities shall submit an investigative priority list in accordance with N.J.A.C. 7:22A-4.4 to the Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625.

(e) All affected municipalities shall submit a copy of the sampling data collected in accordance with N.J.A.C. 7:22A-4.5 to the Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625.

(f) At any time prior to, but no later than one month after, the adoption of the final map in (a) above, all affected municipalities shall submit a priority list for quarterly monitoring in accordance with N.J.A.C. 7:22A-4.8(b) to the Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625.

[(f)**(g) All affected municipalities shall submit a copy of the quarterly monitoring data collected in accordance with N.J.A.C. 7:22A-4.8 to the Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625. The submission shall note where sample analysis indicates that there are excessive levels of bacteria, as specified in N.J.A.C. 7:22A-4.7.

[(g)**(h) All affected municipalities shall submit a quality assurance program plan and have the plan approved by the Department, in accordance with N.J.A.C. 7:22A-4.6(a), prior to taking any grab samples as required by N.J.A.C. 7:22A-4.5 and 4.8. The affected municipalities shall include the project specific information and submit the completed quality assurance program plan to the Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625.

7:22A-4.3 Final mapping

(a) The affected municipality shall prepare a final map which:

1. Delineates all public and private stormwater sewer lines that are located within the geographic boundaries of the affected municipality; and

2. Includes any previously mapped public and private sanitary sewage lines located within the geographical boundaries of the affected municipality.

(b) The scale of the final map shall be no larger than 1:1200 (one inch = 100 feet) and no smaller than 1:4800 (one inch = 400 feet). ***[The final map shall be submitted on stable base mylar.]***

(c) If the process used to develop the final map is a digital process the affected municipality shall submit to the Department a copy in digital form.

(d) All mapping shall be performed utilizing the New Jersey State plan coordinate system (feet). Either the North American Datum of 1927 or 1983 may be employed for the mapping process; however, after December of 1992 the North American Datum of 1983 shall be employed. The affected municipality shall indicate which datum was employed.

(e) The base maps used in developing the final map shall meet National Map Accuracy Standards. Tidelands maps, which have a scale of one inch = 200 feet, provide partial coverage of the coast. Affected municipalities may contact the Department to inquire about the availability of these maps for their municipality. If the tidelands maps provide full coverage of the affected municipality, these maps may be used as base maps for the final mapping.

(f) All base maps shall be certified by a licensed land surveyor or a certified photogrammetrist.

(g) Any new Global Positioning Satellite (GPS) observation shall be submitted to the Department. The coordinates of this observation and a detailed physical description of the location of this observation shall be included in this submittal.

(c)**(h) All features delineated ***[on the final map]*** ***as part of the final mapping*** shall be accurate to within ***[25]*** ***10*** feet. ***A licensed professional (such as a professional planner or a professional engineer) shall certify the accuracy of the map.***

[(d)**(i) The affected municipality shall ***[include with the final map a narrative description]*** ***submit an identification*** of the field work (remote sensing, surveying, etc.) performed to locate the features delineated on the final map.

[(e)**(j) The affected municipality shall include on the final map the following features associated with their stormwater sewer system:

1. The location of stormwater sewer pipes, including the lengths, sizes and types of pipes;

2. The location of stormwater outfalls, including the surface water classification, as set forth in the Surface Water Quality Standards, N.J.A.C. 7:9-4, of the receiving water body at each outfall;

3. The location of any interconnection or cross-connection, including the access points where grab samples were taken in accordance with N.J.A.C. 7:22A-4.5(c) and (d);

ADOPTIONS

4. Arrows indicating direction of flow within the pipe;
5. All stormwater sewer appurtenances, such as manholes, siphons, pumping stations, catch basins, stormwater management basins, and inlet structures. These shall be designated on the final map by suitable symbols and referenced by a legend near the title;
6. Elevations of street surfaces, sewer inverts, manhole rims and inlet structures, if known;

7. The delineation of all lots presently served by individual subsurface sewage disposal systems or cesspools;

8. The location of all industrial establishments. The affected municipality shall designate on the final map by suitable symbols and referenced by a legend near the title, those industrial establishments that have floor drains or other conveyance facilities that discharge into the stormwater sewer system, and those industrial establishments where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products or industrial machinery are exposed to stormwater;

[8.]**9. The location of all *[industrial establishments,]* hazardous waste facilities, solid waste facilities and recycling centers; and

[9.]**10. Street names.

[(f)](k)*** The affected municipality shall include on the final map the following features, associated with the sanitary sewer system:

1. The location of previously mapped sanitary sewage pipes, including the lengths, grades, sizes and types of pipes;
2. Arrows indicating direction of flow within the pipe;
3. All sanitary sewer manholes whether previously mapped or not;
4. All previously mapped sanitary sewer appurtenances, such as siphons and pumping stations. These shall be designated on the final map by suitable symbols and referenced by a legend near the title;
5. Elevations of street surfaces, sewer inverts, manhole rims and inlet structures, if known; and
6. Street names.

[(g)](l)*** The affected municipality shall establish a numerical reference system for the structures located on the final map.

[(h)](m)*** The affected municipality shall submit the NJPDES permit number of any permitted cross-connection identified on the final map. Where an unpermitted cross-connection discharges industrial pollutants, the affected municipality shall submit the name and address of the person responsible for the cross-connection. Where an unpermitted cross-connection discharges domestic pollutants, the affected municipality shall eliminate or cause to be eliminated the cross-connection.

[(i)](n)*** The affected municipality shall submit the list of the potential nonpoint sources of pollution as required by N.J.A.C. 7:22A-4.5(e)2.

[(j)](o)*** The affected municipality may choose to produce two separate maps, one of their separate stormwater sewer system and one of their sanitary sewage system. These maps shall be produced at the same scale and shall follow the requirements of this section. These maps shall contain, at a minimum, four registration points to allow alignment of the maps when overlaid.

[(k)](p)*** The affected municipality shall identify all features on the final map which are neither owned nor operated by the municipality. For those features, the affected municipality shall include a separate list of the owners and/or operators.

[(l)](q)*** After the submission of the final map, all affected municipalities shall maintain and annually update any portion of the final map to incorporate changes or additions to the stormwater and sanitary sewer systems. The updated maps shall also incorporate any interconnections or cross-connections discovered or eliminated after adoption of the final map.

7:22A-4.4 Investigative priority listing

(a) All affected municipalities shall submit a priority list for the Department's approval which identifies the order in which the stormwater sewer systems will be investigated. The priority list shall include for each stormwater outfall the surface water classification, established in the Surface Water Quality Standards, N.J.A.C. 7:9-4, for the waterbody into which the outfall discharges. The priority list shall include the stormwater outfall number established in N.J.A.C. 7:22A-3.10(a) and shall be based on the following priorities, unless

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the affected municipality demonstrates to the satisfaction of the Department that other priorities should be used due to site-specific conditions:

1. Dry weather discharges from stormwater outfalls discharging to ocean front waters in or adjacent to bathing areas;
2. Dry weather discharges from stormwater outfalls discharging to estuarine waters in or adjacent to bathing areas;
3. Wet weather discharges from stormwater outfalls discharging to ocean front waters in or adjacent to bathing areas;
4. Wet weather discharges from stormwater outfalls discharging to estuarine waters in or adjacent to bathing areas;
5. Dry weather discharges from stormwater outfalls discharging to estuarine waters in or adjacent to approved, seasonal or special restricted shellfish growing waters (in that order) as established in N.J.A.C. 7:12;
6. Dry weather discharges from stormwater outfalls discharging to ocean waters in or adjacent to approved, seasonal or special restricted shellfish growing waters (in that order) as established in N.J.A.C. 7:12;
7. Wet weather discharges from stormwater outfalls discharging to estuarine waters or ocean waters in or adjacent to approved, seasonal or special restricted shellfish growing waters (in that order) as established in N.J.A.C. 7:12;
8. Any other dry weather discharges from stormwater outfalls; and
9. All other wet weather discharges from stormwater outfalls.

(b) After the submission of the final map in accordance with N.J.A.C. 7:22A-4.3, the affected municipality may, based on information discovered through final mapping, submit an updated priority list.

7:22A-4.5 Identification of interconnections and cross-connections

(a) All affected municipalities shall identify all interconnections and cross-connections by investigating, in the order established in the priority list approved in N.J.A.C. 7:22A-4.4, the stormwater sewer systems within the municipality.

(b) Prior to the submission of the final map in accordance with N.J.A.C. 7:22A-4.3, all affected municipalities shall investigate at least one third of the stormwater outfalls in accordance with (c) and (d) below. The affected municipality shall investigate the remaining stormwater outfalls *[within three years of the effective date of this subchapter]* ***or within the timeframe established in an executed final mapping grant agreement, whichever comes later*.**

(c) All affected municipalities shall investigate for the presence of interconnections and cross-connections by either:

1. Taking one grab sample of the discharge from the stormwater outfall and analyze that sample for the presence of bacterial contamination in accordance with N.J.A.C. 7:22A-4.6. If the sampling indicates excessive levels as specified in N.J.A.C. 7:22A-4.7, the affected municipality shall identify the source of the contamination in accordance with (d) below; or

2. Taking one grab sample of the discharge from the stormwater outfall and performing a viral indicator test on that sample in accordance with N.J.A.C. 7:22A-4.6. If the test indicates that the stormwater is contaminated by a human source, the affected municipality shall identify the source of the human contamination in accordance with (d) below. If the test indicates that the stormwater is not contaminated by a human source, the affected municipality shall comply with the requirements in (e)2 below; or

3. Not performing any initial sampling or testing at the stormwater outfall, thereby foregoing the need to wait for analytical results, and assume that the discharge from the stormwater outfall would either indicate excessive levels of bacterial contamination or indicate contamination by a human source. Using this option, the affected municipality may forgo the sampling or testing of each stormwater outfall required in (c)1 or 2 above and proceed to identify any sources of contamination in accordance with (d) below. In no case shall any affected municipality forgo the sampling or testing on the assumption that the discharge from the stormwater outfall is not contaminated.

(d) The affected municipality shall isolate and identify the source of the contamination as follows:

1. Taking grab samples throughout the stormwater sewer system and doing one of the following:

i. Analyzing the samples for the presence of bacterial contamination in accordance with N.J.A.C. 7:22A-4.6. Where sampling has been performed in accordance with (c)1 above, the affected municipality shall continue taking grab samples at access points, such as manholes or catch-basins, upstream in the stormwater collection system until excessive levels of bacteria are no longer evident. Where outfall sampling has not been performed in accordance with (c)1 above, the affected municipality shall begin taking grab samples at the stormwater outfall; or

ii. Performing the viral indicator test in accordance with N.J.A.C. 7:22A-4.6. Where testing has been performed in accordance with (c)2 above, the affected municipality shall continue taking grab samples at access points, such as manholes or catch-basins, upstream in the stormwater collection system until the test no longer indicates human contamination. Where outfall testing has not been performed in accordance with (c)2 above, the affected municipality shall begin taking grab samples at the stormwater outfall; and

2. Using smoke testing, dye testing, video investigations, or any other analysis approved by the Department. If the tests indicate that the contamination results from an interconnection or cross-connection, the affected municipality shall comply with the requirements in (e)1 below. If the tests indicate that the contamination does not result from an interconnection or cross-connection, the affected municipality shall comply with the requirements in (e)2 below.

(e) Once the affected municipality identifies the source:

1. All affected municipalities shall eliminate, or cause to be eliminated, any interconnection or unpermitted cross-connection identified within the boundaries of the municipality. Any affected municipality or public entity controlling or operating the stormwater sewer system may require the elimination of any interconnection or unpermitted cross-connection with the use of the penalty procedures in N.J.A.C. 7:22A-1.7.

2. Contamination which does not originate from an interconnection or cross-connection (that is, nonpoint source pollution) shall be identified on a list containing the following:

i. The isolated source area of the contamination using a narrative reference to the final map; and

ii. A listing of the possible nonpoint sources of contamination based on observations and conclusions derived from investigating the isolated source area.

7:22A-4.6 Sampling and testing requirements

(a) Prior to taking any grab samples as required by N.J.A.C. 7:22A-4.5 and 4.8, all affected municipalities shall submit a quality assurance program plan and have the plan approved by the Department. Any method used for sampling, testing or investigation shall be a method approved by the Department.

(b) All affected municipalities shall have all grab samples analyzed by a State certified laboratory which utilizes analytical methods approved by the Department pursuant to N.J.A.C. 7:18. For a laboratory performing the viral indicator test, the laboratory shall be certified in the microbiological category.

(c) All affected municipalities shall include the following information along with the data collected in accordance with N.J.A.C. 7:22A-4.5 and 4.8:

1. The number assigned to the outfall where the sample was collected;

2. The location of the outfall where the sample was collected;

3. The location of the grab samples taken throughout the stormwater system in accordance with N.J.A.C. 7:22A-4.5(d)1;

*[3.]**4.* The date and time the sample was collected; *[and]**

5. An identification of the sample as either a "wet weather" or "dry weather" sample. If a "dry weather" sample, include a description of the discharge, such as color, turbidity, odor, etc.; and

*[4.]**6.* The method used to analyze the sample.

(d) All affected municipalities shall perform sampling or testing in accordance with N.J.A.C. 7:22A-4.5 and 4.8 as follows:

1. When performing sampling in accordance with N.J.A.C. 7:22A-4.5(c)1 *[and (d)1i]* or quarterly sampling in accordance with N.J.A.C. 7:22A-4.8, a grab sample shall be sampled for the presence of the following bacterial indicators:

i. Total coliform;

ii. Fecal coliform; and

iii. Enterococci.

*2. When performing sampling in accordance with N.J.A.C. 7:22A-4.5(d)1i, a grab sample shall be sampled for the presence of the following bacterial indicators:

i. Fecal coliform; and

ii. Enterococci.*

*[2.]**3.* When testing in accordance with N.J.A.C. 7:22A-4.5(c)2 and (d)1ii, a grab sample shall be tested using the viral indicator test, if the test is approved by the Department.

(e) When sampling or testing a stormwater outfall which is submerged or partially submerged, grab samples shall be collected at the manhole closest to the outfall which is not influenced by the receiving water.

(f) Wet weather grab samples shall be collected from the stormwater discharge resulting from a storm event that is greater than .1 inch and at least 72 hours from the previously measurable (greater than .1 inch) storm event. Grab samples shall be collected within the first 30 minutes of the storm event. Dry weather grab samples are required to be taken when an outfall is discharging stormwater 72 hours after the previously measurable (greater than .1 inch) storm event.

7:22A-4.7 Excessive bacterial levels for sample analysis

(a) Based on the surface water classification of the receiving water body as set forth in the Surface Water Quality Standards, N.J.A.C. 7:9-4, bacteria levels shall be considered excessive for the purposes of this subchapter where the grab sample analysis indicates:

1. Fecal coliform levels greater than:

i. 50 counts/100 ml for SC waters;

ii. 200 counts/100 ml for FW2 and SE1;

iii. 770 counts/100 ml for SE2; and

iv. 1500 counts/100 ml for SE3;

2. Enterococci levels greater than:

i. 33 counts/100 ml for FW2; and

ii. 35 counts/100 ml for SE1 and SC; or

3. Bacterial indicator levels greater than the standard for approved shellfish waters as established by the National Shellfish Sanitation Program as set forth in its current manual of operations for all shellfish waters in N.J.A.C. 7:12.

7:22A-4.8 Quarterly monitoring

(a) All affected municipalities shall initiate the quarterly monitoring of their stormwater outfall lines in the first month following the submittal of the final map or *[thirteenth month after the effective date of this subchapter]* *In July 1992*, whichever comes first. The affected municipality shall, on a quarterly basis, take a grab sample at all stormwater outfalls for any stormwater sewer system discharging into salt water in accordance with N.J.A.C. 7:22A-4.6(d)1.

*[b)]**[c)]* Quarterly monitoring shall be performed in accordance with the sampling procedures outlined in N.J.A.C. 7:22A-4.6. For those outfalls where quarterly monitoring, as required in (a) above, and sampling as required by N.J.A.C. 7:22A-4.5(c)1 or (d)1i, will occur during the same quarter, only one grab sample need be taken.

*[c)]**[d)]* Quarterly monitoring shall also include monitoring of any dry weather discharges identified from the stormwater outfalls. *Outfalls having dry weather discharges shall be monitored during both dry and wet weather events.*

*[d)]**[e)]* In the event that there is no sufficient rainfall to produce flow from any given outfall during the scheduled quarterly monitoring, the affected municipality shall perform the monitoring during the next storm event to produce a sufficient flow as established in N.J.A.C. 7:22A-4.6(f).

*[e)]**[f)]* The affected municipality shall submit to the Department all quarterly monitoring data and specify any excessive levels of bacteria, as set forth in 7:22A-4.7, found during quarterly monitoring as required in N.J.A.C. 7:22A-4.2*[f)]**[g)]*.

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*[(f)]**(g)* After the completion of the investigation of all the stormwater outfalls in the municipality, as required in N.J.A.C. 7:22A-4.5(b), the affected municipality shall identify the source of the contamination in accordance with N.J.A.C. 7:22A-4.5 whenever excessive bacterial levels are found during the quarterly monitoring events.

*[(g)]**(h)* The affected municipality, after locating the source of the contamination, shall identify the person responsible for, and promptly eliminate or seek the elimination of the contamination in accordance with N.J.A.C. 7:22A-4.5(c).

7:22A-4.9 Applicant eligibility for final mapping grants

(a) Subject to (b) below, any affected municipality, listed in Appendix A, may apply for a grant to prepare a final map.

(b) Any municipality may challenge the Department's inclusion or omission from Appendix A by submitting documentary evidence which proves to the Department's satisfaction that the municipality's stormwater sewer system either does or does not directly discharge into the salt waters of Atlantic, Cape May, Monmouth, or Ocean counties. A municipality may contest the Department's decision on the petition in accordance with N.J.A.C. 7:22A-1.16(b).

7:22A-4.10 Funding

(a) Grant amounts from the Department for final mapping are based on the applicant's estimated project costs. The minimum grant amount available to an affected municipality for final mapping will be \$20,000 and the maximum will be \$300,000. The minimum grant amount available shall be adjusted based upon certain development factors in the following formula:

$$*[\text{Maximum grant amount} = \frac{(2(R+D+P) + .5(L))}{4} \times (F) + \$20,000]*$$

$$*\text{Maximum grant amount} = \left(\frac{\text{MF}}{\text{Sum of MFs}} \right) \times F + \$20,000*$$

Where:

$$*\text{Municipal Factor (MF)} = \frac{[2(R+D+P) + .5(L)]*}{4}$$

$$R = \frac{\text{road mileage in Appendix A of affected municipality}}{\text{total road mileage of all applicant municipalities}}$$

$$D = \frac{\text{developed acres of affected municipality}}{\text{total developed acres of all applicant municipalities}}$$

$$P = \frac{\text{population in Appendix A of affected municipality}}{\text{total population of all applicant municipalities}}$$

$$L = \frac{\text{developed acres of affected municipality}}{\text{land area of affected municipality in acres}}$$

$$F = \$5,535,000.00 - \$20,000 \text{ (total applicant municipalities)}$$

(b) The resulting amount developed pursuant to (a) above shall be rounded to the nearest 50 dollar amount and shall not exceed \$300,000. If necessary, the resulting amount shall be adjusted based on the total amount of grant funding available.

(c) The Department may provide only up to 90 percent of the allowable project costs and the applicant shall provide at least 10 percent of the allowable project costs.

7:22A-4.11 Pre-application meeting

(a) Prior to submission of a grant application, applicants may request a pre-application conference to discuss application procedures. This conference is not part of the application procedures and verbal statements made by the Department during the conference shall not bind the Department.

(b) Unless otherwise specified, any questions concerning the final mapping requirements shall be directed to the Department of Environmental Protection, Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625, (609) 633-7021.

7:22A-4.12 Application procedures

(a) Applications for final mapping grant moneys shall be submitted to the Department *[within 60 days of the effective date of

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this subchapter]* ***on or before August 16, 1991*** or as otherwise extended by the Department.

(b) Each applicant shall include full and complete documentation in the application, including, but not limited to:

1. A brief description of how the grant shall be used and the method of accomplishing the requirements of this subchapter;

2. A description of how the applicant plans to pay for its share of the project costs, including those costs in excess of the grant award necessary to fully complete the project;

3. A description of the steps the applicant plans to take before receiving grant moneys that shall guarantee that at the time of signing of the grant agreement that the applicant shall be irrevocably committed to pay its share of the project costs;

4. An estimated budget of the applicant's project costs;

5. If the applicant did not participate in the preliminary mapping and inventory phase of the Act, the affected municipality's developed acres, undeveloped acres and total land area in acres. Each category of acreage shall specify the land use and the density of that land use; and

6. Any other supplementary materials that the Department may require.

(c) Each applicant shall submit a certified true sealed copy of a resolution adopted by the governing body of the affected municipality. The resolution shall:

1. Authorize the filing of an application for grant moneys for final mapping;

2. Specify the individual, by title, authorized to sign the application on behalf of the applicant;

3. Commit the applicant to providing at least 10 percent of the project costs and certify that the applicant has available the 10 percent match or more, if necessary; and

4. Commit the applicant to comply with the Department's standards for the final mapping as specified in N.J.A.C. 7:22A-4.

7:22A-4.13 Application evaluation

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. Incomplete applications shall be returned to the applicant with a letter detailing the deficiencies. Incomplete applications which are not amended to conform to the comments of the Department and resubmitted within the time frame established by the Department may be denied;

2. Budget evaluation to ensure that the proposed project costs are reasonable, applicable and allowable; and

3. Final administrative evaluation.

(b) During the evaluation process, the recipient shall, upon the request of the Department, submit supplemental documents or information necessary for the Department to complete its full review and decision on the application. The Department may suspend its evaluation until the additional information or documents have been received. Failure to submit the additional information or documents may be grounds for denial of the grant application.

7:22A-4.14 Department approval or disapproval

(a) After a final evaluation of a completed application, the Department shall take one of the following actions:

1. Approve the application for a grant and initiate the preparation of a grant agreement; or

2. Disapprove the application.

(b) The applicant shall be notified in writing of the Department's decision to disapprove an application.

(c) An applicant may amend and resubmit an application disapproved by the Department within the time frame established by the Department.

7:22A-4.15 Allowable costs

(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant agreement. The quarterly monitoring requirements under N.J.A.C. 7:22A-4.8 will not be an allowable cost under the final mapping grant award. Allowable project costs may include:

1. Work performed by the recipient's personnel, or any party to a subagreement after the effective date of this subchapter, including

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salaries and fringe benefits for the recipient's personnel or persons hired to complete the project; and

2. Equipment and supplies used solely to complete the project which shall include, but not be limited to, video equipment, surveying equipment, vehicle operating costs, and protective clothing.

(b) Notwithstanding (a) above, the Department shall not allow

costs for work that the Department determines is not in compliance with or relevant to this chapter or the specifications or requirements of subagreements or grant agreements. Costs for work not in compliance with or relevant to this chapter, the subagreements, or grant agreements are unallowable.

APPENDIX A

AFFECTED MUNICIPALITIES	ROAD MILEAGE	MAXIMUM GRANT AMOUNT PRELIMINARY MAPPING	POPULATION
ATLANTIC COUNTY			
Absecon City	47.29	\$ 8,600	7,972
Atlantic City	104.91	\$19,100	35,014
Brigantine City	59.76	\$10,900	10,565
Corbin City	9.85	\$ 5,000	257
Egg Harbor City	54.81	\$10,000	4,676
Egg Harbor Township	222.52	\$40,500	23,485
Estell Manor City	55.57	\$10,100	1,128
Galloway Township	223.75	\$40,750	21,405
Hamilton Township	250.41	\$45,000	14,072
Linwood City	39.88	\$ 7,250	6,503
Longport Borough	13.40	\$ 5,000	1,196
Margate City	40.99	\$ 7,450	8,808
Pleasantville City	66.99	\$12,200	14,738
Port Republic City	19.26	\$ 5,000	933
Somers Point City	51.29	\$ 9,350	10,565
Ventnor City	35.82	\$ 6,500	11,364
Weymouth Township	34.09	\$ 6,200	1,530
CAPE MAY COUNTY			
Avalon Borough	41.73	\$ 7,600	2,396
Cape May City	28.58	\$ 5,200	5,912
Cape May Point Borough	7.67	\$ 5,000	287
Dennis Township	81.06	\$14,750	5,093
Lower Township	152.53	\$27,750	20,495
Middle Township	147.53	\$26,850	14,113
North Wildwood City	35.35	\$ 6,450	4,945
Ocean City	107.23	\$19,500	15,562
Sea Isle City	32.34	\$ 5,900	2,955
Stone Harbor Borough	23.93	\$ 5,000	1,327
Upper Township	102.23	\$18,600	9,483
West Cape May Borough	12.90	\$ 5,000	1,260
West Wildwood Borough	5.75	\$ 5,000	360
Wildwood City	33.60	\$ 6,100	4,969
Wildwood Crest Borough	31.87	\$ 5,800	4,074
MONMOUTH COUNTY			
Aberdeen Township	58.77	\$10,700	18,937
Allenhurst Borough	5.04	\$ 5,000	884
Asbury Park City	35.81	\$ 6,500	15,790
Atlantic Highlands	23.33	\$ 5,000	5,011
Avon-By-The-Sea Borough	12.95	\$ 5,000	2,230
Belmar Borough	24.34	\$ 5,000	6,194
Bradley Beach Borough	14.42	\$ 5,000	4,768
Brielle Borough	24.05	\$ 5,000	4,561
Deal Borough	18.04	\$ 5,000	1,790
Fair Haven Borough	23.37	\$ 5,000	5,536
Hazlet Township	65.37	\$11,900	22,939
Highlands Borough	16.82	\$ 5,000	5,149
Keansburg Borough	26.99	\$ 5,000	10,645
Keyport Borough	22.69	\$ 5,000	7,426
Little Silver Borough	32.22	\$ 5,850	5,662
Loch Arbor Village	2.05	\$ 5,000	341
Long Branch City	87.00	\$15,850	29,224
Manasquan Borough	26.38	\$ 5,000	5,316
Matawan Borough	31.18	\$ 5,700	8,566

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Middletown Township	318.13	\$45,000	69,526
Monmouth Beach Borough	13.87	\$ 5,000	3,686
Neptune City	18.32	\$ 5,000	5,134
Neptune Township	121.23	\$22,050	29,289
Oceanport Borough	27.03	\$ 5,000	6,381
Red Bank Borough	29.75	\$ 5,400	11,407
Rumson Borough	48.22	\$ 8,800	7,185
Sea Bright Borough	6.66	\$ 5,000	1,847
Sea Girt Borough	16.74	\$ 5,000	2,556
Shrewsbury Borough	17.49	\$ 5,000	3,098
Spring Lake Borough	28.79	\$ 5,250	4,360
Spring Lake Heights	16.87	\$ 5,000	5,434
Tinton Falls Borough	60.81	\$11,050	11,980
Union Beach Borough	24.47	\$ 5,000	6,435
Wall Township	152.79	\$27,800	20,084

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Barnegat Light Borough	9.80	\$ 5,000	662
Barnegat Township	80.81	\$14,700	11,401
Bay Head Borough	10.52	\$ 5,000	1,307
Beach Haven Borough	20.41	\$ 5,000	1,765
Beachwood Borough	52.10	\$ 9,500	8,551
Berkeley Township	206.84	\$37,650	35,323
Brick Township	282.16	\$45,000	62,825
Dover Township	392.86	\$45,000	74,198
Eagleswood Township	22.31	\$ 5,000	1,121
Harvey Cedars Borough	9.24	\$ 5,000	386
Island Heights Borough	11.42	\$ 5,000	1,604
Lacey Township	166.84	\$30,350	20,175
Lavallette Borough	16.94	\$ 5,000	2,220
Little Egg Harbor Township	95.96	\$17,450	12,533
Long Beach Township	66.20	\$12,050	3,783
Mantoloking Borough	6.36	\$ 5,000	441
Ocean Gate Borough	12.80	\$ 5,000	1,482
Ocean Township	48.98	\$ 8,900	4,291
Pine Beach Borough	14.98	\$ 5,000	1,771
Point Pleasant Beach	23.64	\$ 5,000	5,541
Point Pleasant Borough	77.03	\$14,000	18,272
Seaside Heights Borough	12.27	\$ 5,000	2,188
Seaside Park Borough	17.18	\$ 5,000	1,800
Ship Bottom Borough	16.16	\$ 5,000	1,567
South Toms River Borough	15.49	\$ 5,000	3,851
Stafford Township	140.40	\$25,550	13,276
Surf City Borough	17.80	\$ 5,000	1,619
Tuckerton Borough	18.92	\$ 5,000	2,897

(a)

**DIVISION OF ENVIRONMENTAL QUALITY
COMMISSION ON RADIATION PROTECTION**

**Dental Radiographic Installations
Definition of Qualified Individual**

Adopted Amendment: N.J.A.C. 7:28-16.2

Proposed: November 5, 1990 at 22 N.J.R. 3303(a).
 Adopted: April 17, 1991 by the Commission on Radiation Protection, Max M. Weiss, Ph.D., Chairman.
 Filed: May 24, 1991 as R.1991 d.305, **without change**.
 Authority: N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A. 26:2D-7.
 DEP Docket Number: 035-90-10.
 Effective Date: June 17, 1991.
 Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:

On November 5, 1990, the Commission on Radiation Protection ("CORP") proposed an amendment to the Dental Radiographic Installation regulations at N.J.A.C. 7:28-16 to add a definition of "qualified individual."

Notice of the proposed rule amendment was published on November 5, 1990 in the New Jersey Register at 22 N.J.R. 3303(a). Secondary notice was accomplished by publication in the Trenton Times, the Newark Star Ledger, and the Camden Courier Post and by direct mail notification to 58 individuals.

The written comment period ended December 15, 1990. The Department received written comments from one commenter, Donald F. Schutz, Ph.D., President of Teledyne Isotopes. His comments are reproduced and responded to below.

COMMENT: In the paragraph on social impact, it is stated, "... the individual performing shielding design evaluations and radiation surveys must be knowledgeable in radiation protection principles . . ." In practice an individual capable of performing shielding calculations and design is in a professional position, which would not be cost-effective to utilize for surveys. Radiation surveys are performed by experienced, trained technicians. While we agree that a "qualified individual" is necessary in the first situation (shielding design), he/she is over-qualified to perform the second task. This affects the assumptions made in the economic impact. If a person with the qualifications specified in the proposal is required to perform radiation surveys, the regulated dentists will need to expend more funds than are necessary to achieve the level of radiation protection that is sought.

RESPONSE: In order to perform a radiation survey, an individual must be knowledgeable in radiation protection procedures and principles. The definition lists those criteria of individuals who would be considered

as qualified. In establishing the definition, CORP's intent was to include all categories of individuals who would be considered to be qualified. An individual need only meet one of the several criteria listed.

CORP and the Department agree that someone who has had training in radiation protection principles and procedures can be trained to perform radiation surveys without having acquired advanced degrees and certifications. However, the individual must be trained and knowledgeable in radiation protection principles and procedures.

In developing the definition of a qualified individual, the Department reviewed resumes of individuals who perform radiation surveys. The proposed rule reflects the education and experience of the current population of individuals performing surveys.

This definition should not increase the economic impact to the dentist, as the dentist has the opportunity to contact several qualified individuals and compare the professional fee charged for a radiation survey. The dentist should then contract with one whose professional fee will suit the dentist's budget.

COMMENT: There may be alternate means to achieve the desired goals in the proposed regulations. If the "qualified individual" requirement is enforced for the supervisor of a technician performing the radiation survey, and the supervisor is also required to review the survey results, the intent of the proposed amendment will be met without an unnecessary expense to the users of dental x-rays.

RESPONSE: The requirements of N.J.A.C. 7:28-16.8(a) state that a qualified individual shall perform a radiation survey of the controlled and non-controlled areas surrounding a dental radiographic unit. The technician performing the survey must be an individual who meets at least one of the criteria of the definition. The technician's supervisor must be a qualified individual. The CORP believes, for reasons of providing the necessary levels of radiation protection, that the actual individual who performs the radiation survey must meet the criteria of a qualified individual. Simply having that person's supervisor meet the criteria will not provide the necessary degree of radiation protection.

COMMENT: The ability to perform x-ray surveys can also be restricted to those companies which are licensed by the State of New Jersey to do so. This would only require minor amendments to existing New Jersey radioactive materials licenses. This program could then be audited as part of the routine inspections already being performed.

RESPONSE: The concerns of the commenter are valid. However, this definition of a qualified individual applies only to the subchapter pertaining to dental radiographic installations. The definition of a qualified individual as it is applied to a State radioactive materials license would be addressed in N.J.A.C. 7:28-4, Licensing of Naturally Occurring and Accelerator Produced Radioactive Materials.

COMMENT: Dentists could be required to keep records of the number of exposures given to each patient. Even though a proper survey may have been performed on an x-ray machine, because there are presently no restrictions or records of the number of exposures for a given patient, CORP has not necessarily succeeded in "eliminating unnecessary exposure". Without specific guidelines to dentists on the type or amount of x-rays taken, CORP's goal of keeping doses "as low as reasonably achievable" will not be met for the patient.

RESPONSE: N.J.A.C. 7:28-2.6(b) states that "No provision of N.J.A.C. 7:28 regarding the treatment of human beings in the healing arts is intended to conflict with, supplant, or supersede any requirement of the Medical Practices Act of New Jersey." The patient record keeping requirements for dentists are addressed in the New Jersey Dental Practice Act.

Since 1977, the Bureau of Radiological Health has included in its routine inspection of dental radiographic equipment the evaluation of the radiation dose to the patient from a dental bitewing procedure using the DENT program (Dental Evaluation Normalization Technique) developed by the Federal government. The goal of the DENT program is to provide the dentist with an optimum quality x-ray film for diagnostic purposes and to keep the radiation exposure to the patient as low as reasonably achievable. This procedure is performed by taking a patient exposure entrance dose measurement using the dentist's technique factors and comparing the results to the chart of recommended exposure ranges. If the x-ray exposure falls outside the recommended range, the inspector will recommend alternate technique factors that will eliminate unnecessary exposure. CORP and the Department conclude that the DENT program in progress reduces unnecessary exposure far more than requiring a dentist to record each exposure. Therefore, no change to the rule is needed.

COMMENT: The commenter feels that the regulatory agency responsible for enforcement, the Bureau of Radiological Health, should

also achieve the same level of qualification required for members of private industry. A change to the regulations that would permit the supervisor of the inspector to meet the minimum requirements would satisfy this need. To the best of our knowledge, the New Jersey DEP does not employ any Certified Health Physicists, Medical Physicists, or Radiological Physicists in the capacity of inspector. Will any State personnel be affected by this ruling?

RESPONSE: The Department of Environmental Protection has reviewed the education and experience of the individuals inspecting ionizing radiation-producing equipment and the inspectors' supervisor. This review has determined that each of these individuals meets at least one of the criteria of the definition of a qualified individual. Therefore, no change to the rule is needed.

Full text of the adoption follows.

7:28-16.2 Definitions

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

"Qualified individual" means an individual who meets at least one of the following criteria for diagnostic x-ray equipment:

1. Certification by one of the following agencies in the specialty listed:
 - i. The American Board of Radiology in Diagnostic Radiological Physics or Radiological Physics;
 - ii. The American Board of Health Physics in Comprehensive Health Physics;
 - iii. The American Board of Medical Physics in Diagnostic Imaging Physics or Medical Health Physics;
 - iv. Certification issued by the Fellowship in the Canadian College of Physicists in Medicine which is equivalent to Ii or iii above; or
 - v. Certification by other national certifying boards which may be recognized by the Commission on Radiation Protection where the person seeking recognition as a qualified individual has petitioned the CORP in writing and where the CORP has issued a written determination that the certification in question meets the criteria of a qualified individual pursuant to this subchapter;
2. A bachelor's degree from an accredited college in biology, chemistry, radiation sciences, physics, engineering, or mathematics and at least five years of professional technical experience in the field of radiological physics or in the use of medical or dental ionizing radiation-producing equipment;
3. A master's or doctorate degree in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field and at least two years of professional technical experience in the field of radiological physics or in the use of medical or dental ionizing radiation-producing equipment; or
4. Ten years of professional technical experience in the field of radiological physics or in a radiation protection activity. At least five years of the required health physics experience shall have been with medical or dental ionizing radiation-producing equipment.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

Certificate of Need; Trauma Centers Designation of Additional Level II Trauma Centers Adopted Amendments: N.J.A.C. 8:33P-2.1 and 2.4

Proposed: March 18, 1991 at 23 N.J.R. 822(a).

Adopted: May 14, 1991 by Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Filed: May 17, 1991 as R.1991 d.290, **without change**.

Authority: N.J.S.A. 26:2K-35 et seq. and 26:2H-1 et seq.

Effective Date: June 17, 1991.
 Expiration Date: March 19, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: Only one comment was submitted in response to the proposal. Jersey City Medical Center commented that it supported the amendments to the rules because they provide the State Commissioner of Health greater flexibility to assess the need for access to Level II trauma centers in local geographic areas.

RESPONSE: The Department of Health is adopting the rule amendment as proposed.

Full text of the adoption follows.

8:33P-2.1 Submission dates for certificate of need applications

(a) Applications for designation as a Level I or a Level II trauma center shall be competitively reviewed at each level pursuant to batching procedures set forth in N.J.A.C. 8:33-1.5. The following schedule shall apply for the submission of certificate of need applications for trauma center designation during calendar years 1990 and 1991:

Deadlines for Submission	Cycle Begins
March 1, 1990†	April 15, 1990†
April 1, 1990†	May 15, 1990†
July 1, 1991	August 15, 1991

†For one time only, applications for designation as a Level I Trauma Center in EMS Region II as shown in Attachment A, which is identical to HSA Region IV as shown in Attachment B, shall be submitted on March 1, 1990 rather than April 1, 1990. Level II applications shall be submitted on April 1, 1990.

(b) (No change.)

8:33P-2.4 Need criteria

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

(c) Where the Commissioner of Health finds compelling evidence that factors unique to a service area create access deprivations in certain regions which require him or her to exceed the need criteria specified in (b) above, in order to accommodate the public need for timely access to trauma care, he or she may approve additional Level II trauma centers in specific regions where applicants satisfy the remaining requirements of this chapter, including minimum volume requirements as well as clinical and quality assurance requirements; provided that the total number of Level II trauma centers designated in the State does not exceed seven. Any applicant for an additional Level II trauma center shall request in writing a waiver from the need criteria in (b) above, which request shall be recommended for approval or denial in writing by the HSA (or Local Advisory Board, if designated) for the area. In the review of the waiver request, the applicant shall present, and the HSA (LAB) and the Commissioner shall consider, specific evidence regarding access problems, including, but not limited to, the following:

1. Travel times from the proposed Level II trauma center area, compared to travel times to trauma centers in other geographic areas in the State, for EMS transport of major trauma victims by ground or air to other designated trauma centers outside the area;
2. Other EMS services already available in the area;
3. The incidence of major trauma within the area;
4. The potential adverse impact on patient volume at previously designated trauma centers; and
5. Cost of implementation and operation.

Recodify (c) as (d) (No change in text.)

(a)

DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH

Worker and Community Right to Know Act

Adopted Amendment: N.J.A.C. 8:59-1.3

Adopted New Rules: N.J.A.C. 8:59-12

Proposed: June 18, 1990 at 22 N.J.R. 1892(a).

Adopted: May 13, 1991, by Frances J. Dunston, M.D., M.P.H. Commissioner, Department of Health.

Filed: May 17, 1991 as R.1991 d.291 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. 34:5A-1 et seq., specifically 34:5A-13.

Effective Date: June 17, 1991.

Expiration Date: September 29, 1994.

Summary of Public Comments and Agency Responses:

Written comments were submitted by the following:

- American Industrial Hygiene Association, New Jersey Section
- Frances Conrad, M.S., CIH
- Health and Safety Professional Services, Inc.
- Hunterdon County Department of Health
- Princeton Testing Laboratory, Inc.
- Pryme Safety Services
- R.K. Occupational and Environmental Analysis, Inc.
- Herbert S. Skovronek, Ph.D.
- TecTra Associates, Inc.
- The Forum for Scientific Excellence, Inc.

The following summarizes the comments received and provides the Department's responses to these comments. All comments are on file at the Department of Health.

1. **COMMENT:** Pryme Safety Services asked if consultant trainers would have flexibility to use their own programs or will they be required to follow a state prepared script and state approved visual aids.

RESPONSE: These rules do not change the ability of consultant trainers to use their own programs and visual aids. The purpose of this subchapter is to ensure the accuracy and completeness of information in the required Right to Know education and training program given to public employees and that such programs contain the information required by N.J.A.C. 8:59-6. It is not meant to infringe upon the individual abilities and creativity of consultant trainers in presenting the information.

2. **COMMENT:** Pryme Safety Services suggested that the Department of Health give consultants a copy of the standards by which their programs will be evaluated.

RESPONSE: The standards by which programs will be evaluated consist of the specific topics required to be covered in a Right to Know education and training program, contained in N.J.A.C. 8:59-6.3. The Department has prepared materials which summarize N.J.A.C. 8:59-6 and give recommendations for setting up a successful education and training program. Each applicant will receive a copy of "Guidelines for Education and Training Programs," "Guidelines for Annual Education and Training Program," and a copy of the rules. These three documents have been available for many years, and will continue to be available.

3. **COMMENT:** Pryme Safety Services, R.K. Occupational and Environmental Analysis and The Forum for Scientific Excellence suggested that employees of public agencies who conduct RTK training for their own or other public agencies should be included in the certification process, so that all instructors and programs meet the same qualifying standards.

RESPONSE: Public employees who conduct RTK education and training programs for public employers are evaluated according to the same requirements of N.J.A.C. 8:59-1.3 and 6 as private consultants and consulting agencies. The evaluation occurs at the time of the facility's inspection by the Right to Know Program. The amendment to the Right to Know law that authorizes these rules focused on private consultants and consulting agencies who provide education and training for remuneration in order to protect public employers who contract for services to comply with the law and prevent them from receiving inadequate programs and citations for non-compliance.

4. COMMENT: Princeton Testing Laboratory asked when permanent certification could be applied for and whether it could be made at the same time as the application for provisional certification. Health and Safety Professional Services said that the application process was confusing and thought that an additional application for permanent certification had to be made.

RESPONSE: There is no separate application for provisional and permanent certification. Only one application form and one application fee needs to be submitted for both. The two categories were created so that consultants and consulting agencies could receive preliminary approval (provisional certification) pending the more complete evaluation which will result in permanent certification. Provisional certification will be decided fairly quickly because it is based on the material submitted to the Program. Permanent certification will take longer to grant because the Department will need to conduct an on-site evaluation of one or more Right to Know education and training program presentations to evaluate the program's contents in practice, the knowledge of the consultant as evidenced by actual teaching, and the consultant's ability to effectively convey the required information to the employees. The wording in N.J.A.C. 8:59-12.3 through 12.8 has been changed to clarify this.

5. COMMENT: Princeton Testing Laboratory asked why a consultant working for a certified consulting agency has to be certified if the requirements for approval are the same.

RESPONSE: The requirements for certification are not the same and the language has been modified in N.J.A.C. 8:59-12.2 through 12.8 to reflect this. The law was written to certify both persons "who are paid pursuant to the terms of a contract by employers to conduct education and training programs for purposes of compliance with this act" and education and training programs "provided to employers, for remuneration, for compliance with this Act." A consultant trainer needs to meet the "technically qualified person" qualification set forth in N.J.A.C. 8:59-1.3, while a consulting agency training program must meet the Right to Know education and training program requirements of N.J.A.C. 8:59-6.

6. COMMENT: Princeton Testing Laboratory asked why the Department of Health charges a fee for certification, while other state agencies do not.

RESPONSE: Many professional organizations and state agencies charge for certifying that a person has reached a certain level of competence in their field. In addition, the State must charge fees to cover the costs of administering the certification program. It is reasonable for the State to charge fees to persons and organizations who will benefit monetarily from the certification granted by the State.

7. COMMENT: The Hunterdon County Department of Health asked if 30 hours of hazardous substance training refers to a "Train-the-Trainer" course.

RESPONSE: Many people have taken a 30-hour Right to Know Train-the-Trainer course in the past, or may be taking one in the future. While this course would meet the requirement for 30 hours of hazardous substance training, it is not the only way to meet this requirement. The 30 hours of training may also be met by the combination of one or more hazardous substance training courses.

8. COMMENT: Frances Conrad stated that the two step certification process is unnecessary and burdensome to both applicants and the Department, and that the same results would be achieved by granting certification subject to revocation. Dr. Herbert Skovronek saw no reason to require provisional status before permanent status is granted.

RESPONSE: Granting permanent certification without any on-site evaluation would give public employers the impression of complete adequacy of consultants and consulting agencies. Provisional certification does not necessarily mean that permanent certification will be granted. The two-step process is a reasonable method to insure that paper credentials and programs can be transferred into effective training programs. There will be no additional burden on an applicant after provisional certification is obtained, other than providing a bi-monthly list of upcoming training programs to the Department.

Also, it is much more difficult to revoke the certification of an incompetent trainer or an inadequate training program which would operate to the detriment of public employers and employees, than it is to deny permanent certification at the outset.

9. COMMENT: R.K. Occupational and Environmental Analysis and Dr. Herbert Skovronek suggested the addition of a provision for "grandfathering" those individuals and agencies who have been providing Right to Know training for many years.

RESPONSE: Any consultant and consulting agency with years of experience conducting Right to Know training should easily meet the certification requirements. The Department feels that all consultants and consulting agencies should be evaluated.

10. COMMENT: Dr. Herbert Skovronek recommended that a "phase-in" period be incorporated into the rules, during which uncertified consultants and consulting agencies may function, pending processing of the applications by the Department.

RESPONSE: Provisional certification will be decided fairly quickly because it will be based on a review of materials submitted to the Program; thus, there is no need to have a "phase-in" period. Consultants and consulting agencies which submit applications that are not grossly inadequate will be allowed to continue operating pending issuance of provisional certification.

11. COMMENT: Dr. Herbert Skovronek suggested that the application form to be used for certification be included in the rule so that it may be reviewed and commented on.

RESPONSE: The application form is a simple one-page form. Any recommended improvements can be directed to the Department and incorporated into a revised form.

12. COMMENT: Dr. Herbert Skovronek felt that the rules did not spell out the criteria for certification nor who, within the Department, will do the certification.

RESPONSE: The Department disagrees. To qualify as a consultant, a person must meet the criteria for a "technically qualified person," N.J.A.C. 8:59-1.3, as well as the additional requirements of N.J.A.C. 8:59-12. For a consulting agency, their Right to Know training program must meet the requirements of N.J.A.C. 8:59-6 as well as the additional requirements of this rule. The staff of the Right to Know Program will review and approve the certification.

13. COMMENT: Dr. Herbert Skovronek recommended allowing consultants to develop and distribute materials for the programs they teach without obtaining consulting agency certification.

RESPONSE: It is necessary to keep certification of training and training materials separate, because many people only do one or the other. A consultant who develops his or her own training program needs to receive two certifications but only pays the one \$500.00 fee.

14. COMMENT: Dr. Herbert Skovronek did not see the difference between an instructor and a consultant in N.J.A.C. 8:59-1.3, Definitions.

RESPONSE: There is no difference between the two. In order to reduce confusion, N.J.A.C. 8:59-1.3 has been changed to delete the definition of "instructor."

15. COMMENT: Hunterdon County Department of Health asked how a county employee who provides Right to Know training to other public employees and whose time is reimbursed by the public employers would fit within the rules.

RESPONSE: N.J.A.C. 8:59-12.1(b) specifies that these rules do not apply to employees of public agencies, such as county health departments, who provide Right to Know training to county or other public employees in their role as a public employee. This applies even if the public employer is reimbursed for their services. Any public employee who conducts Right to Know training in a private capacity for personnel remuneration, however, is subject to these rules.

16. COMMENT: The American Industrial Hygiene Association stated that N.J.A.C. 8:59-12.1(f) should be revised to delete the mandatory attendance at meetings and that the Department could provide update information through memos, newsletters or phone calls.

RESPONSE: The Department agrees and has changed N.J.A.C. 8:59-12.1(f) to delete the requirement for mandatory attendance. The Department encourages each consultant and consulting agency to attend these meetings because of the benefits they provide from face-to-face dialogue. Update information will be transmitted by the Department through memos and newsletters.

17. COMMENT: Pryme Safety Services, Dr. Herbert Skovronek, Princeton Testing Laboratory, R.K. Occupational and Environmental Analysis, Hunterdon County Department of Health and the American Industrial Hygiene Association were concerned that informing the Department of courses every six months, as specified in N.J.A.C. 8:59-12.1(g), would not serve the Department's need to monitor programs which are generally not scheduled six months in advance.

RESPONSE: The Department agrees. Therefore, this section will be changed to require notification at two month intervals. The Department will accept voluntary notification of training sessions at any time.

18. COMMENT: In reference to N.J.A.C. 8:59-12.1(h), Dr. Herbert Skovronek requested specific guidelines for what must be included in any advertisements.

RESPONSE: The Department is concerned that advertisement of certifications issued by the Department not be inaccurate or misleading. For this reason, the Department requires, in N.J.A.C. 8:59-12.1(h), that if the certification is advertised, it must specify that the certification only applies to New Jersey Worker Right to Know education and training for public employees, and that it is provisional or permanent. If there is evidence of abuse, more specific rules may be promulgated.

19. COMMENT: Dr. Herbert Skovronek pointed out that N.J.A.C. 8:59-12.2(b) references the wrong citation.

RESPONSE: This and several other typographical errors have been corrected.

20. COMMENT: Princeton Testing Laboratory and Hunterdon County Department of Health asked what kind of information an applicant would need to document the methods used to develop the applicant's understanding of health risks associated with exposure to hazardous substances. (N.J.A.C. 8:59-12.3(a)).

RESPONSE: Proof of understanding of health risks associated with exposure to hazardous substances applies both to a trainer with an appropriate degree and one with 30-hours of hazardous materials training. It may be demonstrated by certain courses reflected on college transcripts, post-graduate courses, hazardous materials and other training programs attended, other certifications and degrees received, work experiences, etc. These examples of documentation of an understanding of health risks have been listed in N.J.A.C. 8:59-12.3(a) of the adopted rule.

21. COMMENT: Health and Safety Professional Services and the American Industrial Hygiene Association stated that the definition of "technically qualified person" does not recognize professional health and safety practitioners such as Certified Industrial Hygienists and Certified Safety Professionals, and pointed out that the criteria for certification of such practitioners are more stringent than those set forth in N.J.A.C. 8:59-1.3.

RESPONSE: The Department will amend N.J.A.C. 8:59-1.3 to recognize Certified Industrial Hygienists (CIH) as meeting the definition of a "technically qualified person," thus automatically qualifying them for provisional certification. N.J.A.C. 8:59-12.3(a) has been changed to allow CIHs to submit proof of current certification in lieu of other documentation. Permanent certification, however, will still depend on the results of the Department's on-site visit to a session conducted by the CIH.

22. COMMENT: Frances Conrad stated that a transcript should be sufficient documentation of a degree and that a diploma would be duplicative.

RESPONSE: The Department agrees, and N.J.A.C. 8:59-12.3(a) has been changed.

23. COMMENT: Frances Conrad commented that N.J.A.C. 8:59-12.6 requires the consulting agency to submit written documentation of the education and experience of its instructors even though the Department has already approved the instructor (consultant's) education and experience.

RESPONSE: The Department agrees and has modified the wording of N.J.A.C. 8:59-12.6(a) to require only the submission of a list of instructors and the status of their provisional or permanent certification.

24. COMMENT: Health and Safety Professional Services interpreted the new rules to mean that a consulting agency needed to have certified instructors before applying for certification as a consulting agency.

RESPONSE: This interpretation is not correct. A consulting agency can submit an application for certification as a consulting agency and applications for its current trainers to be certified as consultants at the same time, but does not have to obtain consultant certification first. Any employees not certified cannot teach the training program until certified. When an application for a consulting agency is accompanied by applications for consultants (trainers) who are its employees, all applications will be processed together. N.J.A.C. 8:59-12.6(a) has been clarified to require information on the status of a trainer's certification application, rather than full documentation.

25. COMMENT: Health and Safety Professional Services, Dr. Herbert Skovronek, the American Industrial Hygiene Association, and Frances Conrad commented that the certification fees were excessive, would discourage qualified individuals from providing these services, and were confusing. TecTra Associates recommended that fees be waived for small businesses.

RESPONSE: The fees were determined according to the needs of the Department in administering the certification program. Only one fee needs to be paid for certification—\$200.00 by a consultant, and \$500.00 by a consulting agency. In other words, a person who is just going to

teach the Right to Know training program would apply for certification as a consultant and pay \$200.00. A person or company which has developed written and visual materials which constitute a complete Right to Know training program, which will be taught by others, would apply for certification as a consulting agency and pay \$500.00. A person who develops his or her own Right to Know training program and teaches it can apply for both certifications for \$500.00. However, an organization which develops its own training program and has its employees teach the course must pay \$500.00 for consulting agency certification and \$200.00 for each employee who will teach the course. N.J.A.C. 8:59-12.9 has been revised to delete the reference to an extra cost for permanent certification.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 8:59-12.2(b) was clarified upon adoption through the addition of subsection (c), setting forth that the information required of a consulting agency applicant included class outlines, teaching methods, and evaluation tools. Since the agencies provide the program, it is logical for them to provide the program information, rather than both they and the consultants providing it as proposed.

2. In N.J.A.C. 8:59-12.4(a), a change was made to require that consultants, in order to secure permanent certification, provide the documentation required under N.J.A.C. 8:59-6 to the public employer. As public employers are required to have this documentation, and consultants to provide it through their running of the education and training programs, this change reinforces the consultants' responsibility to the public employer.

3. N.J.A.C. 8:59-12.6(b) was added to reiterate and provide more detail concerning the materials to be submitted by a consulting agency applicant under N.J.A.C. 8:59-12.2(c).

Full text of the adoption follows (additions to proposal indicated in boldface *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

8:59-1.3 Definitions

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

...
 "Consultant" means a person who is a technically qualified person, as specified in N.J.A.C. 8:59-1.3, who conducts Right to Know education and training programs for public employees, pursuant to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration. "Conducting" means the actual teaching of the program.

"Consulting agency" means an individual who meets, or a corporation or partnership which employs persons who meet, the criteria for a technically qualified person as specified in N.J.A.C. 8:59-1.3, and which develops and provides training objectives, outlines, teaching materials and evaluation tools for the Right to Know education and training program to public employers according to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration. An individual consultant may also be a consulting agency at the same time.

...
 ["Instructor" means a person who meets the requirements described in the definition of technically qualified person in N.J.A.C. 8:59-1.3.]

...
 "Providing" means the selling of a written program along with corresponding materials.

...
 "Shall" means a mandatory requirement.

SUBCHAPTER 12. CERTIFICATION OF CONSULTANTS AND CONSULTING AGENCIES

8:59-12.1 General provisions

(a) Consultants who conduct and consulting agencies which provide the Right to Know education and training program to a public employer shall possess a current certification, in good standing, issued by the Department of Health.

(b) This subchapter shall affect only those consultants who conduct, and consulting agencies which provide, Right to Know education and training programs for remuneration and shall not include Right to Know education and training programs performed by

employees of public agencies for ***their own or*** other public agencies for the purpose of compliance with the Right to Know law. ***However, if public employees conduct such education and training programs outside of their job responsibilities on their own time for remuneration, they must comply with the requirements of this subchapter.***

(c) Training conducted by a consultant or provided by a consulting agency that is regulated by this subchapter shall not be limited to initial and annual Right to Know education and training programs but shall also include 30-hour Train-the-Trainer courses or any other courses provided to the public employer ***[in compliance]* *to enable the public employer to comply*** with the Right to Know law.

(d) The Department of Health shall determine if the 30 hours of hazardous substance training required by N.J.A.C. 8:59-1.3 for a technically qualified person are met. Documentation, such as course certificates and course outlines, shall be submitted to the Department with the application for certification ***in support of the 30 hours of training***. Right to Know education and training programs shall cover all topics as specified in N.J.A.C. 8:59-6.

(e) Application for renewal shall be received by the Department 60 days prior to the expiration date of the permanent certification.

(f) ***[Consultants and consulting agencies shall be present at any update]* *Update* meetings ***[sponsored]* *will be scheduled*** by the Department of Health in order to ensure uniformity and accuracy in Right to Know education and training programs.**

(g) All consultants and consulting agencies shall inform the Department of Health, every ***[six]* *two*** months, of upcoming Right to Know education and training programs to be conducted, and shall permit representatives of the Department of Health to attend, evaluate and monitor the Right to Know education and training programs.

(h) Any advertisement by a consultant or consulting agency of their Right to Know certification by the Department of Health shall specify that the certification only applies to New Jersey Right to Know education and training of public employees and shall specify provisional or permanent status.

(i) All consultants and consulting agencies shall cooperate fully with the Department of Health in all matters which pertain to this rule.

8:59-12.2 Process for application

(a) All applications for certification shall be typewritten on an application form issued by the Department and accompanied by the fee specified by N.J.A.C. 8:59-***[12.5]**12.9***. The fee may be in the form of a check or a money order, made payable to Treasurer, State of New Jersey.

(b) The application ***by a consultant*** shall include, but not be limited to, the applicant's name, address, ***[copy of resume, certification]* *and documentation*** of ***[completion of courses]* *education and experience*** required to qualify as a technically qualified person pursuant to N.J.A.C. ***[8:59-1.2]* *8:59-1.3***.

[c]**(e)* The application by a consulting agency shall include, but not be limited to, the applicant's name and address as well as class outlines, teaching methods, and evaluation tools.

***[d]* All Right to Know education and training programs provided to or conducted on behalf of public employers shall conform to the requirements of N.J.A.C. 8:59-6.**

***[(c)**(e)* Applicants shall, by signature on the application form, attest to the accuracy of the information submitted.**

8:59-12.3 Provisional certification of consultants

(a) An applicant for ***[provisional]* certification** as a consultant shall submit a completed application form and appropriate fee, as required in N.J.A.C. 8:59-12.2, and written documentation of the possession of education and experience as specified in the definition of a technically qualified person at N.J.A.C. 8:59-1.3. Documentation of a degree shall include a transcript ***[and a copy of the diploma granted]***. Documentation of 30 hours of hazardous substance training shall include the number of hours for each course, a copy of the certificate of completion, and a copy of the course outline. Documentation of the methods used to develop the applicant's understanding of health risks associated with exposure to hazardous substances, as defined in N.J.A.C. 8:59-1.3 shall also be submitted. ***This under-**

standing may be demonstrated by certain courses taken in college, post-graduate courses, hazardous materials and other training programs attended, other certifications and degrees received, work experiences, etc. Certified Industrial Hygienists need only submit proof of current certification with their application and fee.*

(b) Provisional certification of consultants shall be ***granted upon the submission of the above documents and the Department's review and approval of same, and shall be*** effective until permanent certification is granted or denied, but shall in no case be effective for more than two years.

8:59-12.4 Permanent certification of consultants

[An applicant for permanent certification as a consultant shall submit a completed application form and appropriate fee, as required in N.J.A.C. 8:59-12.2, and written documentation of the possession of education and experience as specified in the definition of a technically qualified person at N.J.A.C. 8:59-1.3. An applicant]* *[(a) In order to secure permanent certification, a consultant]* shall ***[also]* possess a current provisional ***[certificate]* *certification, ***[and]* shall demonstrate, during one or more Right to Know education and training programs, the knowledge, skills and ability to effectively convey the information required by N.J.A.C. 8:59-6 to employees participating in the program*, and shall provide all documentation required by N.J.A.C. 8:59-6 to the public employer***.****

[(b) Consultants shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.5 Renewal of permanent certification of consultants

(a) An applicant for renewal of permanent certification as a consultant shall submit the following to the Department 60 days prior to the expiration of the certification:

1. A completed application form^[*] as specified by N.J.A.C. 8:59-12.2;

2. A declaration of any additions, deletions or changes occurring since the previous application; and

3. The fee specified by N.J.A.C. 8:59-12.9.

(b) An applicant for ***renewal of*** permanent certification as a consultant shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.6 Provisional certification of consulting agencies

(a) An applicant for ***[provisional]* certification** as a consulting agency shall submit the completed application form and appropriate fee required in N.J.A.C. 8:59-12.2, ***[and]* a list of ***[instructors]* *any consultants*** who will conduct the Right to Know education and training programs for the agency^[*]. The consulting agency shall also submit written documentation of the education and experience of such instructors, as specified in the definition of "technically qualified person" found at N.J.A.C. 8:59-1.3^[*] and ***the status*** of the ***[instructors]* *consultants*** provisional or permanent certification ***[as a consultant]***.**

[(b) The applicant shall submit copies of teaching materials and methods which cover the material to be presented by the consultant as required by N.J.A.C. 8:59-6. Documentation of the education and training program such as lesson plans, class outlines, methods of employee evaluation, sample attendance sheet, and course evaluation forms required by N.J.A.C. 8:59-6 must also be submitted.

[(b)**(e)* Provisional certification of consulting agencies shall be ***granted upon the submission of the documents in (a) and (b) above and the Department's review and approval of same, and shall be effective until permanent certification is granted or denied, but shall in no case be effective for more than two years.**

8:59-12.7 Permanent certification of consulting agencies

(a) ***[An applicant for]* *In order to secure*** permanent certification^[*], ***[as]* a consulting agency shall ***[submit, with the completed application form and appropriate fee required in N.J.A.C. 8:59-12.2, evidence of the possession of]* *possess*** a current provisional ***[certificate]* *certification*** as a consulting agency, ***[and shall]* demonstrate, during one or more Right to Know education and training programs, that the ***program's contents contain the information required by N.J.A.C. 8:59-6 and the*** instructors possess the knowledge, skills and ability to effectively convey the information****

[required by N.J.A.C. 8:59-6] to the employees participating in the program*, and that all documentation required by N.J.A.C. 8:59-6 has been provided to the public employer*.

(b) *[An applicant for permanent certification as a consulting agency]* *Consulting agencies* shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.8 Renewal of permanent certification of consulting agencies

(a) An applicant for renewal of permanent certification as a consulting agency shall submit the following to the Department 60 days prior to the expiration of the certification:

1. A completed application form as specified by N.J.A.C. 8:59-12.2;
2. A declaration of any additions, deletions or changes occurring since the previous application; and
3. The fee specified by N.J.A.C. 8:59-12.9.

(b) An applicant for permanent certification renewal as a consulting agency shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.9 Fees

(a) Fees for certification and renewal shall be submitted with the application and shall be non-refundable.

(b) Fees for an individual consultant shall be as follows:

1. *[Provisional certification]* *Certification application*—\$200.00; *and*
- *[2. Permanent certification—\$100.00; and]*
- *[3.]**2.* Renewal of permanent certification—\$100.00.

(c) Fees for a consulting agency shall be as follows:

1. *[Provisional certification]* *Certification application*—\$500.00; *and*
- *[2. Permanent certification—\$200.00; and]*
- *[3.]**2.* Renewal of permanent certification—\$200.00.

(d) For a person applying for certification or renewal as both a consultant and a consulting agency, the fees charged in accordance with (b) *and* (c)* above shall not exceed \$500.00.

8:59-12.10 Rejection of applications

(a) An application from an individual consultant or consulting agency may be rejected by the Department if the application does not meet the requirements of N.J.A.C. 8:59-12.

(b) Rejection shall be based on deficiencies in documentation of the requirements of N.J.A.C. 8:59-1.3, 6, and 12. The Department retains the right to request supplemental information to the application.

(c) Any rejected application may be resubmitted with additional information within a year of receipt of the original application without additional fees incurred.

(d) If an application is rejected three times, the consultant or consulting agency may exercise the right to an informal hearing, as specified in N.J.A.C. 8:59-12.8**12.12*.

8:59-12.11 Suspension or revocation of certification

(a) A consultant may have his or her certification suspended or revoked for:

1. Incompetence;
2. Failure to adequately present either the topics set forth in N.J.A.C. 8:59-6, or any other materials required by the Department of Health pursuant to N.J.A.C. 8:59-6.3(c);
3. Submitting false information on an application;
4. Failure to comply with the rules *[in this chapter]* *promulgated under N.J.A.C. 8:59*; or
5. Any violations of N.J.S.A. 34:5A-1 and 34:5A-13, and any rules adopted pursuant to the law.

(b) A consulting agency may have its certification suspended or revoked for:

1. Failure to adequately present either the topics set forth in N.J.A.C. 8:59-6, or to present any other materials required by the Department of Health pursuant to N.J.A.C. 8:59-6.3(c);
2. Submitting false information on an application;
3. Failure to comply with the rules promulgated under N.J.A.C. 8:59; or

4. Any violations of N.J.S.A. 34:5A-1, 34:5A-13, and any rules adopted pursuant to the law.

8:59-12.12 Hearings for consultants and consulting agencies when certification has been denied, revoked or suspended

(a) When the Commissioner of Health proposes to deny an application for certification, or revoke or suspend a certification, the consultant or consulting agency shall have the right to an informal hearing under (b) below or a formal hearing under (c) below or both.

(b) An informal hearing before the Commissioner of Health or his or her designee may be held provided a written request is submitted within 20 days after the notice has been received that the Commissioner of Health proposes to deny an application for certification, or to revoke or suspend a certification. When the hearing is held before the Commissioner of Health or his or her designee, the Commissioner or his or her designee shall state his or her findings and conclusions in writing and transmit a copy to the consultant or consulting agency.

(c) A formal hearing before the Office of Administrative Law may be held provided a written request is submitted *by the applicant* within 20 days after *the* notice *has been received that the Commissioner of Health proposes* to deny an application for certification, or to revoke or suspend a certification *[has been received by the Commissioner]*, pursuant to N.J.S.A. 34:5A-31. The procedures governing all formal hearings shall be in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 34:5A-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Controlled Dangerous Substances

Adopted New Rules: N.J.A.C. 8:65

Proposed: October 15, 1990 at 22 N.J.R. 3190(a).

Adopted: May 14, 1991 by Frances J. Dunston, M.D., M.P.H.,

Commissioner, Department of Health.

Filed: May 17, 1991 as R.1991 d.292, **without change.**

Authority: N.J.S.A. 24:21-3 and 24:21-9.

Effective Date: June 17, 1991.

Expiration Date: June 17, 1996.

Summary of Public Comments and Agency Responses:

No comments received. N.J.A.C. 8:65 expired December 2, 1990, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), the expired rules are adopted herein as new rules.

Full text of the expired rules adopted as new can be found in the New Jersey Administrative Code at N.J.A.C. 8:65.

(b)

HEALTH FACILITIES EVALUATION AND LICENSING

Controlled Dangerous Substances

Addition to Schedule III: N.J.A.C. 8:65-10.3(b)4 Anabolic Steroids

Effective Date: April 15, 1991.

Authority: N.J.S.A. 24:21-3.

Take notice that, effective April 15, 1991, Anabolic Steroids enumerated below (CDS Code 4000) have been placed into Schedule III of the Controlled Dangerous Substances Act. This action has been taken pursuant to N.J.S.A. 24:21-3 which provides that once a controlled substance has been scheduled under Federal law and notice is given to the Commissioner of Health, the Commissioner shall similarly schedule the substance after 30 days following the publication in the Federal Register of a final Order scheduling the substance.

A final Order scheduling Anabolic Steroids enumerated below was published in the Federal Register February 13, 1991 (see 56 F.R. 5753).

HIGHER EDUCATION

ADOPTIONS

The Federal action was taken to comply with the provisions of the Anabolic Steroids Control Act of 1990 (P.L. 101-647) as part of the Omnibus Crime Control Bill (S-3266). The scheduling of Anabolic Steroids will result in the registration of certain manufacturers and distributors not heretofore subject to registration. Publication of this notice also serves to add N.J.A.C. 8:65-10.3(b)4, containing the list of anabolic steroids.

The final Order scheduling Anabolic Steroids exempts from registration and other recordkeeping requirements handlers of Anabolic Steroids expressly intended for administration through implants to cattle or other nonhuman species and which have been approved by the United States Secretary of Health and Human Services for such administration.

The term "Anabolic Steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogen, progesterin and corticosteroids) that promote muscle growth. It also includes their salts, esters, or isomers of a drug or substance described below or salts of isomers whenever the existence of such salts of isomers is possible within the specified chemical classification.

Full text of N.J.A.C. 8:65-10.3(b)4 added by this notice follows (additions in boldface **thus**):

8:65-10.3 Controlled dangerous substances: Schedule III

(a) (No change.)

(b) The following is Schedule III listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code numbers:

1.-3. (No change.)

4. Anabolic steroids (CDS Code 4000), as follows:

i. Boldenone;

ii. Chlorotestosterone (4-chlortestosterone);

iii. Clostebol;

iv. Dehydrochloromethyltestosterone;

v. Dihydrotestosterone (4-dihydrotestosterone);

vi. Drostanolone;

vii. Ethylestrenol;

viii. Fluoxymesterone;

ix. Formebolone (formebolone);

x. Mesterolone;

xi. Methandienone;

xii. Methandranone;

xiii. Methandriol;

xiv. Methandrosterone;

xv. Methenolone;

xvi. Methyltestosterone;

xvii. Mibolerone;

xviii. Nandrolone;

xix. Norethandrolone;

xx. Oxandrolone;

xxi. Oxymesterone;

xxii. Oxymetholone;

xxiii. Stanolone;

xxiv. Stanozolol;

xxv. Testolactone;

xxvi. Testosterone;

xxvii. Trenbolone; and

xxviii. Any salt, ester, or isomer of a drug or substance described or listed above.

Filed: May 24, 1991 as R.1991 d.306 with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:71-33; 18A:71-40.7.

Effective Date: June 17, 1991.

Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received by Janice S. Robinson, Assistant Dean, Rutgers School of Law, Newark. The commenter requested that in proposed N.J.A.C. 9:11-3.1(a)2, the word "and" be changed to "or" in order to make the rule more inclusive of students who are underrepresented minorities and from disadvantaged backgrounds.

RESPONSE: The Board accepts and agrees with the commenter's suggestion and is changing the word "and" to "or" at N.J.A.C. 9:11-3.1(a)2 in order to broaden inclusivity for students who are underrepresented minorities and from disadvantaged backgrounds. The change is consonant with the statute's (N.J.S.A. 18A:71-40.7) intent. Further, it was the Board's intent to create this inclusivity in its original proposed rules.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks ***[thus]***).

SUBCHAPTER 3. C. CLYDE FERGUSON LAW SCHOLARSHIP

9:11-3.1 Student eligibility

(a) To be eligible for a C. Clyde Ferguson Law Scholarship, a student shall demonstrate that he or she:

1. Is or has been a legal resident of the State of New Jersey for at least one year immediately prior to receiving the scholarship;

2. Is a student who meets the requirements of N.J.A.C. 9:11-1.5 ***[and]* *or*** falls within one of the following categories:

i. A minority or disadvantaged student who is traditionally underrepresented in the law profession and has demonstrated financial need;

ii. A former or current recipient of the New Jersey EOF undergraduate grant; or

iii. A student who would have been eligible as an undergraduate for a New Jersey EOF; and

3. Is or will be a full-time student enrolled in the Minority Student Program at Rutgers, The State University School of Law-Newark, and enrolled in Rutgers, The State University School of Law-Camden, or Seton Hall University School of Law. Students shall be in a post-baccalaureate program of study leading toward an initial law degree.

9:11-3.2 Grant amounts

(a) The maximum and minimum award ranges for a Ferguson Scholarship shall be annually established by the Board of Directors of the New Jersey Educational Opportunity Fund but shall not exceed the maximum amount of tuition, fees, room and board charged at the Rutgers University School of Law-Newark.

(b) The amount of each Ferguson Scholarship shall be based on the financial need of the student as determined pursuant to N.J.A.C. 9:11-1.7(a), (b), (c) and (f).

9:11-3.3 Rules incorporated by reference

The following provisions of subchapter 1 of this chapter, N.J.A.C. 9:11-1, governing the EOF Program shall also apply to grants made under the C. Clyde Ferguson Law Scholarship program unless they are inconsistent with, or otherwise excepted within, the provisions of this subchapter: N.J.A.C. 9:11-1.2, 1.3, 1.4, 1.6(a), (c), (d), (f), 1.13, 1.15, 1.16, 1.17, 1.19, 1.20, 1.21 and 1.22.

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

C. Clyde Ferguson Law Scholarship

Adopted New Rules: N.J.A.C. 9:11-3

Proposed: November 19, 1990 at 22 N.J.R. 3439(a).

Adopted: May 23, 1991 by the Board of Directors of Educational Opportunity Fund, Delbert Payne, Chairperson.

HUMAN SERVICES**(a)****DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****New Jersey Care . . . Special Medicaid Programs Manual****Medicaid Eligibility Pregnant Women and Children****Adopted Concurrent Amendments: N.J.A.C. 10:72-1.1, 3.4, 4.1, 4.3 and 4.5**

Proposed: April 15, 1991 at 23 N.J.R. 1200(a).

Adopted: May 24, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: May 24, 1991 as R.1991 d. 302, **without change.**

Authority: N.J.S.A. 30:4D-3, 30:4D-7, 7a, b and c and 1902(a)(10)(A)(IV), 1902(1)(c) and (2)(B) of the Social Security Act.

Effective Date: May 24, 1991.

Expiration Date: August 27, 1992.

Summary of Public Comments and Agency Responses:
No comments received.**Full text** of the adoption follows.**10:72-1.1 Program scope**

(a) This chapter contains the criteria for Medicaid eligibility for certain pregnant women and children not eligible under the provisions of N.J.A.C. 10:81 and 82, as well as, certain aged, blind, and disabled persons not eligible under the provisions of N.J.A.C. 10:71.

1. and 2. (No change.)

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1. Pregnant women; and
2. Children under the age of six years.
3. Aged, blind, and disabled individuals (as defined by Title XIX of the Social Security Act). For purposes of this chapter, an aged individual is a person who is 65 years of age or older.

(c) Retroactive Medicaid eligibility is available beginning with the third month prior to the month of application for Medicaid for any month during which the applicant meets all eligibility criteria and during which the applicant has unpaid medical expenses for covered services. In order to qualify for retroactive coverage, an individual need not be determined eligible at the time of application for Medicaid benefits. Application for retroactive Medicaid coverage may be made on behalf of a deceased person as long as the person was alive during a portion of the three-month period immediately prior to the month of application and he or she has unpaid medical expenses for Medicaid covered services.

i. Retroactive Medicaid coverage is not available under the provisions of this chapter for children aged two through five whose family's income exceeds the AFDC income standard (see N.J.A.C. 10:82-1.2(c)) or for pregnant women and children under the age of two whose family's income exceeds 100 percent of the poverty level for any period prior to April 1, 1991.

10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1. (No change.)
2. Children under the age six years.
3. (No change.)

Recodify existing 5 through 8 as 4 through 7. (No change in text.)

10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for aged, blind, and disabled persons covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the

U.S. Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes of one and two. The annual revision to the Federal poverty income guideline will be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

(b) Income limits for pregnant women and the children covered under the provisions of this chapter shall be based on 133 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). The monthly income standard will be one-twelfth of 133 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

(c) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a) or (b) above as applicable.

1. (No change.)

2. With the exception in (c)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

10:72-4.3 Countable income; pregnant women and children

(a) Except as specified below, countable income for pregnant women and children under the provisions of this chapter shall include the income of all members of the household unit as determined at N.J.A.C. 10:72-3.5(a)1 and 2, and shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1.-4. (No change.)

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

10:72-4.5 Resource eligibility

(a) Pregnant women and children seeking Medicaid benefits under the provisions of this chapter are eligible without regard to the value of the household unit's resources. The county welfare agency shall inquire about the household unit's resources only in order to establish income that may result from the household unit's resources.

(b) (No change.)

CORRECTIONS**(b)****THE COMMISSIONER****Municipal and County Correctional Facilities Processing and Housing Juveniles in Municipal Detention Facilities****Adopted New Rules: N.J.A.C. 10A:34-3**

Proposed: April 1, 1991 at 23 N.J.R. 935(c).

Adopted: May 7, 1991 by William H. Fauver, Commissioner, Department of Corrections.

Filed: May 21, 1991 as R.1991 d.293, **without change.**

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 2A:4A-37.

Effective Date: June 17, 1991.

Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received two comments from Barbara Allan, Director, Office of Legal and Regulatory Liaison of the Department of Human Services in response to the proposed new rules. A summary of the comments and the Department of Corrections response follows:

COMMENT: Commenter requested that a specification be added to N.J.A.C. 10A:34-3.9 which would require the officer or staff person supervising the juvenile to have a key to the handcuff in case of fire or other emergency. Concern was also expressed as to whether a juvenile must remain cuffed while eating.

RESPONSE: It is standard procedure, controlled by police and fire regulations, that the supervisor on duty has a key to handcuffs in his or her possession. Moreover, in municipal detention facilities the cuffing mechanism is generally located in close proximity to the officer's station. No double locking is permitted. Juveniles are usually uncuffed to eat unless there is a management problem or escape risk. A decision to uncuff someone is within the discretion of the supervisor on duty.

Full text of the adopted new rules follows.

SUBCHAPTER 3. PROCESSING AND HOUSING JUVENILES IN MUNICIPAL DETENTION FACILITIES

10A:34-3.1 Definitions

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

"Delinquency" means the commission of an act by a juvenile which if committed by an adult would constitute:

1. A crime;
2. A disorderly persons offense or petty disorderly persons offense; or
3. A violation of any other penal statute, ordinance or regulation (see N.J.S.A. 2A:4A-23).

"Detention" means the temporary care of juveniles in physically restricting facilities pending court disposition (see N.J.S.A. 2A:4A-22c).

"Juvenile" means an individual who is under the age of 18 years (see N.J.S.A. 2A:4A-22a).

"Juvenile-family crisis" means behavior, conduct or a condition of a juvenile, parent or guardian or other family member which presents or results in:

1. A serious threat to the well-being and physical safety of a juvenile;
2. A serious conflict between a parent or guardian and a juvenile regarding rules of conduct which has been manifested by repeated disregard for lawful parental authority by a juvenile or misuse of lawful parental authority by a parent or guardian;
3. Unauthorized absence by a juvenile for more than 24 hours from his home; or
4. A pattern of repeated unauthorized absences from school by a juvenile subject to the compulsory absences from school by a juvenile subject to the compulsory education provision of Title 18A of the New Jersey Statutes. (See N.J.S.A. 2A:4-22g.)

"Municipal detention facility" means a holding or lockup facility, usually located in and operated by a municipal police department, which receives and temporarily detains for a brief period of time, juveniles who have been taken into custody who are awaiting release or transfer to other authorities.

"Secure detention" means physical detainment or confinement of a juvenile in a locked room, set of rooms, or cell, or physically securing a juvenile to a cuffing rail or other stationary object.

10A:34-3.2 Taking juveniles into custody

(a) Pursuant to N.J.S.A. 2A:4A-31, a juvenile may be taken into custody as follows:

1. Pursuant to an order or warrant of any court having jurisdiction; or
2. For delinquency, by a law enforcement officer when there has been no process issued by a court, pursuant to the laws of arrest and the Rules of Court.

(b) Except where delinquent conduct is alleged, a juvenile may be taken into short-term custody by a law enforcement officer without order of the court when:

1. The law enforcement officer has reasonable grounds to believe that the health and safety of the juvenile is seriously endangered and taking the juvenile into immediate custody is necessary for the protection of the juvenile;

2. The law enforcement officer has reasonable grounds to believe the juvenile has left the home and care of his or her parents or guardian without the consent of such persons; or

3. An agency legally charged with the supervision of a child has notified the law enforcement agency that the child has run away from out-of-home placement, provided, however, that in any case where the law enforcement officer believes that the juvenile is an "abused or neglected child" as defined in N.J.S.A. 9:6-8.21, the law enforcement officer shall handle the case pursuant to the procedure set forth in the act (see N.J.S.A. 9:6-8.21 et seq.).

(c) The taking of a juvenile into custody shall not be construed as an arrest, but shall be deemed a measure to protect the health, morals and well-being of the juvenile.

10A:34-3.3 Custody of juveniles

(a) A juvenile delinquent may be held in a police station only for a brief period if such holding is necessary to allow release to his parent, guardian, other suitable person, or approved facility (see N.J.S.A. 2A:4A-37c).

(b) Under no circumstances shall any juvenile taken into custody pursuant to a juvenile-family crisis be held more than six hours (see N.J.S.A. 2A:4A-32a).

10A:34-3.4 Notification to parents

(a) Any person taking a juvenile into custody shall immediately notify the juvenile's parents or guardian, if any, that the juvenile has been taken into custody (see N.J.S.A. 2A:4A-33).

(b) Such notice shall be given notwithstanding that further processing time may be required before a decision is made to release or detain the juvenile.

10A:34-3.5 Processing juveniles

(a) Juveniles taken into short-term custody for a juvenile-family crisis shall be held and processed in an unlocked area of the police department (see N.J.S.A. 2A:4A-32a).

(b) Every effort shall be made to process juvenile delinquents in an unlocked area of the police station such as:

1. A booking area;
2. A juvenile aid bureau office;
3. A detective area; or
4. An interview room.

(c) Only in extraordinary situations when juvenile delinquents are assaultive, disruptive, unmanageable or charged with a serious violent crime shall they be placed in a secure cell or holding room.

(d) When the conditions delineated in (c) above are met, in lieu of placing a juvenile in a secure cell or holding room, a cuffing bar may be used provided that:

1. The juvenile is under continuous face-to-face visual supervision by a law enforcement officer or other facility staff; and
2. The juvenile does not have regular contact with adults in secure detention or confinement.

(e) If a juvenile is in custody during a regular meal period, the juvenile shall be provided with a meal.

10A:34-3.6 Separation from adult prisoners or detainees

A juvenile detainee or adjudicated delinquent shall be held in a place separate and apart from any adult charged with or convicted of crime (see N.J.S.A. 2A:4A-37c).

10A:34-3.7 Recordkeeping

(a) Whenever a juvenile is placed in secure detention (secure cell, secure holding room or cuffing bar), an entry shall be made in a separate logbook or in a separate section of the adult cell logbook. Such entry shall contain, at minimum, the following information about the juvenile:

1. Name;
2. Age;
3. Sex;
4. Charge;
5. Date and time of admission into the cell or holding room;
6. Date and time of release from the cell or holding room;
7. Cell number;
8. Time of each physical cell check (continuous face-to-face visual supervision if confined in a barred front cell); and

ADOPTIONS

CORRECTIONS

9. Signature of law enforcement officer conducting each physical cell check.

10A:34-3.8 Reporting suicides or suicide attempts, sexual or physical assaults or substantial injury

(a) All cells or holding rooms in which juveniles are placed shall be free of suicide hazards.

(b) If a juvenile, while in custody at a municipal police department, attempts or commits suicide, is sexually or physically assaulted, or has a substantial injury which requires medical attention, Form 192-I INCIDENT REPORT shall be completed and forwarded within three working days to the Juvenile Monitoring Unit, New Jersey Department of Corrections.

(c) A follow-up detailed internal report must be furnished to the Juvenile Monitoring Unit which includes, at minimum, the following:

1. A detailed chronology of events regarding the incident;
2. The reason for placement into the cell or holding room;
3. Logbook entries noting the times of each physical cell check;
4. Statements by all appropriate law enforcement officers; and
5. Copies of all reports from outside agencies such as:
 - i. The Division of Youth and Family Services (D.Y.F.S.);
 - ii. The Prosecutor's Office;
 - iii. The Medical Examiner's Office; and
 - iv. The hospital(s).

(d) In the event of a death of a juvenile from a suicide or any other reason, the Juvenile Monitoring Unit shall be notified immediately by telephone at (609) 984-6539.

(e) If a death of a juvenile occurs during the evening, weekend or holiday, the telephone report to the Juvenile Monitoring Unit shall be made immediately on the morning of the next regular working day.

(f) All juvenile suicides in municipal lockups shall be thoroughly evaluated by the New Jersey Department of Corrections to determine if all applicable policies and procedures were adhered to as well as to identify possible physical plant problems.

(g) At the discretion of the New Jersey Department of Corrections, juvenile suicide attempts, sexual and physical assaults, and substantial injuries to juveniles may be evaluated.

10A:34-3.9 Supervision of juveniles

(a) As noted in N.J.A.C. 10A:34-3.5(d), in lieu of placing juveniles in a secure cell or holding room, a cuffing bar may be used provided that:

1. The juvenile is under continuous face-to-face visual supervision by a law enforcement officer or other facility staff; and
2. The juvenile does not have regular contact with adults in secure detention or confinement.

(b) Juveniles placed in cells or holding rooms with security type hollow core metal doors shall be checked at least every 15 minutes.

(c) A reporting form shall be placed on the door whenever a juvenile is placed in the holding room, and the person checking on the juvenile shall initial the form during each check.

(d) Continuous face-to-face visual supervision shall be provided by a law enforcement officer or other facility staff, if the juvenile placed in the holding room is:

1. Visibly intoxicated;
2. Under the influence of drugs; or
3. Shows outward signs of depression.

(e) Extreme caution should be exercised before admitting juveniles in the condition outlined in (d) above into municipal detention facilities. Existing municipal police policies and procedures should be reviewed to determine if the situation warrants a medical clearance.

(f) For juveniles placed in cells or holding rooms with barred fronts, continuous face-to-face visual supervision shall be provided by a law enforcement officer or other facility staff.

(g) While audio/video monitoring systems provide an added measure of safety and security, these systems shall not be used as a substitute for continuous face-to-face visual supervision of juveniles.

10A:34-3.10 Physical facilities

(a) Municipal detention facilities shall conform to all applicable public health and safety codes, set forth by:

1. The State of New Jersey;
2. The county; and
3. The municipality in which the municipal detention facility is located.

(b) New construction, alterations, additions and repairs of municipal detention facilities shall comply with:

1. The State Uniform Construction Code Act, N.J.S.A. 52:27D-1.19 et seq.;
2. The Uniform Construction Code Rules, N.J.A.C. 5:23;
3. The New Jersey Uniform Fire Code, N.J.A.C. 5:18; and
4. With this subchapter.

10A:34-3.11 The construction and renovation of juvenile holding rooms

(a) The requirements in (b) through (k) below shall be followed when juvenile holding rooms are constructed or renovated at municipal police departments.

(b) The need for a newly constructed or renovated juvenile holding room(s) shall be determined by:

1. Past practice;
2. The volume of juveniles processed; and
3. Current compliance with appropriate laws and regulations.

(c) The Bureau of County Services, New Jersey Department of Corrections, is available to provide technical assistance from the conceptual planning stage through final blueprint review upon request.

(d) Prior to construction, blueprints for the construction of a juvenile holding room(s) shall be reviewed and approved by the Bureau of County Services, New Jersey Department of Corrections.

(e) Juveniles shall be separated by "sight and sound" from all adult detainees. The juvenile holding room should be as far removed from the adult cellblock as is practical.

(f) The holding room shall be located in an area which facilitates separate processing of juveniles (admission and release).

(g) The entrance to the holding room shall be situated so that juveniles have no contact with adult detainees being admitted or released and, if possible, away from areas utilized by the general public.

(h) The juvenile holding room shall be as non-jail like as possible, but must be secure and provide for controlled entry and exiting, and must not be a room or cell which is ordinarily used for the detention of adults.

(i) Steel mesh detention screens and/or impact-resistant security glazing must be used in place of traditional bars to secure windows and provide observation ports.

(j) When a separate holding room is provided, it must include the following:

1. A minimum of 60 square feet of floor space, with a seven foot width and an eight foot ceiling for single occupancy;
2. A minimum of 100 square feet of floor space for multi-occupancy holding rooms;
3. A bench or other seating secured to the floor and/or wall;
4. Adequate lighting, which provides a minimum of 20 foot candle illumination, with tamperproof security fixtures;
5. A minimum of 10 cubic feet per minute of fresh or purified air for each juvenile;
6. An audio or audio/video system to monitor detainees, if the need for such a system is determined by the New Jersey Department of Corrections based upon the design of the juvenile holding room(s);
7. Audio/video monitoring devices, if installed in the juvenile holding room(s), shall not provide any means by which a suicide attempt may be made;
8. No projections over two feet from the floor from which a juvenile could hang himself or herself;
9. Grills covering the air vents, that are designed to prevent articles of clothing from being tied to the grills to minimize the occurrence of suicide or suicide attempts;
10. A security type hollow core metal door, which swings outward, equipped with:

i. A viewport which shall be at least 10 inches by 12 inches, and constructed of 9/16 inch security glazing or 1/2 inch lexan;
 ii. A detention type lock; and
 iii. No inside doorknob;

11. A detention type combination toilet/lavatory with drinking font, preferably of stainless steel construction;

12. Floors constructed of terrazzo or sealed concrete which slope to a floor drain secured with a cover held in place by tamper-resistant screws;

13. Exterior corridor walls constructed of six inch reinforced concrete or eight inch concrete block filled with cement containing reinforcement rods every 12 inches; and

14. Ceilings constructed of pre-cast concrete slabs or reinforced concrete.

(k) A written exemption from the rules in this subchapter may be granted by the New Jersey Department of Corrections (see N.J.A.C. 10A:1-2.7) in instances where:

1. The juvenile holding room is not in compliance with one or several of the requirements listed above; but

2. The juvenile holding room(s) is in compliance with the general intent and purpose of the rules; and

3. The New Jersey Department of Corrections has determined that to require the municipal facility to comply strictly with all the rules in this section would result in an undue hardship to the overall management of the juvenile holding room(s).

10A:34-3.12 Forms

(a) The following form related to processing and housing juveniles in municipal detention facilities may be reproduced by each municipal detention facility from an original that is available by contacting the Juvenile Monitoring Unit of the Department of Corrections:

1. 192-I INCIDENT REPORT.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Fees

Adopted New Rules: N.J.A.C. 11:1-32

Adopted Amendment: N.J.A.C. 11:10-1.4

Proposed: March 18, 1991 at 23 N.J.R. 825(a).

Adopted: May 24, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: May 24, 1991 as R.1991 d.303, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8, 17:1-8.1 and 17:1C-6(e).

Effective Date: June 17, 1991.

Operative Date: July 1, 1991.

Expiration Date: January 31, 1996.

Summary of Comments and Agency responses:

The Department received 22 written comments from insurers, insurance trade associations, a rating organization, a dental plan organization and a reciprocal insurance exchange. A list of commenters follows:

The PMA Group
 Old American Insurance Company
 Mutual Life Insurance Company of New York
 Connecticut General Life Insurance Company
 The firm of Riker, Danzig, Scherer, Hyland and Perretti on behalf of Connecticut General Life Insurance Company
 Robert Dubman, DDS on behalf of Unity Dental Health Services, P.A.
 New Jersey Association of Mutual Insurance Companies
 Prudential Property and Casualty Insurance Company of New Jersey
 The State Farm Insurance Group of Companies
 The Insurance Services Office, Inc.
 Metropolitan Life Insurance Company
 Mutual Benefit Life

Garden State Life Insurance Company
 New Jersey Manufacturers Insurance Company
 Allstate Insurance Company
 National Association of Independent Insurers
 Selective Insurance Company of America
 American Insurance Association
 American Council of Life Insurance
 New Jersey Citizens United Reciprocal Exchange
 Farm Family Insurance Companies

The Central National Life Insurance Company of Omaha

COMMENT: Several commenters objected to the fees set forth in the proposed new rules as being excessive, unreasonable, punitive and in excess of those charged by other states. While the proposed new fees are intended to reflect the costs to the Department in providing services, the Department provided no rational basis between the amount of each fee and the actual costs to the Department.

Several commenters specifically stated that the proposed fees for property and casualty policy form submissions set forth in N.J.A.C. 11:1-32.6 and the fees for life and health policy form submissions set forth in N.J.A.C. 11:1-32.5 are in excess of those charged by other states. The commenters stated that the fees charged by other states range between \$25.00 to \$75.00 and therefore the fees imposed by these proposed rules (\$250.00 for each property/casualty policy form and \$200.00 or \$300.00 for each life/health policy form) are excessive. Other commenters cited similar examples.

The commenters additionally stated that for these rules to be valid, the Department must provide evidence, or the comparison study conducted and relied upon, to indicate the total cost to the Department in providing each service and the number of times such service was requested. This is required to justify imposing specific fees and the level of those fees, and to show that the Department is not charging fees in excess of the costs of providing a service, which would be unconstitutional.

One commenter further stated that many of the charges appear to be a means of enhancing general revenues through indirect taxation via the Department's fees for services. This is especially evident in the imposition of the maintenance fee (N.J.A.C. 11:1-32.9(a)) which is imposed not for a service but because an insurer writes little or no business in this State and therefore this State receives little or no revenue through premium taxes.

RESPONSE: The fees set forth in the rules reflect the estimated current costs to the Department in providing specified services. Each fee is a conservative estimate of the cost to the Department of providing a particular service. Estimated costs to the Department were determined in the same manner as that utilized for determining charges for the examination of an insurer pursuant to N.J.S.A. 17:23-4 and 17B:21-3. This provided the outside parameter for each fee and basis for comparing fees for dissimilar services. The fees set forth in these rules are less than the estimated costs to the Department determined as set forth above.

With respect to the comments that the fees are in excess of those charged by other states, as noted above, the fees provided by the rules are conservative estimates of the current costs to the Department in providing specified services. While these rules may impose specific fee amounts which are greater than some states, the Department believes that these fees are appropriate, reasonable and necessary to reflect current costs to the Department in providing these services. Existing fees for the most part have not been changed in 20 years, and in some cases, predate the Second World War. It must be also noted that fees have not been previously imposed for numerous services provided by the Department which have been imposed by other states. The Department has reviewed and processed numerous submissions for which, up to now, it has charged no fee. For example, in 1989, in the area of property and casualty, the Department received approximately 1,500 rate, rules and form filing submissions; and, in the area of life and health, over 4,000 form submissions for which it did not charge. New Jersey's fee structure thus has not been "comparable" to other states which charge for processing these filings.

The fee structure provided by these rules thus is not a means of enhancing general revenue through indirect taxation, but rather is intended to set fees which reflect estimated current costs to the Department in providing specified services. With respect to the comment that the maintenance fee is evidence for the assertion that fees are an indirect tax because it is imposed not for a service but because the Department receives little or no revenue through premium taxes, the commenter mischaracterizes the purpose of the fee. Despite the fact that such insurer

writes little or no business in this State, the Department incurs costs with respect to maintaining files, and reviewing and processing financial reports and other filings. The maintenance fee is imposed for the service of maintaining these files.

COMMENT: One commenter requested that the Department provide an estimate of the revenue raised as a result of the imposition of the fees for property and casualty submissions and to publish the amount in the New Jersey Register.

RESPONSE: The Department has estimated that, based on the number of property and casualty submissions received in 1989, the fees imposed should result in an estimated overall revenue of \$500,000.

COMMENT: Several commenters stated that additional premium taxes in the amount of .05 to .1 percent have been imposed on insurers pursuant to sections 80 through 83 of the Fair Automobile Insurance Reform Act of 1990 (FAIR Act), and were dedicated to the Department for payment of administrative costs related to the Department's statutory duties. Imposition of the additional fees set forth in these rules is therefore unjustified. Accordingly, the commenters believe that the proposed rules should be withdrawn.

RESPONSE: Upon consideration of the comments, the Department has determined that no change is required. The Legislature has provided for the imposition of premium taxes pursuant to N.J.S.A. 54:18A-1 et seq., as well as for imposition of fees to cover the costs of providing specified services, N.J.S.A. 17:33-1, 17B:21-7 and 17:1-8. The Legislature did not repeal the statutes which provide for imposition of "user fees" when it amended N.J.S.A. 54:16-8 and 54:18A-1 et seq. It may therefore be concluded that the Legislature did not intend that the existing fee structure be eliminated. In order for the existing fee structure to have any meaning, it must provide for fees which reflect the current costs of providing services. Any other interpretation would result in the existing fee structure being superfluous. The Department therefore believes it appropriate to set fees for services which reflect the current costs to the Department in providing such services.

COMMENT: Several commenters stated that the revenue derived from increased fees for life/health policy form filings should be directly dedicated to funding an increase in staff and/or implementing other means which will significantly reduce the amount of time it currently takes to process submissions and resubmissions. Pursuant to statute, life and health policy forms filed with the Department are deemed approved unless disapproved within 30 days. The commenters suggested that to justify the increased form filing fee, a 30 day review period must apply to resubmissions as well. One commenter specifically suggested the following language be included in the rules to accomplish this: "No insurance policy of any kind shall be used in this State unless the form thereof has been submitted to and filed by the Commissioner. Unless earlier disapproved by the Commissioner, at the expiration of 30 days after submission, or 60 days where the Commissioner has extended the initial 30 day period pursuant to N.J.S.A. Title 17B, any policy so filed shall be deemed approved. In the event the Commissioner shall disapprove any policy within the period prescribed above, any resubmission of such policy shall again be acted upon within 30 or 60 days, or shall be deemed approved."

RESPONSE: The Department disagrees. With respect to the comment that the fees should be directly dedicated to Department funding needs, all sums collected must be paid into the State Treasury pursuant to N.J.S.A. 17:1-8. The Department thus lacks the authority to dedicate funds to specific needs.

The Department further disagrees that the rules should provide that the resubmission of a policy previously disapproved shall be acted upon within 30 or 60 days, or shall be deemed approved. These rules exclusively set fees for providing specified services; they do not provide the procedures associated with the Department's providing of services. The comment is thus outside the scope of the proposal. The Department, however, believes that this procedure is consistent with applicable statutes. These statutes, which provide for the 30 day review period, state that if a form is disapproved during the 30 day period it may not be utilized until the disapproval is affirmatively withdrawn (see N.J.S.A. 17B:25-18c, 17B:26-1c, and 17B:29-7c). There is no time limit imposed for withdrawing disapproval. On the other hand, the Department shares the commenters' concerns with respect to the amount of time it takes to process submissions. The Department has therefore taken steps to reduce the amount of time necessary to process submissions. The Department has substantially reduced the response time in processing submissions during the last year, and expects to further reduce response time in the future.

COMMENT: Several commenters stated that the Department has exceeded its statutory authority in increasing existing fees and imposing new fees by regulation.

RESPONSE: As stated in the proposal Summary, the Department may increase existing statutory fees and impose new fees by regulation pursuant to N.J.S.A. 17:1-8.

COMMENT: Several commenters objected to the proposed new fees due to their disparate impact on small and new insurers and reciprocal insurance exchanges. The rules impose the same requirements on a small domestic mutual company with perhaps marginal statutory surplus writing a small amount of business as on a billion dollar company. One commenter specifically stated that the maintenance fee will unduly penalize small insurers.

Another commenter specifically suggested that the rules provide a "two-tiered" set of fees based on insurer size.

RESPONSE: Upon review of the comments, the Department has determined that no change is required. The fees imposed by these rules are designed to reflect the estimated current costs to the Department in providing specified services. The expenses incurred by the Department and the staff time devoted to processing various filings and information requests does not vary based on insurer size. It must also be noted that the existing statutory fee schedule (N.J.S.A. 17:33-1 and 17B:21-7) does not differentiate based on insurer size. The Department therefore believes that the "single-tier" set of fees provided by these rules is appropriate. Finally, with respect to the comment that the maintenance fee will unduly penalize small insurers, the Department believes that this fee is reasonable to cover the costs to the Department of maintaining files and reviewing and processing documents of insurers who write little or no business in this State. It must be noted, however, that this fee does not apply to newly licensed insurers for a period of two years from the date of licensing to minimize any burden caused by the imposition of the fee on newly licensed insurers.

COMMENT: Several commenters objected to the fees for property and casualty filings. The commenters stated that the "single-tier" set of fees would impose the same fee on a filer making an editorial change in a single rule with a minor rate adjustment in that the rule as on a filer making extensive revisions of rules and rates for an entire rating system. The time and effort needed for these two types of filings are clearly different. One commenter specifically stated that the fee for incidental filings should be no more than half that charged for general submissions.

One commenter further stated that the proposed property and casualty filing fees raises additional concerns with respect to Department practices in processing filings. The commenter stated that if questions arise in the Department's review of a filing, the Department requires that the filer respond within a specified period of time or the filing will be "closed without prejudice." The commenter stated that there is no statutory or regulatory requirement that a filer respond within a specified time. This practice thus has no statutory basis.

The commenter similarly stated that the Department, rather than raise questions about the filing, will disapprove a filing on the basis of questions raised by the filing, with the belief that the filer will resubmit the filing with required responses. The commenter noted that the New Jersey Supreme Court has held that the Commissioner should not disapprove filings without first providing the filer with the opportunity to amend the filing, except in extraordinary circumstances. The commenter thus suggested that these practices be discontinued or provide that a resubmission under such circumstances would not count as a new filing for purposes of these rules.

RESPONSE: Upon review of the commenters' suggestions, the Department has determined that no change is required. With respect to the comments that the Department provide a "two-tier" system of fees for property and casualty form submissions (one for minor/incidental revisions to filings, and one for general submissions), the Department believes that such a system would be problematical to implement both to insurers and to the Department. A two-tier system would require Department personnel, upon receipt of any property and casualty submission, to first make a threshold determination of whether the filing is "incidental" or "general." Establishing standards for such a determination would prove difficult, if not impossible. For example, how many changes, how extensive would each change have to be, and to how many rules or pages of the filings would a change have to be made to cross the threshold of "incidental" to "general." It must also be noted that the commenters do not suggest a standard to be utilized in making this determination. The Department therefore believes that the fee schedule in these rules is appropriate to provide an estimate of average costs

associated with reviewing processing property and casualty form, rate and rule filings and that no change is required. Since individual insurers generally make both "incidental" and "general" submissions, the single fee imposed for all submissions should average out over time.

The Department also disagrees with the comment that it should discontinue the practice of disapproving a filing on the basis of questions raised by the filing or provide that a resubmission under such circumstances not count as a new filing under these rules. There are situations in which applicable statutes mandate that a filing be affirmatively disapproved. This is especially evident in the case of commercial lines policy form filings, which, pursuant to N.J.S.A. 17:29AA-6, are deemed approved if not disapproved within 30 days. If questions arise in the review of the filing it must be disapproved. To do otherwise could result in a situation in which a form is deemed approved notwithstanding the fact the Department had questions or concerns with respect to the filing. For example, the Department may have concerns with respect to a filing and, without disapproving the filing, may request that the filer respond to questions. The filer may not respond, and if the Department takes no further action, the filing would be deemed approved, notwithstanding the fact that questions existed with respect to the filing. The Department therefore believes that it is appropriate and necessary to disapprove a filing when questions arise. The resubmission of a filing under such circumstances should count as a new filing under these rules since Department staff would be required to review the resubmitted filing and any responses submitted therewith, in addition to reviewing the initial filing, to determine whether the Department's questions or concerns were adequately addressed.

Finally, the comment that the Department's policy of requiring a filer to respond to questions about a filing within a specified period of time or the filing will be closed without prejudice has no statutory or regulatory basis, is beyond the scope of these rules. Therefore no response is required.

COMMENT: Several commenters objected to the imposition of a "complaint processing fee" pursuant to N.J.A.C. 11:1-32.9(b), although some commenters stated that they did not believe that they would generate the number of complaints required for the imposition of the fee. The commenters stated that this fee is unjustified, especially since certain lines of insurance are more prone to consumer involvement than other lines (for example, automobile insurance). The commenters believe that in many cases automobile insurance policyholders will file complaints due to changes in the law and regulatory requirements and mandated language which must be placed on certain notices (for example, imposition of residual market equalization charges on policies renewed prior to April 1, 1991 and policy terminations where the termination is valid but insureds are prompted to file a complaint due to mandated language in the notice). One of the commenters specifically stated that it is a violation of due process to penalize the insurer for performing legally required duties. Accordingly, the commenters stated that only valid, justified or meritorious complaints should count toward the threshold of excessive complaints.

One of the commenters specifically suggested that N.J.A.C. 11:1-32.9(b) be revised to read as follows: "In addition to any other fees imposed by this subchapter, Subtitle 3 of Title 17 and Title 17B of the Revised Statutes, and Title 11 of the New Jersey Administrative Code, all insurers shall pay a complaint processing fee for complaints where the actions of the insurer were not required by statute, regulation, rates and rating rules, policy forms, or underwriting rules that were lawful and in force. Such fee shall be paid within thirty days of the determination of the foregoing . . ."

Another one of the commenters specifically stated that handling citizens' complaints is a responsibility of the Department and the costs for such activity should be handled through the budget process. The commenter further stated that no other jurisdiction imposes such a fee. If an insurer has an inordinate number of complaints, the commenter believes that this should trigger corrective action on the part of the Department.

Several commenters further stated that the term "consumer complaint" should be defined. One commenter specifically stated that without definition companies could be at the mercy of the Department as the final arbiter as to what is counted as a complaint for the purposes of reaching the fee threshold. This raises problems in that the Department does not make distinctions among different types of complaints (that is, the Department opens a file on anything brought to its attention). In these cases, the commenter believes that it would be inequitable to charge an insurer for such complaints. Another commenter specifically stated that "com-

plaint" under the rules as drafted is overly broad and could mean a morning disc jockey telling listeners to file complaints. This would result in exorbitant, punitive fees imposed on law-abiding insurers.

Another one of the commenters suggested that the three threshold categories be based on a percentage of risks in force rather than on premium volume. Some lines of insurance generate a much higher premium volume with few policies while other lines generate a small premium volume but a large number of policyholders. The commenter believes that basing the threshold categories on a percentage of risks in force would permit companies to continue to grow without the fear of incurring additional expenses for excessive complaints.

The commenter additionally stated that if fees are imposed on excessive complaints, complaints should be excluded from any market conduct review and potential fines which may be imposed as a result of such a review. The commenter asserted that to do otherwise results in the insurer being charged twice for the same offense.

Several commenters additionally suggested that the complaint processing fee be imposed on the person who files the complaint since the proposal Summary states that the recipient of service or act should bear the reasonable costs of providing the service or performing the act. One of the commenters additionally stated that imposing a fee on an insurer merely because someone complained about it is a thinly veiled system of unauthorized fines and thus is a violation of due process.

RESPONSE: The Department believes that it is appropriate and reasonable to impose a complaint processing fee. First, the Department disagrees that the rules should provide that the fee does not apply to complaints where the actions of the insurer were required by statute, regulation, rates, rating rules, policy forms or underwriting rules, and that to do otherwise would be a violation of due process. The Department believes that it is the insurer's responsibility to ensure that its insureds are made aware of the basis for any action, whether it is statutory or otherwise, and to ensure that insureds have a means of communicating their grievances to the insurer. While the Department is aware that some insureds may file a complaint with the Department even though the insurer provided the insured with a full explanation for the basis of the conduct, statutory or otherwise, which is the subject of the grievance, if an individual insurer has generated an inordinate number of complaints it may be assumed that the insurer is not adequately addressing its insureds' concerns. The Department does not believe that the taxpayers of this State or the industry as a whole should bear the costs of the Department review and processing of an excessive number of complaints generated under such circumstances.

Secondly, the Department disagrees that the fee should apply only to valid or meritorious complaints. A complaint which is "valid" means that the insurer's conduct was in violation of statutory or regulatory requirements. As noted above, this fee is designed to offset costs to the Department of processing an excessive number of complaints, not to penalize insurers for statutory or regulatory violations.

Thirdly, the Department disagrees that inclusion of complaints for a market conduct review results in the insurer being charged twice for the same offense. The number of complaints filed against an insurer does not, in and of itself, result in the imposition of fines. In performing a market conduct review, the Department reviews complaints filed against the insurer to determine whether there has been an on-going practice with respect to certain conduct which is a violation of the insurance laws or rules of this State. It is the violation of statutory or regulatory requirements, and not the number of complaints, that results in imposition of the fine. Thus, including complaints in the performance of a market conduct review, which may result in the imposition of fines, and imposing a complaint processing fee does not result in the insurer being charged twice for the same offense.

Fourthly, the Department disagrees that the threshold categories for imposition of the fee should be based on risks in force rather than on premium volume. Information relating to an insurer's premium volume is more readily available than that relating to risks in force. The Department also believes that basing the threshold on premium will not necessarily result in an insurer automatically incurring additional expenses for excessive complaints since the number of complaints required to incur the fee increases proportionately with premium volume.

The Department agrees, however, that a definition of "complaint" should be provided. A complaint shall be defined as being a written expression by an interested party submitted to the Department expressing a specific grievance with respect to specific conduct or action by the insurer. This should alleviate the commenters' concerns that companies

will be subject to fees by uninterested parties or, as one commenter stated, merely because "a morning disc jockey told listeners to file complaints."

Finally, it must be emphasized that the complaint processing fee is not a penalty but rather a fee to offset costs to the Department in processing an excessive number of complaints generated by an insurer. The fee is not intended to penalize insurers for complaints, but is rather imposed only to offset costs to the Department in processing an extraordinary number of complaints filed against an individual insurer, which as stated previously, the Department believes should be borne not by the taxpayers or the industry as a whole, but by the individual company that generated the excessive number of complaints.

COMMENT: Several commenters objected to the proposed fees due to the impact resulting from retaliatory fees imposed by other states. The additional fees provided by the rules will thus impose a great burden on New Jersey domestic insurers.

One commenter specifically stated it would cost approximately \$3,110 to file a term life insurance policy on a countrywide basis due to retaliatory fees imposed by other states. The commenter further stated that the increased costs could cause a domestic insurer to seek to re-domesticate.

RESPONSE: The Department agrees that the fees imposed by these rules may result in retaliatory fees being imposed by other states on New Jersey domestic insurers. This would occur, however, regardless of the fee schedule in place. The Legislature has provided for a fee structure in which insurers and other entities pay fees for services associated with the costs to the Department of providing such services. These fees must reflect current costs to the Department. To do otherwise would result in a fee structure that is useless for the purpose for which it was intended. These rules are intended to provide for fees which reflect estimated current costs to the Department of providing specified services.

COMMENT: One commenter stated that the authorizing statute, N.J.S.A. 17:1-8, is an unconstitutional delegation of power by the Legislature to the Department. The statute sets forth no standards governing the level of fees to be imposed. A statute must contain adequate standards to guide an administrative agency in exercising delegated powers for a delegation of authority to be constitutional. Accordingly, the commenter suggested that the rules not be adopted.

RESPONSE: Statutes are presumed to be constitutional absent a decision by a court of competent jurisdiction to the contrary. There has been no determination that N.J.S.A. 17:1-8 is unconstitutional. The statute thus is valid and authorizes the Department to implement these rules.

COMMENT: Several commenters stated that imposition of additional fees will increase costs or reduce services to insureds. The intent of the Fair Automobile Act of 1990, P.L. 1990, c.8 (FAIR Act) is to reduce the costs of automobile insurance in this State. These rules therefore should not be adopted since they will increase the costs for automobile insurance contrary to the intent of the FAIR Act.

One commenter additionally stated that the increased fees will impose an additional financial burden which could affect the company's solidity and ability to meet its obligations to policyholders.

RESPONSE: The Department estimates that the amount of revenue from all of the fees provided by these rules will be approximately \$1.2 million. This amount will come from the entire industry, including surplus lines insurers, risk retention groups, reciprocal insurance exchanges, fraternal benefit societies, purchasing groups, etc. Since any additional expense is spread over numerous entities (not just insurers) which are regulated by the Department, the Department believes that any increase in costs to individual insureds due to the imposition of the fees should be negligible.

The Department further disagrees with the comment that these fees will impose an additional burden which may threaten the financial health of an insurer. If an insurer believes that it is unable to obtain an adequate rate of return, it may seek a rate relief.

COMMENT: One commenter stated that the term "submission" in N.J.A.C. 11:1-32.6, which sets forth fees for processing property and casualty submissions, is unclear. For example, the commenter requests a clarification as to whether each of the following constitute a submission under the rules: 1) error corrections; 2) informational filings; 3) change in effective date for approved filings; 4) final printing of approved rates, rules and/or forms; 5) additional information or amendments to pending filings; and 6) withdrawal of obsolete forms.

RESPONSE: The Department interprets the term "submission" for purposes of N.J.A.C. 11:1-32.6 to mean a new or separate filing which requires review by the Department staff, and not changes to a pending

filing. For example, a filing which is resubmitted after being disapproved would count as a "submission" under the rule. Error corrections and additional information or amendments to a pending filing would not constitute a submission. The rules have been changed upon adoption to reflect this clarification. Similarly, a change in an effective date for an approved filing or final printing of approved rates, rules and/or forms would not constitute a submission since the Department had already approved the filing.

The withdrawal of obsolete forms, however, would constitute a submission since Department staff would be required to review and process the application to withdraw the forms to ensure that withdrawal of such forms is not inconsistent with any applicable statutes or regulations.

Finally, with respect to informational filings, while it is unclear as to what informational filing the commenter is referring to, assuming the reference is to informational filings filed by private passenger automobile insurers pursuant to N.J.S.A. 17:29A-36.2b, such filings are exempt from any fee pursuant to N.J.A.C. 11:1-32.6.

COMMENT: One commenter requested clarification as to the scope of application of filing fees to submissions and filings relating to special risks, and under what circumstances filing fees apply to special risks.

RESPONSE: The filing fee applies to all rate, rule and form filing submissions which are determined to apply to a commercial line of insurance which is a special risk, as that term is defined in N.J.S.A. 17:29AA-3. While insurers are generally not required to file rates, rules and forms with respect to special risks, many do so. Department staff are thus required to review the filing to determine whether it relates to a line which is a special risk and thus not subject to regulation.

COMMENT: One commenter suggested that N.J.A.C. 11:1-32.9, which provides for a maintenance fee and complaint processing fee, be clarified to indicate that these fees do not apply to organizations other than insurers since other entities have no direct written premiums, which is the basis for the determination of the amount of these fees.

RESPONSE: The Department agrees that the maintenance fee and complaint processing fee apply only to insurers. Since, as the commenter noted, only insurers have direct written premium, which is the basis of fee, the Department believes that no clarification is necessary.

COMMENT: One commenter stated that it is unclear as to the circumstances under which the fee to withdraw only a rating plan set forth in N.J.A.C. 11:1-32.8(a)6 would be applied.

RESPONSE: The fee would apply if an insurer seeks to eliminate a rating system, and the Commissioner determines that the insurer is not required to file a plan for orderly withdrawal pursuant to N.J.A.C. 11:2-29.4. The rules are clarified upon adoption to provide that the fee applies to the elimination of a rating system, to be consistent with N.J.A.C. 11:2-29.

COMMENT: One commenter stated that concurrent with the desire to increase revenue should be the desire to decrease costs. The commenter suggested that the Department examine the need for the services it provides. If the cost of providing a service is greater than the potential benefit to consumers or the Department's other constituents, that service should be eliminated. For example, the commenter stated that a number of states have eliminated the need for routine and simple policy forms to be submitted for approval.

RESPONSE: The services for which fees are imposed are required by the insurance laws of this State, Titles 17 and 17B of the Revised Statutes. The Department thus does not have the authority to eliminate requirements with respect to review and approval of rates, rules and forms submitted by insurers, and the other services performed for which fees are imposed.

COMMENT: Several commenters questioned the timeliness of imposing these additional fees.

One commenter, while acknowledging the Department's authority to set a new fee schedule through promulgation of these rules, questioned the appropriateness and timeliness of this action in light of the 1990-91 New Jersey Budget. The Budget reports that the insurance industry is generating an amount in fees and related charges, exclusive of premium taxes, sufficient to more than cover projected budgetary needs.

One commenter stated that while the rules recognize present assessment burdens imposed on automobile insurers, it fails to acknowledge burdens imposed on the entire property and casualty industry. In addition to the imposition of various taxes, surcharges and assessments, there are indications that insurers participating in the Market Transition Facility are experiencing rate inadequacies and that the industry in general is not enjoying a profitable period. Subjecting insurers to additional fees will further burden insurers. Imposition of new fees is thus untimely and will

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be counterproductive to efforts to bring about market stability. The commenter concluded that since there is no indication that the budgetary requirements of the Department are fiscally impaired, it would be appropriate to seek an alternative means to raise revenue other than through the imposition of additional and arbitrary fees. The commenter thus suggested that the proposed fee schedule be withdrawn.

RESPONSE: As noted in a response to a previous comment, these rules revise the existing fee structure to reflect estimated current costs to the Department in providing specified services. The existing fee structure generally dates to 1971 and in some cases predates the Second World War. The Department thus believes that it is not only timely, but it is overdue, to revise the existing fee structure to reflect current costs. Further, whether the Department's budgetary requirements are impaired is not the issue addressed by these rules. The Legislature has empowered the Commissioner of Insurance (Commissioner) to establish fees to cover costs of providing services. Such a fee schedule must reflect current costs associated with providing services. To do otherwise would result in a fee structure which is useless for the purpose for which it was intended. The Department has therefore determined that it is appropriate and reasonable to increase existing statutory fees and impose additional fees for services for which no fee was previously charged, to reflect current costs to the Department of providing services, pursuant to N.J.S.A. 17:1-8.

COMMENT: Several commenters objected to the fees imposed to withdraw or transfer business pursuant to N.J.A.C. 11:1-32.8.

One commenter suggested that the term "withdrawal" be clarified with respect to the application of the fee for such activity. The commenter further stated that "withdrawal" should not be defined as broadly in these rules as it is in the withdrawal regulations (N.J.A.C. 11:2-29). For example, the commenter stated that a review of the reduction in agency commissions should not constitute a withdrawal for purposes of imposing the fee of \$5,000 to \$10,000 as set forth in these rules.

Another one of the commenters stated the fees for withdrawals are comparatively high, punitive and violative of the Department's standard for the level of fees (that is, that the fees are reasonable, reflect current costs to the Department and are comparable to fees charged by other states for similar services).

Another commenter specifically questioned why insurers who have no policies in force should be required to pay a \$1,000 fee as required by N.J.A.C. 11:1-32.8(a)5.

RESPONSE: The Department believes that the fees imposed by the rule relating to withdrawals reflect costs to the Department associated with reviewing and processing a plan of orderly withdrawal required to be submitted pursuant to N.J.A.C. 11:2-29.

Regarding clarification of the term "withdrawal" for purposes of imposing the fee under these rules, the appropriate fee is imposed on any insurer, as that term is defined in N.J.A.C. 11:2-29.2, which is required to submit a plan of orderly withdrawal as set forth in N.J.A.C. 11:2-29.4. The rules have been changed to reflect this clarification.

Finally, the Department believes that it is reasonable to impose a fee for review of a plan of orderly withdrawal submitted by an insurer with no policies in force. Department staff are required to review and process a plan of orderly withdrawal submitted by an insurer regardless of the number of policies the insurer has in force. The Department, however, recognizes the fact that the review and processing of a plan of orderly withdrawal submitted by an insurer which has few or no policies in force should take less time than for a plan submitted by an insurer with numerous policies currently in force. Accordingly, the fee for the review of a plan of orderly withdrawal varies based on the number of policies an insurer has in force.

COMMENT: One commenter suggested that N.J.A.C. 11:1-32.6(a)2, which sets forth fees for property and casualty form submissions, be clarified to provide that if an insurer is submitting a group of forms for one line of insurance, only one filing fee would be charged. The commenter suggested that N.J.A.C. 11:1-32.6(a)2i be revised to apply to "each policy forms submission."

RESPONSE: The Department agrees that one form filing fee for property and casualty submissions applies to a filing containing more than one form. The rules have been changed upon adoption to reflect this clarification.

COMMENT: One commenter suggested that filings referencing advisory organization filings (for example, filing for a later effective date) and form changes required by legislation or regulation, be exempt from the form filing fee set forth in N.J.A.C. 11:1-32.6(a)2i.

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RESPONSE: The Department disagrees. A filing which references an advisory organization filing, but which is different from the advisory organization filing which has been approved (for example, contains a later effective date or a narrower scope of coverages than that contained in the advisory organization filing) must be reviewed and analyzed to determine whether the change(s) are appropriate and consistent with the insurance laws and regulations of this State. The Department similarly disagrees that form changes required by legislation or regulation should be exempt from the form filing fee. Department staff must review these forms to determine whether the revised forms comply with any statutory or regulatory change. Further, since many changes are required by statute, exemption from the filing fee in such cases would all but render the imposition of the fee useless for the purpose for which it is intended.

COMMENT: One commenter requested clarification regarding the fee imposed for each underwriting rule submission. Since more than one rule is part of a product's underwriting rules, the regulation as drafted appears to require \$250.00 for each rule for the product.

RESPONSE: The Department intended that the filing fee apply to each underwriting rule filing submission, regardless of the number of "rules" in any one filing for a specific product. The rules have been changed upon adoption to reflect this clarification.

COMMENT: One commenter stated that charging an additional fee for review of credit life or health insurance forms, and riders, endorsements and applications for credit life or health insurance, pursuant to N.J.A.C. 11:1-32.5(a)3 and 5, is inappropriate. The commenter believes that credit insurance is no more difficult to deal with than ordinary life insurance products.

RESPONSE: The Department disagrees. Credit life or health insurance is subject to specified additional requirements as set forth in N.J.S.A. 17B:29-1 et seq. and N.J.A.C. 11:2-3. In addition to reviewing policy forms, Department staff are required to review the rating schedule which, pursuant to statute, a filer is required to submit concurrently with the submission of the policy form. Department staff are therefore required to conduct a more lengthy review to determine whether the filing complies with specific statutory and regulatory requirements pertaining to credit life or health insurance beyond that required for "ordinary" products. The Department thus believes it appropriate and reasonable to impose a higher fee for the review and processing of policy forms for credit life or health insurance to reflect the Department's costs to perform such service.

The Department, however, has determined that some revision to N.J.A.C. 11:1-32.5 is appropriate. The rules as currently drafted would impose a fee of \$200.00 for rate revisions for all products, except for credit life or health insurance and contracts on a variable basis, for which the fee is \$300.00. Upon further review, the Department believes it appropriate to impose the same fee for review and processing of rate revisions for credit life or health insurance and contracts on a variable basis as is imposed for review and processing of rate revisions for other products. The rules have been changed upon adoption to reflect this change.

COMMENT: One commenter stated that it assumes that a public hearing will be scheduled to allow further comment and testimony regarding these proposed rules as required by N.J.S.A. 17:1-8.2.

RESPONSE: The Department disagrees. Interested members of the public are entitled to express their views on proposed rules either orally or in writing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 17:1-8.3. The Department obtains public input from comments submitted.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 11:1-32.5, 32.6 and 32.7 are revised to clarify that fees for submissions apply to a filing made by or on behalf of an insurer.

2. Editorial changes are made to the following sections to correct printing errors and as a matter of form: N.J.A.C. 11:1-32.2, 32.3(a)6, 32.5, 32.6(a)2i and vi, 32.8(a), 32.8(a)6 and 32.10.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 32. FEES

11:1-32.1 Purpose and scope

(a) This subchapter sets forth specific fees charged for various services provided by the Department. For services not included in

this subchapter, the Department shall charge such other fees as may be provided by applicable statute or rule.

(b) This subchapter applies to insurers licensed to transact business in this State, eligible surplus lines insurers, dental plan organizations, dental service corporations, fraternal benefit societies, reciprocal insurance exchanges, risk retention groups, purchasing groups, and to any other person to whom a service is provided as set forth in this subchapter.

11:1-32.2 Definitions

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

"Annuity" is *as* defined in N.J.S.A. 17B:17-5.

"Certificate of eligibility" means a certificate issued to an unauthorized insurer by the Commissioner pursuant to N.J.S.A. 17:22-6.45 evidencing that it is an eligible surplus lines insurer in this State.

"Commissioner" means the Commissioner of the Department of Insurance.

"Complaint" means a written expression by an interested party submitted to the Department expressing a specific grievance with respect to specific conduct or action by an individual insurer.*

"Contract on a variable basis" is as defined in N.J.S.A. 17B:28-1.

"Credit health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specified loan or other credit transaction while the debtor is disabled.

"Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other transaction.

"Dental plan organization" means any person who undertakes to provide directly or to arrange for or administer one or more dental plans providing dental services pursuant to N.J.S.A. 17:48D-1 et seq.

"Dental service corporation" is as defined in N.J.S.A. 17:48C-2(a).

"Department" means the New Jersey Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State pursuant to N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., 17:46B-1 et seq. and 17B:18-1 et seq.

"Fraternal benefit society" is as defined in N.J.S.A. 17:44A-1.

"Form A filing" means a statement filed by every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a New Jersey stock insurance company or who is a director or officer of such a company, in the acquisition of control of or merger with a domestic insurer pursuant to N.J.S.A. 17:27A-1 et seq.

"Health insurance" is as defined in N.J.S.A. 17B:17-4.

"Life and health insurer" means an insurer authorized or admitted pursuant to the provisions in Title 17B of the Revised Statutes to transact solely the business of life insurance, health insurance or annuities in this State.

"Life insurance" is as defined in N.J.S.A. 17B:17-3.

"Private passenger automobile insurance" means direct insurance on private passenger *[insurance]* *automobiles* as defined in N.J.S.A. 39:6A-2.

"Property and casualty insurer" means an insurer authorized or admitted to transact the kinds of insurance specified in N.J.S.A. 17:17-1, 17:46A-2 and 17:46B-1.

"Purchasing group" is as defined in 15 U.S.C. 3901(a)(5).

"Reciprocal insurance exchange" means an individual, partnership, trustee, or corporation authorized to exchange reciprocal or interinsurance contracts pursuant to N.J.S.A. 17:50-1 et seq.

"Risk retention group" is as defined in 15 U.S.C. 3901(a)(4).

"Special risks" is as defined in N.J.S.A. 17:29AA-*[4]**3*.

"Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40.

11:1-32.3 General procedures

(a) All fees set forth in this subchapter, excluding the fees set forth in N.J.A.C. 11:1-32.9, shall be paid at the time of the filing or application or the request for service.

(b) All fees set forth in this subchapter shall be paid by check and made payable to the State Treasurer of New Jersey.

11:1-32.4 Fees; general

(a) On filing with the Department any certificate specified in this section by an insurer, fraternal benefit society or dental plan organization authorized to transact business in this State, there shall be paid to the Commissioner fees as follows:

1. Filing a certificate of incorporation of a domestic insurer—\$1,500;

2. Filing a certificate of an increase of capital stock of a domestic insurer—\$250.00;

3. Filing a certificate of consolidation and merger of insurers—\$2,500;

4. For each Form A filing in connection with the acquisition or control of a domestic insurer—\$2,500;

5. Upon the scheduling of a hearing in connection with a Form A filing—\$2,500;

6. Filing a certificate of dissolution of insurer, change of name, change of nature of business, amended *[certification]* *certificate* of incorporation (other than those authorizing increase in capital stock), decrease of capital stock, or increase or decrease of par value of shares—\$250.00;

7. Processing application and renewal of certificate of authority to transact business as a dental plan organization—\$1,000; and

8. All certificates not otherwise provided for—\$50.00.

(b) The following fees shall be paid for services provided by the Commissioner in addition to those set forth in (a) above as follows:

1. Filing each annual statement of an insurer—\$100.00;

2. Providing certificate of valuation of policies (life and health insurers only)—\$25.00;

3. Providing certificate of the condition or qualification of an insurer—\$25.00; each additional copy for same company—\$5.00;

4. Filing service of lawful process upon the Commissioner as attorney—\$30.00;

5. Providing copy of Statutory Annual Statement pages (11 × 21)—\$2.00 per page;

6. Certifying copy of any paper filed with the Department—\$5.00; certifying a company document—\$50.00;

7. Providing copy of any paper filed with the Department (except Statutory Annual Statements)—\$0.50 each for the first 10 pages; \$0.25 each for the next 10 pages; \$0.10 per page thereafter;

8. Filing each annual statement of a fraternal benefit society formed pursuant to N.J.S.A. 17:44A-1 et seq.—\$100.00;

9. Filing each annual statement of a dental plan organization—\$100.00;

10. Filing each annual statement of a dental service corporation—\$100.00; and

11. Filing an application for a certificate of authority to transact business as a dental service corporation—\$25.00.

11:1-32.5 Fees; life and health insurers

(a) The following fees shall be paid for services provided by the Commissioner regarding submissions by *or on behalf of* life and health insurers in addition to any other applicable fees imposed by this subchapter:

1. Processing application for a certificate of authority to transact business in this State—\$5,000; application to extend existing authority to other lines of business—\$2,500;

2. Reviewing policies, *[including premium rate revisions,]* except for contracts on a variable basis and credit life or health insurance—\$200.00;

3. Reviewing policies*[, including review of separate account agreements and premium rate revisions]* for contracts on a variable basis and credit life or health insurance—\$300.00;

4. Reviewing all riders, endorsements and applications, except for contracts on a variable basis and credit life or health insurance—\$50.00; *[and]*

5. Reviewing riders, endorsements and applications for contracts on a variable basis and credit life or health insurance—\$75.00*[*]*; and*

6. Reviewing rate revisions for health insurance and credit life or health insurance—\$200.00.

11:1-32.6 Fees; property and casualty insurers

(a) The following fees shall be paid for services provided by the Commissioner regarding submissions by ***or on behalf of*** property and casualty insurers in addition to any other applicable fees imposed by this subchapter as follows:

1. Processing application to extend existing certificate of authority to other lines of business—\$500.00. The Commissioner may waive this fee if the extension of authority is required by statute to permit an insurer to continue to transact a line of business previously authorized;

2. Processing personal lines and commercial lines filings, excluding private passenger automobile insurance filings, as follows:

- i. Each policy ***[form]* *forms filing* submission—\$250.00;**
- ii. Each rate filing submission—\$250.00;
- iii. Each underwriting ***[rule]* *rules filing* submission—\$250.00;**
- iv. Each combined ***[form]* *forms* and rate filing submission—\$500.00;**
- v. Each combined ***[rule]* *rules* and rate filing submission—\$500.00;**
- vi. Each combined ***[rule]* *rules* and *[form]* *forms filing* submission—\$500.00;**
- vii. Each combined ***[form, rule]* *forms, rules* and rate filing submission—\$500.00.**

3. Reviewing consent to higher rate filings submitted pursuant to N.J.A.C. 11:4-7 and 11:13-5—\$250.00; and

4. Reviewing all submissions and filings relating to special risks—\$250.00.

(b) Error corrections, amendments and additional information which is submitted with respect to a pending filing, shall not be considered a submission for the purposes of (a)2 above.

11:1-32.7 Fees; surplus lines insurers, risk retention groups and purchasing groups

(a) The following fees are imposed for services provided by the Commissioner regarding submissions by ***or on behalf of*** surplus lines insurers, risk retention groups and purchasing groups:

1. Processing application for a Certificate of Eligibility—\$1,000;
2. Filing each Annual Statement filed by an eligible surplus lines insurer—\$100.00;
3. Filing each Annual Statement filed by a risk retention group—\$100.00; and
4. Registration of new risk retention group or new purchasing group—\$100.00.

11:1-32.8 Fees; withdrawals, transfer of business

(a) Upon application of an insurer to withdraw or transfer its business the following fees be paid:

1. Processing ***[application for]* *a plan of orderly* withdrawal *[from]* *required to be submitted pursuant to N.J.A.C. 11:2-29.4*** by an insurer with 1,000 or more policies currently in force—\$10,000;
2. Processing ***[application for]* *a plan of orderly* withdrawal *[from]* *required to be submitted pursuant to N.J.A.C. 11:2-29.4 by*** an insurer with at least one but no more than 999 policies currently in force—\$5,000;
3. Processing application to transfer business from an insurer in the amount of 1,000 policies or more—\$5,000;
4. Processing application to transfer business from an insurer in an amount of less than 1,000 policies—\$2,500;
5. Processing ***[application to withdraw from]* *a plan of orderly withdrawal required to be submitted pursuant to N.J.A.C. 11:2-29.4 by*** an insurer that has had no policies in force during the three years immediately preceding the date of its application—\$1,000; and
6. Processing application to ***[withdraw only]* *eliminate* a rating *[plan]* *system by an insurer that is not required to submit a plan of orderly withdrawal pursuant to N.J.A.C. 11:2-29.4*—\$500.00.**

11:1-32.9 Miscellaneous fees

(a) In addition to any other fees imposed by this subchapter, Subtitle 3 of Title 17 and Title 17B of the Revised Statutes or Title 11 of the New Jersey Administrative Code, all insurers shall pay a maintenance fee within 30 days of receipt of notice that such fee is due calculated as follows:

1. Any insurer which has direct written premiums in this State in an amount less than \$100,000 as of the end of the calendar year immediately preceding the date the fee is due shall pay a fee of \$1,000.

2. Any insurer which has no direct written premiums in this State, but has direct written premiums in one or more jurisdictions as of the end of the calendar year immediately preceding shall pay a fee of \$2,500.

3. Notwithstanding the provisions of (a)1 and 2 above to the contrary, any insurer which is licensed or authorized to transact business in this State on or after January 1, 1991 shall not pay any fee imposed by (a)1 and 2 above for a period of two years from the date of the issuance of a certificate of authority to transact business in this State.

4. Any insurer which has no direct written premiums in this State and all other jurisdictions in which it is authorized to transact business as of the end of the calendar year immediately preceding shall not pay a fee pursuant to (a)1 and 2 above.

(b) In addition to any other fees imposed by this subchapter, Subtitle 3 of Title 17 and Title 17B of the Revised Statutes, and Title 11 of the New Jersey Administrative Code, all insurers shall pay a complaint processing fee within 30 days of the receipt of notice that the fee is due as follows:

1. For an insurer that has less than \$25,000,000 of direct written premiums in this State for the calendar year immediately preceding, a fee of \$50.00 for each consumer complaint submitted to the Department and assigned to that insurer which is in excess of 50 as of the end of the calendar year immediately preceding.

2. For an insurer that has at least \$25,000,000, but not greater than \$250,000,000 of direct written premiums in this State for the calendar year immediately preceding, a fee of \$50.00 for each consumer complaint submitted to the Department and assigned to that insurer which is in excess of 250 as of the end of the calendar year immediately preceding.

3. For an insurer that has in excess of \$250,000,000 of direct written premiums in this State for the calendar year immediately preceding, a fee of \$50.00 for each consumer complaint submitted to the Department and assigned to that insurer which is in excess of 500 as of the end of the calendar year immediately preceding.

11:1-32.10 Applicability of fees imposed by insurance laws of this State

(a) The fees set forth in this subchapter supersede fees set forth in N.J.S.A. 17:33-1, 17B:21-7, 17:48-14, 17:44A-34, 17:48C-23*, **17:48D-5*** and 17:50-4, to the extent such fees are inconsistent with the fees set forth herein. The fees set forth in this subchapter are in addition to the following fees imposed by the laws and regulations of this State:

1. Admission application for foreign or alien insurers (N.J.A.C. 11:1-10.6);
2. Application for formation of a domestic insurer (N.J.A.C. 11:1-28.5);
3. Application and renewal for certificate of self-insurance of motor vehicles (N.J.S.A. 39:6-52, N.J.A.C. 11:3-30);
4. Application for hospital workers' compensation group self-insurance (N.J.A.C. 11:15-1.3);
5. Producer licensing and insurance education program fees (N.J.A.C. 11:17);
6. Custodial deposit fees (N.J.S.A. 17:20-3.1 and 17B:18-39.1, and N.J.A.C. 11:2-32);
7. Health service corporation fees (N.J.S.A. 17:48E-38);
8. Hospital service corporation fees (N.J.S.A. 17:48-14);
9. Medical service corporation fees (N.J.S.A. 17:48A-21);
10. General supervisory fee for dental service corporations (N.J.S.A. 17:48A-23);

11. All fees set forth in N.J.S.A. 17:33-1 and 17B:21-7 to the extent such fees are not inconsistent with the fees set forth in this subchapter; and

12. Any and all fees which may be imposed by the laws and regulations of this State in the future.

(b) Notwithstanding anything in (a) above to the contrary, to the extent that the laws of any other State or foreign country impose fees for services specified in this subchapter upon domestic insurers

or reciprocal insurance exchanges which are in excess of the fees set forth in this subchapter, such fee shall be imposed upon the insurer or reciprocal exchange of such other state or foreign country doing business in New Jersey, pursuant to N.J.S.A. 17:32-15 and 17B:23-5, as applicable.

11:1-32.11 Penalties

(a) Failure to pay an applicable filing or application fee at the time of filing or application may result in the filing or application being rejected as incomplete.

(b) Failure to pay the applicable fee at the time of making a request for service may result in the Department's refusal to provide such service.

(c) Failure to pay the fees set forth in N.J.A.C. 11:1-32.9 within 30 days of receipt of notice that the fee is due may result in the imposition of penalties as authorized by law.

11:10-1.4 General rules

(a) (No change.)

(b) To renew its certificate of authority, a DPO shall remit the renewal fee as set forth in N.J.A.C. 11:1-32.4(a)7 to the Commissioner 30 calendar days prior to the renewal date.

(c) (No change.)

(a)

DIVISION OF ADMINISTRATION

New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge

Adopted Amendments: N.J.A.C. 11:18-1.4 and 1.5

Adopted New Rules: N.J.A.C. 11:18-1.7 and Appendices A through C

Proposed: April 1, 1991 at 23 N.J.R. 938(a).

Adopted: May 24, 1991 by Samuel F. Fortunato, Commissioner,
Department of Insurance.

Filed: May 24, 1991 as R.1991 d.304, with substantive and
technical changes not requiring additional public notice and
comment (N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6e, 17:30D-1 et seq. and
52:14B-1 et seq.

Effective Date: June 17, 1991.

Expiration Date: December 18, 1994.

Summary of Public Comments and Agency Responses:

The Department of Insurance has received one written comment on its proposed rules from the New Jersey Property-Liability Insurance Guaranty Association.

COMMENT: The Guaranty Association suggests that the Department clarify N.J.A.C. 11:18-1.4(a). The Association suggests the Department revise this section to read: "... [on] of the total premium of any [person] **physician and/or doctor** subject to the surcharge provided in this paragraph who was not insured (**primary or excess**) or reinsured by the Association for at least three consecutive months **from 1976 to 1982.**"

RESPONSE: The Department does not believe that this provision should be limited to physicians or doctors, since there may be hospitals or health care facilities that are subject to this provision. The Department further believes that since "from 1976 to 1982" is already mentioned in subsection (a) of N.J.A.C. 11:18-1.4, it is not necessary to repeat this requirement. The Department agrees with the commenter's suggestion regarding the addition of "primary or excess" and has amended this section accordingly.

COMMENT: The commenter further suggests clarification of N.J.A.C. 11:18-1.4(b). The commenter suggests the Department revise this section to read: "... subject to the surcharge provided in this paragraph which was not insured (**primary or excess**) or reinsured by the Association for at least three consecutive months **from 1976 to 1982.**"

RESPONSE: The Department believes that the provision "from 1976 to 1982" is not necessary since it is already mentioned in N.J.A.C. 11:18-1.4(b). The Department agrees with the commenter's suggestion regarding the addition of "primary or excess" and has amended this section accordingly.

COMMENT: The commenter submitted a revised Appendix B that it believes more accurately presents the Association's indemnity and loss adjustment expenses.

RESPONSE: The Department agrees with the commenter and has revised Appendix B in accordance with the commenter's suggestions. The Department's revision of Appendix B only affects the commenter (which is the Guaranty Association).

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*).

11:18-1.4 Imposition of surcharge

(a) A surcharge of five percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering physicians and doctors presently licensed in New Jersey who were insured (primary or excess) or reinsured by the Association from 1976 to 1982, whether currently practicing individually or as a professional association or employee thereof, or in affiliation or employment with any hospital or health maintenance organization, and those covering health maintenance organizations which were insured (primary or excess) or reinsured by the Association from 1976 to 1982. Anything aforesaid to the contrary notwithstanding, for policies issued or renewed on or after *[the effective date of this amendment]* ***June 17, 1991*** the surcharge shall be two and one-half percent on the total premium of any person subject to surcharge provided in this paragraph who was not insured ***(primary or excess)*** or reinsured by the Association for at least three consecutive months.

(b) A surcharge of three and seventy-five hundredths percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering hospitals that were insured (primary or excess) or reinsured by the Association from 1976 to 1982. Anything aforesaid to the contrary notwithstanding, for policies issued or renewed on and after *[the effective date of this amendment]* ***June 17, 1991*** the surcharge shall be two and one-half percent of the total premium of any hospital subject to the surcharge provided in this paragraph which was not insured ***(primary or excess)*** or reinsured by the Association for at least three consecutive months.

(c) A surcharge of two and one-half percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering physicians, doctors, hospitals and health maintenance organizations presently licensed in New Jersey who were not insured (primary or excess) or reinsured by the Association from 1976 to 1982, or who were insured (primary or excess) or reinsured for a period of less than three consecutive months by the Association from 1976 to 1982.

(d)-(h) (No change.)

11:18-1.5 Collection and remittance of surcharge

(a) (No change.)

(b) The insurer shall remit each collected surcharge to the Department for transmittal to the Treasurer for the account of the Fund not later than 10 days from the end of the calendar month in which the surcharge was collected. Insurers shall make checks payable to "State of New Jersey, General Treasury." The Commissioner shall remit the collected surcharge to the Treasurer no later than three days after receipt of the surcharge.

(c) The monies collected and a report in the form set forth in Appendix A, incorporated herein by reference, shall be submitted to:
Fiscal Office

New Jersey Department of Insurance
CN-325

Trenton, New Jersey 08625

Attn: MMRRF Surcharge.

(d) When requesting monies received by the Fund, the Association shall file such request with the Commissioner in the form set forth in Appendix B, incorporated herein by reference. Upon a determination that the information set forth in the form is complete and accurate, the Commissioner shall notify the Treasurer and the Treasurer shall remit the amount requested to the Fund balance, including all accrued interest thereon, to the Association pursuant to N.J.S.A. 17:30D-11.

INSURANCE

(e) Not later than March 1 of each year, each insurer shall file with the Commissioner in the form set forth in Appendix C, incorporated herein by reference, the following:

1. A listing of each Fund surcharge collected during the preceding calendar year and to which class of health care provider the surcharge applies;
2. A listing of each Fund surcharge remitted to the Commissioner during the preceding calendar year and to which class of health care provider the surcharge applies;
3. The total amount of Fund surcharges collected during the preceding calendar year;
4. The total amount of Fund surcharges remitted to the Commissioner during the preceding calendar year; and
5. A statement from an officer of the company certifying that the information submitted is accurate and complete to the best of his or her knowledge.

(f) The information required in (e) above shall be submitted to:
 Fiscal Office
 New Jersey Department of Insurance
 CN 325
 Trenton, New Jersey 08625
 Attention: MMRRF Surcharge
 (g)-(h) (No change.)

11:18-1.7 Penalties

Failure by an insurer to comply with this subchapter may result in the imposition of penalties or sanctions pursuant to N.J.S.A. 17:33-2 or other provisions of law.

APPENDIX A

**MONTHLY STATEMENT ON THE
 MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND
 SURCHARGE ON MEDICAL MALPRACTICE LIABILITY
 INSURANCE PREMIUMS**

(Note: This statement does not have to be filed if no medical malpractice insurance premiums were collected during the month.

For The Calendar Month Ending _____, 19__

1. Name and address of Insurer

Name _____
 Address _____

2. Surcharges Collected During The Month

(Note: "Total Premiums" referred to below is for insurance covering claims arising out of the rendering of professional medical services by physicians, hospitals, and health maintenance organizations (HMO's).

- a. A 5% Surcharge On The Total Premiums of Physicians In New Jersey Who Were Insured (Primary or Excess) or Reinsured By The New Jersey Medical Malpractice Reinsurance Association ("NJMMRA") from 1976 to 1982 (Less Returned Surcharges for Endorsements Decreasing Premiums or Cancellations).

Total Medical Malpractice					
Liab. Prem. Collected For Mo.	5% Surchg. (.05)	=	Surchg. On Prems.	-	Returned Surchgs. Herein
_____			_____		_____
			Year-To-Date Total Surcharges Remitted		_____

ADOPTIONS

- b. A 3.75% Surcharge On The Total Premiums of Hospitals Which Were Insured (Primary or Excess) or Reinsured By The NJMMRA from 1976 to 1982 (Less Returned Surcharges for Endorsements Decreasing Premiums or Cancellations).

Total Medical Malpractice					
Liab. Prem. Collected For Mo.	3.5% Surchg. (.0375)	=	Surchg. On Prems.	-	Returned Surchgs. Herein
_____			_____		_____
			Year-To-Date Total Surcharges Remitted		_____

- c. A 2.50% Surcharge On the Total Premiums of Physicians, Hospitals and Health Maintenance Organizations Licensed in New Jersey, Which Were Not Insured (Primary or Excess) or Reinsured by the NJMMRA from 1976 to 1982 (Less Returned Surcharges For Endorsements Decreasing Premiums, or Cancellations).

Total Medical Malpractice					
Liab. Prem. Collected For Mo.	2.50% Surchg. (.025)	=	Surchgs. On Prems.	-	Returned Surchgs. Herein
_____			_____		_____
			Year-To-Date Total Surcharges Remitted		_____

Grand Total Remitted For The Month (Total of a, b, and c)

CERTIFICATION

I hereby certify that the above information is accurate and complete. I am fully aware that if any of the above information is willfully false, I am subject to the penalties and/or sanctions Pursuant to N.J.S.A 17:33-2 and/or other provisions of the law.

Original Signature Of An Officer Of The Company (no stamp or other facsimile signatures will be accepted)

Signature _____

Print Name _____

Title _____

Date _____

Telephone No. _____

(NOTE: ATTACHED SHOULD BE THE "DETAILED MONTHLY STATEMENT OF SURCHARGES COLLECTED" AND THE "DETAILED MONTHLY STATEMENT OF SURCHARGES RETURNED")

INSURANCE

ADOPTIONS

***[APPENDIX B**

**NEW JERSEY MEDICAL MALPRACTICE
REINSURANCE ASSOCIATION
QUARTERLY RECOVERY STATEMENT
AS OF MARCH 31, 1991**

BALANCE ON HAND AT BEGINNING OF QUARTER _____
 SURCHARGES RECEIVED FROM DOI _____
 INTEREST INCOME _____
 TOTAL _____
 LOSS ADJUSTMENT EXPENSES PAID: PREVIOUS QUARTER _____
 ADMINISTRATIVE EXPENSES PAID: PREVIOUS QUARTER _____
 LOSS ADJUSTMENT EXPENSES PROJECTED: ALLOCATED _____ UNALLOCATED _____
 ADMINISTRATIVE EXPENSES PROJECTED _____
 TOTAL DISBURSEMENTS _____
 OUTSTANDING RESERVES _____
 AMOUNT REQUESTED _____

EXECUTIVE DIRECTOR

DATED _____]*

***APPENDIX B**

**NEW JERSEY MEDICAL MALPRACTICE
REINSURANCE ASSOCIATION RECOVERY STATEMENT
AS OF _____**

(AMOUNTS)
 NJMRA CASH BALANCE ON HAND @ _____ DATE _____
 PROJECTED RECEIPTS TO _____ DATE _____ : _____
 INTEREST INCOME _____
 OTHER _____
 TOTAL PROJECTED RECEIPTS _____
 PROJECTED DISBURSEMENTS TO _____ DATE _____ : _____
 LOSSES _____
 LAE PROJECTED _____
 ADMINISTRATIVE EXPENSES _____
 TOTAL PROJECTED DISBURSEMENTS _____
 PROJECTED CASH BALANCE @ _____ DATE _____
 AMOUNT REQUESTED AS OF _____
 MEMO INFORMATION FOR PRIOR QUARTER _____
 ENDING _____
 OUTSTANDING RESERVES AS OF _____ DATE _____
 SURCHARGES RECEIVED FROM DOI _____
 INTEREST INCOME RECEIVED _____
 LOSSES PAID _____
 LAE PAID _____
 ADMINISTRATIVE EXPENSES PAID _____*

APPENDIX C

TO: Controller
 NJ Medical Malpractice Reinsurance Association
 P.O. Box 868
 Chatham, New Jersey 07928
 Attn: MMRRF Surcharge

RE: ANNUAL REPORT AND RECONCILIATION OF THE NEW JERSEY MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND SURCHARGE For the Calendar Year
 (Note: This Report Is Not Required If No Medical Malpractice Liability Insurance Premiums Were Written During The Year)
 For The Calendar Year Ended December 31, 19 _____

This report is required pursuant to N.J.A.C. 11:18-1.5 adopted on December 18, 1989 by Kenneth D. Merin, Commissioner of Insurance, State of New Jersey, viz:

By March 1 of the year following that in which the surcharges were collected and remitted, each insurer must file with the NJMRA an annual accounting of all surcharges collected and remitted in connection with the premiums collected during each calendar year. This will be compared with the calculation of surcharges based on any applicable written medical malpractice liability insurance premiums contained on p. 14 of the insurer's Annual Statement.

ANNUAL STATEMENT OF MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND SURCHARGES PAID

1. A 5% Surcharge On The Total Premiums (i.e., Direct Written Medical Malpractice Liability Premiums) For Insurance On The Professional Services Of Physicians Who Were Insured (Primary or Excess) or Reinsured By The New Jersey Medical Malpractice Reinsurance Association From 1976 to 1982.
 - a) Medical Malpractice Liability Insurance Of This Category—Direct Written Premiums (Any contained on p. 14 of Annual Statement) \$ _____
 - b) Surcharge of 5% (or .05) \$ _____
2. A 3.75% Surcharge On The Total Premiums (i.e., Direct Written Medical Malpractice Liability Premiums) For Insurance On The Professional Services Of Hospitals which were Insured (Primary or Excess) or Reinsured By The Medical Malpractice Reinsurance Association From 1976 to 1982.
 - a) Medical Malpractice Liability Insurance Of This Category—Direct Written Premiums (Any contained on p. 14 of Annual Statement) \$ _____
 - b) Surcharge of 3.75% (or .0375) \$ _____
3. A 2.50% Surcharge On The Total Premiums (i.e., Direct Written Medical Malpractice Liability Premiums) For Insurance On The Professional Services Of Physicians, Hospitals, Health Maintenance Organizations Who Were Not Insured (Primary or Excess) or Reinsured By The New Jersey Medical Malpractice Reinsurance Association From 1976 to 1982.
 - a) Medical Malpractice Liability Insurance Of This Category—Direct Written Premiums (Any contained on p. 14 of Annual Statement) \$ _____
 - b) Surcharge of 2.50% (or .025) \$ _____

ADOPTIONS

- 4. Direct Written Medical Malpractice Premiums Not Subject To The Surcharge (include a brief definition of the items in this category).
 - a) Any Direct Written Premiums (contained on p. 14 of the Annual Statement detailed by type of coverage) \$ _____

SUMMARY

I. Premium Reconciliation

Direct Written Medical Malpractice Premiums Subject To The Surcharge (1a)+2a)+3a) _____

Direct Written Medical Malpractice Premiums Not Subject To The Surcharge (4a) _____

Total Of The Above (Should Equal All Direct Written Medical Malpractice Liability Insurance Premiums Shown On p. 14 Of Annual Statement) _____

Total Medical Malpractice Liability Insurance Premiums Collected During The Calendar Year _____

Difference Between Total Direct Written and Collected Medical Malpractice Liability Insurance Premiums Reported Above _____

2. Surcharge Reconciliation

Total Surcharges (Excl Surcharge Monies Returned To Policyholders Based On Written Premiums For the Calendar Year. (1b)+2b)+3b)). _____

Total Surcharges Collected During The Year (Total Should Reconcile To The Sum of All Amounts Remitted Per The Monthly Reports) _____

Difference Between The Surcharge Totals _____

CERTIFICATION

I hereby certify that the above information is accurate and complete. I am fully aware that if any of the above information is willfully false, I am subject to the penalties and/or sanctions pursuant to N.J.S.A. 17:33-2 and/or other provisions of the law.

_____ Date

_____ Name of Company

_____ Address of Company

_____ NAIC Number

_____ Signature of Company Officer

_____ Print Name and Title

_____ Telephone Number

NOTE: SEPARATE REPORTS MUST BE FILED FOR EACH COMPANY.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ACCOUNTANCY
Reexamination

Adopted Amendment: N.J.A.C. 13:29-1.7

Proposed: April 15, 1991 at 23 N.J.R. 1060(a).
Adopted: May 16, 1991 by the State Board of Accountancy,
David M. Pogash, C.P.A., President.
Filed: May 24, 1991 as R.1991 d.310, without change.
Authority: N.J.S.A. 45:2B-6(g).
Effective Date: June 17, 1991.
Expiration Date: May 23, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:29-1.7 Application for reexamination

(a) (No change.)

(b) Rules on conditional credit are as follows:

1. (No change.)

2. A candidate who fails to pass all subjects, but who receives a passing grade of 75 or more in two or more subjects, or in accounting practice alone, shall receive conditional credit for each subject passed.

3. To add to conditional status, the candidate must attain a grade of 75 or more in the subjects passed.

4. In the event that a candidate fails to qualify in all examined subjects in accordance with (b) 2 and 3 above during the 10 examinations immediately following the first examination at which conditional credit was earned, the candidate shall forfeit all conditional credit, shall revert to the status of a new applicant at the next succeeding examination for which he or she sits, and shall be required to write the entire examination therefor.

5.-6. (No change.)

7. The conditional credit provided for in this rule shall be deemed to have commenced with the examination administered in May 1991.

8. (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF NURSING

Fees; Licensure of Professional and Practical Nurses; Certification of Homemaker-Home Health Aides

Adopted Amendment: N.J.A.C. 13:37-12.1

Proposed: March 4, 1991 at 23 N.J.R. 672(a).
Adopted: May 3, 1991 by the State Board of Nursing,
Dorothy J. DeMaio, President.
Filed: May 24, 1991 as R.1991 d.311, without change.
Authority: N.J.S.A. 45:11-24 and 45:1-3.2.
Effective Date: June 17, 1991.
Expiration Date: January 23, 1995.

The Board of Nursing afforded all interested parties an opportunity to comment on the proposed amendment to its fee schedule, N.J.A.C. 13:37-12.1. The official comment period ended on April 3, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on March 4, 1991 at 23 N.J.R. 672(a). Announcements were also forwarded to: the Star Ledger, the Trenton Times, the New Jersey State Nurses' Association, New Jersey League for Nursing, New Jersey Society of Nursing and other interested parties and professional associations.

LAW AND PUBLIC SAFETY

ADOPTIONS

A full record of this opportunity to be heard can be inspected by contacting the State Board of Nursing, 124 Halsey Street, Post Office Box 45010, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Two comments were received during the 30 day comment period. COMMENT: Nicholas R. Scalera, Acting Director of the Division of Youth and Family Services, stated the concern that increased fees may result in additional costs to agencies which contract with the Division, and that such additional costs, if not made allowable in contracts with the Division, will result in less services for clients.

RESPONSE: In response, the Board states that the licensing and certification fees are imposed upon the individual, not the agency. Any minimal and indirect costs to a contracting agency are clearly outweighed by the need for the State to administer and enforce licensing and certification standards to protect the health, safety and welfare of the public.

COMMENT: The second comment received was from the New Jersey State Nurses Association, which stated that it supported the proposed new fees contingent upon the understanding that the funds resulting from the increase in fees will be targeted for use by the Board of Nursing.

RESPONSE: The Board acknowledges and appreciates the support of the Association. As stated in the proposal, the sums to be raised have been calculated to defray all proper expenses incurred by the Board. In accordance with N.J.S.A. 45:1-3.2, the fees have been established at a level estimated not to raise an amount in excess of that required to defray Board expenses.

Full text of the adoption follows.

13:37-12.1 Fee schedule

(a) The following fees shall be charged by the Board in connection with licensure of professional and practical nurses.

- 1. Certification for original examination and licensure:
 - i. Professional nurse \$50.00
 - ii. Practical nurse 40.00
- 2. Certification for reexamination and licensure:
 - i. Professional nurse 50.00
 - ii. Practical nurse 40.00
- 3. Licensure by endorsement:
 - i. Professional nurse 50.00
 - ii. Practical nurse 40.00
- 4. Verification 30.00
- 5. Renewal of license (Biennial) 30.00
- 6. Late renewal of license 40.00
- 7. Duplicate license 10.00
- 8. Temporary work permit 10.00
- 9. Notary Fee 5.00
- 10. Record duplication 5.00
- 11. Copy of Nurse Practice Act 3.00
- 12. Copy of Standards of Practice 1.00

(b) (No change.)

(c) The following additional fees shall be charged by the Board in connection with certification of homemaker-home health aides.

- 1. Program approval fee (annual) \$100.00
- 2. Fee for each additional location at which course is offered (annual) 25.00
- 3. Instructor's Manual 10.00
- 4. Student Manual 3.00
- 5. Renewal of certificate (Biennial) 5.00
- 6. Late renewal of certificate 10.00
- 7. Duplicate certificate 5.00
- 8. Certification by endorsement 5.00

(a)

**BOARD OF PSYCHOLOGICAL EXAMINERS
Fees**

Adopted Amendment: N.J.A.C. 13:42-1.2

Proposed: April 1, 1991 at 23 N.J.R. 980(a).
Adopted: May 6, 1991 by the Board of Psychological Examiners,
T. Stephen Patterson, Ph.D., President.
Filed: May 24, 1991 as R.1991 d.312, without change.

Authority: N.J.S.A. 45:1-3.2 and 45:14B-13.

Effective Date: June 17, 1991.

Expiration Date: October 31, 1993.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the adoption follows.

13:42-1.2 Fees

(a) Charges for examinations, licensure and other services are:

- 1. Application fee: \$100.00.
- 2. Examination fee: \$200.00 written, \$100.00 oral.
- 3. Initial license fee:
 - i. During the first year of a biennial license renewal period: \$210.00.
 - ii. During the second year of a biennial license renewal period: \$105.00.
- 4. License renewal fee, biennial: \$210.00.
- 5. Late renewal fee in addition to biennial renewal: \$50.00.
- 6. Reinstatement fee in addition to biennial renewal fee: \$150.00.
- 7. Temporary permit:
 - i. \$75.00 plus \$25.00 for each additional supervisor.
 - ii. Review of extension request for one-year and three-year permits, each: \$25.00.
- 8. Replacement wall certificate: \$50.00.
- 9. Verification of licensure: \$35.00.
- 10. Duplicate renewal certificate: \$25.00.

(b) (No change.)

(b)

NEW JERSEY RACING COMMISSION

**Thoroughbred Rules
Open Claiming**

Adopted Amendment: N.J.A.C. 13:70-12.37

Proposed: April 15, 1991 at 23 N.J.R. 1068(a).
Adopted: May 17, 1991 by the New Jersey Racing Commission,
Bruce H. Garland, Executive Director.
Filed: May 24, 1991 as R.1991 d.313, without change.

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

Effective Date: June 17, 1991.

Expiration Date: January 25, 1995.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the adoption follows.

13:70-12.37 Opening claiming

- (a) This section is not applicable to any licensed owner that has claiming privileges pursuant to N.J.A.C. 13:70-12.1.
- (b) Any individual or entity may claim a horse by obtaining an open claiming license pursuant to (c) below.
- (c) An applicant may obtain an open claiming license by complying with the following procedures:
 - 1. through 3. (No change.)Recodify existing (c) and (d) as (d) and (e) (No change in text.)

(c)

NEW JERSEY RACING COMMISSION

**Harness Rules
Open Claiming**

Adopted Amendment: N.J.A.C. 13:71-14.36

Proposed: April 15, 1991 at 23 N.J.R. 1068(b).
Adopted: May 17, 1991 by the New Jersey Racing Commission,
Bruce H. Garland, Executive Director.
Filed: May 24, 1991 as R.1991 d.314, without change.

ADOPTIONS

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

Effective Date: June 17, 1991.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:

Comment received from Anthony Abbatiello, President of the New Jersey Standardbred Breeders' and Owners' Association, Freehold, New Jersey, indicating the S.B.O.A. is in favor of this amendment to the open claiming rule.

Full text of the adoption follows.

13:71-14.36 Opening claiming

(a) This subchapter is not applicable to any licensed owner that has claiming privileges pursuant to N.J.A.C. 13:71-14.1.

(b) Any individual or entity may claim a horse by obtaining an open claiming license pursuant to (c) below.

(c) An applicant may obtain an open claiming license by complying with the following procedures:

1. through 3. (No change.)

Recodify existing (c) and (d) as (d) and (e) (No change in text.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Error in Declaration

Adopted Amendment: N.J.A.C. 13:71-16.3

Proposed: April 15, 1991 at 23 N.J.R. 1069(a).

Adopted: May 17, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: May 24, 1991 as R.1991 d.315, **without change.**

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

Effective Date: June 17, 1991.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-16.3 Error in declaration

(a) Where a horse properly declared is omitted from the race by error of the association, or its agent or employee, the horse shall be added to the race but given the outside post position provided, however, that the error is discovered prior to the printing of the official program or prior to scratch time, whichever is sooner.

1. In the event that there is not a position on the gate available to add the horse omitted in error, the race shall be redrawn. This shall apply only in stakes events, late closers, early closers and futurities and shall not apply to overnight events.

PUBLIC UTILITIES

(b)

OFFICE OF CABLE TELEVISION

Regulations of Cable Television

Prompt Restoration Standards

Adopted New Rule: N.J.A.C. 14:18-3.13

Proposed: March 4, 1991 at 23 N.J.R. 682(a).

Adopted: May 22, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities).

Filed: May 23, 1991 as R.1991 d.298, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 48:5A-10.

PUBLIC UTILITIES

Effective Date: June 17, 1991.

Expiration Date: July 26, 1995.

Summary of Public Comments and Agency Responses:

A public hearing was held on April 8, 1991, by the Board of Public Utilities. No hearing officer was used. Written comments were submitted to the Office of Cable Television (OCTV) by April 18, 1991. Two commenters, Michael Darcy, New Jersey League of Municipalities and Thomas Kelly, New Jersey Cable Television Association, presented oral comments at the hearing and also submitted written comments. A copy of the transcript of the public hearing is available through the Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102. A summary of comments and responses follows:

COMMENT: The New Jersey Cable Television Association (NJCTA) commented that the Administrative Procedure Act, N.J.S.A. 52:14B-4(g) compels an agency to provide a factual basis or summary for any new proposed rule. The NJCTA contended that the OCTV did not provide this nor did it possess it.

RESPONSE: The Board believes that the data which is available, forms a factual basis for the proposal and it was offered to the NJCTA. The OCTV has recorded outages over a period of three and a half years and believes this data forms the factual basis for the rule making. The data indicates that operator response time is a significant factor influencing total length of outages and that some operators do not respond promptly, thereby causing outages to persist longer than seemed appropriate to the Board.

COMMENT: The NJCTA commented that the Federal Communications Policy Act of 1984, 47 U.S.C. 521 et seq. provides for customer service standards and construction related concerns by franchising authorities as part of a franchise or franchise renewal. The NJCTA contended that this proceeding constituted neither, and can only be incorporated through negotiations with the cable operator.

RESPONSE: The OCTV is the franchising authority in New Jersey and believes this "customer service standard" is necessary for the safe, proper and adequate service. Further, the Board is specifically permitted to enact consumer protection requirements pursuant to 47 U.S.C. 552.

COMMENT: The NJCTA commented that the Office was discriminatory by establishing standards more stringent than those placed on utilities. No rational basis was provided for the disparate treatment.

RESPONSE: The Board recognizes that this rule may be more specific than any single regulation applicable to utilities. However, utilities are governed by similar performance criteria and already respond promptly to service interruptions even in the absence of more stringent response criteria.

COMMENT: The NJCTA commented that the economic burden on the cable operators would be great. Two issues affecting economics were raised. The first was that of potential for penalties levied for failure to comply.

The second economic aspect on which the NJCTA commented is the question of proper staffing in the incidence of multiple threshold outages. The NJCTA contended over-staffing for the unlikely event of multiple outages would be an economic burden to the cable operator. Additionally, the NJCTA contended that the rule, as written, does not provide for more lenient application in the event of multiple outages over which the company has no control, such as severe storms. The NJCTA proposed an addition to subsection (b) to read: "... or multiple near-simultaneous losses of service caused by weather conditions or other occurrences ..."

RESPONSE: The Board recognizes operators' limited ability to respond within two hours under certain situations involving multiple system outages occurring simultaneously or near simultaneously. The Board also recognizes that it would be impracticable to have cable companies retain extra staff merely to respond within two hours in the event of numerous, simultaneous outages which would tax an operator's field manpower beyond what should be reasonably expected. However, the Board believes that the operator should make his best effort to restore service as quickly as possible. Therefore, the rule has been amended to include a new section which provides for operator response in the event of multiple, near-simultaneous outages.

COMMENT: The NJCTA recommended against adopting this rule at this time, but contended if the Board were to adopt this rule, the NJCTA asked the Board to reconsider some of the language. In specific, the NJCTA commented about the efficacy of the phrase, "governmental authorities." The NJCTA contended that this term may result in misunderstandings of which governmental officials have authority and how the term "emergency situation" is defined. The NJCTA would like the

rule to substitute "emergency service providers" for the broad-based, "governmental authorities."

The New Jersey League of Municipalities (League) commented that the term "governmental authorities" may be too broad and suggested the alternate phrase, "other designated emergency authority."

RESPONSE: The Board disagrees with the NJCTA recommendation against adoption and believes this rule is necessary at this time. The Board agrees with the NJCTA and the League that "governmental authorities" is too broad and has amended the rule accordingly.

COMMENT: The NJCTA commented that the rule should have clear and certain performance criteria. The rule should not be subject to open interpretation.

RESPONSE: The Board believes that the performance criteria is clear and certain. The Board further believes that the rule's language clearly sets out the outage restoration criteria to be met by the State's cable operators.

COMMENT: The League commented that the rule should be amended to contain a provision which reads, "Above mentioned authorities and utilities shall be supplied yearly with operator's 24 hour emergency phone number(s)." The League commented that these numbers should be for use strictly in emergency situations.

RESPONSE: The Board believes that this information should be provided to local emergency authorities and utilities but believes it is inappropriate to amend the rule to require yearly reporting to those authorities. The Board believes that such exchanges of emergency contact personnel lists already take place between many local governments and cable operators upon request. Additionally, the Office has no prior record of complaints to indicate that this information is not now being supplied by the industry upon request.

Summary of Changes Upon Adoption:

The agency, in response to the comments received, has made two substantive changes to the rule. When proposed, the rule incorporated the phrase "other governmental authorities," as to whom is enabled to invoke the power of immediate response from any given cable operator (in addition to emergency authorities). The New Jersey Cable Television Association felt the term was too broad and might result in a call to respond to "non-emergencies." The League of Municipalities concurred that this term may be too broad and had no problem with a substitution. The Board, therefore, felt it was appropriate to substitute the term "authorized emergency service providers" for the term "other governmental authorities." The term "authorized emergency service providers" encompasses Federal, State, county and municipal emergency service providers such as civil defense, National Guard, Armed Forces, and emergency management personnel.

The agencies has also added subsection (g) which allows a cable operator to respond to multiple near-simultaneous outages as quickly as possible without over-staffing the system with on-call personnel. The addition allows for restoration within a reasonable time period.

Full text of the rule follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

14:18-3.13 Prompt restoration standards

(a) For systems over 10,000 subscribers, the cable television operator shall dispatch personnel to begin corrective action within two hours of notification of any total loss of service affecting five or more contiguous subscribers within the cable system.

1. In situations where a system experiences multiple simultaneous or near-simultaneous outages due to weather or other causes beyond the system operator's control, the operator shall make every reasonable attempt to respond to and restore the multiple outages as soon as possible.

(b) In situations where it is not practicable to respond for reasons of safety or access to equipment, the company shall respond as soon as the situation would allow.

(c) Systems having less than 10,000 subscribers shall dispatch personnel to begin corrective action in response to a total loss of cable service affecting five or more contiguous subscribers within the system as promptly as possible.

(d) All operators shall respond immediately to emergency situations at the request of police, fire, rescue or other *[governmental authorities]* ***authorized emergency service providers*** or utilities.

(e) All operators shall dispatch personnel to begin corrective action as promptly as possible to any service interruptions or service deficiencies within the control of the operator and affecting the cable distribution plant, which interrupt one or more programming services to subscribers.

(f) For purposes of this rule, contiguous subscribers are those subscribers residing on the same streets or in the same neighborhood or geographic area of the system.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route U.S. 1 Business in Mercer County and Route U.S. 1 including Strawberry Street Connection and Milltown Road

Adopted Amendments: N.J.A.C. 16:28-1.150 and 1.151

Proposed: April 15, 1991 at 23 N.J.R. 1072(a).

Adopted: May 16, 1991 by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Filed: May 22, 1991 as R.1991 d.297, **without change.**

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

Effective Date: June 17, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comment received.

Full text of the adoption follows.

16:28-1.150 Route U.S. 1 Business

(a) The rate of speed designated for the certain parts of State highway Route U.S. 1 Business described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Mercer County:

(1) City of Trenton:

(A) Zone 1: 35 miles per hour between the junction of Route U.S. 1 and the City of Trenton—Township of Lawrence line (Brunswick Circle) (approximate mileposts 0.0 to 0.41); thence

(2) Lawrence Township:

(A) Zone 1: 40 miles per hour between the City of Trenton—Township of Lawrence line (Brunswick Circle) and Whitehead Road (approximate mileposts 0.41 to 1.09); thence

(B) Zone 2: 45 miles per hour between Whitehead Road and Texas Avenue (approximate mileposts 1.09 to 1.80); thence

(C) Zone 3: 55 miles per hour between Texas Avenue and Carnegie Road (approximate mileposts 1.80 to 2.73).

16:28-1.151 Route U.S. 1 including Milltown Road

(a) The rate of speed designated for the certain parts of State highway Route U.S. 1 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. Zone one: 50 mph in the City of Trenton and Lawrence Township from Conovers Alley (milepost 0.6) to milepost 3.0; thence ii.iii. (No change.)

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

1. (No change.)

OTHER AGENCIES**(a)****CASINO CONTROL COMMISSION****Casino Service Industries****Determination of Enterprises Conducting Business
On A Regular Or Continuing Basis with Casino
Licensees Or Applicants****Adopted Amendment: N.J.A.C. 19:43-1.2**

Proposed: October 15, 1990 at 22 N.J.R. 3203(a).

Adopted: May 22, 1991 by the Casino Control Commission,
Steven P. Perskie, Chairman.

Filed: May 24, 1991 as R.1991 d.299, **without technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3), **and with portions not adopted at this
time.**

Authority: N.J.S.A. 5:12-63(c), 69(c) and 92(c).

Effective Date: June 17, 1991.

Expiration Date: April 27, 1994.

The adopted amendments, which would permit an enterprise to transact \$75,000 of business with a casino licensee or applicant, or \$225,000 of business cumulatively with several casino licensees or applicants, prior to the enterprise being evaluated for licensure as a casino service industry solely on the basis of dollar volume of business, are in recognition of inflation which has occurred since the previous dollar thresholds were adopted in November 1981. The Casino Control Commission is not adopting the proposed amendments to N.J.A.C. 19:43-1.2(e) and (f) at this time. The Commission is continuing its review of those provisions which relate to the transportation industry, and of the comments received concerning them. Some or all of the balance of the amendment may be adopted by the Commission at a later time.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division), Sands Hotel, Casino and Country Club (Sands), Harrah's Marina Hotel and Casino (Harrah's), Bally's Park Place Casino Hotel and Tower (Bally's), and TropWorld Casino and Entertainment Resort (TropWorld).

COMMENT: The Division generally supports the proposed amendments. It states that the upward revisions in the dollar thresholds of N.J.A.C. 19:43-1.2(d)1 and 2 are necessary "to correct for both past and anticipated inflation impacts," and concludes that the adjustments "will permit continual efficient identification of those vendor enterprises whose substantial business warrants the closer examination which the service industry licensing investigation permits."

RESPONSE: The Casino Control Commission agrees with and accepts the Division's comment, although noting that the regulation would not automatically adjust for future inflation.

COMMENT: Sands, Harrah's, Bally's, and TropWorld support increasing the dollar thresholds in N.J.A.C. 19:43-1.2(d)1 and 2, but suggest, without naming a specific figure, that the increases be higher.

RESPONSE: The Commission believes that the revised dollar thresholds effectively adjust for inflation impact to date, and thus satisfy the intended purpose of the proposal. It is further recognized that periodic review of the effects of inflation will be necessary, and appropriate future adjustments made.

COMMENT: The Division generally supports the proposed addition to N.J.A.C. 19:43-1.2(e), the effect of which is to identify passenger transporters for licensing consideration based on the "indirect but substantial nature of their business relationships with the casino industry." The Division further states that inasmuch as the proposal merely extends the systems already in place to comply with N.J.A.C. 19:45-2.6, "the measure should not prove too costly or cumbersome to implement." The Division notes, however, that "time periods for computing 'total dollar value of business'" are not specified in the proposal.

RESPONSE: The Commission agrees with the Division with respect to its observation concerning the effect of the proposed amendment, and as to the relative ease of implementing the required reporting under the revised rule. The Commission is not in accord with the Division, however, regarding the necessity for specifying a time period for computing total

dollar value of business. Since the amendment, in both N.J.A.C. 19:43-1.2(d)1 and 2, calls for measurement of business "within any 12-month period," the cumulative dollar volume condition could arise in any month. Accordingly, reporting on a monthly basis will logically be required in support of the regulation.

COMMENT: The Sands, Harrah's, Bally's, and TropWorld each oppose the adoption of N.J.A.C. 19:43-1.2(e) on the basis that such financial reporting is unnecessary because the affected passenger transporters are not casino service industries within the meaning of N.J.S.A. 5:12-12.

RESPONSE: The Commission disagrees with the casino industry analysis of the definition contained in the statute. Although the Casino Control Act contains illustrative information concerning both the types of enterprises and types of business activity encompassed in the statute, there also is the phrase "without limitation" which requires that the Commission scrutinize "any form of enterprise which provides casino applicants or licensees with goods or services . . . on a regular or continuing basis. . . ." The Commission is aware of the considerable reliance the casino industry has placed on patrons bussed to Atlantic City. Casino licensees provide reserved bus "slots" for the buses of those companies which regularly transport passengers to their casinos. In exchange, the casino licensees agree to provide the passengers of those bus companies with attractive packages of complimentary goods and services. The Commission maintains that such agreements, whether written or unwritten, establish a sufficient nexus of "service" to the casino licensee as to establish grounds for the proposed regulation. At this time, however, the Commission does not adopt the amendments to N.J.A.C. 19:43-1.2(e) to afford an opportunity for further study of various questions related to the appropriate financial measurements upon which to base the regulation.

Full text of the adoption follows. (Note: Those portions of N.J.A.C. 19:43-1.2(e) for which the proposed amendments are not adopted at this time are reproduced below in their current code form.)

19:43-1.2 License requirements**(a)-(c) (No change.)**

(d) Notwithstanding the provisions of (c) above, persons and enterprises which provide, or imminently will provide, goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to casino applicants or licensees, their employees or agents shall, unless otherwise determined by the Commission, be deemed to be transacting such business on a regular or continuing basis if:

1. The total dollar amount of such transactions with a single casino applicant or licensee, its employees or agents, is or will be equal to or greater than \$75,000 within any 12-month period; or

2. The total dollar amount of such transactions with all casino applicants or licensees, their employees or agents, is or will be equal to or greater than \$225,000 within any 12-month period.

(e) The word "transaction", for the purpose of this section, shall be construed to effectuate the public interest and the policies of the Act.

(b)**CASINO CONTROL COMMISSION****Accounting and Internal Controls****Definitions; Procedures For Exchange of Checks****Submitted By Gaming Patrons****Adopted Amendments: N.J.A.C. 19:45-1.1 and 1.25**

Proposed: January 22, 1991 at 23 N.J.R. 191(a).

Adopted: May 22, 1991 by the Casino Control Commission,
Steven P. Perskie, Chairman.

Filed: May 24, 1991 as R.1991 d.301, **without change.**

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g), (l) and (m),
5:12-99 and 5:12-101.

Effective Date: June 17, 1991.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement indicated that it supported the adoption of the proposal as published.

RESPONSE: Accepted.

Full text of the adoption follows.

19:45-1.1 Definitions

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

"Bank" is defined in N.J.A.C. 19:45-1.25.

"Changeperson" means a person employed in the operation of a casino to possess an imprest inventory of coin created from slot booth funds and used for the even exchange with slot machine patrons of coupons, coin, currency and slot tokens.

"Check" is defined in N.J.A.C. 19:45-1.25.

"Checking account" is defined in N.J.A.C. 19:45-1.25.

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

(a) (No change.)

(b) No casino licensee or any person licensed under the Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Act, may accept a check other than a recognized travelers' check or other cash equivalent, from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for such check unless the requirements of this section and N.J.A.C. 19:45-1.26, 19:45-1.27, 19:45-1.28 and 19:45-1.29 concerning check cashing, redeeming, consolidating, collecting and recording procedures are observed by the casino licensee and its employees and agents. For purposes of this chapter: the term "check" when used in connection with an exchange, redemption, substitution or consolidation by a patron shall mean any draft drawn by the patron which is a "cash item" as defined in Regulation J of the Board of Governors of the Federal Reserve System, 12 C.F.R. §210.2(e), and which is drawn on an account maintained in a "depository institution" as defined in Section 19(b) of the Federal Reserve Act, 12 U.S.C. §461(b), including share drafts and drafts drawn on negotiable order of withdrawal accounts or similar accounts; the term "checking account" shall mean any account on which a "check" is drawn; and the term "bank" shall include any "depository institution" as defined in 12 U.S.C. §461(b). For purposes of this chapter, a check received from a person by cage cashiers may be presumed by the casino licensee not to be exchanged to enable such person to take part in gaming activity as a player, if the casino licensee shall cause to be posted at each general cashier station in the cashiers' cage a conspicuous sign that reads: "By law, personal checks cannot be exchanged for currency or coin to be used for gaming purposes."

(c)-(p) (No change.)

(a)

CASINO CONTROL COMMISSION**Accounting and Internal Controls****Procedure for Exchange of Checks Submitted by Gaming Patrons****Slot Booths****Adopted Amendments: N.J.A.C. 19:45-1.25 and 1.34**

Proposed: February 19, 1991 at 23 N.J.R. 397(a).

Adopted: May 22, 1991 by the Casino Control Commission,

Steven P. Perskie, Chairman.

Filed: May 24, 1991 as R.1991 d.300, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c) and 5:12-101(g).

Effective Date: June 17, 1991.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Sands Hotel and Casino, Harrah's Casino Hotel, Trump Taj Mahal Casino Resort, Atlantic City Showboat, Inc. and TropWorld Casino and Entertainment Resort support the proposed amendments, as published.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement supports the proposed amendments to N.J.A.C. 19:45-1.25 and 1.34; however, it recommends that acceptable internal control procedures be established prior to adoption.

RESPONSE: The Commission does not agree with the Division's position that it is necessary to receive approval of the internal control procedures detailing how cash advance transactions will be performed prior to the adoption of the amendments to N.J.A.C. 19:45-1.25 and 1.34. As has been done in previous rule adoptions, the internal control procedures can be approved after the proposal has been adopted.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

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

(i) A person may obtain cash at the cashiers' cage or slot booth to be used for gaming purposes by presenting a recognized credit card to a general cashier or slot cashier. Prior to the issuance of cash to a person, the general cashier or slot cashier shall verify through the recognized credit card company the validity of the person's credit card or shall verify through a recognized electronic funds transfer company which, in turn, verifies through the credit card company the validity of the person's credit card and shall obtain approval for the amount of cash the person has requested. The general cashier or slot cashier shall then prepare such documentation as required by the casino licensee to evidence such transactions and to balance the imprest fund prior to the issuance of the cash.

(j)-(p) (No change.)

19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1.-8. (No change.)

*[8.]***9.*** The issuance of Payouts in conformity with N.J.A.C. 19:45-1.40;

*[9.]***10.*** The issuance of cash to patrons upon the presentation of a recognized credit card in accordance with N.J.A.C. 19:45-1.25(i);

[and]

*[10.]***11.*** The exchange with the cashiers' cage of any coin, currency, slot tokens, chips, plaques and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of change with changepersons the slot booth shall not be allowed to obtain coin, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage. Exchanges with the cashiers' cage must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booths.

*[11.]***12.*** (No change in text.)

(b)-(c) (No change.)

ADOPTIONS

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION
Temporary Adoption of New Rules and Amendments
Gaming Equipment; Rules of the Games
Red Dog

Authority: N.J.S.A. 5:12-69(e), 5:12-70(f) and 5:12-100(e).

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether various temporary amendments and new rules concerning the game of red dog should be adopted on a permanent basis. The experiment shall be conducted in accordance with temporary rules which will be posted in each casino participating in the experiment and will also be available from the Commission upon request.

Specifically, the test would allow any casino licensee which wishes to participate in the experiment, and which meets all terms and conditions established by the Commission, to offer the game of red dog to the public beginning on July 1, 1991. The experiment would continue for the maximum period of time authorized by N.J.S.A. 5:12-69(e), unless otherwise terminated by the Commission pursuant to the terms of the experiment.

Should the temporary amendments and new rules prove successful, the Commission will propose them for permanent adoption in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

Take further notice that the conduct of this experiment is being announced in anticipation of the passage of statutory amendments pending before the Legislature as of May 22, 1991, which would add the game of red dog to the list of authorized games contained in N.J.S.A. 5:12-5. If these amendments are not enacted by July 1, 1991, the red dog experiment will be cancelled.

EMERGENCY ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Eligibility of Clipped Pepper Transplants

Adopted Emergency Amendment: N.J.A.C. 2:17-7.1

Emergency Amendment Adopted: May 21, 1991, by State Board of Agriculture, Arthur R. Brown, Jr., Secretary.
Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): May 28, 1991.

Emergency Amendment Filed: May 31, 1991 as R.1991 d.317.

Authority: N.J.S.A. 4:7-1 et seq.

Emergency Amendment Effective Date: May 31, 1991.

Emergency Amendment Expiration Date: July 30, 1991.

The Agency emergency amendment follows:

On May 21, 1991, Arthur R. Brown, Jr., Secretary, New Jersey Department of Agriculture, pursuant to the authority of N.J.S.A. 4:7-1 et seq., and the applicable provisions of the Administrative Procedure Act, and upon certification by the Governor of the State of New Jersey that an imminent peril exists (see N.J.S.A. 52:14B-4(c)), adopted an emergency amendment to N.J.A.C. 2:17-7.1, concerning the eligibility of movement into New Jersey of clipped pepper transplants. The emergency amendment is effective for 60 days upon filing with the Office of Administrative Law (OAL).

Summary

To respond to an imminent peril of a nationwide pepper plant shortage, the Department of Agriculture is adopting an emergency amendment to ensure a steady supply of pepper transplants for farmers. Without this adoption, an undetermined number of farmers would not receive sufficient plants to produce their crop. These plants must have been grown under an official certification program, or be inspected and certified by an official state inspector not more than three days prior to shipping to New Jersey.

The immediate adoption of the amendment is necessary for the Department of Agriculture to administratively authorize entry of clipped pepper transplants into the State.

Social Impact

The adopted emergency amendment will affect farmers, farmworkers, plant brokers and those working in the food processing industry. The emergency amendment will help strengthen the agricultural industry in New Jersey and will favorably benefit all affected classes through ensuring a sufficient harvest.

Economic Impact

There will be no economic impact on the general treasury, or increased administrative costs to the Department of Agriculture. The practice of clipping may mask disease symptoms in pepper plants; clipped plants may be more susceptible to certain plant diseases. A major positive economic impact will benefit those farmers who, due to shortages of plants, would not otherwise procure sufficient plants to raise a crop for the processing market this year. Clipped plants produce a later crop which is satisfactory for the processing market. Farmworkers and those working in the food processing industry will benefit through employment throughout the full harvest season.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the emergency amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments permit small businesses (farmers) to further their activities.

Full text of the adopted emergency amendment follows (additions indicated in boldface **thus**).

2:17-7.1 Movement into New Jersey of pepper transplants

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

(d) Imported pepper transplant standards include the following:

1.-2. (No change.)

3. Not clipped **except as listed:**

i. Only those clipped pepper plants qualifying under an official state certification program in the state of origin, or inspected and certified to be apparently free from injurious insects, nematodes and plant disease by an official in the state of origin will be admitted into New Jersey.

ii. Plants shall not be clipped in such a manner to impede successful growth as determined by the inspecting authority.

4.-5. (No change.)

(e)-(f) (No change.)

(b)

DIVISION OF DAIRY INDUSTRY

Milk Prices to Dairy Farmers

Adopted Emergency New Rules and Concurrent Proposed New Rules: N.J.A.C. 2:51.

Emergency New Rules Adopted and Concurrent Proposed New Rules Authorized: May 31, 1991 by Woodson Moffett Jr., Director, Division of Dairy Industry, New Jersey Department of Agriculture.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): May 31, 1991.

Emergency New Rule Filed: May 31, 1991 as R.1991 d.322.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-22 and 23.

Concurrent Proposal Number: PRN 1991-352.

Emergency New Rule Effective Date: May 31, 1991.

Emergency New Rule Operative Date: June 1, 1991.

Emergency New Rule Expiration Date: July 30, 1991.

Submit comments by July 17, 1991 to:

Arthur R. Brown, Jr., Secretary
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625

These new rules were 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 these emergency new rules are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the emergency period expiration date.

The agency emergency adoption and concurrent proposal follow:

Summary

On April 12, 1991, petitions were received by the Department from dairy farmers and cooperatives requesting an emergency hearing to consider fixing a premium price to dairy farmers above the price established by Federal milk marketing orders in effect in New Jersey.

Pursuant to N.J.S.A. 4:12A-22 and 23, the hearing was held and a Finding of Fact was entered pursuant to N.J.S.A. 4:12A-23. The Director found that, to avoid the loss of large numbers of dairy farmers during the next year, it is necessary to enter an order fixing a premium above federal milk marketing order prices. Petitioners had asked for a premium of \$1.05 per hundredweight for a period of one year from the effective date of the order. The rules provide for such premium, provides procedures for equitable distribution to dairy farmers, provides for the operation of an equalization fund and provides for payment of the premium directly to dairy farmers by the dealers.

Social Impact

The additional income to farmers resulting from adoption of N.J.A.C. 2:51, Emergency State Milk Order Price, will permit New Jersey's dairy farmers to pay their current operating expenses and thus remain in business. New Jersey dairy farmers are important in maintaining tax paying open spaces and maintaining the aesthetic value of rural New Jersey. The maintenance of the dairy farming industry is important to

all of New Jersey citizens. New Jersey's dairy farmers provide its citizens, locally produced high quality milk for consumption.

Economic Impact

The direct increase in income to dairy farmers will amount to about \$2.7 million during the one-year period the order is in effect. This income will be used to purchase feed and supplies by the dairy farmers, and will promote the welfare of feed dealers and suppliers of farm equipment. Further, if the additional income is not received, an estimated 15 percent of New Jersey dairy farmers would go out of business within the year. Such loss would result in economic chaos for rural communities, especially in the six dairy producing counties. The increase in prices to dairy farmers will result in higher prices to consumers, estimated to be equal to about 4 cents per gallon for the New Jersey milk purchased by New Jersey processing plants. But long term loss of New Jersey's dairy farmers would result in higher milk prices because the dealers would be required to purchase from more distant farmers and pass the increased cost onto the consumer.

N.J.A.C. 2:51-2.2 requires monthly reporting of information by dealers to the Director. Dealers will incur administrative costs in providing these reports.

Regulatory Flexibility Analysis

Milk produced by New Jersey's dairy farmers is purchased by eight New Jersey processors, of which four are small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose minimal additional reporting requirements on the dealers and does not require anything of the farmers.

The reporting requirements imposed under N.J.A.C. 2:51-2.2 provide the minimum information required by the Division to monitor the effect of these rules; therefore, no differing requirements based on business size are provided.

Full text of the emergency adopted and concurrent proposed new rules follows.

CHAPTER 51 EMERGENCY STATE MILK ORDER PRICE

SUBCHAPTER 1. DEFINITIONS

2:51-1.1 Definitions

Words used in this chapter, unless otherwise expressly stated or unless the context or subject matter otherwise requires, shall have the following meanings.

"Class I milk" shall mean milk classified as Class I pursuant to Joint and Concurrent Federal-State orders in effect in New Jersey (7 CFR Parts 1002 and 1004).

"Dealer" shall mean any person who purchases milk from producers for processing or resale, who is licensed as a dealer under the Milk Control Act, N.J.S.A. 4:12A-1 et seq., and is also classified as a handler by the Market Administrator pursuant to 7 CFR Part 1002 and 7 CFR Part 1004.

"Director" shall mean the director of the Division of Dairy Industry, New Jersey Department of Agriculture or such other authority as designated by the New Jersey Secretary of Agriculture.

"Producer" shall mean a dairy farmer living in New Jersey and producing Grade A milk for sale to milk dealers, as hereinafter defined.

"Settlement fund" shall mean the fund established by the Director for the purpose of equalizing obligations of individual dealers with payments to producers.

SUBCHAPTER 2. CLASS I PRICES FOR MILK PURCHASED FROM NEW JERSEY PRODUCERS

2:51-2.1 Additional payments to producers

Each dealer purchasing milk from New Jersey producers shall pay such producers an amount equal to \$1.05 per hundredweight more than the Class I price applicable to such purchases under terms of Federal-State Orders No. 2 and No. 4 (7 CFR Parts 1002 and 1004).

Dealers processing milk from producers from other states shall prorate total Class I usage to New Jersey producers based upon the proportion of total receipts represented by milk from New Jersey producers. This \$1.05 per hundredweight additional obligation shall be termed "the \$1.05 per hundredweight New Jersey State order price."

2:51-2.2 Reports by dealers

(a) For each month that this chapter is in effect, each dealer receiving milk from New Jersey producers shall, no later than the 10th day of the following month, report to the Director on forms provided for such purposes as follows:

1. The volume of milk received from New Jersey producers for the preceding month;
2. The percentage of total producer receipts from all sources utilized as Class I milk for the preceding month;
3. The total pounds of New Jersey milk allocated to Class I; and
4. Such other information as may be required to administer and enforce the provisions of this chapter.

2:51-2.3 Pay price to producers

(a) Computation of price shall be as follows:

1. Each month that this chapter is in effect, the Director shall, for the preceding month, calculate the total amount due producers under this chapter for Class I milk and the average value (price) per hundredweight for all New Jersey milk sold to licensed New Jersey dealers.

2. The average monthly price hereinafter designated as the month's "New Jersey premium" shall be announced by the Director no later than the 15th day of the month. Each dealer shall be notified by phone or fax, with confirmation in writing.

(b) Payment of premium shall be as follows:

1. An amount determined by multiplying the announced "New Jersey premium" price times each New Jersey producer's total deliveries shall be paid to such producer no later than the 20th day of the succeeding month; or, in the case of producers whose milk is marketed by cooperatives, payments shall be made to such cooperatives no later than the 18th day of the succeeding month.

2. The monthly "New Jersey milk premium" shall be clearly designated as such on New Jersey producer check statements.

2:51-2.4 Operation of settlement fund

(a) The Director shall establish a "settlement fund" for the purpose of equalizing the obligations of individual New Jersey plants under the terms of this chapter, with payments to producers of the monthly "New Jersey premium" price, as follows:

1. Dealers with total monthly obligation under this chapter in excess of the monthly "New Jersey premium" for receipts of milk from New Jersey producers, shall no later than the 16th day of the month, pay such excess amount into the settlement fund.

2. Dealers with a total monthly obligation under this chapter, which is less than the monthly "New Jersey premium" payable to New Jersey producers delivering milk to said plants, shall be paid the difference from the fund. The Director shall make such equalization payment to the dealer not later than the 17th day of the month.

3. The Director shall establish such financial reserves as are necessary to operate the settlement fund and to pay the actual cost of fund operation, such as checks and bank charges, by withholding the necessary sum from the first month's "average New Jersey premium" payable to producers. Such reserve shall be paid to producers prior to the termination of this or any succeeding chapter.

SUBCHAPTER 3. TERMINATION OF CHAPTER

This chapter shall be effective for a period of one year from date of adoption unless extended or modified pursuant to the Administrative Procedures Act.

PUBLIC NOTICES

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Notice of Receipt of Petition for Rulemaking Appeals Process

Petitioners: Ocean County Agriculture Development Board.
 Authority: N.J.S.A. 4:1C-5(f) and N.J.S.A. 52:14B-4(f).

Take notice that on May 16, 1991 petitioners filed a petition with the State Agriculture Development Committee (SADC) requesting the promulgation of rules for an appeals process for the resolution of disputes arising before the SADC under the farmland preservation program.

Specifically, petitioners are requesting promulgation of regulations which would provide for the holding of a hearing before the SADC or the Office of Administrative Law (OAL) for the resolution of such controversies. Petitioners further request that "the rules should require that a hearing be held within 45 days of the date by which the SADC or OAL receives a request for a hearing."

After due notice, this petition will be considered by the State Agriculture Development Committee in accordance with the provisions of N.J.S.A. 4:1C-5(f).

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan Public Notice

Take notice that on May 10, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan was adopted by the Department. This amendment identifies a discharge to groundwater treatment facility proposed to serve Phase I of the Einstein Center commercial development. Phase I consist of Lots 17.03, 17.07 and 17.09 of Block 11.01 in Franklin Township, Somerset County.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Mercer County Water Quality Management Plan Public Notice

Take notice that on May 13, 1991, pursuant to the provisions of the Water Quality Management Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment updates the Princeton Township and Princeton Borough Wastewater Management Plan (WMP). The WMP identifies an addition of approximately 635 acres to the Stony Brook Regional Sewerage Authority (SBRSA) sewer service area in Princeton Township. Areas of the Township are also removed

from the sewer service area of the SBRSA. The Pretty Brook Sewerage Treatment Plant (STP) will be abandoned and flows conveyed to the SBRSA STP.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan and Upper Delaware Water Quality Management Plans Public Notice

Take notice that on May 15, 1991, pursuant to the provisions of the Water Quality Management Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan and Upper Delaware Water Quality Management Plans was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Washington Township, Morris County. Activities proposed in the WMP include: expansion of the Schooley's Mountain Sewerage Treatment Plant (STP) sewer service area; construction of two discharge to groundwater STP's, one servicing the Long Valley Village Service Area and one serving the Parker Acres Service Area; abandonment of the Long Valley Village Middle School STP and Old Farmers Road School STP and incorporation of their flows into the proposed Long Valley Village STP; and the remainder of the Township identified as an on-site groundwater disposal area for facilities with design flows of less than 20,000 gallons per day. This amendment also amends the Washington Township portions of the "Hackettstown Municipal Utilities Authority WMP for the Town of Hackettstown and portions of Allamuchy Township, Independence Township, Mansfield Township, Washington Township, Mount Olive Township."

INSURANCE

(e)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Notice of Receipt of Petition for Rulemaking N.J.A.C. 11:5-1.13

Petitioner: Michael R. Monihan, Broker/President, Monihan Realty, Inc.

Take notice that the New Jersey Real Estate Commission received on May 13, 1991 a petition to amend rule N.J.A.C. 11:5-1.13(c). The requested amendment is intended to address a concern that the current text of the rule does not clearly indicate that upon termination from their employment with a broker, no salesperson or broker-salesperson shall remove or cause to be removed from the offices of the broker any of the files of the broker pertaining to sale or rental listings. Rather, the current text of the rule refers only to "all files on pending and closed transactions . . .". The petitioner has requested that the Commission consider amending the rule so as to clearly provide that salespersons and broker-salespersons are precluded from removing files on listings, as well as files on pending and closed transactions upon the termination of their employment relationship with a broker.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Real Estate Commission will mail to the petitioners and file with the Office of Administrative Law a notice of action on this petition.

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 May 6, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT APRIL 15, 1991

NEXT UPDATE: SUPPLEMENT MAY 20, 1991

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
22 N.J.R. 1807 and 1964	June 18, 1990	23 N.J.R. 1 and 144	January 7, 1991
22 N.J.R. 1965 and 2062	July 2, 1990	23 N.J.R. 145 and 248	January 22, 1991
22 N.J.R. 2063 and 2202	July 16, 1990	23 N.J.R. 249 and 332	February 4, 1991
22 N.J.R. 2203 and 2386	August 6, 1990	23 N.J.R. 333 and 636	February 19, 1991
22 N.J.R. 2387 and 2622	August 20, 1990	23 N.J.R. 637 and 798	March 4, 1991
22 N.J.R. 2623 and 2860	September 4, 1990	23 N.J.R. 799 and 924	March 18, 1991
22 N.J.R. 2861 and 3072	September 17, 1990	23 N.J.R. 925 and 1048	April 1, 1991
22 N.J.R. 3073 and 3182	October 1, 1990	23 N.J.R. 1049 and 1226	April 15, 1991
22 N.J.R. 3183 and 3274	October 15, 1990	23 N.J.R. 1227 and 1482	May 6, 1991
22 N.J.R. 3275 and 3420	November 5, 1990	23 N.J.R. 1483 and 1722	May 20, 1991
22 N.J.R. 3421 and 3606	November 19, 1990	23 N.J.R. 1723 and 1854	June 3, 1991
22 N.J.R. 3607 and 3666	December 3, 1990	23 N.J.R. 1855 and 1980	June 17, 1991
22 N.J.R. 3667 and 3896	December 17, 1990		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3	Return of contested cases: failure of party to appear at hearing	23 N.J.R. 1728(a)		
1:1-3.3, 14.4, 14.14	Return of cases; failure to appear; sanctions	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:1-5.4	Representation by non-lawyers	23 N.J.R. 1053(a)	R.1991 d.296	23 N.J.R. 1919(a)
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)		
1:13-1.1, 4.1	Division of Motor Vehicle cases	23 N.J.R. 928(a)		
1:13-14.4	Motor Vehicle cases: failure to appear	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:13A-14.1	Lemon Law hearings: failure to appear	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:14	Board of Public Utility hearings	23 N.J.R. 640(a)		
1:14	Board of Public Utility hearings: extension of comment period	23 N.J.R. 1230(a)		

Most recent update to Title 1: TRANSMITTAL 1991-2 (supplement February 19, 1991)

AGRICULTURE—TITLE 2				
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:9-1	Avian influenza: indemnification of poultry losses	23 N.J.R. 1485(a)		
2:17-7.1	Movement into State of pepper transplants	Emergency (expires 7-30-91)	R.1991 d.317	23 N.J.R. 1966(a)
2:18	Nursery inspection fees	23 N.J.R. 1230(b)		
2:21-7	Fees for seed testing	23 N.J.R. 1231(a)		
2:32-2.3, 2.11, 2.22, 2.27	Sire Stakes Program	23 N.J.R. 252(a)	R.1991 d.241	23 N.J.R. 1408(a)
2:50-1.1, 2.1	Dairy farmers and milk dealers notice to discontinue sale or purchase of milk	23 N.J.R. 929(a)		
2:51	Milk prices to dairy farmers	Emergency (expires 7-30-91)	R.1991 d.322	23 N.J.R. 1966(b)
2:69-1.11	Commercial values of primary plant nutrients	23 N.J.R. 1728(b)		
2:73-2	Seal of Quality for Eggs program	23 N.J.R. 1729(a)		

Most recent update to Title 2: TRANSMITTAL 1991-2 (supplement February 19, 1991)

BANKING—TITLE 3				
3:1-2.17	Closing of branch offices	23 N.J.R. 801(a)		
3:1-2.25, 2.26	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:1-2.25, 2.26, 17	Automated teller machines	23 N.J.R. 642(a)	R.1991 d.244	23 N.J.R. 1408(b)
3:1-6.1, 6.2, 6.6	Assessments on trust assets	23 N.J.R. 1073(b)		
3:1-18	Foreign banks and associations: registration of service facilities	23 N.J.R. 1233(a)		
3:3-2	Nonpublic records	23 N.J.R. 253(a)	R.1991 d.287	23 N.J.R. 1921(a)
3:6-8	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:6-13	Repeal (see 3:1-2.25, 2.26, 17)	23 N.J.R. 642(a)	R.1991 d.244	23 N.J.R. 1408(b)
3:16-2.1	Pawnbroker service charges	23 N.J.R. 1729(b)		
3:17	Consumer Loan Act rules	23 N.J.R. 1234(a)		
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:17-1.1, 1.4	Consumer loan licensees: check solicitations	23 N.J.R. 931(a)		
3:17-3.4	Location of consumer loan records	23 N.J.R. 803(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
3:18-2.1	Location of secondary mortgage loan records	23 N.J.R. 803(a)		
3:18-10.5	Surety bonding of secondary mortgage loan licensees	23 N.J.R. 802(a)	R.1991 d.272	23 N.J.R. 1661(a)
3:23-2.1	License fees for motor vehicle installment sellers and home repair contractors	23 N.J.R. 1073(b)		
3:24-2.7	Posting of general ledger by check cashers	23 N.J.R. 932(a)		
3:29-1.1-1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	23 N.J.R. 1485(b)		
3:32-1.11, 2	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:38-1.2, 1.4, 1.9	Mortgage banker and broker net worth standards	23 N.J.R. 643(a)		
3:38-1.5	Surety bonding of mortgage loan licensees	23 N.J.R. 802(a)	R.1991 d.272	23 N.J.R. 1661(a)
3:38-2.1	Location of mortgage loan records	23 N.J.R. 803(a)		

Most recent update to Title 3: TRANSMITTAL 1991-3 (supplement April 15, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A

4A:6-5.3	PAR use and review: administrative change			23 N.J.R. 1410(a)
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Most recent update to Title 4A: TRANSMITTAL 1990-5 (supplement November 19, 1990)

COMMUNITY AFFAIRS—TITLE 5

5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-1.12	Hotels and multiple dwellings: administrative correction regarding Uniform Fire Code inspections			23 N.J.R. 1410(b)
5:14-1.1-1.6, 2.1, 2.2, 2.3, 3.1-3.12, 3A, 4.10, App. A-D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-1.5	Fire official and fire inspector certification	23 N.J.R. 1235(a)		
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)		
5:18A-1.4, 2.3, 3.3, 4.3-4.7, 4.9, 4.10	Fire official and fire inspector certification	23 N.J.R. 1235(a)		
5:23-1.1, 1.4, 2.14, 2.23, 2.25, 3.4, 3.11, 3.14, 4.3, 4.5, 4.12, 4.13, 4.18, 4.20, 4.24, 5.1, 5.3, 5.5, 5.7, 5.19, 5.20, 5.23, 12	Elevator Safety Subcode	23 N.J.R. 805(a)		
5:23-2.38	Barrier Free Recreational Standards: appeals regarding facility noncompliance	23 N.J.R. 1730(a)		
5:23-3.11A, 4.2	Uniform Construction Code: plan review of proposed school facilities	23 N.J.R. 1084(a)	R.1991 d.309	23 N.J.R. 1922(a)
5:23-3.14, 3.18, 3.20, 10.3	Uniform Construction Code: 1991 subcode references; Energy and Radon Hazard subcodes	23 N.J.R. 1487(a)		
5:23-3.15, 3.18	Uniform Construction Code: plumbing and energy subcodes	23 N.J.R. 804(a)		
5:23-5.3, 5.15, 5.20, 5.23	Uniform Construction Code: fire inspector RCS license	23 N.J.R. 1085(a)	R.1991 d.308	23 N.J.R. 1923(a)
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:24-2.3, 2.5	Dwelling unit conversions: senior citizens and disabled protected tenancy	23 N.J.R. 645(a)	R.1991 d.252	23 N.J.R. 1662(a)
5:27-1.3	Rooming and boarding houses: proof of fire code compliance	23 N.J.R. 932(b)	R.1991 d.288	23 N.J.R. 1925(a)
5:34-7.1-7.4, 7.7	Cooperative pricing and joint purchasing systems by local governmental units	23 N.J.R. 933(a)	R.1991 d.284	23 N.J.R. 1787(a)
5:70-6.3	Congregate Housing Services Program: service subsidies	23 N.J.R. 934(a)	R.1991 d.295	23 N.J.R. 1925(b)
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-9.9	Housing and Mortgage Finance Agency: JUMPP project net increases	23 N.J.R. 646(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		
5:91-4.1, 4.5	Council on Affordable Housing: petition for substantive certification; municipal/developer incentives	23 N.J.R. 1088(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 6.1, 6.2, 6.3, 14.4	Council on Affordable Housing: credits for rehabilitation and new construction; rental housing	23 N.J.R. 1488(a)		

Most recent update to Title 5: TRANSMITTAL 1991-4 (supplement April 15, 1991)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General Willaim C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

EDUCATION—TITLE 6

6:3-7.4, 7.7	Homeless children and youth: administrative corrections	_____	_____	23 N.J.R. 1410(c)
6:11-11.9	Speech language specialist endorsement	23 N.J.R. 336(a)	R.1991 d.282	23 N.J.R. 1816(b)
6:20-2.12, 2.13, 2.14, 2A.10, 2A.11, 2A.12, 4.1, 5.3, 5.6, 8.3	Financial management in local districts	23 N.J.R. 1733(a)		
6:20-4.3, 4.4	Private schools for handicapped: administrative corrections	_____	_____	23 N.J.R. 1410(c)
6:21-7, 19	Pupil transportation aid	23 N.J.R. 1737(a)		
6:22-1.2-1.7, 2, 3, 4, 5.4, 5.5, 6, 7, 8	School Facility Planning Service	23 N.J.R. 1238(a)		
6:24-7.1, 7.2, 7.7	Budget appeals: administrative corrections	_____	_____	23 N.J.R. 1410(c)
6:28-1.1, 1.3, 3.2, 3.5, 3.7, 4.2, 4.4, 6.5, 7.1, 7.2, 10.1, 10.2, 11.4	Special education	23 N.J.R. 1053(d)		
6:29-7.3, 7.4	School employee physical examinations	23 N.J.R. 336(b)	R.1991 d.283	23 N.J.R. 1817(a)
6:30-4.4, 4.5	Reporting of enrollments in adult high schools	23 N.J.R. 1243(a)		
6:39-1.3, 1.4	Statewide assessment of pupil achievement: students with educational disabilities; State mandated tests	23 N.J.R. 1244(a)		
6:41	Repeal Advisory Council	23 N.J.R. 1244(b)		
6:43-1.1, 1.2, 3.3, 7.1, 8.1	Vocational and technical education: programs and standards	23 N.J.R. 1246(a)		
6:46-1.1, 2	Local area vocational school districts	23 N.J.R. 1247(a)		
6:47	Repeal Management Services	23 N.J.R. 1244(b)		
6:48	Repeal Professional Services	23 N.J.R. 1244(b)		
6:49	Repeal Occupational Research Development	23 N.J.R. 1244(b)		
6:50	Repeal Urban Education and Manpower Training	23 N.J.R. 1244(b)		
6:51	Vocational and technical education: administration and organization	23 N.J.R. 1250(a)		
6:52	Repeal Residential Schools	23 N.J.R. 1244(b)		

Most recent update to Title 6: TRANSMITTAL 1991-3 (supplement April 15, 1991)

ENVIRONMENTAL PROTECTION—TITLE 7

7:0	Clean Water Enforcement Act: notice of intention to propose rules regarding civil administrative penalties	23 N.J.R. 935(b)		
7:1E	Discharges of petroleum and other hazardous substances	23 N.J.R. 1335(a)		
7:11-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:5C-1.4, 3.1, 5.1	Endangered Plant Species Program	23 N.J.R. 812(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:7E-8.13	Buffers and compatibility uses: administrative correction	_____	_____	23 N.J.R. 1662(b)
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)	R.1991 d.270	23 N.J.R. 1662(c)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)	R.1991 d.271	23 N.J.R. 1664(a)
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)	R.1991 d.307	23 N.J.R. 1926(a)
7:14A-1.9, 2.5, 3.10, 8.13	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		

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7:14A-15 7:18	Industrial wastewater pretreatment: preproposed rules Certification of laboratories analyzing drinking water and wastewater	23 N.J.R. 149(a) 23 N.J.R. 1109(a)		
7:18-1.1, 1.3, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.15, 5.2-5.5, 5.7, 5.8 7:18-6.6	Radon laboratory certification program	23 N.J.R. 29(b)	R.1991 d.246	23 N.J.R. 1423(a)
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App. 7:24 7:24	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology Water Pollution Control Act Dam Restoration Grant Program Dam Restoration Grant Program: administrative correction to proposal	23 N.J.R. 1089(a) 22 N.J.R. 2870(a) 23 N.J.R. 650(a) 23 N.J.R. 935(a)	R.1991 d.307 R.1991 d.256	23 N.J.R. 1926(a) 23 N.J.R. 1665(a)
7:25-4.13, 4.17 7:25-5 7:25-18.1	Endangered and nongame wildlife species 1991-92 Game Code Winter flounder and red drum: size and possession limits	22 N.J.R. 1308(a) 23 N.J.R. 1494(a) 23 N.J.R. 43(a)	R.1991 d.277	23 N.J.R. 1788(a)
7:25-18.1 7:25-18.5 7:25-18.5-18.11 7:25-22.1-22.4	Taking of Atlantic sturgeon: preproposed amendment Bait net and gill net regulation Gill netting in Delaware Bay Menhaden fishing in Delaware Bay: notice of rule invalidation	23 N.J.R. 1111(a) 22 N.J.R. 3685(a) 22 N.J.R. 1311(a)	R.1991 d.278	23 N.J.R. 1792(a) 23 N.J.R. 1432(a)
7:25-22.3 7:25A-1.4, 1.5, 1.6, 1.9	Fishing for Atlantic menhaden Oyster management	22 N.J.R. 3611(a) 23 N.J.R. 1112(a)		
7:26-4.3, 4.4, 4.6, 15.6 7:26-4A.3	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-8.1 7:26-8.2, 8.8, 8.12 7:26-8.2, 8.8, 8.12	Fee schedule for hazardous waste generators, facilities, and transporters Mixtures of solid and listed hazardous wastes Hazardous waste management: Toxicity Characteristic Hazardous waste management: reopening of comment period regarding Toxicity Characteristic of waste	23 N.J.R. 814(a) 23 N.J.R. 1113(b) 23 N.J.R. 151(a) 23 N.J.R. 1401(a)		
7:26-8.13 7:26-8.14 7:26-8.14	Hazardous waste from non-specific sources: F019 exclusion Hazardous waste management: methyl bromide production wastes Hazardous waste management: reopening of comment period regarding listing of methyl bromide production wastes	23 N.J.R. 153(a) 23 N.J.R. 154(a) 23 N.J.R. 1401(b)	R.1991 d.243	23 N.J.R. 1432(b)
7:26-8.15, 8.16 7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4 7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4 7:26-12.4	Hazardous waste criteria, identification, and listing Hazardous waste management Hazardous waste management: extension of comment period Hazardous waste facility permits: administrative correction	23 N.J.R. 1114(a) 22 N.J.R. 3186(a) 22 N.J.R. 3431(a)		23 N.J.R. 1432(c)
7:26A 7:26B-1.3, 1.5	Solid waste recycling ECRA "cleanup plan" and applicability: validity of rules	22 N.J.R. 3088(a)		23 N.J.R. 1797(a)
7:27-13.1, 14.1, 15.1 7:27-25.1, 25.2, 25.5, 25.7, 25.8 7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution control: administrative corrections Air pollution by vehicular fuels Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 45(b) 23 N.J.R. 261(a)		23 N.J.R. 1432(d)
7:28-1.4, 20 7:28-3.5, 3.13, 4.19	Particle accelerators for industrial and research use Fee schedules for possession and use of radioactive materials	23 N.J.R. 1401(c) 22 N.J.R. 3300(a)		
7:28-16.2 7:31-2.16	Dental radiographic installations: qualified individual Toxic Catastrophe Prevention Act Program: annual registration fees	22 N.J.R. 3303(a) 23 N.J.R. 818(a)	R.1991 d.305	23 N.J.R. 1937(a)
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

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8:20-1.2	Birth Defects Registry: reporting requirements	23 N.J.R. 820(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		

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8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:22-1	Campground sanitation	23 N.J.R. 1252(b)		
8:24	Retail food establishments	23 N.J.R. 168(b)		
8:25	Youth Camp Safety Act standards	23 N.J.R. 651(a)	R.1991 d.269	23 N.J.R. 1665(a)
8:26	Public recreational bathing	23 N.J.R. 376(a)	R.1991 d.245	23 N.J.R. 1433(a)
8:33P-2.1, 2.4	Designation of additional Level II trauma centers	23 N.J.R. 822(a)	R.1991 d.290	23 N.J.R. 1938(a)
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:43E-3.10, 3.15	Adult closed acute psychiatric beds: notice of rule invalidation regarding liaison services and discharge and transfer planning	_____	_____	23 N.J.R. 1439(a)
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 1.2	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)	R.1991 d.291	23 N.J.R. 1939(a)
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)	R.1991 d.292	23 N.J.R. 1943(a)
8:65	Controlled dangerous substances: reopening of comment period	23 N.J.R. 823(a)		
8:65-10.3	Controlled dangerous substances: addition of anabolic steroids to Schedule III	_____	_____	23 N.J.R. 1943(b)
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a), 3581(b))	22 N.J.R. 1214(b)	R.1991 d.161	23 N.J.R. 906(a)
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a); 23 N.J.R. 206(a), 907(a))	22 N.J.R. 2501(a)	R.1991 d.254	23 N.J.R. 1672(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
8:71	Interchangeable drug products	23 N.J.R. 178(a)	R.1991 d.255	23 N.J.R. 1670(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)		

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9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)	Expired	
9:2-13.9	Auxiliary organizations: personnel	22 N.J.R. 1656(a)	Expired	
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)	Expired	
9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)	Expired	
9:7-3.2	Tuition Aid Grant Program: determining award levels	23 N.J.R. 1057(a)		
9:9-7	New Jersey College Loans to Assist State Students (NJCLASS) Program	23 N.J.R. 1257(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)	R.1991 d.306	23 N.J.R. 1944(a)

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10:3-4	Cognizant division contracting by community provider agencies	23 N.J.R. 1647(a)		
10:36	Patient supervision at State psychiatric hospitals	23 N.J.R. 1652(a)		
10:38	Interim Assistance Procedures Manual	23 N.J.R. 261(b)	R.1991 d.268	23 N.J.R. 1686(a)
10:42	Use of mechanical restraints and safeguarding equipment on developmentally disabled individuals	23 N.J.R. 1653(a)		
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
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10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.5, 1.13	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)		
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10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
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10:68	Manual of Chiropractic Services	23 N.J.R. 1327(a)		
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:70	Medically Needy Manual	23 N.J.R. 964(a)		
10:72-1.1, 3.4, 4.1, 4.3, 4.5	Medicaid eligibility: pregnant women and children	23 N.J.R. 1200(a)	R.1991 d.302	23 N.J.R. 1945(a)
10:73	Medicaid program case management services	23 N.J.R. 1328(a)		
10:81-2.17, 2.18	Public Assistance Manual: administrative changes			23 N.J.R. 1705(a)
10:81-8.22, 8.23	Extended Medicaid eligibility for newborns	23 N.J.R. 1657(a)		
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)		
10:83-1	Special Payments Handbook: administrative changes			23 N.J.R. 1411(a)
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:85-1.1, 1.2, 1.3, 2.1, 2.2, 2.5, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1-6.9, 7.2, 9.4, 12.1, 12.2	General Assistance Program	23 N.J.R. 1741(a)		
10:85-3.2, 10.2	General Assistance: administrative changes			23 N.J.R. 1412(a)
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:87-2.3, 2.6, 2.23, 2.30, 2.31, 3.6, 4.8, 5.5, 5.6, 5.9, 5.10, 7.14, 9.5, 9.7, 10.3, 10.9, 10.10, 10.21, 10.24, 11.23, App. A	Food Stamp Program: miscellaneous requirements	23 N.J.R. 179(a)	R.1991 d.247	23 N.J.R. 1412(b)
10:97-1.3, 1.4, 2.1-2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.6, 4.7, 4.8, 4.14, 4.15, 5.1, 5.3, 5.4, 6.1, 6.3, 6.4, 6.5, 7.1-7.4, 8.1, 8.2, 8.3, 9.1	Commission for Blind and Visually Impaired: Business Enterprise Program	23 N.J.R. 1749(a)		
10:120	Youth and Family Services administration	23 N.J.R. 1658(a)		

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10A:2-5	Reporting loss of funds	23 N.J.R. 1510(a)		
10A:2-8	Inmate financial aid upon release from correctional facility	23 N.J.R. 1511(a)		
10A:2-9	Gifts to correctional facilities	23 N.J.R. 1754(a)		
10A:3	Security and control	23 N.J.R. 1259(a)		
10A:3-1.1-1.4, 2	Inmate "keep separate status"	23 N.J.R. 383(a)	R.1991 d.250	23 N.J.R. 1672(b)
10A:4	Inmate discipline	23 N.J.R. 658(a)	R.1991 d.276	23 N.J.R. 1797(b)
10A:5	Close custody units	23 N.J.R. 1260(a)		
10A:9-5.5	Restoration of forfeited commutation time	23 N.J.R. 1261(a)		
10A:16-12	Inmates at risk of suicide	23 N.J.R. 1756(a)		
10A:18-1.3, 2.7	Inspection of inmate outgoing mail	23 N.J.R. 1758(a)		
10A:22-2.5	Inmate and parolee records: availability of information to correctional facility personnel	23 N.J.R. 1512(a)		
10A:34-3	Processing and housing juveniles in municipal detention facilities	23 N.J.R. 935(c)	R.1991 d.293	23 N.J.R. 1945(b)

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11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1-6	New Jersey Property-Liability Insurance Guaranty Association: assessment premium surcharge	23 N.J.R. 823(b)		
11:1-32	Department fees	23 N.J.R. 825(a)	R.1991 d.303	23 N.J.R. 1948(a)
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)	Expired	
11:2-29	Orderly withdrawal of insurance business	23 N.J.R. 15(b)	R.1991 d.262	23 N.J.R. 1673(a)
11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)		
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		

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11:3-39	Automobile physical damage coverage: rate reductions for anti-theft devices and safety features	23 N.J.R. 384(a)		
11:4-16.6, 16.8, 23	Medicare supplement coverage: minimum standards	23 N.J.R. 1264(a)		
11:10-1.4	Dental plan organization: certificate of authority renewal fee	23 N.J.R. 825(a)	R.1991 d.303	23 N.J.R. 1948(a)
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)		
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
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12:45-3	Vehicle modification requirements for mobility impaired: administrative correction	_____	_____	23 N.J.R. 1416(b)
12:55-1.4	Voluntary wage deductions for repayment of debts to State	23 N.J.R. 1660(a)		
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12:235	Workers' Compensation	23 N.J.R. 834(a)	R.1991 d.275	23 N.J.R. 1819(a)
12:235	Workers' Compensation system	23 N.J.R. 1759(a)		

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12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	23 N.J.R. 828(a)		
12A:31-1, 2, 3	Development Authority for Small Businesses, Minorities' and Women's Enterprises: extension of comment period on loan programs	23 N.J.R. 1769(a)		
12A:31-2	Development Authority: loan guarantee program	23 N.J.R. 830(a)		
12A:31-3	Development Authority: direct loans	23 N.J.R. 832(a)		
12A:80-2	Urban Development Corporation: public and nonpublic information	23 N.J.R. 20(a)	R.1991 d.257	23 N.J.R. 1682(a)
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13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		
13:18-6	Verification of automobile liability insurance coverage	23 N.J.R. 973(a)	R.1991 d.289	23 N.J.R. 1806(b)
13:20-10.1	Automatic vehicle identification systems: traffic management	23 N.J.R. 21(a)	R.1991 d.249	23 N.J.R. 1417(a)
13:20-31.1	Motor vehicle inspection: private center licensing	23 N.J.R. 387(a)	R.1991 d.253	23 N.J.R. 1417(b)
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13:27-6.2-6.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:29-1.7	Accountant licensure: conditional credit and reexamination	23 N.J.R. 1060(a)	R.1991 d.310	23 N.J.R. 1959(a)
13:29-1.8, 1.11, 1.12, 1.13, 2.3	Board of Accountancy: fee schedule	23 N.J.R. 1061(a)		
13:30-2.6	Registered dental assistant: laboratory fabrication of athletic mouthguards	23 N.J.R. 287(b)	R.1991 d.248	23 N.J.R. 1418(a)
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13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
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13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
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13:35-6.13	Board of Medical Examiners: biennial registration fees	23 N.J.R. 833(a)	R.1991 d.286	23 N.J.R. 1815(a)
13:36-1.6	Board of Mortuary Science: fee schedule	23 N.J.R. 1063(b)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
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13:38-3.6, 5.1	Board of Optometrists: fee schedule	23 N.J.R. 1064(a)		
13:38-3.6, 5.1	Board of Optometrists fee schedule: correction to comments submission address	23 N.J.R. 1279(a)		
13:38-3.11	Practice of optometry: application for licensure	23 N.J.R. 166(a)	R.1991 d.228	23 N.J.R. 1418(b)
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13:39A	Board of Physical Therapy rules	23 N.J.R. 1065(a)		
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