NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 20 NUMBER 12

June 20, 1988 Indexed 20 N.J.R. 1317-1500

(Includes adopted rules filed through May 27, 1988)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: APRIL 18, 1988
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MAY 16, 1988

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

RULE ADOPTIONS

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **July 20, 1988.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

RULEMAKING IN THIS ISSUE—Continued

Filing Deadlines

July 18 issue:	
Proposals	**June 20**
Adoptions	**June 24**
August 1 issue:	
Proposals	**July 1**
Adoptions	**July 11**
August 15 issue:	
Proposals	**July 18**
Adoptions	**July 25**
September 6 issue:	
Proposals	**August 8**
Adoptions	**August 15**

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.

The New Jersey Register (ISSN 0300-6069) is published the first and third Monday (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $75 ($150 by First Class Mail); back issues when available, $8 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in Trenton, New Jersey and additional mailing offices.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 41-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to four volumes depending on the Department coverage desired.

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES
State Agriculture Development Committee
Acquisition of Development Easements
Proposed Amendments: N.J.A.C. 2:76-6.9, 6.11 and 6.14.

Authorized By: State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.
Authority: N.J.S.A. 4:1C-5f.
Proposal Number: PRN 1988-318.

Submit comments by July 20, 1988 to:
Donald D. Applegate
Executive Director
State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The acquisition of development easements as provided for in the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, is an effort to encourage the preservation of agricultural lands to protect the State's diminishing farmland resources. Landowners who satisfy the eligibility requirements, as provided in N.J.A.C. 2:76-6, may voluntarily apply to a county agriculture development board to sell a development easement. The value of the development easement is determined through an appraisal and review process outlined in N.J.A.C. 2:76-6.8. Ultimately, the fair market value of the development easement shall be certified by the State Agriculture Development Committee.

Once a development easement has been purchased, a Deed of Easement is recorded which permanently prohibits any non-agricultural development on the premises. The restriction runs with the land and is binding upon every successor to the land. The actual purchase of the development easement currently occurs by a 50/50 cost-share between the State and the county and/or local government.

The State will also reimburse the county for 50 percent of certain ancillary costs related to the purchase of the development easement such as appraisal costs, title searches and surveys.

The proposed amendments to N.J.A.C. 2:76-6.9, 6.11 and 6.14 will raise the State's cost-share cap on development easement purchases and ancillary costs from 50 to 80 percent. This will bring procedural rules into conformity with recent amendments to the legislation on which the agriculture retention program rests. The proposed amendments do not impact on program procedures in any way other than by raising the State cost-share cap.

The 1981 Farmland Preservation Bond Act was amended by November 1987 voter referendum to increase program flexibility by permitting the State to pay up to 80 percent of the cost of the development easement generally, to pay 100 percent under emergency conditions, and to purchase farmland in fee simple for the purpose of selling that land after restricting it with an agricultural deed restriction. After legislative approval, these voter-approved changes were signed into law February 9, 1987. The proposed amendments would now incorporate the first change, the State 80 percent cost share into procedural rule.

Social Impact

The proposed amendments to N.J.A.C. 2:76-6.9, 6.11 and 6.14 will have a positive social impact. Under current procedural rules, the State is permitted to pay 50 percent of development easement purchase costs, with the county, local government and/or other private sources paying the remaining 50 percent. The local 50 percent share, however, has proved to be too great a share for some of the State's more rural counties with more limited tax bases to carry. Because these counties also tend to be those with the largest contiguous blocks of farmland, the 50 percent State cost-share cap tended to reduce, and in some cases preclude, participation by otherwise interested counties. The effect of the 50 percent State cost-share limitation was, therefore, to hamper the effectiveness of the agriculture retention program in protecting the State's farmland resources.

By raising the State cost-share to 80 percent, the proposed amendments will increase participation in the development easement purchase program. This has already been demonstrated, with anticipation of the higher State cost-share fueling a dramatic increase in county activity to encourage landowner participation in the development easement purchase program. The proposed amendments will therefore directly increase the ability of the Agriculture Retention and Development program to permanently protect more farmland within a shorter period of time.

The increased State cost-share also reduces the financial burden to counties. The 20 percent county, local and/or private cost-share requirement means that local farmland preservation monies will go further, giving counties greater buying power for each farmland preservation dollar. This, in turn, will enhance the program's ability ro preserve larger, more contiguous blocks of agricultural land, and therefore to ensure the continued viability of New Jersey's agricultural industry.

Economic Impact

The proposed amendments will have a positive economic impact on all of the counties participating in the farmland preservation program, agricultural land owners and on the citizens of the State. Counties will benefit because the increased cost-share rate will allow limited county funds to go further toward the purchase of development rights. Not only will more land be able to be preserved, but counties can maximize the impact of preserving the land by preserving large contiguous tracts, minimizing the amount and impact of non-agricultural development into such areas. It thereby indirectly allows a more efficient use of local infrastructure projects in areas away from these preserved tracts.

Landowners will benefit because larger numbers will be able to participate in and benefit from the sale of their development easements because, effectively, more county funds will be available. Participation in the easement purchase program allows land owners to realize a significant part of the equity in their farmland without necessitating the sale of their land, often for non-agricultural development. Monies derived from the sale of development easements can be used to reduce farm debt, improve or expand their farm operation or for other purposes. The amount that landowners will be paid for their development rights will remain the same; only the county/State cost-share split regarding the source of those funds will change.

The citizens of the State will benefit from the increased amount of agricultural land permanently preserved through the easement purchase program and that land's economic contribution to the agricultural industry in New Jersey.

Regulatory Flexibility Statement

The majority of the land potentially subject to development easements is owned by small businesses, as that term is defined in the Regulatory Flexibility Act, P.L. 1986 c.169. The proposed amendments benefit such landowners by allowing greater numbers of landowners statewide to participate in the easement purchase program. Participation in the program through the application to sell development rights on their property is entirely voluntary.

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

2:76-6.9 Final board review

(a) The board shall inform the landowner of the **certified** fair market value [certification] **of the development easement** and shall proceed to negotiate a purchase price of the development easement with the landowner. In no case shall the committee make a grant to the board for more than [50] **80** percent of the [fair market certification] **certified fair market value of the development easement.**

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

2:76-6.11 Final committee review

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

(c) The committee shall authorize funding for [50] **no more than 80** percent of the cost of the development easement on the applications receiving a priority ranking.

(d) (No change.)

2:76-6.14 Payment procedures; schedule of payment

(a) (No change.)

(b) The committee, upon receipt of all approvals and verification of costs incurred by the board, shall authorize the Secretary to issue a grant to the board for [50] **no more than 80** percent of the costs for acquisition of the development easement.

1. (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL FINANCE

Local Finance Board Rules

N.J.A.C. 5:30

Waiver of Executive Order No. 66 (1978)
Authorized By: Governor Thomas H. Kean

Take notice that the rules affecting the Local Finance Board, Department of Community Affairs, found at N.J.A.C. 5:30, were due to expire on June 1, 1988, pursuant to the sunset provisions of Executive Order No. 66 (1978). Although the Department of Community Affairs is in the process of readopting these rules, the rules would expire before readoption could be accomplished. Governor Thomas H. Kean has been informed by the Department of Community Affairs that the readoption will be completed by July 1, 1988.

These rules include administrative rules governing local bond activities, annual budgets, capital budgets and capital improvement programs, emergency appropriations, annual audits, accounting, financial administration, municipal port authorities, financial administration, municipal pool authorities, school bonds, federal grants for library construction and State library aid, local public purchasing procedures and tenant property tax rebates. It is important that no lapse exist in these rules given the gravity of the subject matters covered.

Accordingly, as Governor of the State of New Jersey and by the authority vested in him by Executive Order No. 66 (1978) to grant a waiver of the requirements in the Order with regard to any administrative rule and having determined that good cause exists, Governor Kean, on May 24, 1988, directed that the five-year sunset provision of Executive Order No. 66 (1978) be waived for the rules found at N.J.A.C. 5:30, and the expiration for these rules be extended for a period of one month from June 1, 1988 through July 1, 1988, inclusive of both dates.

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules: Initial Pricing of Rental Units

Proposed Amendment: N.J.A.C. 5:92-12.4

Authorized By: James L. Logue, Chairman, New Jersey Council on Affordable Housing.
Authority: N.J.S.A. 52:27D-301 et seq.
Proposal Number: PRN 1988-309.

Submit comments by July 20, 1988 to:
Douglas V. Opalski, Executive Director
New Jersey Council on Affordable Housing
CN 813
Trenton, NJ 08625-0813

The agency proposal follows:

Summary

The Council on Affordable Housing has received a great deal of public input regarding the affordability of rental units. As a result of this input, the Council has decided to amend N.J.A.C. 5:92-12.4. This rule had allowed rents, excluding utilities, to equal 30 percent of the gross monthly income of the appropriate household. The proposed amendment requires rents including a personal benefit allowance for utilities to be structured so as to fall within the 30 percent standard.

This amendment will require greater subsidies of rental units. Since developers and communities have agreed to construct rental units based on a given set of economic facts, the Council believes it would be unfair to apply this rule retroactively. Thus, the rule shall apply to petitions for certification filed after August 1, 1988.

The Council has also amended the language to clarify that the affordability standards are requirements.

Social Impact

The proposed amendment will have a positive impact in that it will result in more affordable rents to low and moderate income households.

Economic Impact

The proposed amendment will require greater subsidies from the developers of low and moderate income rental units.

Regulatory Flexibility Statement

The proposed amendment imposes no compliance requirements on small businesses in New Jersey. Although some developers may meet the definition of small business, the decision to develop rental properties is a voluntary one.

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

5:92-12.4 Initial pricing

(a) Municipalities shall [consider requiring] **require** that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of ten percent, the monthly principal, interest, taxes, insurance and condominium fees do not exceed 28 percent of an eligible gross monthly income. Municipalities shall [consider requiring] **require** that rents, excluding utilities be set so as not to exceed 30 percent of the gross monthly income of the appropriate household size. Maximum rent shall be calculated as a percentage of the uncapped Section 8 income limit (as contained in the Technical Appendix) or other recognized standard adopted by the Council that applies to the rental housing unit. The following criteria shall be considered in determining rents and sale prices:

1.-5. (No change.)

(b) Municipalities that petition for certification after August 1, 1988 shall require that rents, including an allowance for utilities consistent with the personal benefit expense allowance for utilities as defined by HUD or a similar allowance approved by the Council, be set so as not to exceed 30 percent of the gross monthly income of the appropriate household size as outlined in (a) above.

Recodify existing (b)-(c) as **(c)-(d)**.

EDUCATION

(c)

STATE BOARD OF EDUCATION

Teacher Preparation and Certification

Proposed New Rules: N.J.A.C. 6:3-1.23, 1.24; 6:11-3.25

Proposed Amendments: N.J.A.C. 6:11-4.2, 5.7; 6:11-10

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.
Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:6-10, 18A:6-50, 18A:6-7A-1, 18A:7A-1.1, 18A:10-6, 18A:13-14, 18A:16-1, 18A:17-14.1 to 17-14.3, 18A:17-15, 18A:17-17, 18A:17-20, 18A:17-32, 18A:17-42 to 17-45, 18A:18A-4, 18A:18A-6, 18A:22-1, 18A:22-2, 18A:22-13, 18A:22-14, 18A:22-19, 18A:22-22, 18A:24-11, 18A:28-9 to 28-13, 18A:29-6 to 29-16, 18A:40-12.1, 18A:40-12.2 and 18A:49-1 to 49-8.
Proposal Number: 1988-266.

Submit comments by July 20, 1988 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In 1985, the State Board of Education directed the State Department of Education to study the current system for certifying school principals and to recommend needed improvements. The department presented the results of its initial study, along with general recommendations, in November 1986. At that time, the State Board adopted a resolution acknowledging the department's process and one-year timetable for completing its study and recommendations.

During the past 12 months, the department established two major advisory committees to assist in the process of finalizing its study. A Management Science Panel was convened to recommend areas of knowledge in the field of management education in which principal candidates should be educated and tested. An Internship Panel was established to recommend the educational training and experiences that should be provided in a principal residency. The reports of the these advisory committees were presented to the State Board in October 1987, and they provided important bases upon which the proposed rule amendments were formulated.

These proposed amendments were originally published in the March 7, 1988 New Jersey Register at 20 N.J.R. 437(b). In April, having received public comments from more than 200 individuals, the State Board of Education directed the Department of Education to propose additional amendments. These reproposed amendments were presented to the board and, approved for publication at its May meeting. At that time, the board also voted to republish all proposed amendments, including those that were previously published. Therefore, the current reproposal supersedes the proposal published in the March 7, 1988 New Jersey Register. The general purpose of amendments to that original proposal is to assure that all principal candidates possess an appropriate amount of teaching experience and competency.

The proposed rule amendments include the following major recommendations:

N.J.A.C. 6:11-4.2 Provisional Certificate: This proposed amendment would authorize the issuance of provisional certificates to principal residents who meet requirements.

Also, in December 1986, the State Board of Education adopted rules allowing the provisional employment of speech-language pathologists who meet certain requirements (see N.J.A.C. 6:11-12.11(c)(2)). Therefore, an amendment is proposed to the current rule governing the use of the Provisional Certificate in order to establish consistency in the Administrative Code.

Additions to this reproposed rule would require a formal assessment of each principal candidates' practical teaching competency.

N.J.A.C. 6:11-10.2(a)3 Previous Certification and Experience: It is proposed that the following requirements be deleted as common requirements for all administrative endorsements: a standard New Jersey teaching certificate or its equivalent; and three years of successful teaching experience. These requirements are included instead under each individual endorsement for which they apply.

N.J.A.C. 6:11-10.8(a) Principal Certification: Requirements: It is proposed that the current standards for principal certification be replaced by the following requirements: a Master's degree in the field of leadership/management (effective upon adoption); a score on a State examination of knowledge of leadership/management (effective September 1988); an assessment of performance in exercises which simulate the duties of principals (effective September 1989); and a principal residency (effective September 1989). In addition, each candidate would be required to possess three years of professional experience in education. This requirement would be eliminated when the residency requirement goes into effect in September 1989.

N.J.A.C. 6:11-10.8(b) Principal Residency: These proposed amendments would establish standards governing the operation of principal residencies. They include requirements for gaining entry to a residency program and address criteria for the selection and training of mentors. The proposed amendments would establish procedures for the evaluation and certification of residents, and would permit residents who are not recommended for certification to appear before the State Board of Examiners. The proposed amendments would require that certain "pre-residency" experiences in the areas of curriculum/evaluation and instruction/supervision be completed prior to the time candidates are assigned provisionally to positions as principals. The pre-residency experiences would be of 30-60 days duration. The proposed amendments would also require the completion of a residency of one to two years duration involving a broader range of experiences than those in the pre-residency. Both the pre-residency and the residency would require, among their other experiences, appropriate amounts of teaching-related experiences depending upon the individual resident's prior background.

Additions to this reproposed rule would require each candidate who lacks teaching experience or teaching competency to complete 300 hours of teaching in the pre-residency and to teach on a regular basis in the one to two years residency. The amendments also provide that candidates who are enrolled in preparation programs when the new rules become effective may have until 1992 to complete those programs in lieu of the required master's degree in management.

N.J.A.C. 6:11-5.7 Provisional Teacher Program: This proposed amendment would permit provisional teachers who are not recommended for certification to contest such adverse recommendations.

N.J.A.C. 6:11-3.25 Procedures for Contesting Certification: Recommendations: This proposed new rule would establish procedures under which provisional teachers and resident principals who are not recommended for certification might contest the adverse recommendations of their mentors.

N.J.A.C. 6:3-1.23 and 1.24 Support Residencies for Regularly-Certified, Inexperienced First-Year Principals and Local District Responsibility: These new rules would require local districts to provide residency support programs for those first-year principals who obtained or will obtain their regular principal endorsements before September 1, 1989 prior to the institution of the residency requirement. Such support residencies shall not impose "entry requirements" on regularly-certified principals and they shall not require any special certification evaluation of those to whom the rule applies. No state certification action shall result from any residency provided for a regularly certified, inexperienced first-year principal. Additions to these reproposed rules would also require local boards of education to establish criteria, in addition to state certification, for hiring applicants for professional positions.

Social Impact

The proposed new rules and amendments are expected to produce several benefits. They will provide a more structured licensing system and requirements that are consistent with the purposes of state licensure. They will broaden the pool of qualified leaders from which local districts may select their principals. They will provide new principals with training that will help assure their success. The proposed new rules and amendments will provide for far more rigorous screening of candidates than the current system, and rules will provide clarity and professional distinction to the role of principal.

Economic Impact

There will be some initial costs associated with the implementation of various aspects of the proposed system. Funds have been appropriated for this purpose. However, as with all aspects of State certification, the system will eventually be supported completely by a combination of State support and fees paid by certification candidates. Districts will provide non-monetary support through their participation except where they choose voluntarily to provide financial support, for example, by reimbursing the fees paid by resident principals they employ. Certification applicants seek educational licenses of their own accord and these licenses qualify them for employment in publicly funded professional careers. Notwithstanding the fact that loans, scholarships and other forms of aid traditionally are made available to candidates who need such assistance, ultimately the cost of licensure should continue to be borne by the beneficiaries of the licensing process.

Regulatory Flexibility Statement

The proposed new rules and amendments impose no reporting, recording, or compliance requirements for small businesses. All requirements of the amendments impact upon applicants for professional licenses to qualify them for employment.

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

6:3-1.23 [(Reserved)] **Support residencies for regularly-certified, inexperienced first-year principals**

(a) Regularly-certified, inexperienced first-year principals are individuals who:

1. Acquired regular New Jersey school principal endorsements pursuant to N.J.A.C. 6:11-10.8 prior to September 1, 1989;

2. Have not previously held full-time employment as principals, vice-principals, or in other positions for which the principal endorsement is required in New Jersey or elsewhere; and

3. Have been offered employment as principals or vice-principals in a New Jersey public school district.

(b) Each district employing a regularly-certified, inexperienced first-year principal shall enter into an agreement to provide a principal residency program pursuant to N.J.A.C. 6:11-10.8(b), including a pre-residency experience, except that:

1. Entry requirements in N.J.A.C. 6:11-10.8(b)1 shall not apply to regularly-certified, inexperienced first-year principals;

2. Special certification evaluations as described in N.J.A.C. 6:11-10.8(b)5 shall not be conducted for regularly-certified, inexperienced first-year principals, and no evaluations or recommendations concerning their certification shall be presented to the State Department of Education; and

3. As part of the support residency, the district shall require the new principal to undergo an assessment of performance at a State-approved center during the pre-residency phase. The sole purpose of this assessment shall be to provide a diagnosis of strengths and weaknesses as a basis for designing continuing education and support exercises.

(c) The State Department of Education shall monitor local districts to determine compliance with this section.

6:3-1.24 Local district responsibility for employment of staff

(a) State certification requirements are those structured training and competency evaluation requirements that are prescribed by the State Board of Education in order to protect the public. In addition, the teaching and other background experiences of candidates for professional positions may often be important considerations in the local selection of specific staff for specific positions. Each district board of education shall determine the types of background experiences and personal qualities, if any, that the district requires or prefers successful candidates for specific positions to possess in addition to appropriate state certification. Such local requirements shall be based upon a careful review of the position in question, and the requirements shall emphasize the nature of experience and the quality of individual achievement desired, rather than only the amount of experience, and shall be applied flexibility without having the force of legal requirements.

(b) No teaching staff member shall be employed in the public schools by any board of education unless he or she is the holder of a valid certificate (see N.J.S.A. 18A:26-2). In addition, district boards of education should exercise their right and responsibility to require job candidates to present other, more detailed documentation of their competency. Such documentation includes resumes, references, records of past experiences, college transcripts, certification test scores, assessment reports, internship evaluations, and other documentation of competency relevant to the specific position.

6:11-3.25 Procedure for provisional staff contesting of certification recommendations of mentors

(a) When the Secretary of the State Board of Examiners receives any adverse recommendation concerning the standard certification of a provisional staff member, the Secretary shall notify the provisional staff member of the date upon which the State Board of Examiners will consider such recommendation. If the adverse recommendation has not already been contested by the provisional staff member pursuant to N.J.A.C. 6:11-10.8(b)6iv or N.J.A.C. 6:11-5.7(e), the Secretary shall allow the provisional staff member an additional opportunity to provide the State Board of Examiners with written materials documenting the reasons why the provisional staff member believes standard certification should be awarded.

(b) When a provisional staff member contests an adverse recommendation concerning his or her standard certification, the secretary shall formally notify the provisional staff member of the opportunity to request a hearing before an administrative law judge.

(c) Upon receipt of notification pursuant to (b) above, the provisional staff member shall be allowed 20 days to request a hearing. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) The State Board of Examiners shall take final action on the opinions rendered by administrative law judges concerning the certification of provisional staff members.

6:11-4.2 Provisional certificate

(a) A provisional certificate is a substandard one-year certificate issued to an applicant who is not eligible for a standard certificate. [It] **A provisional certificate** may be issued under certain circumstances to an applicant whose preparation does not meet completely the New Jersey requirements for standard certification.

(b) To be eligible for the provisional certificate **in instructional fields** the applicant shall:

1. Hold a bachelor's degree from an accredited college or university (except in certain technical fields as noted in N.J.A.C. 6:11-6.3(c)) [and];

2. Pass a subject matter test for teaching field(s) or a test of general knowledge for the elementary and nursery endorsements. In order to be eligible to take a subject field test, the applicant must have completed at least 30 semester hours in a coherent major or five years of experience in the subject fields; **and**

3. Have been offered employment in a New Jersey public school district approved by the commissioner at the recommendation of the Board of Examiners to offer a certification training program; [and]

[4.](c) Persons who pass the appropriate test **as set forth in (b)2 above** shall be granted a formal document which will enable them to seek employment as provisional teachers in the public schools.

(d) To be eligible for the provisional certificate for admission to a Principal Residency Program pursuant to N.J.A.C. 6:11-10.8(b), the applicant shall:

1. Hold a master's degree in one of the recognized fields of leadership or management, such as educational administration, public administration, business administration, leadership or management science. In order to be accepted for certification, the degree program must provide study in the following topics, which represent those areas of management that are directly related to education and the principalship: leadership and human resource management; communications; quantitative decision-making; finance; and law. Degree programs may provide study in other areas at the discretion of the sponsoring institution and its faculties. This requirement shall be effective (upon adoption of this amendment).

2. Pass a State-administered examination of knowledge in the areas of leadership and human resource management, communications, quantitative decision-making, finance and law. Within these five topical areas, the examination shall assess leadership and management proficiences that are validated as being most directly relevant to education and the essential duties of school principals. This requirement shall be effective September 1, 1989;

3. Undergo an assessment of performance, conducted by State-approved assessors, through structured exercises which simulate the duties of school principals, and authorize the state to release the written results of this assessment to potential sponsoring districts and schools. In particular, there shall be a formal assessment of each candidate's teaching competencies that are essential to principals' ability to lead and supervise instruction and curriculum. The State Department of Education shall, with appropriate professional input, develop and validate the criteria, instruments, and procedures for conducting such assessments. This requirement shall be effective September 1, 1989; and

4. Obtain an offer of employment in a position requiring the principal endorsement in a school or district which has reviewed the candidate's assessment report and has agreed formally to sponsor the residency.

5. Applicants who meet the requirements of (d)1 through 3 above shall receive eligibility papers which will permit the applicant to seek employment in positions that require the principal endorsement.

(e) To be eligible for the provisional certificate in the field of speech-language pathology, the applicant shall:

1. Hold a master's degree in the field of speech-language pathology; and

2. Pass a State-administered examination of knowledge in the area of speech-language pathology.

6:11-5.7 Recommendation for certification of provisional teachers

(a) At the conclusion of the alternative training program, the chairperson of the Support Team shall prepare a comprehensive evaluation report on the provisional teacher's performance. This report shall be submitted by the Chairperson directly to the Bureau of Teacher Preparation and Certification and shall contain a rec-

ommendation as to whether or not a standard certificate should be issued to the provisional teacher.

(b) The final comprehensive evaluation report on each provisional teacher shall be made on standard forms developed by the State Department of Education.

(c) The final report on each provisional teacher shall include one of the following recommendations:

1. Approved: [recommends] **Recommends** issuance of a standard certificate[.];

2. Insufficient: [recommends] **Recommends** that a standard certificate not be issued but that the candidate be allowed to seek entry on one more occasion in the future into a State-approved training program[.]; **or**

3. Disapproved: [recommends] **Recommends** that a standard certificate not be issued and that the candidate not be allowed to enter into a [state] **State**-approved training program.

(d) [All certification recommendations must be either accepted or rejected by the State Board of Examiners in accordance with the same procedures used for graduates of New Jersey college preparation programs.] **The Support Team chairperson shall provide the provisional teacher with a copy of the provisional teacher's written evaluation report and certification recommendation before submitting it to the Bureau of Teacher Preparation and Certification.**

(e) If the provisional teacher disagrees with the chairperson's recommendation, the provisional teacher may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the chairperson written materials documenting the reasons why the provisional teacher believes standard certification should be awarded. The chairperson shall forward all such documentation to the Bureau of Teacher Preparation and Certification along with the evaluation report and recommendation concerning certification.

SUBCHAPTER 10. NEW JERSEY [ADMINISTRATIVE AND SUPERVISORY SUPPLEMENT TO STANDARDS FOR STATE APPROVAL OF TEACHER EDUCATION] STANDARDS FOR CERTIFICATION OF ADMINISTRATIVE AND SUPERVISORY PERSONNEL

6:11-10.1 Use of [supplement] **standards**

(a) [This supplement] **These standards** will be used by the Bureau of Teacher [Education and Academic Credentials] **Preparation and Certification** in the following ways:

1. [In conjunction with the Standards for State Approval of Teacher Education (Subchapter 7, 6:11-7.4) to evaluate and approve administrative and supervisory programs in New Jersey colleges] **As a basis for approving college preparation programs for administrative and supervisory personnel.**

2. As the basis for evaluating the eligibility of candidates [who have completed administrative and supervisory programs in out-of-State colleges, or wish to qualify for New Jersey certification, based on] **for** administrative or supervisory certification [and experience in other states].

[3. As the basis for defining the nature and extent of the studies that will constitute certificate programs designed by colleges for candidates who already possess the academic degree required for a certificate.]

[4.]**3.** As the basis for defining the nature and extent of experience background required for administrative and supervisory certificates.

6:11-10.2 [Common requirements: all administrative and supervisory programs] **College degrees**

(a) Except when specifically indicated below, the following requirements apply to all programs leading to a New Jersey administrative or supervisory certificate.

1. Master's degree:

i. Approved programs, except where noted otherwise, will lead to a master's degree.

ii. **Where authorized below, non-degree** [Certificate] **certificate** programs may be designed for students who already hold [the appropriate degree required by the certificate, provided it meets the accreditation policies indicated in (b) below] **master's degrees. Such certificate programs must be approved by the New Jersey State Department of Education.**

2. College accreditation:

i. Except as indicated below, degrees will be recognized for purposes of administrative and supervisory certification in New Jersey from colleges **and/or programs** accredited or approved by the [State Board or Department of Education of the] state in which the college exists.

[ii. College degrees from colleges in states in which the State Board or Department of Education lacks authority to regulate the establishment of colleges to give approval for purposes of administrative and supervisory education, will be accepted for purposes of such certification in New Jersey if these degrees are accepted for purposes of administrative and supervisory certification by the State Department of Education in the state in which the colleges exists.

iii. Professional preparation presented by students for transfer credit to New Jersey colleges offering administrative and supervisory certificate programs will be determined by the college in which the applicant will complete an approved program]

ii. Transfer of credit from one college to another shall be determined by the policies of the colleges involved.

[3. Previous certification and experience:

i. Each of the administrative and supervisory certificates in this Section, unless indicated otherwise in this Supplement, will require the following:

(1) A standard New Jersey teacher's certificate or its equivalent;

(2) Three years of successful teaching experience. Experience in New Jersey public schools must have been completed under an appropriate New Jersey teacher's certificate.]

6:11-10.3 [Recommendations of national academic and professional organizations] **(Reserved)**

[Recommendations and guidelines of the appropriate national academic and professional groups should be given due consideration in developing college programs.]

6:11-10.4 Authorization

(a) School administrator: This endorsement is required for the position of superintendent of schools. The holder of this endorsement may also serve as assistant superintendent of schools[, principal,] or supervisor.

(b) Principal: This endorsement is required for **the** positions of principal, [or] vice-principal, **and certain other administrative positions.** Holders of this endorsement may supervise instruction[, and may also serve as assistant superintendent of schools, and as assistant superintendent in charge of curriculum and/or instruction].

(c) Supervisor: This endorsement is required for supervisors of instruction who do not hold a school administrator's or principal's endorsement. The supervis[ion]**or** shall be defined as any school officer who is charged with authority and responsibility for the continuing direction and guidance of the work of instructional personnel. This endorsement also authorizes appointment as an assistant superintendent in charge of curriculum and/or instruction.

(d) Assistant superintendent in charge of business: This [certification] **endorsement** is required for the position of assistant superintendent of schools in charge of business affairs.

(e) School business administrator: This [certification] **endorsement** is required for the position of school business administrator when the local board of education is granted permission by the State Board of Education to create such a position. The holder of this [Certificate] **endorsement** is authorized to perform such duties as the rules of the State Board of Education shall define.

6:11-10.5 **(Reserved)**

6:11-10.6 [Requirements; general] **(Reserved)**

[Requirements other than, and/or different from, those prescribed in subchapter 7 of this chapter (Standards for the State Approval of Teacher Education) are specified in sections 7 through 14 of this subchapter.]

6:11-10.7 School administrator [requirements]

(a) Successful completion of one of the following is required for school administrators:

1. A curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or

2. A program of college studies in the areas indicated below, including 30 semester-hour graduate credits, in addition to those required for a standard teacher's certificate, and including study in each of the starred areas. This study may be in either separate or integrated courses.

i. *School administration: Included may be studies in such areas as general school administration, elementary, secondary and vocational administration, school law, school finance, school plant planning and design. These studies may be in either separate or integrated courses;

ii. *Educational supervision;

iii. *Curriculum development: [a] A course in general principles of curriculum development, or a combination of specialized courses covering both elementary and secondary, vocational, or adult programs;

iv. The learner and the learning process;

v. Academic disciplines related to school administration, such as[,] anthropology, business or public administration, economics, government, intercultural relations, group dynamics, psychology, sociology, labor relations, law, and community organization.

3. When candidates have completed their preparation for this endorsement in an out-of-State college or university, a doctor's degree in educational administration, or completion of an approved two-year graduate program for the preparation of school administrators leading to the education certificate or similar diploma or degree, from a program accredited by the National Council for Accreditation of Teacher Education (NCATE), will be accepted as meeting the college study requirements indicated above.

4. Successful completion of three years of educational administrative or supervisory experience, under a New Jersey administrative or supervisory endorsement or its equivalent, when spending at least half time in administrative or supervisory duties.

i. One year of this experience requirement will be waived to holders of the doctor's degree in educational administration, received from an accredited institution in a program approved by the Department of Education.

ii. One year of internship in a program approved by the Commissioner of Education may be submitted toward the fulfillment of this experience requirement.

5. A standard New Jersey teacher's certificate or its equivalent, and three years of successful teaching experience. Experience in New Jersey public schools must have been completed under an appropriate New Jersey teacher's certificate or its equivalent. This experience requirement shall not apply to candidates who hold New Jersey school principal endorsements.

6:11-10.8 Principal

[(a) Successful completion of one of the following are required for principals:

1. A curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement OR

2. A program of college studies in the areas indicated below, including twenty-four semester-hour graduate credits in addition to those required for a standard teacher's certificate, and including study in each of the starred areas. This study may be in either separate or integrated courses.

i. *School administration. Included may be studies in such areas as general school administration, elementary, secondary, and vocational administration, school law, school finance, school plant planning and design. These studies may be in either separate or integrated courses.

ii. *Educational supervision:

iii. *Curriculum development: a course in general principles of curriculum development, or a combination of specialized courses covering both elementary and secondary, vocational, or adult programs;

iv. The learner and the learning process;

v. Academic disciplines related to school administration such as anthropology, business or public administration, economics, government, intercultural relations, group dynamics, dynamics, psychology, sociology, labor relations, law, and community organization.

3. When candidates have completed their preparation for this endorsement in an out-of-State college or university, a master's degree in educational administrtion from a program accredited by the National Council for Accreditation of Teacher Education (NCATE) will be accepted as meeting the study requirements indicated above.]

(a) Each candidate for the principal endorsement shall:

1. Possess a provisional certificate pursuant to N.J.A.C. 6:11-4.2(d);

2. Complete a State-approved residency program pursuant to (b) below while employed provisionally in a position requiring the principal endorsement. This requirement shall be effective September 1, 1989; and

3. Possess an instructional certificate and three years of professional experience in education. This requirement shall cease to be in effect on September 1, 1989.

(b) The principal residency is a training program conducted under the direction of a State-approved mentor and the sponsorship of the public school district or nonpublic school that employs the certificate candidate.

1. In order to enter a residency program, the certification candidate shall:

i. Possess a provisional certificate pursuant to N.J.A.C. 6:11-4.2(d); and

ii. Obtain an offer of employment in a position requiring the principal endorsement in a district or school which has reviewed the candidate's assessment report and has agreed formally to sponsor the residency.

2. The requirements for State-approval of residency programs are follows:

i. The State Department of Education shall issue a standard agreement detailing the experiences and requirements of the residency. This agreement shall be entered into by the Department, the sponsoring district, the residency mentor, and the candidate before the residency may be initiated.

ii. Sponsoring districts and mentors may propose modifications to the standard residency agreement in order to accommodate the backgrounds and special training needs of individual candidates.

iii. No residency program may be undertaken without a valid agreement.

3. Each State-approved residency shall provide training in two phases:

i. Pre-residency experiences of no fewer than 30 days nor more than 60 days duration. This phase shall emphasize professional experiences and training in the areas of instruction/supervision and curriculum/evaluation. The pre-residency phase must be completed before the candidate assumes full responsibility on a provisional basis for a principalship, vice-principalship or other position requiring the principal endorsement. The Department shall, at the recommendation of the mentor and the district superintendent, prescribe the content of each new principal's pre-residency. Such prescription shall be based upon a review of each candidate's assessment reports, background experiences and other information gathered by the mentor and superintendent. The content of each pre-residency shall be specified in the standardized written agreement to be signed by the mentor, the district superintendent, the principal candidate, and approved by the Department.

(1) For candidates who possess practical teaching competencies but lack practical management competencies, the pre-residency shall consist of management and management-related experiences in the amount of 300 clock hours.

(2) For candidates who possess practical management competencies but lack practical teaching competencies, the pre-residency shall consist of teaching and teaching-related experiences in the amount of 300 clock hours. As a means of obtaining these experiences, the candidate shall be assigned to classroom to teach under a supervising teacher. This assignment shall be similar in format to student teaching and its purpose shall be to provide the candidate with those practical teaching competencies which are essential to lead and manage a school.

(3) For candidates who lack practical competency in both teaching and management, the pre-residency shall be extended until the candidate completes all required experiences in both teaching and management.

(4) For candidates who possess practical competency in both teaching and management, the mentor and district superintendent may request and the Department may prescribe a waiver of the pre-residency.

(5) For candidates who possess partial competence in practical aspects of teaching and/or management, the mentor and district superintendent may request and the Department may prescribe other variations to the pre-residencies described in (b)3.i.(1) through (4) above.

(6) No candidate shall be certified provisionally or permitted to assume a position that requires the principal endorsement until he or she has successfully completed the pre-residency.

ii. Residency experiences which shall be completed while the candidate is serving as a principal or vice principal. The residency phase shall provide professional experiences and training in the areas of instruction/supervision, curriculum/evaluation, pupil personnel, personnel management, community relations, student relations, facilities management, finance, school law, and technical administrative skills. The Department with appropriate professional input, shall design standard training exercises which all candidates shall complete in each of these topical areas. The mentor and the district superintendent shall, at the start of the residency, submit to the Department a written supplementary recommendation concerning any standard exercises that should be waived and any concerning teaching or other special experiences, if any, that the individual candidate should complete before achieving standard certification. Such recommendations shall be submitted on State-developed forms and shall take into account strengths and weaknesses identified in the candidate's assessment reports and backgrounds. The Department shall direct the candidate to complete any such special experiences as appropriate.

iii. All candidates whose assessment reports and/or backgrounds indicate a need shall be involved in teaching and teaching-related experiences on a regular basis for no less than one year and up to the two years maximum duration of the residency. Each residency program shall assure that the resident acquires sufficient familiarity with the teaching process to lead and manage in the school setting. Each residency agreement entered pursuant to (b)2 above shall include in its prescription appropriate amounts and types of classroom teaching and teaching-related experiences in both the pre-residency and residency phases. The nature and amount of such experiences shall be determined in consideration of the resident's prior experiences and shall be accorded an appropriate place among other important training needs and priorities identified for the individual resident. The residency shall provide at least one experience in an elementary school and at least one experience in a secondary school. The residency phase shall be completed in no less than one year nor more than two years.

iv. Each candidate shall complete 45 clock hours of formal study in the supervision of instruction and curriculum during the pre-residency. Each candidate shall complete 90 additional hours of formal study during the residency in the following topics: supervision of instruction and curriculum, pupil personnel services, school personnel management, community relations, student relations, school facilities management, school finance, school law and technical administrative skills.

4. Each residency shall be under the direction of a mentor who is a certified, experienced principal appointed by the Department and who has completed a State-approved orientation and training program.

5. The mentor shall supervise and verify the completion of all required experiences and training by the resident.

i. The primary responsibility of the mentor is to assure that the resident receives appropriate training, support and supervision as the resident carries out his or her critical job responsibilities.

ii. The mentor shall evaluate each resident's ability to exhibit leadership and management capabilities in accord with State-established criteria, on State-developed instruments.

iii. Each mentor shall, with State approval, form an advisory panel of practicing educators and shall convene this panel on at least three occasions for purposes of reviewing the resident's progress and soliciting advice concerning the certification of the resident.

iv. Each resident shall be evaluated formally by the mentor on at least three occasions: after approximately three months, six months and nine months from the start of the residency. The first two of these evaluations shall be conducted mainly for diagnostic purposes while the final evaluation shall be the basis for recommending the residents' certification. Such ealuation shall be conducted in accord with state criteria and reported on State-developed forms. The mentor shall discuss each evaluation report with the resident, and the mentor and resident shall sign each report as evidence of such discussion. Upon completion of each evaluation, the report shall be sent to the Secretary of the State Board of Examiners; the final evaluation shall be accompanied by the recommendation for certification pursuant to (b)6 below.

v. Each mentor shall be responsible for supervising no more than three residents concurrently.

6. Standard certification of residents shall be approved or disapproved pursuant to the following procedures:

i. Before the end of the residency year, the mentor shall submit to the Bureau of Teacher Preparation and Certification a comprehensive evaluation report on the resident's performance using State-approved forms and criteria.

ii. This final report shall include one of the following certification recommendations:

(1) Approved: Recommends issuance of a standard certificate;

(2) Insufficient: Recommends that a standard certificate not be issued but that the candidate be allowed to continue the residency or seek admission to another residency for a maximum of one additional year; or

(3) Disapproved: Recommends that a standard certificate not be issued and that the candidate be prohibited from continuing or reentering a residency.

iii. Candidates who receive a recommendation of "approved" shall be issued a standard certificate.

iv. The mentor shall provide the resident principal with a copy of the resident principal's written evaluation report and certification recommendation before submitting it to the Bureau of Teacher Preparation and Certification.

v. If the resident principal disagrees with the mentor's recommendation, the resident principal may within 15 days of receipt of the evaluation report and certification recommendation submit to the mentor written materials documenting the reasons why the resident principal believes standard certification should be awarded. The mentor shall forward all such documentation to the Bureau of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification.

(c) The requirements listed in (a) and (b) above shall not apply to persons who obtain New Jersey principal endorsements prior to October 1, 1988.

(d) Persons who can document that they enrolled, before October 1, 1988, in a New Jersey college program approved by the Department for the preparation of principals, shall have until October 1, 1992 to complete that program in lieu of the required masters degree in leadership/management (see N.J.A.C. 6:11-4.2(d)1.). Those who have not qualified for the principal endorsement by October 1, 1992, shall be required to obtain the required masters degree.

(e) All candidates shall be required to meet all other requirements of N.J.A.C. 6:11-4.2(d)2 through 5 and this section that become effective prior to date upon which they qualify for principal endorsements.

6:11-10.9 Supervisor

(a) Successful completion of one of the following are required for supervisors:

1. A college curriculum approved by the New Jersey Department of Education as the basis for issuing this endorsement; [OR] **or**

2. A program of college studies including [twelve] **12** semester hours of graduate study in supervision and curriculum development. Included in this study must be a least one course in the general principles of staff supervision, and one course in the general principles of curriculum development and evaluation. The additional work may be oriented directly toward supervision and curriculum development in particular grade levels, or in specific subject fields.

3. When candidates have completed their preparation for this endorsement in an out-of-State college or university, a master's degree in educational administration or supervision from a program accredited by the National Council for Accreditation of Teacher Education (NCATE) will be accepted as meeting the college study requirements indicated above.

4. A standard New Jersey teacher's certificate or its equivalent, and three years of successful teaching experience. Experience in New Jersey public schools must have been completed under an appropriate New Jersey teacher's certificate or its equivalent.

6:11-10.10 School business administrator

(a) The requirements for school business administrators are:

1. A bachelor's degree based upon a four-year curriculum in an accredited college. The requirement of a master's degree does not apply to this endorsement.

2. Successful completion of one of the following:

i. A standard New Jersey teacher's certificate or its equivalent, and three years of appropriate teaching experience; or

ii. Business training and experience as approved by the Secretary of the State Board of Examiners.

3. Successful completion of one of the following:

i. A college curriculum approved by the New Jersey State Department of Education as the basis for issuing this certificate; or

ii. Thirty semester-hour credits including work in each of the starred fields:

(1) *School business administration;

(2) *School buildings—including planning, construction and maintenance;

(3) *School finance;

(4) *School law;

(5) *Accounting;

(6) *Organization and administration of public education;

(7) *Curriculum of public schools;

(8) Foundations of education, including such courses as history or philosophy of education, principles of elementary education, and principles of secondary education;

(9) Electives related to administration, curriculum, or the foundations of education.

(b) The policies governing issuance of a school business administrator's certificate are:

1. A person who was employed full time in the district as a school business official on January 2, 1963, does not need a certificate to continue in his present position, but may be issued a certificate authorizing service in his present district if he requests it.

2. A person who was employed full time as a school business official on January 2, 1963, may be issued a school business administrator's certificate upon presentation of 12 semester hours of study, including work in areas **in** [6:11-10.10] (c)2i.v. **above**. The additional 18 semester-hour credits required for the certificate will, in these cases, be waived.

3. In cases where applicants submit business training and experience for approval in meeting requirements [6:11-10.10(b)] **in this subsection** for the certificate, the records submitted will be reviewed by a committee for the purpose of determining eligibility.

4. Persons serving full time as school business officials on January 2, 1963, will be considered to have satisfactory "business training and experience" in meeting requirements [6:11-10.10(b)] **in this subsection** for the school business administrator's certificate.

5. In administering the policies above, a "school business official" shall be interpreted as a person who served on a full-time basis on January 2, 1963, as the secretary of any board of education or a business manager in a chapter 6 district. Applications must be accompanied by a statement from the county superintendent of schools, certifying to such service.

6. Persons serving full time as the secretary of the board of education or the business administrator in a chapter 6 district prior to September 1, 1967, may qualify for the school business administrator's certificate by meeting the requirements previously in effect. In such cases, the requirement of a bachelor's degree will not apply.

6:11-10.11 Assistant superintendent for business

(a) The requirements for an assistant superintendent for business are:

1. A master's degree in business, public, or school administration from an accredited or approved institution.

2. Experience in one of the following:

i. Three years of successful teaching experience; or

ii. Three years of experience as secretary of a board of education or school business administrator under a school business administrator's certificate.

3. Successful completion of one of the following:

i. A college curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or

ii. Thirty-two semester-hour graduate or undergraduate credits in the following fields. These credits must be in addition to those required for the regular instructional certificate and must include work in each of the starred (*) areas. This work may be in a separate or integrated courses:

(1) *Administration of public education;

(2) *Supervision of instruction in the public schools;

(3) *The curriculum of the public schools;

(4) *School business administration;

(5) *School business—including planning, construction and maintenance;

(6) *School finance;

(7) *School law;

(8) *Accounting;

(9) *Electives related to the field.

4. These changes shall be effective July 1, 1978.

6:11-10.12 Executive superintendent

(a) This certificate is required for the position of executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Shall possess and be able to demonstrate a knowledge of the complex problems of an urban community, involving the educational, societal, fiscal and political aspects;

2. Shall possess a master's degree;

3. Shall have five years of administrative experience in which three years must be in an organization of comparable complexity and magnitude;

4. Shall have a knowledge of school board interrelationships, including negotiations;

5. Shall be able to demonstrate knowledge of accounting, school finance, school business administration and Federal programs;

6. Shall have a knowledge of long-range education planning, and a knowledge of planning for capital construction of educational facilities;

7. Shall possess knowledge of organization, curriculum and administration of public education;

8. Shall have a working knowledge of modern management techniques.

6:11-10.13 Assistant executive superintendent with specialization in supervision and curriculum

(a) This certificate is required for the position of assistant executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Certification to serve as principal issued by New Jersey State Board of Examiners; or in the alternative;

2. A standard New Jersey teacher's certificate or equivalent;

3. Teaching experience;

4. A master's degree;

5. A program of graduate studies including coursework in:

i. Administration of public education;

ii. School law, including collective negotiations;

iii. Public school curriculum;

iv. Supervision of instruction in public schools;

v. Administration and supervision of school personnel.

6:11-10.14 Assistant executive superintendent with specialization in business administration

(a) This certificate is required for the position of assistant executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Bachelor's degree;

2. Approved teaching or business experience;

3. A program of studies incuding coursework in:

i. Administration of public education;
ii. School business administration;
iii. School buildings, including planning, construction and maintenance;
iv. School finance;
v. School law, including collective negotiations;
vi. Public school curriculum.

ENVIRONMENTAL PROTECTION

The following proposals are authorized by Richard T. Dewling, Commissioner, Department of Environmental Protection.

A **public hearing** concerning the proposed amendments to N.J.A.C. 7:7A-9.2 and 9.4, and N.J.A.C. 7:14A-3.1 will be held on:

July 14, 1988 at 10:00 A.M. at
Conference Room A, 5 Station Plaza
New Jersey Department of Environmental Protection
Division of Coastal Resources
501 East State Street
(Corner of East State Street and Clinton Avenue)
Trenton, New Jersey

Submit written comments by August 19, 1988 to:

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

(a)

DIVISION OF COASTAL RESOURCES

Freshwater Wetlands Protection Act Rules Statewide General Permits

Proposed Amendments: N.J.A.C. 7:7A-9.2 and 9.4

Authority: N.J.S.A. 13:1B-3, 58:10A-1 et seq., particularly 58:10A-4 and 58:10A-6 and 13:9B-1 et seq. particularly 13:9B-23 and 13:9B-25.

DEP Docket Number: 020-88-05.

Proposal Number: PRN 1988-320.

The agency proposal follows:

Summary

On May 16, 1988, the New Jersey Department of Environmental Protection (Department) adopted rules, effective June 6, 1988, and operative July 1, 1988, to implement the Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B-1 et seq. (see the June 6, 1988 New Jersey Register at 20 N.J.R. 1235(a)). The Act requires strict regulation of activities in freshwater wetlands and State open waters. Pursuant to N.J.S.A. 13:9B-23, the Department is authorized to adopt general permits which provide an expedited permit process for common, routine activities which are determined by the Department to have minimal individual and cumulative adverse impacts on the environment, and only minor impacts of freshwater wetlands.

These proposed amendments change the adopted rules by providing for eight new Statewide General Permits and modifying provisions concerning use of multiple Statewide General Permits to reflect the additional general permits. These Statewide General Permits and modified use provisions will provide an expedited review process for certain activities which heretofore have required an individual freshwater wetlands or open water fill permit. The proposed new Statewide General Permits were suggested for promulgation during the comment period for the proposed new rules appearing on December 21, 1987 at 19 N.J.R. 2330(a). The proposed Statewide General Permits deal with minor road crossing fills, stormwater outfall structures, surveying activities, fish and wildlife harvesting, water level recording devices, mosquito control water management activities, fish and wildlife management, and trail construction on public lands.

Until such time as these proposed amendments are adopted, these activities require an individual permit. However, in light of these proposed amendments, the Department will also accept general permit applications and approve general permits for these activities in accordance with these amendments.

Social Impact

The proposed amendments will have a positive social impact by providing for quicker and more efficient review of several common activities, some of which are carried out by government entities. This will minimize delay for all applicants because it will allocate State resources for their most efficient use in administering the permit review process of the freshwater wetlands program.

Economic Impact

The proposed Statewide General Permits and their multiple use are not expected to have any adverse economic impact. The proposed amendments will have a positive economic impact on persons contemplating the activities covered by the proposed Statewide General Permits, because authorizations for projects covered by general permits are generally granted more quickly and require lesser fees than would be the case under individual permits.

Environmental Impact

As required by N.J.S.A. 13:9B-23, the Department has conducted an environmental analysis and believes that the activities authorized by the proposed Statewide General Permits will have only minimal individual and cumulative adverse impacts on the environment and only minor impacts on freshwater wetlands. The proposed Statewide General Permits will have a positive environmental impact in that the expedited, systematic review process for these routine activities will free up wetlands program staff time for the more thorough review necessary for projects requiring individual freshwater wetlands and open water fill permits, which are more likely to cause greater environmental impacts.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (P.L. 1986, c. 169), the Department has determined that these amendments will substantially reduce reporting, recordkeeping, or other compliance requirements on small businesses which engage in those regulated activities addressed by the amendments.

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

7:7A-9.2 Statewide General Permits

(a) The following activities in freshwater wetlands and State open waters are hereby allowed under Statewide General Permits provided the activity is in compliance with specific conditions contained in the Statewide General Permit and with the standard conditions for all Statewide General Permits in N.J.A.C. 7:7A-9.3 and provided the activities are in compliance with the Act, this chapter, and the Federal Act:

1.-9. (No change.)

10. Minor road crossing fills including attendant features, both temporary and permanent, that are part of a single and complete project for crossing a freshwater wetland or State open water, provided that:

i. The crossing is bridged, culverted or otherwise designed to prevent the restriction of, and to withstand, expected high flows;

ii. Disturbance of any freshwater wetlands or State open waters does not extend beyond 50 feet on either side of the ordinary high water mark of any associated water body;

iii. The total area of freshwater wetland or State open water disturbed does not exceed 0.25 acres or 100 cubic yards of fill, whichever is smaller; and

iv. The crossing is designed to minimize disturbance and other detrimental effects upon freshwater wetlands or State open waters through the use of best management practices including, but not limited to:

(1) Minimizing cartway, shoulder widths and side slopes of the roadway;

(2) Stabilizing all disturbed areas; and

(3) Using suitable, clean, non-toxic fill material.

11. Construction of stormwater outfall structures and associated stormwater conveyance structures such as pipes, headwalls, rip-rap and other energy dissipation structures, provided the following conditions are met:

i. The structures are designed to minimize the area of freshwater wetlands or State open waters disturbance;

ii. The right-of-way for any piping does not exceed 20 feet in width;

iii. The total area of freshwater wetlands or State open waters disturbed does not exceed 0.25 acres;

iv. The facility is designed in accordance with a plan approved by the appropriate County Soil Conservation District;

v. All stormwater which is discharged into a freshwater wetland or State open water is first filtered or otherwise treated outside of the freshwater wetland or State open water, to minimize sediment, pollutants, and any other detrimental effects upon the freshwater wetland or State open water. Detention basins, contour terraces and grassed swales are examples of pre-discharge treatment techniques which may be acceptable. This Statewide General Permit does not authorize placement of detention facilities in freshwater wetlands or State open water. The Department will take into consideration whether the outfall is part of a Regional Stormwater Management Plan already approved by the Department;

vi. The total amount of rip-rap or any other material placed in the freshwater wetland or State open water does not exceed 10 cubic yards; and

vii. The upper 18 inches of material in any backfilled area must consist of the original topsoil.

12. Surveying activities such as soil borings and cutting of narrow (five feet or less) survey lines which do not alter the character of the freshwater wetland or State open water.

13. Fish and wildlife harvesting activities such as traps and duck blinds.

14. Placement of water level recording devices, water quality monitoring and testing devices and similar scientific devices.

15. Mosquito control water management activities conducted by a county mosquito control agency provided:

i. Best management practices are employed including, but not limited to, shallow swales no more than three feet wide, and low sills no more than three feet wide;

ii. Disturbance of vegetation is minimized;

iii. Only light equipment is used;

iv. Excavated spoils are removed or spread evenly in a shallow layer no more than three inches deep on-site;

v. The existing hydrologic condition of the hydric soils is maintained (that is, excessive drainage is not permitted);

vi. The activities do not take place in exceptional resource value freshwater wetlands; and

vii. The county submits individual, site-specific project proposals to the Administrator of the State Office of Mosquito Control Coordination, and the Administrator determines that the project is necessary to control a documented mosquito problem to existing residents. After approval by the Administrator, the project shall then be submitted to the Department for Statewide General Permit review in accordance with the requirements of this chapter.

16. Fish and wildlife management activities which do not involve the discharge of more than 10 cubic yards of clean fill, carried out in county, State or Federal wildlife management areas, parks or reserves. These activities include but are not limited to:

i. The placement of artificial nesting structures, observation blinds, sign posts, or fencing;

ii. The clearing of vegetation to increase habitat diversity (when carried out in accordance with an approved wildlife management plan); and

iii. The blocking or filling of human-made drainage ditches for the purpose of restoring previously existing wetland conditions.

17. Trail and/or boardwalk construction on publicly owned park land, wildlife management areas or reserves, provided:

i. The width of the trail or boardwalk does not exceed eight feet;

ii. Natural materials such as wood chips are used to the maximum extent practicable;

iii. The project does not interfere with the natural hydrology of the area; and

iv. The project does not encroach upon or adversely affect the habitat of any threatened or endangered species.

7:7A-9.4 Use of multiple Statewide General Permits

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

(c) For Statewide General Permits at N.J.A.C. 7:7A-9.2(a) 2, 6, [and] 7, **10 and 11,** the Department may approve activities covered under more than one general permit on a single property, provided that the total area of wetlands or State open waters disturbed on that property by activities under general permits [does not exceed one acre] **10 and 11 does not exceed 0.25 acre, the total disturbance on the property under Statewide General Permits 6 and 7 does not exceed one acre and the total disturbance of wetlands or State open waters on the property under all general permits combined does not exceed one acre. For example, the Department could approve a minor road crossing disturbing 0.125 acre, an outfall disturbing 0.125 acre, and 0.5 acre of fill in a swale, such that the total area disturbed on the property under the combined authority of Statewide General Permits 10 and 11 would not exceed 0.25 acre, the total disturbance under Statewide General Permit 7 would not exceed one acre and total disturbance on the property under the authority of all general permits would not exceed one acre.**

(d) (No change.)

(e) For Statewide General Permits at N.J.A.C. 7:7A-9.2(a) 1, 3, 4, 5, [and] 9, **12, 13, 14, 15, 16 and 17,** the Department may issue approvals for any number of activities on a single property covered by any number of these general permits. Later activities on the same property will also be eligible for approval under these Statewide permits.

(f) No property will be the subject of Department approvals under Statewide General Permits 2, 6, [or], 7, **10 or 11** more often than once every five years.

(a)

DIVISION OF WATER RESOURCES

NJPDES Permits for Discharge of Dredged or Fill Material

Non-exempt Discharges

Proposed Amendment: N.J.A.C. 7:14A-3.1

Authority: N.J.S.A. 13:1B-3, 58:10A-1 et seq., particularly 58:10A-4, 58:10A-6 and 13:9B-1 et seq.

DEP Docket Number: 021-88-05.

Proposal Number: PRN 1988-319.

The agency proposal follows:

Summary

On May 16, 1988 the New Jersey Department of Environmental Protection (Department) adopted rules (see the June 6, 1988 New Jersey Register at 20 N.J.R. 1235(a)), operative July 1, 1988, to implement the Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B-1 et seq. The Act amends the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., discontinuing the Department's discretion to exempt the discharge of dredged or fill material into freshwater wetlands and State open waters as these two terms are defined at N.J.A.C. 7:7A-1.4, from the requirement of a New Jersey Pollutant Discharge Elimination System (NJPDES) permit.

The rules which were adopted on May 16, 1988 included the requirement that these activities are now regulated and require a permit. The proposed amendment changes the NJPDES permit rules to make them consistent with the Act and the May 16, 1988 adoption, by deleting the discharge of dredged or fill material into freshwater wetlands and State open waters from the list of discharges at N.J.A.C. 7:14A-3.1(b) which are exempt from NJPDES permit requirements.

Social Impact

The amendment to N.J.A.C. 7:14A-3.1 will be positive since it eliminates a conflicting provision from the rule and promotes consistency between the NJPDES and Freshwater Wetlands Protection rules.

Economic Impact

The proposed amendment to N.J.A.C. 7:14A-3.1 will have no adverse economic impact in that it merely makes the rules implementing the New Jersey Water Pollution Control Act consistent with recent amendments to that Act and the Freshwater Wetlands Protection Act and its implementing rules at N.J.A.C. 7:7A.

Environmental Impact

The proposed amendment will have a positive environmental impact because it will aid the coherent review of the discharge of dredged or fill material by the freshwater wetlands program.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, the Department has determined that this rule would not impose additional reporting, recordkeeping, or other compliance requirements on small businesses because it merely removes a conflicting provision from a rule in order to implement a statutory requirement.

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

7:14A-3.1 Scope

(a) (No change.)

(b) The following discharges do not require DSW permits:

1. (No change.)

2. Discharges of dredged or fill material into waters [of the United States which are regulated under Section 404 of the Federal Act] **for which the State could not be authorized to administer the section 404 program under section 404(g) of the "Federal Water Pollution Control Act Amendments of 1972," as amended by the "Clean Water Act of 1977" (33 U.S.C. §1344) and implementing regulations;**

3.-5. (No change.)

(c) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Labeling and Storage Standards Applicable Both to Generators Who Offer Hazardous Waste to a Waste Reuse Facility and to Waste Reuse Facilities

Proposed Amendments: N.J.A.C. 7:26-7.4, 9.1, and 12.1

Authority: N.J.S.A. 13:1D-1 et seq. and 13:1E-6.

DEP Docket Number: 019-88-05.

Proposal Number: PRN 1988-313.

Submit written comments by July 20, 1988 to:

Carl Will
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08540

The agency proposal follows:

Summary

On August 18, 1986, the Department of Environmental Protection ("Department") adopted amendments to allow the exchange of hazardous waste between generators and waste reuse facilities, as defined by N.J.A.C. 7:26-1.4 (see 18 N.J.R. 1701(a)). The following amendments are being proposed to correct certain deficiencies in the August 18, 1986 amendments.

The proposed amendment to N.J.A.C. 7:26-7.4(j)1 instructs generators to register with the Department's Waste Reuse Program instead of the Bureau of Hazardous Waste Engineering before offering hazardous waste to a waste reuse facility.

The proposed amendment to N.J.A.C. 7:26-7.4(j)2 would require that a generator not offer hazardous waste to a waste reuse facility for use or reuse unless the generator has complied with all applicable requirements for labeling and accumulating wastes in N.J.A.C. 7:26.

The proposed amendment to N.J.A.C. 7:26-9.1(c)13iii, pertaining to wastes intended for use or reuse being served for less than 90 days, requires that a waste reuse facility comply with the appropriate accumulation and labeling requirements of N.J.A.C. 7:26-9.3(a)3 for containers or N.J.A.C. 7:26-9.3(b)5 for tanks as a condition for exemption from hazardous waste facility standards.

The proposed amendment to N.J.A.C. 7:26-9.1(c)13v requires a waste reuse facility to maintain records which list the date that each shipment of hazardous waste enters a tank, the volume of that shipment, the date that each quantity of hazardous waste is removed from the tank and the volume of the waste at that time as a condition for exemption from facility standards.

The proposed amendment to N.J.A.C. 7:26-12.1(b)11 requires the owner or operator of waste reuse facilities to submit the information required by N.J.A.C. 7:26-12.1(b)11i through xi to the Waste Reuse Program and provides the appropriate address.

The proposed amendment to N.J.A.C. 7:26-12.1(b)11iii modifies the information which the owner or operator of a waste reuse facility is required to submit to the Waste Reuse Program. The Department determined that the present wording unnecessarily restricts inclusion in the Program to "manufacturing" companies. The modification will clarify that companies engaged in industrial processes where a waste material can effectively be substituted for a commercial product may participate in the program. The second example of "use or reuse" at N.J.A.C. 7:26-1.4 supports this interpretation. In that example, spent pickle liquor may be used as a phosphorus precipitant and sludge conditioner in wastewater treatment. Wastewater treatment is not considered to be a manufacturing process. This amendment clarifies the scope of the waste reuse program while preventing the program from being exploited by facilities fraudulently masquerading as industrial facilities.

Social Impact

The proposed amendments will have a positive social impact. They will ensure that hazardous wastes being stored for eventual reuse are subject to the same storage and labeling requirements as hazardous wastes being stored for eventual treatment or disposal.

Economic Impact

The bulk of the proposed amendments will have no economic impact. Waste that will be stored prior to reuse would otherwise be stored prior to treatment or disposal according to N.J.A.C. 7:26. Since the proposed amendments will not require more stringent storage or labeling procedures than those required for waste being stored prior to treatment or disposal, no facility or generator should be adversely affected. The amendment to N.J.A.C. 7:26-12.1(b)11iii will have a positive economic impact, by making the waste reuse program available to industrial facilities which previously had been excluded.

Environmental Impact

The proposed amendments will have a positive environmental impact. Wastes being stored prior to reuse will be required to meet the same labeling and storage requirements as those being stored prior to treatment or disposal. This will prevent any disparity in the handling of these two waste streams and will allow uniform enforcement of the rules.

Regulatory Flexibility Statement

Some small businesses as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169) will be impacted by these amendments. In order to comply with these amendments more stringent storage and labeling requirements will be required for hazardous waste bound for waste reuse and hazardous waste being stored at a waste reuse facility prior to its use. These amendments merely assure that waste being stored prior to and after exchange will be subject to labeling and storage requirements equivalent to those for waste being stored prior to treatment or disposal. In developing these amendments, the Department has balanced the need to protect the environment against the economic impact of the amendments and has determined that to minimize the impact of the amendments would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

The amendment to N.J.A.C. 7:26-12.1(b)11iii may have a positive economic impact on New Jersey's small businesses by opening up the waste reuse program to a wider range of industrial facilities.

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

7:26-7.4 Hazardous waste generator responsibilities

(a)-(i) (No change.)

(j) A generator shall not offer hazardous waste to a waste reuse facility for use or reuse unless:

1. The generator has registered with the Department's waste reuse facility program. To register, a generator shall submit the following information to: New Jersey Department of Environmental Protection, Division of **Hazardous** Waste Management, [Bureau Chief, Bureau of Hazardous Waste Engineering,] **Waste Reuse Program, 401 East State Street, 5th Floor,** CN 028, Trenton, N.J. 08625.

i.-vii. (No change.)

2. The generator has complied with all applicable requirements [for managing containers of hazardous waste at N.J.A.C. 7:26-7.2 and all storage requirements under N.J.A.C. 7:26-9.3(a)2] **for labeling and accumulation of hazardous waste as contained in N.J.A.C. 7:26.**

3.-5. (No change.)

7:26-9.1 Scope and applicability

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

(c) The standards and requirements of this subchapter do not apply to:

1.-12. (No change.)

13. The owner[/] **or** operator of a waste reuse facility provided the following conditions are met:

i.-ii. (No change.)

iii. Wastes intended for use or reuse are stored no longer than 90 days**, and the requirements set forth for accumulation of wastes for less than 90 days at N.J.A.C. 7:26-9.3(a)3 or (b)5 are also met**;

iv. (No change.)

v. The owner[/] **or** operator of the waste reuse facility maintains a written operating record at the facility in accordance with the applicable provisions of N.J.A.C. 7:26-9.4(i) **and, for hazardous waste stored in tanks, records are maintained which list the date that each shipment of hazardous waste enters the tank, the volume of that shipment, the date that each quantity of hazardous waste exits the tank, and the volume of the hazardous waste exiting the tank**;

vi.-xi. (No change.)

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

7:26-12.1 Scope and applicability

(a) (No change.)

(b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities.

1.-10. (No change.)

11. The owner[/] **or** operator of a waste reuse facility, provided all conditions and requirements of N.J.A.C. 7:26-9.1(c)13 are met, and the owner[/] **or** operator submits the following information and documentation to the [Department] **New Jersey Department of Environmental Protection, Division of Hazardous Waste Management, Waste Reuse Program, 401 East State Street, 5th Floor, CN 028, Trenton, N.J. 08625**:

i.-ii. (No change.)

iii. [Description of the wastes to be reused, products to be produced, a] **A brief description of the waste reuse process[:] including the waste to be reused, raw material to be substituted, and the end product of the industrial process;**

iv.-xi. (No change.)

(c) (No change.)

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Chargeback

Learning Disabled, Auditorily Impaired and Visually Impaired Students

Proposed Amendment: N.J.A.C. 9:4-1.5

Authorized By: Board of Higher Education,
T. Edward Hollander, Chancellor and Secretary.
Authority: N.J.S.A. 18A:64A-7, N.J.S.A. 18A:72H-8.
Proposal Number: PRN 1988-287.

Submit comments by July 20, 1988 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the Board of Higher Education's Statewide Plan for Higher Education (1981) and the Higher Education Services for Auditorily Impaired, Visually Impaired and Learning Disabled Students Act, N.J.S.A. 18A:72H-1 et seq., the Department of Higher Education has established four Comprehensive Centers for Learning Disabled Students and three New Jersey Centers for Collegiate Deaf Education. These centers provide substantially enhanced disability-specific academic programs and adaptive services through specialized orientation and compensatory learning strategy development courses, academic assistance, counselling by personnel trained in particular disabilities and use of adaptive educational materials and aids.

Six of the centers are located at county colleges. Because of the concentration of resources at these particular county colleges, it is expected that the centers will attract students with particular disabilities from outside the counties. Under present regulations, students who need comprehensive remedial programs must take the full sequence of remediation in their home counties. This limits access to the extensive disability-specific support and specialized personnel available through the centers to students who are residents of the counties in which the centers are located. The proposed amendment will allow out-of-county students, who meet eligibility requirements and are accepted into a center's specialized direct service program, to register for and attend, on chargeback basis, all course work necessary to satisfy the requirements of a program of study, including comprehensive remedial programs, at the institution where the center is located. The proposal also specifies the center's intensive academic support programs as programs of study for the purpose of chargeback.

Social Impact

The proposed amendment will allow special needs students to attend particular county colleges which provide intensive programmatic support for their particular needs through various centers at an in-county tuition rate on a chargeback basis when the appropriate center is not located at their home county college. Thus, such students will be able to attend whichever county college best suits their special academic needs without being placed at an economic disadvantage by having to pay out-of-county tuition rates.

Economic Impact

The proposed amendment will allow students who qualify for programs set up pursuant to N.J.S.A. 18A:72H-1 et seq. to attend an out-of-county county college on a chargeback basis (at an in-county tuition rate). Such a tuition rate is substantially less than the out-of-county tuition rate which such students might otherwise be required to pay.

The amendment will serve to increase the chargeback payments of those counties without centers to county colleges which have centers as the amendment will increase the number of students eligible to attend a county college on a chargeback basis.

Regulatory Flexibility Statement

The proposed amendment does not require a regulatory flexibility analysis since it does not impose any requirements on small businesses.

The proposed amendment simply provides for students who qualify for admission into programs established at county colleges pursuant to N.J.S.A. 18A:72-H-1 et seq. to attend centers established at out-of-county county colleges on a chargeback basis. The proposal does not impact upon small businesses.

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

9:4-1.5 Chargeback

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

(g) **For the purpose of chargeback, Comprehensive Support Centers for Learning Disabled Students, New Jersey Centers for Collegiate Deaf Education and College Resource Centers for Visually Impaired Students designated by the Chancellor, shall be considered eligible**

programs of study. Out-of-county students, who meet the eligibility requirements and are accepted into direct service programs in a Center located at a community or county-assisted college, shall be permitted to register for and attend, on a chargeback basis, all course work necessary to satisfy the requirements of a program of study approved by the Director of the Center in which the student is enrolled.

[(g)](h) Students required to enroll in a comprehensive remedial program, as defined by the Chancellor, must take that full sequence of remediation in the home county **with the exception of students enrolled in Comprehensive Support Centers for Learning Disabled Students, New Jersey Centers for Collegiate Deaf Education or College Resource Centers for Visually Impaired Students. Students enrolled in the programs of these Centers may complete required comprehensive remedial programs at the Centers.** Each academic year, the Chancellor shall determine and distribute to the county colleges a definition of comprehensive remedial program for such students which shall be based upon severe deficiencies in reading, writing and mathematics as evidenced by New Jersey College Basic Skill Placement Tests results. After the successful completion of such remediation, students will be eligible to take the intended courses of study on a chargeback basis at the out-of-county institution.

[(h)](i) Students not required to enroll in a comprehensive remedial program as defined in [(g)](h) above may take such remediation as part of the program of [student] **study** at the out-of-county institution on a chargeback basis.

[(i)](j) A student shall be eligible to attend an out-of-county community or county-assisted college on a chargeback basis if the student's local county or county-assisted college cannot admit the student into a particular course or program of study desired by the student due to lack of available space in the course or program of study which continue or will continue over one year from the initial date of attempted admission.

[(j)](k) The college accepting such out-of-county students shall charge the sending counties according to a system of differential chargeback rates as determined by the Board of Higher Education, calculating the amount to be charged in the following manner:

1. The total number of current year's estimated resident credit-hour and equivalent credit-hour enrollments and divide by 30 to obtain the full-time equivalent student enrollments (resident FTE's).

i. Equivalent credit hours for State fundable non-credit course offerings shall be calculated by dividing total non-credit course contact hours by 15.

ii. Resident credit-hour and equivalent credit-hour enrollments are defined as all county resident enrollments which are eligible for State funding pursuant to N.J.A.C. 9:4-3.10 and 9:4-3.12.

2. Divide the sum of all resident FTE's from [(j)](k)1 [of this section] **above** into the current county operating appropriation to determine the base chargeback rate.

3. Multiply the sending county's eligible credit-hour and equivalent credit-hour enrollments for each differential funding group by their respective differential ratios, and total. Divide the total by 30 to determine the sending county's eligible weighted FTE's.

4. Multiply the base chargeback rate times the sending county's eligible weighted FTE's to determine the charge to the sending county.

5. The receiving college shall adjust the charge to sending counties when audited actual credit-hour and equivalent credit-hour enrollments become available from the annual enrollment audit. The calculations in [(i)](k)1 to 4 above shall be made utilizing the audited actual credit-hour and equivalent credit-hour enrollments divided by 30 to equal FTE's and adjusted county operating appropriation, if applicable. The difference between this adjusted chargeback amount and the previous State Fiscal Year's chargeback amount to each sending county shall be added to or subtracted from the following year's initial chargeback billing to said sending counties, and be so identified upon that bill.

[(k)](l) Each receiving college shall provide to the sending counties:

1.-3. (No change.)

[(l)](m) The receiving college may expend the $1.00 per credit hour collected for minor capital purposes as part of its chargeback billing subject to the following limitations:

1.-2. (No change.)

CORRECTIONS

THE COMMISSIONER

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by July 20, 1988 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

(a)

Security and Control: Strip Search
Proposed Amendments: N.J.A.C. 10A:3-5.6 and 5.7

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

Proposal Number: PRN 1988-306.

The agency proposal follows:

Summary

This proposal amends N.J.A.C. 10A:3-5.6 so that all references to "Frisk Search" in the title and the rule have been changed to "Pat Search". N.J.A.C. 10A:3-5.6(d), which required that frisk searches be conducted by staff members of the same sex as the inmate, has been amended to permit pat searches to be conducted by male or female correction officers regardless of the sex of the inmate. This proposal also amends N.J.A.C. 10A:3-5.7 so that all references to "Frisk Search" are deleted, and N.J.A.C. 10A:3-5.7(g) has been added which authorizes strip searches of inmates by correction officers of the opposite sex in emergency situations.

Social Impact

The proposed amendments will provide the administrative flexibility that is necessary to more effectively utilize correction officers within the Department of Corrections.

Economic Impact

The proposed amendments will have no significant economic impact because additional funding is not necessary to implement or maintain the amendments.

Regulatory Flexibility Statement

The proposed amendments impact on inmates and the Department of Corrections and do not affect small businesses as defined in the Regulatory Flexibility Act.

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

10A:3-5.6 [Frisk] **Pat** search

(a) A [frisk] **pat** search or pat-frisk shall be conducted while the inmate is fully clothed. [It] **A pat search or pat-frisk** includes both the touching of the inmate's body through clothing, including hair, dentures, etc., and a thorough examination into pockets, cuffs, seams, etc., and all personal property in the inmate's possession.

(b) [Frisk] **Pat** searches of inmates may be conducted at any time in the following circumstances:

1.-3. (No change.)

(c) In addition to the foregoing routine searches, a [frisk] **pat** search may be conducted at any time when there is a reasonably clear indication that the inmate is carrying contraband. This search may be conducted only with prior approval of a supervisory level officer or staff member. Factors which may form the basis for such search may include:

1.-2. (No change.)

(d) [All frisk searches shall be conducted by staff of the same sex as the inmate] **Pat searches may be conducted by either male or female officers regardless of the sex of the inmate.**

10A:3-5.7 Strip searches

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

(e) All [frisk] **pat** searches, strip searches and body cavity searches shall be conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person. The number of officers present shall be only that number reasonably necessary to provide security. No member of the opposite sex shall be present during strip searches and body cavity searches except medical staff persons as set forth **in (d) above, and as set forth in (g) below**.

(f) (No change.)

(g) Strip searches of inmates may be conducted by officers of the opposite sex under emergent conditions as ordered by the Superintendent. Under no circumstances shall invasive body cavity searches be conducted by anyone other than a medical doctor or registered nurse (R.N.).

(a)

Social Services: Religion

Proposed Amendments: N.J.A.C. 10A:17-5.3 and 5.8

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

Proposal Number: PRN 1988-307.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:17-5.3 permits inmates assigned to half-way houses to attend worship services and/or religious activities in the community at the discretion of the Superintendent. The proposed amendment to N.J.A.C. 10A:17-5.8 clarifies the responsibilities of the Chaplain or volunteer religious leader and the custody shift supervisor in the control of religious ritualistic elements.

Social Impact

The proposed amendment to N.J.A.C. 10A:17-5.3 will have no significant social impact because it simply codifies the existing practice regarding the attendance of religious activities by inmates assigned to half-way houses. The proposed amendment to N.J.A.C. 10A:17-5.8 will have no significant social impact because it merely clarifies the responsibilities of the chaplain or volunteer religious leader and the custody supervisor in the control of religious ritualistic elements.

Economic Impact

The proposed amendments will have no significant economic impact because additional funding is not necessary to implement or maintain the amendments.

Regulatory Flexibility Statement

The proposed amendments impact on inmates and the Department of Corrections and do not affect small businesses as defined in the Regulatory Flexibility Act.

OFFICE OF ADMINISTRATIVE LAW NOTE: The adopted text of N.J.A.C. 10A:17-5 may be found in the adoption section of the June 6, 1988 issue of the New Jersey Register.

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

10A:17-5.3 Inmate attendance of community religious activities

(a) Inmates within the Division of Adult Institutions, including satellite units, and adult inmate paraprofessionals assigned to juvenile correctional facilities shall not be permitted to attend worship services and/or religious activities in the community.

(b) At the discretion of the Superintendent, inmates residing in community residential centers may be permitted to attend religious services in the community.

10A:17-5.8 Control of religious ritualistic elements

(a) Religious ritualistic elements, including but not limited to **sacramental** wine, **fragrance** oil **in institution approved containers** and matzo, which are necessary as part of the religious service, [shall] **may** be brought into the correctional facility only by the Chaplain or a volunteer religious group leader from the community.

(b) The custody shift supervisor shall be responsible for the secure storage of [sacramental] **religious ritualistic** elements.

(c) When [sacramental] **religious ritualistic** elements are to be used, these elements shall be issued by the custody shift supervisor only to the Chaplain or a volunteer religious group leader from the community.

(d) The Chaplain or a volunteer religious group leader from the community shall be responsible for the use and return of [sacramental] **any excess religious ritualistic** elements to the custody staff supervisor **for secure storage following the use of the elements at religious services**.

(b)

Bedside and Funeral Visits

Proposed Amendments: N.J.A.C. 10A:18-7

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

Proposal Number: PRN 1988-305.

The agency proposal follows:

Summary

The proposed amendments broaden the Superintendent's authority to approve bedside and funeral visits, and prohibit correctional facilities from denying an inmate's request for a bedside or funeral visit solely because the inmate and his or her family are indigent. Modifications have been made in the format of this Subchapter to facilitate easy reading and interpretation.

Social Impact

The proposed amendments authorize the Superintendent to approve the attendance of an inmate at the bedside and/or funeral of a dying or deceased relative other than a parent, spouse, child or sibling if that relative acted as a parent or guardian over a period of time. The amendments prohibit the denial of an indigent inmate's request for a bedside or funeral visit solely because of the inability of the inmate and his or her family to pay the costs of the visit.

Economic Impact

The proposed amendments will have no significant economic impact because sufficient staff and financial resources are available to implement and maintain these rules.

Regulatory Flexibility Statement

The proposed amendments impact on inmates and the Department of Corrections and do not affect small businesses as defined in the Regulatory Flexibility Act.

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

SUBCHAPTER 7. BEDSIDE AND FUNERAL VISITS

10A:18-7.1 (No change)

10A:18-7.2 Authority

(a) Pursuant to N.J.S.A. 30:4-8.1, the correctional facility Superintendent may, at his or her discretion, authorize and permit the attendance of an inmate at the bedside and/or funeral of a dying or deceased relative, **as defined in N.J.A.C. 10A:18-1.3.**.

(b) [A relative shall be defined in N.J.A.C. 10A:18-1.3] **The Superintendent may, at his or her discretion, authorize and permit the attendance of an inmate at the beside and/or funeral of a dying or deceased relative other than those listed in N.J.A.C. 10A:18-1.3 when it can be verified that the relative acted, for a period of time, as a parent or guardian of the inmate, such as a grandparent.**

[(c) During the bedside and/or funeral visit, the inmate shall at all times be in the custody of one or more correction officers or employees of the correctional facility wherein the inmate is confined.]

[(d) The inmate shall not be permitted to go on a bedside or funeral visit that is outside the State of New Jersey.]

10A:18-7.3 Verification

(a) The burden is on the inmate to prove that the ill or deceased person is his or her relative as defined in N.J.A.C. 10A:18-1.3.

(b) The fact of illness or death shall be verified by the Superintendent or his or her designee.

[10A:18-7.3]**10A:18-7.4** Eligibility

(a) The correctional facility Superintendent shall determine whether an inmate is eligible to go on a bedside or funeral visit. [The correctional facility Superintendent is not required to permit bedside or funeral visits if:

1. The visit will interfere with the security or orderly operation of the correctional facility;
2. The inmate is an incorrigible criminal;
3. The inmate is a known escape risk;
4. The inmate has unusual disciplinary problems;
5. The inmate is recognized as untrustworthy; or
6. The inmate is a highly publicized person whose reappearance in the community under any conditions other than strict compliance with the laws governing parole and release would cause unfavorable comment in the community.]

(b) If the Superintendent is in doubt as to the propriety of permitting a particular inmate to leave the correctional facility under the circumstances enumerated in this subchapter, the Superintendent shall consult with the Assistant Commissioner of his or her Division.

[(c) The burden is on the inmate to prove that the ill or deceased person is his or her relative as defined in N.J.A.C. 10A:18-1.3.]

[(d) The fact of illness or death shall be verified by the Superintendent or his or her designee.]

10A:18-7.5 Ineligibility

(a) The inmate shall not be permitted to go on a bedside or funeral visit that is outside the State of New Jersey.

(b) The inmate shall not be permitted to go on a bedside or funeral visit that is in a private residence.

(c) The correctional facility Superintendent is not required to permit bedside or funeral visits if:

1. The visit will interfere with the security or orderly operation of the correctional facility;

2. The inmate is an incorrigible criminal;

3. The inmate is a known escape risk;

4. The inmate has unusual disciplinary problems;

5. The inmate is recognized as untrustworthy;

6. The inmate is a highly publicized person whose reappearance in the community under any conditions other than strict compliance with the laws governing parole and release would cause unfavorable comment in the community; or

7. The location of the funeral or bedside visit could place either the escorting correction officer(s) or the inmate in jeopardy.

10A:18-7.6 Security

During the bedside and/or funeral visit, the inmate shall at all times be in the custody of one or more correction officers or employees of the correctional facility wherein the inmate is confined.

[10A:18-7.4]**10A:18-7.7** Court ordered funeral visits

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

[10A:18-7.5]**10A:18-7.8** Payment of visit expenses

(a) (No change.)

(b) **No inmate shall be denied approval for a bedside or funeral visit solely because of the inability of the inmate and his or her family to pay travel and other expenses. In the event that an inmate is indigent and it can be verified that the inmate's family is unable to reimburse the correctional facility for the expenses of a deathbed or funeral visit, the correctional facility shall assume the expenses of the visit.**

[(b)](**c**) The Business Office of the correctional facility shall predetermine the expenses claimed for reimbursement upon the approval by the Superintendent.

[(c)](**d**) A detailed written statement of expenses shall be prepared using the following criteria to determine the amount of reimbursement due:

1.-5. (No change in text.)

[(d) The Superintendent may grant exceptions to payment of visit expenses if all other conditions of this subchapter are met and the Superintendent is satisfied that the family cannot meet the expenses of the visit.]

[10A:18-7.6]**10A:18-7.9** Notification of Central Office

All bedside and funeral visits shall be noted in the Superintendent's monthly report.

LABOR

The following proposals are authorized by Charles Serraino, Commissioner, Department of Labor.

Submit comments by July 20, 1988 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
New Jersey Department of Labor
CN 381
Trenton, New Jersey 08625-0381

(a)

DIVISION OF EMPLOYMENT SECURITY

Separation and Disqualification Notices

Proposed Amendment: N.J.A.C. 12:17-1.6

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 43:21-4(c)(1) and 43:21-6(a).

Proposal Number: PRN 1988-314.

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 43:21-4(c)(2), the Department of Labor (Department) may modify the requirement that an unemployed individual must be "actively seeking work" to receive unemployment benefits if the modification is warranted by economic conditions.

Pursuant to N.J.S.A. 43:21-4(c)(2), the Department promulgated N.J.A.C. 12:17-1.6 which concerns employer notice to the Department in the event of a temporary layoff of employees. N.J.A.C. 12:17-1.6 currently requires, among other things, that certain individuals who are temporarily separated from work through no fault of their own for a definite period of no more than four weeks need not conduct an active search for work provided that they otherwise meet the eligibility requirements set forth in N.J.S.A. 43:21-4.

The Department proposes to amend N.J.A.C. 12:17-1.6 by expanding the maximum period of temporary unemployment from four weeks to eight weeks. The Department believes that this amendment appropriately reflects the current economic conditions and personnel practices of employers.

Other amendments to the rule are editorial in nature and do not change the substance of the rule.

Social Impact

The proposed amendment will benefit those individuals who are temporarily unemployed longer than four weeks but less than eight weeks since they no longer have to conduct futile work searches.

Economic Impact

The proposed amendment will have a positive economic impact on individuals who are temporarily unemployed longer than four weeks but less than eight weeks since these individuals will no longer have to spend time and money conducting futile work searches.

The proposed amendment will have no direct impact on employers.

The proposed amendment will slightly reduce Department costs associated with processing claims by alleviating the need to review claimant work search records.

Regulatory Flexibility Statement

The proposed amendment will not place any additional reporting, recordkeeping or compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Thus, no regulatory flexibility analysis is required.

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

12:17-1.6 Notice of temporary separation from work

(a) Whenever [a] workers **are** temporarily separated from [his] work through no fault of [his] **their** own or not of [his] **their** own accord, the employer, upon request by the local unemployment insurance claims office, shall verify the expected duration of the

[worker's] period of unemployment, the reason for [his] separation, and the date on which the employer expects the workers to return to [his] work.

(b) If the period of temporary unemployment is [for four] **eight** weeks or less and the employer has furnished the information required in [subsection] (a) [of this Section] **above**, the workers will be entitled to benefits if [he] **they** meet[s] all of the requirements of subsections (a), (b), (c), (d) and (e) of N.J.S.A. 43:21-4, except that the employer's verification that [he] **they** expect[s] the workers to return to work within the [four-week] **eight-week** period will dispense with the requirement of actively seeking work during such period.

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health for Public Employees: Ethylene Oxide

Proposed Amendment: N.J.A.C. 12:100-4.2

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); and 34:6A-25 et seq., specifically 34:6A-30; and 29 CFR Part 1910

Proposal Number: PRN 1988-316.

The agency proposal follows:

Summary

The Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., requires the Department of Labor to establish health and safety standards for public employees.

On November 5, 1984, rules were promulgated by the Commissioner which adopted the Federal Occupational Safety and Health Administration (OSHA) standards by reference in N.J.A.C. 12:100, Safety and Health Standards for Public Employees.

On April 4, 1988, the Federal Occupational Safety and Health Administration issued a final rule on ethylene oxide which became effective on June 6, 1988. This final rule on ethylene oxide was published in the Federal Register of Wednesday, April 6, 1988.

This standard, 29 CFR Part 1910.1047 Ethylene Oxide, addresses all instances of occupational exposure to ethylene oxide. The standard retains the eight hour time weighted average (TWA) for occupational exposure to ethylene oxide at one part per million (ppm) and adopts the short term exposure limit (STEL) at five ppm as averaged over a 15 minute period. The section consists of 14 topics including: permissible exposure limits; exposure monitoring; methods of compliance; respiratory protection and personal protective equipment; emergency situations; medical surveillance; communication of ETO hazards to employees; recordkeeping; and observation of monitoring.

Additionally, the Federal standards include four appendices, which address the following issues: Substance Safety Data Sheet for Ethylene Oxide; Substance Technical Guidelines for Ethylene Oxide; Medical Surveillance Guidelines for Ethylene Oxide; and Sampling and Analytical Methods for Ethylene Oxide.

N.J.S.A. 34:6A-30 states, in part: ". . . the Commissioner shall provide, at the minimum, for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the Secretary under the authority of the Occupational Safety and Health Act of 1970."

This final Federal rule is an amendment as described above and is the rule which the Division of Workplace Standards of the Department of Labor proposes to adopt into the State regulations by reference. The Department proposes to amend N.J.A.C. 12:100-4.2(a) and adopt the Federal rule by reference.

It should be noted that paragraph (m) of 29 CFR 1910.1047 addresses an effective date and start-up dates. These dates represent implementation dates set by the United States Department of Labor for the protection of employees in the private sector by private employers. The effective date of this amendment for the State program and for public employers and public employees will be the date the adoption notice of this amendment is published in the New Jersey Register.

Social Impact

This proposed amendment will protect the health, safety and welfare of public employees handling ethylene oxide. There exists sufficient documented scientific information that exposure at concentrations above the permissible exposure limits is associated with occupational disease and ill-health symptoms.

Implementation of this amendment will reduce illness occurring among public employees. The amendment will improve working conditions, reduce time lost because of exposure to ethylene oxide, and will enhance the welfare and morale of public employees affected.

Economic Impact

Compliance with this proposed amendment will impose some increased costs on public employers. However, the use of ethylene oxide by public employees is not widespread. Its use in the public sector is almost exclusively confined to hospitals, which use the ethylene oxide as a method of sterilization for medical equipment.

Regulatory Flexibility Statement

Since only public employers in the State of New Jersey will be affected by the proposed amendment, the proposal does not impose any additional reporting, recordkeeping or compliance requirements on small business. Thus, a regulatory flexibility analysis is not required.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR 1910, General Industry Standards with the amendments published in the Federal Register through [December 31, 1987] **April 6, 1988** with certain exceptions noted in (b) and (c) below, are adopted as occupational safety and health standards and shall include:

1.-19. (No change.)

(b)-(c) (No change.)

(b)

DIVISION OF WORKPLACE STANDARDS

Apparel Industry Registration System

Proposed New Rules: N.J.A.C. 12:210-1

Authority: N.J.S.A. 34:1-20; 34:1A-3(e) and P.L. 1987, c.458.

Proposal Number: PRN 1988-315.

The agency proposal follows:

Summary

In 1987, the legislature drafted and passed legislation concerning the apparel industry. This legislation (P.L. 1987, c.458), which was signed into law in January, 1988, requires the Commissioner of Labor to establish a Special Task Force on the Apparel Industry to enforce the State Labor laws in the apparel industry. The legislation further requires the Commissioner to establish a registration system for employers in that industry.

The proposed new rules are intended to help the Department identify those individuals in the apparel industry who violate the State labor laws and to ensure that apparel workers are not working in conditions which violate the laws concerning wages and hours, wage payment, child labor, unemployment and temporary disability insurance, and workers' compensation.

N.J.A.C. 12:210-1.1 sets forth the purpose and scope of the proposed new rules. N.J.A.C. 12:210-1.2 is a definitions section.

N.J.A.C. 12:210-1.3 outlines the procedures established by the Department for registering apparel industry manufacturers and contractors. The section lists the information which must be submitted to the Department, and the circumstances under which a certificate of registration will be issued. The section also sets forth the registration fees and the renewal periods.

N.J.A.C. 12:210-1.4 creates a special task force which shall be responsible for enforcing all State labor laws which affect the apparel industry.

N.J.A.C. 12:210-1.5 lists the acts which constitute violations of the subchapter, and sets forth the applicable penalties.

Social Impact

The proposed new rules will help to eliminate those apparel industry manufacturers and contractors who violate labor laws, thus preventing exploitation of garment workers. Additionally, the rules will protect those manufacturers and contractors who abide by the rules from unfair competition.

Economic Impact

The proposed new rules will ensure that garment workers receive the wages to which they are due pursuant to State laws. The rules will mandate that all manufacturers and contractors pay the wages required by law, and thus those individuals who are currently paying sub-standard wages will be forced to increase their workers' salaries. In addition, manufacturers and contractors will have to pay an annual registration fee to the Department.

The Department will experience an increase in costs as a result of having to create a task force and increasing the amount of apparel industry inspections which will take place as a result of the proposed new rule's requirements. There will also be an increase in the administrative functions of the Department. However, the Department expects these additional costs to be covered by the legislative appropriation alloted to the Department pursuant to P.L. 1988, c.458.

Regulatory Flexibility Statement

The proposed new rules will impose some reporting, recordkeeping and compliance requirements upon manufacturers and contractors in the apparel industry, some of whom will be small businesses. It is not possible, at this time, to determine the number of small businesses to which the rules will apply, as these manufacturers and contractors are not yet registered with the Department. However, the Department is statutorily mandated to apply these requirements to all apparel industry manufacturers and contractors, as it has been determined by the legislature that this is the only effective way to eliminate those segments of the apparel industry that willfully violate State labor laws.

Full text of the proposed new rules follows.

CHAPTER 210
APPAREL INDUSTRY REGISTRATION SYSTEM

SUBCHAPTER 1. GENERAL REQUIREMENTS

12:210-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish a registration system which requires apparel industry manufacturers and contractors to register with the Department as a condition of doing business in the State.

(b) This subchapter is applicable to all New Jersey apparel industry manufacturers and contractors.

12:210-1.2 Definitions

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

"Apparel industry" means the making, cutting, sewing, finishing, assembling, pressing or otherwise producing of apparel, designed or intended to be worn by any individual and sold or offered for sale for that purpose, but does not include cleaning, pressing, or tailoring services performed upon apparel sold or offered for sale at retail.

"Commissioner" means the Commissioner of Labor.

"Contractor" means any person who contracts to perform in this State the cutting, sewing, finishing, assembling, pressing or otherwise producing of any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose. The definition of contractor is for the purpose of this subchapter only, and shall not affect the classification of an individual as an independent contractor pursuant to the Unemployment Compensation Law.

"Department" means the New Jersey Department of Labor.

"Manufacturer" means any person who contracts with a contractor to perform in this State the cutting, sewing, finishing, assembling, pressing or producing of any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose, or who cuts, sews, finishes, assembles, presses or otherwise produces in this State any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose.

"Production employee" means any person who directly performs the cutting, sewing, finishing, assembling, pressing or otherwise producing of any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose.

12:210-1.3 Registration; issuance of certificate

(a) Prior to engaging in the apparel industry business in this State, a manufacturer or contractor shall register with the Department by completing a form prescribed by the Commissioner.

(b) The registration form shall contain, but not be limited to, the following information for all manufacturers and contractors:

1. The structure of the business, that is, sole proprietorship, partnership or corporation;

2. The name and principal business address in the State;

3. The tax identification number; and

4. If the registrant is a contractor, whether the registrant subcontracts the cutting or sewing of apparel or its sections or components.

(c) Divisions, subsidiary corporations or related companies may be named and included under one omnibus registration.

(d) The Commissioner shall issue a certificate of registration upon receipt of the following:

1. The registrant's completed registration form;

2. Documentation that the registrant has workers' compensation coverage for his or her production employees working in the State; and

3. Payment of one of the following to the Division of Workplace Standards:

i. The initial registration fee of $100.00; or

ii. The annual renewal registration fee of $50.00.

(e) Manufacturers or contractors in existence prior to or on July 1, 1988 shall file the initial registration by July 1, 1988. The registration shall be valid until January 15, 1989.

(f) New manufacturers or contractors shall file the initial registration upon the commencement of business in the apparel industry in this State. The registration shall be valid until January 15 of the following year.

(g) The certificate of registration shall be renewed by January 15 of each year.

12:210-1.4 Special task force

(a) The Commissioner shall establish a special task force, comprised of Departmental personnel, to enforce all State labor laws which affect the apparel industry.

(b) The task force shall have the power to:

1. Inspect manufacturers and contractors, with respect to their production employees, for compliance with:

i. The registration requirements of N.J.A.C. 12:210-1.3;

ii. State wage and hour, unemployment compensation, temporary disability, workers' compensation, child labor and industrial homework laws; and

iii. All orders and assessments of civil penalties by the Commissioner;

2. Investigate and conduct inspections of a manufacturers' or contractors' locations, books, records and premises to ensure compliance with this subchapter; and

3. Take any action necessary to implement the provisions of this subchapter.

(c) The task force members shall receive special training with regard to the State labor laws to enable them to enforce the provisions of this subchapter.

(d) The task force shall issue a report on its activities to the labor and appropriation committees of the legislature.

12:210-1.5 Violations; penalties

(a) The following acts constitute violations of this subchapter:

1. Failure to comply with the registration requirements pursuant to N.J.A.C. 12:210-1.3;

2. Performing services or representing oneself as being registered to perform apparel industry services without holding a valid registration;

3. Contracting for the performance of an apparel industry service with a manufacturer or contractor who is known to have failed to register, renew its registration, or whose registration has been revoked; and

4. Failure to comply, for the second time in three years, with an order of the Commissioner concerning registration compliance.

(b) The following civil penalties may be imposed by the Commissioner for committing the violations in (a)1 through 4 above:

1. A fine of up to $1,000 for an initial violation;
2. A fine of up to $2,000 for each subsequent violation.

i. Penalties shall be payable to the Division of Workplace Standards.

3. An intentional failure to comply with the registration requirements shall be a crime of the fourth degree.

(c) If a manufacturer or contractor fails to comply with an order by the Commissioner to register or renew registration, the Commissioner may obtain an injunction prohibiting the manufacturer or contractor from conducting business.

(d) If a manufacturer or contractor is found guilty, after a hearing held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, of two violations of the same provision of this subchapter in three years, the Commissioner may suspend the registration of any such manufacturer or contractor for a period ranging from 30 days to one year.

(e) Any manufacturer or contractor who contracts, for the second time in three years, with a manufacturer or contractor who is known to have failed to comply with the registration requirements in N.J.A.C. 12:210-1.3, shall be liable to pay any civil penalty assessed against the known violator, if such violator has not paid the penalty.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

URBAN ENTERPRISE ZONE AUTHORITY

Urban Enterprise Zone Program

Proposed New Rules: N.J.A.C. 12A:120-1

Authorized By: Borden R. Putnam, Chairman, Urban Enterprise Zone Authority.

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

Proposal Number: PRN 1988-317.

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

July 18, 1988 at 10:00 A.M.
Conference Room B219
Department of Commerce, Energy
and Economic Development
20 West State Street
Trenton, New Jersey 08625

Submit written comments by July 20, 1988 to:

Bernard J. McBride
Administrative Practice Officer
Department of Commerce, Energy
and Economic Development
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

New rules are being proposed to implement policy and definitional changes in the Urban Enterprise Zone Program (N.J.S.A. 52:27H-60). These rules are promulgated by the New Jersey Urban Enterprise Authority, which is given the responsibility of implementing and overseeing the program. The purpose of these rules is to encourage economic development in certain areas of specifically designated municipalities in the State. Additionally, these proposed rules will improve the ability of zones to attract additional business enterprises for the zone. Some key provisions of these proposed rules include:

1. The definition of a "qualified business" (see N.J.A.C. 12A:120-1.2); and

2. Good faith waiver provisions applicable to qualified business unable to meet certain requirements to receive zone business benefits (see N.J.A.C. 12A:120-1.5).

Social Impact

The social impact of this program and the amended policy will be positive in the sense that additional employment opportunities will become available for residents of the municipalities in which a zone is located and for the residents of the zone. Additionally, zone municipalities will be better able to attract business to the zone because of additional flexibility in these proposed rules.

Economic Impact

The economic impact of this program and the amended policy should impact on the State in a positive manner by providing enhanced economic development opportunities for economically distressed municipalities. These opportunities should result in sounder economic development within these municipalities as well as broadening and strengthening the tax base of these municipalities. The State will incur certain administrative costs as well as a loss of revenue generated from State sales tax. Certain amounts of State sales tax generated from sales within the zone are set aside for purposes of providing funds for certain service improvements in the zone.

Regulatory Flexibility Statement

These proposed rules will affect only those small businesses that choose to apply for benefits under the Urban Enterprise Zone Program. If a defined small business were to apply for benefits under this program, the burden as to paperwork would be no different than those of any other business in this program. The compliance requirements imposed by this proposal must be applied uniformly to all businesses applying for benefits to enable the Urban Enterprise Zone Authority to effectively implement the Act.

CHAPTER 120
URBAN ENTERPRISE ZONE AUTHORITY

SUBCHAPTER 1. URBAN ENTERPRISE ZONE PROGRAM

12A:120-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement N.J.S.A. 52:27H-60 (P.L. 1983, ch. 303), the New Jersey Urban Enterprise Zones Act.

(b) The Act provides for the establishment of an UEZA which is to designate certain areas of the State as Urban Enterprise Zones (UEZ). The Act also provides that the UEZA provide continuing review of the implementation of the Act and report annually to the Governor and the Legislature on the effectiveness of UEZ's in addressing the conditions cited in the Act, including any recommendations for legislation to improve the effectiveness of operation of the UEZ's.

(c) Applications and questions concerning UEZ's should be directed to:

Urban Enterprise Program
New Jersey Department of Commerce, Energy,
and Economic Development
20 West State Street
Trenton, New Jersey 08625

12A:120-1.2 Definitions

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

"Act" means the New Jersey Urban Enterprise Zones Act, P.L. 1983, ch. 303 (N.J.S.A. 52:27H-60).

"Administrator" means the administrator of the Urban Enterprise Program in the Department of Commerce, Energy, and Economic Development.

"Authority" or "UEZA" means the New Jersey Urban Enterprise Zone Authority.

"Enterprise Zone" or "Zone" means an urban enterprise zone designated by the New Jersey Urban Enterprise Zone Authority pursuant to the Act.

"Qualified business" means any entity authorized to do business in the State of New Jersey which at the time of designation as an enterprise zone is engaged in the active conduct of a trade or business in that zone, and for which at least 25% of its full-time employees, newly hired during the two years after issuance of the business' certificate of occupancy to work at a business location in the zone, meet one or more of the following criteria:

1. Resident within the zone or within the municipality which the zone is located; or

2. Unemployed for at least a year prior to being hired and residing in New Jersey, or recipients of New Jersey public assistance programs for at least one year prior to being hired; or

3. Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, Pub. L. 97-300 (29 U.S.C. 1501 et seq.).

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which application for enterprise zone designation is submitted pursuant to section 14 of the Act, an annual average of at least 2,000 unemployed persons, and in which the average annual unemployment rate for that year exceeded the State average annual unemployment rate; except that a municipality which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) shall qualify if its municipal average unemployment rate for that year exceeds the State average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor.

"Zone development corporation" means a nonprofit corporation or association created by the governing body of a qualifying municipality to formulate and propose a preliminary zone development plan pursuant to section 9 of the Act.

"Zone development plan" means a plan adopted by the governing body of a qualifying municipality for the development of an enterprise zone therein, and for the direction and coordination of activities of the municipality, zone businesses and community organizations within the enterprise zone toward the economic betterment of the residents of the zone and the municipality.

"Zone neighborhood association" means a corporation or association of persons who either are residents of, or have their principal place of employment in, a municipality in which an enterprise zone has been designated pursuant to the Act; which is organized under the provisions of Title 15 of the Revised Statues; and which has for its principal purpose the encouragement and support of community activities within, or on behalf of, the zone so as to:

1. Stimulate economic activity;
2. Increase or preserve residential amenities;
3. Otherwise encourage community cooperation in achieving the goals of the zone development plan.

12A:120-1.3 Application for zone business benefits

Any business which desires to receive zone business benefits shall forward to the administrator a letter specifying the benefits which it wants to receive, a letter of endorsement from the municipality for the business to receive the benefits, a certification that the business is located in the zone, and any other additional information requested by the administrator.

12A:120-1.4 Time for application for zone business benefits

A business may apply for zone business benefits at any time after the business to be located in the zone agrees with the administrator or his or her designee to provide an increase in permanent full-time employment in the zone.

12A:120-1.5 Zone business benefits eligibility

(a) Qualified businesses within a zone shall be eligible to receive all benefits provided for under the Act as approved by the UEZA for the specific zone.

(b) The UEZA in determining whether a business is to have a status as a qualified business shall:

1. Review data compiled by the United States and New Jersey Department of Labor and private industry councils created under the Federal Job Training Partnership Act, and any other relevant sources, which bears on the availability to the business, in the area in which it is or will be located, of potential employees who meet criteria set forth in N.J.S.A. 52:27H-62 (c)(1), (2), or (3); and

2. At the time the business applies for qualified business designation under N.J.S.A. 52:27H-62(c), review the business' employee turnover experience for the two years preceding its application and estimate the number of new positions to be created by the business during the two years after the date of its zone certificate of occupancy.

12A:120-1.6 Good faith waiver

(a) If the UEZA determines that an applicant for qualified business status or a previously qualified business in unable in good faith to meet the definition of qualified business (see N.J.A.C. 12A:120-1.2) because of an insufficient number of persons satisfying the criteria of N.J.S.A. 52:27H-62 (c) (1), (2), and (3), and the workforce requirements of the business are available within the business's geographical area, the UEZA in its discretion may reduce the requirement below 25 percent for that business conditioned upon the agreement of the business to implement any one or more of the following actions:

1. Sponsor and fund development and training programs in high schools, vocational or technical schools, or continuing education facilities which serve the zone city and which primarily develop basic or entry level job skills;

2. Provide summer or part-time jobs for zone city high school students or graduates;

3. Provide summer internships for zone city students attending post-secondary, vocational, or technical educational institutions;

4. Design and implement skills training programs in zone cities. These programs shall include but are not limited to:

i. Secretarial skills;
ii. Computer skills;
iii. Financial administration and analysis skills;
iv. Management skills; and
v. Other vocational skills;

5. Participate in and fund State and federally sponsored job training programs in zone cities. These programs shall include but are not limited to:

i. The New Jersey Department of Labor's Customized Training Program;
ii. The Jobs Training Partnersip Act, Pub.L. 97-300 (29 U.S.C. & 1501 et seq.); or
iii. Any other job training program recognized by the UEZA;

6. Sponsor and fund any such programs as may be designated by the UEZA.

(b) In determining the extent that a zone business shall be required to implement, sponsor, or fund any of the activities set forth under (a) above, the UEZA shall take into account the business's size as reflected in the number of employees normally, seasonally and currently employed by the business.

(c) A business which is required by the UEZA to implement one or more of the actions enumerated in (a) above, in lieu of some portion of the 25 percent requirement of N.J.A.C. 12A:120-1.2 shall:

i. Remain subject to those specified requirements for a period of not less than five years, or such other period of time as may be established by the UEZA in order to fulfill the goals of the Act; and

ii. Consistent with federal and state law, agree to grant a preference in hiring persons participating in the activities as specified in this section.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax

Farmland Assessment Act: Woodlands

Proposed New Rule: N.J.A.C. 18:15-2.15

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:4-23.1 and 54:4-23.21.
Proposal Number: PRN 1988-310.

Submit comments by July 20, 1988 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

This new rule is being proposed to provide for an extension of time for farmland assessment applicants to comply with the additional conditions imposed on certain woodland owners under N.J.S.A. 54:4-23.3 (P.L. 1986, c.201). An affected woodland owner filing an application in a timely manner in the 1988 pretax year for assessment of land during the 1989 tax year under the provisions of the Farmland Assessment Act of 1964 shall have until March 1, 1989 to meet the additional conditions required of such owners.

Social Impact

The proposed new rule will provide sufficient time for affected woodland owners to comply with the additional conditions imposed under N.J.S.A. 54:4-23.3 (P.L. 1986, c.201). Because of the limited number of approved foresters available to prepare a woodland management plan and certify compliance with a plan as set forth in N.J.A.C. 18:15-2.7, farmland assessment status for many owners could be jeopardized through no fault of their own. It is anticipated that between 3,000 and 4,000 owners of woodland will require the services of less than 35 foresters approved by the Department of Environmental Protection to prepare and certify a woodland management plan.

Economic Impact

The proposed new rule will not require any expenditure by local or State government. Adoption of the new rule could save affected woodland owners from losing farmland assessment status and the preferential tax treatment afforded to such owners under the Farmland Assessment Act of 1964.

Regulatory Flexibility Statement

The proposed new rule will afford sufficient time to an anticipated 3,000 to 4,000 woodland owners to file and comply with the requirements as set forth in N.J.A.C. 18:15-2.7. The general timber and wood product industries in this State could be adversely affected if farmland assessment status is lost on woodlands which provide locally accessible raw materials and products to the timber industry and general public. Satisfactory compliance with these conditions will result in substantial tax savings to a landowner since local property taxes will be based on such value the land has in agricultural use rather than its highest and best use. Consulting forestry firms are anticipating considerable increases in requests for their services since affected woodland owners will be required to file a woodland management plan with their application for farmland assessment and annually obtain certification of compliance with the filed plan from the foresters approved by the Department of Environmental Protection. Although owners of woodland will incur a cost to obtain the services of an approved forester, the cost is minimal when compared with the local property tax savings resulting from an assessment placed on the woodland property in accordance with its agricultural use value rather than the property's true value. Typically, a plan will be developed for a period of time not less than 10 years. The cost for most plans will range from $200.00 to $1,500. Annual costs for review and an approved forester's certification of compliance are expected to range from $50.00 to $500.00 for most landowners. Generally, costs incurred by owners of woodland for professional forestry services will be more than offset by the increases that will accrue in the value and quality of woodland yields attributable to improved forestry practices. Such increases will enhance the general timber and wood products industries in this State.

Environmental Impact

The extension of time to March 1, 1989, provided under this proposed new rule, will afford sufficient time to woodland owners to submit the additional information as set forth in N.J.A.C. 18:15-2.7 and therefore maintain farmland assessment status. Land qualified for farmland assessment provides a mix of benefits, including preservation of open space, promoting wildlife, improving soil capabilities and maintenance of water quality.

Full text of the proposed new rule follows.

18:15-2.15 Transition rule initiating filing time for beginning of application or new conditions on woodland owners

An owner of woodland filing an application for farmland assessment (Form FA-1) in 1988 for valuation, assessment and taxation of land in accordance with the provisions of the Farmland Assessment Act of 1964 during the 1989 tax year, but not fulfilling the additional conditions imposed on affected woodland owners as set forth in N.J.A.C. 18:15-2.7, shall be granted an extension of time to fulfill such conditions by filing the required additional information with the tax assessor and the Commissioner of the Department of Environmental Protection no later than March 1, 1989. The extension of time shall not relieve an applicant seeking farmland assessment qualification of his land in 1989 from submitting an application for farmland assessment (Form FA-1) in a timely manner during the 1988 pretax year.

OTHER AGENCIES

(a)

NEW JERSEY TURNPIKE AUTHORITY

New Jersey Turnpike Authority Rules

Proposed Readoption: N.J.A.C. 19:9

Authorized By: New Jersey Turnpike Authority, Frank B. Holman, Executive Director.
Authority: N.J.S.A. 27:23-1, 27:23-29.
Proposal Number: PRN 1988-312.

Submit comments by July 20, 1988 to:
Frank B. Holman, Executive Director
New Jersey Turnpike Authority
New Brunswick, New Jersey 08903

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66(1978), N.J.A.C. 19:9 is scheduled to expire on July 13, 1988. These rules were originally filed and became effective prior to December 3, 1963. The New Jersey Turnpike Authority, pursuant to the authority of N.J.S.A. 27:23-1 and 27:23-29, proposes to readopt these subchapters without change.

The rules augment the provisions of N.J.S.A. 27:23-2, the enabling legislation of the New Jersey Turnpike Authority, which specifically empowers the Turnpike Authority to construct, operate, maintain, and repair modern express highways, and to issue revenue bonds, payable solely from tolls, other revenues and proceeds of such bonds to finance such projects.

N.J.A.C. 19:9 consists of five subchapters. Subchapter 1 relates to the control of traffic on the New Jersey Turnpike, including speed limits, limitation on the use of the Turnpike, transportation of hazardous materials and payment of tolls. Subchapter 2 deals with the Turnpike Authority's procedures for purchasing and contracting. Subchapter 3 sets the rates for towing disabled vehicles on the Turnpike project. Subchapter 4 concerns the inspection of Turnpike Authority records and sets the fees for such records, including documents, slides, photographs, bid documents and New Jersey State Police reports. Subchapter 5 relates to the pre-employment screening standards for applicants for employment with the Turnpike Authority.

Since July 13, 1983, a number of sections of N.J.A.C. 19:9 have been amended. Car carriers are permitted to be 65 feet in length and have a seven-foot overhang; three feet in front and four feet in rear. A semitrailer shall be 48 feet in length when in a tractor-semitrailer combination. In deference to Division of Motor Vehicles standards, the Authority deleted red rejection stickers as a reason to prohibit vehicles from using the Turnpike. The Authority now requires its prospective bidders to submit its pre-qualifications at least 21 calendar days prior to bid opening of a specific contract. The Authority also codified its Purchasing Department bid requirements, including procedures for submission of bids, award of contracts, joint contracts with State purchasing departments and other related topics. Commercial motor vehicle operators must keep very specific records regarding their hours of work, rest periods and mileage driven. New Jersey State Police records may be requested either by mail or in person. The cost when requested in person is $1.00.

These rules which are proposed for readoption have provided an efficient and effective mechanism for the regulation of the safe and efficient use of the New Jersey Turnpike by all those who travel on it and who are situated near it. The rules have also provided an effective means for the proper administration of the New Jersey Turnpike Authority so as to fulfill the command of the Turnpike Authority's enabling legislation.

Social Impact

The rules proposed for readoption are essential to ensure the continued safe and efficient use and operation of the New Jersey Turnpike and the effective maintenance and administration of the New Jersey Turnpike Authority, which purposes are mandated by the enabling legislation of the Turnpike Authority, N.J.S.A. 27:23. These rules have enabled the construction and operation of a modern express highway embodying every known safety device, and the collection of tolls necessary for the administration of the Turnpike Authority and to meet the Turnpike Authority's bonding indebtedness.

Economic Impact

The only way that the New Jersey Turnpike Authority can meet the financial obligations created in fulfillment of the legislative mandate of N.J.S.A. 27:23-1, to construct, operate, maintain and repair a modern express highway, is through the collection of tolls for the use of its roadway. Pursuant to N.J.S.A. 27:23-2, Turnpike Revenue bonds do not constitute a debt nor a pledge of the faith and credit of the State of New Jersey, nor does the State contribute funds to the Turnpike Authority. Thus, the New Jersey Turnpike Authority must generate its own funds to meet its own financial obligations, including its bonding indebtedness. Tolls are set by the New Jersey Turnpike Authority Commissioners, upon consideration of the Turnpike Authority's financial needs, and must be approved by the Governor of the State of New Jersey in order to become effective.

The fees required by these rules are incidental to the services provided. The fees do not constitute a source of revenue for the New Jersey Turnpike Authority.

Any expenses incurred as a result of these rules are vital if the New Jersey Turnpike Authority is to meet the above-enumerated goals of its enabling legislation.

Regulatory Flexibility Statement

The readoption of the Turnpike Authority's rules will have a nominal effect on small businesses operating in New Jersey. Since the New Jersey Turnpike Authority is compelled to publicly bid for all goods and services above the sum of $8,400, in accordance with N.J.S.A. 27:23-6.1, the rules must be applied to all businesses on an equal basis. The New Jersey Turnpike Authority, in accordance with N.J.S.A. 52:14B-1, has adopted a policy of assuring set-aside of a portion of its purchasing and contracting requirements to benefit small businesses. Thus, the readoption of the Turnpike Authority's rules would have no adverse effect whatsoever regarding vendors who are classified as small businesses within the intent and meaning of the Regulatory Flexibility Act. Furthermore, these rules do not impose any recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act. The rules have been in effect since the opening of the New Jersey Turnpike in 1951 and, historically, there has been no indication of any adverse effect on small businesses. These rules are generally organizational and technical rather than substantive, and must be uniformly applied to all segments of the business community. The rules regarding the control of traffic must be uniformly applied for the protection of the traveling public, and thus will contribute to the expediency of the transportation of goods and services for all segments of the business community.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:9.

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing of Primary Election for Governor

Proposed Amendments: N.J.A.C. 19:25-16.4, 16.5, 16.6, 16.10, 16.11, 16.14, 16.18, 16.20, 16.27 and 16.33.

Authorized By: Frederick M. Herrmann, Ph.D., Executive Director, Election Law Enforcement Commission.

Authority: N.J.S.A. 19:44A-38.

Proposal Number: PRN 1988-311.

A **public hearing** concerning this proposal will be conducted on:
July 19, 1988 at 10:00 A.M.
State House Annex, Room 334
Trenton, New Jersey

Submit written comments by July 20, 1988 to:
Gregory E. Nagy, Esq., Legal Director
Election Law Enforcement Commission
28 West State Street, Suite 1215
Trenton, New Jersey 08608

The agency proposal follows:

Summary

The New Jersey Election Law Enforcement Commission (Commission) proposes to amend its rules concerning the public financing of primary election candidates for Governor, N.J.A.C. 19:25-16. These amendments are derived from the Commission's experience in administering past programs and from past advisory opinions issued by the Commission. The specific proposed changes are as follows:

1. N.J.A.C. 19:25-16.4 (Designation of principal campaign committee) has been combined in the proposal with N.J.A.C. 19:25-16.5(a) concerning the appointment of treasurers and depositories. No substantive change has been proposed.

2. N.J.A.C. 19:25-16.5 has been retitled "Pre-candidacy activity" in the proposal. Individuals, or committees on their behalf, conducting pre-candidacy fund raising or spending (that is, "testing the waters") will be required to file with the Commission within 10 days after receipt of funds for such activity a statement identifying the name, address and account number of the bank account established for that purpose. Also, an individual conducting pre-candidacy activity, or a committee in his or her behalf, will be required to file with the Commission quarterly reports of moneys received and expended for pre-candidacy activity ("testing the waters").

3. N.J.A.C. 19:25-16.6(c) (Contribution limits; applicability) has been amended in regard to contributions received from minors (under 18 years of age). Such contributions will be attributed to the parents or guardian of the minor contributor for purposes of determining compliance with the $800.00 contribution limit. The Commission believes that minors under 18 years old, who cannot vote, should not be permitted to make contributions because of the probability that the decision to contribute may be influenced by the parents or guardian and not be made independently.

4. The proposed amendment to N.J.A.C. 19:25-16.10(c) (Who may or may not contribute; generally) establishes specific standards for determining affiliation status among corporate contributors or among labor organization contributors. The existing text establishes the "degree of control or common ownership" as the standard for determining when corporations are affiliated. This amendment provides that corporations shall be considered affiliated when a majority of the directors of both corporations are the same, or when one corporation owns the majority of the stock of others. This provision is sometimes referred to as "anti-proliferation" because it is intended to prevent several corporations from each making contributions which in the aggregate exceed the $800.00 contribution limit when those corporations are affiliated to each other. In regard to labor organizations, the proposed standards for determining affiliation status are if one labor organization has legal authority to seize or encumber dues or assets of another, or the leadership of one labor organization is identical to the leadership of another.

5. A new N.J.A.C. 19:25-16.11(a) is proposed (Contributions eligible for match; generally) to the effect that a contribution will not be matched unless it was deposited and received in a pre-candidacy or "testing the waters" account, or was received by a person who was a candidate in the primary election for the office of Governor. The Commission's intention is to exclude from matching fund eligibility any contribution received by a candidate at the time when that candidate was seeking an elective office other than Governor.

6. A new N.J.A.C. 19:25-16.11(e) is proposed requiring that contributions received from a corporation or labor organization must be accompanied by a certification that the "anti-proliferation" standards proposed in N.J.A.C. 19:25-16.10 have been observed.

7. A new N.J.A.C. 19:25-16.11(f) is proposed permitting the matching of contributions received from persons or entities who are also contributing to bona fide continuing political committees with at least 15 contribut-

ing members, which continuing political committees in turn are making contributions eligible for match to the same gubernatorial candidate. Therefore, a member of such an organization may contribute up to the maximum contribution of $800.00 to a gubernatorial candidate notwithstanding the fact that the organization to which that member belongs has also contributed a full maximum $800.00 contribution to the same candidate.

8. The proposed amendment to N.J.A.C. 19:25-16.14 (Limitation on contributions eligible for match) establishes the purchase price of a ticket to a fund raising event or lottery ticket as the amount of the contribution eligible for match, and establishes an additional requirement that tickets for such events or lotteries and their promotional material must state that the price represents a contribution to the candidate conducting the event or lottery. The existing rule requires the Commission to determine the fair market value of any entertainment event or lottery conducted by a gubernatorial candidate. Only the difference between the purchase price and the fair market value, under the existing rule, can be treated as eligible for matching public funds. The Commission believes that tickets for entertainment events and lotteries present substantial valuation problems beyond the ability of the Commission to establish in the short time frame of a matching fund application for a gubernatorial candidacy. Further, the Commission is persuaded that the current rule is overly complex and difficult for candidates or the Commission to apply. The proposed amendment would be predicated on the reasonable assumption that any contributor purchasing a ticket to a fund raising event or a lottery sponsored by a candidate or committee is doing so as an expression of political support, and not for the value of attending the event or participating in the lottery.

9. A proposed new N.J.A.C. 19:25-16.14(e) (Matching of funds) requires that statements submitted by candidates concerning applications for public funds cannot be handwritten.

10. Proposed new N.J.A.C. 19:25-16.20(b) and (c) (Special account for public funds) require campaign treasurers of candidates receiving public funds to file with the Commission reports identifying disbursements made out of any public fund account established for the candidate's campaign. This reporting obligation begins on the fourth Monday following January 1 in a gubernatorial election year, or as soon as the account is established thereafter, and subsequent reports must be filed on every other Monday thereafter until the public fund account is closed. The reports must identify each disbursement made from the public fund account and must give a complete statement of the purpose of the expenditure, indicating which permitted use of public funds is applicable; see N.J.A.C. 19:25-16.25 setting forth the specific purposes for which public funds may be used. Failure to file complete or timely reports, or failure to expend public funds in compliance with statutory and regulatory requirements shall result in immediate cessation of further public fund deposits by the Commission.

11. The proposed amendment to N.J.A.C. 19:25-16.27 (Expenses not subject to expenditure limits) provides that expenses incurred for an election night celebration or event pursuant to proposed N.J.A.C. 19:25-16.33(c) shall not be subject to the overall expenditure limit on candidates receiving public funds. The Commission believes that expenses for election night events are a traditional part of the campaign process and are not intended to be part of the overall campaign expenditure limit provided in N.J.S.A. 19:44A-7, particularly because they generally are conducted after the close of the polls.

12. Proposed new N.J.A.C. 19:25-16.33(b) (Repayment of public of other funds) provides that a publicly funded candidate cannot incur new debt or make expenditures after the date of the election other than to satisfy preexisting campaign obligations or to pay the reasonable and necessary costs of closing the campaign. This proposed rule is intended to protect the interest of the State in the return to the State of any unexpended balance remaining in the account of a publicly financed candidate; see N.J.S.A. 19:44A-35(c). A publicly financed candidate is therefore prohibited from using any remaining balance for expenses not strictly related to campaign activity, or closing of the campaign account.

13. Proposed new N.J.A.C. 19:25-16.33(c) provides that an election night celebration conducted on the date of the primary election is a permissible campaign expenditure.

Social Impact

The proposed amendments will affect gubernatorial candidates and their campaign treasurers in primary elections. However, the Commission does not believe that these proposals affect the public at large. The proposals are intended to enhance the Commission's ability to administer the statutory requirements of the public funding program, particularly the requirements that public funds awarded to gubernatorial candidates must be spent for purposes specifically enumerated in the statute. Also, the Commission believes that gubernatorial campaign reporting will be enhanced by requiring prospective candidates to identify their bank accounts, and further requiring quarterly reporting of money received and expended by such prospective candidates, or by committees on their behalf. In the absence of such a proposal, the Commission is concerned that substantial funds could be raised without any public disclosure.

Economic Impact

The Commission believes that the proposed amendments will have only a nominal economic impact on prospective and actual candidates for governor in a primary election. New minimal filing responsibilities are imposed upon prospective candidates, and enhanced filing responsibilities are imposed upon actual candidates who are receiving public funds. The Commission believes that the public benefits from these additional requirements far outweigh any nominal economic cost to prospective or actual candidates. Further, the Commission believes its proposed amendment requiring publicly funded candidates to avoid new debt after the date of the election and limiting expenditures to preexisting outstanding campaign obligations or reasonable and necessary closing costs will increase the amount of funds ultimately remaining as unexpended and returned to the State at the close of the campaign.

Regulatory Flexibility Statement

The proposed amendments affect the campaign financing of gubernatorial candidates in a primary election, and as such do not impose reporting, recordkeeping or other compliance requirements on small businesses other than those imposed on any entity making a contribution to a gubernatorial candidate. Such requirements must be applied uniformly to all contributing entities to enable the Commission to administer the statutory requirements of the public funding program.

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

[19:25-16.4 Designation of principal campaign committee]

[Upon becoming a candidate, each candidate, whether publicly declared or not, shall designate to the commission the name and address of his or her principal campaign committee for the primary election, the name and address of his or her campaign treasurer and the name, address and number of his depository bank account. As to certification of compliance with contribution limitations, see N.J.A.C. 19:25-16.12.]

19:25-16.4 Appointment of treasurers and depositories

(a) Each candidate in a primary election, whether or not publicly declared and whether or not intending to participate in public funding, shall:

1. Designate the name and address of his or her principal campaign committee for the primary election;

2. Appoint a campaign treasurer;

3. Designate a depository bank account; and

4. Notify the commission pursuant to N.J.A.C. 19:25-5.2 (Appointment by candidates) of such appointment and designation no later than the 10th day after receipt of any contribution or after incurring or making any expenditure, whichever comes first.

19:25-16.5 [Appointment of treasurers and depositories] **Pre-candidacy activity**

[(a) Each candidate in a primary election, whether or not publically declared and whether or not intending to participate in public funding, must appoint a campaign treasurer and designate a depository bank account and must notify the commission pursuant to N.J.A.C. 19:25-5.2 (Appointment by candidates) of such appointment and designation no later than the tenth day after receipt of any contribution or incurring or making any expenditure, whichever comes first.]

[(b)] **(a)** All funds received by an individual, or a committee in his or her behalf, solely for the purpose of determining whether that individual should become a candidate (for example "testing the waters") shall be deposited in a separate depository established solely for that purpose[.] **and the individual or committee controlling that depository shall file quarterly reports with the commission in the manner and on the dates set forth in N.J.A.C. 19:25-10.**

(b) An individual, or a committee on that individual's behalf, shall file with the commission a notice containing the name, address and account number of the depository established pursuant to (a) above not later than 10 days after the receipt of funds for the purpose of determining whether that individual should become a candidate.

(c) In the event the individual on whose behalf funds are received and payments made solely for the purpose of determining whether the individual should become a candidate does in fact become a candidate, the separate depository established under [(b)] (a) above may be designated by that individual as or incorporated with the matching fund account under N.J.A.C. 19:25-16.18(b), provided that the account and all of the contributions deposited in it meet all of the requirements of N.J.A.C. 19:25-16.18(b).

19:25-16.6 Contribution limits: applicability

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

(c) Contributions by children under the age of 18 shall be attributed to the [parent who is responsible for the contribution and not to the child unless:

1. The child is 14 years of age or older and a signed statement from the child and the child's parent or guardian is submitted to the commission that the decision to contribute was solely that of the child and the funds used to make the contribution were legally and beneficially controlled by the child and are not the proceeds of a gift made for the purpose of contribution; or

2. The child is 11 years old or older and, in addition to the signed statement set forth in paragraph 1 above, evidence is submitted satisfactory to the commission that the child acted independently and with full knowledge of the contribution.] **parents or guardian of the child.**

19:25-16.10 Who may or may not contribute; generally

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

(c) A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to or on behalf of a candidate which, when added to any other contribution by any related or affiliated corporation, associaton or labor organization, exceeds $800.00 in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the [degree of] control or common ownership with related or affiliated corporations, associations or labor organizations[,] **and** the source and control of funds used for such contribution. [and the degree to which the decisions whether to contribute, to what candidate and in what amount are independent decisions.]

1. In the case of corporations, affiliation status between corporate contributors shall be determined by the following:

i. Whether a majority of the directors are the same; or

ii. Whether one corporation owns a majority of the stock of any other contributing corporation.

2. In the case of labor organizations, affiliation status between labor organization contributors shall be determined by the following:

i. Whether one labor organization has legal authority to seize or otherwise encumber dues or assets of any other contributing labor organization; or

ii. Whether the leadership of one labor organization is identical to the leadership of any other contributing labor organization.

19:25-16.11 Contributions eligible for match; generally

(a) To be eligible for matching with public funds for a gubernatorial primary election, a contribution must have been received by a candidate at a time when that candidate was seeking or had sought nomination for election for the office of Governor, except that a contribution received and deposited pursuant to N.J.A.C. 19:25-16.5 (Pre-candidacy activity) for the purpose of determining whether an individual should become a candidate for nomination for election for the office of Governor shall be eligible. Any funds received prior to the inception of such a candidacy, or prior to the inception of fund raising activity to determine whether an individual should become a candidate for nomination for election for the office of Governor and not deposited pursuant to N.J.A.C. 19:25-16.5 shall not be eligible for match.

[(a)](b) Only contributions in cash or by check, money order or negotiable instruments shall be contributions eligible for match. Loans shall not be eligible for match. In-kind contributions shall not be eligible for match, but will count toward the individual contribution limit of $800.00 and the overall expenditure limit contained in section 2 of P.L. 1980, c.74 (N.J.S.A. 19:44A-7) except for expenses not subject to expenditure limits pursuant to N.J.A.C. 19:25-16.27. The total of all contributions eligible for match from any person or political committee shall not exceed $800.00 in the aggregate.

[(b)](c) A maximum of $800.00 in the aggregate of a candidate's own funds may be deposited in the matching fund account.

[(c)](d) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his campaign committee, if such check, money order or instrument contains all of the foregoing information.

(e) To be eligible for match, a contribution received from a corporation or labor organization must be accompanied by a certification made by an officer of that contributing entity that no other corporation in the case of a corporate contribution, or no other labor organization, in the case of a labor organization contribution, has made a contribution to the recipient candidate that violates the restrictions on related or affiliated contributions contained in N.J.A.C. 19:25-16.10(c).

(f) A contribution received from a contributing member of a political committee which has made a prior contribution to the candidate shall be eligible for matching funds, provided that the political committee is a bona fide political entity with at least 15 contributing members and was not created to circumvent the contribution limit contained in the act.

19:25-16.14 Limitation on contributions eligible for match

(a) Any contribution in the form of the purchase price paid for an item with significant intrinsic and enduring value (such as a watch) [or in the form of a purchase price paid for a chance to participate in a raffle, lottery or similar drawing for valuable prizes, or in the form of the purchase price paid for the admission to any activity that primarily confers private benefits to the contributor in the form of entertainment (such as a concern, motion picture of theatrical performance)] shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the $800.00 contribution limit.

(b) A contribution in the form of the purchase price paid for admission to a testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the $800.00 limitation.

(c) The purchase price paid to a candidate for a fund raising event or lottery shall deemed the amount of the contribution made to such candidate. The tickets for such an event or lottery and the promotional materials shall state that the purchase price represents a political contribution to the candidate.

19:25-16.18 Matching of funds

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

(e) Any statement or list submitted pursuant to this section shall not be handwritten.

19:25-16.20 Special account for public funds

(a) The commission shall maintain for each qualified candidate a separate segregated public fund account for deposit of public funds. All public funds received by the commission from the General Treasury of the State shall be promptly deposited by the commission into such separate segregated public fund account. No funds other than such public funds shall be deposited in such separate segregated public fund account, and all expenditures from such account shall be separately identified in reports filed with the commission.

(b) The campaign treasurer of a candidate on whose behalf a public fund account has been established shall file with the commission on the fourth Monday following January 1 and every other Monday thereafter and for as long as said public fund account is open, a report identifying each disbursement made out of the public fund account. The identification of each disbursement from the public fund account shall include the check number, date of payment, full name of payee, full payee mailing address and a complete statement of purpose of the expenditure indicating which of the permitted purposes set forth in N.J.A.C. 19:25-16.25 (Use of public funds) is applicable. Failure to file any such report, failure to provide the identification information required in such report, or failure to expend public funds in compliance with N.J.A.C. 19:25-16.25, shall result in immediate cessation of public fund deposits by the commission.

(c) Any report filed pursuant to this section disclosing an expenditure for the purpose of media consultant services or other services shall be accompanied by a certification from the payee itemizing media advertising purchases or other services provided, and shall certify such funds are or will be expended in compliance with N.J.A.C. 19:25-16.25.

19:25-16.27 Expenses not subject to expenditure limits

(a) The following expenditures by a qualified candidate shall not be subject to the expenditure limit described in N.J.A.C. 19:25-16.9(a)3. (Limitations on participating candidates):

1.-3. (No change.)

4. Election night celebration or event expenses incurred pursuant to N.J.A.C. 19:25-16.33(b).

19:25-16.33 Repayment of public or other funds

(a) All monies received by a qualified candidate from the public fund for the primary election campaign expenses remaining after the liquidation of all unlawful obligations with the respect to that election shall be repaid to the commission (for return to the Treasurer to the State of New Jersey) not later than six months after the date of such primary election. All moneys, other than moneys received from the public fund, remaining available to any qualified candidate after the liquidation of all obligations, shall also be repaid to the commission (for return of the Treasurer of the State of New Jersey) no later than six months after the date of such primary election provided, however, that nothing herein contained shall require any candidate to pay into the public fund a total amount of moneys in excess of the total amount of moneys received by such qualified candidate from the public fund.

(b) No candidate who has received public funds shall incur any debt or make any expenditure after the date of the election for any purpose other than the following:

1. To satisfy outstanding obligations incurred on or before the date of the election made for appropriate campaign purposes; or

2. To pay the reasonable and necessary costs of closing the campaign.

(c) An election night celebration or event conducted by a candidate who has received public funds will be deemed a reasonable and necessary cost of closing the campaign provided that it is conducted on the date of the primary election.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Commercial Fertilizer and Soil Conditioner Commercial Values

Adopted Amendment: N.J.A.C. 2:69-1.11

Proposed: April 4, 1988 at 20 N.J.R. 696(a).
Adopted: May 25, 1988 by Arthur R. Brown, Jr., Secretary of Agriculture, State Board of Agriculture.
Filed: May 27, 1988 as R.1988 d.284, **without change.**

Authority: N.J.S.A. 4:9-15.26, 4:9-15.33.

Effective Date: June 20, 1988.
Expiration Date: October 3, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

2:69-1.11 Commercial values

(a) The State Board of Agriculture, pursuant to N.J.S.A. 4:9-15.26, determines the commercial value of primary plant nutrients to be:

1. Nitrogen:	$4.00 per unit.
2. Water insoluble nitrogen:	$7.50 per unit.
3. Available phosphoric acid	$3.00 per unit.
4. Soluble potash:	$3.00 per unit.

(b) These values shall be effective July 1, 1988 through June 30, 1989.

BANKING

(b)

THE COMMISSIONER

Residential Mortgage Interest Rate Limits

Adopted Amendment: N.J.A.C. 3:1-1.1.

Proposed: November 16, 1987 at 19 N.J.R. 2089(a).
Adopted: May 13, 1988 by Mary Little Parell, Commissioner, Department of Banking.
Filed: May 26, 1988 as R.1988 d.282, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 31:1-1.

Effective Date: June 20, 1988.
Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: A commenter recommended that the floating interest rate be established at eight percent over the index rather than 3.5 percent and expressed reservations about the wisdom of legal limitations on interest.

RESPONSE: The Department considered various interest rate limits before deciding on the rate adopted in this rule (*viz.*, 3.5 percent over the index). The Department's analysis suggested that the proposed limitation would be high enough over the market to allow room for competition, yet would not be so high as to permit unreasonably high returns. The Department has made the policy judgment that the goals to be achieved by its interest rate limitation are preferable to the results, taken as a whole, which would follow from a total deregulation of the usury rate for the type of loan covered by the rule.

With regard to the coverage of the rule, the commenter correctly observed that it applies only to loans which have not been preempted by the federal Depository Institutions Deregulation and Monetary Control Act (12 U.S.C. §3501 et seq., DIDAMCA). That act preempts State law limiting interest rates and other charges for loans, made after March 31, 1980, which are secured by a first lien on residential real property and meet the definition of federally related mortgage loan in 12 U.S.C. 1735f-5(b). "Federally related mortgage loan" includes loans which are made by creditors who invest in more than $1,000,000 of real estate loans per year.

As a result of the preemption effected by DIDAMCA, the State rule adopted applies to private loans and to loans made by small business entities. Should the federal preemption be repealed, the Department would review the limitation herein established in light of its broader applicability.

COMMENT: A commenter noted that the retention of the phrase "consummated on or after October 20, 1981" infers that the amendment is to be applied retroactively to that date.

RESPONSE: The Department agrees with the commenter, and had no intention to apply the rule retroactively. Furthermore, any effort at such application would raise Constitutional questions. Therefore, the Department has changed the date to read "July 1, 1988." The first day of the month was selected to ease any bookkeeping burdens which the amendment might cause.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

3:1-1.1 Interest rates

(a) (No change.)

(b) The maximum rate of interest to be charged on loans secured by a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes, consummated on or after *[October 20, 1981]* ***July 1, 1988***, shall be at least six percent per annum but not more than the Monthly Index of Long Term United States Government Bond Yields, compiled by the Board of Governors of the Federal Reserve System and as published by said Board of Governors in the monthly Federal Reserve Bulletin, for the second preceding calendar month plus an additional 3.5 percent per annum rounded off to the nearest quarter of 1 percent per annum. Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended. Any provision in a mortgage commitment contracted prior to the effective date of this regulation providing for an increase in interest rates to be charged based on the highest lawful interest rate shall be null and void.

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

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(c)

Uniform Construction Code Standards; Manufacturer's Recommendations

Adopted Repeal and New Rule: N.J.A.C. 5:23-3.6

Proposed: April 4, 1988 at 20 N.J.R. 699(a).
Adopted: May 23, 1988 by Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.
Filed: May 27, 1988 as R.1988 d.283, **without change.**

Authority: N.J.S.A. 52:27D-124.

Effective Date: June 20, 1988.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Elizabethtown Gas Company believes the current language, which requires manufacturer's recommendations to supersede subcode or standard requirements to govern in the event of any conflict, is preferable to the proposed new text because "it is to the safety and

benefit of the public at large to follow state-of-the-art installation standards."

RESPONSE: In the judgment of the Department, it is improper to delegate to manufacturers the power to establish requirements that are binding as a matter of law. The State Uniform Construction Code Act in effect delegates lawmaking power to recognized codewriting organizations, but this cannot be extended to private companies.

Full text of the adoption follows.

5:23-3.6 Standards; accepted practice

This chapter, together with the subcodes, national standards and appendices it adopts by reference, are the primary guide to accepted engineering practice in respect to any material, equipment, system or method of construction therein specified. When this chapter and the subcodes, national standards and appendices it adopts by reference are silent, a manufacturer's recommendations for the installation of any material or assembly shall be considered to be accepted engineering practice; provided, however, that a manufacturer's recommendations shall not be read to overrule this chapter or any subcode, national standard or appendix which it adopts by reference.

(a)

Uniform Construction Code Building and Mechanical Subcodes Adopted Amendments: N.J.A.C. 5:23-3.14 and 3.20

Proposed: March 21, 1988 at 20 N.J.R. 575(a).
Adopted: May 19, 1988 by Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.
Filed: May 19, 1988 as R.1988 d.270, **without change.**

Authority: N.J.S.A. 52:27D-124.

Effective Date: June 20, 1988.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-3.14 Building subcode

(a) Rules concerning the building subcode adopted are as follows:

1.-2. (No change.)

3. The 1988 Supplement to the BOCA National Building Code/1987 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.

(b) (No change.)

(c) The following articles or sections of the 1988 Supplement to the building subcode are modified as follows:

1. The following amendment is made to Article 1 of the building subcode, entitled "Administration and Enforcement":

i. Sections 108.2, 108.2.1, 111.4, 115.2, 115.2.3.2 are deleted.

2. The following amendment is made to Article 2 of the building subcode, entitled "Definitions":

i. The definition, "Inspection, special" is amended to delete the words "Section 108.0" and substitute in lieu thereof "N.J.A.C. 5:23-2.21".

3. The following amendments are made to Article 6 of the building subcode, entitled "Special Use and Occupancy Requirements":

i. Section 602.2 is deleted; and

ii. Section 624.3.1 is amended to delete the word "code" and substitute in lieu thereof "building subcode".

4. The following amendment is made to Article 13 of the building subcode, entitled "Materials and Tests":

i. Delete section 1307.0 Special Inspections in its entirety and substitute in lieu thereof "See N.J.A.C. 5:23-2.18 for Special Inspection requirements".

5. The following amendments are made to Appendix A of the building subcode, entitled "Reference Standards":

i. Delete the entire subheading "ASHRAE" and all titles under this subheading;

ii. Under the subheading "BOCA", delete the following titles:

(1) National Existing Structures Code;

(2) National Plumbing Code; and

(3) Basic/National Private Sewage Disposal Code;

iii. Under the subheading "CABO", delete the following titles:

(1) One and Two Family Dwelling Code; and

(2) Model Energy Code; and

iv. Under the subheading "NFiPA", delete the title "National Electrical Code."

5:23-3.20 Mechanical subcode

(a) Rules concerning the mechanical subcode adopted are as follows:

1.-2. (No change.)

3. The 1988 Supplement to the BOCA National Mechanical Code/1987 is adopted by reference with modifications cited in (c) below as part of the mechanical subcode for New Jersey.

(b) (No change.)

(c) The following articles or sections of the 1988 Supplement to the mechanical subcode are modified as follows:

1. The following amendment is made to article 3 of the mechanical subcode, entitled "Air Distribution Systems":

i. Section M-312.2.2 is amended to delete the word "code" and substitute in lieu thereof "fire protection".

2. The following amendments are made to Appendix A of the mechanical subcode entitled "Reference Standards":

i. Under the subheading "ASHRAE", delete the following titles:

(1) Thermal Environmental Conditions for Human Occupancy;

(2) Energy Conservation in New Buildng Design; and

(3) Handbook, Fundamentals Volume;

ii. Under the subheading "BOCA", delete the following title:

(1) Basic/National Plumbing Code;

iii. Under the subheading "NFiPA", delete the following title:

(1) National Electrical Code.

ENVIRONMENTAL PROTECTION

DIVISION OF FISH, GAME AND WILDLIFE

(b)

Marine Fisheries Adopted Amendment: N.J.A.C. 7:25-18.5

Proposed: September 8, 1987 at 19 N.J.R. 1609(a).
Adopted: May 24, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.
Filed: May 27, 1988 as R.1988 d.285, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-9, 23:2B-6, 23:2B-14, 23:5-24.2 and 23:9-115.

DEP Docket Number: 037-87-08.
Effective Date: June 20, 1988.
Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

These amendments were proposed on September 8, 1987. The comment period closed on April 20. 1988.

No comments were received.

The amendment as proposed contained an erroneous codification of the rule. The adoption corrects this by changing from N.J.A.C. 7:26-18.5 to 7:25-18.5. The word "smallest" has been deleted from N.J.A.C. 7:25-18.5(g)6vi because it is redundant and its retention would defeat the purpose of the provision to create different staked gill net requirements at different times of the year.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

*[7:26-18.5]***7:25-18.5*** General net regulations

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

(g) Persons intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the Commissioner for a license. Upon receipt of the application and the prescribed license fee, the Commissioner may, in his or her discretion, issue single season licenses as specified for each net type for the taking of fish with nets only as follows:

1.-4. (No change.)

5. Drifting gill nets shall be used only in the Atlantic Ocean, Delaware Bay, and the tributaries of Delaware Bay. The smallest mesh of any drifting gill net shall be not less than five inches stretched beginning February 12 through February 29 and not less than 2.75 inches stretched beginning March 1 through December 15. These nets shall not individually exceed 200 fathoms in length. Individual drifting gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 12 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15. Drifting gill nets may be used for all species except those specifically protected.

i-ii. (No change.)

iii. Drifting gill nets shall be used in the Atlantic Ocean only from February 12 through December 15. Drifting gill nets shall not be used in the Atlantic Ocean within 100 fathoms of the marked channel of any inlet;

iv. Drifting gill nets shall be used in the tributaries of Delaware Bay only for the season extending from February 12 through May 15 and July 15 through December 15;

v. Drifting gill nets shall be used in Delaware Bay only from February 12 through December 15. For the purpose of this section, that portion of Delaware Bay defined by the New Jersey-Delaware boundary on the west, Loran C27180 on the east, and Loran C42830 on the north, during the period from May 15th through June 15th, shall be known as the Brandywine Shoal Restricted Area.

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

vi. (No change.)

6. Staked and anchored gill nets shall be used in the Atlantic Ocean, Raritan Bay, Sandy Hook Bay, and Delaware Bay and its tributaries. Staked or anchored gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length from the beginning of the season through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15.

i.-ii. (No change.)

iii. Staked and anchored gill nets may be used in the Atlantic Ocean for any species except those specifically protected only beginning February 12 through December 15, where individual gill net length shall not exceed 50 fathoms. The smallest mesh of any such net used in the Atlantic Ocean shall not be less than five inches stretched beginning February 12 through February 29 and not less than 2.75 inches stretched beginning March 1 through December 15. Staked or anchored gill nets shall not be used in the Atlantic Ocean within 100 fathoms of the marked channel of any inlet;

iv. (No change.)

v. Staked gill nets may be used in the tributaries of Delaware Bay for any species except those specifically protected only beginning February 1 through May 15 and July 15 through December 15, where individual gill net length shall not exceed 30 fathoms. The mesh of any such net used in the tributaries of Delaware Bay shall be 2.75 inches stretched beginning February 1 through February 29 and shall not be less than 2.75 inches from March 1 through May 15 and July 15 through December 15. No net shall be set across any tributary or mouth of any tributary, nor shall any net be set in a manner that impedes navigation;

vi. Staked gill nets may be used in Delaware Bay for any species except those specifically protected only beginning February 1 through December 15, where individual gill net length shall not exceed 30 fathoms. The *[smallest]* mesh of any such net used in Delaware Bay shall be 2.75 inches stretched beginning February 1 through February 29 and shall not be less than 2.75 inches beginning March 1 through December 15. Staked gill nets shall not be used in that portion of Delaware Bay known as the Brandywine Shoal Restricted Area as defined in (g)5v above;

vii. The use of anchored gill nets is permitted in the tributaries of Delaware Bay for any species, except those specifically protected, only beginning February 12 through May 15 and July 15 through December 15, where individual gill net length shall not exceed 30 fathoms. The smallest mesh of any such net used in the tributaries of Delaware Bay shall not be less than five inches stretched beginning February 12 through February 29 and not be less than 2.75 inches from March 1 through May 15 and July 15 through December 15. No net shall be set across any tributary or mouth of any tributary, nor shall any net be set in a manner that impedes navigation;

viii. The use of anchored gill nets is permitted in the Delaware Bay for any species except those specifically protected only beginning February 12 through December 15, where individual gill net length shall not exceed 30 fathoms. The smallest mesh of any such net used in the Delaware Bay shall not be less than five inches stretched beginning February 12 through February 29 and not less than 2.75 inches from March 1 through December 15. Anchored gill nets shall not be used in that portion of the Delaware Bay known as the Brandywine Shoal Restricted Area as defined in (g)5v. above;

ix. The staked and anchored gill net resident fee shall be $3.00 per net.

7.-11. (No change.)

12. Shad nets for the Hudson River shall be held in place by either stakes or anchors and shall not exceed 200 fathoms in length. The smallest mesh of any shad net shall not be less than five inches stretched.

i. Shad nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches square and suspended at least two feet above the mean high waterline.

ii. Shad nets shall be used in the Hudson River for the taking of shad only.

(h) (No change.)

(a)

Marine Fisheries
General Net Rules
Adopted Amendment: N.J.A.C. 7:25-18.5

Proposed: April 18, 1988 at 20 N.J.R. 866(a).

Adopted: May 25, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: May 27, 1988 as R.1988 d.286, **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. 23:2B-1 et seq., specifically 23:1B-6 and 23:5-24.2.

DEP Docket Number: 014-88-03.

Effective Date: June 20, 1988.

Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

The proposed amendment was published in the April 18, 1988 New Jersey Register. The public comment period closed on May 18, 1988. One comment was received.

COMMENT: The proposed amendment to set a limit of 35 alewife or blueback herring should be changed to reduce the limit to 15 alewife or blueback herring. Due to the large amounts of herring caught per fisherman in the past, when no limits existed, the herring population will be severely damaged if it is not protected by a more stringent limit.

RESPONSE: The freshwater limit for herring established at N.J.A.C. 7:25-6.6 is 35 per person, per day. The freshwater herring fishery is directly adjacent to the marine fishery at certain points along streams and rivers throughout the State. A marine limit which is inconsistent with the freshwater limit of 35 would therefore present difficult enforcement problems and may result in ineffective resource management. In addition, the Division has determined that the proposed new marine limit, in conjunction with the longstanding freshwater limit, will be sufficient to protect the resource.

Agency Initiated Change

The Department has deleted a substantial portion of N.J.A.C. 7:25-18.5(g)4 as proposed in order to clarify that the proposed $10.00 license is not required when the listed net types of the specified sizes (as described in N.J.S.A. 23:5-24.2b and N.J.A.C. 7:25-18.5(g)4 as proposed) are used and the catch will not be sold or used for barter. Fish taken with these nets may not be sold or used for barter unless the $10.00 license is procured from the Department. The Department will provide further clarification in a subsequent proposal.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

7:25-18.5 General net regulations

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

(g) Persons intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the Commissioner for a license. Upon receipt of the application and the prescribed license fee, the Commissioner may, in his or her discretion, issue single season licenses as specified for each net type for the taking of fish with nets only as follows:

1.-3. (No change.)

4. The bait net season shall begin on January 1 and shall end on December 31. Bait net resident fees shall be $10.00 per license *[and the use of bait nets shall be subject to the following conditions:

i. Bait nets shall be limited to one or more of the following types:

(1) Dip nets 24 inches in diameter or less;

(2) Bait seines not exceeding 150 feet and mesh not exceeding 2.5 inches stretched;

(3) Cast nets not exceeding 20 feet in diameter;

(4) Lift or umbrella nets not exceeding four feet square; and

(5) Killipots not exceeding 10 inches in diameter or 25 inches in length if cylindrical or 2,000 cubic inches for any other conformation for the taking of killifish (Cyprinodontidae spp.) only;]* ***for licenses required by P.L. 1987 c.68, amending N.J.S.A. 23:5-24.2.***

*[ii.]***i.*** No person shall take more than 35 alewife or blueback herring in the aggregate per day with any dip net, cast net or bait seine; and

*[iii.]***ii.*** The simultaneous possession of greater than 35 alewife or blueback herring in the aggregate and any dip net, cast net or bait seine shall constitute prima facie evidence of the violation of this rule.

5.-11. (No change.)

(h) (No change.)

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Resource Recovery and Solid Waste Disposal Facility Fund

Adopted Amendment: N.J.A.C. 7:26-14.1
Adopted New Rules: N.J.A.C. 7:26-14A

Proposed: May 18, 1987 at 19 N.J.R. 828(a).

Adopted: May 16, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: May 17, 1988 as R.1988 d.268 **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3) and **with portions not adopted.**

Authority: N.J.S.A. 13:1D-1 et seq., 13:1E-6, P.L. 1985, c.330, 331 and 335 and P.L. 1980, c.70.

Effective Date: June 20, 1988.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

N.J.A.C. 7:26-14A.4

COMMENT: The definitions of "construction" and "construction costs" conflict with each other since "construction costs" is defined more narrowly. The term "construction" should include all items which are part of the definition of "construction costs". While it is understood that the term "construction costs" is used for the determination of funding amounts for each loan recipient, the use of this term has an illogical result in that the cost of "constructing" may not equal "construction costs". Perhaps the definition of "construction costs" could be eliminated from this section, which would also necessitate that the term be removed from N.J.A.C. 7:26-14A.11(a)1 in favor of the term "project costs", excluding certain enumerated costs which could be used instead. This will result in far less confusion while keeping the basic intent of the rule the same.

RESPONSE: The Department has thoroughly evaluated this comment and agrees that the term "construction costs" conflicts with "construction"—an untenable result. The Department agrees that a better approach would be to eliminate the term "construction costs" and then use the term "project costs" with certain exclusions to determine the amount of funding pursuant to N.J.A.C. 7:26-14A.11(a)1. As a result, the definition of "construction cost" has been deleted. The treatment of this term as it is used in N.J.A.C. 7:26-14A.11(a)1 is discussed more fully in the Department's response to a comment pertaining to that section which can be found below and in the section of this Summary entitled "Agency Initiated Changes".

COMMENT: In the definition of "local government unit," the word "utility" should be deleted since there are many other types of municipal or county authorities in addition to "utility authorities" which could potentially implement a resource recovery or landfill project.

RESPONSE: The definition of "local government unit" was taken verbatim from P.L.1985, c.330, the Resource Recovery and Solid Waste Disposal Facility Bond Act. The Department maintains that the "catch-all" language at the end of the definition, "or any other political subdivision of this State authorized to construct or operate . . . facility" encompasses the other types of authorities which are suggested by the commenter so long as the authority is formed in accordance with the laws of New Jersey and so long as the authority is properly authorized to construct the subject facility. As a result, the Department sees no need to delete the word "utility" from the definition.

COMMENT: In the definition of "residual landfill" the word "primarily" is not needed and should be deleted.

RESPONSE: The Department maintains that the word "primarily" is a part of the definition of "residual landfill". The very nature of this type of landfill facility is that it is to be constructed, first and foremost, for use as a disposal site for residuals from resource recovery facilities and also as a backup disposal site for nonprocessible waste and bypass waste at times when the resource recovery facility is shut down.

The word "primarily" stresses the Department's intent that the residuals landfill is not to be used as a direct and primary disposal site more commonly known as a sanitary landfill.

COMMENT: The definition of "bonds" means "the bonds authorized to be issued or issued, under the 1980 and 1985 Acts" and yet the only reference to "bonds" in this subchapter is found in the definition of "project cost". The word "bonds" in this definition of "project cost" does not seem to refer to "bonds authorized by the 1980 and 1985 Acts".

RESPONSE: The comment is correct. The word "bonds" in the definition of "project cost" was not intended to mean "bonds authorized by the 1980 and 1985 Acts". The defined term "bonds" is never actually used in the rules and therefore the definition has been deleted to avoid undue confusion.

COMMENT: In the definition of "resource recovery facility", it is unclear whether a refuse-derived fuel (RDF) processing facility is included. The definition should be revised to specifically include this type of facility or technology by name.

RESPONSE: This definition is taken verbatim from P.L.1985, c.330. The Department maintains that the "catch-all" language at the end of the definition encompasses refuse-derived fuel facilities.

COMMENT: Are "recycling centers" included in the definition of "resource recovery facility"? If so, then the definition should specifically mention "recycling centers" and the requirement for inclusion of the facility in the district plan clarified since the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., (P.L.1987, c.102) has removed recycling centers from the regulatory requirements for solid waste facilities.

RESPONSE: "Recycling centers" are included in the definition of "resource recovery facilities" as an "other solid waste facility constructed for the collection, separation, recycling and recovery of metals, glass, paper, and other materials for reuse or for energy production . . ." The Department, therefore, maintains that the definition does not require change.

While the New Jersey Stationwide Mandatory Source Separation and Recycling Act has removed the requirements for engineering design approval, registration and environmental and health impact statement (EHIS) approval for recycling centers at N.J.S.A. 13:1E-99.34, the Act

does not remove the requirement for inclusion of recycling centers in the applicable district recycling plan. As such, for planning purposes, recycling centers must be included in the district solid waste management plan.

N.J.A.C. 7:26-14A.5(b)1

COMMENT: The phrase "and if applicable" should be deleted since the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. requires that both the facility and facility site be included in the district plan. The Department should know what technology will be used and that the chosen technology has been incorporated into the district plan.

RESPONSE: The Department agrees with the comment and has deleted the language as suggested.

N.J.A.C. 7:26-14A.5(b)2

COMMENT: The phrase "if applicable" should be deleted from this subsection unless "recycling center" is added to the definition of "resource recovery facility" since all other types of solid waste facilities are required to comply with N.J.S.A. 13:1E-26.

RESPONSE: As stated above, the Department maintains that recycling centers are included in the definition of "resource recovery facility" and therefore the language "if applicable" is appropriate for this section since recycling centers are not required to receive EHIS approval pursuant to N.J.S.A. 13:1E-99.34, P.L. 1987, c.102, Section 41.

N.J.A.C. 7:26-14A.7(b)3

COMMENT: Add immediately after the phrase "at a minimum" the words "and if appropriate for the project". Add immediately after "environmental assessments" the words "environmental mitigation measures, host community benefits agreement(s)".

RESPONSE: The Department has no objection to these two suggested language additions, since the additions require a description of other like items which would probably have been included by the applicant in its written statement if appropriate for the project. The language has been added to the rule.

N.J.A.C. 7:26-14A.7(b)4

COMMENT: The phrase "if applicable" should be added immediately after the words "to meet the specifications and needs of material and energy users". Delete the word "other" which appears after the language "and the compatibility of the proposed projects with . . ."

RESPONSE: The Department agrees with the comment since not all facilities eligible for funding pursuant to this subchapter have to or need to "meet the specifications and needs of material and energy users" nor are there necessarily "other existing or proposed material and energy recovery programs within the Solid Waste Management district". The commenter correctly states that when these items are appropriate for a particular facility they should be included in the statement describing the technical feasibility of the project. For facilities which would not involve the items commented upon, the rule should not mandate that such items be included in the description. The suggested language has been added and the word "other" deleted.

N.J.A.C. 7:26-14.7(c)

COMMENT: The resolution or ordinance contemplated by this subsection will be passed prior to an applicant receiving an award. Consequently, it will not be possible for any governing body to accept the terms and conditions of a loan document which will probably be prepared after the application for a loan has been approved. A phrase could be added to the end of the last sentence in paragraph (c)1 such as "if the applicant accepts the loan".

RESPONSE: The Department agrees with the first part of the comment and has therefore removed the language of the subsection which reads "and to obligate the applicant to the terms and conditions of the loan". Similar language with the same intent can already be found at N.J.A.C. 7:26-14A.14(b)1, which is the more appropriate section in which to include a requirement that only an authorized person may commit the local government unit to the loan terms and conditions.

N.J.A.C. 7:26-14A.7(f)

COMMENT: In this subsection, who is to make the appropriation?

RESPONSE: To clarify this section, the words "by the Legislature" have been added following "until an appropriation is made".

7:26-14A.9(a)1 through 11.

COMMENT: The proposed criteria ". . . are not applicable to ranking an 'environmentally sound and sanitary landfill project' . . ." and ". . . are geared toward 'resource recovery facility' projects . . .".

RESPONSE: The Solid Waste Management Act justifies some preference for resource recovery technology projects. N.J.S.A. 13:1E-21 states that ". . . the solid waste disposal strategy . . . shall include the maximum practicable use of resource recovery procedures . . ." N.J.S.A. 13:1E-136 states that ". . . New Jersey must move away from its current reliance on landfilling as the principal method of solid waste disposal to the application of waste reduction, recycling and energy recovery techniques . . ." However, since . . . landfilling will remain important as a waste disposal option for the short and long term future . . .," New Jersey Solid Waste Management Plan Update 1985-2000, p.136, loans are authorized for the construction of environmentally sound sanitary landfill facilities. Criteria for prioritizing funding applications in the rule provide for the assignment of priority points to environmentally sound sanitary landfills. For example, it would be possible for a landfill project that is to be developed in conjunction with a recycling program to receive a total maximum priority point score of 280. Similarly, the total maximum priority point score for a resource recovery facility is 290. Thus, a landfill application has the potential of being in a competitive position with a resource recovery project.

COMMENT: (Criterion No. 1) The definition of "construction" includes "designing, engineering, financing, extension, repair, remodeling, or rehabilitation, or any combination thereof". Thus a project in the construction phase may not necessarily be entitled to priority points for activities such as permitting and procurement as stated in the accompanying note with the criterion. The note should be revised to read "a project already in the construction phase may be entitled to priority points . . ."

RESPONSE: For purposes of awarding priority points under criterion No. 1, the phrase "project is already under construction" refers to a project which has received all permits necessary for construction (and/or extension, remodeling, repair and rehabilitation) to commence, break ground and begin to put together the components of the facility. Most, if not all projects eligible for funding will involve some permits and procurement aspects; therefore, it is likely that projects under construction will be entitled to additional priority points for activities such as permitting and procurement. However, since there is a possibility that this may not be the case, the Department will amend the language of the note to reflect this possibility in a rule proposal in the near future.

COMMENT: (Criterion No. 2) How will facilities which receive a Temporary Certificate of Authority to Construct and Operate or some other emergency approval be evaluated under this criterion?

RESPONSE: Departmental rules do not provide for the granting of a Temporary Certificate of Authority to Construct and Operate ("temporary certificate") for resource recovery facilities. Therefore, resource recovery facilities, in order to receive priority points for criterion No.2, must have received all necessary permits and approvals. Rules do allow for the Department to grant a temporary certificate for sanitary landfills. However, to ensure continued operation, a sanitary landfill operating under a temporary certificate must obtain all necessary permits. The Department will propose language to be added to this subsection in the near future which will allow the Department, at its discretion, to award up to 10 priority points to a sanitary landfill which has obtained a temporary certificate.

COMMENT: (Criterion No. 3) This criterion will unfairly award extra points to loan applicants who have gone through a procurement process for a vendor and would penalize an applicant like Burlington County which is developing and implementing the project itself.

RESPONSE: Criterion No. 3 was designed to give priority points to projects which have completed the procurement/contracting process. Completion of this task is a further indication of the project's readiness to proceed. While Burlington County ". . . is developing and implementing the project itself", the county will, it is assumed, be processing/contracting for various elements (for example, design, construction, etc.) of the project and its completion of these procurement/contracting tasks will make it eligible for priority points under Criterion No. 3.

COMMENT: (Criterion No. 4) The rule should define "arrangement" and "emergency backup disposal".

RESPONSE: The Department will propose appropriate language to help clarify the intent of this subsection in the near future.

COMMENT: (Criterion No. 5) Proof of purchase of the project site in the form of a deed(s) or of a lease in the form of a contract should be required by the Department in the loan applications.

RESPONSE: Applicants will be required to certify or otherwise provide proof that long term access to the facility site has been obtained in order to receive priority points for criterion No. 5. Similar proof of achievement will be required of the applicant in order to receive priority points for the other criteria as well. Please see N.J.A.C. 7:26-14A.7(b)8 which requites that such documentation be provided to the Department.

COMMENT: (Criterion No. 6) Unlike the sale of electricity or steam, 20 year contracts for the sale of recyclable materials, compost or refuse-

derived fuel are not necessary or desirable. A minimum of three to five year contracts for these products is more reasonable. This criterion should be revised accordingly or omitted altogether.

RESPONSE: The Department generally agrees with this comment. Appropriate changes will be proposed in the near future.

COMMENT: (Criterion No. 7) All non-hazardous solid waste types should be included, particularly ID Nos. 12 and 74. The criterion does not appear to contemplate an integrated project like that in Burlington County. The Burlington County project includes source separation recycling with curbside pickup and intermediate processing; refuse derived fuel processing; bulky waste processing tires, demolition, tree stumps, white goods; co-composting; land application; and landfilling.

RESPONSE: The Department agrees that solid ID waste types Nos. 12 (dry sewerage sludge) and 73 (septic tank cleanout wastes) should be included in this subsection. Appropriate language will be proposed in the near future. Concerning the second part of the comment, it is the intent of the Department under Criterion No. 7, to award priority points to the project for which funding is sought based on the project's ability to reduce (via material and energy recovery and reuse) the amount of material requiring ultimate disposal in a sanitary landfill.

COMMENT: (Criteria Nos. 8 and 9) Why is there a distinction in the points awarded for a residual landfill (25 points) and a sanitary landfill in Criterion No. 9 (15 points)? This appears to be unfair treatment.

How would criteria Nos. 8 and 9 apply in the case of the Burlington County Landfill, which will initially serve as both a residual landfill and an environmentally sound sanitary landfill? The landfill in the Burlington County project will service the resource recovery facilities in the project by providing for disposal of all process residuals and non-processable and emergency by-pass solid waste.

However, in the early phase of operation (during the first five years), the landfill will receive as much as 90 percent of the processable waste in the first year prior to operation of the Refuse Derived Fuel/Co-Composting Facility to as much as 50 percent of the processable waste by the fifth year after the operation of the RDF/Co-Composting Facility. The County has undersized the Refuse Derived Fuel/Co-Composting Facility to process approximately 50 percent of the Municipal Solid Waste available, thereby allowing for the opportunity for maximum implementation of the County's recycling program. Given a five year period for full implementation of the recycling program, the County will then assess the need to expand the operation of the Refuse Derived Fuel/Co-Composting Facility to handle the processable waste, if any, which may still be going to the landfill.

RESPONSE: As previously noted, the Solid Waste Management Act encourages the "maximum practicable use of resource recovery . . ." and a ". . . move away from . . . reliance on landfilling as the principal method of solid waste disposal . . ." Also, a residual landfill is considered by the Department to be an integral component of a resource recovery system. Therefore, a residual landfill is assigned more priority points than a sanitary landfill. In the case of a landfill serving initially as a sanitary landfill and later on as a residual landfill servicing a resource recovery facility, the Department may award priority points from both criteria Nos. 8 and 9.

COMMENT: (Criterion No. 10) How is "project" defined? Burlington County will be seeking a loan for the RDF/Co-Composting Facility which is only a segment of the Burlington County project.

RESPONSE: "Project" is defined at N.J.A.C. 7:26-14A.4.

COMMENT: (Criterion No. 11) It is doubtful that one can effectively characterize the success of a facility by the number of years it has been operating. Some projects, which have operated successfully from an economic standpoint, have been environmental failures (that is, Harrisburg and others). Moreover, characterizing success in this manner will tend to encourage existing technology which may not be desirable and certainly discourage any innovative and alternative projects.

Why limit comparison to facilities in the United States? This is unreasonably restrictive.

RESPONSE: Given New Jersey's solid waste disposal problems and the need to establish new recovery and disposal capacity, the Department believes it is in the best interests of the State to support technologies with proven track records. Therefore, criterion No. 11 was developed to award priority points to technologies which have been proven through successful operation. The provision that the facility be operated successfully in the United States was included because the monitoring of a facility's operating history in this country would be easier to substantiate. The Department agrees that an evaluation of a successful operation should include both an economic and environmental element. Therefore, criterion No. 11 has been revised by adding the phrase: "from an economic and environmental view point", prior to the phrase "in the United States". This additional language will clarify the original intent of this criterion by stating clearly that both economic and environmental review are necessary for a complete evaluation.

N.J.A.C. 7:26-14A.10(a) and (b)

COMMENT: The procedure set forth in subsections (a) and (b) is unclear. It appears that paragraph (a)2 should be eliminated since the recommendation for funding can only be made following the evaluation procedure in subsection (b).

RESPONSE: The Department agrees with this comment. As this section presently reads, the Department action in paragraph (a)2 is inconsistent with the procedure in (b). To clarify this, paragraph (a)2 has been deleted.

N.J.A.C. 7:26-14A.10(f)

COMMENT: Regarding the one year requirement for the obtaining of permits, some of the permits required for a facility, such as air permits, cannot be obtained until after construction. What about litigation delays? What about use of money for preconstruction work, such as design, engineering, environmental and health impact statements, etc . . .?

RESPONSE: The Department fully recognized the possible delays in obtaining permits and approvals for a facility as pointed out in the comment. In light of this possible delay, this subsection was drafted so that an extension of time beyond the one year from the notice of intent to award a loan could be requested and obtained by an applicant if such delays were encountered.

The second part of the comment does not seem to apply to this subsection of the rule. An applicant receiving a notice of intent to award a loan who then obtains necessary permits within the one year limit or during an approved extension and who is then awarded a loan which is executed in accordance with this subchapter, could probably recover the itemized pre-construction costs provided such items meet the definition of "project cost" set forth at N.J.A.C. 7:26-14A.4.

N.J.A.C. 7:26-14A.10(g)

COMMENT: This subsection requires the applicant to notify the Department if it "discovers that costs will exceed those previously estimated" so that the Department can adjust the priority points previously assigned to that project. However, upon examination of the priority points scheme in N.J.A.C. 7:26-14A.9, costs do not influence the assignment of priority points. This language should therefore be deleted.

RESPONSE: The Department agrees with this comment. Costs are not considered in the priority points analysis set forth at N.J.A.C. 7:26-14A.9 and, therefore, the Department has removed the phrase "costs will exceed those previously estimated, or".

N.J.A.C. 7:26-14A.11(a)1

COMMENT: If the percentage of construction costs for determining the amount of the loan is going to vary, it should be done by regulation.

RESPONSE: Please note that the subsection which is the basis of this comment has been deleted in this adoption. Further discussion of this section can be found in the subsection following these comment/responses entitled "Department Initiated Changes". The subsection will be reproposed with appropriate changes.

Understand, however, that the loan fund balance available for new loans will vary from year to year depending upon the number of previous loans executed, sum of repayments to the Fund, interest earnings on the Fund, etc. Because of these variations, the Department decided early in the rule drafting process that the best approach to determining the amount of loans to be awarded would be by a percentage of costs for each application period. As such, the percentage has not been set by rule. However, the Department will give full notice of the established percentage each time an application period is announced, as required by this section.

N.J.A.C. 7:26-14A.11(b)4, 5 and 6

COMMENT: The use of the word "disbursement" in the three paragraphs cited above is inconsistent. In paragraph (b)5, "disbursement" refers to the act of the Department in transferring the loan money to a chosen escrow agent and also refers to the act of the escrow agent in providing loan funds to the borrower for a project cost. The meaning of the word in paragraph (b)4 is unclear. The inconsistent use of the word should be remedied.

RESPONSE: The Department agrees that use of the same word in several different contexts is confusing. Use of the word "disbursement" is most appropriate to describe the act of the escrow agent in providing loan funds to the borrower for a project cost. Therefore, the word will continue to be used in paragraph (b)5, last sentence and in paragraph

(b)6. In paragraph (b)4, the word "released" will replace "disbursed" in the first sentence, and the phrase "release of the loan funds" will replace "loan disbursements" in the second sentence.

In paragraph (b)5, first sentence, the word "disbursements" will be replaced by the phrase "release of the loan funds".

N.J.A.C. 7:26-14A.14(a)1

COMMENT: Specify the hazard insurance requirements and whether this insurance is available.

RESPONSE: Due to the variability in the type, size, and risk of projects applicable for funding pursuant to this subchapter, along with the fluctuation of availability of insurance for these types of projects and other market conditions, the Department maintains that it is impossible to set forth the specific requirements applicable for every possible facility that may receive funding. The Department maintains that the loan agreement is the appropriate document in which to set forth specific insurance requirements applicable for the individual facility for which funding is provided.

N.J.A.C. 7:26-14A.22(e)

COMMENT: What if a person is debarred after the award of bids?

RESPONSE: Under no circumstances can Fund monies be used for payment to a debarred firm or person, even after the award of bids. If the firm or person is debarred at the time of award of bids, then subsection (d) would control. To clarify this issue, the Department will propose language in subsection (c) in the near future.

Department Initiated Changes

N.J.A.C. 7:26-14A.1

The agency has added the word "Additionally", to the beginning of the second sentence of this section to break up the string of citations on that line and highlight the start of the new sentence.

N.J.A.C. 7:26-14A.11(a)1

Based upon comments received regarding the term "construction costs" which has, as a result of those comments, been deleted, the Department had to reexamine this paragraph of the rule which uses a percentage of "construction costs" to determine the amount of funding that loan recipients may receive. The Department decided to delete the entire paragraph and will repropose the paragraph with amended language.

N.J.A.C. 7:26-14A.11(a)4

The Department has corrected the spelling of "repaid" to "prepaid" which was originally intended. Though the existing language basically means that repayments may be made without penalty at an earlier time than required in the repayment schedule, and while that meaning will not change with the use of the word "prepaid", the word "prepaid" is the more commonly used and more accurate term in this context.

N.J.A.C. 7:26-14A.11(b)

The Department has deleted the word "applicant" in the introductory sentence of this subsection and has replaced it with the word "borrower". Both terms refer to the same entity, but "borrower" is the more appropriate term in this subsection which sets forth the terms of the loan agreement. At this point in the loan process, the local government unit is no longer an applicant but has been awarded a loan and is being notified of the terms by which it will be bound as a "borrower".

N.J.A.C. 7:26-14A.11(d) and (e)

In both subsections, the Department has deleted the phrase "loan award document" and replaced it with the more accurate phrase "loan agreement". This is the appropriate term since this section of the rule clearly refers to the terms and conditions of the loan agreement, the document to be executed between the Department and the borrower.

N.J.A.C. 7:26-14A.12(b) through (g)

The agency has reevaluated these subsections and has decided not to adopt them and alternative payment procedures in the near future.

N.J.A.C. 7:26-14A.14(b)

For the same reasons that changes were made by the Department in N.J.A.C. 7:26-14A.11(b), above, the agency has deleted the word "applicant" each time it appears in N.J.A.C. 7:26-14A.14(b) and (b)1 and replaced it with "borrower", the more accurate term.

In addition, the agency has added the phrase "and this subchapter" to the end of the third sentence of N.J.A.C. 7:26-14A.14(b)1 to emphasize that the "person authorized by resolution or ordinance to obligate the 'borrower' to the terms and conditions of the loan agreement" is also binding the borrower to the requirements of "this subchapter".

N.J.A.C. 7:26-14A.15(a) and (c)

The agency has deleted the word "applicant" each time it appears in the two subsections and has replaced it with the word "borrower" since the local government unit executing the loan agreement is more appropriately a "borrower" and no longer an "applicant".

N.J.A.C. 7:26-14A.23

In N.J.A.C. 7:26-14A.23(a)1, the term "non-performance" has been deleted and replaced with the more accurate, more commonly used and synonymous term "default".

The default provision set forth at N.J.A.C. 7:26-14A.23(a)1ii has been deleted as redundant since "default by the borrower" says no more than the introductory phrase "event of default . . . shall include . . ." As a result of this deletion, several citations within the subsection were changed to reflect the recodification of the section.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***: deletions indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 14. RESOURCE RECOVERY GRANTS OR LOANS

7:26-14.1 Scope

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations pursuant to the Natural Resources Bond Act, P.L. 1980, c.70 for the development and implementation of resource recovery projects as described within the approved District Solid Waste Management Plans developed under N.J.S.A. 13:1E-1 et seq. Any loan agreement which is executed pursuant to P.L. 1985, c.220, c.331 and c.335 prior to the effective date of N.J.A.C. 7:26-14A shall be in accordance with this subchapter, 7:26-14. Any loan agreement executed pursuant to P.L. 1985, c.330, c.331 and c.335 after the effective date of N.J.A.C. 7:26-14A shall be in accordance with that subchapter, 7:26-14A.

Full text of the proposed new rules follows.

SUBCHAPTER 14A. RESOURCE RECOVERY AND SOLID WASTE DISPOSAL FACILITY LOANS

7:26-14A.1 Scope

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations from the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330, c.331 and c.335. ***Additionally*** P.L. 1985, c.335 appropriate***d*** to the Resource Recovery and Solid Waste Disposal Facility Fund $50,000,000 from the Natural Resources Bond Fund established pursuant to P.L. 1980 c.70. Appropriations from the Fund shall be used for loans to local government units for the construction of resource recovery facilities and environmentally sound sanitary landfill facilities which are identified and included in a district solid waste management plan approved pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. Any loan agreements which are executed pursuant to P.L. 1985, c.330, c.331 and c.335 after *[the effective date of this subchapter]* ***June 20, 1988***, shall be in accordance with this subchapter. Loan agreements entered pursuant to P.L. 1985, c.330, c.331 and c.335 and which are executed prior to *[the effective date of this subchapter]* ***June 20, 1988***, shall be in accordance with N.J.A.C. 7:26-13.

7:26-14A.2 Construction

This subchapter shall be construed so as to permit the Department to discharge its statutory functions and to effectuate the purposes of the law.

7:26-14A.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Natural Resources Bond Act, P.L. 1980, c.70, and the Resource Recovery and Solid Waste Disposal Facility Bond Act, P.L. 1985, c.330, c.331, and c.335;

2. To establish policies and procedures for the distribution of funds appropriated from the Resource Recovery and Solid Waste Disposal Facility Fund as loans to local government units within the State to help defray the costs of constructing resource recovery facilities and environmentally sound sanitary landfill facilities. This includes local government unit contracts with vendors who contract with the local government unit to undertake such projects to service the local government unit's recovery and disposal needs;

3. To protect the public and the State by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of funds are consistent with the laws and policies of the State;

5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of loans; and

6. To establish accounting procedures for the administration of loans.

7:26-14A.4 Definitions

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

"1980 Act" means the Natural Resources Bond Act of 1980, P.L. 1980, c.70;

"1985 Act" means the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985, P.L. 1985, c.330, c.331 and c.335;

["Bonds" means the bonds authorized to be issued, or issued, under the 1980 and 1985 acts;]

"Commissioner" means the Commissioner of the Department of Environmental Protection or his designee;

"Construct" and "construction" means, in addition to the usual meanings thereof, the designing, engineering, financing, extension, repair, remodeling, or rehabilitation, or any combination thereof, of a resource recovery facility or an environmentally sound sanitary landfill facility or any component part thereof;

["Construction costs" means, for the purpose of determining loan amounts, those costs associated with the putting together or building of a resource recovery facility or an environmentally sound sanitary landfill facility including the construction and/or rehabilitation of building and equipment, site preparation and landscaping, roads and parking, and utilities and does not include such things as engineering and design, legal and financial, insurance, other professional services and land acquisition. This shall not include the acquisition of an existing previously constructed facility.]

"Department" means the Department of Environmental Protection.

"Division" means the Division of Solid Waste Management in the Department of Environmental Protection.

"Environmentally sound sanitary landfill facility" means a sanitary landfill facility which is equipped with a liner or liners, a leachate control and collection system, and a groundwater pollution monitoring system, or any other pollution control or other engineering device required by the Department pursuant to law or rule and regulation, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq.

"Escrow account" means the account established with the escrow bank for receipt, investment and disbursement of the Fund loan monies.

"Escrow agent" means the entity or individual responsible for authorizing disbursements from the escrow account pursuant to the terms of the Fund loan agreement and the escrow agreement.

"Escrow bank" means the financial institution designated as the escrow bank pursuant to an escrow agreement entered into by the borrower.

"Full scale operation" means the point of time at which a facility becomes commercially available to operate at the facility for which it was designed.

"Fund" means the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330.

"Local government unit" means a county, municipality, municipal or county utility authority, an implementing agency pursuant to an approved Solid Waste Management Plan, or any other political subdivision of this State authorized to construct, operate, or arrange for the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility.

"Project" means any work relating to the construction of a resource recovery facility or an environmentally sound sanitary landfill facility by a local government unit.

"Project cost" means the expenses incurred in connection with:

1. The acquisition by purchase, lease, or otherwise of a project; the development of a project; and the construction of any project authorized by the 1985 Act;

2. The acquisition by purchase, lease or otherwise and the development of any real or personal property for use in connection with any project authorized by the 1985 Act, including any rights or interests therein;

3. The execution of any agreements and franchises deemed by the Department to be necessary or useful and convenient in connection with any project authorized by the 1985 Act;

4. The procurement of engineering, inspection, planning, legal, financial, geological, hydrological or other professional services, including the services of a bond registrar or an authenticating agent;

5. The issuance of bonds, or any interest or discount thereon;

6. The administrative, organizational, operating or other expenses incident to the financing, completing and placing into service of projects authorized by the 1985 Act or any related contractual arrangements for providing resource recovery or environmentally sound sanitary landfill facility services;

7. The establishment of a reserve fund or funds for working capital, operating, maintenance or replacement expenses and for the payment or security, principal or interest on bonds, as the State Treasurer may determine; and

8. Reimbursement to any fund of the State of moneys which may have been transferred or advanced therefrom to any fund created by the 1985 Act, or of any moneys which may have been expanded therefrom for or in connection with any project authorized by the 1985 Act.

"Residual landfill" means an environmentally sound sanitary landfill facility which is designed primarily for the disposal of residuals from resource recovery facilities, non-processable wastes for an emergency backup disposal when resource recovery facilities are shut down for repair or maintenance.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse, or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

"Vendor" means a private or public entity qualified and selected by a local government unit in accordance with any applicable law resulting in an agreement whereby the vendor agrees to design, construct, and/or operate a resource recovery facility and/or an environmentally sound sanitary landfill facility or to provide resource recovery facility and/or environmentally sound sanitary landfill facility services to the local government unit.

7:26-14A.5 Eligibility for project loans

(a) Any local government unit is eligible to apply for and receive a loan for a resource recovery facility or environmentally sound sanitary landfill facility from the Fund provided it satisfactorily completes and submits the local application, meets the criteria set forth in this subchapter and ranks high enough on the priority list to obtain available funding. Only a county governing body, however, is eligible to receive a loan from moneys transferred to the Fund pursuant to P.L. 1985, c.335 from the Natural Resources Fund which was established pursuant to P.L. 1980, c.70.

(b) To receive a loan, the project shall meet the following criteria to the satisfaction of the Department:

1. The project for which the loan application is being made has been included (by lot and block number, *[and if applicable,]* by type of technology, for example, landfill, mass burn, composting, etc.) in the appropriate district solid waste management plan adopted and approved in accordance with N.J.S.A. 13:1E-1 et seq.;

2. If applicable, the project shall have received the approvals required under N.J.S.A. 13:1E-26; and

3. The local government unit shall not be in current default on any State loan. If a local government unit is in current default on a State loan, a Fund loan pursuant to this subchapter will not be

executed between the Department and the local government unit unless the Department determines that repayment of the defaulted loan will be received.

(c) Those projects for which appropriations have been approved prior to the effective date of this subchapter are exempt from the requirements of N.J.A.C. 7:26-14A.7, 14A.9, and 14A.10. The Department, however, reserves the right to request materials and information as otherwise required by those sections necessary to review and develop the loan agreement for these projects.

7:26-14A.6 Preapplication procedures

(a) Prior to the close of the application period and scheduled so as to allow sufficient time to develop and submit a project application, the Division shall conduct a resource recovery facility and environmentally sound sanitary landfill facility financing seminar. The purpose of the seminar shall be to describe to public agencies the resource recovery and solid waste disposal loan program established pursuant to P.L. 1985, c.330 and the loan application process set forth in this subchapter. Notice of the seminar shall be published in the New Jersey Register and further provided through mailings and public notices. The seminar shall not be part of the formal application procedure and, therefore, verbal statements made during the seminar shall not be binding upon the Department.

(b) Questions concerning the financial seminar referenced at (a) above and the loan application process should be directed to:

Chief
Bureau of Solid Waste and Resource Recovery Financing
Division of Solid Waste Management
Department of Environmental Protection
CN 028
Trenton, New Jersey 08625

7:26-14A.7 Application procedures

(a) Each application for a resource recovery or environmentally sound sanitary landfill facility loan shall be submitted to the Department on forms available from the Department for that purpose.

(b) Each application submitted to the Department shall include the following information:

1. A full description of the project, including, at a minimum, the type of resource recovery or sanitary landfill facility, project goals and objectives, budget, identification of consultants and contractors (if known), scheduling of major project construction phases and related costs, proposed disbursement schedule and public participation activities;

2. Certification by the appropriate Solid Waste Management District that the project is in conformance with the approved District Solid Waste Management Plan developed under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;

3. A written statement describing the project's readiness to proceed, including, at a minimum, ***and if appropriate for the project*** status of waste stream evaluation (quantity and composition), facility sizing, engineering design, site selection and acquisition, marketing commitments, Federal, State and local permits required for the project, environmental assessments, ***environmental mitigation measures, host community benefit agreement(s)*** the contracts the local government unit enters into for the design, construction, acquisition and/or operation of the facility and, in the case of a resource recover facility, provisions for emergency back-up and residue disposal;

4. A written statement describing the technical feasibility of the project, including, at a minimum, the history of the development and utilization of the specific technologies/procedures involved, the likely ability of the project to meet environmental requirements, the ability of the proposed facility to meet the specifications and needs of material and energy users***, if applicable*** and the compatibility of the proposed project with *[other]* existing or proposed material and energy recovery programs within the solid waste management district;

5. A written statement describing the financial feasibility of the project, including, at a minimum, a cost/revenue analysis, a description of the applicant's financial plan to repay the loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan. The statement shall describe the roles and responsibilities of all participants in the project, including the vendor, and all contracts entered into or contemplated for the project. The Department reserves the right to review all such contracts for purposes of prioritizing applications. This description shall include a detailed outline of the contractual commitments which will ensure project completion, as well as contingencies in the event of non-completion or completion at less than full capacity. Sources and uses of all funds to be used in the project, including the potential State loan, shall be fully described;

6. A written estimate of all project and construction costs;

7. A written statement describing the applicant's need for loan funding and how the receipt of a loan will impact the project; and

8. All other information, forms, agreements and subagreements the Department may require to assign priority points.

(c) Applications shall be signed for the applicant by a person authorized by resolution or ordinance to file an application for a State loan, ***and*** to represent the applicant in all matters relating to the application process*[, and to obligate the application to the terms and conditions of the loan]*.

1. Each resolution or ordinance shall constitute an undertaking to accept the requirements of this subchapter *[and the terms and conditions of the loan award document]*.

2. A copy of the signed resolution or ordinance shall be submitted with the application.

(d) Complete applications shall be submitted in advance of the application closing date for the application period in which the applicant wishes to be awarded a loan. There shall be at least one application period in each fiscal year, which application period shall be announced in the New Jersey Register sufficiently in advance of the application period to enable all eligible local government units to apply.

1. Additional application periods may be established as deemed necessary by the Department upon publication of a notice of the details of the additional application period in the New Jersey Register.

2. The application closing date for any application period may be extended, if deemed necessary by the Department, upon publication of a notice of extension in the New Jersey Register.

(e) The Division shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

2. Programmatic, technical, and scientific evaluation to determine the merit and relevance of the project to the Department's program objectives; and

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable.

(f) No loan shall be awarded until an appropriation is made ***by the Legislature*** for the project to be financed.

(g) All applications shall be sent to:

Chief
Bureau of Solid Waste and Resource Recovery Financing
Division of Solid Waste Management
Department of Environmental Protection
CN 028
Trenton, New Jersey 08625

(h) It is the responsibility of the applicant to insure that the Department has received all necessary documentation in a timely manner and in advance of the closing date for receipt of applications. If a submitted application is determined by the Department to be incomplete because not all necessary documentation has been received by the Department as of the application closing date, then that application will not be considered for funding for that loan period.

7:26-14A.8 Use and disclosure of information

All loan applications and other submissions, when received by the Division, are public records pursuant to N.J.S.A. 47:1A-1 et seq. The

Division shall make them available to persons who so request, to the extent required by New Jersey and/or Federal law and consistent with the confidentiality provisions therein.

7:26-14A.9 Criteria for project loan priority

(a) Each year, project loan applications shall be assigned priority points by the Department in accordance with the provisions outlined in this section. A project shall be ranked according to the number of priority points it receives. Loan awards, depending on the amount of funds available in the Fund, shall be offered to projects in order of ranking unless the Legislature appropriates funds otherwise. This subchapter provides the terms and conditions under which application will be evaluated and prioritized and funding awards will be recommended by the Department. It is possible that the provisions of this subchapter will be superseded by legislation approriating funds to specific projects. The Priority Criteria and corresponding Priority Points shall be as follows:

Priority Criteria	Priority Points
1. Project is already under construction. (NOTE: A project already into the construction phase is also entitled to priority points for activities such as permitting and procurement which were completed prior to the construction phase.)	50
2. The project has received all permits and approvals as determined by the Department, necessary to proceed with construction and operation.	20
3. The procurement process for the project has been successfully completed in accordance with appropriate statutes and a contract has been awarded for the design and construction of the project.	20
4. Long term (minimum 20 years) contracts/arrangements have been executed for the disposal of process residues, non-processable wastes and emergency backup disposal.	20
5. The site for the project has been obtained by purchase or long term (minimum 20 years) lease.	20
6. Long term (minimum 20 years) contracts have been awarded for the sale of materials and/or energy recovered by the project.	20
7. The project has the capability of recovering or reducing the weight of the solid waste stream directed to the project by the following percentages via material and energy recovery processes (includes solid waste types 10, 13, 23, 25 and 27):	
i. Material Recovery:	
(1) 25 percent or more	50
(2) 20 percent to 24 percent	40
(3) 15 percent to 19 percent	30
(4) 10 percent to 14 percent	20
(5) 5 percent to 9 percent	10
ii. Energy Recovery:	
(1) 70 percent or more	50
(2) 60 percent to 69 percent	40
(3) 50 percent to 59 percent	30
(4) 40 percent to 49 percent	20
(5) 30 percent to 39 percent	10
8. The project is a residuals landfill designed primarily to service a resource recovery facility by providing for the disposal of process residues and non-processable and emergency by-pass solid wastes.	25
9. The project is a sanitary landfill designed primarily to serve as a solid waste disposal facility for non-processable wastes. (Note: A sanitary landfill project combined with a comprehensive source separation/recycling program can also receive priority points under priority criteria (a)6 above.)	15
10. The percentage of the county's solid waste stream that will be serviced by the project:	
i. 80 percent or more	40
ii. 60 percent to 79 percent	20
iii. 40 percent to 59 percent	20
iv. 20 percent to 39 percent	10
11. The degree of technical feasibility and fitness of the project for its intended purpose as measured by the number of total years a commercial facility(ies), excluding sanitary landfills, of similar size and design has successfully operated ***from an economic and environmental view point*** in the United States:	
i. 25 or more years	50
ii. 20 to 24 years	40
iii. 15 to 19 years	30
iv. 10 to 14 years	20
v. 5 to 9 years	10

(b) In the event that two or more projects are assigned an equal number of priority points, the Department shall determine which project(s) will be recommended for funding. This determination shall be based on the Department's assessment of the need for the project as it relates to the State's overall solid waste management needs. Also, the Department may, at its discretion, award a portion of the priority points for a particular priority criteria. For example, if a materials and energy recovery project applicant has executed a materials recovery sales contract, but not an energy recovery sales contract, the Department may award a portion of the priority points assigned to priority criteria (a)6 above.

(c) Applicants can apply for and receive funding for project costs which have been incurred on or after November 5, 1985. Such applicants must follow the procedures, meet the requirements and maintain all the records required by this subchapter.

7:26-14A.10 Determination by the Department

(a) Upon completion of a full review, evaluation and prioritization of each application received during each application period, the Department shall take one of the following action:

1. Approve the application as meeting the application requirements;

[2. Approve the application and recommend for funding; or]

[3.] ***2.*** Disapprove the application.

(b) The Department shall then review the list of projects and requested loan amounts, and shall determine which projects it will recommend for funding based upon the financial condition and projections of the Fund and previous legislative appropriations. The Department shall then establish a priority rank list, which list, and any amendments thereto, shall be published in the New Jersey Register.

(c) The Department shall send a Notice of Intent to Award to those approved applicants for which it recommends funding. Such notice shall state the intent of the Department to recommend the passage of legislation appropriating funds for the loan. Without passage of a specific legislative appropriation, the project will not receive funding.

(d) The Department shall notify applicants whose applications meet minimum application requirements but which are not recommended for funding in that particular application/funding period. Applicants may file for reconsideration in future funding periods pursuant to (i) below.

(e) The Department shall notify applicants in writing of any disapproval. A disapproval of an application shall not preclude reconsideration of the application by the Department following revision and resubmission by the applicant provided that the resubmission or revision is completed in advance of the closing date for applicants. If the application period has already closed, the applicant shall not be precluded from re-applying for a loan in the next annual application period.

(f) The applicants receiving a Notice of Intent to Award a loan shall obtain all necessary Federal, State and local permits and approvals within one year of receipt of the Notice of Intent to Award a loan. Failure to obtain the required permits within the required time period shall make the project ineligible for a loan for that application period unless prior approval for an extension has been granted by the Division.

(g) If subsequent to the issuance of a Notice of Intent to Award, the applicant discovers *[that costs will exceed those previously estimated, or]* any *[other]* circumstances *[appear]* which affect the award of priority points, the applicant shall immediately notify the

Department. The Department shall then recalculate, if appropriate, the applicant's priority determination utilizing the new information submitted, adjust the ranking of the application, and assess its impact on the Department funding recommendation.

(h) Any applicant receiving a Notice of Intent to Award who decides not to proceed with a project shall notify the Department as soon as this decision is made.

(i) Applicants with approved projects on a priority list that are not awarded loans in any application period, as applicable, who wish to apply for a position on any subsequent priority list in any subsequent application period, may apply by a timely filing of a letter, signed by the appropriate party, notifying the Department that the applicant requests a renewal of its application for a resource recovery or environmentally sound sanitary landfill facility loan. Where there are changes in the original application, the applicant shall update the appropriate documents required by N.J.A.C. 7:26-14A.7. The application shall be treated as a new application for a resource recovery or sanitary landfill loan and evaluated in accordance with this subchapter.

7:26-14A.11 Loan terms and administration of disbursements

(a) The following requirements apply to the amount of, interest rate on and maturity period of the loan:

1. *[Loan amounts shall be determined as a percentage of construction costs. This percentage, which may vary according to project type, and which shall be established by the Department annually or for each application period and published in the New Jersey Register at the same time that the application period is announced pursuant to N.J.A.C. 7:26-14A.7(d), shall be based upon estimated construction costs at the time of application. Increases or decreases in actual costs with respect to these estimates shall not result in loan amount modifications.]* ***(Reserved)***

2. Loan proceeds may be used to pay any project costs authorized in the loan agreement, which agreement shall be consistent with the provisions of the 1985 Act and this subchapter.

i. Loan proceeds may be used for project costs associated with the construction of resource recovery facilities and/or environmentally sound sanitary landfill facilities to service the needs of local government units.

ii. Loan proceeds may be used directly by the local government unit to undertake project costs associated with the development of a resource recovery and/or environmentally sound sanitary landfill facility.

iii. Loan proceeds may be used by the local government unit to defray project costs associated with an agreement it has entered into with a vendor.

3. The proposed interest rate on the loans for each application period shall be set forth in the notice setting forth the priority list, which list is to be published in the New Jersey Register pursuant to N.J.A.C. 7:26-14A.10(b). The interest rate shall be dependent upon legislation and/or the financial condition of the Fund. The loan interest rate shall be established annually by the State Treasurer.

4. The loan maturity period shall be for a period of 23 years from the date the funds are delivered to the escrow agent by the Department. Repayment shall begin no later than the sixth year of the loan maturity period or one year following the full scale operation of the facility, whichever comes first. Equal semi-annual loan repayments shall be made starting on or before the first of February and August for every year that repayments are due. The Department may, at its discretion, negotiate an individual repayment schedule. Principal and accrued interest, if applicable, may be *[repaid]* ***prepaid*** without penalty prior to the end of the loan maturity period.

5. There shall be due and owing by the local government unit to the Fund a late fee of five percent of any payment when such payment is 15 calendar days or more past due, 10 percent of any payment when such payment is 30 calendar days or more past due. Failure of the local government unit to make any repayment within 45 calendar days of the scheduled repayment date shall constitute default of the loan agreement and all outstanding principal, interest and penalty amounts shall become immediately due and owing to the State.

(b) The following terms of the loan shall be incorporated into the loan agreement to be executed by the Department and the *[applicant]* ***borrower***:

1. Execution of the loan agreement constitutes an irrevocable agreement to repay the loan on the part of the borrower;

2. Counties and municipalities shall place general obligation bonds with the State in order to receive the loan proceeds. Other local government units lacking general taxing powers shall secure their loans with service/deficiency agreements with a local government unit having the ability to levy taxes, a surety bond, or other security acceptable to the Department;

3. A list of the required contents of the county or municipal bond resolution, which list shall be subject to Department approval;

4. Loans may be *[disbursed]* ***released*** by the Department on a single or multiple sum basis at the discretion of the Department. *[Loan disbursements]* ***Release of the loan funds*** may be based upon adherence to the project schedule ***which shall be*** included in the loan agreement;

5. *[Disbursement]* ***Release of the loan funds*** may only be made to an escrow agent selected by the borrower and approved by the Department. In the case of comparatively small loans or where the local government unit, after using its best efforts, cannot retain an escrow agent which will act in accordance with this subchapter, the Department shall act as the escrow agent. The borrower shall enter into an agreement with the escrow agent specifying the escrow agent's duties and responsibilities, which agreement shall be consistent with the terms and conditions of the loan agreement and the requirements of this subchapter. Any escrow agent shall only disburse loan funds in accordance with the executed loan agreement, the escrow agreement and this subchapter;

6. Where there is an escrow agent other than the State, the escrow agent shall submit an annual report to the Department which includes a disbursement report for the previous year, a certified statement by the licensed project engineer for the local unit or the vendor in accordance with N.J.A.C. 7:26-14A.24, confirming the percentage of project construction which is completed, and an estimate of expenditures for the upcoming fiscal year;

7. Interest earned on the funds in the borrower's loan escrow account shall accrue to the benefit fo the project and may only be used for project costs as defined in N.J.A.C. 7:26-14A.4; and

8. The borrower shall be responsible for paying for the services of the escrow agent.

(c) The borrower shall promptly notify the Division of Solid Waste Management in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification. Changes in the project which shall require such notification shall include but are not limited to:

1. Rebudgeting;

2. Changes in approved technical plans or specifications for the project;

3. Changes which may affect the approved scope or objective of a project;

4. Significant changed conditions at the project site;

5. Deceleration in time for the performance of the project, construction schedule, or any major phase thereof; and

6. Changes which may increase or substantially decrease the total cost of the project. There shall be no loan modification increasing the funding amount.

(d) If, on the basis of information submitted pursuant to (c) above, the Department determines that a formal loan amendment is necessary, it shall notify the borrower and a written amendment to the loan *[award document]* ***agreement*** will be prepared in accordance with this subchapter.

(e) Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the borrower, constitute changes to the loan *[award document]* ***agreement*** (but not necessarily to the project work) and do not affect the substantive rights of the Department or the borrower. The Department may issue such change unilaterally. Such changes shall be in writing and shall be effected by a *[latter]* ***letter*** (certified mail, return receipt requested) to the borrower.

7:26-14A.12 Payment procedures

(a) The escrow agent shall only make payments in accordance with the escrow agreement which shall be consistent with the loan agreement and this subchapter. A retainage may be held in accordance with the loan agreement.

(b) *[The escrow agent shall not authorize disbursement unless he or she has received the following:

1. A requisition for payment from the borrower stating the net amount requested, by item;

2. A certification in accordance with N.J.A.C. 7:26-14A.24 from the borrower signed by its Chief Financial Officer or other individual authorized to perform this duty on behalf of the borrower, stating that for each item for which funds are requested:

i. All of the requisitioned money will be used for Project Costs as defined in N.J.A.C. 7:26-14A.4 and the loan agreement;

ii. The costs have been incurred or will be incurred within a reasonable time pursuant to (g) below; and

iii. The borrower has submitted to the Department all documentation and information required pursuant to (d) below.

3. A written confirmation from the Department stating that the previous disbursement, if any, has been reviewed by the Department pursuant to (e) below, and has been found to be a project cost as set forth at N.J.A.C. 7:26-14A.4 and the loan agreement.]* ***(Reserved)***

(c) *[When the requirements of (b) above are met, the escrow agent shall authorize disbursement and, at the same time, submit to the Department four copies of the requisition and certification submitted by the borrower in accordance with (b)1 and (b)2 above, along with any other documentation submitted by the borrower to support payment.]* ***(Reserved)***

(d) *[At the same time that the borrower submits to the escrow agent the documentation and information required by (b) above, the borrower shall submit to the Department sufficient information and documentation which shall enable the Department to determine whether the item for which loan funds are requisitioned is eligible as a project cost pursuant to N.J.A.C. 7:26-14A.4 and the loan agreement.]* ***(Reserved)***

(e) *[Upon receipt by the Department of the documentation and information required to be submitted pursuant to (c) and (d) above, the Department shall have 30 days in which to conduct its own review of the requisition, certification, and supporting documentation to determine if the items for which payment was requested by the borrower are project costs pursuant to N.J.A.C. 7:26-14A.4 and the loan agreement. Upon completion of that review, the Department shall take one of the following actions:

1. If the items for which payment was requested are found to be project costs, the Department shall notify the escrow agent, in writing, of this affirmative determination, which determination shall then serve to satisfy the requirement of (b)3 above, for the next disbursement; or

2. If any item for which payment was requested by the borrower is determined by the Department not to be a project cost, the Department shall notify the escrow agent and the borrower, in writing, of this negative determination. The Department shall specify which item or items was determined not eligible for payment pursuant to N.J.A.C. 7:26-14A.4. Where deemed necessary to assist in its determination of cost eligibility, the Department may invoke its right to perform a financial audit pursuant to N.J.A.C. 7:26-14A.19(a). The Department shall then instruct the escrow agent to withhold from the next authorized disbursement an amount equal to the total dollar amount of ineligible project costs which were paid by the escrow agent in the previous disbursement. If the borrower decides to contest the Department's determination, the matter shall be handled pursuant to N.J.A.C. 7:26-14A.25.]* ***(Reserved)***

(f) *[If at any time, the total amount of project costs previously paid by the escrow agent pursuant to (c) above, and later determined not to be project costs by the Department pursuant to (e)2 above, exceeds the balance remaining in the escrow account, the Department shall instruct the escrow agent to withhold the remaining balance in the escrow account and the Department shall then pursue any available remedies, including termination of the entire loan agreement pursuant to N.J.A.C. 7:26-14A.23, to recover the remaining amount already disbursed for ineligible project costs.]* ***(Reserved)***

(g) *[In the event that the borrower submits a requisition for payment, along with all other required documentation pursuant to (b) above, for prospective project costs, that is, payment for items which have not yet been purchased/acquired by the borrower or its vendor, then the project cost must be incurred, using the designated disbursement, within a reasonable time. Failure to spend the disbursed sum of money for the specified project cost within a reasonable time, as determined by the Department, may result in withholding of future disbursements pursuant to (e)2 above, and/or invocation of any remedies available to the Department, including termination of the loan agreement pursuant to N.J.A.C. 7:26-14A.23.]* ***(Reserved)***

(h) In the event that no monies are requisitioned by the borrower or disbursed from the escrow account within five years of the loan closing date of the loan agreement, all monies in the escrow account, including all investment earnings from the monies in the escrow account, shall revert to the Fund and be credited as repayment of the principal of the loan by the borrower.

(i) In those cases in which the Department is to act as escrow agent pursuant to N.J.A.C. 7:26-14A.11(b)5, all requirements of this section shall apply to the Department except that (c) above, shall not apply. Whenever in this sectino reference is made to an escrow agent as a separate entity from the Department, the same term shall mean and refer to the Department which shall mean and refer to the Department which shall then carry out all functions of the escrow agent.

7:26-14A.13 State share of the project cost

The State share of the total project cost shall be expressed as a dollar amount and set forth in the loan agreement. This dollar amount shall be the maximum amount awarded to the applicant for the project.

7:26-14A.14 Loan agreement

(a) The Department may impose conditions precedent to each payment under the loan agreement as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985 which conditions shall include but not be limited to the following:

1. The borrower shall submit proof that it and its contractors and subcontractors will comply with any hazard insurance requirements of the loan agreement and that it will be able to certify that the insurance is in full force and effect and that the premiums have been paid;

2. The borrower shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with generally accepted accounting principles;

3. The borrower shall certify that it and its contractors and their subcontractors will comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27-1 et seq.; the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 through 34:11-56.46; the Civil Rights provisions of N.J.S.A. 10:1-1 et seq. and the rules promulgated pursuant thereto; and

4. The borrower shall certify in accordance with N.J.A.C. 7:26-14A.24 that it is in compliance with all other requirements and conditions of the loan agreement and this subchapter.

(b) The Division shall prepare and transmit four copies of the loan agreement to the *[applicant]* ***borrower***.

1. The *[applicant]* ***borrower*** shall execute all four copies of the loan agreement and return them within 45 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The loan agreement shall be signed by a person authorized by resolution or ordinance to obligate the *[applicant]* ***borrower*** to the terms and conditions of the loan agreement ***and this subchapter***. A copy of the resolution or ordinance shall be forwarded immediately to the Department.

2. The loan agreement shall set forth the terms and conditions of the loan, which may include but not be limited to, as applicable: approved project scope including construction plans and specifications where applicable, budget, approved project costs, escrow agent requirements, construction and disbursement schedules, and the approved commencement and completion dates for the project or major phases thereof.

3. After the Department has completed its internal processing of the loan agreement, it shall transmit a copy of the executed loan agreement to the borrower.

7:26-14A.15 Effect of loan agreement

(a) At the time of execution of the loan agreement by the Department and the *[applicant]* ***borrower***, the loan shall become effective and shall constitute an obligation of the Resource Recovery and Solid Waste Disposal Facility Fund in the amount and for the purposes stated in the loan agreement.

(b) The award of the loan shall not commit or obligate the Department to award any continuation loan to cover cost overruns of the project. The Department shall not in any way be held responsible for cost overruns.

(c) A determination of eligibility by the Department shall not be used as a defense, by the *[applicant]* ***borrower***, to any action by any agency for the *[applicant's]* ***borrower's*** failure to obtain all requisite permits, licenses and operating certificates.

7:26-14A.16 Repaid funds

(a) All loan repayments and any interest on loans shall be deposited into the Fund. Upon a specific legislative appropriation, the Department may lend all moneys deposited in the Fund to local government units to finance other approved resource recovery or environmentally sound sanitary landfill facility projects in accordance with P.L. 1985, c.330.

7:26-14A.17 Fraud and other unlawful or corrupt practices

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

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall immediately notify in writing the Division of Solid Waste Management when such allegation or evidence comes to its attention, and shall periodically advise the Division of the status and ultimate disposition of any related matter.

7:26-14A.18 Administration and performance of loan

The borrower bears primary responsibility for the administration and success of the project, including any subagreements made by the borrower for accomplishing loan objectives. Although borrowers are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the borrower to the Department. The primary concern of the Department is that loan funds awarded be used in conformance with this subchapter and the loan agreements to achieve loan objective and to insure that the purposes set forth in the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985 are fully executed.

7:26-14A.19 Access

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

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

7:26-14A.20 Assignment

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

7:26-14A.21 Publicity and signs

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

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

7:26-14A.22 Debarment

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

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

(c) The borrower, prior to acceptance of State funds, shall certify that no contractor or subcontractor is included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders as a result of action by a State agency other than the Department.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the borrower may take into account the loss of Department loan funds under these rules which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsible bidder pursuant to law; and the borrower may advise prospective bidders that these procedures will be followed.

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

7:26-14A.23 Termination of loans

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

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

i. Failure to comply with any of the terms and conditions of the loan agreement;

ii. *[Default by the borrower;]*

[iii.] ***ii.*** A determination that the loan was obtained by fraudulent practices;

[iv.] ***iii.*** Gross abuse or corrupt practices in the administration of the project have occurred;

[v.] ***iv.*** Funds have been expended for non-allowable costs; and/or

[vi.] ***v.*** Failure to comply with a corrective action/correction schedule entered into pursuant to (a)4 below.

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

3. The Department shall afford the borrower an opportunity for consultation prior to any termination. After such opportunity for consultation the Department may, in writing, terminate the loan in

whole or in part. Upon termination, the full amount of the outstanding balance of the loan shall be immediately repaid in full.

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

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

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

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

i. Withholding of loan disbursement;

ii. Acceleration of loan agreement;

iii. Conversion to an interest-bearing loan; and

iv. Immediate loan repayment in accordance with procedures outlined in (a)2 and 3 above.

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

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

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

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

(c) The Department and borrower may enter into a mutual agreement to terminate the loan agreement at any time pursuant to terms which are consistent with this subchapter. The termination agreement shall establish the effective date of termination of the project and the schedule for the repayment of the entire loan.

(d) The effect of termination of the loan, in whole or in part, shall be as follows:

1. Upon termination, the borrower may be required to immediately refund or repay the entire amount of the loan to the Fund. If the loan is guaranteed by a security/deficiency agreement, the agreement shall be brought into effect to ensure the entire repayment of the loan. At the Department's discretion, it may authorize the immediate repayment of part of the loan and allow the remaining balance to be repaid in accordance with the loan agreement repayment schedule.

2. The borrower shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of funds awarded under the loan. The Department shall make the final determination of the allowability of termination costs.

(e) In addition to any termination action, the Department retains the right to pursue other legal remedies as may be available under Federal, State and local law as warranted.

7:26-14A.24 Certifications

Whenever in this subchapter a certification is required pursuant to this section, such certification shall include the following statement:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

7:26-14A.25 Administrative hearings

(a) The Department shall decide in writing all disputes arising under a loan.

(b) A borrower may request an administrative hearing within 15 days of a written decision by the Department. The borrower shall be required to specify in writing and in detail the basis for its appeal.

(c) Following receipt of a complete request for a hearing pursuant to (b) above, the Department may attempt to informally settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(d) If the Department determines the matter to be a contested case, the Department shall file the request for an administrative hearing with the Office of Administrative Law. Such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

7:26-14A.26 Severability

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

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Toxic Catastrophe Prevention Act

Adopted New Rules: N.J.A.C. 7:31-1, 2, 3, 4 and 6

Proposed: September 21, 1987 at 19 N.J.R. 1687(a).

Adopted: May 22, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: May 23, 1988 as R.1987 d.272, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with portions not adopted** (N.J.A.C. 7:31-2.12 and 2.15 were withdrawn (see 20 N.J.R. 350(a)).

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and 26:2C-1 et seq., particularly 26:2C-8.

DEP Docket Number: 042-87-08.

Effective Date: June 20, 1988.

Operative Date: July 21, 1988.

Expiration Date: June 20, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("Department") is adopting N.J.A.C. 7:31-1, 2, 3, 4 and 6 establishing procedures, requirements and standards for the Toxic Catastrophe Prevention Act ("TCPA") program. These rules were proposed on September 21, 1987 at 19 N.J.R. 1687(a). On February 16, 1988, the Department proposed confidentiality and trade secret rules ("confidentiality") for the TCPA program (see 20 N.J.R. 350(a)). The confidentiality proposal withdrew N.J.A.C. 7:31-2.12 on inspections and N.J.A.C. 7:31-2.15 on insurance from the 19 N.J.R. 1687(a) proposal and included them in the confidentiality proposal. All comments on inspections and insurance received in response to the 19 N.J.R. 1687(a) proposal shall be responded to in the response document to the confidentiality proposal. All comments received concerning confidentiality and trade secrets will also be responded to in the response document to the confidentiality proposal.

N.J.A.C. 7:31-2.19 and N.J.A.C. 7:31-2.20, which concern general and enforcement type adjudicatory hearings, respectively, have been combined into a new subchapter 6, Civil Administrative Penalties and Re-

quests for Adjudicatory Hearings, in order to create a new enforcement subchapter which is more useful, better organized and sets forth more clearly the Department's enforcement rules including procedures, options and penalties. In addition, N.J.A.C. 7:31-2.21, Exemptions for non-contiguous EHS equipment, has been recodified as N.J.A.C. 7:31-2.19 for continuity purposes. Public hearings were held on October 27, 28 and 29, 1987 to provide interested parties the opportunity to present testimony on the proposed new rules. The comment period closed on November 27, 1987. The Department received written comments from 52 persons and 13 people presented comments at the public hearings.

GENERAL COMMENTS

COMMENT: The framers of the Toxic Catastrophe Prevention Act (the Act or TCPA) intended the Department to adopt rules designed to widen the use of existing, well developed risk management practices to all industrial sectors which handle extraordinarily hazardous substances. Companies already employing sound practices were to be left relatively unhindered, free to use and hone these skills, subject to adequate controls to avoid any backsliding. The proposed rules singularly fail to do this. The rules are inflexible and inordinately detailed in setting forth required practices and procedures. Thus, it completely devalues the substantial years of experience that have built up through employing sound practices that are equivalent or better than those prescribed. The Department should concentrate its efforts on those that have demonstrated that they actually pose a threat.

RESPONSE: One goal of the Act is to ensure that all registrants having an extraordinarily hazardous substance (EHS) in a quantity greater than or equal to the registration quantity for that EHS will have an approved risk management program. The definition of a risk management program as set forth in the Act, at N.J.S.A. 13:1K-21i, includes the eight major elements which the Department has defined as the minimum requirements for a risk management program at N.J.A.C. 7:31-3. Some registrants may have no risk management program (RMP), or their established RMP may have several material deficiencies. N.J.A.C. 7:31-3 is designed to equitably define for each registrant how to meet the minimum requirements of an RMP, as listed in the Act. The Department does not believe that the previous experience that industry has in risk management practices is being devalued. A great number of current industry safety and risk management practices have been incorporated into the minimum requirements of the risk management program. Those companies already employing sound risk management practices will find it easier to meet the minimum requirements of an RMP than those without such a program. The Department has determined that those facilities without an RMP pose the greatest threat, and for these facilities the Department and the facility owner will develop an extraordinarily hazardous substance risk reduction work plan (work plan). A consultant must conduct an extraordinarily hazardous substance accident risk assessment (EHSARA) based on the work plan and then the registrant must undertake an extraordinarily hazardous substance risk reduction plan. Those registrants which develop a work plan, review an EHSARA, and undertake an EHS risk reduction plan which leads to an RMP will obviously be required to perform much more work than those registrants with an established RMP.

COMMENT: The Basis and Background Document presents an analysis of the labor requirements anticipated to administer the proposed TCPA program. However, the Department has not addressed whether the program can be managed in an effective, timely manner. The Department needs to have answers to the following questions:

1. How long will it take to do summary and detailed reviews of RMP's? Is this time period reasonable, or will delays slow down implementation of risk reduction measures, create criticism of the program, and encourage people to avoid or ignore the rules.

2. Can the Department reasonably expect to find a sufficient number of qualified persons to review RMP's and risk reduction work plans, given the technical expertise required, shortages of trained technical personnel in the New Jersey area, and Department pay scales? If there are questions regarding the reasonable likelihood of maintaining an adequate qualified staff, the program will not achieve the claimed benefits; rules that do not require large numbers of highly qualified technical people should be considered. A backlog in air permit application approvals has been attributed to the transfer of some Department staff from the New Source Review Section to the TCPA program. If the Department can't staff this program and still perform its other duties, what can industry expect when the program becomes fully operational?

3. Have review and management procedures been established, or at least planned? What are these procedures, and will they assure timely and responsible execution of program requirements?

The Department will have to maintain a very large staff and budget to administer the Act and the proposed rules. Neither the Act nor the proposed rules say much about local authorities (first responders). Perhaps the emphasis is misplaced or not as well balanced as desirable. Many companies which submitted TCPA registration forms for EHS's listed in Part I of Table I of N.J.A.C. 7:31-2.3 more than 18 months ago have yet to hear from the Department.

RESPONSE: A detailed workload analysis has been conducted by the Department to determine the staffing requirements for screening the summary risk management program statements, work plan preparation, site inspections, consent agreements, and annual report reviews. The Department expects to implement the program without unreasonable delays and has made the following conclusions based on this study: 1. The average summary risk management program statement review will take approximately five work-hours to complete; 2. An average full RMP document review should take approximately 12 work-hours to complete; and 3. An average site inspection should take approximately 17.5 work-hours to complete. The topic of Risk Management Program review is discussed in the Basis and Background document in Section VII subsection P, and Table VII-5 contains an estimate of the professional hours needed to conduct RMP reviews. The Department has not had a problem finding well qualified and talented personnel to implement the TCPA program and thus does not anticipate delays on its part slowing the implementation of risk reduction measures. The Department does not expect a backlog similar to that in the New Source Review Section because the Department has determined through a workload analysis that it has sufficient personnel to implement the TCPA program. In addition, the deadline for the submittal of summary risk management program statements for those registrants affected by the N.J.A.C. 7:31-2.3 Table I, Part II, has been moved back to June 30, 1989, in order to permit an orderly phase-in of both the Part I and Part II EHS's.

The Department has also studied the most efficient ways to handle internally its review of RMP's. Management controls and practices currently planned for implementation by the time of RMP review include: 1. Computerized tracking of registration forms, summary risk management program statement submittals, annual reports, and other documents from the facility; 2. The use of optical character reading of the risk management program checklist; and 3. Enlisting the aid of the Department's Bureau of Enforcement Services to verify registration compliance. Adoption of these practices is anticipated to provide for timely and efficient review of the required submittals to the Department.

The Department does not expect the workloads of local authorities such as first responders to increase due to the rules, as they do not place any requirements on or in any way regulate this group. Because of the hazards involved with the handling of EHS's and the scientific techniques involved in RMP management, the Department has placed responsibility for administering the TCPA program at its Trenton offices, rather than on local authorities or even the Department's own field offices. Thus, the nature of EHS's and the scientific techniques involved in managing an RMP preclude the use of unqualified personnel to administer the Department's program.

As to those facilities which have already registered with the Department for Part I EHS's, the Department advised them in September 1986 that they could begin preparing their risk management programs. However, the Department must wait until the proposed rules are effective before taking any further steps in implementing the TCPA program, except for unusual circumstances in which the public health and safety may require the Department to take action in accordance with the Act itself.

COMMENT: Facilities with only one EHS such as chlorine should be subject to less comprehensive RMP requirements since the EHS equipment is less complex, the process is simple, and the chance of a catastrophic release is greatly reduced.

RESPONSE: The Act specifically identified chlorine as an EHS and stated that any facility which had greater than the registration quantity of that substance must register with the Department and meet the eight minimum requirements of a risk management program. Therefore, no exemption for facilities handling only one EHS, such as chlorine, may be granted. However, some of the eight elements of an RMP such as the safety review of the design of equipment, risk assessment for specific pieces of equipment, or standard operating procedures may be less detailed for the simpler processes and will therefore be more easily satisfied

by the registrants. Also, the development and implementation of an RMP will certainly be less complicated if the facility has only one EHS, rather than two or more.

COMMENT: Hazardous waste container storage facilities, which are covered by a hazardous waste storage permit and in which no treatment or disposal is performed, should be exempt from the proposed rules. Operations at storage facilities are simple. Materials are stored in U.S. Department of Transportation-approved containers, which are not opened while in storage. Under the New Jersey Hazardous Waste Regulations, storage facilities are required to have a hazardous waste facility permit, must be designed to prevent an incident and must have emergency plans and procedures that are approved by the Department. For permitted hazardous waste container storage facilities, the information required for the TCPA rules has already been submitted to the Department. Since the key elements of a risk management plan are already in place and fully implemented at permitted hazardous waste storage facilities, the Department should include an exemption for these facilities.

RESPONSE: The Department recognizes that the overall intent of both the hazardous waste storage regulations and these rules is to ensure the safe operation of these facilities. The Department further recognizes that some of the provisions of the two programs may overlap and that satisfying some provisions of the hazardous waste regulations could also satisfy some requirements of the TCPA program. However, the TCPA and the rules address a different threat than that dealt with by the hazardous waste storage regulations and are more stringent in several areas. While the TCPA program is concerned primarily with the immediate threat to the public health and safety of a catastrophic release of an EHS, the New Jersey hazardous waste regulations are concerned primarily with the impairment of the environment and the resulting long term effects on the public health and safety of improper storage, treatment and disposal of all hazardous wastes. Thus, in order to ensure the safe operation of those hazardous waste storage facilities which store at least the registration quantity of an EHS, no exemption has been provided. However, to the extent that key elements of a RMP are already in place and fully implemented, the burden on the facility to develop an RMP will be reduced.

COMMENT: A commenter stated that its tanks do not contain the minimum reportable quantities of EHS's except perhaps for a very brief moment in the dilution process and should clearly be exempt from these rules. Hydrofluoric acid is stored in the 55 gallon drums in which it is received. When emptied into the batching tanks, the acid is immediately diluted with water to a percentage concentration well below the 70 percent threshold set forth in the list proposed in N.J.A.C. 7:31-2.3. Hydrochloric acid is treated similarly and is immediately diluted with water to a concentration well below 36 percent.

RESPONSE: If the quantity of any EHS at the site is kept below the registration quantity for that EHS, the facility is not subject to the TCPA. However, the presence of hydrofluoric acid stored in drums at the facility would subject that facility to the TCPA if at any time the concentration of the hydrofluoric acid was 70 percent or more by weight hydrogen fluoride and in excess of the registration quantity. Hydrochloric acid would be treated similarly.

COMMENT: One commenter provided a tabular summary of the incidents used in the Department's background document for the TCPA rules which provided the following information for each incident: site name; date of the incident; type of incident, that is, explosion, fire, spill, air release, vehicle accident, or rail accident; release mode, that is, air, water or land release; cause of the incident, that is, human, equipment, vandalism or unknown; materials and quantities involved in each incident; and the response actions to each incident. From this summary it was concluded that the database of 671 incidents discussed in the Basis and Background Document for proposed N.J.A.C. 7:31 extended far beyond the intent of the Act, and that the database should be modified to: 1. only include those incidents which have a direct bearing on the Act, that is, incidents involving EHS's listed in the proposed rules, and 2. to focus on those incidents which resulted in "death or permanent disability" to the off-site community. Of the 118 incidents involving EHS's, there were three fatalities and no more than one fatality per incident, which does not meet the definition of extraordinarily hazardous accident risk as stated in the Act. The database failed to identify which, if any, of the 118 incidents meet the criteria of extraordinarily hazardous accident risk.

RESPONSE: The Department wishes to emphasize that the requirements of the rules are derived from the provisions of the Act itself, and are not based on the incidents discussed in the Basis and Background Document. The database of 671 incidents was referenced in the Introduction of the Basic and Background Document as background information only. Its inclusion in the document was merely to illustrate the causes, types, and frequency with which environmental incidents occur in the State and the need for increased awareness and measures to prevent such incidents from occurring in the future. The specific incidents presented in Section B of the Introduction to the Basis and Background Document do involve EHS's included in Table I at N.J.A.C. 7:31-2.3(a), with a few exceptions. The exceptions are those releases that occurred just two months prior to the accident in Bhopal. However, those incidents heightened public awareness and were a major factor leading to development of the TCPA. The Department believes that this database provides valuable information as to the types of accidents that occur in the State and gives information as to where to focus efforts to increase safety.

The Department believes that even though an actual incident my not have resulted in death or permanent disability, the incident is still of concern and should still be reported. The absence of death or permanent disability in a given instance may have been due solely to chance factors such as the time of the incident, wind speed and direction, atmospheric stability, or the location of the nearest off-site population. The Act defines an extraordinarily hazardous accident risk as a potential for release of an EHS which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability. Because of the lack of comprehensive reporting requirements in effect at the time of the incidents, in particular incomplete information as to the quantity of the EHS used at the facility, as well as the exact cause of death, the Department is unable to determine which, if any, of the 118 incidents involving EHS's would have been included within the scope of the rules.

COMMENT: Of the 61 incidents in the database cited in the Basis and Background Document involving Part I EHS's, 14 people were injured and eight people were hospitalized. Of those, were there any cases of permanent disability? If none involve permanent disability, they should not be used as supporting data.

RESPONSE: The number of people killed, injured, or hospitalized as listed in the database was obtained by the Department's Bureau of Communications and Support Services at the time of the incident from on-scene personnel. No follow-up investigations were conducted by the Department to determine the number permanently injured by the incident and no names of injured or hospitalized personnel were obtained. However, as stated in the Basis and Background Document, the database was used only to illustrate the cause, frequency, and extent of incidents, and the chronology of incidents was intended merely to illustrate the increased frequency of incidents just prior to and following the accident in Bhopal. While the requirements of the rules are based on the provisions of the TCPA itself, the Department believes that useful information can also be derived from incidents involving releases of EHS's which did not result in death or permanent disability. The TCPA program is designed to prevent potential releases of EHS's that could produce death or permanent disability, and reviewing actual EHS release incidents, whether they resulted in death or permanent disability or not, provides valuable information on the causes, frequency, and extent of such release. This type of review could lead to more effective measures for preventing a catastrophic release in the future. Otherwise, industry safety personnel and the Department would have to operate on much less information and would be unable to learn from past minor incidents which could prevent a major incident involving the potential loss of life and/or permanent disability of off-site persons in the future.

COMMENT: The database of incidents cited in the Basis and Background Document does not support the need for the costly "permit approval" approach given the problems with defining state of the art and handling confidential information. With the possible exception of anhydrous ammonia, neither does the database support the need for the expansion of the initial EHS list beyond 11 substances. Of the 671 incidents cited, only 58 incidents involved Part II listed EHS materials, and only 14 substances on the Part II EHS list were involved. The remaining incidents do not involve EHS's and do not relate to TCPA issues. The absence of catastrophic accidents indicates that most EHS facilities have effective RMP's. This supports the conceptual performance oriented RMP rather than a rigid permit/approval approach.

RESPONSE: The Department is not proposing a "permit approval" approach in these rules. Rather, the rules establish the requirement that owners or operators of EHS facilities institute and implement risk management programs to prevent the release of EHS's and further provides for review and inspection procedures by the Department, with enforce-

ment actions being based on consent agreements and administrative orders. In addition, the Department has recently proposed new rules concerning the handling of confidential and trade secret information for the TCPA program in the New Jersey Register at 20 N.J.R. 350(a), and the handling of confidential information is not expected to significantly impact the TCPA program. All comments on confidentiality and trade secrets will be responded to in the adoption notice for those rules. The Department also does not anticipate any significant problems in applying the term "state of the art", because of the manner in which the term has been defined and the manner in which it will be used in hazard analysis and risk reduction determinations. Regarding the expansion of the EHS list, the Act, at N.J.S.A. 13:1K-22c, specifically required the Department to adopt as a rule an EHS list; and the database was not used to justify expansion of the EHS list beyond the original 11 substances. As discussed in the Basis and Background Document, the toxicity of the substance and the ability of the substance to be dispersed into the atmosphere were considered as criteria for the EHS list expansion, and each of the 93 substances and chemical compounds listed at N.J.A.C. 7:31-2.3 Table 1, Part II met the criteria for inclusion on the list of EHS's. The database provided useful information as to the cause, frequency, and extent of past accidents that have occurred and specifically supports the need for better maintenance procedures and employee training to prevent these types of incidents. The fact that no catastrophic incidents have yet occurred within the State involving a particular substance is not a justifiable reason for excluding it from the proposed N.J.A.C. 7:31-2.3 Table I, Part II. Although many EHS facilities do have RMP's and New Jersey has not suffered any catastrophic accidents of the same magnitude as that of Bhopal, India, the Legislature has determined, at N.J.S.A. 13:1K-20, that the threat of a catastrophic release does exist in New Jersey and that the single most effective effort to be made toward prevention of such a release is the anticipation of the circumstances that could result in such occurrences and the taking of those precautionary and preemptive actions required; in other words, the implementation of effective RMP's. As the result of the investigation of the incidents cited in the Basis and Background Document, the Legislature and the Department identified the need to define more fully the elements of RMP's which, when implemented, would require more thorough analysis techniques and preventive measures by the owners or operators of facilities handling EHS's. Finally, the fact that the Act, at N.J.S.A. 13:1K-21i, in defining "risk management program" listed the eight elements which are included in the rules, indicates that the Legislature did not intend RMP's to be mere conceptual performance oriented guidelines.

COMMENT: One commenter provided a tabular summary of the 671 incidents used in the Department's background document for the TCPA rules which provided the following information for each EHS involved: the number of incidents involving that particular EHS and whether it was the result of fire or an air release; the type of source of the substance, that is, fixed/covered, fixed/probably not covered, or transportion source; and the number of incidents involving fatalities, injuries, hospitalization or evacuation. It then stated that the Department infers that this database supports the need for the proposed new rules, but that to do so is highly misleading. For example, the database includes over 70 pesticide incidents, 30 incidents involving PCB's, 57 fuel supply related incidents, and 65 incidents involving transportation accidents and 20 involving sanitary landfill fires—all of which are not covered by the TCPA. Also, much of the database includes incidents related to operations not covered by the proposed rules. Furthermore, only 119 of the 671 incidents involve an existing or proposed EHS. It would be useful to understand how the proposed rules would have affected those incidents.

RESPONSE: The Department recognizes that many of the incidents in the database did not involve an EHS. However, the database was merely analyzed for the types and causes of 671 incidents reported to the Department's Division of Environmental Quality which included incidents involving air quality, pesticides, radioactive compounds, and spills. The Legislature in enacting the TCPA clearly identified the need for a comprehensive public protection program and directed the Department to develop and establish rules regarding the prevention of toxic catastrophes. Thus, these incidents were not the basis for the rules, although many of them do support the need for the rules by pointing out equipment and operator failures or errors which resulted in releases that may have been prevented by an effective RMP. The findings and declarations of the Legislature as stated in the Act, at N.J.S.A. 13:1K-20, specifically refers to the "score of accidental releases into the atmosphere of the State . . .". Therefore, to refer to these incidents is not misleading.

The causes and types of incidents occurring at fixed facilities does give an indication as to where efforts should be made to prevent further recurrences of similar types of accidents. As noted in the Basis and Background Document in Section I, subsection A, analysis of incidents with known causes reveals that factors directly related to management initiatives predominate, such as preventive maintenance and operator training. In a high percentage of the incidents the cause or causes are unknown, and this may have been due to lack of stringent reporting and follow-up investigation requirements in effect at the time. Although the Department recognizes that the database is incomplete, the Department believes that it does demonstrate that some of the past incidents could have been avoided by better maintenance procedures, better operator training, and adherence to the procedures of a risk management program.

COMMENT: The Department should have evaluated the 671 incidents between 1980 and 1986 and the 124 incidents between 1986 and 1987 to determine: 1. How many incidents occurred at facilities to be covered by the proposed new rules as opposed to at exempt facilities? 2. How many would have been reasonably foreseeable under the proposed program, or would they have occurred anyway? 3. What was the severity and preventability of incidents that would not have been prevented by these rules? Is the Department justified in focusing its attention and resources on the types of incidents the proposed program would prevent?

RESPONSE: Whether a particular facility would have been covered by the rules or would have been exempt was not available to the Department during the preparation of the Basis and Background Document for the proposed rules, as the information concerning the total amounts of substances at a site where an incident occurred was not included in the incident database. Although the number of incidents that would have been foreseeable, and thus preventable, under the proposed rules is not available from the limited database concerning these incidents, it is generally accepted by industry that a risk management program can reduce the risk of a release of an EHS that may have the potential for a catastrophe. The database concerning the 795 incidents is not sufficient to permit the Department to calculate with any degree of reliability either the severity or preventability of these incidents. The rules focus on preventing those types of releases which would most likely result in acute health effects to persons exposed off-site, and thus are clearly in accordance with the intent of the Act.

COMMENT: The State should recognize that older facilities will probably not have current drawings and documentation regarding all equipment. Hence, the requirements of the proposed rules place a heavier burden on older facilities. Therefore, the compliance schedules should distinguish between old and new facilities.

RESPONSE: The Department recognizes that the requirements of the rules will impact differently on each facility, not only because of the age of the facility but also because of its size, function, and the type and number of EHS's it handles. Obviously, up-to-date drawings and documentation regarding EHS facilities and equipment are required if accurate and complete safety reviews and hazard analyses are to be performed. However, registrants with an EHS listed in Part I of Table I at N.J.A.C. 7:31-2.3 have until September 19, 1988 to update their drawings and documentation and to conduct the required safety reviews and hazard analyses. Those registrants with EHS's listed in Part II of Table I at N.J.A.C. 7:31-2.3 do not have to submit their summary risk management program statements until June 30, 1989, which was revised from the proposed submittal deadline of October 31, 1988, in order to allow an orderly phase-in of these facilities. The Department believes that these time periods provide ample time for all facilities to perform these tasks.

COMMENT: Several provisions of the proposed rules require submittals by the regulated community within a specified time period. A registrant is not only required to meet the deadlines, but also stands to suffer severe financial penalty in the event of delays. The Department should be required to adhere to specific timetables as well to avoid delays in reviewing RMP's and to avoid backlogs in the approval process. A section should be added to guarantee that within 90 days of any filing the Department will provide a response or, in the alternative, the Department should be required to reach a decision within 180 days that either accepts the registrant's submission or provides a description of short-comings.

RESPONSE: The Department has attempted to structure the program requirements to avoid delays in the operation of affected facilities. However, the Department cannot guarantee that all reviews will be completed

within 90 days or even 180 days, as a set time period for review may lead to an incomplete review of the submittal. The Department must conduct a proper review of all documents required to be submitted to it in order to ensure that the requirements of the rules are being met. If a review is not thorough, the intent and purpose of the TCPA will not be carried out and an otherwise preventable EHS release could occur. The Department will notify registrants of any required submissions which are incomplete or inadequate and will, of course, describe the deficiencies to permit registrants to satisfy the requirements of the TCPA program. Through a workload analysis which it performed, the Department has determined that the TCPA program is properly staffed to avoid delays. Therefore, no specific deadlines for Department response will be added to the rules.

COMMENT: A registrant who is trying to comply in good faith should be able to ask the Department for more time, that is, an extension of time to comply.

RESPONSE: The Department has established appropriate time schedules for the different stages of developing or implementing an acceptable RMP. The Department determined that these time schedules are reasonable and provide sufficient time for a registrant to comply with the various requirements of the program. Two time limits which the Department has extended are: 1. the submittal of summary risk management program statements for those facilities which have an EHS in N.J.A.C. 7:31-2.3 Table I, Part II has been changed from October 31, 1988, to no later than June 30, 1989, in order to provide a smooth phase-in of these facilities; and 2. the 30 day time limit for the registrant to execute a contract with a consultant chosen by the Department has been extended to 45 days to provide sufficient time to negotiate the terms of the contract.

COMMENT: Must the Department respond within the 90 day period specified in proposed N.J.A.C. 7:31-2.5(c), 2.10(a)2, and 2.10(a)3, or is it open-ended and subject to the Department's workload?

RESPONSE: The 90 day periods specified in N.J.A.C. 7:31-2.5(c), 2.10(a)2, and 2.10(a)3 apply only to those owners or operators who are constructing new EHS facilities and who have not previously been registered under the TCPA program. The requirements to register with the Department and submit a safety review, a hazard analysis and a risk assessment prior to the start of construction, and to submit a summary risk management program statement prior to placing the equipment into EHS service are necessary to ensure that risk reduction measures have been included in the design and operating procedures of a facility where the owner or operator was not previously involved in the TCPA program. The ability of the Department to review the submitted documents and approve construction and operation of the new EHS facility depends in large measure on the adequacy and completeness of the documents themselves. While the Department cannot guarantee that all reviews will be completed within 90 days, as a set time period for review may lead to an incomplete review of the submittal, the Department will endeavor to complete the review in a timely manner. The Department believes that if a review is not thorough, the intent and purpose of the TCPA will not be carried out and an EHS release may occur which would otherwise have been prevented. The Department intends to conduct thorough and timely reviews of these submittals and will notify the owner or operator of its approval or of any necessary revisions as quickly as possible.

COMMENT: The following comments concern the expected economic impact of the rules. Based on estimates from several of its member companies, one commenter estimated that the initial cost for the one time revision for each RMP would range from $250,000 to $500,000 per EHS facility, with an average cost per EHS facility of $375,000 and a total cost of $602,000,000 for the 1,606 EHS facilities in the State. The estimated annual cost of maintaining an RMP in compliance with the TCPA rules was $100,000 to $300,000 per EHS facility, with an average cost per EHS facility of $200,000 per year and a total cost of $321,000,000 per year for the 1,606 EHS facilities in the State. The figure of 1,606 facilities represents the commenter's estimate of the EHS facilities that would be involved with substances on the total expanded list of EHS's. Another commenter estimated the TCPA costs for a two million gallon per day wastewater treatment registrant at $18,700 initially and $11,200 annually.

The Department underestimated the economic impact of the proposed rules on both the Department and on the affected facilities. Due to the high specificity and detailed nature of the proposed rules, facilities would be required to reorganize most of the components of their RMP's. It is estimated that this would require a significant effort to complete and the economic burden is substantial. The Basis and Background Document discusses in general terms that the increased costs of doing business would be partially offset by some lower operating and maintenance costs. Projected costs of administration and compliance and any alternative systems were not developed. The Basis and Background Document does not provide cost/benefit data or include capital expenditures needed to bring industry into compliance with the rigid rules. The public will not realize any significant improvement in the reduction of catastrophic release potential commensurate with the costs to be incurred.

What will be the cost to big business? Does the Department's failure to make this estimate imply money is no object in the Department's eyes?

What alternatives were evaluated? What costing out of those alternative enforcement schemes was carried out?

The Department estimates of $5,000 to $250,000 annual compliance cost, in addition to $5,000 to $1,000,000 start-up costs for small businesses is outrageous. The Department underestimated the costs to small businesses by only considering capital investments; labor, maintenance, and administrative costs could double the estimate.

RESPONSE: The economic impact statement in the Summary to the proposed rules identified the TCPA activities which would contribute both to increased costs and to savings, not otherwise readily available, that would result from TCPA compliance. Section XI of the Basis and Background document on economic effects of TCPA explained in more detail the particular TCPA activities, in terms of TCPA compliance, that each major category of registrant would experience.

The Department has clarified the economic impact of the TCPA rules by including actual cost estimates. Definition of various categories of registrants to which different costs apply facilitates this examination.

The number of registrants covered by the original list of 11 EHS's and covered by the list of additional 93 EHS's and the number of their sites/systems and cost of TCPA compliance, respectively, are as follows:

Census	Original list	Increment Additional list	Total
Registrants	665	174	837
Sites/systems	803	174	977
Compliance costs, millions (e)			
One-time RMP/WP	$45	$14	$59
One-time capital	$40	$18.6	$58.6
Annual compliance	$20	$11.7	$31.7

In the foregoing tabulation, (e) refers to Department estimates and "onetime RMP/WP" refers to one-time RMP revisions and one-time work plan/EHSARA implementation. It should be noted that the census value of 803 sites/systems, meaning industrial sites and water/wastewater systems, corresponds to the census data presented by Table IV-2 on page 46 of the Basis and Background Document of 803 "facilities."

Costs to individual sites/systems depend on a range of factors. The Department has estimated the average cost per site/system corresponding to various categories of registrants. Costs included in the average are either on a site/system or EHS facility basis. The average costs are used to calculate the costs of the entire group.

Initial costs include initial RMP revision and site-filing costs and the installed cost of a weather station mandated directly in the rules, but exclude cost of equipment to reduce risk as may be required by a registrant risk reduction plan as these are included in capital cost defined below. In the Regulatory Flexibility Statement that accompanied the Summary statement with the proposed rules, the cost of the weather station had been considered as a capital cost rather than an initial cost.

The capital costs include the total installed costs of equipment and facilities to reduce risk as may be required by a risk reduction plan developed as a result of a hazard analysis or risk assessment by the registrant from the initial review of the Department.

The annual costs include annual TCPA fee, registrant's RMP administrative costs, and operating and maintenance costs of TCPA mandated equipment and of equipment installed as a result of subsequent risk reduction plans.

Implementation of an RMP for some sites/systems will mean increased costs on some items like more frequent safety reviews and hazard analyses and increased maintenance. On the other hand, other sites/systems may not experience these as increased costs because these activities are already part of implementing their RMP prior to the enactment of TCPA. However, all registrants would incur annual TCPA fees as these reflect the cost to the Department which will be ongoing.

The profile of sites/systems with the original 11 EHS's reflects their status through August 1987. It is expected that upon update or registration after the operative date of the rules, the profile will shift to fewer

sites/systems in total among those with EHS's on the original list and to more registrants with established RMP's, which will be reflected in a lower aggregate cost of TCPA compliance. The incremental number of sites/systems that results from the list of additional EHS's is obtained by comparing data from other Department registration files with TCPA registrations.

The range of factors affecting costs to individual sites/systems is evident by reviewing the costs of the industrial sites with those of the water/wastewater systems:

	$ Per site/system	
	Average	Range
One-time RMP/WP		
Industrial	$93,100	$30,400-$1,194,000
Water/wastewater	$38,600	$11,600-$54,300
Annual TCPA Compliance		
Industrial	$44,000	$21,700-$596,200
Water/wastewater	$16,100	$ 7,100 -$18,100

The average of $93,100 for one-time RMP/WP costs anticipated for industrial sites does not reflect the upper limit of $1,194,000 that is estimated for one site in the State. Excluding that site, an upper limit of $400,000 for a site is estimated to be more likely. The more than two-thirds of the industrial sites which handle either one or two EHS's are estimated to experience a cost less than the average of $93,100.

The average of $38,600 per water/wastewater system for one-time RMP/WP costs reflects the large proportion which will be engaged in the work plan route to an RMP. Systems subscribing to an available generic RMP are likely to experience a better than 50 percent saving compared to the costs originally anticipated for systems which would take the work plan route.

Similarly, with regard to annual compliance costs of industrial sites, more than two thirds of the sites which have either one or two EHS's are estimated to have annual cost less than the $44,000 average, and the upper limit estimate of $596,200 reflects the one largest site in the State. Excluding that site, an upper limit of $180,840 for a site is estimated to be more likely.

On capital costs, the $4,000 to $6,000 for a weather station included with the one-time RMP/WP costs is estimated to define the lower limit of capital cost mandated by TCPA. While no small business in the State is expected to spend more than $1 million for TCPA capital cost, TCPA capital expenses of a larger chemical manufacturer could reach several million dollars. However, such high levels of capital expense are not considered likely since chemical manufacturers with large establishments in the State probably have well developed RMP's and their facilities already reflect implementation of earlier risk reduction plans.

The cost data presented in the Regulatory Flexibility Statement that accompanied the Summary statement with the proposed rules gave ranges of TCPA costs to each small business: $5,000 to $1,000,000 as the range of initial capital cost; and $5,000 to $250,000 as the range of annual cost of compliance. These figures were apprised from U.S. Census data to define gross order of magnitude of costs. The figures were used to support the proposition that no exemption would be provided small businesses because the benefit that the proposed rules would provide to the environment justified its economic impact on small businesses.

However, cost effectiveness was important to frame specific requirements of the rule in meeting the Act's intent. For example, in dividing the requirements for "risk assessment for specific pieces of equipment" into hazard analysis and risk assessment, as presented in N.J.A.C. 7:31-3.9, probabilistic risk assessment methods were first considered. Implementation of such methods was found to be costly and the intent of the Act is met equally well by the rule's requirements on this element of a risk management program at much lower cost. As another example, possible exemptions are included in the rule (N.J.A.C. 7:31-2.19) for very small facilities in meeting the requirements of subchapter 3 of the TCPA rules as another way of reducing costs.

While the costs to be incurred in developing and implementing the TCPA program are significant, the Department believes that as a result of the implementation of effective RMP's at all EHS facilities in the State, the public will realize a significant reduction in the threat of potentially catastrophic EHS releases, the main goal of the Act.

COMMENT: The proposed rules contain onerous record keeping and reporting requirements and places an unreasonable burden upon business and local government. The Department should reassess the administrative costs associated with the paper burden imposed which would result in failure to meet the mandate of the law. The excruciating detail goes beyond the intent of the Act and results in rigid and duplicative regulation of facilities. This will create a tremendous amount of paperwork for those affected and the Department, and will violate the paperwork reduction act without benefit to industry or the public. The administrative modifications to the format of existing risk management plans will result in an unnecessary burden to sections of the regulated sector, and could even result in poorer compliance as a result of confusion between old and new RMP's. Prudent facility operators should be granted greater flexibility in the management of their activities. The minimum elements for a risk management program assume a complex chemical operation. With some of the reportable quantities being equivalent to perhaps one drum, much of the program elements are irrelevant or overkill. Rather than developing new rules or duplicating existing requirements, the Department should acknowledge such existing regulations and standards as: Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. 1101 et seq., the Federal Emergency Planning and Community Right-to-Know Act of 1986, (SARA Title III); the Chemical Manufacturers Association Community Awareness and Emergency Response programs; Occupational Safety and Health Administration (OSHA) regulations; American National Standard Institute (ANSI) practices; and National Fire Protection Association (NFPA) codes.

RESPONSE: The Department has streamlined the recordkeeping and reporting requirements of the TCPA program in order to eliminate unnecessary efforts on the part of facilities while ensuring that the Department has access to all the information necessary for a complete and proper review of covered facilities. Such measures include the completion of a checklist reporting system by the facility, a summary risk management program statement, which has now been revised to require less information to be submitted to the Department, and the requirement to submit to the Department only a catalog list of the documents held at the facility. The documents on the catalog list need not be supplied to the Department until requested, and except for those documents needed to support consent agreements, administrative consent orders, and administrative orders, the Department plans to inspect these documents outside of the facility only in special circumstances. The Department believes that the requirements of the rules are necessary to equitably determine which facilities have acceptable RMP's, and that set requirements must be established in order to equitably determine which facilities are being operated prudently. While the State of New Jersey does not have a paperwork reduction act and the Federal law, 44 U.S.C. 3501 et seq., does not apply to the states, the Department has attempted to minimize the paperwork burden for both the regulated community and itself by taking the measures noted above.

While the Department recognizes that some facilities may have effective RMP's in formats which differ from that specified by the rules, the Department has determined that the best means of ensuring compliance by all facilities is to require that all RMP's cover the eight elements of an RMP as set forth in the Act at N.J.S.A. 13:1K-21i. Although reorganization will be necessary on the part of some facilities, the result overall will be more effective risk management by all facilities. Any confusion resulting from the shift from an old to a new RMP should be short lived and minimal, as any effective RMP is constantly undergoing review and revision in order to be maintained current and effective. EHS facility operators, while required to satisfy the requirements of the rules, do retain significant flexibility in managing their facilities and their RMP's. An example of the requirements of the proposed rules being relaxed to grant registrants greater flexibility in managing their facilities is the revision to N.J.A.C. 7:31-3.10(a) which eliminated the requirement to establish an emergency response committee and instead leaves it up to the registrant's management to develop and implement the required emergency response program.

Regarding the reference to the reportable quantities of some EHS's being equivalent to one drum, the Department has determined that the registration quantities for each chemical on the expanded list does indeed have the potential for a catastrophe. The method for making this determination is discussed in Section VII, subsection D of the Basis and Background Document to the proposed rules. While each of the eight elements of an RMP must be addressed for a facility with the registration quantity of an EHS on board, even if no complex chemical operation is entailed, the development and implementation of an acceptable RMP at such a facility should be considerably less detailed and burdensome than at a facility with a larger quantity of an EHS and a complex process. The burden of compliance is obviously greater where the risks are greater.

The rules do recognize existing standards and the Department will inspect facilities to verify that the applicable standards are being used and met. A few examples of the standards incorporated into the rules are National Fire Protection Association, American National Standard Institute, and American Petroleum Institute standards. However, the intent of some of the regulations mentioned in the comment is not the same as that of the TCPA. For example, OSHA is concerned with on-site employee injuries, whereas the TCPA program is concerned with the potential for off-site injuries and deaths in the surrounding population. Both must be addressed, and the solution for one program may not be an adequate solution for the other program's goals. SARA Title III does not address many of the issues of the TCPA nor does it require facilities to have an effective risk management program, but it is a complementary program to the TCPA. Finally, the Community Awareness and Emergency Response program does not address all the aspects of an RMP, and it is not a mandatory program.

COMMENT: The Act restricts the use of the information supplied to the Department by an insurance carrier only to "its own employees or agents to assist in enforcing the provisions of this act, or for use in a civil or criminal proceeding, if so ordered by a court," and further mandates that the Department adopt by rule principles or guidelines and procedures to govern the internal management of the information supplied to it by insurers pursuant to the Act. These guidelines must be adopted to ensure that the information supplied is not subject to disclosure to the general public. The Act also requires the Department to have these provisions regarding confidential information in place prior to receiving confidential information from registrants. The potential for industrial espionage is enormous given the large amounts of information that would be requested by the State, and the Department gave strong assurances to industry that confidential information supplied to the Department by registrants would be treated as such. The proposed rules do not mention how the Department will guarantee confidentiality. New Jersey facilities will be at a competitive disadvantage with out-of-state facilities which do not have to divulge this information. Without adequate assurances of protection, registrants would have to choose between the cost of losing trade secrets and the cost of relocating to another state. The proposed rules should not be finalized until the regulated community can access the impact of the program on their operations as affected by the confidentiality provisions.

RESPONSE: The Department published its proposed rules concerning confidentiality and privileged trade secrets under the TCPA in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a). In that proposal, the Department also withdrew the insurance section initially proposed as part of these rules and proposed a new insurance section, N.J.A.C. 7:31-2.15. The newly proposed N.J.A.C. 7:31-2.15(e) specifically provides that the Department is authorized to disclose information obtained from an insurance carrier only to its own employees or agents to assist in enforcing the Act, or for use in civil or criminal proceedings, if so ordered by a court. The confidentiality and trade secret rules, N.J.A.C. 7:31-5, are designed to carry out the mandate of the Act by providing the principles, guidelines, and procedures governing the internal management of confidential information supplied by both registrants and insurers, and thus ensures that such information is not inadvertently disclosed to the public. As the confidentiality and trade secret rules provide for the protection of both confidential information and privileged trade secret and security information, New Jersey facilities will not be competitively disadvantaged as to out-of-state facilities and should not be forced to consider relocating to other states. Although the confidentiality and trade secret rules are not being adopted at the same time as the TCPA program rules, the Department anticipates that the confidentiality and trade secret provision will be adopted shortly, as the comment period closed on April 6, 1988. Also, the TCPA program rules do not become operative until 60 days after they are adopted, but the confidentiality and trade secret rules will be effective upon publication. Thus, there should be little, if any, gap between the two sets of rules. Finally, as the comment period for the confidentiality and trade secret provision was extended an extra 22 days, industry and the public had a sufficient amount of time to assess the effect of the rules and to comment on it. Comments concerning confidentiality and trade secrets will be responded to in the adoption notice for the confidentiality rules, N.J.A.C. 7:31-5.

COMMENT: The information generated by the proposed rules should be more accessible to the public. There are no provisions for public access to information such as risk assessments, process chemistry, inventory, standard operating procedures and site plans.

RESPONSE: Generally, all public information, as defined by the New Jersey Right to Know Act, N.J.S.A. 47:1A et seq., collected by or originated by the Department in connection with the Act or these rules will be available to the public. However, information such as risk assessments, process chemistry, standard operating procedures, and site plans may be claimed by the registrant as constituting confidential information, and therefore it may not be available to the general public. The TCPA confidentiality and trade secret rules, N.J.A.C. 7:31-5, which provide the details on how the Department will handle the confidential and trade secret information, were proposed on February 16, 1988, in the New Jersey Register at 20 N.J.R. 350(a). Proposed N.J.A.C. 7:31-5.5 sets forth the criteria for the Department's determination of what constitutes confidential and privileged trade secret information. The public may request a copy of any information in the Department's possession; however, information properly claimed as confidential will be treated as such by the Department, unless the Department determines it is not entitled to such treatment. Of course, an edited version, the public copy, of any confidential information provided to the Department will be available to the public upon request. Comments regarding confidentiality and trade secrets will be responded to in the adoption notice of the proposed confidentiality rules, N.J.A.C. 7:31-5.

COMMENT: Documents such as engineering diagrams, process chemistry, operating instructions, accident investigation reports, safety procedures and emergency response procedures should remain at the site. N.J.A.C. 7:31-2.6(e) should be reworded to allow for review of documents at the Department under unusual circumstances only. There should be strict rules governing confidentiality in this area because the public and the media may construe unlikely scenarios as probable occurrences. In addition, many accident scenarios addressed by a hazard analysis are highly unlikely.

RESPONSE: Engineering drawings, process chemistry, and operating instructions, etc., will generally be permitted to be maintained at the site, except for those documents needed to support consent agreements, administrative consent orders and administrative orders. Additionally, the Department is reserving the right to require that documents be submitted to it when it deems it necessary to review or maintain them at the Department's offices. Therefore, N.J.A.C. 7:31-2.6(e) has not been revised.

Registrants will, of course, have the opportunity to claim that information resulting from a hazard analysis is entitled to be treated as confidential information, and the Department believes that confidential and privileged trade secret information will be adequately protected by proposed N.J.A.C. 7:31-5. Comments addressing confidentiality and privileged trade secrets will be responsed to in the adoption notice for the proposed confidentiality rules, N.J.A.C. 7:31-5.

COMMENT: One commenter submitted a detailed proposal which listed those portions of the rules which required documentation to be provided to the Department and indicated for each such requirement whether it was appropriate for that documentation to be submitted to the Department, to be maintained on site for review by the Department or not to be maintained by the registrant at all. The majority of the information submitted pursuant to the proposed rules is certain to contain confidential business information. Is the State going to be in a position to provide hundreds of file drawers with locks for the monumental quantity of documents they are going to receive? In considering which documents are to be submitted and which documents are to be maintained on site available for review by the Department at any time, one must balance the State's desire for possession of confidential and proprietary information versus the potential severe economic liability to the registrant. The reports of safety reviews, hazard analyses, and risk assessments which are required to be submitted should instead be maintained at the site. Though it is not specifically requested to be submitted to the Department, all information required by proposed N.J.A.C. 7:31-3.3 through 3.10 regarding the risk management program should be maintained at the site.

Finally, concern was expressed that hazard analyses and risk assessments in particular are confidential and proprietary information, and that such sensitive information should not be deposited in the Department's files.

RESPONSE: The Department is retaining the right to have confidential information submitted to its office for review; however, except for those documents needed to support consent agreements, administrative consent orders and administrative orders, in most cases it is anticipated that the information will not be submitted to the Department but rather will be permitted to be retained on site for review during inspections.

It is not the intent of the Department to require burdensome amounts of paperwork to be submitted and stored at its offices. The Department has reviewed the documentation requirements of the proposed rules in view of this comment and has determined that, although the times of submission or availability may have changed, all the required documents are needed by the Department to effectively implement and carry out the Act and the TCPA program.

The Department is also aware of the sensitivity of the documents to be submitted and has proposed procedures to maintain confidentiality, including locked cabinets, secured computer data, and an authorized records custodian, in the proposed confidentiality rules, N.J.A.C. 7:31-5, which appeared in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a). Comments concerning confidentiality will be responded to in the adoption notice for proposed N.J.A.C. 7:31-5.

COMMENT: The Department should develop either a single Generic Risk Management Program or, in the alternative, models of an RMP for a simple and a complex process before promulgating these rules. It seems senseless for thousands of companies to develop thousands of RMP's when the Department could produce one or two that would be the models for most of the users of hazardous products. The money for such a generic RMP should come from the Department's budget. Further, RMP guidance and training should be provided by the Department to those registrants who require it.

RESPONSE: The Department does not believe it is either necessary or possible to create a model RMP that will fit all or even most facilities. Rather than developing a general model which may be suitable for only a few facilities, the Department has specified in N.J.A.C. 7:31-3 the elements of a risk management program that must be implemented at every affected site. In all cases, site-specific development of the risk management program must be performed by the registrant for the program to be effective. Furthermore, management's full support for the development and implementation of an effective risk management program is necessary to ensure the success of the TCPA program and the attainment of its overall goal of risk reduction. This necessary commitment to ongoing risk reduction is more likely to exist if management has played a major role in developing its own RMP.

In cases where similar operations and processes exist, such as in water and wastewater treatment facilities, when requested the Department has and will review and comment on generic risk management programs for groups of registrants. However, it is the responsibility of each registrant to develop its own risk management program for its particular site or facility from the generic RMP. The Department is planning to participate in several seminars providing instruction on compliance with the TCPA program. Notice of the times, dates and places of these seminars will be published by the sponsors, providing all registrants the opportunity to attend.

COMMENT: In view of the impact of the proposed rules on local government facilities, it should be rethought or streamlined until adequate funding or other funding sources are provided to local governments. Pushing the responsibility for implementing and funding the program on local government is unconscionable. Water purveyors and their customers should not be asked to pay for State-mandated services.

RESPONSE: The Legislature in enacting the TCPA required that the owner or operator of each facility in the State that handles, uses, manufactures, stores, or has the capability to generate one or more of the EHS's in at least the registration quantity must comply with the requirements of the Act, and authorized the Department to charge and collect fees from facility owners in accordance with a schedule which reflects the cost of reviewing individual facilities and enables the Department to administer the program on a self-supporting basis. As no exemption from compliance or fees was provided or authorized for local government facilities, they are included within the program and must comply with the Act and the rules.

COMMENT: In actual incidents, the local fire department and emergency response team are first to arrive and an enormous financial strain will result unless the Department is willing to reimburse local municipalities for investigative costs.

RESPONSE: The rules impose requirements on facilities that handle EHS's, not upon local agencies. The Department does not expect the workload for these local agencies to change as a result of these rules, as local fire departments and emergency response teams responded to these types of emergencies prior to the implementation of the TCPA program. Also, the Act does not provide authority for the Department to reimburse local municipalities for either their investigative or emergency response costs.

COMMENT: Clarification was requested on whether facilities which only transport or store an EHS in quantities above the registration quantity are subject to the proposed rules. One commenter urged the Department to consider including trucks and trains in the proposed rules, while another commenter stated that if they are subject to the rules, the distributor or transportation company that transports EHS's should only have to register, but should be relieved from developing an RMP. Also, nothing in the proposed rules takes distributors of chlorine cylinders into consideration, and such facilities would not be able to determine precisely the contents of or quantity in the shipping containers.

RESPONSE: The rules do not apply to situations where the EHS is only being transported by road, air, water or rail while under the jurisdiction of the Department of Transportation rules. Once on a site, the proposed rules will apply to the owner or operator of the site which handles, uses, or stores the EHS. Thus, a distributor or transportation company that only transports an EHS does not have to register or develop an RMP; however, if such a company engages in the storage of an EHS, however temporary, or in the loading and unloading of EHS's in amounts greater than the registration quantity at its facility, it will be subject to the RMP provisions of the rules as described above. The contents and quantity of a storage drum, container, or cylinder should be known through the use of a bill of lading, transport slip, hazardous waste manifest, or a similar type of tracking system. These tracking systems are designed to ensure that the operator of the facility will know what is being stored or handled on their premises.

COMMENT: Regarding the fee for the fiscal year ending June 30, 1988, without benefit of the proposed rules prior to the imposition of the fee, the commenters stated they were precluded from altering plant operations to remove the hazard and avoid the fee.

RESPONSE: N.J.A.C. 7:31-2.16(b) has been revised to provide that each registrant with an EHS listed in Part I of Table I of N.J.A.C. 7:31-2.3 is required to submit a fee within 60 days after the effective date of this chapter. In addition, the fee is now assessed on a calendar year, rather than a fiscal year, basis with the fee for calendar year 1988 being approximately 60 percent of the amount computed in accordance with N.J.A.C. 7:31-2.16. The basis for the annual fee was changed from a fiscal year to a calendar year basis and the fee for calendar year 1988 was prorated because of the unexpected delay in the adoption of the rules and to provide for equitable billing of both Part I and II EHS facilities.

N.J.A.C. 7:31-2.5(e) provides that a registrant shall submit an updated registration form within 30 days after a change which makes the EHS facility's registration form incorrect. The Department is not charging retroactive fees. Registrants of Part I EHS facilities have known since the rules were proposed that the fees are based on the EHS inventory, and have therefore had the opportunity to reduce their inventories and thus reduce or avoid completely the annual fee. The Department has mailed the revised registration form, which was published with the Department's confidentiality proposal in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a), to all Part I EHS registrants. If the revised registration form indicates a quantity of an EHS which is less than the registration quantity and was submitted prior to May 13, 1988, the registrant will not be obligated to pay the indicated fee or be subject to the rules.

N.J.A.C. 7:31-2.5(a) provides that facilities which have Part II EHS's shall register within 90 days after the effective date of the rules. However, if before this date the owner or operator has changed its operations in such a way that it no longer handles a Part II EHS in an amount greater than or equal to the registration quantity, it is neither required to register nor pay the fee. For those owners and operators of facilities required to register and pay a fee, the fee shall be calculated based on the inventory reported to section D of the registrant's registration form on file with the Department as of the previous December 1st. A new paragraph has been added to N.J.A.C. 7:31-2.16(g) to clarify this procedure.

COMMENT: The Department should establish an advisory council as a means for providing good technical counsel on sound engineering practices. The council, comprised of technical experts, would create a formal process for technical input, would expedite the program and would monitor program implementation.

RESPONSE: The Department agrees that technical input is necessary for determining sound engineering practices. The procedures in the rules provide the registrant ample opportunity both to seek technical input and to provide it to the Department. The Act itself contains no provisions regarding an advisory council responsible for the duties listed in this comment. Implementation of the program, as indicated by the Act, is the responsibility of the Department and the Department's staff has

sufficient expertise to effectively implement the TCPA program. The Department, of course, welcomes and will consider technical and other input which would improve the TCPA program.

GENERAL: WATER/WASTEWATER TREATMENT PLAN FACILITIES

COMMENT: The Act and proposed rules encourage an unsafe practice to be adopted by New Jersey municipal water and wastewater treatment facilities. These facilities could reduce their inventory to a 350 pound canister of chlorine in order to fall below the registration quantity. This would not increase the costs of using chlorine, but would probably increase the risk of injury to operators because of changing canisters more often and there would be more risk of motor vehicle accidents. Also, since the Act was passed a trend has developed in which those installations which were small users, perhaps having ten 150 pound cylinders on hand, are now ordering three 150 pound cylinders in order to avoid paying the TCPA fee. A distributor of chlorine can no longer afford the freight cost associated with smaller, more frequent deliveries and will be forced to renege on many municipal contracts. As a rule established from experience and past practice, local health departments have recommended to treatment facilities that they maintain a 30 day working inventory of disinfection chlorine on hand for immediate response to insure the availability of chlorine in case of any public health emergency or industry short-fall of supply. Therefore, it is recommended that disinfection chlorine be exempt from the 500 pound inventory.

RESPONSE: While the rules do not require an operator to reduce its EHS inventory to an amount below the registration quantity, the Department recognizes that the rules could encourage this practice. Of course, no prudent person would take an action which would increase overall risk. Although smaller size chlorine cylinders do increase the frequency of piping manipulations and cylinder handling, reducing the chlorine inventory on-site does decrease the potential for off-site consequences. Therefore, an overall reduced risk is expected. In the case of some small users, greater than necessary inventories may have been carried. Where local health departments recommend greater inventories than the registration quantity and the inventory is stored in small cylinders, an exemption from the requirements of N.J.A.C. 7:31-3 may be available under the non-contiguous equipment conditions specified in N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19). Any contractual difficulties arising between a distributor and its customers regarding delivery schedules is the responsibility of those parties. In as much as the Act, at N.J.S.A. 13:1K-22, specifies that chlorine in a quantity of 500 pounds or more is an EHS, the Department has no authority to exempt it from the requirements of the TCPA program.

COMMENT: As a result of the proposed rules, large users, who are usually better prepared in safety and emergency response areas than small users, will be penalized by the proposed fees, which are higher for large users.

RESPONSE: The Act authorizes the Department to charge and collect fees from registrants to administer the program on a self-sustaining basis. The proposed fee schedule is designed to generate sufficient funds to administer the TCPA program and is based on the estimated effort and expense for the Department to complete the required tasks. The Department reviewed several methods on which to base fees for a self-supporting program including one based on distribution of the cost of the program by imposing a flat fee on each registrant and one based directly on the quantity of an EHS associated with each registrant. From this review, the Department concluded that a combination fee based on both the number of registrants and the quantity of EHS at each site would distribute the cost of implementing the TCPA program most fairly. The base fee distributes the cost among registrants and reflects that some minimum number of hours of effort will be required to review every site for the tasks identified. The fee based on the EHS inventory distributes the cost of implementing the program according to the quantity of EHS on-site. Roughly, for a given EHS, the greater the EHS inventory at a site, the greater the magnitude of the hazard at the site. And, generally, the Department expects to devote more time and effort to those facilities which pose the greater potential risk. Therefore, the Department believes that the fee schedule is fair and equitable for all sizes and types of EHS facilities.

COMMENT: In reviewing the Basis and Background Document, one could conlcude that the reportable stored volume should be a "single point source" in the event of a release. Storage in individual cylinders does not seem to fit, since a highly unlikely event would have to occur to cause all cylinders to release simultaneously, particularly if the cylinders are not located in the same area.

RESPONSE: Although the determination of the registration quantity for each EHS on Part II of Table I of N.J.A.C. 7:31-2.3 is based on either a single point source or a single area source, whichever constitutes the most likely release event, the requirement for registration of a site's entire EHS inventory is based on the definitions of "EHS" and "site." An "EHS" is defined in part as ". . . any substance or chemical compound in sufficient quantities at a single site . . .", and "site" is defined as "the entire plot of contiguous land upon which the registrant operates or locates one or more facilities." The Act itself provides the definition of EHS. Therefore, the entire inventory quantity must be reported. However, it is recognized that unconnected cylinders constitute a lower risk. For this reason, N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19) provides an exemption from the requirements of N.J.A.C. 7:31-3 for non-contiguous EHS equipment under certain conditions.

COMMENT: Does the Act or the proposed rules require the containment or covering of an outdoor chlorine storage area?

RESPONSE: Neither the Act nor the proposed rules directly require physical changes in the design of a facility as mentioned in the comment. However, such measures may be required if they are identified as necessary risk reduction measures as the result of a hazard analysis or risk assessment, as described in N.J.A.C. 7:31-3.9.

COMMENT: The economic impact on water and wastewater treatment systems is grossly underestimated. It seems likely that the implementation of the rules for two general waterworks companies will be in the vicinity of $100,000. If internal costs of $25,000 and consulting fees of $100,000 assumed, the cost of water for one of these companies would increase by nearly $63,000 per year, assuming a five year amortization. The continued annual cost of compliance would increase the cost of water by an estimated $9,000 per year for a combined increase of $72,000. This increase would be necessary even for a company that already stores its chlorine in such a way that any release would be less than the registration quantity. It is necessary to weigh the proposition of rules which will not prevent all releases with the amount of protection actually provided by their implementation and their associated costs. Also, the staffing required to develop and implement an RMP and to comply with the other requirements for medium to large utilities is underestimated and needs to be re-evaluated.

RESPONSE: The Department estimates that the cost of TCPA compliance for smaller waterworks companies with the simplest chlorination facilities possible could result in one time and annual costs as low as the following:

One time RMP revision cost	$11,600
Annual compliance cost	$ 7,100

Thus, the two general waterworks companies referred to are expected to experience an initial one time cost of $23,200 including staffing, rather than $125,000, for internal and consulting costs if they either already have an acceptable RMP or participate in a chlorine user group subscribing to a generic RMP. Water/wasterwater registrants with no risk management program will, of course, experience higher costs on the average than those with an RMP because of the greater effort required on the part of the independent consultant.

The significance of the annual cost for the first five years when the initial one time cost is amortized over that time period will depend on the number of customers to whom the total cost would be distributed, assuming cost pass along. The increase in per customer annual cost is some $6.00 for the waterworks with 1,500 customers and some 35 cents for waterworks with 25,000 customers. These costs will be 25 percent lower after the amortization period.

COMMENT: Proposed N.J.A.C. 7:31-2.16(j) and (l) refer to a water treatment system and wastewater treatment system. The commenter's township has both. Will the fee be applied to each system?

RESPONSE: N.J.A.C. 7:31-2.16(j) and (l) require that each registrant of a water treatment system and a wastewater treatment system pay a base fee and an inventory derived fee. Therefore, a separate fee must be paid for each system, and this fee would cover all the sites included within each system. The Department has clarified N.J.A.C. 7:31-2.16(j) by adding the words "per system" after "$4,000."

COMMENT: If there are five separate water systems not physically connected, but all operated and supplied by the same company, would the base fee be $4,000 total or $4,000 for each system?

RESPONSE: In accordance with N.J.A.C. 7:31-2.16(j), a separate fee is required for each water treatment system and each wastewater treatment system. Therefore, a company which operates five separate systems would be required to pay five separate fees. The Department has clarified N.J.A.C. 7:31-2.16(j) by adding the words "per system" after "$4,000."

COMMENT: The base fee of $4,000 proposed in N.J.A.C. 7:31-2.16(j) is excessive for water and wastewater treatment systems. On what basis has the $4,000 annual fee for water and wastewater treatment systems been determined fair? Treatment facilities and suppliers will be assessed the same fee and the suppliers fee, most likely, will be passed on to the treatment plant through higher chlorine costs. In a number of cases, the fee will amount to more than the annual cost of chlorine. The fee is arbitrary, and its only basis is funding the Department's operation. The fee should be on a sliding scale; it is presently a burden for small systems which will be subsidizing the TCPA program for major chemical and manufacturing companies. The Department will spend much less time on facilities with only one EHS as opposed to major chemical and manufacturing facilities. There are situations where the proposed rule and fees are excessive considering the nature of the probable exposure to hazard and the quantities involved.

RESPONSE: The Act authorizes the Department to charge and collect fees from registrants to administer the program on a self-sustaining basis. The proposed fee schedule is developed to generate sufficient funds to administer the TCPA program and is based on the estimated effort and expenses for the Department to complete the required tasks. The Department reviewed methods on which to base fees for a self-supporting program including one based on distribution of the cost of the program across the number of registrants and one based on distribution of the cost across the quantity of EHS associated with each registrant. From this review, the Department concluded that a combination fee based on the number of registrants and the quantity of EHS at each site would distribute the cost of implementing the TCPA program most fairly and equitably. The base fee distributes the cost among registrants and reflects that some minimum number of hours of effort will be required to review every site for the tasks identified. The fee based on the EHS inventory distributes the cost of implementing the program according to the quantity of EHS on-site. Roughly, the greater the EHS inventory at a site, the greater the magnitude of the hazard at the site. Fees are discussed in Section VIII, subsection P of the Basis and Background Document. Based on the Department's estimates of the hours required to implement the program, conduct the RMP reviews, develop and execute work plans, review annual reports and conduct inspections, as indicated in Tables VIII-4, 5, 6, 7, and 8 in the Basis and Background Documents, the base fee of $4,000 for each water and wastewater treatment system is equitable and reasonably reflects the Department's effort required to review each individual system. A comparison of the Department's estimated effort for the chemical facilities versus water and wastewater treatment systems indicates that the overall workloads are comparable and in line with the anticipated fees contributed by each. The method of fee distribution will result in industrial, wastewater and potable water registrants respectively contributing approximately 42 percent, 33 percent and 25 percent of the fees collected. Although the base fee may exceed the annual cost of chlorine for some water and wastewater treatment systems, the method of determining the fees is considered reasonable and fair, and the base fee is not excessive in view of the effort required to review each site.

Finally, the Act specified that chlorine in a quantity of 500 pounds or more is an EHS and listed the right elements of an RMP which are included in the rules. If a water or wastewater treatment system handles, uses, or stores chlorine in an amount equal to or greater than the registration quantity, it must satisfy the requirements of the rules, unless it meets the conditions of one of the exemptions provided in N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19).

COMMENT: Is the inventory derived fee proposed in N.J.A.C. 7:31-2.16(l) based on the inventory present on the day one's check is signed or the average annual inventory? Also, if a facility's chlorine inventory decreases monthly due to use, will its decreasing inventory affect the registration quantity?

RESPONSE: The inventory derived fee in N.J.A.C. 7:31-2.16(l) is based on the site's anticipated maximum inventory at any given time during the year. This method of calculating the fee should encourage facilities to reduce their EHS inventories to the minimum necessary for efficient operation, and thus reduce the overall risk. The facility must register with the Department and will be subject to the requirements of the rules if at any one time the on-site inventory equals or is greater than the minimum registration quantity. Therefore, the fact that the inventory does not exceed the registration quantity at all times does not in any way relax the requirements of the rules.

COMMENTS: In the case of water and wastewater treatment facilities, even though more than the registration quantities are stored in one location, no event would result in the release of more than 300 pounds at any one time. The cylinders are typically used with a vacuum delivery system which reduces system leaks and has proven extremely reliable. The proposed rule should either exclude these facilities completely by providing an exemption or recognize and moderate the extent of the requirements for an RMP for those installations that are marginally above the minimum reportable quantity and neither manufacture nor process the EHS.

It is reasonable for these facilities to register, be subject to inspections and perhaps pay a $500 annual inspection fee, but implementation of the full program pursuant to N.J.A.C. 7:31-3 is not reasonable.

RESPONSE: The Department recognizes that chlorine cylinders at water and wastewater treatment systems may or may not be connected, and that where they are not connected, a release of the registration quantity is less likely.

However, the recommended registration and safety inspection option is not satisfactory because the Act requires each owner or operator of a site with the registration quantity of chlorine to have a risk management program. The rules do provide an exemption from the risk management program requirements for small EHS containers such as 150 pound cylinders of chlorine provided the non-contiguous EHS equipment conditions listed in N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19) are met. Therefore, systems with 150 pound cylinders of chlorine must register and pay the base fee if their entire inventory is equal to or greater than the registration quantity, but exempt equipment would not be subject to the risk management program requirements of N.J.A.C. 7:31-3. All registered facilities must pay a fee computed in accordance with N.J.A.C. 7:31-2.16(j) and (k) which is designed to reflect the costs of the Department's review of individual facilities while permitting the Department to operate the TCPA program on a self-supporting basis, as mandated by the Act. During program implementation, no provision exists for a reduced fee even if equipment meets one of the non-contiguous exemption conditions provided in N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19), as the Department must still review the registrant's summary risk management program statement, dispersion and consequence analysis, and/or annual report and conduct an annual inspection, etc.

COMMENT: The Department has not balanced the need to protect the environment against the economic impact of the rules; that is, it applies the rules appropriate for large manufacturers to small operations with only a minimum of EHS present.

RESPONSE: A major goal of the Legislature in enacting the TCPA was to ensure that any facility having at least the registration quantity of an EHS would have an effective RMP which addresses the eight elements included in the definition of "RMP." The Department was directed by the Act to expand the list of EHS's and to determine an appropriate registration quantity for each new EHS. All of the registration quantities listed have the potential to cause a catastrophe and, therefore, each facility handling them is required to have a risk management program, unless it is exempt under N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19). The Department does not believe that the TCPA program places an undue economic burden on small EHS facilities, as various parts of the RMP will not be as detailed or difficult to implement for those facilities which have only small quantities of an EHS or relatively simple processing procedures. The Department has indeed balanced the threat of potentially catastrophic circumstances posed by small EHS facilities against the economic impact of the rules on those businesses, and has determined that an exemption for such facilities, other than the one provided for non-contiguous equipment in N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19), is not appropriate.

COMMENT: A commenter stated that its wastewater treatment facility was designed under criteria established by the New Jersey Department of Environmental Protection. The construction was inspected by the Department. It is given a permit to operate the facility and is inspected annually by the Department to insure conformance with the requirements of the permit. There is no significant impact to be gained by requiring already regulated treatment facilities to be subject to this further administrative burden.

RESPONSE: Although the comment does not specify which rules it is referring to, it is apparently the Sewer System and Wastewater Treatment Plants rules and the New Jersey Pollution Discharge Elimination System rules, N.J.A.C. 7:9-1 and 14A-1, respectively, which primarily address the discharge of pollutants in surface and ground water. The TCPA rules address prevention of off-site toxic catastrophes. These are two entirely different areas with different goals, and the requirement

concerning the prevention of the discharge of pollutants into the State's surface and ground water clearly do not address the concerns of the Legislature in enacting the TCPA.

COMMENT: Clarification is requested on what constitutes a water system as used in N.J.A.C. 7:31-2.16, as compared to a site.

RESPONSE: The definition of a "site" is given in N.J.A.C. 7:31-1.5 as "the entire plot of contiguous land upon which the registrant operates or locates one or more facilities". The definition of water treatment system includes any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system. A comparison of N.J.A.C. 7:31-2.16(j), which requires that a registrant of a water treatment system shall pay a base fee of $4,000, with N.J.A.C. 7:31-2.16(k), which requires that all other registrants not included in (j) shall pay a base fee of $4.000 per site, indicates that a water treatment system may consist of more than one site. Therefore, the various facilities included in the definition of water treatment system do not have to be located on the same site to be covered by the same fee, as long as they are under the control of the operator of the system and are used primarily in connection with the system. Thus, it is possible for a water treatment system to have several facilities located at different sites and still be subject to only one annual fee for the entire system.

COMMENT: A commenter stated that its wastewater treatment facility has a safety program that includes chlorine handling procedures. Can its safety program be submitted as its risk management program for the purpose of complying with proposed N.J.A.C. 7:31-2 and 3?

RESPONSE: A risk management program as defined by the Act includes safety reviews, standard operating procedures, preventive maintenance, operator training, accident investigation, risk assessment for specific pieces of equipment or operating alternatives, emergency response and audit procedures. While a safety program can be submitted by a registrant as its risk management program, it must include all of the eight elements and they must meet the minimum requirements of N.J.A.C. 7:31-3 before being approved by the Department.

COMMENT: The registration quantity of chlorine as proposed in N.J.A.C. 7:31-2.3 should be raised to at least 2,000 pounds. If that is not possible, the facilities affected by the rules should be phased in so that those having a registration quantity between 2,000 and 5,000 pounds are first affected. Then at a later time, the limit could be reduced to 500 pounds.

RESPONSE: The registration quantity for chlorine was included in the Act, at N.J.S.A. 13:1K-22a, and is not subject to change by the rulemaking process. As the Department is adequately staffed to review and approve the RMP's of all Part I EHS facilities, it is not necessary to phase-in these facilities based on EHS quantities greater than that established as the minimum registration quantities for such EHS's in the Act.

SUBCHAPTER 1. GENERAL PROVISIONS

COMMENT: In the proposed N.J.A.C. 7:31-1.1.(b), the words "generate, store, or handle" should replace "handle, use, manufacture, store, or have the capability to generate" in order to be consistent with the wording in the Act.

RESPONSE: The activity descriptions "use, manufacture, store or have the capability to generate" are derived directly from the definition of extraordinarily hazardous substance found in the Act, at N.J.S.A. 13:K-21e. The activity description "handle" was added because it appears in other sections of the Act as an included activity description. The grouping of activity descriptions suggested by the comment, "generate, store or handle," also appears in the Act at N.J.S.A. 13:1K-22b and d, but was expanded upon to include all of the on-site activities involving EHSs that must be included in an effective program for the prevention of toxic catastrophes.

COMMENT: The proposed N.J.A.C. 7:31-1.2(a) should be expanded to include some degree of flexibility on a case-by-case basis by the Department for facility owners or operators to meet the variety of TCPA requirements.

RESPONSE: N.J.A.C. 7:31-1.2(a), which provides that the rules shall be liberally construed to permit the Department to discharge its statutory functions, does not permit the Department to apply the rules differently to different registrants on a case-by-case basis. Such flexibility would undermine the intent of the statute and subject the Department to charges of favoritism, bias, and unequal treatment. Therefore, no change has been made to this section.

However, some flexibility in meeting the requirements of the rules is provided by N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19) and N.J.A.C. 7:31-3.9, which provide exemptions from the RMP requirement and from the quantitative risk assessment requirement, respectively, when the stated conditions are met, or the potential release amount is below the specified quantity. Basically, these two provisions relax particular requirements of the rules where the level of risk is determined to be low.

COMMENT: A critical point in the proposed rules which is unclear, and likely to cause confusion, stems from the TCPA definitions, proposed in N.J.A.C. 7:31-1.5, and regards the requirement to report any EHS stored at a "single site". This "single site" concept should be clarified to read "single storage facility", since it is possible to store these EHS's in small containers and in numerous sites in the facility.

RESPONSE: A comparison of the definitions of "facility" and "site" found in N.J.A.C. 7:31-1.5 eliminates any confusion regarding the reporting requirements for an EHS stored at a single site. "Facility" means a building, equipment, and contiguous area; and "site" is defined as the entire plot of contiguous land upon which the registrant operates or locates one or more facilities. The registration quantity which triggers the requirements of the Act and these rules is site specific, rather than facility specific. Therefore, two or more facilities located on the same site, each with less than the registration quantity of an EHS, will nonetheless be subject to the requirements of the Act and the rules if the total quantity of the EHS on the site exceeds the specified registration quantity for that EHS.

COMMENT: Proposed N.J.A.C. 7:31-1.2 should be deleted.

RESPONSE: N.J.A.C. 7:31-1.2(a), which provides that the rules shall be liberally construed to permit the Department to discharge its statutory function, was included to indicate that the Department will interpret the rules liberally in order to achieve the broad goals of the Act, and will therefore not be deleted.

COMMENT: The definition of "abnormal condition" as proposed in N.J.A.C. 7:31-1.5 should include a concept of a range of operating criteria.

RESPONSE: The Department agrees that "normal" may be defined by a range of values rather than one fixed value for each parameter, and has amended the definition of "abnormal condition" accordingly.

COMMENT: In the proposed definition of "Commissioner" delete "or the person delegated to act on his behalf".

RESPONSE: A program as comprehensive as the TCPA program requires delegation of the Commissioner's decision making powers to other Department employees in order to implement the program effectively. As authorized by N.J.S.A. 13:1B-4, "Delegation of powers by the commissioner", the Commissioner may delegate to subordinate officers or employees in the Department such of his powers as may be desirable, to be exercised under his supervision and direction. Therefore, no change has been made.

COMMENT: The proposed definition of "consequence analysis" should be amended to identify which toxicological based criteria are to be used.

RESPONSE: The toxicological based criteria which the Department recommends be used in performing a consequence analysis is the Acute Toxicity Concentration (ATC). ATC is a means of measuring the toxicity of a substance and is one of the key criteria used by the Department in determining which substances were to be added to the EHS list. In defining the ATC of a substance, the Department reviews the following inhalation toxicity data: Immediately Dangerous to Life and Health (IDLH), Lowest Lethal Concentration (LC_{LO}), one tenth of the median Lethal Concentration ($LC_{50/10}$), Threshold Limit Value (TLV) and Short Term Exposure Limit (STEL). These inhalation toxicity data (and the Department's method of reviewing them to determine the ATC of a substance) are explained in Section VII, subsection C2 of the Basis and Background Document. Basically, the data from IDLH, LC_{LO} and $LC_{50/10}$ are reviewed to determine whether death or permanent disability actually occurred, and by what physiological mechanism. The lowest, confirmed, documented data is chosen as the ATC which is then compared to the TLV and STEL. The ATC must be greater than TLV or STEL, since these data represent concentrations at which no adverse health effects should occur. The ATC for each of the EHS's on the Department's expanded list is provided in Table VII-2 of the Basis and Background Document. The definition of "consequence analysis" has been clarified accordingly, and the definition of "Acute Toxicity Concentration" (ATC) has been included in N.J.A.C. 7:31-1.5.

COMMENT: The definition of "criteria for design and operation" as proposed in N.J.A.C. 7:31-1.5 should include a reference to United States or domestic codes. The New Jersey Chemical Industry does not have an

opportunity to comment on or provide input to foreign codes and standards, and therefore, should not be required to comply with such codes and standards.

RESPONSE: A consensus standard adopted as a criteria for design and operation by a New Jersey establishment would be one on which the registrant or industry would have had an opportunity to comment. The definition affords the registrant the opportunity to voluntarily adopt additional foreign technology and practices when the domestic codes need to be supplemented. Foreign codes and consensus standards may contain technology and practices not included in domestic codes which a registrant may use to supplement his own criteria for design and operation. Therefore, no change has been made.

COMMENT: The term "consensus" should be deleted from the proposed definition of criteria for design and operation because it is so vague that it creates more uncertainty than guidance. It is not clear what group or groups the consensus is to be among.

RESPONSE: The term "consensus" in this context refers to national organizations which publish standard engineering practices. The process of developing standards generally includes peer review and consideration of public comment to produce standards which reflect agreement among participants with diverse interests and expertise. Therefore, the proposed definition of "criteria for design and operation" has not been changed; however, for clarification purposes a definition of "consensus standard" has been added to N.J.A.C. 7:31-1.5.

COMMENT: The Department cannot require industry to meet the dispersion modeling requirements because no existing model will do all the items listed in the proposed definition of dispersion analysis. The Department should either recommend a model which will accomplish the listed items or else revise the rules to reflect what is attainable.

RESPONSE: The Department agrees that no single existing model will do all the items listed in the proposed definition of "dispersion analysis". However, the Department intends that the model used shall wherever possible take the items listed into account, so that the dispersion analysis will be of value in determining the consequence of the release and the likelihood of a particular consequence at some level of usefulness in order to determine the elements that shall be incorporated into a risk reduction plan. The Department believes that adequate models do exist which can meet the proposed dispersion analysis requirements if the factors included in the definition are taken into consideration by the model. The addition of "the release scenario" to the model requirements is intended to clarify that the actual parameters of a release are to be used in the model.

COMMENT: In the definition of "dispersion analysis", replace the phrase "models acceptable to the Department" with "appropriate model". The Department's rule on dispersion analysis does not address topographical, geographical, and geological properties and only partially addresses physical and chemical properties.

RESPONSE: The phrase "acceptable to the Department" will not be changed as the Department believes that it should determine whether a particular model can be used for a particular site; that is, whether that model will satisfy the definition of "dispersion analysis" in that particular instance. This will prevent risk assessments from being invalidated because the dispersion modeling was unacceptable to the Department.

In Section VII subsection D, of the Basis and Background Document to the proposed rules, the Department indicated that the model used to determine the registration quantity was the only type that could generally be used to determine the registration quantities. This model does not take into account such factors as topographical, geographical, and geological properties of a site. The Department neither intends nor expects this model to be used at all specific EHS sites. Therefore, in some cases when this model is used, it may be necessary to take factors such as topography, geography, or geology into account in order to accurately estimate the dispersion of an EHS.

COMMENT: The Department should leave the dispersion model vague because the behavior of chemicals is still hard to predict. Error monitoring and fence line monitoring together with modeling might be a better method.

RESPONSE: The Department believes that reasonable estimates can be made with the dispersion models currently available, and that other methods for predicting dispersion such as error monitoring or fence line monitoring should not be used for this purpose. However, error monitoring and fence line monitoring may be appropriate for use in other aspects of an RMP. The Department also does not intend to make the definition of "dispersion analysis" vague, as this would make it more difficult for the Department to determine if a particular dispersion analysis at a site was acceptable.

COMMENT: Please clarify what is meant by an "indirect release" as used in the proposed definition of "EHS accident". This term should be deleted from the definition.

RESPONSE: The Department has clarified the definition of "EHS accident" by changing the reference to "indirect release" to refer to an incident which results directly or indirectly in an EHS release. An example of an incident which could indirectly result in an EHS release is an explosion in an adjacent non-EHS facility.

COMMENT: An "EHS accident" is defined in proposed N.J.A.C. 7:31-1.5 as an incident that results in a direct or indirect EHS release. A great deal of information is lost if incidents that could potentially lead to an EHS release are not investigated (for example, runaway reactions that are contained). Perhaps "accident" should be redefined as an "incident" and all such occurrences investigated.

RESPONSE: The Department considered requiring the investigation of incidents which could result in an EHS release/near miss, but decided against such a requirement because of the difficulties of verifying compliance. Investigation of incidents which could have resulted in an EHS release/near miss can provide valuable information for a risk management program, and the Department strongly recommends that the hazard analysis team consider such incidents in its identification of conditions that may result in an EHS accident. However, the definition of "EHS accident" has not been changed as recommended by this comment.

COMMENT: The definition of "EHS equipment" appears twice in proposed N.J.A.C. 7:31-1.5 and should be deleted.

RESPONSE: The Office of Administrative Law inadvertently repeated the definition of "EHS equipment" when it should have printed the definition of "existing EHS equipment". The definition of "existing EHS equipment" is being added now as a clarification of the definition of "new EHS equipment". These definitions of "EHS equipment", "new EHS equipment", and "existing EHS equipment" are necessary in order to differentiate between the various categories of equipment covered by the rule and the differing requirements applicable to each category.

COMMENT: The proposed definition of "EHS equipment" should be limited to "principal equipment" as stated in the Act, or to that equipment which could cause an EHS release as stated in the statutory EHS definition or to "an actual piece of equipment that handles an EHS".

RESPONSE: The Act, at N.J.S.A. 13:1K-22b, does refer to "principal equipment" where a general description of the process is required on the registration form. In other portions of the Act, however, the term "equipment" is not so limited and other types of ancillary equipment must be identified and reported. Some examples in N.J.S.A. 13:1K-24 are: equipment and instruments involved in the handling and management of the EHS, equipment designed to forestall a discharge of an EHS, and equipment which might reduce the risk of a release of an EHS. All equipment that may contribute to the release of an EHS must be included in the RMP. The failure of the equipment such as instrumentation or controls, along with those types of principal equipment mentioned in the Act, may result in a release of an EHS, either due to the failure of one piece of equipment or because of the failure of combinations of pieces of equipment. Since the Legislature determined that these types of equipment should be included in the TCPA program, the Department drafted the definition of EHS equipment to include them, and no change has been made.

COMMENT: The term "significant likelihood" used in the definition of "extraordinary hazardous accident risk" is not explained or quantified.

RESPONSE: The phrase "significant likelihood" is taken directly from the definition of "extraordinary hazardous accident risk" as found in the Act, at N.J.S.A. 13:1K-21(a), and the Department intends that these terms have their common meanings when used together in a phrase; that is, a probability, or something likely to occur, which is important or deserving of consideration. Therefore, no change has been made to the definition.

COMMENT: The definition of "EHS facility" proposed in N.J.A.C. 7:31-1.5 is confusing. Does "EHS facility" mean a building, a process or individual pieces of equipment? The definition should be modified to refer to a building or a specific area of a building containing EHS equipment or a logically related area of contiguous EHS equipment. The entire contiguous site should not be considered the EHS facility. Further, this definition should not include a research and development laboratory in order to be consistent with the Act.

RESPONSE: The Department has reviewed the definition of "EHS facility" and determined that it is easily understandable and that no change is necessary. The definition of "facility", also in N.J.A.C. 7:31-1.5, meaning "a building, equipment, and contiguous area", further clarifies

the scope of the definition of "EHS facility". Also, the definition of "facility" specifies that a research and development laboratory is not included within the scope of that term, and thus it is likewise not included within the meaning of "EHS facility".

COMMENT: The definition for "EHS facility" and "EHS equipment" proposed in N.J.A.C. 7:31-1.5 are not clear in their application to petroleum refineries and terminals. This matter is further compounded by the lack of any exemption for de minimis concentrations of an EHS that may be present at the site above the minimum registration quantity, but in very low concentrations throughout many operating units and equipment. The affected EHS equipment should be limited to equipment that could cause an EHS release as defined in the Act, that is "which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability".

RESPONSE: Those facilities within a petroleum refinery or terminal that handle, use, manufacture, store or have the capability to generate in one hour the registration quantity of an EHS are EHS facilities and must register with the Department. The equipment within that facility where failure or improper operation would result in or contribute to an EHS accident is EHS equipment. EHS equipment will not be limited to only that equipment which could produce an EHS release, but extends to any equipment which could contribute to such a release. Any actions necessary to reduce risks at the facility in accordance with the RMP will, or course, be appropriate to the actual risk existing at the facility. Also, a registrant may request an exemption for certain non-contiguous EHS equipment from the RMP requirements of N.J.A.C. 7:31-3, if the equipment meets the conditions specified in N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19). Therefore, no change has been made.

COMMENT: The definition of "EHS release" as proposed in N.J.A.C. 7:31-1.5 should be changed to reflect the intent of the Act, which deals solely with the prevention of catastrophic events. The Act states that a risk management program should minimize "extraordinarily hazardous accident risks" and clearly defines these as meaning ". . . a potential for release of an extraordinarily hazardous substance into the environment which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability". Other environmental laws and regulations already address chemical releases in the amounts below the minimum reportable quantity. A provision should be added which exempts emissions/releases already regulated, permitted, licensed, registered, inspected, etc. by other agencies. The definition should only refer to discharges or emissions in a quantity equal to or greater than the registration quantity, and thus have potential for off-site impacts. Even under the proposed rules, facilities which generate, store or handle less than the registration quantity are not required to register or comply with the proposed rule or Act. The Act neither implies nor requires measures to deal with those releases less than the registration quantity. Registrants with multiple facilities should only be required to identify possible EHS releases equal to or greater than the registration quantity. This definition also affects the following proposed definitions: "abnormal conditions", "accident", "emergency condition", "EHS equipment", "external forces and events" and "human error".

The proposed rules seem to use "EHS release" interchangeably with "EHS accident", so the definition should be changed.

Also, the definition of "EHS release" is not compatible with N.J.A.C. 7:27-20.1 which defines a "reportable release", and the definition should be modified to include "with the potential to have an off-site impact".

REPONSE: The Department does not agree that the definition of "EHS release" should be revised to refer to only discharges or emissions in a quantity equal to or greater than the registration quantity. Also, the Department has determined that the definitions of "EHS release" and "EHS accident" are clearly distinct and that it is thus not necessary to change either of them. An "EHS release" is defined as any unpermitted discharge of an EHS into the environment, while an "EHS accident" is defined as a set of conditions or circumstances which lead to an EHS release.

The definition of "EHS release" excludes discharges or emissions occurring pursuant to and in compliance with any existing State permit or rule. In view of this exemption, and the fact that other existing environmental laws and regulations do not address the prevention of EHS releases, the Department does not feel that additional exemptions are necessary. The Act, at N.J.S.A. 13:1K-22 a and b, refers to a specific quantity of a particular EHS only in regard to registration. The Act does not relate any specific quantity or the registration quantity with an extraordinarily hazardous accident risk (EHAR). In fact, a release of an EHS quantity less than the registration quantity could in many instances satisfy the definition of EHAR as given in the Act. However, the Act does require measures on the part of owners or operators of EHS facilities to deal with the risk of an EHS release without stipulation of any quantity in the definition of RMP. The needs for an RMP to include the requirements of risk assessment mandates that any owner or operator shall determine whether the quantity of a particular release could cause an EHAR, that is ". . . produce a significant likelihood that persons exposed may suffer acute health effects . . ." To implement this requirement of the Act, the rules require that the registrant determine the quantity of each potential release as part of a hazard analysis.

In specifying any quantity, the rules apply a philosophy concerning prevention of catastrophic releases that has been applied by industry for many years to prevent accidents that result in injuries to employees. This philosophy, first presented by Heinrich, H.W., and summarized by F.P. Lees, "Loss Prevention in the Process Industries", states that for every serious accident that results in death or disability there are a number of less serious accidents. Further, there is a direct relationship between the two types of accidents. Heinrich found that for every 330 accidents, including those that result in no injury, there is one that results in death or disability. Thus, to prevent serious accidents, all accidents need to be controlled. Industrial safety programs typically include elements of safe operating procedures, equipment inspections, accident investigations, safety audits, emergency response, safety training and safety inspection. These are the same elements included in the proposed rules for a risk management program. For this reason, it would also be inappropriate to limit the definition of "EHS release" to only those releases with the potential to have an off-site impact.

Finally, the statement that the definition of "EHS release" is not compatible with N.J.A.C. 7:31-20.1, is inappropriate as the rules concerning reportable releases in accordance with the amendment to the Air Pollution Control Act, N.J.S.A. 26:2C-19e have not yet been formally proposed.

COMMENT: The definition of "EHS facility" should not include a research and development facility. Some pilot plant operations are conducted in a pilot plant and/or in manufacturing equipment. Research processes are supervised by highly competent, trained-technical personnel.

RESPONSE: The definition of "facility" in the rule is taken directly from the Act at N.J.S.A. 13:1K-21h. A research and development facility, pilot plant operations or manufacturing equipment at a manufacturing facility handling an EHS for research purposes which is in a "specially designated area used primarily for research, development and testing activity . . .", is a research laboratory, and consequently would not be regulated under these rules as a "facility".

COMMENT: Quantities listed in the proposed rules should serve as a base value for defining an EHS facility.

RESPONSE: The definition of "EHS facility" at N.J.A.C. 7:31-1.5 establishes the registration quantity as the base value for defining an EHS facility, and this determines whether the requirements of the TCPA program are applicable.

COMMENT: The proposed rules should include a definition for the term "site" which means the actual plant site that may contain a number of facilities.

RESPONSE: N.J.A.C. 7:31-1.5 already includes a definition of "site" which reflects the intent of the comment.

COMMENT: In the proposed definition of "emergency response team", the words "appointed by the emergency response program committee" should be deleted. The Department should not dictate who appoints the emergency response team; site management should.

RESPONSE: The Department agrees that the registrant should appoint the emergency response team and has amended the definition accordingly.

COMMENT: "Fact sheet" is described in exactly the same terms as "material safety data sheet" in the list of definitions. The definitions should specify how these two documents differ, what specific purposes they may serve, and how they are related. The "Extraordinarily Hazardous Substance Data Sheet", introduced in Appendix D, is a further complication. Please provide the fact sheet as an appendix to the rules for all EHS substances.

RESPONSE: "Material data safety sheets" (MSDS) or "fact sheets" are required as part of the Standard Operating Procedures, N.J.A.C. 7:31-3.5(c)12, and as part of the written Emergency Response Program, N.J.A.C. 7:31-3.10(b)3. The "MSDS" is prepared by chemical companies pursuant to OSHA's Federal Hazard Communication Standard (29 CFR

1910:1200), while the "fact sheet" is prepared by the New Jersey Department of Health, pursuant to the New Jersey Worker and Community Right-to-Know Law (N.J.S.A. 34:5A-1). Both of these documents describe, at a minimum, the chemical and physical properties and the physical and health hazards of a substance, as stated in their definitions, and either is acceptable in fulfilling the above rule requirements. Although differences exist in format between MSDS's and fact sheets, such differences are not essential to their definitions, therefore they will not be changed. As a matter of reference, format requirements are listed in 29 CFR 1910:1200(g) (MSDS) and in N.J.A.C. 8:59-4 (fact sheets). The "Extraordinarily Hazardous Substance Data Sheet", prepared by the Department for each substance included in Part II of the Table I of EHS's in N.J.A.C. 7:31-2.3, was introduced in Appendix D of the Basis and Background Document to summarize the toxicity and physical and chemical characteristics that make a substance extraordinarily hazardous. It is not part of the rules themselves, but it does provide background including a compilation of acutely toxic effects developed from a review of many sources and defines a lowest acute toxicity concentration and a substance hazard index, both Department compiled information which is unavailable elsewhere. Finally, the fact sheets will not be provided as an appendix to the rules, but may be readily obtained from the New Jersey Department of Health, CN368, Trenton, New Jersey, 08625, (609-984-2202).

COMMENT: The definition of "What If Checklist" proposed in N.J.A.C. 7:31-1.5 should not dictate the structure so tightly that it must be forced into a table. To require the structure to be put into table format is likely to shorten the answers, reduce technical content, and result in an inferior product.

RESPONSE: The standard format for reporting the results of the "What If Checklist" is generally in tabular form and, therefore, this reporting method was included in the definition. A tabular presentation is suggested by the "Guidelines for Hazard Evaluation Procedures" published by the American Institute of Chemical Engineers. The tabular form of reporting is compatible with the use of the "What If Checklist" and can be accomplished with clear, concise sentence structure, without the sacrifice of content or detail. When additional details are needed, footnotes are acceptable. Therefore, no change has been made in the definition as a result of this comment.

COMMENT: The proposed definition of "failure mode and effects analysis" or "FMEA" should be rewritten to emphasize the following: 1. An FMEA is driven by a study of the piping and instrument diagrams and not by a study of operation or maintenance procedures, etc. It is important, however, that personnel developing the FMEA be familiar with the other documents referenced. 2. An FMEA cannot effectively be used to determine the overall probability of an EHS release. While the frequency of component failures can be assigned, an FMEA cannot effectively be used to quantitatively evaluate the complex interactions of process interlocks, operator actions, etc. Other methods such as fault tree analysis must be used for this purpose. 3. Responsibility and timing for recommended actions should be included in the report.

RESPONSE: In accordance with the comment, the definition of "FMEA" has been amended to reflect that the failure and the effects of failure in an FMEA are determined in a study of the updated piping and instrument diagrams that describe the facility. Regarding the capability of an FMEA, the Department also agrees with the comment and has amended the definition of "FMEA" to remove any indication that FMEA can be used to determine the overall probability of EHS release. With respect to responsibility and timing of recommended acts, N.J.A.C. 7:31-3.9(c) already covers the requirements for the implementation of the risk reduction program for specific pieces of EHS equipment or operating alternatives that would result from an FMEA. Therefore, responsibility and timing for recommended actions has not been included in the definition of "FMEA".

COMMENT: The definitions of "failure mode and effects analysis" and "fault tree analysis" as proposed in N.J.A.C. 7:31-1.5 must identify what basis is to be used by the Department in assigning probabilities of the failure of components. If the quantitative FMEA is to be used to compare one facility with another facility, as opposed to one component at a facility with another component at the same facility, it is imperative that the basis for assigning probabilities of failure be standardized throughout the industry. The Department could address this problem with the issuance of a guidance document as opposed to an amendment to the definitions.

RESPONSE: Risk assessment, in quantifying the probability—consequence values of a particular risk, helps the analyst to prioritize risks as candidates for remedial measures. In addition, it also helps the hazard analyst to quantify the benefits of a proposed means of mitigation or to decide on its adoption, or the selection of alternatives. The Department does not plan to issue such a guideline document at this time, nor has it amended the definitions of either "FMEA" or "fault tree analysis" to reflect standard failure rate. The Department will use quantitative risk analysis to compare risk reduction measures within a facility as these assessments will be performed with consistent failure rate data. The Department does not initially intend to conduct facility comparisons using quantitative risk assessments until an adequate failure rate data base has been established. Data for assigning probabilities of failure of components is increasingly being published. The Institution of Electrical and Electronic Engineers (IEEE) Standard 500-1984, available from ANSI, New York, has such data which is applicable to EHS equipment although its principal focus is on nuclear power stations. The U.S. Environmental Protection Agency Prevention Manual, Volume I (Prevention and Protection Technologies for Controlling Accidental Release of Air Toxics) (EPA/600/8-87/039a) presents typical failure rates gleaned from a number of sources on instruments, piping, vessels and pumps. Reliability Technology, by Green and Bourne, is another source of generic failure rate data. It is recognized that some frequency data may have to be used with a degree of caution when failure history is lacking. As facility specific evidence increases, the uncertainties in the corresponding failure frequency data will decrease.

COMMENT: The proposed definition of FMEA should be consistent with other hazard analyses techniques. The requirements of the study team that apply to the HAZOP and the What If Checklist should also apply to the team that performs an FMEA. This point is not addressed in the text.

RESPONSE: A failure mode and effects analysis is performed by analysts with background in the technique. In this respect, it is similar to the fault tree analysis which also is performed by analysts with a background in the technique, rather than by the multi-disciplinary team approach which is used in the What If Checklist and hazard and operability study. Therefore, no change has been made.

COMMENT: The description of methodologies used in risk assessment (FMEA, FTA, HAZAN, HAZOP) should differentiate between qualitative and quantitative means and define generally the uses of each and their relationship.

RESPONSE: The definitions of "FMEA" and "FTA" have been amended to differentiate between qualitative or quantitative means. No specific methodology has been required in the quantitative risk assessment. The use of each methodology is included in the definitions. The comment refers to FMEA, FTA, HAZAN, and HAZOP as methods of risk assessment presented by the proposed rules. On the contrary, FMEA, FTA and HAZOP are defined in the rules as methods of "hazard analysis", not risk assessment and HAZAN is not mentioned in the rules at all. The selection by a registrant of a particular method of hazard analysis, such as FMEA, qualitative FTA, HAZOP or What If Checklist, which are included in the rules, depends on factors which are specific to registrants and the situations to which the method is to be applied. System complexity and background of registrant staff or available consultants are among the factors that would lead to a selection. Further, a quantitative FTA (as distinct from a qualitative FTA) is a possible method included in a risk assessment when the approximate likelihood of the occurrence of release must be determined. The definitions which describe the methodologies of "FMEA", "FTA", "HAZOP" and "What If Checklist" have been clarified to give generally the uses of each and their relationship.

COMMENT: An illustrative example of an FMEA and a HAZOP should be made available as Department guidance in addition to being defined in N.J.A.C. 7:31-1.5.

RESPONSE: As there are numerous examples of these techniques published in the literature covering this subject, the Department will not provide its own examples. For instance, FMEA and HAZOP are both explained in "Guidelines for Hazard Evaluation Procedures" published by the Center for Chemical Process Safety of the American Institute of Chemical Engineers.

COMMENT: The proposed definition of "fault tree analysis" should be rewritten to separate more distinctively qualitative and quantitative fault tree analysis. Also, stronger emphasis should be provided on the focus of a fault tree on a "preselected top event". A fault tree cannot

be used to study a process; its focus is solely on the top event. Also, additional emphasis to follow-up on recommended changes should be added.

RESPONSE: The definition of "fault tree analysis" has been revised in response to this comment in order to separate more distinctly qualitative and quantitative fault tree analysis. Also, the revised definition highlights the main focus of fault tree analysis in TCPA, which is the identification of circumstances that could result in an EHS release, i.e., the "top event". The definition of "fault tree analysis" is to identify options and is not concerned with the implementation of remedial actions. Implementation of recommended remedial actions is covered in the program discussion at N.J.A.C. 7:31-3.9.

COMMENT: In reference to the proposed definition of "fault tree analysis", a fault tree analysis is the analysis of a fault tree. It is the fault tree that is the logic diagram.

RESPONSE: The Department agrees fault tree analysis is the analysis of the logic diagram, and the definition has been amended accordingly.

COMMENT: It is important to stress in the proposed definition of "fault tree analysis" that fault trees be analyzed using cut sets/prime implicants.

RESPONSE: The Department agrees that the definition of fault tree analysis in N.J.A.C. 7:31-1.5 should refer to cut sets and has amended the definition accordingly. However, it is not necessary for the definition of fault tree to include the concept of prime implicants because the concept of minimum cut sets is adequate for the level of fault tree complexity found in systems handling process fluids. In practice, available software to analyze fault trees exclusively use the concept of minimal cut sets. Prime implicants are used instead of minimal cut sets to express unique failure modes of noncoherent fault trees which include more complex logic gates than simple "and" or "or" gates.

COMMENT: The definition of "hazard analysis" as proposed in N.J.A.C. 7:31-1.5 should be amended to allow the use of techniques other than the four listed. As an example, there are adoptions of some of the four techniques for a specific process or industry that have been developed. The definition should be modified to include "other nationally recognized techniques" or "any of several systematic, multi-disciplinary, and documented team reviews of updated process chemistry . . .".

RESPONSE: The definition of "hazard analysis" is a "systematic identification of the potential conditions that may result in an EHS accident using singly or in combination a Hazard and Operability Study (HAZOP), Failure Mode and Effect Analysis (FMEA), qualitative Fault Tree Analysis (FTA), or "What If Checklist". These techniques have been established as the standard, accepted methods in the work of the Center for Process Safety, the oil companies study group for Conservation of Clean Air and Water, Europe (CONCAWE), the World Bank and Knowlton. Other common terms synonymous with hazard analysis include hazard survey and hazard identification. The Department believes it is necessary to specifically identify the techniques of hazard analysis as this is an integral part of the determination whether a facility has an established RMP. In addition to the fact that the above four techniques are well documented and established, the Department believes that it is necessary to limit the hazard analysis to these four techniques in order to standardize the review and approval of RMP's. The Department recognizes that hazard analysis is a rapidly expanding field and is currently studying other techniques and criteria which will be considered for possible inclusion in the future.

COMMENT: The definition of "HAZOP" proposed in N.J.A.C. 7:31-1.5 should be rewritten to emphasize the following points: (1) a HAZOP is driven by a study of piping and instrument diagrams or plant models and not by a study of operating and maintenance procedures. (2) Responsibility and timing for follow-up to recommended actions should be included in the report. In addition, the proposed definition of "HAZOP" should be amended to refer to any of several systematic, multi-disciplinary and documented team reviews. Without this, the definition is too restrictive.

RESPONSE: The Department agrees with the first part of the comment and has amended the definition of "HAZOP" to emphasize the study of the updated piping and instrument diagrams that describe the facility. With respect to the second part of the comment, responsibility for and timing of recommended actions is provided for in N.J.A.C. 7:31-3.9(c) and (k) and need not be included in the definition. The definition of "HAZOP" as amended is the standard definition of that type of study.

COMMENT: In determining the number of "hazard units", as that item is defined in N.J.A.C. 7:31-1.5, present at a site, if an inventory of EHS is so separated, stored, or secured so as to realistically prevent its being combined into a quantity of EHS equal to the minimum reportable quantity, why should it be used?

RESPONSE: The definition of "hazard unit", at N.J.A.C. 7:31-1.5, has been deleted as the Department has determined that its meaning is readily apparent from its use in N.J.A.C. 7:31-2.16(l). In determining the number of hazard units at a site, the entire inventory is included just as the entire inventory is used to determine if registration is required. These requirements are based on the definition of an "EHS" in the Act itself and on the definition of "site" at N.J.A.C. 7:31-1.5. The inventory of an EHS in equipment that has been determined by the Department to be exempt from the requirements of an RMP in accordance with N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19) is still included in the calculation of the number of hazard units at the site, as this equipment will still require an inspection and review by the Department to determine the accuracy of the dispersion and consequence analysis.

COMMENT: The organization of the definition of "hazard unit" proposed in N.J.A.C. 7:31-1.5 is confusing. It should be reworded as follows: "Hazard unit means the minimum reportable quantity of an EHS as listed in Table I of N.J.A.C. 7:31-2.3. The minimum reportable quantity can be satisfied either by the quantity of an EHS held in inventory at a site or the quantity of EHS capable of being generated in one hour."

RESPONSE: The Department has determined that the definition for "hazard unit" is unnecessary and has deleted it.

COMMENT: The definition of "material deficiency" as proposed in N.J.A.C. 7:31-1.5 should be revised to delete the reference to state of the art. The Act does not intend to require existing facilities to upgrade to state of the art technology.

RESPONSE: The Department agrees that the reference to state of the art risk reduction measures does not need to be included in the definition of "material deficiency" and has amended the definition accordingly. However, the concept of state of the art has now been included in N.J.A.C. 7:31-3.9(c)2v and (g), to determine the appropriate risk reduction measures to be used in developing the risk reduction plan. The Department believes that the purpose and intent of the Act is not to only endorse the current status of those practices that are in use at a facility, but to require that practices be upgraded where necessary for the reduction of risk.

COMMENT: The definition of "modification" as proposed in N.J.A.C. 7:31-1.5 should be revised to reflect only significant changes such as those that increase the EHS inventory, impact on the RMP or result in a significant increase in the probability or magnitude of a release. Minor changes, including process changes within plus or minus five percent to ten percent from filed procedures, should be allowed. The Department should given some examples of modifications. Also, the reference to "procedures" in the definition of "modification" should be deleted as procedures are reviewed regularly per RMP standards.

RESPONSE: The definition of "modification" will not be amended to exclude minor changes. However, N.J.A.C. 7:31-2.11 does distinguish between those modifications for which a registrant may proceed without submitting the normally required reports of safety review, hazard analysis, and, where required, risk assessment, and those for which such submittals are required. This distinction is based upon the magnitude of the increased potential for a release which the registrant will determine when it performs the hazard analysis on the modification. The Department believes that the definition of "modification" is clear and that no examples are necessary. Although EHS procedures are reviewed in accordance with RMP requirements, the Department will not delete "procedures" from the definition of "modification". A change in procedures can increase the potential of a release, and modifications which are not properly reviewed and evaluated before being implemented have been identified as a common cause of errors, mishaps and accidents. Therefore, no changes have been made in the definition.

COMMENT: The definition of "process chemistry", proposed in N.J.A.C. 7:31-1.5, should refer to all relevant chemical reactions. The proposed definition allows an infinite number of possibilities, many of which have no effect on safety, health, or the environment.

RESPONSE: The Department agrees with this comment and the definition of "process chemistry" has been amended to include only those chemical reactions which are relevant to possible scenarios of an EHS release.

COMMENT: In the definition of "process flow diagram", proposed in N.J.A.C. 7:31-1.5, delete the phrases "basic control loops or major control scheme" and "operating cycles and batch sizes". Basic control loops are found on P&I diagrams. Operating cycles and batch sizes are found in operating instructions. Or, in the alternative delete the entire phrase "material balance, raw materials, . . . operating cycles and batch sizes where applicable". The Department should stipulate the information required, not the format. Also, the process flow diagram is meant to be a series of drawings and specifications, not just one drawing.

RESPONSE: The Department disagrees with the recommendation that the indicated phrases should be deleted. A process flow diagram is an important background source of information for analysts performing a hazard analysis, along with a P&I diagram. The simplified basic control loops or major control schemes shown on the process flow diagram aids comprehension of the P&I diagram, as do the material balances, raw materials, operating cycles, and batch sizes information. However, the definition of "process flow diagram" has been modified by the Department as a result of this comment to permit referencing of documents which give details important to the hazard analysis, such as material balance flows, raw material products, intermediate treatment chemicals, operating conditions of temperature, pressure and stream characteristics, operating cycles, and batch sizes where applicable. All of the information is still required, but it may now be provided by properly cross-referencing other documents. Because the amended definition does provide for cross-referencing to other documents, no specific format is required and the process flow diagram can consist of more than one drawing.

COMMENT: The definition of "piping and instrument diagrams" (P&ID's) as proposed in N.J.A.C. 7:31-1.5 should include only essential information. As described in the definition, the diagrams would become useless, detailed, cluttered drawings. The definition should allow more flexibility to have the information on more than one diagram, or in a series of drawings and specifications, some of which are interchangeable with non-EHS processes. Also, the Department should stipulate the information required, not the format. To require all such documents to cross reference one another is unnecessarily burdensome. It is more important that all pertinent data is available and retrievable. Finally, reference data in any accompanying specifications, operation and maintenance manuals, and vendor drawings should not have to be included on the P&ID's.

RESPONSE: The P&ID should depict the mechanical details of the facility to a degree sufficient so that analysts at one location will be able to perform a hazard analysis of the facility as built without waste of time and delay in gathering the pertinent data. The definition describes the drawings which have been prepared by engineering contractors for at least the past three decades for reference purposes for engineering, purchasing, and erection activities which require great detail in one series of drawings. Also, for the past fifteen years hazard analyses have been based on these same documents because they provide the required details. Using P&ID's without sufficient detail often results in several times the effort and cost being expended to perform a safety review and hazard analysis as compared to the effort and cost of including the details on the drawing initially. However, the definition has been clarified to encompass one or more detailed drawings, to allow references to other drawings and to include only such detail as is critical to the design. It has also been clarified to allow a standard of depicting instrumentation other than the Instrument Society of America standard, and has been simplified to eliminate much of the piping data. As the amended definition permits the referencing of other documents, the Department believes that a P&ID will be orderly, uncluttered, useable and highly useful.

COMMENT: The definition of "Piping and Instrument Diagram" (P&ID) proposed in N.J.A.C. 7:31-1.5 is unnecessarily rigid in requiring that the drawings are represented to Instrument Society of America (ISA) standards. Although most contractor's methods generally follow ISA, precise conformance of every item on every drawing to ISA does not exist and is unnecessary for the drawings to be fully understandable by a qualified engineer. The cost of redrawing every one of the many P&ID's to absolute conformance with ISA would be significant, at no benefit to the public. This requirement should be deleted entirely, or alternatively the phrase "or other equivalent standard" should be added to the definition after "ISA Standards".

RESPONSE: The definition of "piping and instrument diagram" has been amended to indicate that a diagram showing symbols and identification of every instrument including instrument function either in accordance with ISA standards or a standard adequate for the conduct of a safety review or hazard analysis with an appropriate symbol legend shown is acceptable. The ISA standard is retained in the definition because it is comprehensive and understandable to a large percentage of engineers. This is especially important for a safety review or a hazard analysis of a facility with complex controls and safety interlocks.

COMMENT: The definitions of "Piping and instrument diagram", "Process flow diagram", and "Standard Operating Procedure" should be consolidated into a new definition of "Process Data" to be readily available.

RESPONSE: The three definitions have not been consolidated into a new definition, because each of these items is well established and familiar to designers and operators of facilities using, generating or storing hazardous substances and is in use world-wide. "Piping and instrument diagram" as defined in the rule is intended primarily to facilitate safety reviews and hazard analyses. The definition of "process flow diagram" is intended primarily to facilitate understanding of the piping and instrument diagram. The definition of "standard operating procedures" renders that document suitable for both reference purposes and for training on specific activities involving EHS's and EHS equipment and for conducting timely safety reviews and hazard analyses.

COMMENT: Commenters recommend that a definition of "Minimum Registration Quantity" be added to N.J.A.C. 7:31-1.5 specifying the quantity listed in the Part I and II lists of Table I which triggers facility registration. Wherever "reportable quantity" is referred to in the rule, it should be changed to "registration quantity" so as not to conflict with statutes and regulations such as Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9601 et seq., and Resource Conservation and Recovery Act, (RCRA), 42 U.S.C. 6901 et seq.

RESPONSE: The Department agrees with this comment and a definition of "Registration Quantity" has been included in N.J.A.C. 7:31-1.5. Wherever "minimum reportable quantity" is referred to in the rule, it has been changed to "registration quantity" so as not to conflict with statutes and regulations such as SARA and RCRA. Such a change also serves to distinguish the registration quantity from the quantity to be reported in the event of a release.

COMMENT: The definition of "Responsible manager" should be reworded to reflect the minimum of a plant manager or equivalent.

RESPONSE: While the plant manager or his or her equivalent will often be identified as the responsible manager, there may be cases where other personnel are assigned responsibility for management of the risk management program. So long as the registrant's designee possesses sufficient authority and the necessary technical background to effectively carry out the RMP, the Department does not desire to interfere with the registrant's management organization.

COMMENT: The proposed definition of "risk assessment" is overly restrictive as it includes only quantitative analysis, whereas it should actually embrace both qualitative and quantitative methodologies.

RESPONSE: While the definition of "risk assessment" embraces only quantitative methodologies and has not been changed, the Department has clarified the definition of "fault tree analysis" to make the differentiation suggested, as the comment is appropriate to that term. FMEA, HAZOP, what if/checklist, and FTA are to be used to identify hazards, and the scenarios that cause the EHS release. In addition, N.J.A.C. 7:31-3.9 requires that reports of hazard analysis include estimates of the quantity of a potential release and a ranking of potential EHS releases in order of quantity.

Finally, the definition of "FTA" has been clarified to distinguish the qualitative FTA which is applied to hazard analysis and the quantitative FTA which is applied to quantitative risk assessment.

COMMENT: The term "state of the art" should be replaced with one of the following: sound engineering practices, best available control technology, best practical control technology, or accepted engineering practices. In the alternative, the definition should refer to proven, demonstrated technology that will result in acceptable risk, or state of the art should be redefined as technology and operating procedures which protect public safety to the greatest extent possible. Also, does the Department have any specific examples for what constitutes reasonable cost as used in the proposed definition?

RESPONSE: The Department has clarified the definition of "state of the art" to mean up-to-date technology that would achieve a reduction of risk at the facility of the registrant. Criteria for design and operation represents the technology and practices required by the registrant for use in its facilities as a result of either a governmental mandated standard, a code, adopted portions of consensus standards, or internally developed standards that reflect state of the art.

Sound engineering practice or accepted engineering practice are not adequate terms to replace state of the art, because they refer principally to design requirements and do not consider operating and maintenance procedures. The requirement as to the degree to which the technology must have been demonstrated should remain for the registrant to ascertain. The Department requires only that the state of the art search be comprehensive and that the registrant be able to produce evidence that the technology represents an advancement in the reduction of risk that has been satisfactorily demonstrated. Finally, in regard to what constitutes reasonable costs the definition has been augmented with a reasonable cost criteria which requires that cost be commensurate with the reduction of risk achieved.

COMMENT: The proposed definition of "state of the art" is so vague that it does not give the regulated community sufficient opportunity to know what the appropriate standard actually is. In the absence of a definite standard, the Department would not have sufficient guidelines to allow even-handed enforcement. The use of the proposed definition goes well beyond the intent of the Act, thus rendering such requirements illegal. There is no manual or master list of "state of the art" technologies from which one can select the ideal "state of the art" applicable to a specific situation. An administrative agency is forbidden, under the guise of interpretation, to extend a statute in order to give the statute any greater effect than its language allows. The Department has no authority to interpret a statute in the most expansive manner possible. The Constitution requires regulations to provide more specificity in their standards than is included in the proposal. Also, due process requires statutory and regulatory requirements to be clearly defined, so as to give a person of ordinary intelligence, in light of ordinary experience, the opportunity to know just what is prohibited, so that the person may act accordingly. An unclear rule places both regulated parties and law enforcement officials in an untenable position in that regulated parties have no notice of how they should conform their conduct in order to be within the confines of the law, and parties entrusted with enforcement of such rules are not provided with guidelines sufficient to prevent arbitrary and erratic enforcement. The language of the rule is so vague and ambiguous that persons of common intelligence must necessarily guess at its meaning and differ as to its application. Such a regulation, because it virtually invites arbitrary and discriminatory enforcement, is unconstitutional.

RESPONSE: Although an administrative agency is prohibited from promulgating rules which exceed the scope and intent of the underlying statute, the Department believes that its use of the term "state of the art" in the rule is well within the fair contemplation of the Toxic Catastrophe Prevention Act and the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. The Department was delegated broad authority over the regulation of the handling, use, storage, manufacture and generation of extraordinarily hazardous substances. The proposed rule does not exceed the scope of that delegation and is entirely consistent with the underlying goal of the legislature to prevent the accidental release of extraordinarily hazardous substances into the environment of the State. The Department believes that the purpose and intent of the Act is not to only endorse the current status of those practices that are in use, but that it is also to create a climate in which the latest proven technology in risk reduction will be effectively employed. The term "state of the art" as defined in the rule is not so vague or ambiguous that it would lead to arbitrary and discriminatory enforcement actions by the Department. "State of the art" as defined by the rule provides clear guidelines to both the regulated community and to the Department. Although the term "state of the art" is a fairly broad, general standard, considering the nature and purpose of the Act and the need for flexibility to achieve risk reduction measures, the standard is adequate to provide clear notice of what is required on the part of the regulated community and to prevent arbitrary or erratic enforcement by the Department.

COMMENT: Change the definition of "State of the art" by changing the term "may" to "must"; i.e. "the technology must have been demonstrated . . ." and "the technology must be in the public domain . . .". "May" expands the definition too far.

RESPONSE: The definition of "state of the art" has been changed, including the substitution of the term "shall" for "may," which limits the definition in the manner suggested by this comment.

COMMENT: The Department should substitute "criteria for design and operation" for "state of the art."

RESPONSE: "State of the art" and "criteria for design and operation" are separate and distinct concepts. State of the art represents the latest proven technology which a registrant may or may not include in its criteria for design and operation. Criteria for design and operation represents technology that a registrant adopts so that its employees consistently apply the documented designs and practices to its particular EHS facility.

While criteria for design and operation normally include at least a consensus standard, they may also include requirements that the registrant originates on its own initiative, some of which may reflect state of the art. Many practices which were state of the art in years past have now been incorporated into consensus standards as their value has become generally recognized. Therefore, the recommended substitution has not been made.

COMMENT: The referernce to "technology used in pilot operations" should be deleted from the definition of "state of the art" because it is still in the development stage and does not constitute state of the art for commercial applications.

RESPONSE: The reference to pilot operation has been retained in the definition of "state of the art" to provide a registrant with a basis for establishing that a particular process or piece of equipment has been demonstrated to be reliable in reducing risks on a scale large enough to be translated into commercial operation. Otherwise, only those procedures or equipment items which have been demonstrated in commercial operation would be available to registrants seeking to reduce the risks at their facilities, and as a result advancements in the state of the art of risk reduction would be slowed down considerably.

COMMENT: The Department should add a definition of "site specific risk assessment quantity" to N.J.A.C. 7:31-1.5 for use in determining the need to perform risk assessment in addition to having an approved RMP. Other than the presence of sufficient toxic material, the two most significant variables affecting a potential catastrophe are separation of potential receptors and the exposed population density. It is not unreasonable to use average values in the calculation of a registration quantity. However, it is important to recognize the actual values of these other two variables in making a decision on the application of risk assessment. The site specific risk assessment quantity should be based on the minimum registration quantity for each particular site and should consider the actual separation of potential public receptors from the source, the actual exposed population density, and a potential exposure of five times the Acute Toxicity Concentration (ATC), which if released within one hour is predicted to result in multiple fatalities beyond the property line of the site.

RESPONSE: While the recommendation to add a definition of "site specific risk assessment quantity" to the rule to determine the need to perform a risk assessment has not been adopted, the Department agrees that it is important in risk assessment to recognize the actual value of population density, and believes that the actual value of the fence line distance, rather than the separation distance from potential receptors should be used. While there may well be no persons permanently exposed at the fence line, the Department prefers to use this factor which in many cases will provide an additional margin of safety to the equation. However, the Department believes that a site specific risk assessment quantity based on five times the ATC is not acceptable, as this concentration level would significantly increase the threat of death for exposed people in an off-site population beyond the level of acceptable risk established by the rule. If a risk assessment is required after the potential release has been identified by a hazard analysis, the Department suggests that a first step should be a dispersion/consequence analysis. Further, the Department recognizes that the effort to perform a risk assessment when added to the cost of the risk reduction should correspond to the benefit of the reduction in risk that would be obtained.

COMMENT: The rule should contain a clear definition of "toxic catastrophe" since it is difficult to implement rules to prevent the occurrence of an undefined, non-quantified event.

RESPONSE: Including a definition of "toxic catastrophe" in the rule as suggested by the commenter is not necessary. The Act defines the term "Extraordinarily Hazardous Accident Risk" as a potential for a release of an extraordinarily hazardous substance into the environment which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability. The Act also defines "Risk Management Program", in part, as the sum total of programs for the purpose of minimizing extraordinarily hazardous accident risks. These two definitions provide the Department with a clear goal and a sound basis for the implementation of the rule.

COMMENT: The definition of "site plan" includes unnecessary and restrictive requirements.

RESPONSE: The definition of "site plan" includes all the information which is typically shown on a site plan diagram and is intended to provide

a comprehensive document that is useful for emergency response planning.

COMMENT: The proposed definition of "water treatment system" should include any treatment system, public or private, regardless of the size or number of connections.

RESPONSE: The definition of "water treatment system" was drafted to be consistent with the definition in other Departmental rules, in particular N.J.A.C. 7:10-1.3, and does include publicly and privately owned water treatment systems. Also, because of the minimum registration quantity of 500 pounds for chlorine, some small water treatment systems will not be subject to the rule in any case.

SUBCHAPTER 2 GENERAL REQUIREMENTS, PROHIBITIONS AND PROCEDURES

COMMENT: Part II of the proposed N.J.A.C. 7:31-2.3 Table I should be deleted. The Act gave the Department the authority to amend, by rule, the extraordinarily hazardous substance list to accommodate new chemical compounds that may be developed or to reflect new information or scientific data that may become available to the Department. The Part II list does not reflect any novel or new compounds that did not exist at the time the statute was enacted. The Department should seek additional legislation to add the 109 proposed EHS's to the existing program.

RESPONSE: The Act, at N.J.S.A. 13:1K-22c, specifically required the Department, in consultation with the Department of Health, to develop and adopt an EHS list. The Act also gives the Department the additional power to amend, by regulation, the EHS list when new chemical compounds are developed or new information becomes available to the Department. Part II of the list conforms with the mandate of the Act, and no additional legislation is required.

COMMENT: Before any new substances are considered for addition to the list, criteria for adding and deleting substances should be proposed for comment. The proposed rule contains no rationale for adding N.J.A.C. 7:31-2.3 Table I, Part II.

RESPONSE: The Act, at N.J.S.A. 13:1K-22c, required the Department, in consultation with the Department of Health, to develop and adopt as a rule an extraordinarily hazardous substance list and provided that the list must correlate the substances and compounds with the quantities required to produce the potentially catastrophic circumstances. The Act further provided the Department with the power to amend the EHS list to accommodate new chemical compounds or reflect new information or scientific data available to the Department. It did not require the Department to promulgate as a rule its rationale for the expanded list. The rationale for the expanded list of gaseous and volatile compounds, however was provided in the Basis and Background document to the rule at Section VII, subsections B, C, and D. When new substances are added to or deleted from the EHS list in the future, the Department will provide the rationale for the changes in an accompanying basis and background document.

COMMENT: The Act requires that the list of EHS's shall correlate the substances or compounds with the quantities thereof required to produce potentially catastrophic circumstances. A mere listing does not comply with the Act.

RESPONSE: At N.J.A.C. 7:31-2.3, Table I Part II not only provides the name and CAS number for each Extraordinarily Hazardous Substance listed but also provides the minimum registration quantity in pounds for each EHS. The minimum registration quantity for each EHS represents the quantity required to produce the potentially catastrophic circumstances referred to in the Act at N.J.S.A. 13:1K-22c. The method used to determine these quantities is discussed in Section VII, subsection D of the Basis and Background document.

COMMENT: The Department should concentrate on the implementation of the first list of 11 chemicals before embarking on a nine-fold expansion of the list, as this is inviting failure to effectively carry out the law's intent. Immediate implementation of the list proposed in N.J.A.C. 7:31-2.3 Table I, Part II will either dilute the resources available or will require additional resources adding costs without commensurate benefit; and will also cause confusion which will result in inferior RMP's. The list expansion could be implemented in a phased approach when the program is fully established and running smoothly; i.e. either when all facilities have received approval of their RMP for their Part I list, or two years after the date their summary RMP statement was submitted for the Part I list. In addition, the phase-in of an EHS on Part II of the list could be based on multiples of the registration quantity which would provide for an orderly start-up by both registrants and the Department.

RESPONSE: The Department agrees that the EHS's in Part I of Table I in N.J.A.C. 7:31-2.3 should be implemented prior to the EHS's on the Part II list. Therefore, the summary risk management program statements for those facilities which have at least the registration quantity of an EHS on the Part II list are now required under N.J.A.C. 7:31-2.6(c) to be submitted by June 30, 1989, rather than by October 31, 1988, as originally proposed.

This will allow the TCPA program to be more effectively implemented with the staffing and resources available to the Department. The Department believes that it is not necessary to further phase in the facilities affected by the list expansion on the basis of multiples of the registration quantities.

COMMENT: The Department has underestimated the number of facilities that will be affected by the proposed expansion of the list. An underestimation of the TCPA program could have substantial impacts on affected sites. The Department should provide the actual basis for its estimates and state its plans for processing information in a timely fashion.

RESPONSE: Estimates of the number of facilities affected by the Part II EHS list were derived from the Air Pollution Enforcement Data System (APEDS) and the Right to Know files and is considered to be sufficiently accurate for planning purposes.

In order to facilitate the processing of submittals and minimize impact on both affected sites and the Department the deadline for the Part II summary risk management program statements as specified in N.J.A.C. 7:31-2.6(c) has been extended to June 30, 1989.

COMMENT: The substance hazard index used by the Department to include additional substances in the proposed N.J.A.C. 7:31-2.3 Table I, Part II is flawed because of the unrealistically low vapor pressure cap of 760 torrs used. A more realistic vapor pressure will acknowledge the effect of the driving force for release.

RESPONSE: The substance hazard index (SHI) which was used as a screening tool for chemicals with detectable vapor pressures is simply a ratio of concentrations; i.e. the ratio of the maximum possible concentration at the point of release to the acute toxic concentration. One million parts per million is the only physically possible upper limit of the numerator, and the use of any vapor pressure higher than 760 torrs would exceed this maximum concentration.

This is discussed in Section VII, subsection C3 of the Basis and Background document to the rule. More information on this topic can be found in the sources referenced there. Using the ratio of the vapor pressure (if below 760 torrs) to the atmospheric pressure gives an indication of the maximum concentration possible at the liquid-gas interface. Therefore, using higher vapor pressures would not give an accurate estimate of the maximum concentration possible at the surface of the liquid. SHI is used to rank the inherent hazard potential of volatile substances without site-specific or dispersion considerations.

The use of vapor pressures greater than 760 torrs for liquified gases would change the meaning of the substance hazard index and would introduce needless complications. The direction of the driving force would then have to be considered to assess the catastrophic potential. Higher pressures also may have a tendency to disperse the substance more and unrealistically reduce the catastrophic potential. Finally, certain substances have critical temperatures less than 20°C and cannot exist as liquids at any pressure at 20°C; that is, they have infinite vapor pressure at 20°C.

COMMENT: The New Jersey Office of Management and Budget should do a management study similar to that conducted on the Department's proposed underground storage tank program before the Department expands its program to see if the program mandated by the Act can be run smoothly.

RESPONSE: The Department has held discussions with the Office of Management and Budget to determine the staffing requirements to implement the TCPA program. However, the Department does not feel that a management study similar to that conducted for the underground storage tank rules is necessary for this program. The Department has performed a detailed workload analysis and has determined that the staffing and other resources available to the Department will allow the TCPA program to be smoothly implemented.

COMMENT: The Department's process of considering only volatility and acute toxicity factors fails to show that if a substance is released that it would produce a catastrophic event, and that exposed persons would suffer acute health effects.

RESPONSE: The Department did not consider only volatility and toxicity in the determination of the registration quantities. It also took into consideration release scenario, meteorological conditions, population

density and distance from release to human population (outside the plant boundary) to show that upon a release of the registration quantity one death is likely to occur. This procedure is discussed in Section VII, subsection D, Determination of the Reportable Quantity, in the Basis and Background Document to the rules.

COMMENT: The method used for determining the SHI, specifically with regard to the application of toxicity data, substance volatility and release concentration, is not appropriate. While the proposed use of toxicity data in the SHI is based on the lowest published value of three acute toxicity measures (Immediately Dangerous to Life and Health (IDLH), Lowest Lethal Concentration (LC_{LO}), and one tenth of the median Lethal Concentration ($LC_{50}/10$) for any mammalian species, the lowest human value related to acute inhalation toxicity where available, should be used, as it is generally recognized as the best predictor of actual effects on human populations. Thus, the lowest value of IDLH, LC_{LO}, or $LC_{50}/10$ as related to acute human inhalation should be used as the denominator of the SHI.

While the proposed rules define one million parts per million (ppm) as the release concentration for materials with a vapor pressure greater than atmospheric at 20°C and one million parts per million (ppm) times the ratio of substance vapor pressure to atmospheric pressure as the release concentration for materials with a vapor pressure less than atmospheric at 20°C, release concentrations for potential EHS's should be based on state of the art dispersion modeling which takes into account the critical factors known to affect the release concentration for that chemical. These factors include vapor pressure, diffusivity, vapor density, molecular weight, specific gravity, specific heat and heat of vaporization. Under the proposed definition of release concentration for materials with vapor pressures greater than atmospheric at 20°C all release concentrations would be the same for all substances. Likewise, the proposed rules consider only saturated vapor in air concentrations for materials with vapor pressures less than atmospheric at 20°C. Variability among chemical release concentrations should be accounted for in the SHI calculations. Release concentration (numerator of SHI) should be defined as the maximum instantaneous concentration in ppm at 300 feet downwind, predicted by a state of the art dispersion model for the release, and instantaneous vaporization of 100 pounds of material under specific meteorological conditions. Therefore, the SHI for establishing additional EHS's should be the ratio of the release concentration to the acute human inhalation toxicity value, where available.

Any substance having an SHI greater than or equal to 500 by the above method should be considered an EHS. Thus, two substances on the Part I list of EHS's, allyl chloride and hydrogen sulfide, should be removed from the list and all newly proposed substances which do not have an SHI greater than or equal to 500 should not be included in Part II. Of 11 proposed substances studied, none had an SHI that met this test.

As an additional alternative, the following definition of SHI is more technically and scientifically correct than the Department's definition of SHI:

$$\text{SHI} = \frac{\dfrac{\text{Vapor Pressure (20°C)}}{\text{Total Atmospheric Pressure}} \times 10^6}{\text{Acute Toxicity Concentration - ppm}}$$

The commenter provided a tabular listing that provided a comparison of the proposed SHI and the Department's calculation. Using the SHI listing, a logical cutoff for the Part II listing is an SHI of 13,385, which corresponds to the lowest SHI for the Part I EHS's excluding toluene-2,4-diisocyanate. Only 59 of the 95 proposed Part II EHS's would qualify using this definition of SHI.

RESPONSE: Regarding the suggestion that for acute inhalation toxicity the lowest human data should be used, the Department has serious reservations about using LC_{LO} human data. Generally, LC_{LO} human datum comes from accident reports developed from autopsy (this level is the amount present in the air when death occurred) and does not represent scientifically valid LC_{LO} information. There is no LC_{LO} for humans (by definition). IDLH values include both human and animal results (where both are available). The lowest figure for inhalation is the most conservative figure; i.e. the level that has the potential to cause death in the most sensitive.

Regarding the comment about the incorrect use of vapor pressure and concentrations, calculating the SHI is an extension of the Vapor Hazard Ratio (Section VII, subsection C3 of the Basis and Background document) to substances that are gases at 20°C. The intent was to retain the meaning as the ratio of maximum release concentration to toxic concentration, and not to add additional factors to develop an all-inclusive substance hazard index. The rigorous development of catastrophic quantity used as part of hazard analysis and risk assessment takes into account all the factors mentioned in the comment, and insures that appropriate concentrations are considered at pertinent distances from the release.

A specific constant release quantity for all substances and a specific downwind distance to determine concentration ratios are arbitrary values, and ignore the actual values that may occur in a release scenario. Modeling is more appropriately used in determining quantities, after an EHS has been selected, rather than in the EHS selection process itself.

Selection of new substances which are volatile as well as toxic must be based on the definition of an EHS as given in the Act: i.e. an EHS is any substance which in the proper quantity and scenario can result in acute health effects, namely death or permanent disability. To meet this basic definition, the SHI criterion will be reduced to identity substances, and other criteria based on such factors as reactivity, solubility, and aerosol formations will then be developed to determine the minimum registration quantity of the EHS.

To use either of the suggested SHI definitions and cutoffs would result in several chemicals being deleted not only from N.J.A.C. 7:31-2.3, Table I, Part II, but also from Part I. The Part I EHS list and registration quantities were included in the Act and cannot be deleted by the administrative rulemaking process. All the substances on the expanded EHS list have been shown by the Department to have the potential to cause a catastrophe. The method for their inclusion on the list has been determined to be sound and, therefore, has not been changed.

COMMENT: Another commenter recommended that any substance with an SHI greater than 100, as calculated by the first method suggested in the above comment, be considered for addition to the EHS list and that the list be implemented in two phases as follows: (1) 23 substances with SHI's greater than 500. (2) 16 substances with SHI's greater than 100.

RESPONSE: The criteria suggested by the commenter is unacceptable since several substances would be excluded from the list expansion that do have the potential to cause a catastrophe. The list expansion will not be implemented in two phases, as the Department has determined that its staffing and other resources are sufficient to effectively implement the TCPA program in accordance with the rule as adopted.

COMMENT: The acute toxicity concentration (ATC) levels for the eleven Part I EHS's range between 1 and 100 ppm and average 23.8 ppm. The ATC levels for the additional chemicals added to the list, however, range between 0.1 to 571 ppm and average 67.7 ppm. This is another example where the EHS listing has been expanded beyond the intent of the legislation which originally listed 11 EHS's. The rules could establish a scientific panel to consider and recommend additions to the list.

RESPONSE: The legislation requires the Department to add to the list substances (or compounds) that have the potential to cause a catastrophic event, either death or permanent disability. Scenarios for such catastrophic events have been developed for all chemicals added to the list. The Department did have input from an outside scientific committee during the development of the expanded list, N.J.A.C. 7:31-2.3, Table I, Part II.

The method used to select the substances for the expanded list is described in Section VII, subsections A through D of the Basis and Background Document to the rules. Although the average ATC values of the expanded list are slightly higher than those for the original list, these values still indicate that the substances are highly toxic. The Department firmly believes that each substance added to the expanded list meets the intent of the Act, and that each chemical's registration quantity has the potential for a catastrophe.

The Department has the necessary expertise to develop future additions to the list and a scientific panel is not required to assist in this process. However, the Department will consider recommendations and data submitted to it for future additions to the list.

COMMENT: Based on comparisons of Immediately Dangerous to Life and Health values (IDLH) established by the National Institute for Occupational Safety and Health (NIOSH) and SHI's based on human toxicity information and state of the art dispersion modeling, the additional EHS's proposed in the regulations do not pose the same magnitude of acute hazard potential to the community as those substances listed in Part I. The average IDLH established by NIOSH for eleven of the proposed new EHS's is 22 times greater than the average IDLH for the Part I EHS's, and the average SHI for eight on the proposed new EHS's was 18 times greater than the average SHI for 5 of the Part I EHS's. These differences substantiate the conclusion that many of the proposed EHS's do not approach the level of acute hazard manifested by the Part I EHS's.

RESPONSE: IDLH values were not the only values that were used by the Department to determine the acute toxicity concentration in the development of the Part II EHS list. Other values used included Lowest Lethal Concentration (LC_{LO}) and one tenth of the median lethal concentration ($LC_{50}/10$). The Department has shown through dispersion modeling, as discussed in Section VII, subsection D of the Basis and Background Document to the rule, that a release of the registration quantity of each EHS does have the potential for a catastrophe. In addition, the Part II EHS's, not only approach but actually equal the level of acute hazard manifested by the Part I EHS's, based upon the Department's method of SHI calculation.

COMMENT: The extraordinarily hazardous substance list proposed in N.J.A.C. 7:31-2.3 Table I, Part II should be more comprehensive. The Department's expanded list fails to include many substances which satisfy the general criteria. This commenter provided a listing of 27 chemicals for the Department to review for possible inclusion on the list. Also, the Department should attempt to define the additional categories of reactive, explosive, elevated temperatures and elevated pressure as discussed in the Summary of the proposed rules and establish criteria for EHS's which do not fall into the atmospheric dispersion category but which have the potential for chronic health threats. Finally, the Department should develop a priority scheme for adding chemicals to the EHS List founded on solid risk assessment.

RESPONSE: The 27 chemicals suggested by the commenter have been reviewed by the Department. Although all these chemicals fit the general criteria to be considered to be an EHS, they do not meet the criteria for inclusion in Part II of the EHS list. These 27 substances, and any others submitted to the Department for addition to the list will be considered in any future list expansions.

The criteria to be used for future possible list expansions of EHS's were discussed in the summary of the proposed rules, in the New Jersey Register, at 19 N.J.R. 1687(a), and in the Basis and Background Document, at Section VII, subsection C4, Other Properties. The Act describes an extraordinarily hazardous substance as "any substance or chemical" which meets the definition for an EHS and provides that the Department has the power to add to the list of EHS's by amending it. The Department is developing a priority system for adding chemicals to the EHS list.

COMMENT: The criteria of atmospheric dispersion, fire, explosion, and chronic health threats should be substituted for a finite list, and it should be the reigstrant's responsibility to prove that the substances they produce, use, or handle the meet the criteria.

RESPONSE: The Department believes that to substitute the criteria of atmospheric dispersion, fire, explosion, and chronic health threats for a finite list would be very difficult to enforce and regulate, and therefore is not adopting this suggestion.

COMMENT: Toluene-2,4-diisocyanate (TDI) should be excluded from the proposed N.J.A.C. 7:31-2.3 Table I, Part I, based on criteria set forth in the SHI. On the basis of acute toxicity and vapor pressure, TDI would not be considered acutely hazardous. A facility can store 5,599 pounds of 36 percent hydrogen chloride, which is known to be extremely hazardous, and not have to register; but 100 pounds of TDI must be registered. There is a significant difference in hazard potential between a storage facility which stores 150 pounds of TDI and a typical urethane foam producer which handled thousands of pounds daily.

RESPONSE: TDI at a registration quantity of 100 pounds can not be deleted from the list of extraordinary hazardous substances by the Department because it was included on the initial EHS list in the Act itself, at N.J.S.A. 13:1K-22a. The Department believes that TDI was included on the initial EHS list by the Legislature on the basis of its extreme toxicity and widespread use. All facilities which either process or store greater than the registration quantity of TDI are, therefore, subject to the requirements of the rule.

COMMENT: Acrylonitrile should not be added to the list because its exposure limit (2 ppm) is significantly higher than many other substances, its IDLH (9,000 ppm) is orders of magnitude higher than EHS's such as chlorine and hydrocyanic acid, and its one hour LC_{50} is greater than the U.S. Department of Transportation criteria for considering a substance "toxic by inhalation".

RESPONSE: Inhalation or skin contact of acrylonitrile can lead to cyanosis and asphyxiation or pulmonary edema which can be fatal. Also, acrylonitrile meets the toxicity and vapor pressure criteria for inclusion at N.J.A.C. 7:31-2.3 Table I, Part II. These criteria are discussed in the Basis and Background document to the proposed rule at Section VII, subsection C. Through the dispersion modeling and consequence analysis methods discussed at Section VII, subsection D of the Basis and Background document the Department has determined that the registration quantity of acrylonitrile has the potential for a toxic catastrophe. Therefore, acrylonitrile has not been deleted from the Part II EHS list.

COMMENT: The use of 36 percent hydrochloric acid (HCl) as a cutoff in the proposed N.J.A.C. 7:31-2.3 Table I, Part II is not justified because this water solution does not generate HCl gas in quantities which are hazardous. The Department should eliminate 36 percent HCl from the list and use anhydrous HCl or allyl chloride as the basis for determining what chemicals should be on the Part II list. Thirty-six percent aqueous hydrogen chloride does not constitute the same hazard as does hydrogen chloride gas. The Basis and Background Document refers to 36 percent HCl as being one of the originally designated substances in the Act when this is not the fact. Hydrogen chloride was designated in the Act, and the Department was not following the intent of the original legislation. Hence, the 93 additional substances added by the Department should be re-evaluated. These comments also apply to 28 percent aqueous ammonium hydroxide.

RESPONSE: The selection of 36 percent hydrochloric acid as a cutoff is justifiable. While hydrogen chloride is established by the Act as an EHS with a registration quantity of 2,000 pounds the Basis and Background Document in Section VII, subsection C3 states that the 36 percent hydrochloric acid was derived from the initial list. A solution of an EHS has in equilibrium with it a gas-vapor mixture which contains the EHS. When the mixture immediately above the solution surface is displaced by air movement (wind), the constituents of the solution will evaporate, the EHS included. Thirty-six percent hydrochloric acid is a standard product grade that is widely handled. A spill of 5,600 pounds of it could result in a release of 2,000 pounds of HCl vapor commensurate with the release of the pure HCl. Thus, a solution provides a suitable basis as a cutoff, as well as the pure substance. Similarly, the Department calculated that an unconstrained spill of 28 percent ammonium hydroxide could result in a release of ammonia vapors that has the potential for a catastrophe.

COMMENT: The method by which the registration quantity of 36 percent aqueous hydrogen chloride proposed in N.J.A.C. 7:31-2.3 Table I, Part II was arrived at does not take into account the decreased volatility of the hydrogen chloride in the solution. Simply applying an assay of solution to the registration quantity of the hydrogen chloride gas, in other words dividing 2,000 pounds by 0.36, indicates that no consideration was given to the properties of a solution versus the gas itself.

RESPONSE: The Act, at N.J.S.A. 13:1K-22a, identifies hydrogen chloride and ten other substances as the initial extraordinarily hazardous substances list. All meet the definition of an EHS in that they are acutely toxic and a release of a sufficient quantity would result in the death or permanent disability to those exposed. The Department has focused on toxic and volatile substances for this phase of the EHS list expansion which is based on both the definition of an EHS as provided in the Act and the characteristics of the eleven initial EHS's. The original list included HCl, Chemical Abstract Services (CAS) #7647-01-0. This CAS number includes both anhydrous HCl and aqueous HCl, which possess similar chemical and toxicological properties. Since both anhydrous and aqueous HCl result in identical cellular damage upon exposure, the Department could not arbitrarily ignore the hazard potential of the stronger grades of aqueous HCl. The fact that aqueous HCl has a lower vapor pressure than anhydrous HCl is compensated for by the larger registration quantity, determined by consideration of solution properties.

COMMENT: Ozone should not be included on the list proposed in N.J.A.C. 7:31-2.3 Table I, Part II because it is fundamentally different than all other chemicals on the list. Ozone is not stored in large quantities and is never present in pure form. Ozone is usually generated on-site and in unstable. Ozone concentrations in the gas stream leaving the ozone generator are typically dilute; i.e., two percent ozone or less. Ozone generating operatons are essentially fail-safe. Dispersion modeling indicates that exposure to ozone is not a problem at generation rates of 15 pounds per hour.

RESPONSE: While it is different from other chemicals on the list, ozone meets the criteria for inclusion in Part II of the EHS list because modeling demonstrated that if 15 pounds/per hour or more, in any percent concentration, is released within that hour, whether from storage or generation, it will have the same potential for a toxic catastrophe as would a release of any other chemical on the list using the conditions described in the Basis and Background Document. The Department is aware that ozone may not be stored in large quantities, but the generating capacity of 15 pounds/per hour has the potential for a catastrophe. Although it is generated on-site and mixed with air, it remains a gas with

known properties. At 20°C, after one hour the ozone level will be 85 percent of the initial concentration, as stated in the Kirk-Othmer Chemical Encyclopedia; therefore, a sufficient amount would remain one hour after being released to have the potential for a catastrophe.

Regarding the statement that ozone generating operators are essentially "fail safe", the environmental risks of generating ozone depends on the likelihood of release. The intent of the TCPA is to promote use of proven risk reduction techniques and procedures through appropriate risk management.

COMMENT: The Department is to be commended for specifically identifying substances to be addressed by the proposed rule. However, no reference is made to whether these substances proposed in N.J.A.C. 7:31-2.3 refer to the gaseous or liquid state. Some clarification is obviously needed for substances such as ammonia which exists in both states.

RESPONSE: Unless otherwise indicated, the list of extraordinarily hazardous substances refers to both the liquid and gaseous states. For example, anhydrous ammonia at 20°C and atmospheric pressure exists as a gas, but if the temperature were decreased to below its boiling point at atmosheric pressure (-33.35°C), it would be a liquid. Therefore, no change in the rule is required.

COMMENT: The proposed N.J.A.C. 7:31-2.3 Table 1, Part II lists formaldehyde gas. The background data is based on formaldehyde as a gas. The Commenter's facility stores, handles, and processes formalin. Formalin is a solution of formaldehyde in approximately 50 percent water. Background data on the formalin, as well as dispersion studies conducted by this facility, all indicate that no threat to health exists at the fence lines from operations that store, handle, or process formalin. Therefore, the above mentioned operations should not come under the provisions of the proposed N.J.A.C. 7:31-1, 2, 3 and 4.

RESPONSE: As indicated, Part II of the EHS list includes formaldehyde gas only. Formalin does not meet the criteria for inclusion in Part II because of its low vapor pressure.

COMMENT: The dispersion model used to calculate the registration quantity for the proposed N.J.A.C. 7:31-2.3 Table I, Part II, should not be the puff type, since ozone is not stored but is generated and consumed from a "carrier gas", normally air.

RESPONSE: The Department agrees that a puff type dispersion model would be inappropriate for the purpose of calculating the registration quantities of EHS's, and such a model was not used. The Basis and Background Document for the proposed rule in Section VII, subsection D-3, Atmospheric Dispersion Modeling, indicates that the model used to determine the registration quantities for the Part II EHS list in N.J.A.C. 7:31-2.3 Table I, was Turner's neutrally buoyant, continuous emission dispersion model.

COMMENT: It is far from certain that the procedure used in deriving the registration quantity will sufficiently insure the safety of the public for the substances proposed in N.J.A.C. 7:31-2.3. It is not clear how the quantities were initially established and there is a question as to the viability of the air quality model used by the Department. Is there a firm basis for saying that the established quantity at every site contributes to a potential catastrophic scenario? Registration quantities should be decided on a case-by-case basis, using site specific information. If the real distance from the EHS to the nearest property line is greater than 100 meters, the actual distance should be used in the equation to determine the registration quantity. The proposed rule should include a provision to allow the use of real data (not a standard 100 meters as point of contact) in the above equation. Also, the Lawrence Livermore Laboratories recently conducted field testing on hydrogen fluoride and derived potentially acceptable dense gas models which may be useful in determining the registration quantity for a dense gas.

RESPONSE: Since the Act, at N.J.S.A. 13:1K-22a, specifies only one registration quantity for each of the original EHS's, the Department is following the precedent established by the Act in establishing a single registration quantity for each EHS on the expanded list, rather than permitting a different registration quantity for each site. The Department believes that the single quantity given in N.J.A.C. 7:31-2.3 is appropriate for registration purposes. The method used to determine each registration quantity is discussed in detail in the Basis and Background Document to the rule in Section VII, subsection D. The Department believes that the procedure used in deriving the registration quantity does sufficiently ensure the safety of the public in that it is based on most conservative, scientifically valid and realistic conditions. The resulting registration quantity is a realistic minimum quantity for the following reasons:

(1) The acute toxic concentration used as the toxicological criteria is most conservative, representing a minimum lethal concentration for the most sensitive animal; (2) F—stability class is most conservative; (3) Wind speed of 2 meters per second is most conservative for accurate Gaussian prediction; (4) Property line (100 meters) is most conservative for accurate Gaussian prediction; (5) Ground level release is most conservative; (6) Ground level reception is most conservative; (7) Not correcting for clothing or shelter is most conservative; and (8) The population density used is the average of the densest industrial communities. Furthermore, the Department believes that establishing a registration quantity on a case-by-case, site-specific basis would lead to massive confusion among the regulated community as to the applicability of the rule to their facility and would result in an unmanageable program for the Department to administer. Also, it would not drastically reduce the amount of work for the regulated parties, as a hazard analysis and risk assessment would still need to be performed to determine if the accidental release of an EHS would cause an off-site injury or death.

The type of model used to determine the registration quantities is the only kind that has been approved by the United States Environmental Protection Agency for dispersion modeling. For this reason other types of models, such as dense gas, could not be used as they have not yet been properly validated.

As discussed in the Basis and Background Document, a number of criteria are being considered for including chemicals on the EHS list. As with the initial list expansion, the inclusion of these chemicals on the list will be based on the degree of hazard presented by these chemicals as determined by the toxicity of the chemical and a consequence analysis for realistic release scenarios. Regarding the recent field testing conducted by the Lawrence Livermore Laboratories, it is noted that hydrogen fluoride is an anomaly in terms of dispersion after its release into the atmosphere. It tends to disperse as a dense gas cloud rather than as the expected neutrally buoyant gas. Other chemicals on the proposed list (such as arsine) will also disperse as a dense gas given the proper release conditions, proper release amounts, and proper physical and chemical characteristics of the EHS. Not all EHS's or accidental release scenarios can result in a dense gas cloud being formed. It is likely, however, that a neutrally buoyant cloud could be formed by all EHS's on the proposed list under the right conditions of release. Because it is likely that a neutrally buoyant cloud could be formed, a neutrally buoyant type model was used to establish the registration quantity that would be applicable to all sites where EHS's are used, stored, manufactured, or handled.

The Department recognizes that a dense gas model and the algorithm to calculate hydrogen fluoride dispersion may need to be used within the risk assessment process. The Department intends to address the proper use, acceptability and application of these models in the future and will permit their use in performing the consequence analysis within the facility's risk management program.

COMMENT: The standard "one death off site" is too high for the purpose of developing a minimum registration quantity. Potential releases which would result in either hospitalization or evacuation of a specific number of people should be used instead.

RESPONSE: The Act at N.J.S.A. 13:1K-21a, defines an "Extraordinarily hazardous accident risk" as "a potential for release of an extraordinarily hazardous substance into the environment which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability." The Act, at N.J.S.A. 13:1K-21i, also defines a "Risk management program" as "the sum total of programs for the purpose of minimizing extraordinarily hazardous accident risks . . ." Thus the standard used to determine the minimum registration quantities for the Part II EHS's in N.J.A.C. 7:31-2.3, Table I, is based on the language of the Act and provides a clearly defined standard. Therefore, it has not been changed.

COMMENT: A provision should be included to permit revisions to the EHS list, to not only add but to remove substances and to revise the registration quantities as necessary.

RESPONSE: The Act, at N.J.S.A. 13:1K-22C, specifically provides that the Department has the power to amend, by regulation, the EHS list to accommodate new chemical compounds or to reflect new information or scientific data that becomes available to the Department. As this power is provided by the statute, it is not necessary to include it in the rule also. In the event new information indicates that an EHS should be removed from or added to the list or that the minimum registration quantity of an EHS should be increased or decreased, the Department will consider proposing an appropriate amendment to the EHS list at that time.

COMMENT: The Basis and Background Document did not fully explain how the Clancey equation for spills is utilized for determining the

registration quantity of substances proposed in N.J.A.C. 7:31-2.3 that are liquids at 20°C and atmospheric pressure. The equation requires assumptions to be made on the square footage of the spill area, which cannot be practically determined. Since these liquid substances are already regulated under various spill containment regulations, they do not need to be included in the proposed rule as well. At least for the liquids with low vapor pressures, an exclusion from the proposed rule should be available if the substance is regulated by and is in compliance with applicable spill control requirements.

RESPONSE: The Clancey equation is used together with the Gaussian dispersion equation to calculate the liquid pool area required to produce emission rates to obtain specific toxic concentrations. For high volatility liquids, the quantity emitted per hour from the pool is the registration quantity. For low volatility liquids, the registration quantity is the quantity in the pool. The pool is assumed to be at least two millimeters in depth to be realistic in computing a minimum quantity that would have to be in a pool of the calculated area.

The TCPA regulates any substance in a sufficient quantity at a single site such that its release into the environment would produce a significant likelihood that persons exposed will suffer acute health effects resulting in death or permanent disability. All liquids listed in N.J.A.C. 7:31-2.3 have been found to meet this definition. At their calculated registration quantities, the liquids with the lower vapor pressures have the same catastrophic potential after a spill as those with higher vapor pressures. Therefore, none will be exempted from the provisions of the rule.

The spill containment regulations referred to in the comment address a different threat than the TCPA and the rule. The various spill containment regulations are primarily concerned with spills onto the land or into waterways, surface and groundwater and are generally directed at limiting the chronic health effects of the spill. However, the TCPA deals with only those extraordinarily hazardous substances which when spilled have a potential to cause acute health effects; i.e. immediate catastrophic consequences. Also, the spill containment regulations are directed towards physical containment of a liquid spill of the material while the TCPA program covers all potential releases to the environment, including atmospheric releases. In addition, the spill containment regulations deal with containing a spill or incident while the TCPA focuses on preventing an incident from occurring. Finally, the TCPA program has requirements for several management control measures which are not necessarily covered by the spill containment regulations.

COMMENT: Some compounds on the EHS list proposed in N.J.A.C. 7:31-2.3 appear to be anomalies and go far beyond the concept of preventing a catastrophe. Surely drums of ammonia do not coincide with bulk tanks of TDI. Referring to the proposed Part II list expansion, the concern for a combustion product such as nitrogen oxide (NO_x) does not seem rational compared to materials such as chlorine or chlorine dioxide. This concern is more related to the "capable of being produced" issue, rather than the storage and handling of liquified gases.

RESPONSE: Nitrogen oxides such as nitrogen dioxide, nitrogen trioxide, and nitrogen tetroxide were included on the list because they meet the criteria used by the Department, and because they are items of commerce or can be intermediates in a synthetic process. Special provisions for stack generated nitrogen oxides have been made. Modeling of nitrogen oxides shows that at a 200 pound or greater release a potential catastrophic event could occur. Similar modeling was done for chlorine dioxide and anhydrous ammonia to determine their registration quantities. Every substance at the registration quantity listed in N.J.A.C. 7:31-2.3, Table I, Part II has the potential for a catastrophe. Therefore, no change in the rule is required.

COMMENT: If an EHS is present as a dilute solution, its hazard in the solution should be the determining factor, not its mere presence. Methylamine is often purchased as an aqueous solution which obviously poses considerably less risk than the gas itself.

RESPONSE: Solutions or mixtures which contain an EHS must be registered if the quantity of the EHS that is handled, used, manufactured, stored or generated on site exceeds the registration quantity. Subsequent safety reviews, hazard analysis or risk assessments will determine the actual extraordinarily hazardous accident risk involved and indicate the extent of risk reduction actions that are warranted. Also, if the conditions specified by N.J.A.C. 7:31-2.21 (now N.J.A.C. 7:31-2.19) are met, the registrant may request an exemption from the requirements of N.J.A.C. 7:31-3 for certain non-contiguous EHS equipment.

COMMENT: It is difficult to believe that phosphorus trichloride has a 500 pounds cutoff while phosphorus trifluoride has a 34,000 pounds cutoff. Are the acute toxicity and volatility characteristics that different?

RESPONSE: Data for the lowest toxicity level found for phosphorus trichloride (PCl_3) is 5 ppm, while the lowest toxicity level for phosphorus trifluoride (PF_3) is 529 ppm; i.e. PCl_3 is approximately 106 times as toxic as PF_3. This difference is probably due to differences in water reactivity—PCl_3 being extremely reactive while PF_3 is slowly reactive. It is likely, therefore, that significantly more PF_3 is exhaled as compared to PCl_3, if comparable levels are breathed in. The modelling method used by the Department to determine the registration quantity for PF_3 shows that a release of 34,000 pounds has the potential for a toxic catastrophe. The registration quantity of 500 pounds for PCl_3 was determined by the Legislature in the Act.

COMMENT: The risk associated with Part I compounds is not consistent with the proposed N.J.A.C. 7:31-2.3 Table I, Part II compounds, which should be subject to separate rule-making procedures or be reconsidered in their entirety by the Department.

Given the existing common law and statutory protections, the extraordinary onerous and expensive burden contemplated by the proposed TCPA rule should be reserved for only those substances which pose the same degree of risk to the public that was envisioned by the Legislature in enacting the TCPA.

Most of the risks identified by the Legislature have been controlled by the original 11 substances and whatever minimal risk remains can be addressed by addressing each additional substance in an objective rule-making process which defines the risk associated with each material and includes the opportunity for industry to provide comments which would provide valuable operational insight and experience.

RESPONSE: The Department believes that the risk associated with Part II compounds is consistent with the risk associated with Part I compounds and that all of the Part II compounds meet the criteria established by the Act for inclusion as EHS's. The Part II EHS list in Table I of N.J.A.C. 7:31-2.3(a) consists of gaseous or volatile substances that are acutely toxic in their associated registration quantities.

By enacting the TCPA and specifically requiring the Department to adopt an EHS list, the Legislature clearly indicated that it did not consider the existing common law and statutory provisions sufficient to protect the public from those substances which met the Act's criteria for inclusion on the EHS list.

The adoption of an EHS list is mandated by the Act, at N.J.S.A. 13:K-22c, and is based on the definition of an EHS as provided in the Act. Extraordinarily hazardous substance means "any substance or chemical compound used, manufactured, stored, or capable of being produced from on-site components in this State in sufficient quantities at a single site such that its release into the environment would produce a significant likelihood that persons exposed will suffer acute health effects resulting in death or permanent disability." The combination of toxicity, dispersibility, and quantity equates the risks associated with substances on the Part II EHS list to those of substances on the initial EHS list.

The Part II EHS list at N.J.A.C. 7:31-2.3(a), Table I was properly promulgated by an objective rule-making process that included the opportunity for industry to provide comment, and it has been adopted in accordance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Therefore, no change to the rule is necessary as a result of this comment.

COMMENT: The prohibition proposed in N.J.A.C. 7:31-2.4 should be modified to reflect the statutory definition of an EHS which states "capable of being produced from on-site components in this state in sufficient quantities at a single site such that its release into the environment would produce a significant likelihood that persons exposed will suffer acute health effects resulting in death or permanent disability".

RESPONSE: The phrase "substances or chemical compounds" in the proposed N.J.A.C. 7:31-2.4(a) and (b) was intended by the Department to mean only those substances or chemical compounds which are EHS's. However, these sections have been revised for clarity. The use of the term "EHS" in N.J.A.C. 7:31-2.4(a) and (b), is, of course, in accordance with its statutory definition.

COMMENT: The phrase "capable of being produced from on-site components" in the definition of "EHS" is vague and should contain a specific reference to exothermic decomposition by-products, products of combustion, etc. For instance, in a fire PVC could emit hydrochloric acid. Was this type of release an intended situation? Also, if components in a facility can produce an EHS but are in separate areas, is the facility "capable" of manufacturing EHS's? The proposed rule should define this phrase, otherwise considerable time and effort will be spent preparing for events which are not reasonably foreseeable.

RESPONSE: The Department believes that "capable of being produced from on-site components" as used in N.J.S.A. 13:1K-21e, includes those situations in which an EHS may be released into the environment due to its generation from non-EHS's by one of the following means: water and water vapor reaction, instability or decomposition, or mere mixing and chemical reaction with another substance.

For example, in situations where two substances are mixed, and the mixture can or may generate an EHS, then an EHS is "capable of being produced from on-site components", and that operation would be covered. In a case where two substances, which when mixed will generate an EHS, are stored in separate containers, and it is not reasonably foreseeable that they will be mixed together, then an EHS is not "capable of being produced from on-site components" and would not be covered.

The Act gives the Department the authority to amend the list to accommodate new chemicals compounds that may be developed or reflect new information or scientific data that may become available to the Department. Further research in the categories of chemicals, "capable of being produced" is necessary to determine what potential exists for a catastrophic event in those cases. These categories of chemicals such as PVC were, therefore, not included in the Table I, Part II expanded list.

COMMENT: The statement "or have the capability to generate within one hour" as it first appears in the proposed N.J.A.C. 7:31-2.4 is indefinite, arbitrary and too broad. It particularly affects industries with large flows of materials containing low concentrations of an EHS. As written, the major portion of petroleum industries would be EHS facilities because hydrogen sulfide occurs in low concentrations in raw materials, intermediate, and possibly finished products. The Department should distinguish between EHS facilities that have continuous flows of materials containing an EHS versus large inventories of EHS's, in that flows can be reduced and controlled quickly when required to mitigate a release.

RESPONSE: Each owner or operator of a site handling, using, manufacturing or storing at least the registration quantity of an EHS is required to register with the Department in accordance with N.J.A.C. 7:31-2.5. Even though a facility may have greatly diluted at least the registration quantity of an EHS with another substance, it is still required to register and to comply with the risk management program requirements of N.J.A.C. 7:31-3; i.e. to take those risk reduction measures which are appropriate considering the risk at the facility.

The Department believes that facilities which have greatly diluted EHS's will require less extensive RMP's and risk reduction measures than those facilities with similar quantities which are not diluted.

COMMENT: In the proposed N.J.A.C. 7:31-2.4(b), the registration period for EHS facilities is restricted to 90 days after final promulgation of the regulations. We request that this period be extended to 180 days, so that the amount of information needed to fully complete the survey forms can be obtained.

RESPONSE: The 90 day registration period is mandated by the Toxic Catastrophe Prevention Act, at N.J.S.A. 13:1K-22d, and is not subject to change by the rule. Therefore, the registration period has not been changed.

COMMENT: The proposed N.J.A.C. 7:31-2.4(c), (d) and (e) requiring Departmental approval before construction or operation of a new EHS facility or the use of a new EHS in an existing facility is without statutory authority. Will approval for construction be withheld until an approved RMP is in place or can construction begin and operation be contingent upon approval of the RMP? Further, prior approval is burdensome and will destroy rapid competitive response and cause considerable delay in construction and start-up of new facilities. Frequently a new material may be used for a single product which may never be repeated, or to temporarily overcome some process problem. It would seem prudent to allow facilities with an approved RMP to use other EHS materials without delay as the program elements in place for one substance are not likely to be markedly different for another EHS. There will be lost business opportunities and jobs because the chemical industry in the State will no longer be able to introduce new products or new cost effective product modifications in a timely manner. The unnecessary burden of pre-approval should not be placed on companies who have demonstrated the capability to design, start-up and operate new or modified facilities in a safe and environmentally sound manner. It leads to increased cost of operation and growth of government. This apparent limitation should be removed and means provided to allow business as usual during this interim period even if it is at the facility's own risk. A provision should be added allowing construction to proceed if the owner or operator has filed with the Department the material required by N.J.A.C. 7:31-2.10 and a construction timetable 90 days prior to the start of construction, or if the Department has failed to approve the plan or to respond in writing identifying the deficiencies within 90 days.

RESPONSE: The TCPA rules are promulgated, in part, under the authority of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., which relates to the control and suspension of air pollution, defined in part as the presence in the outdoor atmosphere of one or more air contaminants in such quantities or duration as are injurious to human health or welfare, and which provides the Department with the power to promulgate rules to prevent, control, and prohibit air pollution throughout the State. This, and the general guidance provided in the Toxic Catastrophe Prevention Act, at N.J.S.A. 13:1K-20, that the single most effective effort in prevention of environmental accidents is by anticipating the circumstances that could result in their occurrence and taking those precautionary and preemptive actions required, is the basis for the rule's requirement that the Department approve construction of a new EHS facility which does not have an approved RMP, approve the operation of a new EHS facility and approve the use of a new EHS at an existing facility before such operation or use commences.

The requirements under N.J.A.C. 7:31-2.4(c) and (d), are not unduly burdensome for new facilities, as safety reviews and hazard analyses are normally conducted as standard design practice and thus should not create any additional delay. To allow a facility to handle an EHS without complying with the specific provisions for the development, approval and implementation of an effective RMP would expose the facility to the potential for a toxic catastrophe. The rules, therefore, require approval of the summary risk management program statement, safety review, hazard analysis and risk assessment of the proposed facility prior to construction for those facilities without an approved risk management program and in some cases may actually reduce delays and save costs by avoiding unnecessary design changes and reconstruction required to ensure the safe operation of new EHS facilities. Construction will be allowed to proceed before the complete RMP is approved; however, operation may not commence until the RMP is approved.

A new EHS facility planned by a registrant with an approved risk management program in effect at the site is not as restricted and is allowed to proceed with construction, although it must receive Departmental approval of its modified RMP prior to operation. This should not present an undue burden to facilities with an approved risk management program. Any modification to an existing EHS facility requires a safety review and hazard analysis as defined under modifications. The Department merely requires pre-notification of modifications by registrants that have an established RMP.

Introduction of a new EHS to an existing EHS facility may involve some similarities in the risk management requirements. However, there are significant differences between the characteristics of different EHS's and these differences may require revisions to the procedures, training, maintenance, materials of construction, pressure relief devices, controls, etc. which all necessitate a safety review, hazard analysis, and revised risk management program. However, with proper planning on the part of EHS facilities in the State of New Jersey, neither business opportunities nor jobs should be lost to other states because of the requirements of the TCPA and the public will have benefited from the reduced threat of toxic catastrophes.

As to the suggestions to change the rule to allow construction to proceed upon the filing of certain required materials without being required to wait for Department approval, or to provide a 90 day deadline for Department response, the Department believes that pre-approval of construction of a new EHS facility is especially important in the case of an owner or operator which does not presently have an approved RMP and may not have had previous experience with EHS facility operations or construction.

In regard to the statement that facilities should be allowed to operate at their risk during the interim while awaiting Department approval of new construction or operation, the Legislature by enacting the TCPA has clearly indicated that facilities will no longer be allowed to operate at their own risk. Therefore, there will be no changes in the rule.

COMMENT: An interim status should be provided under the proposed N.J.A.C. 7:31-2.4(d) to allow operation of a new EHS facility until Departmental review is completed.

RESPONSE: No interim status will be provided in the rule to allow a facility which does not have an approved risk management program to go into operation because this may endanger the public's safety as some unacceptable operating procedures may be implemented.

A facility may begin to construct the new EHS facility if it has submitted the reports of a safety review, hazard analysis, and risk assessment

where required at least 90 days prior to construction as stated at N.J.A.C. 7:31-2.10(a)2. However, no registrant may begin operating a new EHS facility without an approved RMP until the Department and the registrant have executed an administrative consent agreement containing an approved RMP as stated at N.J.A.C. 7:31-2.4(d). Therefore, no changes have been made to the rule.

COMMENT: The proposed N.J.A.C. 7:31-2.4(f) should be amended to provide that a registrant with a complete submission shall be deemed to have an approved RMP unless notified to the contrary by the Department, and can therefore implement modifications while awaiting Departmental approval.

RESPONSE: In response to this comment, N.J.A.C. 7:31-2.4(f) has been amended to indicate that those facilities which the Department has determined to have an established RMP, as described at N.J.A.C. 7:31-2.7, or an approved EHSARA work plan, may make a modification. The requirements for those facilities performing a modification are described at N.J.A.C. 7:31-2.11. The Department must review the summary risk management program statement to determine that an RMP exists in order to ensure that the facility has taken the proper risk management measures for the modification.

COMMENT: Delete "at least 90 days" from the proposed N.J.A.C. 7:31-2.5(d) or revise this requirement. If a facility has an approved RMP, all changes will be documented in the annual report. Also, delete the proposed N.J.A.C. 7:31-2.5(e) as it is redundant, since if one has an approved RMP you must be doing everything required to construct a new EHS facility and all changes will be documented in the annual report.

RESPONSE: The Department believes that the requirements for the submittal of a new registration form, a summary risk management program statement, and reports of the safety review, hazard analysis, and risk assessment 90 days prior to putting a new EHS facility into service at a site is necessary even for those registrants with an RMP previously approved by the Department. To simply document these changes in the annual report is not sufficient proof that the risks associated with a new EHS facility are being properly managed in a timely manner. A new EHS facility may require totally different operating procedures or emergency response procedures from those currently used at the site. The RMP for the site also has to be properly revised to reflect these changes for the new EHS facility, and it must be reviewed by the Department. The Department believes that this must be submitted 90 days prior to operation to verify that these new risks are being properly addressed and managed.

N.J.A.C. 7:31-2.5(e) is not redundant as it applies to any change in the site's registration form which makes it incomplete or inaccurate, not just to changes regarding new construction. The Department feels that it should be notified of these changes through the submittal of a revised registration form to verify whether the site's RMP may be affected.

COMMENT: The proposed N.J.A.C. 7:31-2.5(d) should be modified to emphasize the differentiation between sites with an approved risk management program and sites without an approved risk management program. Also, the commenters believe, registration should be submitted prior to beginning construction even for those sites with an approved risk management program.

RESPONSE: The Department does not agree that N.J.A.C. 7:31-2.5(d) needs to be modified to differentiate between sites with an approved RMP and sites without an approved RMP. N.J.A.C. 7:31-2.5(d) specifically refers to sites which have a previously approved RMP, and N.J.A.C. 7:31-2.5(c) refers to those facilities which do not have an approved RMP and are constructing a new EHS facility. The Department does not agree that a new registration should be submitted prior to beginning construction by those sites which already have an approved RMP. A registrant that has already demonstrated the ability to develop and implement an effective RMP at a site should be capable of adapting the RMP to a new facility at the same site. However, the registrant must submit an updated registration form and must also submit the documentation required in N.J.A.C. 7:31-2.10(b), which includes: (1) a revised RMP description meeting the requirements of N.J.A.C. 7:31-3.12(a)1; (2) a report of the safety review of the new EHS facility or new EHS service prepared in accordance with N.J.A.C. 7:31-3.4; and (3) the report of the hazard analysis and risk assessment prepared in accordance with N.J.A.C. 7:31-3.9 at least 90 days prior to the scheduled placing of the equipment into EHS service. Also, in accordance with N.J.A.C. 7:31-2.4(e)2, a registrant may not operate a new EHS facility or use an existing facility for a new EHS service before receiving written Departmental approval. Thus the Department will have the opportunity to review the required RMP submittals prior to the new facility beginning actual operation.

COMMENT: The proposed N.J.A.C. 7:31-2.5(e) requires that updated registration forms be submitted to the Department within 30 days of any changes that make the prior registration incorrect or incomplete. Clarification is needed on the level of significance of a change for which the Department should be notified. If a reaction product is allowed to remain in a vessel for a longer period of time than originally described, surely this would not be reportable. Must all risk reduction efforts and safety measures be reported? Companies would have to file monthly re-registrations describing the results of safety meetings and training. If a registrant has an approved RMP, the changes will be documented in the annual report. Also, the specified time period for submitting an updated registration form should be changed from 30 days to 60 days.

RESPONSE: The requirements of N.J.A.C. 7:31-2.5(e) have been clarified to match the latest revision of the registration form (DEQ-080, 1/88) which was published in the February 16, 1988 New Jersey Register at 20 N.J.R. 360. The Department needs timely notification of changes to Sections A, B, D, E, F (exclusive of items 1 through 3) and G amended by the registrant. Data in the indicated sections are important to the Department in four main areas: (1) Data to assure proper contact with the registrant when needed; (2) Data on the compliance level of the registrant; (3) Data on the magnitude of risk of the EHS's at the site to the neighboring locale; and (4) Data on registrant liability insurance coverage.

The Department does not require that details of process description such as the time period a reaction product would remain in a vessel be included in Section E. Consequently, the registration form need not be updated to reflect such detailed EHS changes by the registrant. Only a general description of the process containing data significant to compliance level and magnitude of risk is needed. Items 1, 2 and 3 of Section F are excluded from the updating requirement, because after the initial registration submittal this information will be provided to the Department as part of the reports of safety review or hazard analysis, as required to be submitted by other parts of the rule.

Finally, the 30-day time limit for submittal of an updated registration is believed to be sufficient; therefore no change has been made to this reporting period.

COMMENT: The proposed N.J.A.C. 7:31-2.5(g)7 requires registrants to identify in the registration form "the insurance carriers underwriting the site's environmental liability and workers' compensation insurance policies including the address of the carrier, the type of policy, the amount of insurance and limitations or exclusions to the policy". This provision needs to be revised to take into account the fact that many facilities may be unable to obtain environmental liability insurance policies. Moreover, it is unreasonable to require the registrant to list all of the "limitations or exclusions" to each such policy as insurance policies are most entirely made up of limitations and exclusions. If all of that information is necessary for the Department's purposes, which is doubtful, the registrant should at least be given the option of attaching a copy of the pertinent policies.

RESPONSE: N.J.A.C. 7:31-2.5(g)7 is derived from the Act, at N.J.S.A. 13:1K-22b. Section G of the registration form requires only a limited amount of general information concerning the site's environmental liability coverage. The rule does not require the registrant to obtain environmental liability insurance. Limitations or exclusions to a policy provide valuable information to the Department, in that it may indicate an independent third party may have already found an area of risk that needs improvement. A pertinent section of the policy may be attached, but the Department is not requiring or requesting that the entire policy be attached to the registration form. Therefore, no change has been made.

COMMENT: How detailed should the process description be that is required by the proposed N.J.A.C. 7:31-2.5(g)5? Will a batch sheet be necessary? This should be clarified to indicate that general process information is acceptable and not detailed, step-by-step process information, sufficient to allow a third party to duplicate the process.

RESPONSE: Section E of the registration form describes the information that is required regarding the process description; i.e., a general description of the process involved in the use, manufacture, storage, handling or generation of the EHS, including typical and maximum operating conditions (temperatures and pressures) as they relate to the EHS, and a simplified flow sheet. A batch sheet is not necessary, nor is detailed, step-by-step process information required. No change in the rule is necessary as the required information is clarified by the registration form itself.

COMMENT: In the proposed N.J.A.C. 7:31-2.5(b) change the time period for registration from "90 days" to "180 days" after substances are added to the EHS list.

RESPONSE: In N.J.A.C. 7:31-2.5(b), the 90 day time period to register with the Department has been deleted as unnecessary, because this subsection merely provides for the voluntary registration by owners or operators of sites which plan to use EHS's in the future.

COMMENT: The proposed N.J.A.C. 7:31-2.5(g)2i and ii should exempt research and development facilities from the reporting requirement.

RESPONSE: The rule, at N.J.A.C. 7:31-1.5, defines "facility" such that it does not include a research and development laboratory, which is further defined as a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which EHS's are used by or under the supervision of a technically qualified person. A research and development laboratory which meets these standards will be exempt from the reporting requirements of N.J.A.C. 7:31-2.5(g) 2i and ii.

COMMENT: In the proposed N.J.A.C. 7:31-2.6(b) regarding submittal of a summary risk management program statement, change "60 days" to either "120 days" or "180 days". Although most of this information already exists, it is not in the format dictated by the regulation; and unless the Department greatly simplifies the paperwork requirements, it will take much longer than 60 days to prepare this. Also, in the proposed N.J.A.C. 7:31-2.6(c), the summary risk management program statement should be submitted within 120 days from the operative date, rather than between October 1 and October 31, 1988, because the format is very specific and will require reorganization of many parts of the RMP.

RESPONSE: For those registrants with an existing risk management program, conversion of the data to the required summary form should not be difficult, and the 60 day time period specified by N.J.A.C. 7:31-2.6(b), which does not begin to run until these rules become operative, is considered sufficient. However, the proposed N.J.A.C. 7:31-2.6(c) has been amended to require that each registrant with an EHS listed in Part II of Table I in N.J.A.C. 7:31-2.3, which indicates on its registration form that it has a risk management program, shall submit a summary risk management program statement containing the information required by N.J.A.C. 7:31-3.12 to the Department by June 30, 1989. This will allow registrants with Part II EHS's sufficient time to plan for and meet the requirements of the rule.

In addition, N.J.A.C. 7:31-3.12 has been amended to require less information to be submitted in the summary risk management program statement than was required in the proposal.

COMMENT: The proposed N.J.A.C. 7:31-2.6(e) allows any documents to be reviewed either at the site or at the Department in the discretion of the Department. This review should be conducted on-site, or at the Department only under unusual circumstances. This comment also applies to the proposed N.J.A.C. 7:31-3.3(c). All of the supporting documentation is too bulky and as envisioned would be distributed at several locations on the site.

RESPONSE: The Department must have the discretion to review required documents either at the site or at the Department's offices in order to ensure an effective review and the efficient implementation and management of the TCPA program. In general, the Department intends to review as much documentation as possible at the site and does not desire to burden the registrant with undue submissions of paperwork. It will be necessary, however, for the Department to maintain those documents necessary to support consent agreements, administrative consent orders or administrative orders at its offices. Additionally, some documents will be reviewed at the Department's offices, and the documents reviewed will be maintained in accordance with the TCPA confidentiality and trade secret provisions, N.J.A.C. 7:31-5, as proposed in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a). All comments concerning confidentiality and trade secrets under the TCPA will be responded to in the adoption notice for the TCPA Confidentiality rule. Therefore, no change has been made.

COMMENT: The Department is resorting to tools such as administrative consent orders to initiate a simple approval process in the proposed N.J.A.C. 7:31-2.6(f) and (h). The "permit approval" approach exceeds the statutory intent. The Department could have invented a simple permit or it could, as the Act suggests, have an agreement. A new term, "agreement", should be added to the definitions which means a written cooperative agreement between the EHS facility and the Department which spells out the program and the mutually agreed upon duties and requirements. A consent order smacks of an enforcement action or some environmental wrong-doing and is adversarial rather than cooperative. The language should be changed to "an approval letter" or an "agreement". The Act does not require consent or administrative orders; it indicates only that the parties may enter into consent agreements or that the Department may issue administrative orders. An agreement should be the first step in resolving minor differences rather than resorting to administrative consent orders.

RESPONSE: The Act specifically provides, at N.J.S.A. 13:1K-23b, that "if the owner or operator and the Department agree on the measures necessary to correct the deficiencies or omissions in the risk management program, the parties may enter into a consent agreement." Neither the Act nor the rule specify a permit approval approach. The Act, at N.J.S.A. 13:1K-23(c), goes on to provide that "if the parties cannot reach agreement the commissioner, after notice and hearing and written findings of fact, may issue an administrative order requiring changes or additions to correct the deficiencies". This procedure is included in the rule at N.J.A.C. 7:31-2.6(i). The Department believes that consent agreements and consent orders provide a sound basis for implementing and managing the TCPA program and have the additional advantage of being readily enforceable should a registrant fail to comply with the requirements of the Act and the rule. Therefore, no changes has been made.

COMMENT: Nowhere in the proposed rule does it say that an RMP may be approved. It is critical to the regulated community to know how RMP's may be approved, and to be allowed to comment on this because certain key actions appear to be contingent on RMP approval.

RESPONSE: In response to this comment the Department has clarified N.J.A.C. 7:31-2.6(a) to indicate the means by which the Department may approve an RMP. Although not specifically identified as RMP approval methods, N.J.A.C. 7:31-2.6(h) and (i) and N.J.A.C. 7:31-2.9(k) are clearly designed to result in approved RMP's. Therefore, approval of an RMP may be effected by the signing of a consent agreement as described in N.J.A.C. 7:31-2.6(h) or by the registrant's implementation of the requirements of an administrative order issued pursuant to either N.J.A.C. 7:31-2.6(i) or N.J.A.C. 7:31-2.9(k).

COMMENT: In the proposed N.J.A.C. 7:31-2.6(a) delete "to the satisfaction of the Department" as unnecessary.

RESPONSE: The phrase "to the satisfaction of the Department", has been deleted from N.J.A.C. 7:31-2.6(a) as it is redundant.

COMMENT: The proposed 7:31-2.6(a) should be deleted or modified to recognize the need for a start-up program to work into compliance without going through the legal, time-consuming and costly consent agreement process. The proposed rules have no provision for starting up or working into the program. Good RMP's take time to develop. The Department should allow registrants to develop RMP's further or to modify them to satisfy guidelines without being in non-compliance situations.

RESPONSE: The Department recognizes the fact that effective RMP's take time to be developed. However, registrants without an established risk management program are covered by the startup procedure provided in N.J.A.C. 7:31-4, Work Plan Requirement. This procedure is established by the Act, at N.J.S.A. 13:1K-24. Those registrants who indicated that they have an established RMP are provided a 60 day period by N.J.A.C. 7:31-2.6(b) to meet the minimum criteria of an established RMP set forth by N.J.A.C. 7:31-2.7(b), and also have an additional 60 days to submit a proposal to correct any RMP deficiencies found by the Department. Additional time is likely to be provided for the implementation of any required remedial actions in accordance with a schedule agreed upon between the registrant and the Department. The Department also recognizes that registrants will be continually refining and developing their RMP's in an effort to further reduce risk and this ongoing development of effective RMP's is encouraged. Therefore, no change to the rule is necessary.

COMMENT: The proposed N.J.A.C. 7:31-2.6(f) outlining the contents of a draft consent agreement should include in (f)2 the reasons the Department has considered the program deficient. The rationale for determination of a deficiency and the references to the regulations and the Act to which the deficiencies pertain should be included. Further, the proposed N.J.A.C. 7:31-2.6(f)3 should recognize that the Department's proposed actions are not the only means to that end by substituting "may" for "must". The proposed N.J.A.C. 7:31-2.6(g) should be changed to indicate that the proposals of the registrant may reflect changes or additions which differ from those made by the Department.

RESPONSE: The Department will develop and send to the registrant upon completion of review of the registrant's risk management program a draft consent agreement. This draft consent agreement will contain, in part, the proposed actions that must be taken to correct the material

deficiencies in the RMP pursuant to N.J.A.C. 7:31-2.6(f)3. These proposed actions represent the actions that the Department believes the registrant must address to obtain an effective RMP, and in most instances the basis of the deficiency will be self-evident. Therefore, the rationale for determining deficiencies and a specific cite to the Act or rule will not be included as a requirement of N.J.A.C. 7:31-2.6(f)2.

The Department also recognizes that the proposed corrective actions listed in accordance with N.J.A.C. 7:31-2.6(f)3 may not be the only means to correct a material deficiency. The registrant may submit a proposal pursuant to N.J.A.C. 17:31-2.6(g) that differs from the Department's proposed action to correct the deficiency. The language of N.J.A.C. 7:31-2.6(f)3 will be retained, since this draft consent agreement may be finalized as an administrative order, if no other proposal to correct any deficiencies is submitted by the applicant.

COMMENT: The proposed N.J.A.C. 7:31-2.6(g) provides the registrant 60 days to correct any deficiencies in his risk management program. This time frame may not be adequate if substantial modifications are required. The commenter suggests that up to 180 days be allowed for resubmittal of proposals to correct the deficiencies.

RESPONSE: The 60 day time period following receipt of the Department's recommended changes or additions during which the registrant is to submit any proposals to correct deficiencies or omissions in its RMP is established by the Act, at N.J.S.A. 13:1K-23a, and therefore will not be changed. It is noted that the registrant does not have to correct the deficiencies of the risk management program within 60 days, but merely has to propose how they will be corrected. Sixty days is adequate time for the registrant to submit a proposal with a plan to correct deficiencies.

COMMENT: The proposed N.J.A.C. 7:31-2.6(i) should be amended to provide 390 days for the Department and the registrant to reach agreement on the RMP.

RESPONSE: The proposal for a 390 day time period to reach agreement on a risk management program is excessive and would cause unreasonable delay in implementing effective RMP's. It is not possible to establish one standard time frame for reaching agreement because several factors will influence this, such as size of the facility, complexity of the processes involved, or number of deficiencies in the risk management program.

COMMENT: In N.J.A.C. 7:31-2.6(f), the Department should inform the registrant of the status of review of an RMP within a prescribed time, for example, 90 days.

RESPONSE: It is the intention of the Department to avoid delays for implementing approved RMP's at facilities covered by the TCPA program. However, the Department cannot guarantee that all reviews will be completed within the suggested 90 day time limit, and imposing a status reporting requirement on the Department as to its progress would only cause further delay and would provide little useful information to the registrant. Of course, every effort will be made to expedite the review of RMP's in order to implement the requirements of the program in as timely a manner as possible. Therefore, no change has been made to the rule.

COMMENT: There is precedent in State government for preliminary hearings and the law allows this. Informal hearings should be included in the Department's procedures, for example, prior to issuing an administrative order as proposed in N.J.A.C. 7:31-2.6(i). The commenter recommends that a section be added which provides the opportunity for a hearing with the Commissioner if the Department and the registrant cannot reach agreement on the deficiencies of the risk management program and the method to correct them. This opportunity and the hearing must reflect due process provided by the Act. N.J.S.A. 13:1K-26b provides that an owner may petition the Commissioner for a review of a Departmental order to undertake a risk reduction plan. If the Commissioner affirms the order, the owner may request a hearing in the Office of Administrative Law. Then the Commissioner "shall" transmit the relevant documents, and an adjudicatory hearing "shall" be conducted. Similarly, N.J.S.A. 13:1K-30b provides that "no civil administrative penalty shall be levied except subsequent to the notification of the violator," which "notice shall include . . . a statement of the violator's right to a hearing." This statutory language makes clear that hearings may not be denied by the Department for an omission in a registrant's request.

RESPONSE: Although the rule does not address this issue of preliminary or informal hearings, the Department realizes that informal meetings will be held between the Department and the registrant to negotiate and finalize the consent agreement. However, the rule will not be changed to specifically provide for an informal hearing with the Commissioner if the Department and registrant cannot reach agreement, as this could well lead to significant delays in the program.

The opportunity to request an adjudicatory hearing to contest an administrative order issued pursuant to N.J.A.C. 7:31-2.6(i)1 is provided for by N.J.A.C. 7:31-2.6(i)2; and N.J.A.C. 7:31-2.19(a) (now N.J.A.C. 7:31-6.3(b)) provides for the statutorily required hearing. As to a violator's right to a hearing, the Act, at N.J.S.A. 13:1K-30b, does provide that the notice of civil administrative penalty assessment shall include a statement of the violator's right to a hearing, and it continues on to provide that the violator shall have 20 days from receipt of the notice within which to deliver a written request for a hearing. In accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Department may place on any party the responsibility of requesting a hearing if the Department notifies the party in writing of its right to a hearing and of its responsibility to request the hearing, N.J.A.C. 7:31-2.20(c) (now N.J.A.C. 7:31-6.3(a)) provides the procedures which a violator must follow in requesting an adjudicatory hearing. This subsection is clearly written and requires only that information necessary for the Department to determine whether a contested case actually exists, whether to attempt to negotiate or settle the matter and, where appropriate, to file the case with the Office of Administrative Law. Thus, N.J.A.C. 7:31-6.3(c) and (e), which permit the Department to deny a request for a hearing if the violator fails to submit its request in a timely manner or to include all the required information, is in accordance with the law and no change will be made.

COMMENT: The Commissioner should consider cost effectiveness and technical feasibility during the hearing and review process.

RESPONSE: N.J.S.A. 13:1K-26a provides that upon review of the extraordinarily hazardous substance accident risk assessment (EHSARA), the Department shall, if appropriate, order the owner or operator to undertake an EHS risk reduction plan and further requires that the order identify any risks which, within the limits of practicability and feasibility, must be abated. As the factors of cost effectiveness and technical feasibility are included within the common meanings of practicability and feasibility, both will be considered in the Department's determination of which risks, if any, must be abated by the owner or operator of a facility in order for its RMP to be approved.

COMMENT: Because of the enforcement potential and lack of flexibility of consent agreements, industry will be reluctant to enter into such agreements unless there is considerable extra float in compliance schedules and requirements. Industries will take full advantage of the adjudicatory hearings and bog down the program if consent agreements are used rather than permits.

RESPONSE: The Act, at N.J.S.A. 13:1K-23b and c and N.J.S.A. 13:1K-26g, specifically provides for consent agreements and for administrative orders for the correction of deficiencies or omissions and the abatement of risks in order to establish effective RMP's. It does not specify a permit approval process to implement RMP's. In addition, N.J.A.C. 7:31-2.6(g) and (h) provide registrants with the opportunity to submit their own proposals for correcting deficiencies, and indicate that if the Department and registrant reach agreement on the RMP, they shall enter into a consent agreement. The language of the rule implies that some negotiation is expected in the consent agreement process and the Department recognizes that flexibility is required on its part if the TCPA program is to be successfully implemented and managed. Regarding the enforceability of consent agreements, the Department must have the capability to require compliance with the RMP in order to effectively implement the TCPA program. Finally, the Act and the rule provide registrants with the right to request adjudicatory hearings, but the Department believes that it is in the best interest of industry to cooperate with it in carrying out the intent of this important public safety program.

COMMENT: The initial evaluation proposed in N.J.A.C. 7:31-2.7 must be amended to incorporate the procedure called for in the Act. If not, this section must be deleted in its entirety since it exceeds the statutory procedures for evaluating a risk management program as defined in the Act. The proposed initial evaluation takes away due process. The Act clearly mandates that attempts be made to address deficiencies. It should be recognized that few, if any, of a registrant's safety reviews, hazard analyses, or risk assessments conducted prior to promulgation of the proposed rules will retroactively meet all the requirements of N.J.A.C. 7:31-3.9. It is unfair that the RMP process requires submission of documents that may not exist in the required form because the requirements were unknown (e.g., safety reviews—past 2 years, hazard analyses and risk assessments—4 years, EHS accident reports-6 years). The selection of a retroactive timeframe for acceptability of safety reviews is arbitrary. This is retroactive regulation which places all registrants in jeopardy of non-approval of its RMP no matter how effective it is. Internal company audits and regulatory inspection results should be considered in the initial

evaluation. Additional flexibility is needed to allow facilities to develop a complying RMP and yet avoid non-compliance for failing the initial evaluation. If a company has used an RMP in the past and commits to use it as required in the future, this should be adequate.

RESPONSE: The Department disagrees with the need to amend or delete N.J.A.C. 7:31-2.7(b). The Act, at N.J.S.A. 13:1K-24, states that upon review of the registration and accompanying materials the Department shall develop a workplan for those facilities without a risk management program. In order to accomplish this, an initial evaluation must be made to determine if the registrant has an established risk management program. The intent of the initial evaluation of the summary risk management program statement is to provide enough information to the Department to allow a determination of whether the registrant's risk management program exists. A demonstration that the registrant has conducted a safety review and hazard analysis and, where required, a risk assessment, prior to submission of the summary risk management program statement will result in the Department finding that an RMP exists because it shows an awareness of the importance of risk identification and risk reduction management. The procedure in N.J.A.C. 7:31-2.6 does allow for handling deficiencies in an existing RMP. If these efforts are wholly inadequate or nonexistent, however, there is no existing risk management program to be reviewed by the Department. Although the Department would prefer to review all safety reviews and hazard analyses conducted in the past two years and four years respectively, N.J.A.C. 7:31-2.7 and 3.12 have been changed to require the submission of only the most recent reports of safety review and hazard analysis which can be conducted any time prior to the required submission of the summary risk management program statement, which for Part I EHS facilities is as late as 60 days after the effective date of the rule. Thus sufficient time exists for all facilities to comply with these requirements and, therefore, no changes have been made.

COMMENT: The use of "where required" in the proposed N.J.A.C. 7:31-2.7(b) is not clear. Who or what determines "where required" and in accordance with what criteria?

RESPONSE: In N.J.A.C. 7:31-2.7(b), "where required" refers to the circumstances under which a risk assessment is required to be performed. As N.J.A.C. 7:31-2.7(b) properly references N.J.A.C. 7:31-3.9(d), which specifies when a risk assessment must be performed, no change is necessary.

COMMENT: Internal audits and regulatory inspection results of agencies such as the Environmental Protection Agency and the Occupational Safety and Health Administration should be considered in the Department's initial evaluation of an RMP.

RESPONSE: N.J.A.C. 7:31-2.7 establishes the criteria for an initial evaluation of an RMP which consists of a review of the RMP description and reports of safety reviews, hazard analysis and risk assessments included in the summary risk management program statement. Therefore, the documents suggested are not needed for review during the initial evaluation of an RMP. However, they may be considered by the Department if the RMP is accepted for further review in accordance with N.J.A.C. 7:31-2.6(e).

COMMENT: Some appeal or negotiation process should be provided for registrants who feel they have a valid RMP. Some process is needed to permit correction of deficiencies prior to imposing an order to engage outside consultants.

RESPONSE: The initial evaluation of a risk management program is based upon the objective criteria established in N.J.A.C. 7:31-2.7(b). Either the registrant's summary risk management program statement meets the standard and is accepted for further review in accordance with N.J.A.C. 7:31-2.6(e), or it does not meet the standard and the registrant is required to follow the procedures in N.J.A.C. 7:31-2.9 for developing and implementing an extraordinarily hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan. There is no adminstrative appeal or negotiation process for those registrants who are found not to have an established risk management program at the initial evaluation stage.

COMMENT: As long as a utility meets the 60 day deadline for submission of an acceptable summary RMP, it should not have to proceed with the requirements of N.J.A.C. 7:31-2.9.

RESPONSE: If a registrant's summary risk management program statement meets the requirements of N.J.A.C. 7:31-2.7(b), its RMP will be accepted for further review and it will not have to proceed with the procedures specified by N.J.A.C. 7:31-2.9. Only if it is found not to have an established RMP under N.J.A.C. 7:31-2.7 is a registrant required to assist the Department in developing a work plan in accordance with N.J.A.C. 7:31-2.9.

COMMENT: One of the key elements to the success of this program is the expeditious identification of "high potential" sites through a two stage quality assessment of the existing RMP's consisting of initial screening through summary statement, and an on-site audit for compliance by owner/operator and the Department. The Department should work with registrants to correct deficiencies through an agreed upon compliance schedule, and should also audit to ensure compliance with the RMP based on the number of EHS releases, the results of previous audits, etc.

RESPONSE: The rule provides for an initial screening of RMP's through the initial evaluation of the summary risk management program statement as provided for in N.J.A.C. 7:31-2.7. If the summary risk management program statement shows that the registrant does have an established RMP, the Department plans, in most cases, to review the remaining documentation of the registrant's RMP during a site inspection. The Department has established a procedure to correct deficiencies in an RMP through an agreed upon compliance schedule at N.J.A.C. 7:31-2.6(f)4. The Department believes that to meet the intent of the Act, it must audit and inspect to ensure compliance with the RMP based on the requirements of N.J.A.C. 7:31-3, not solely on the number of EHS releases, and results of previous audits. These factors, of course, will play a part in the frequency and focus of Departmental inspections.

COMMENT: The phrase "assist the Department in developing a work plan" found in the proposed N.J.A.C. 7:31-2.9(a) should be changed to "in cooperation with the facility owner or operator, develop an extraordinarily hazardous substance risk reduction work plan." The recommended language directly reflects the language of the Act. It is clear that there is a difference between the terms "cooperation" and "assist". The first implies a cooperative spirit of joint responsibility. The second implies a primary and secondary relationship. Similarly, "assist" or "assisting" used in the proposed N.J.A.C. 7:31-2.5(f)2 and 7:31-2.9(b) should be changed to "cooperating".

RESPONSE: The Act, at N.J.S.A. 13:1K-24, clearly gives the Department the primary responsibility for developing the risk reduction work plan. The Department will of course require the assistance and cooperation of the facility owner or operator in meeting these requirements; however, the Department must have the authority to require the registrant to comply with the requirements of the rule in order to effectively carry out the intent of the Act. Therefore, the requested change will not be made.

COMMENT: N.J.A.C. 7:31-2.9(a) should be eliminated since N.J.A.C. 7:31-2.7 covers the requirement to proceed with the remainder of N.J.A.C. 7:31-2.9.

RESPONSE: N.J.A.C. 7:31-2.9(a) applies to registrants who have indicated that they do not have an RMP, as well as those whose RMP was determined to be unacceptable. As N.J.A.C. 7:31-2.7 only applies to registrants whose RMP was determined to be unacceptable, this subsection is necessary for clarity and will not be deleted.

COMMENT: The language of the proposed N.J.A.C. 7:31-2.9(c)3 implies that the work plan has already been developed. This provision should reflect the purpose of developing a work plan consistent with the requirements of N.J.A.C. 7:31-4 and should be specific to the registrant's facility.

RESPONSE: The Department agrees that N.J.A.C. 7:31-2.9(c)3 should be clarified, and has amended this paragraph to indicate that the work plan is "to be" developed.

COMMENT: The Act does not give the Department the authority to require the use of consultants or the submission of proposals as required in N.J.A.C. 7:31-2.9(d), (e) and (f). The requirement to submit and pay for three proposals imposes undue economic burdens, would certainly take longer than 60 days and should be extended to at least 90 days. The subsection concerning the independent consultant selection should be revised to allow a facility to prepare its own RMP if it has the expertise, and the Department should then review and approve the program. The Act does not require an outside consultant, only the Department to point out deficiencies in an RMP.

Also, mandating the use of an outside consultant does nothing to improve the risk management and risk management capabilities of in-house personnel. The line foreman, workers, process engineers, design engineers, health and safety professionals and environmental managers have an understanding of their production processes which no consultant can match. For the program to become truly successful, it has to become a "process", an integral part of the company's operations and way of thinking, not a "program" imposed from the outside and destined to languish once outside forces have been removed. In addition, this internal expertise may be distributed throughout different divisions of a company,

and internal audits are often performed by teams from separate divisions. The importance of input from registrant's personnel should be included in the rule.

RESPONSE: The Act does indeed provide the Department with the authority to have an accident risk assessment conducted by an independent consultant. N.J.S.A. 13:1K-25 specifies that "The EHSARA shall be conducted in conformity with the work plan for the facility developed by the Department pursuant to Section 6 of this Act by an independent consultant selected by the Department from a list of three candidates submitted by the owner of the subject facility or, at the option of the Department, by the Department or by an independent consultant contracted for by the Department . . ." Thus, the Act does not allow a facility to prepare its own EHS accident risk assessment which eventually leads to an RMP.

The submission of proposals by consultants is considered necessary in order to adequately evaluate the consultants and the extent of work proposed by each consultant. The proposals may be in an abbreviated form in some cases; however, they are necessary for the Department to determine that the EHSARA proposals meet the requirements of N.J.A.C. 7:31-2.18 and that the consultants are capable of performing the EHSARA in accordance with the schedule set forth in the work plan.

It is a common practice to require three proposals to determine the consultants' comprehension of the scope of work and the personnel required to carry out the proposal. Consultants are rarely selected before review of at least three proposals, and in many cases the costs for development of the proposals are absorbed by the consultants, so that no additional burden may be placed on the registrant. The Department believes that 60 days is a reasonable time for the submittal of proposals to conduct the EHSARA since the requirements of a work plan will have been already prepared through a meeting between the registrant and the Department as stated at N.J.A.C. 7:31-2.9(c).

Preparation of a risk management program by a registrant's own personnel in the case of a facility without an existing RMP is inconsistent with the mandate of the Act. N.J.S.A. 13:1K-25 clearly requires that the EHSARA be conducted by an independent consultant. However, the use of facility personnel to contribute to the development of the program is recognized in N.J.A.C. 7:31-4.5(a)7 through 12. The Department agrees that foremen, workers, and engineers can contribute significantly, and that their efforts can be an integral part of the risk assessment under the supervision of the independent consultant. Finally, the Department agrees that the RMP has to become an integral part of a registrant's operations in order for it to be successful and has designed the program's requirements to ensure that risk reduction and RMP procedures become literally a day to day consideration at covered facilities. Therefore, no changes will be made.

COMMENT: How will the Department impose the requirement for the registrant to hire a consultant to do an extraordinarily hazardous substance accident risk assessement on small companies which cannot afford huge consulting fees. Will this result in non-enforcement against small companies?

RESPONSE: The requirement that an EHSARA shall be conducted by an independent consultant or by the Department originates in the Act, at N.J.S.A. 13:1K-25. The division of work between the registrant and the consultant or the Department, and the schedule of the work to conduct an EHSARA shall be established in accordance with N.J.A.C. 7:31-2.9(c) which provides for consideration by the Department and the registrant of the full range of factors that may affect the cost of the consultant to the registrant. The Department will require compliance with the rule by all companies subject to it, regardless of the size of the facility. However, the cost of the extraordinarily hazardous substance accident risk assessment is expected to be based, at least in part, on the size of the facility, the quantity of the EHS involved and the relative complexity of the process itself. Therefore, the cost for small companies is generally expected to be less than that for large facilities which generally have more complicated processes and greater amounts of EHS on board.

COMMENT: Referring to the proposed N.J.A.C. 7:31-2.9(d), what criteria will the Department use in authorizing a type of personnel to perform an extraordinarily hazardous substance accident risk assessment? Availability of Department personnel and recalcitrance of the registrant should be considered.

RESPONSE: The selection of the type of personnel the Department will authorize to perform an EHSARA will likely depend on the scope of the facility, capabilities and resources of the registrant, and the availability of consultants or Department personnel. Recalcitrant registrants will be subject to appropriate legal actions, and the penalties listed at N.J.A.C. 7:31-2.20 (now N.J.A.C. 7:31-6.4).

COMMENT: The consultant selection process specified is unnecessarily time-consuming, burdensome, and cost-ineffecitve. Consultants will require time on-site to develop a meaningful proposal and will charge for their efforts.

RESPONSE: The consultant selection process specified at N.J.A.C. 7:31-2.9(d) through (g) is directly derived from the requirements of the Act, at N.J.S.A. 13:1K-25, and is not excessively time-consuming or burdensome. It is a common practice to require three proposals to determine the consultant's comprehension of the scope of work and the personnel and other resources required to complete the work. Consultants are rarely selected before review of at least three proposals, and in many cases the costs for development of the proposals are absorbed by the consultants, so that no additional burden may be placed on the registrant. This would include the consultant's time on-site to develop a proposal.

COMMENT: The proposed N.J.A.C. 7:31-2.9(g) allows only 30 days to execute a contract with the chosen consultant. This is an unrealistically short period of time for a contract to be negotiated, reviewed and approved by all the individuals involved, some of whom may be in other countries. At a very minimum, 60 days would be required.

RESPONSE: The Department agrees that an extension of the time allowed to execute a contract with the consultant is reasonable; however, 45 days is deemed sufficient to complete this process. The rule has been modified accordingly. Also, the 30 day period specified in D of Table II at N.J.A.C. 7:31-2.20(i) (now N.J.A.C. 7:31-6.4(d)) has been changed to 45 days to be consistent with N.J.A.C. 7:31-2.9(g).

COMMENT: The risk reduction plan prepared pursuant to the proposed N.J.A.C. 7:31-2.9(k) should consider the costs and resources associated with such actions.

RESPONSE: The Act, at N.J.S.A. 13:1K-26, specifically requires the Department in ordering an owner or operator to undertake an EHS risk reduction plan, to identify the risk or risks which must, within the limits of practicability and feasibility, be abated and a reasonable timetable for implementation of the plan. Therefore, the Department is required to take cost and resource considerations into account when directing a registrant to implement a risk reduction plan. The Department will thus consider the various alternatives available for reducing the risks at a faclity, including the overall cost and effectiveness of each available alternative in directing a registrant to implement a risk reduction plan. However, the most important consideration remains the effectiveness of the alternative in reducing overall risk. As the Department is required by the Act to consider these factors, no change is necessary.

COMMENT: The wording of the proposed N.J.A.C. 7:31-2.9(h) should be made consistent with the Act by deleting "and develop a recommended risk reduction plan which will include the identification of those activities necessary to create a risk management program."

RESPONSE: Although the Act does not specifically state it, one of its main goals is clearly to ensure that all registrants have an effective RMP. The purpose of the EHS risk reduction work plan, the EHSARA, and the EHS risk reduction plan is clearly the development of an effective RMP which is defined by the Act, at N.J.S.A. 13:1K-21i, as ". . . the sum total of programs for the purpose of minimizing extraordinarily hazardous accident risks . . ." Therefore, no change will be made.

COMMENT: In the proposed N.J.A.C. 7:31-2.10(b)2 the deadline for submission of required documentation to the Department should be changed to 30 days as opposed to 90 days since this will provide sufficient time for the Department to visit a proposed new EHS facility before it is placed into service.

RESPONSE: Submission of the required documentation only 30 days prior to the scheduled placing of EHS equipment into service would not provide sufficient time for the Department to thoroughly review the revised RMP description, hazard analysis, and safety review; to advise the rgistrant of any substantial deficiencies which must be corrected; and also allow the registrant reasonable time to implement necessary risk reduction measures. Therefore, no change will be made.

COMMENT: While the Act specifies a dual approach (those facilities with RMP's submit them to DEP for review and those facilities without RMP's work through the EHS risk reduction work plan, EHSARA, and EHS risk reduction plan), a compromise position would be to structure the risk reduction work plan after the elements of the RMP, so that the same objective is obtained.

RESPONSE: The extraordinarily hazardous substance risk reduction work plan is indeed structured after the elements of the RMP. N.J.A.C. 7:31-4.5, which specifies the scope of work in the work plan, requires a review and evaluation of the eight elements of an RMP, so that this approach is clearly designed to end in an approved RMP. Therefore, no change is necessary.

COMMENT: The proposed N.J.A.C. 7:31-2.11 suggests that only registrants with an approved RMP may make a modification. This is punitive and unworkable. An interim status should be added which would apply to facilities which have submitted their RMP for review.

RESPONSE: N.J.A.C. 7:31-2.4(f) has been amended to indicate that those facilities which the Department has determined have an established RMP, as described at N.J.A.C. 7:31-2.7, may make a modification. The requirements for those facilities performing a modification are described in N.J.A.C. 7:31-2.11. The Department must review the summary risk management program statement to determine that an RMP exists in order to ensure that the facility has taken the proper risk management measures for the modification.

COMMENT: If a company uses a different EHS than was covered in its RMP, would it have to obtain approval of a new RMP for that substance or could it simply obtain approval for a modification to its current RMP?

RESPONSE: In accordance with N.J.A.C. 7:31-2.10(b)2, a registrant with an approved RMP wishing to use a new EHS must submit reports of safety review, hazard analysis and risk assessment (if necessary), and a revised RMP description at least 90 days prior to placing the new EHS into service.

COMMENT: The proposed N.J.A.C. 7:31-2.11(a) and (b) requiring a safety review, hazard analysis and risk assessment on all modifications is unreasonable and unprecedented by anyone in the chemical industry, even those companies with the most sophisticated and advanced RMP's. Requiring a hazard analysis for all modifications, regardless of their relationship to actual safety procedures, is unduly burdensome and might actually work against the measures which are occasionally necessary to react to process conditions outside the registrant's direct control. The Department must recognize that the responsible manager must have the authority to make modifications which do not increase the probability of a release or the probability of an increase in the amount of release. All changes should be documented and be considered in the annual safety review. If the modification involves changes which affect the facility's RMP, then the RMP must be changed prior to obtaining approval of the responsible manager. Where a modification could increase the probability, rate or amount of a release, a safety review and hazard analysis must be conducted. Recommendations from these studies must be completed prior to implementation of the modification. A risk assessement should be conducted if the hazard analysis identifies an increase in the potential for a release in an amount which within one hour will be equal to or greater than five times the registration quantity, or the site specific risk assessment quantity. However, twice next to nothing still closely approximates nothing, and if no relief is given on this issue, the Department and industry will be bogged down by unproductive and costly "de minimis" transactions. The Department would of course be notified of the modification in advance, providing the opportunity for a site visit.

RESPONSE: The Department believes that it is necessary to perform a safety review and hazard analysis on every modification made. An example of what may occur when a modification is not properly reviewed before being implemented is the accident that occurred in Flixborough, England where a release and explosion of cyclohexane killed several people on-site and destroyed the facility. The Bhopal, India, accident occurred because several pieces of safety equipment had been disconnected without studying the various possibilities of an accident occurring without this equipment being on-line. A safety review and hazard analysis on every modification is therefore not unduly burdensome. Based on the safety review and hazard analysis, the responsible manager has the authority to implement modifications without receiving Departmental approval. However, the reports of safety reviews and hazard analyses for certain modifications must be submitted to the Department at least 60 days prior to the implementation of the modification in accordance with N.J.A.C. 7:31-2.11(b).

The registrant shall submit the report of the safety review, the report of the hazard analysis, and where applicable, the report of the risk assessment on the modification to the Department at least 60 days prior to the date of placing the equipment or procedure in EHS service. Also, the equipment placed into EHS service must of course be placed into service as represented in the reports of safety review, hazard analysis and risk assessment.

The Department firmly believes that the conditions identify major modifications and that the specified reports must be submitted to the Department for review in order to verify that the modification does not have a likely potential for a catastrophe. To merely document these modifications in the annual safety review may allow a modification with the potential for a catastrophe to be put into operation. Also, simply providing advance notification of a modification would not provide the Department with sufficient details if a hazard was present, or even if a site visit to inspect the modification was warranted. N.J.A.C. 7:31-2.11(b) and 3.9(d) have been amended to delete the requirement for a risk assessment and subsequent notifications to the Department on a modification where the potential release that may result is an increase of twice the potential that existed before the modification was made. The Department agrees with the comment that risk assessments should be conducted on only major modifications and that the requirement for a risk assessment on numerous smaller modifications was in error. However, the Department is still reviewing the issue of modifications that raise the potential release to five times the registration quantity where that size potential did not exist before. The twice the potential increase clearly did not address the intended issue and as proposed would have resulted in unnecessary risk assessments being conducted that would have utilized substantial resources of both the regulated community and the Department without making any impact of significance on the reduction of risks.

COMMENT: The proposed N.J.A.C. 7:31-2.11(b) requiring 60 days advance notice of modification of equipment or procedures is unrealistic and impractical. The proposed requirement exceeds statutory authority in that the Act contained no provisions for prior notice of modifications. The requirement should be revised to require notice within 30 days after the fact for major or significant modifications only; and, if all modifications must be reported, then non-safety modifications should not be reported in advance, and the 60 day advance notice requirement should be shortened. Also, there is a need for prompt modifications due to unforeseen circumstances and to protect companies acting on such circumstances. Therefore, the penalties for not meeting advance notification in such circumstances should be waived; and the Department should include a waiver of the 60 day rule in the proposed N.J.A.C. 7:31-2.11(b) if unusual or mitigating circumstances warrant it. As a final alternative, the 60 day prior notification should be completely eliminated.

RESPONSE: Although the Act does not specifically address prior notification of modifications, modifications are recognized as a common cause of errors, mishaps, and accidents because they are either unauthorized or improperly designed. The Legislature declared, at N.J.S.A. 13:1K-20, that the single most effective effort towards prevention of catastrophic accidents is the anticipation of the circumstances that could result in such occurrences and taking those precautionary and preemptive actions required. In addition, the TCPA rules are promulgated, in part, under the authority of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., which relates to the control and suspension of air pollution, defined in part as the presence in the outdoor atmosphere of one or more air contaminants in such quantities or duration as are injurious to human health or welfare, and which also provides the Department with the power to promulgate rules to prevent, control, and prohibit air pollution throughout the State.

Notification of major modifications 30 days after the fact could result in a registrant incurring additional expense and perhaps delay in the form of interruptions of production in making additional changes to meet Department requirements which may have been avoided by providing advance notice of the modification. The Department will be notified of all other modifications in the annual report pursuant to N.J.A.C. 7:31-3.13.

The rule will not be changed to provide a waiver of either the 60 day rule for unusual or mitigating circumstances, or of the penalties for not meeting this requirement as all modifications requiring the specific submittals must be reviewed by the Department to meet the intent of the Act. Based on this, the Department has determined that the submission of reports of the safety review, hazard analysis, and risk assessement 60 days prior to placing the equipment or procedure into service is necessary to protect the public health, safety and welfare. Therefore, no changes to the rule will be made.

COMMENT: How do the proposed requirements of N.J.A.C. 7:31-2.11 regarding modification to an EHS facility relate to N.J.A.C. 7:27-8.2 and 8.3 regarding air pollution permit alterations. Will an air permit alteration also have to be submitted? If so, can the modification be implemented if the air permit has not been approved?

RESPONSE: Although the TCPA rules are promulgated, in part, under the authority of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., the TCPA rule and the Bureau of Air Pollution Control rule are entirely separate rules designed for separate purposes. Therefore, an EHS must satisfy the requirements of each rule separately.

COMMENT: N.J.A.C. 7:31-2.12 goes far beyond the statutory authority of the Act and gives the Department the right of a warrantless

search. N.J.A.C. 7:31-2.12 is invasive of privacy and in violation of property rights. Such inspections can only be conducted based on probable cause and reasonably related to determining compliance status. Further, many plants have proprietary processes or equipment and in some instances there are contractual terms prohibiting sketches or photographs of proprietary processes or machinery. The inspections should only apply to EHS facilities and not to other site facilities; they should be limited to reasonable times and the right to test, sample, photograph, or sketch should be limited only to portions of an EHS facility. The Department and its employees should be subject to criminal or civil liabilities if the confidentiality of the registrant's EHS facility is breached. Disclosure of confidential information should be required only for cause and not at the whim of the individual inspector. A warrant of subpoena procedure is the least that should be required.

RESPONSE: This section regarding inspections was withdrawn. A new N.J.A.C. 7:31-2.12 describing the Department's rights and the registrant's responsibilities during inspections was proposed in the February 16, 1988 N.J. Register at 20 N.J.R. 350(a), along with the Department's proposed Confidentiality rule, N.J.A.C. 7:31-5. This comment and all others received during the comment period for the withdrawn or newly proposed N.J.A.C. 7:31-2.12, will be considered and responded to in the notice of adoption for the TCPA Confidentiality rule, N.J.A.C. 7:31-5.

COMMENT: In reference to the proposed N.J.A.C. 7:31-2.12, third party inspection is necessary to ensure total compliance with audit and reporting requirements. Self-regulation, which is allowed by the proposed N.J.A.C. 7:31-3.11(b)2, for example, has been proven ineffective in many cases. In some cases involving self-regulation, oversights can result from ignorance. For example, inspectors are not always aware of current changes in codes. In other cases, "oversights" are deliberately made so that a particular plant would not have to shut down for repairs. Third party inspection will ensure that all rules are applied unbiased across the board, will provide the Department with a fair overall appraisal of the program, and will define state of the art for the entire field.

RESPONSE: This section regarding inspections was withdrawn. A new N.J.A.C. 7:31-2.12 describing the Department's rights and the registrant's responsibilities during inspections was proposed in the February 16, 1988 N.J. Register at 20 N.J.R. 350(a), along with the Department's proposed confidentiality rules, N.J.A.C. 7:31-5. This comment and all others received during the comment period for the withdrawn or newly proposed N.J.A.C. 7:31-2.12, will be considered and responded to in the notice of adoption for the confidentiality rules, N.J.A.C. 7:31-5.

COMMENT: The frequency of inspection proposed in N.J.A.C. 7:31-2.12(b) should be extended from once a year to once every two years.

RESPONSE: This section regarding inspections was withdrawn. A new N.J.A.C. 7:31-2.12 describing the Department's rights and the registrant's responsibilities during inspections was proposed in the February 16, 1988 N.J. Register at 20 N.J.R. 350(a), along with the Department's proposed Confidentiality rule, N.J.A.C. 7:31-5. This comment and all others received during the comment period for the withdrawn or newly proposed N.J.A.C. 7:31-2.12, will be considered and responded to in the notice of adoption for the Confidentiality rule, N.J.A.C. 7:31-5.

COMMENT: The proposed requirements of N.J.A.C. 7:31-2.12 should reference the language of the Act which states that "facility owners or operators shall be under no obligation to employ any personnel solely to assure access to the facility by the Department when this access would otherwise be impossible." The Department should schedule inspections in advance. It may be necessary to call in personnel to safely escort Department personnel through an EHS area. Additionally, N.J.A.C. 7:31-2.12 should state that those individuals conducting inspections should be fully qualified and will be subject to the same personal protective equipment needs as others in the facility.

RESPONSE: This section regarding inspections was withdrawn. A new N.J.A.C. 7:31-2.12 describing the Department's rights and the registrant's responsibilities during inspections was proposed in the February 16, 1988 N.J. Register at 20 N.J.R. 350(a), along with the Department's proposed Confidentiality rule, N.J.A.C. 7:31-5. This comment and all others received during the comment period for the withdrawn or newly proposed N.J.A.C. 7:31-2.12, will be considered and responded to in the notice of adoption for the Confidentiality rule, N.J.A.C. 7:31-5.

COMMENT: In the proposed N.J.A.C. 7:31-2.12(c), "within a reasonable time" is too vague. The Department should furnish an inspection report in a specified amount of time following the inspection, such as 30 days or 90 days.

RESPONSE: This section regarding inspections was withdrawn and a new N.J.A.C. 7:31-2.12 describing the Department's rights and the registrant's responsibilities during inspections was proposed in the February 16, 1988 N.J. Register at 20 N.J.R. 350(a), along with the Department's proposed Confidentiality rule, N.J.A.C. 7:31-5. This comment and all others received during the comment period for the withdrawn or newly proposed N.J.A.C. 7:31-2.12, will be considered and responded to in the notice of adoption for the Confidentiality rule, N.J.A.C. 7:31-5.

COMMENT: In the proposed N.J.A.C. 7:31-2.13, the authority of the Department to take such actions is questioned. No power to force an owner or operator to cease operating was given except after a risk had been identified, a risk reduction plan approved, and a scheduled implementation date missed. A risk determination should be outlined by the Department that quantifies what degree of risk would require process termination through Department mandate. A finding of imminent and substantial risk should be required and a procedure for immediate appeal of such a cease operation order should be provided. In the alternative, this section should be deleted in its entirety as it is duplicative of existing regulatory programs, and a court order is necessary to require a facility to cease operating EHS equipment.

RESPONSE: The Department's authority to order an owner or operator or registrant to cease operating to protect human health from an EHS release is based on three statutes. Under the act relating to the organization and reorganization of the Department, N.J.S.A. 13:1D-1 et seq., the Department is given the power to institute legal proceedings for the prevention of pollution of the environment and the abatement of nuisances in connection therewith, N.J.S.A. 13:1D-9e. Secondly, in accordance with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., the Department is authorized upon discovery of a condition which violates the provisions of that act or any rule promulgated pursuant thereto, and this rule is promulgated in part under the authority of the Air Pollution Control Act, to order such violation to cease and to take such steps as are necessary to enforce such an order, N.J.S.A. 26:2C-14. Finally, the Act, at N.J.S.A. 13:1K-26a, specifically provides that "the Commissioner may order those operations posing the identified risk or risks that have not been abated on schedule to cease until the risk reduction plan has been implemented." At N.J.A.C. 7:31-2.13 the Department has construed its authority under these statutes in such a manner as to allow it to carry out the basic underlying assumption of the TCPA, which is that the single most effective effort to be made is toward prevention of those environmental accidents by anticipating the circumstances that could result in their occurrence and taking those precautions and preemptive actions required, N.J.S.A. 13:1K-20.

The Department agrees that pursuant to the Act, it is required to establish criteria or quantitative standards for determining risk. This will be developed and proposed in a future amendment to the rule. However, the Departent does have authority under the Act to require those operations which pose an unreasonable risk of a potentially catastrophic release to cease operating until the identified risk or risks have been abated. Because of the emergent nature of these situations, the Department is not providing for an administrative appeal of such orders. Therefore, no changes are being made to the rule at this time.

COMMENT: The requirement for an annual report in N.J.A.C. 7:31-2.14 is very burdensome. A simple certification could be submitted and file data could be reviewed in the course of site inspections instead.

RESPONSE: The requirements of the annual report in N.J.A.C. 7:31-2.14 represents the minimum information needed by the Department to verify compliance with the provisions of the Act in an efficient manner. The submittal is designed to allow the Department to adequately prepare for the on-site inspection and verify compliance as much as possible from its offices. By requiring the submission of an updated checklist, RMP description, and Sections D and E of the registration form, the submittal of voluminous site documents is avoided and the inspection of site documents is minimized. A simple certification would not provide the updated information the Department needs to keep informed of the current status on each EHS facility.

COMMENT: In the proposed N.J.A.C. 7:31-2.15, regardless of the authority provided in N.J.S.A. 13:1K-28, the requirement that insurance carriers rating reports be submitted should be deleted. The Act provides for the Department to institute an administrative procedure to determine whether an owner or a facility should be required to authorize an insurer to release to the Department certain information. Therefore, this review process should be clarified by adding a reference to the requirements of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Furthermore, the legality of requiring the submission of the underwriter's reports is questionable, particularly if the carrier is located out of state. If necessary, this requirement should be subject to subpoena procedures directed to the offending company. Additionally, it introduces inspection standards peculiar to the insurance carrier into the rule, a procedure

which circumvents legal rulemaking. At any rate, the wording of the proposed N.J.A.C. 7:31-2.15(c) should be changed to limit disclosure to only information relevant and pertinent to the EHS facility in question.

RESPONSE: This section regarding the release of information by insurance carriers was withdrawn and a new N.J.A.C. 7:31-2.15 was proposed in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a) along with the Department's proposed Confidentiality rule, N.J.A.C. 7:31-5. This comment and all others received during the comment period for the withdrawn or newly proposed insurance section will be considered and responded to in the notice of adoption for the Confidentiality rule, N.J.A.C. 7:31-5.

COMMENT: N.J.A.C. 7:31-2.15, regarding the release of information by insurance carriers, will seriously inhibit an insured from disclosing pertinent underwriting information to its insurance carrier for fear that the information released may be obtained by other parties. This may impede loss control efforts. The outstanding concern and reluctance by the insured to disclose its proprietary information cannot be diminished, even though N.J.S.A. 13:1K-28 provides immunity from civil liability for any insurance carrier as well as affords confidential treatment to the information released. If an insurer cannot obtain the full information needed to evaluate and underwrite a risk, the result is that the risk cannot be accurately assessed and priced. An underpriced risk yields inadequate premiums which result in insufficient funds to pay for any covered losses. When an insurer's reserves are depleted, the insurer's policyholders surplus is utilized to pay out losses. If an insurer's policyholder's surplus is jeopardized, an insurer runs the risk of statutory insolvency. As the possibility of insolvency heightens, the insurer is forced to take the precautionary measures of either raising prices or worse, declining to underwrite risks if the insureds are not releasing pertinent underwriting data. The result is that insureds suffer increased costs and the loss of coverage for environmental risks. As costs rise, coverage shrinks. Therefore, the rule is not in the best interest of the public. Also, there is no advantage to be gained from these procedures, because in the event of an EHS release the State could subpoena the offending company's records anyway. Adoption of this section negatively impacts the insurance industry and the public, undermining risk management, rather than enhancing it.

RESPONSE: This section regarding the release of information by insurance carriers was withdrawn and a new N.J.A.C. 7:31-2.15 was proposed in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a) along with the Department's proposed confidentiality rules, N.J.A.C. 7:31-5. This comment and all others received during the comment period for the withdrawn or newly proposed insurance section will be considered and responded to in the notice of adoption for the confidentiality rules, N.J.A.C. 7:31-5.

COMMENT: If both the Act and the proposed rule comtemplate a proceeding which would be commenced to require an insurer to turn over its files, the insurer should receive notice of the hearing and be named in the proceeding as a party to the action. For this reason, N.J.A.C. 7:31-2.15(a) should be changed to indicate that any insurer required to supply information to the Department pursuant to this section shall be named as a party in any action commenced and shall have all the rights of a party to that action including the right to request that the court issue a protective order with respect to any documents considered privileged, proprietary, confidential, defamatory or to contain the work product, trade secrets or security information of that insurer. Also, the Act provides for certain immunities to insurers in subsequent civil proceedings for any statements made or for actions taken voluntarily or in response to an authorization or request from the client facility. N.J.S.A. 13:1K-28(b). The rules make no reference to the immunities provided in this section and should be changed to indicate that any insurer or its representative that produces information pursuant to the regulation shall be afforded all the immunities from liability set forth in the Act.

RESPONSE: This section regarding the release of information by insurance carriers was withdrawn and a new N.J.A.C. 7:31-2.15 was proposed in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a) along with the Department's proposed Confidentiality rule, N.J.A.C. 7:31-5. This comment and all others received during the comment period for the withdrawn or newly proposed insurance section will be considered and responded to in the notice of adoption for the Confidentiality rule, N.J.A.C. 7:31-5.

COMMENT: The purpose of insurance inspections is to evaluate and help a company correct potential job hazards. The proposed N.J.A.C. 7:31-2.15, in effect, could place the carrier in the position of a regulator. The information insurance carriers obtain is confidential and it would be unethical to share it with anyone else. There is concern that if hazards found during an insurance inspection are not communicated to the State, or if hazards are not found at all, the carrier may be found negligent.

RESPONSE: This section regarding the release of information by insurance carriers was withdrawn and a new N.J.A.C. 7:31-2.15 was proposed in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a) along with the Department's proposed Confidentiality rule, N.J.A.C. 7:31-5. This comment and all others received during the comment period for the withdrawn or newly proposed insurance section will be considered and responded to in the notice of adoption for the confidentiality rules, N.J.A.C. 7:31-5.

COMMENT: The proposed fee schedule set forth in N.J.A.C. 7:31-2.16 calls for the same fee for a facility which manufactures, stores, and uses a given quantity of a specific EHS as for a facility which is simply a terminal, storing the same quantity of the same EHS. Yet it would seem safe to conclude that the work expended by the Department in evaluating the RMP of the former facility would be far greater than evaluating the program of the latter, and one would assume that the potential risk to the community would similarly be greater at the former facility. Different fees are appropriate for different situations.

RESPONSE: The Act authorizes the Department to charge and collect fees from registrants to administer the program on a self-sustaining basis. The proposed fee schedule is designed to generate sufficient funds to administer the TCPA program and is based on the estimated effort and expense for the Department to complete the required tasks. The Department reviewed several methods on which to base fees for a self-supporting program including one based on distribution of the cost of the program by imposing a flat fee on each registrant and one based directly on the quantity of an EHS associated with each registrant. From this review the Department concluded that a combination fee based on both the number of registrants and the quantity of EHS at each site would distribute the cost of implementing the TCPA program most fairly. The base fee distributes the cost among registrants and reflects that some minimum number of hours of effort will be required to review every site for the tasks identified. The fee based on the EHS inventory distributes the cost of implementing the program according to the quantity of EHS on-site. Roughly, the greater the EHS inventory at a site, the greater the magnitude of the hazard at the site, and in some cases storage terminals may represent an even greater risk than manufacturing operations. They are involved in one of the greatest risk areas which is loading and unloading of bulk containers. Generally the Department expects to devote more time and effort to those facilities which pose the greater potential risk. Therefore, the Department believes that the fee schedule is fair and equitable for all sizes and types of EHS facilities and no change in the fee schedule will be made as a result of this comment.

COMMENT: By statutory mandate at N.J.S.A. 13:1K-31, the Department's fee schedule "shall reflect the costs to the Department of reviewing individual facilities . . ." However, the proposed N.J.A.C. 7:31-2.16 does not charge fees based upon the number of individual EHS facilities. Rather, it first distinguishes between water treatment or wastewater treatment systems and "all other registrants". Then, even though the "all other registrants" are charged the same base fee as those registering a water or wastewater treatment system, the former pay on a per site basis, not on a per facility basis. Thus, several EHS facilities on one site would pay one base fee of $4,000, but one EHS and one wastewater treatment system on one site would pay two base fees, or $8,000. There is no basis for the differentiation made in the proposed N.J.A.C. 7:31-2.16(j) and (k), and it clearly contravenes the statute to charge one category by facility, but the other category by site.

RESPONSE: A site which has an EHS facility and a water or wastewater treatment facility would only pay one base fee as the water or wastewater treatment system would be considered a part of the site at the option of the registrant. This is consistent with the Act in that the Department will expend less effort in reviewing the site because of the similar documentation involved in the review of the RMP, and the fee schedule has been changed to reflect this.

COMMENT: The fees proposed in N.J.A.C. 7:31-2.16 based on hazards units should only be applied to quantities of chemicals that could reasonably be combined to create a condition reaching the minimum registration quantity.

RESPONSE: The Department had previously investigated a number of different fee schedules that would be easy to understand, would reflect the cost to the Department for reviewing a facility's RMP, and yet would be fair and equitable to all parties subject to the TCPA. The idea of combining an inventory-derived fee with the $4,000 base fee is based on the proposition that facilities with more EHS's and with larger quantities

of EHS's would require more time by the Department to review because they represent a greater risk. Also, the Department believes that the suggested fee schedule would not be easy to understand for registrants and would be difficult to administer by the Department because of ambiguity and subjectivity of the phrase "reasonably be combined". Therefore, no change has been made.

COMMENT: Based on the method for calculating fees proposed in N.J.A.C. 7:31-2.16, water and wastewater treatment system would be subsidizing the TCPA program for major chemical and manufacturing companies. The Department will have to spend much less time and effort reviewing information concerning facilities with only one EHS as opposed to the major facilities. It is recommended that the method of calculating fees should reflect the Department's costs to handle each registrant's TCPA information submitted pursuant to the proposed rule. Also, has the Department done any calculations for expected revenue or average expected fees for facilities using specific substances or processes? The registration fees do not appear to be substantial for certain substances.

RESPONSE: The fee schedule is designed to reflect the Department's efforts to review each risk management program. Water and wastewater systems as defined in the rule would pay only one base fee of $4,000 per system, regardless of the number of sites within that water or wastewater system. An additional fee based on the quantity of chlorine on the sites within the system would be added to the base fee; however, the quantity of EHS's is generally much lower at most water and wastewater treatment systems than at the average EHS facility. Thus, the average water and wastewater treatment systems will be paying an annual fee of $4,200 to the TCPA program, while the average industrial operation will be paying an annual fee of $6,650. It is currently estimated that water and wastewater treatment facilities will pay 58 percent of the cost of the program, while they represent over 72 percent of the facilities to be subject to the TCPA. With the additional facilities to be added upon further expansion of the EHS list, the number of facilities and the percentage of the costs paid by industrial operations is expected to significantly increase. Over 42 percent of the water and wastewater systems have indicated to the Department that they do not have risk management programs in place as compared to only 11 percent of the industrial facilities. For these reasons, the Department believes that the fee schedule is fair and equitable, in that the fee for each EHS above the base fee will reflect the effort expended by the Department. As to the statement that the registration fee will not be substantial for certain substances, the registration quantity was determined for each EHS to be the amount of that EHS which has the potential for a toxic catastrophe. The registration quantities of two different EHS's will therefore represent the same hazard. Translating this into hazard units equitably distributes the inventory-derived fee for different substances.

COMMENT: A substantially reduced base fee should be assessed to all registrants. Another fee should be charged to registrants with no RMP to prepare a work plan.

RESPONSE: The proposed fee schedule was developed to generate sufficient funds to administer the TCPA program and is based on the estimated effort and expenses for the Department to complete the required tasks. The Department reviewed different methods on which to base fees for a self-supporting program including one based on distribution of the cost of the program across the number of registrants and one based on distribution of the cost across the quantity of EHS associated with each registrant. From this review the Department concluded that a combination based on the number of registrants and the quantity of EHS at each site would distribute the cost of implementing the TCPA program most fairly and equitably. The base fee distributes the cost among all registrants and reflects that some minimum number of hours of effort will be required to review every site for the tasks identified. The fee based on hazard units distributes the cost of implementing the program according to the quantity of an EHS on-site by relating the hazard unit to the registration quantity of the EHS; i.e., the number of hazard units at an EHS reflects the magnitude of the hazard at the site. To charge a decreased base fee to every registrant and an additional fee for those registrants without an RMP would be inappropriate.

The Department does not believe that it will have to perform a substantially larger amount of work for those registrants with no RMP. Those registrants in the work plan are required to compile all of the site documentation, and an independent consultant paid for by the registrant will be responsible for conducting the extraordinarily hazardous substance accident risk assessment at the Department's option. Thus, registrants without RMP's should be paying the Department the same fee as a registrant with an RMP, as the Department's actual workload is expected to be roughly the same for either type of registrant. Of course, a registrant without an RMP will have actual implementation costs that are significantly higher as the consultant chosen by the Department operates at the registrant's expense and the required risk reduction measures may be significantly more expensive. Therefore, to charge a decreased base fee to every registrant and an additional fee for those registrants without an RMP would be inequitable, and no change will be made.

COMMENT: Is the fee in N.J.A.C. 7:31-2.16 applied to each chemical, each process or the overall plant site?

RESPONSE: For water and wastewater treatment systems the annual base fee applies to each treatment system. For all other registrants, the base fee is applied to each site. The inventory derived fee is determined from the number of hazard units of an EHS and is based on the total inventory of each EHS at each site or system, respectively. In the case where a water treatment system or wastewater treatment system and one or more chemical processing facilities are all located on one site, only one base fee would be applied to the entire site.

COMMENT: The certification proposed in N.J.A.C. 7:31-2.17(a)1 is unrealistic and should be deleted or modified. No official could certify that the information is true, accurate and complete unless all elements of the RMP were prepared and performed by that official. No one person can know every nut and bolt in the facility and every nuance of the operating procedures, systems, programs, training, emergency response, evaluation, hazard analysis, risk assessment, dispersion analysis, etc. This could be a totally self-incriminating statement. The certification should be modified to reflect that one person can only certify to the best of his knowledge and belief. Further, the certification should be signed by the most knowledgeable and responsible person or by the officially designated appointee.

RESPONSE: The certification in N.J.A.C. 7:31-2.17(a) is not unrealistic. While no one individual can personally carry out all of the requirements of the Act, these rules and the RMP, responsibility for overall compliance with these requirements must be placed in some identifiable and responsible corporate, partnership, proprietary or governmental officer or official who has personal knowledge of these activities. The Department cannot be required to sanction the unwillingness on the part of an owner or operator of a site to identify an official willing to take responsibility for the RMP. Therefore, the Department is not willing to include such language as "to the best of his knowledge and belief" in the certifications. The highest ranking individual at the site is clearly in the best position to know what the actual situation is at his or her facility and to ascertain whether documents required to be submitted with his or her signature are true, accurate and complete. The certification of the highest official at the site assures that responsibility for the program is placed at the highest levels and that upper management involvement and support for the program is secured. Therefore, no change will be made to the rule based on this comment.

COMMENT: Regarding certification in the proposed N.J.A.C. 7:31-2.17(a), penalties should be imposed only under the circumstance of submission of knowingly false, inaccurate, or incomplete information. In addition, a more appropriate certification for the proposed N.J.A.C. 7:31-2.17(a)1 would be the language proposed in N.J.A.C. 7:31-2.17(a)2.

RESPONSE: By requiring a two part certification for those reports listed in N.J.A.C. 7:31-2.17(a), the Department is seeking to ensure that high level management is aware of and involved in this phase of its business.

The two part certification assures that the highest ranking official at the site has determined that the information provided is true, accurate and complete, and that, as appropriate, a principal executive officer of at least the rank of vice president, a general partner or the proprietor, or a principal executive officer or ranking elected official of a public agency has personally examined and is familiar with the information submitted, has made the appropriate inquiry and believes the information is true, accurate and complete. The Department is therefore holding these certifying officials to a higher standard than that suggested by the commenter. In view of the dangers posed by EHS's, the Department believes it is entirely appropriate to require that certifying officials be familiar with the documentation submitted to the Department and have either determined for themselves that the information provided is true, accurate and complete, or have made appropriate inquiries as to its truth, accuracy and completeness, in accordance with the requirements of N.J.A.C. 7:31-2.17(a). Therefore, no change has been made with regard to the imposition of penalties concerning the certifications required by N.J.A.C. 7:31-2.17(a). Also, the certification in N.J.A.C. 7:31-2.17(a)1, required of the highest ranking official at the site, will not be changed as suggested

because the Department believes this official is in the best position to ensure that the information provided is true, accurate and complete.

COMMENT: The proposed N.J.A.C. 7:31-2.17(a)2 requiring a corporate vice president's signature is extremely burdensome for corporations which have no vice president in New Jersey and should be modified or deleted. It is highly unlikely that a person in such a position is familiar with so complex a program. The certification is meaningless, of virtually no value, and not supported by the Act. The legal notion that corporate officers can be responsible for the conduct of far away operations is established and accepted by industry, and a signature by a vice president does not change this law or advance the purposes of the Act. The certification should be modified to either reflect that the signature is based on inquiry of those immediately responsible for obtaining the information or should be signed by an officer's designated representative or by the EHS responsible manager. At any rate, the State already has adequate powers of enforcement without adding this cumbersome burden.

RESPONSE: While the Act does not specifically address the issue of certification of required documentation, the Legislature's intent in requiring the Department to develop, establish and enforce by regulation a system of record keeping which requires the owner or operator of an EHS facility to report on various activities and events, N.J.S.A. 13:1K-27, indicates concern for accurate and complete reporting. Considering the threat posed by an accidental release of an EHS, the Department believes that this certification requirement is not unduly burdensome and it will not be modified or deleted. It is vital to the success of the TCPA program that high level management officials be involved and committed to the successful implementation and management of their RMP. The certification required for registration forms, RMP descriptions, and RMP check lists must be signed for a corporation by a principal executive officer of at least the level of vice president. This level of certification was established and is currently enforced in the Department's Environmental Cleanup Responsibility Act program, in accordance with N.J.A.C. 7:26B-1.13. The signature does not necessarily have to be that of a vice president, but it should be an officer of at least that level of authority; and such officer need not be familiar with each specific detail of the program, but based on inquiry of those individuals responsible for obtaining the information, the officer must certify that the submitted information is believed to be true, accurate, and complete.

COMMENT: The proposed N.J.A.C. 7:31-2.17 requiring high ranking company officials to sign a risk management program check list is extremely important. This holds senior company officials directly responsible for the accuracy of the information in the check list and also holds them ultimately accountable for establishing procedures and practices to adequately protect people from accidental chemical releases.

RESPONSE: The Department recognizes that senior company officials must be held directly responsible for the implementation of an effective risk management program which will require their full support. Information submitted to the Department must be true, accurate, and complete, and this must be reviewed and confirmed by top level management. It is their responsibility to ensure that responsible individuals prepare the required information and effectively implement the approved RMP at their EHS facility.

COMMENT: The requirement for double certification proposed in N.J.A.C. 7:31-2.17 for the Risk Management Program Checklist by both the highest ranking official on site and the principal executive officer, general partner or proprietor, ranking elected official is inconsistent with that on the Registration Form.

RESPONSE: The Department agrees that the requirements for certification provided in N.J.A.C. 7:31-2.17(a) are inconsistent with the original registration form. However, a revised registration form was proposed as Appendix II to the confidentiality rules, N.J.A.C. 7:31-5 in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a), and it is consistent with the certification requirements established by the rule.

COMMENT: The proposed criteria in N.J.A.C. 7:31-2.18 for selecting consultants are quite extensive, and it would be difficult to find sufficient firms that are experienced in all the areas listed. In order for the Department to form an adequate pool of consulting talent, the Department should allow consultants to form teams, in a joint venture arrangement, so that together they can provide all of the required services. Also, requiring the prior approval of the Department for hiring consultants very likely will result in delays akin to those in the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., (ECRA) program.

RESPONSE: The Department is not seeking to specify the form of business organization for consultants. Where a consultant meets the qualifications and demonstrates the capabilities to perform the work as set forth in N.J.A.C. 7:31-2.18, the Department will consider the consultant acceptable regardless of the form of its organization. Thus, individuals or firms may join together to form consulting teams which will be acceptable to the Department if they satisfy the criteria in N.J.A.C. 7:31-2.18. Regarding the statement that prior approval by the Departments of consultants will result in delays akin to the ECRA program, the Act, at N.J.S.A. 13:1K-25, specifies that the independent consultant will be selected by the Department from a list of three candidates submitted by the owner of the facility. As this procedure is required by the Act it cannot be changed by the Department. However, the Department does not anticipate that its review of the proposals and its selection of the independent consultant will be a time consuming process, and N.J.A.C. 7:31-2.9(f) provides that the Department must select a consultant within 15 days to perform the EHS accident risk assessment or, if it determines that none of the consultants' proposals meet the requirements, direct the registrant to submit, within 60 days, the proposals of three additional consultants.

COMMENT: The proposed N.J.A.C. 7:31-2.18(b)2 should be deleted so that a consultant who designed a plant would not be barred from performing the risk manangement study if qualified. Allowing one consultant to do both has economic benefits.

RESPONSE: The requirement that the consultant conducting an EHSARA be an "independent consultant" originates in the Act, at N.J.S.A. 13:1K-25, and the rule is consistent with the Act. The Department believes it was the intent of the Legislature to have an outside party perform this function since an outside party would not have any preset conceptions regarding the facility. Allowing the same consultant to both design a plant and perform the EHSARA may be cost effective, but would not satisfy the requirement of the Act that the consultant be "independent".

COMMENT: The proposed N.J.A.C. 7:31-2.18(f)4 should be split so that the technical leader of the hazard analysis has at least three years experience in such work and is a Certified Safety Professional (CSP) in system safety (certified by the Board of Certified Safety Professionals) or a registered Professional Safety Engineer. The technical leader of the risk assessment portions of work should have the qualification listed above or should have at least three years experience in such work and be a Certified Industrial Hygienist (certified by the American Board of Industrial Hygiene), or be certified in industrial hygiene by the American Academy of Environmental Engineers. The person leading the hazard analysis should be an expert in the field. The military standard for system safety requirements (MIL-STD-882B) states in TASK 107.21 that the Principal System Safety Engineer/Manager shall have: "Registration as a professional safety engineer in one of the states of the United States, or certification by the Board of Certified Safety Professionals in system safety." Responsibility for hazard analysis should be under the control of professionals currently recognized as experts for such work. Only a Certified Safety Professional (CSP), licensed by the Board of Certified Safety Professionals, or a licensed Certified Safety Specialist (CSS), certified by the World Safety Organization, is really qualified to administer an RMP.

RESPONSE: The Department does not agree that separate technical leaders are needed for the hazard analysis and risk assessment. The technical leader of the hazard analysis and risk assessment portions of the work should have a minimum of 12 months aggregate experience in such work. As the TCPA program is concerned with acute episodes rather than long-term chronic effects, the technical leader with a hazard analysis background can be expected to also have experience that is applicable for performing risk assessments as set forth in the rule. The 12 months experience requirement is a minimum requirement; however extending this to a three year period would be too restrictive and would limit the availability of qualified personnel. Requiring that the technical leader be registered Professional Safety Engineer, a certified Industrial Hygienist, a Certified Safety Professional, a Certified Safety Specialist, or have the registration based on the suggested military standard is also too restrictive. The independent consultant staff committed to the work should have a key member who is a licensed professional engineer as indicated in N.J.A.C. 7:31-2.8(f)2; and this requirement is adequate to ensure sufficient expertise on the staff to produce an EHSARA report which will meet the requirements of the EHS risk reduction work plan. For the above reasons, no changes are being made to the rule.

COMMENT: Selection of consultants by the Department as proposed in N.J.A.C. 7:31-2.18 provides opportunities for corruption, graft, or at the least, favoritism within the Department. As the Department will choose a consultant from a list provided by the user and as only Department approved consultants can be engaged, the Department should provide a list of approved consultants, and the facilities should select

consultants from the Department's list. Also, has the Department determined that consultants with the qualifications prescribed in N.J.A.C. 7:31-2.18 exist? The criteria proposed are so numerous and voluminous that only very large consultant organizations have the resources and expertise to qualify, and then only at high expense.

RESPONSE: The Act, at N.J.S.A. 13:1K-25, prescribes the selection process for consultants and that procedure cannot be changed by the Department. N.J.A.C. 7:31-2.9(e) states that each registrant shall submit the names and proposals of three consultants who meet the requirements set forth in N.J.A.C. 7:31-2.18 who are willing and able to perform the EHSARA in accordance with the schedule set forth in the work plan. The Department will first review the consultant proposals to ensure that the requirements set forth in N.J.A.C. 7:31-2.18 are met and the following factors will be taken into consideration in the final selection of the consultant: the workload capacity of the consultant, the expertise of the consultant in a particular field, and the personnel and skill resources of the consultant. The Department has an established code of ethics to ensure the integrity of Department personnel involved in the final selection process.

Contrary to the statement that only large consultant organizations will have the necessary resources and expertise to qualify, the Department believes that small firms with qualified individuals will also qualify as acceptable consultants. The Department believes that there are enough qualified consulting firms to meet the demand and that there will be sufficient competition among these consultants to keep the costs at a reasonable level. This information was obtained informally by attendance of Department personnel at training courses and seminars and also through correspondence that has been submitted to the Department by consultants.

COMMENT: Can an audit team from one division of a company audit a separate division, and could this independent auditor be considered equivalent to an independent consultant?

RESPONSE: The requirement of N.J.A.C. 7:31-2.18 that the consultant conducting an EHSARA be an "independent consultant" originates in the Act, at N.J.S.A. 13:1K-25, and the rule must be consistent with the Act. Therefore, the consultant must not be owned or controlled by the company which hires it to perform an EHSARA. However, the team which audits the RMP in accordance with N.J.A.C. 7:31-3.11 may consist of staff from another division of a company since an audit team may be employees of either the registrant or an independent consultant. The policy for the selection of employees or an independent consultant to perform the audits required by N.J.A.C. 7:31-3.11 is determined by the registrant and will be set forth in its risk management program under the requirements for audit. However, only a minority of the members of the audit team may be involved in the day-to-day operation or management of the specific EHS facility being audited to ensure an objective and unbiased audit.

COMMENT: The selection of the independent consultant by the Department will remove cost-effectiveness from the list of consultant's goals. There will be a problem similar to that affecting superfund where consultants hired by the U.S. Environmental Protection Agency (EPA) cost twice as much as consultants hired and managed by industry.

RESPONSE: The Department will, of course, select the consultant which has submitted the best proposal from the standpoint of performing the EHSARA. However, consultants in submitting their proposals to a registrant will have to consider cost-effectiveness because the registrant is certain to give consideration to that factor in deciding which three consultants to nominate to the Department to perform the EHSARA on its site. Therefore, cost-effectiveness can be expected to remain as one of the goals of consultants in submitting proposals to registrants. In regard to the comment concerning the hiring of consultants by the EPA under superfund costing twice as much as consultants hired and managed by industry, the Department does not anticipate a similar problem because the Act, at N.J.S.A. 13:1K-25, specifically provides that the Department will select an independent consultant from a list of three candidates submitted by the owner of the facility at which the EHSARA will be conducted. In addition, N.J.A.C. 7:31-2.9(g) provides that the registrant shall execute the contract with the consultant chosen by the Department. Thus, the Department's role in hiring the independent contractor is much more limited than the EPA's role in that process under superfund.

COMMENT: The Department should set standards of performance, but there are objections to the Department or consultants telling registrants how to run their manufacturing operations. Registrants should be free to choose how to meet the Department's standards. However, provisions such as N.J.A.C. 7:31-4.6(b)2, 3, 4, 5 and 6 are objectionable because they have the consultant or the Department telling registrants how to run their manufacturing operations, rather than allowing the registrant the freedom to choose how to meet the standard.

RESPONSE: Beyond insuring that the requirements of the Act and the rule are being met, it is not the desire or intent of the Department to tell a registrant how to operate its facility, or to have a consultant do that. Wherever possible the Department has attempted to establish standards for registrants to meet rather than spelling out detailed requirements. N.J.A.C. 7:31-3 in presenting the minimum requirements of a risk management program establishes standards which a registrant's RMP must include in order to satisfy the requirements of the Act. The paragraphs referred to in the comment which provide for the correction of deficiencies in the risk management program or the EHS facility itself reflect the mandate of the Act as provided in N.J.S.A. 13:1K-23 and 26. When a consultant conducts an EHSARA he or she is required by the Act, at N.J.S.A. 13:1K-24, to report on any matters of deficiency with respect to extraordinarily hazardous accident risks to the Department. The rule in this respect must be and is consistent with the Act.

COMMENT: In the proposed N.J.A.C. 7:31-2.18(e)1xiii(4) add at the end "and the identification of their licenses and certifications which apply to each specific task". This will help to choose which consultants are most qualified.

RESPONSE: The consultant must be adequately qualified or have qualified personnel to be assigned to each specific task as described in N.J.A.C. 7:31-2.18(e)1. However, each consultant is free to decide how to best present their qualifications. Matching the licenses and certifications of the consultant to specific tasks may well enhance the proposal; however, this is not mandatory and would be unnecessarily restrictive. Therefore, no change has been made.

COMMENT: In the proposed N.J.A.C. 7:31-2.18(e)1xiii items (1) and (2) may be confidential information. Some companies specify in their contracts that consultants shall not publicize their relationship with the company nor the work performed on the company's behalf.

RESPONSE: The Department agrees with this comment and has clarified N.J.A.C. 7:31-2.18(e)1xiii(1) and (2) to reflect that in some cases this information is not required to be divulged to the Department. The intent of this subsection is to enable the Department to review information which demonstrates the qualification of the consultant to perform an EHSARA. Consultants limited by restrictive covenants from identifying a client may either describe the client and the work performed in such a manner as to not disclose the client's identity, or identify a different client who can be contacted by the Department as a reference regarding its performance on a similar assessment and its qualifications.

COMMENT: The Act does not give the Department the right to dictate the consultant's organizational structure. The proposed N.J.A.C. 7:31-2.18(f) refers to members of the consultant's staff whereas the consultant could be an individual.

RESPONSE: N.J.A.C. 7:31-2.18(f) has been clarified to indicate that a consultant may have a staff or may be an individual. It is not the intent of the Department to dictate the structure of the consultant hired to conduct an EHSARA. A consultant may submit an acceptable proposal in terms of work performance schedule and qualifications, whether the consultant has a large staff or is an individual.

COMMENT: In the proposed 7:31-2.18(e)1iii through vii, and ix through xi, replace the words "preparation" and "performance" with "review". In N.J.A.C. 7:31-2.18(e)1viii, replace "performance of" with "conduction", in order to reflect what the consultant would actually be asked to do. In the proposed N.J.A.C. 7:31-2.18(e), the submittal should provide the consultant's qualifications to review process and safety engineering, review procedures, etc. These are the things a consultant would be required to do. It would be the registrant's responsibilities to do the actual preparation of the various requirements.

RESPONSE: N.J.A.C. 7:31-2.18(e)1 contains the qualifications that are necessary for the consultants to adequately perform their responsibilities. Although the consultants may not actually prepare or perform the tasks spelled out in N.J.A.C. 7:31-2.18(e)1, the Department believes the consultants must be qualified in these tasks in order to perform the EHSARA effectively. Therefore, no change has been made to the rule.

COMMENT: The proposed N.J.A.C. 7:31-2.18(f) requiring a professional engineer's license is unduly restrictive. Does the engineer referred to need to be registered in New Jersey and must he or she be of any particular engineering discipline, such as chemical, etc.? The requirement that the consultant must have completed one previous project in each area is unnecessary. The technical leader, who has the most technically demanding work, needs 12 months experience, but the task force

leader needs 36. This is strange. Therefore, N.J.A.C. 7:31-2.18(f) should be a recommendation only, if the Department retains its authority to reject consultants, or else it should be substantially revised.

RESPONSE: The Department is not requiring all members of the consultant's staff to have professional engineer's licenses. The State of New Jersey requires consulting engineering services to be performed by an engineer licensed in the State of New Jersey. Therefore, the Department requires that a key member of the consultant's staff be a Professional Engineer, but a particular discipline is not specified as the professional engineer's license in New Jersey is not issued in any particular engineering field.

N.J.A.C. 7:31-2.18(f) requires experience in at least one project in each of the areas listed. The nature of the work in these specific areas requires experience in these subjects in order to be able to effectively develop a work plan.

N.J.A.C. 7:31-2.18(f)3 and 4 indicate that the task force leader is required to have more experience than the technical leader. The reason for this is that the task force leader is required to guide and direct a multidisciplinary team and thus has considerably more responsibility for the overall project. The Department is retaining and will revise its authority to reject a consultant if a consultant's proposal does not meet the qualifications listed in N.J.A.C. 7:31-2.18, as these are the minimum qualifications which are needed by a consultant to effectively implement the work plan. Therefore, no changes are being made to the rule.

COMMENT: Since there are no certification processes for risk assessment professionals, the State should develop and implement certification processes for professional safety engineers and professional industrial hygienists in order to facilitate the consultant selection procedures proposed in N.J.A.C. 7:31-2.18.

RESPONSE: While certification processes for risk assessment professionals would likely facilitate the consultant selection process, the only requirement concerning the certification or licensing of a consultant in the rule is that contained in N.J.A.C. 7:31-2.18(f)2, which requires one key staff member to be a licensed professional engineer. In the State of New Jersey, the State Board of Professional Engineers and Land Surveyors is responsible for the licensing of professional engineers, N.J.S.A. 45:8-29, and therefore, the Department cannot establish a separate certification process for this profession. Professional safety engineers, professional industrial hygienists, and other safety professionals are certified by various national boards and organizations and, although the Department will consider these certifications and licenses in determining a consultant's qualifications, it would be inappropriate for the Department to establish specific standards which only address the needs of the TCPA program. Therefore, no change has been made.

COMMENT: The 20 calendar days proposed in N.J.A.C. 7:31-2.19(a) (now 6.3(b)) for submittal of a written request to the Department for an adjudicatory hearing is insufficient time to develop data and arguments. Thirty or 60 days is more appropriate. The 20 day timeframe is not consistent with other Department rules that provide 30 days to file a request for a hearing.

RESPONSE: The Act, at N.J.S.A. 13:1K-29a, specifies a 20 day period for a violator to request a hearing following receipt of a notice of enforcement action by the Department. If the Legislature believed a 20 day period was sufficient time to request a hearing for enforcement actions, 20 days should also be sufficient time for a registrant to submit a written request to the Department for an adjudicatory hearing to contest an administrative order or a written notification from the Department withholding approval of a new EHS facility or rejecting a modification. In addition, the 20 calender day time period provided by N.J.A.C. 7:31-6.3(b) for the submission of a written request for an adjudicatory hearing is an appropriate time frame which the Department has established for such requests. This time period is sufficient to allow a registrant to develop and gather the information required to be submitted by N.J.A.C. 7:31-6.3(b) in support of its request, and thus has not been changed.

COMMENT: The proposed N.J.A.C. 7:31-2.19(b) (now N.J.A.C. 7:31-6.3(e)) and N.J.A.C. 7:31-2.19(c) (now 6.3(f)) appear to confuse the registrant's option of requesting a review by the Commissioner with the right to an adjudicatory hearing. Specifically, the proposed N.J.A.C. 7:31-2.19(c) states, "If it grants the request." Whereas, the right to an adjudicatory hearing is one exercised solely by and subject solely to the request of the registrant. Further, the proposed N.J.A.C. 7:31-2.19(b) (now 6.3(e)) permits arbitrary and capricious judgments by the Department as to what and what is not "all the information". These comments also apply to the proposed N.J.A.C. 7:31-2.20 (now 6.3(d)). In accordance with the Administrative Procedure Act as well as the mandate of the Act, there should be no circumstances under which a request for hearing should be denied.

RESPONSE: N.J.A.C. 7:31-6.3(a) and 6.3(b) are concerned only with the right of a registrant to request an adjudicatory hearing and not with requesting a review by the Commissioner of a lower Departmental decision. The Act, at N.J.S.A. 13:1K-26b and N.J.S.A. 13:1K-30b, does provide the owner of a facility and a violator, respectively, with the right to request adjudicatory hearings. However, under the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., the Department may place on any party the responsibility of requesting a hearing if the Department notifies the party in writing of its right to a hearing and of its responsibility to request the hearing. N.J.A.C. 7:31-6.3(a) and 6.3(b) merely provide the procedures which an owner or a violator must follow in requesting an adjudicatory hearing. These two subsections are clearly written and require only that information necessary for the Department to determine whether a contested case actually exists, whether to attempt to negotiate or settle the matter and, where appropriate, to file the case with the Office of Administrative Law. If there are, in fact, no genuine issues of fact or law in dispute, then a registrant should not be allowed to frustrate the purposes of the Act by pursuing a frivolous appeal. The Department must be concerned with speed and efficiency in the administration of its statutory responsibilities. Thus, N.J.A.C. 7:31-6.3(c) and (e) which allow the Department to deny a request for a hearing if the requestor fails to submit its request in a timely manner or to include all the required information will not result in arbitrary and capricious decisions. Therefore, no change has been made.

COMMENT: The proposed N.J.A.C. 7:31-2.19(a)2 and 2.20(c) (now 6.3(b) and 6.3(a)) should be amended to require a violator to include a summary of the required information in a request for an adjudicatory hearing.

RESPONSE: N.J.A.C. 7:31-2.19(a)2 and 2.20(c) has been rewritten and now appear as N.J.A.C. 7:31-6.3(b) and (a), respectively. The Department has determined that it needs all the information proposed at N.J.A.C. 7:31-2.19(a) and 2.20(c) except for a statement of the legal authority and jurisdiction for the hearing, a reference to the statutes and rules involved, and a statement of the matters of law and fact asserted. Both N.J.A.C. 7:31-6.3(a) and (b) include a provision for the violator or the registrant to request, if necessary, a barrier-free hearing location for disabled persons; and, N.J.A.C. 7:31-6.3(a) (proposed as N.J.A.C. 7:31-2.20(c)) now requires the violator to include an estimate of the time required for the hearing. The estimate of hearing time requirement was inadvertently omitted from the proposed N.J.A.C. 7:31-2.20(c), but was included at N.J.A.C. 7:31-2.19(a)2. The Department needs all of the information required pursuant to N.J.A.C. 7:31-6.3(a) and (b) to determine whether there is a contested case; whether, and where appropriate, to file the case with the Office of Administrative Law; and also to attempt to negotiate or settle the matter rather than refer it for an adjudicatory hearing. A summary would not provide the detailed information necessary to make these decisions or to file the matter with the Office of Administrative Law.

COMMENT: In the proposed N.J.A.C. 7:31-2.19(b) (now 6.13(e)) registrants should be provided a reasonable opportunity, at least five or 10 days, to cure defects in their request for a hearing. The registrant's only recourse would be to seek review in the Appellate Division of Superior Court which would not further judicial economy, but rather would only clog the Appellate Division with appeals which more properly should be heard on an administrative level.

RESPONSE: The Department has clearly specified the information required and has provided sufficient time for the registrant to complete and submit its request for an adjudicatory hearing. The 20 calendar day time period is an appropriate time period which the Department has established for the submission of such requests. Therefore, the rule will not be changed to provide additional time for a registrant to correct defects in its request for an adjudicatory hearing.

COMMENT: The proposed N.J.A.C. 7:31-2.20 (now 6.4) should provide a registrant the freedom to discover, correct and report a violation without being fined or faced with an enforcement action. The best way to encourage cooperation is to not penalize positive self-policing actions. For example, exceptions from an RMP noted in the annual report shall be exempt from penalties if corrective action is carried out on an agreed upon schedule with the Department. This whole section is completely based upon the "negative-slap them on the wrist" approach. Successful implementation of the proposed rules would best be served by a balanced approach that emphasizes and provides incentives for good

performance, such as the OSHA Star Program, and uses the negative, penalty type approach for only those facilities which choose to violate the provisions of the rules.

RESPONSE: Nothing in the rule precludes a registrant from discovering and correcting discrepancies during a preliminary audit or safety review and the Department encourages registrants to take such preventive measures. However, no such change will be made. N.J.A.C. 7:31-3.11, Audit requirements for risk management programs, describes the mechanism by which the registrant completes the risk management program checklist, lists deficiencies found in completing the checklist, recommends remedial actions and implements those recommended remedial actions. Although a fine or other enforcement action can be levied against the registrant based solely on the findings of the self-audit, the Department can consider the fact that the registrant's recommended remedial actions were implemented in a timely manner in its penalty assessment determination.

COMMENT: The penalties proposed in N.J.A.C. 7:31-2.20(i) (now 6.4(d)) should be the maximum civil administrative penalties for each EHS facility. Specific penalties could be negotiated based on specific circumstances.

RESPONSE: The Act, at N.J.S.A. 13:1K-30b, establishes maximum civil administrative penalties for the first, second, third and each subsequent violation of the Act or any rule, regulation or order promulgated or issued pursuant thereto. The Department in Table II at N.J.A.C. 7:31-6.4(d) establishes a civil administrative penalty schedule to provide notice to the public as to the severity of various offenses by determining what penalty will be assessed for a first, second, or third offense for each category of offense listed. The use of the penalty table is also designed to ensure that similar offenses receive similar penalties.

COMMENT: The penalties for noncompliance are not large enough to deter companies from committing certain violations. For instance, the penalty for constructing new EHS facilities is only $10,000 for the first offense. A company could easily incorporate the risk of having to pay this penalty into the cost of doing business.

RESPONSE: The Act, at N.J.S.A. 13:1K-30b, limits the penalty for a first offense to $10,000, and the Department established the penalty schedule in N.J.A.C. 7:31-2.20(i) (now 6.4(d) based on the severity for each category of offense. To cover those offenses which continue from day to day, N.J.A.C. 7:31-2.20(1) (now 6.4(c) provides that if the violation is of a continuing nature, each day during which it continues constitutes an additional, separate and distinct offense. Taking the example provided in the comment, construction of a new EHS facility without an approved RMP and Department approval could result in progressive penalties of up to $50,000 for each day of construction.

COMMENT: The following changes should be made to Table II at the proposed N.J.A.C. 7:31-2.20(i) (now 6.4(d)): (1) In A, the hazard of not registering an EHS facility is relative to the EHS facility, not the total site, therefore change "site" to "facility"; (2) In J, replace "provide" with "make available", regarding information requested by the Department; (3) In K, add "reasonable" before "access" to indicate the type of access Department employees or agents should be granted for inspections; (4) In M, add "willful" to "falsification of information" so that honest mistakes or typos are not penalized; and (5) In Q, replace "Departmental approval" with "notification of the Department".

RESPONSE: (1) The Department agrees that the failure to register an EHS facility as set by the total hazard units relates to the facility rather than the site and the word "site" has therefore been changed to "facility". (2) The word "provide" will not be changed to "make available" as the Department is reserving the right to have the information sent in to its offices. (3) The Department is always reasonable in gaining access to sites for inspections; however, the Department will not change the wording as recommended because pursuant to the Act, at N.J.S.A. 13:1K-27a, the Department has the right to enter any facility at any time in order to verify compliance with the Act. (4) The Department requires that the person certifying the documentation either verify the truth, accuracy and completeness of the information personally (N.J.A.C. 7:31-2.17(a)1) or ensures that full and proper inquiries have been made to determine the accuracy of the information (N.J.A.C. 7:31-2.17(a)2), and thus no change is being made. (5) As Departmental approval is required pursuant to N.J.A.C. 7:31-2.4(e)2 before placing a new EHS facility into service or placing an existing facility in different EHS service, no change has been made.

COMMENT: The proposed N.J.A.C. 7:31-2.20(h) (now 6.2(b)) should be amended to provide 30 days for payment of administrative penalties, instead of 20 days.

RESPONSE: The provision that payment of the penalty is due when either a final order is issued or when the notice of civil administrative penalty assessment becomes final is required by the Act, at N.J.S.A. 13:1K-30b. Therefore, no change has been made.

COMMENT: A better definition of what constitutes a second or third offense as used in the proposed N.J.A.C. 7:31-2.20(i) (now 6.4(d)) is needed. These should be uncorrected deficiencies previously cited, rather than multiple first time deficiencies.

RESPONSE: A second or third offense as used in N.J.A.C. 7:31-6.4(d) can include both uncorrected deficiencies or continuing violations previously cited as well as repeated violations of the same provisions. As stated in N.J.A.C. 7:31-6.4(c), "if a violation is of a continuing nature, each day during which it continues constitutes an additional, separate and distinct offense."

The following example illustrates a repeated violation of the same requirement: if a registrant falsifies information on an annual report submitted to the Department in 1988, and again in 1989, those acts constitute first and second offenses respectively, and will be assessed penalties accordingly.

COMMENT: The proposed N.J.A.C. 7:31-2.20(k) (now 6.4(f) should be made consistent with the Air Pollution penalties in N.J.S.A. 26:2C-19(b) and (d). If no subsequent offense occurs within a three year period of an offense, the next penalty will be assessed at the level of the first offense, not the last offense.

RESPONSE: The Air Pollution Control Act, at N.J.S.A. 26:2C-1 et seq., contains no provision regarding the assessment of a lesser penalty amount if no subsequent offense occurs within a three year period, or any other time period, of the last offense. Therefore, the rule is not inconsistent with the Air Pollution Control Act, and no change will be made.

COMMENT: The exemption provisions proposed in N.J.A.C. 7:31-2.21(a) (now 2.19(a)) are too narrow to be practical. Risk management program requirements should have exceptions for handling small quantities of EHS's, isolating piping, or transfer systems—20 pages of minimum RMP requirements is unreasonable for de minimis conditions. For example, a process using one gallon of hydrochloric acid that happens to be within 100 meters of another process using an EHS would not be exempted. The provision should be revised to require compliance with N.J.A.C. 7:31-2.19(a)1 and either (a)2 or (a)3. Also, a provision (a)4 should be added to exempt equipment which contains either less than the minimum or 25 percent of the minimum registration quantity. Finally, if a facility's EHS equipment is not located within 100 meters of the property line, the proposed rule should be reworded to exempt this facility.

RESPONSE: N.J.A.C. 7:31-2.21 (now 2.19) has been amended to provide that a registrant may request an exemption for non-contiguous EHS equipment when the equipment has the capability to contain or generate in one hour less than the minimum registration quantity of an EHS, and either the equipment is located a minimum of 100 meters from the property line and other EHS equipment, or the registrant can demonstrate to the satisfaction of the Department by dispersion and consequence analyses that a release of the contained or generated quantity of the EHS will not result in acute health effects to persons exposed beyond the site boundary. This should adequately address situations involving the handling of small quantities of EHS's, isolated piping, and transfer systems.

For some scenarios, the dispersion/consequence analysis computer model developed by the Department and discussed in the comment regarding the site specific risk assessment quantity may be used by the registrant for the dispersion and consequence analysis. N.J.A.C. 7:31-2.21(c) (now 2.19(c)) has also been amended to allow the request for the exemption to be submitted with the registration form.

The suggestion to simply exempt equipment that is located more than 100 meters from the property line is not acceptable, as such equipment may contain an EHS in an amount which if released could cause a catastrophe. Likewise, to simply exempt equipment that contains less than the minimum registration quantity or even 25 percent of the registration quantity is not acceptable, as this equipment may be located close to the property line so that if the EHS is released there is the potential for a catastrophe.

COMMENT: The proposed N.J.A.C. 7:31-2.21 (now 2.19) regarding exemptions for non-contiguous equipment should be deleted. Since hazard analysis provides the basis for which EHS equipment should be included in the RMP, all EHS equipment should initially be exempted from the requirements of an RMP until the Department has determined

through the review of hazard analysis and risk assessment that certain pieces of equipment should be included within the scope of the RMP. Including all equipment in the risk management program and doing extensive dispersion and consequence analysis to exclude such equipment disregards technical and professional judgment on the part of the registrant as documented in its hazard analysis. Only that equipment which handles, stores or has the ability to generate the registration quantity of EHS within one hour must be included in the risk management program. This issue should be handled on an exemption basis. The Department is invited to review the hazard analysis and risk assessment during site visits, and if in their judgment additional equipment should be included in the scope of the RMP they can so advise.

RESPONSE: Shifting the burden from the registrant to establish that its EHS equipment is exempt from RMP requirements to the Department to establish through review of hazard analysis and risk assessment that particular pieces of equipment should be included in the scope of the RMP, would render the TCPA program very difficult to implement and unmanageable. Therefore, all equipment which could result in an EHS accident must initially be included in the RMP, even if the release potential is less than the registration quantity. This is to ensure that all potential releases are managed and controlled as part of the measures toward the prevention of catastrophic releases. However, the Department recognizes that certain equipment in EHS service under no circumstances poses a threat to an off-site population and thus can be exempted from the requirements of N.J.A.C. 7:31-3, if the conditions for the exemption, as set forth in N.J.A.C. 7:31-2.19, are met. Thus, no change based on this comment will be made.

COMMENT: The proposed N.J.A.C. 7:31-2.21(c) (now 2.19(d)) should be amended to indicate that the Department can deny an exemption only if the registrant fails to demonstrate that the requirements of N.J.A.C. 7:31-2.21(a) (now 2.19(a)) are met. This changes the burden to the Department from the registrant.

RESPONSE: The suggested change in the language of the rule would have no effect on the registrant's burden to satisfy the requirements of N.J.A.C. 7:31-2.19(a), and thus establish its entitlement to an exemption for non-contiguous EHS equipment. However, the suggested change would shift the Department's response from one affirmatively granting an exemption request to one of denying only those exemptions which fail to meet the criteria. As the suggested language change is considered confusing and may impose a quick response burden on the Department to deny inappropriate exemptions, no change has been made.

SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A RISK MANAGEMENT PROGRAM

COMMENT: What is the justification for mandating the risk management program in the precise form spelled out in the proposed N.J.A.C. 7:31-3? Alternatives exist and should be evaluated. Risk management by its very nature is site and chemical specific. Under the proposed rule, a facility with four 150 pound chlorine cylinders is subject to the same requirements as a chemical plant which manufactures millions of pounds of chlorine per year. The proposed N.J.A.C. 7:31-3 should present guidelines, not requirements. The Department should set standards of performance for persons and companies to meet in order to protect health and the environment, but they should be allowed freedom to choose how we meet those standards. Also, a site specific system for evaluating RMP's could be assessed almost continuously through the Department's field offices and New Jersey Office of Emergency Management. Opportunity exists to consolidate responsibility and accountability without additional levels of support staffing in the Department's Trenton office.

RESPONSE: The Act, at N.J.S.A. 13:1K-21i, defines "risk management program" by specifying the eight minimum requirements of an RMP, and provides at N.J.S.A. 13:1K-22 that any facility that uses, manufactures, stores or is capable of producing an EHS at or in excess of the registration quantity is required to register and is subject to the TCPA. While the Act does not specifically require that each covered facility have a risk management program, this is clearly the goal of the Act. In addition, the Act, at N.J.S.A. 13:1K-23a, mandates that the Department review submitted RMP's for "material deficiencies that could reduce the effectiveness of the risk management program" and recommend RMP changes or additions. This requires that the Department develop the means necessary for review of RMP's. The requirements set forth in the proposed N.J.A.C. 7:31-3 are the Department's response to the mandate of the Act. While it recognizes that risk management is site and chemical specific, the Department has set forth what it considers to be the minimum requirements of risk management for all facilities subject to the TCPA. The effort required to comply with this program will be directly related to the risk associated with the facility as well as the registrant's prior commitment to risk management. The Department set forth these requirements with the full appreciation that it is the registrant's responsibility to determine how to meet the requirements. To present N.J.A.C. 7:31-3 as mere guidelines instead of requirements would not ensure that the eight minimum requirements of an RMP would be properly implemented by each EHS facility in the State. Finally, the Department's field offices and the Office of Emergency Management do not have sufficient staff resources with the necessary expertise to implement and manage the TCPA program, and it is the Department, not the Office of Emergency Management, that is given the responsibility by the Act to carry out the TCPA program.

COMMENT: Can the minimum requirements for an RMP proposed in N.J.A.C. 7:31-3.3(a) be construed as a safety program, and can a safety program satisfy RMP requirements?

RESPONSE: Any of the elements of a facility's safety program which are applicable to the requirements of a risk management program can be used as part of the facility's RMP. However, all eight elements of an RMP, as defined by the Act and N.J.A.C. 7:31-3, must be satisfied before an RMP will be approved by the Department.

COMMENT: The effort required to compile and coordinate the required documentation is not only burdensome, but of limited value without extensive and detailed line by line reviews between those who perform the work and those reviewing it. A comprehensive internal risk assessment review of a major process may require a year for a well-coordinated group to assure that each assumption, preventive maintenance operation, and data element is accurately accounted for and appropriately used. When an external review body is added, this effort becomes even more burdensome and time-consuming. The State's proposed review effort appears infeasible and beyond the Act's intent.

RESPONSE: The documents required to be submitted to the Department either at its offices or for on-site review are considered to be the minimum necessary for the Department to effectively verify TCPA compliance. The great majority of the documents which would normally be held for on-site review, such as process flow diagrams, piping and instrument diagrams and standard operating procedures, are expected to be already in existence. Where the normal practice of updating such documents to perform safety reviews, hazard analyses or risk assessments is not being followed, the initial burden may well be significant; however, it will be of great value, because of the usefulness of such documents in satisfying risk management program requirements in the future. It is neither required or expected that special TCPA copies of such documents as process flow diagrams or piping and instrument diagrams be prepared for submission to the Department. The Department is specifically required by the Act, at N.J.S.A. 13:1K-23a, to review a registrant's RMP, and, at N.J.S.A. 13:1K-26a, to review the EHS Accident Risk Assessment for each facility. And, in accordance with N.J.S.A. 13:1K-27a and b the Department has the right to enter any facility at any time to verify compliance with the Act and is required to develop a system of recordkeeping which requires each registrant to report certain RMP activities to the Department. Thus, the Department's review of RMP documentation is clearly in accordance with the intent of the Act, and the Department believes that it has sufficient expertise and other resources to carry out the required review effort in an efficient and timely manner.

COMMENT: The proposed N.J.A.C. 7:31-3.3(a) should include safety standards adopting recognized codes or establishing company standards when no recognized code applies, and plant security and access control procedures.

RESPONSE: N.J.A.C. 7:31-3.3(a) lists the eight requirements of an RMP which are mandated by the Toxic Catastrophe Prevention Act, at N.J.S.A. 13:K-21i, and which are considered essential by the Department for an effective RMP. Adopting recognized codes or company established standards is a requirement of a facility's criteria for design and operation and is already provided for at N.J.A.C. 7:31-3.4, Safety review of new and existing facilities. Although there are no specific requirements for security and access control, registrants are required to review their facilities to identify and reduce risks. If during these reviews deficiencies in security and access control are identified as possible causes or contributors to potential catastrophic releases, remedial action must be taken.

COMMENT: Another key element of the TCPA program which should be covered is the need to concentrate on risk reduction as opposed to costly and time consuming risk quantification.

RESPONSE: The rules focus on the prevention of toxic catastrophes and the reduction of extraordinarily hazardous accident risks. Experts in the risk assessment field define risk as the likelihood of occurrence

times the consequences. If a particular release has the potential for catastrophic consequences, the likelihood of that occurring must be considered. The only way that this likelihood can be determined is through a formal quantitative risk assessment. The results of the risk assessment must then be studied to determine whether risk reduction measures are necessary. Finally, as a registrant may be able to use a simplified method of dispersion/consequence analysis rather than a more detailed dispersion and consequence analysis method, the expenditures of time and money often associated with risk quantification may be avoided.

COMMENT: The provisions of N.J.A.C. 7:31-3.3(b) should be more broadly stated so as not to require that one designated individual approve all procedures, actions, and documents listed for compliance with this program. Flexibility is needed to adopt the rule to existing corporate organizations. Managers of small companies do not have enough spare time to absorb so complex a program. The responsibility should be able to be distributed between two or more managers consistent with their respective functional responsibilities. On large sites, the responsible manager is likely to be a person who has direct responsibility for the EHS facility. This requirement has no statutory basis and should be deleted. Also, in N.J.A.C. 7:31-3.3(b) replace the word "site" with "EHS facility".

RESPONSE: N.J.A.C. 7:31-3.3(b) has been clarified to require that each registrant with a risk management program appoint a responsible manager who shall be responsible for insuring compliance with the risk management program and the rule. This clarification reiterates the requirement that all registrants must comply with the requirements of the Act, these rules and their risk management programs. This section should not be interpreted as meaning that one individual is responsible for carrying out all RMP activities. The Department believes that it is the registrant's right to select the individuals at a site who are directly responsible for carrying out the requirements of N.J.A.C. 7:31-3 and is thus not dictating a company's management organization. Although the Act does not require that one manager be responsible for the RMP for each site, the Department believes that for purposes of gathering and submitting documents, meeting deadlines, and communicating with the Department, it is necessary to have only one person designated as responsible manager.

As an RMP is required for each site, rather than each facility, the word "site" will not be replaced with "EHS facility" in N.J.A.C. 7:31-3.3(b).

COMMENT: In the proposed N.J.A.C. 7:31-3.3(c)3 and 4, what is the justification for examining records for a six year period? Why is this historical data needed? What if it is unavailable? This should state "three years" instead of "six years", since three years is more than sufficient time to provide a retrospective analysis. This same comment also applies to the proposed six year EHS accident report recordkeeping requirement in N.J.A.C. 7:31-3.8(a)4.

RESPONSE: The Department does not agree that the six year retention time for hazard analyses, risk assessments, safety reviews and audits should be reduced to three years. This historical data assists the Department in determining trends in plant operations, in measuring the effectiveness of the RMP, and in helping to ensure compliance with and enforcement of the RMP. Similarly the requirement in N.J.A.C. 7:31-3.3(c)4 to retain accident reports will remain at six years, as this is considered the minimum necessary to establish useful statistical records and to prevent recurrence of similar types of accidents. If prior to the promulgation of this rule, a registrant has not used or has not retained these or similar documents for the specified time period, this requirement will only apply to those documents which were produced and have been retained. Thus, if the specified historical data is unavailable, but all other requirements of an effective RMP are satisified, the registrant's RMP can still be approved by the Department.

COMMENT: The proposed N.J.A.C. 7:31-3.3(c), (d), and (e) should be amended to require that data remain on site for the Department's review, or in unusual circumstances be made available at the Department's offices in the presence of the registrant's representative. This will avoid cost, unnecessary administrative burden, trade secret disclosure problems, and violation of the state's paperwork reduction act.

RESPONSE: Except for the documents the Department needs to have at its offices to support consent agreements, administrative consent orders, or administrative orders, the intention of the Department is to permit most documentation to be maintained at the site in order to avoid unnecessary paperwork and submittals; however the Department retains the right to have any information required to be maintained submitted to it at the Department's offices when necessary in order to effectively implement and carry out the program.

With regard to the reference to trade secret disclosure problems, the Department has proposed the Confidentiality rule, N.J.A.C. 7:31-5, in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a). This and any other comments received during the comment period for those proposed rules will be responded to in the comment and response summary published in the New Jersey Register with the notice of adoption for N.J.A.C. 7:31-5.

As to the possible violation of the State's paperwork reduction act, it is noted that New Jersey has no such statute and that the Federal Paperwork Reduction Act, 44 U.S.C. 3501, does not apply to the states. However, the Department has attempted to minimize the paperwork burden on both the regulated community and on the Department itself as noted above.

COMMENT: The proposed N.J.A.C. 7:31-3.3(e)4 and 5 regarding site documentation should refer to either the National Electrical Code area classification diagrams or NEC listing for the EHS facility, rather than the site. Either diagrams or a listing will provide the required information.

RESPONSE: N.J.A.C. 7:31-3.3(e)4 refers to National Electrical Code area classification diagrams which are laid out on the site plan or individual plot plan of each facility depending upon the scale of the site. A mere listing of electrical classifications would not be adequate. The diagrams clearly represent the boundaries of hazardous area classification and provide very useful information during safety review and risk assessment. The Department agrees that National Electrical Code area classification diagrams may not be necessary for the entire site in all cases, especially for a large site. If proper separation is maintained between an electrically hazardous area and an EHS area as per the National Electrical Code and good engineering practices, it should not pose any threat of a potential EHS release. However, National Electrical Code area classification diagrams should include the areas surrounding the EHS facility. Therefore, N.J.A.C. 7:31-3.3(e)4 has been revised to refer to only the EHS facility and the adjoining areas on the site which can pose a threat of an EHS release due to a fire hazard.

COMMENT: The proposed N.J.A.C. 7:31-3.3(e)5 should be changed to Electrical one line diagrams "for the EHS facility" for the sake of clarity.

RESPONSE: The definition of electrical one line diagram as provided in N.J.A.C. 7:31-1.5 includes all electrical power distribution systems that could contribute to an EHS release. N.J.A.C. 7:31-3.3(e)5 refers to "EHS electrical one line diagrams" which is intended to apply not only to the EHS facility, but also to electrical components located on other non-EHS facilities which could contribute to an EHS release. To clarify this intent the reference to EHS has been deleted.

COMMENT: In the proposed N.J.A.C. 7:31-3.3(e)5 and 8 add "for new EHS equipment" at the end for clarity. Or, as alternatives, either the proposed N.J.A.C. 7:31-3.3(e)8 should be deleted, or the phrase "where existent" should be added at the end and "EHS facility" should be amended to "site".

RESPONSE: As N.J.A.C. 7:31-3.3(e)5 and 8 are intended to refer to both new and existing equipment, the suggested reference to new EHS equipment has not been added. N.J.A.C. 7:31-3.3(e)8 requires that facilities maintain a list of criteria for design and operation which is necessary for any equipment or modifications, and the definition of "criteria for design and operation" refers to the applicable EHS facility. Thus, N.J.A.C. 7:31-3.3(e)8 means the list of criteria for design and operation for all EHS facilities at the site. The Department does not agree that the phrase "where existent" should be added to N.J.A.C. 7:31-3.3(e)8 or that the paragraph should be deleted, as the Department believes that the criteria for design and operation should be developed if they do not currently exist.

COMMENT: Due to the extensive requirements proposed in N.J.A.C. 7:31-3.4(d)1 through 7, the frequency of the safety review should be modified to reflect the complexity and amount of EHS equipment. Either an annual safety review should be required for those facilities whose EHS equipment is prone to change, and a biennial safety review for larger EHS facilities with an established EHS use; or a complete safety review should only be conducted every three years since any modifications which cause increases in release potential are already covered in the proposed N.J.A.C. 7:31-2.4. Or, as another alternative the safety review could be deleted and a visual inspection could be done just prior to the hazard analysis on a three year frequency.

RESPONSE: The annual review as stated in N.J.A.C. 7:31-3.4 ensures that EHS equipment is operated as intended, that documents describing the equipment and procedures correspond to actual conditions, and that there are no unauthorized deviations in operating conditions, maintenance procedures, standard operating procedures and instrumentation. A facility that undergoes only one safety review per year is one that has not been modified during the previous twelve months, as a safety review

is required to implement a modification. Unauthorized deviations which go undetected for over a year often pose hazards which have a high likelihood of resulting in an EHS release. Therefore, no change in the requirement for an annual safety review has been made.

COMMENT: Delete "and shall also be written in the language of fluency of EHS operators not fluent in English" from the proposed N.J.A.C. 7:31-3.5(a). It is unreasonable to expect operating procedures to be written in any language other than English. If the operators are not fluent in English, their supervisors, co-workers and emergency response personnel will not be able to communicate with them. If a person is not fluent in English, he should either be taught English or not allowed to operate an EHS facility.

RESPONSE: Due to the extraordinarily hazardous nature of EHS's the Department has determined that the standard operating procedures must be written in English and in the language of fluency of any EHS operators at the facility who cannot read or speak English. The critical issue is that all EHS operators understand the information contained in the standard operating procedures. Therefore, they must be able to read and understand the standard operating procedures in order to ensure the safe operation of the EHS facility.

COMMENT: Quality control is frequently overlooked during the operation cycle. One means of applying quality control to the operation cycle is to install temperature recorders so that a permanent record exists of a potentially dangerous situation. Instrumentation located at critical points of the process could provide a record for third party surveillance.

RESPONSE: The need for a specific type of instrumentation can only be determined on a case-by-case basis, and thus cannot be included as a requirement for all registrants. If through risk assessment a specific operation is identified as requiring risk reduction, then such instrumentation may be installed as a risk reduction measure.

COMMENT: The proposed N.J.A.C. 7:31-3.5(c)4 provides that the standard operating procedures developed for a facility shall include a "description of emergency conditions which could occur including the control and mitigating procedures to be followed to reduce the impact of the emergency conditions". Clearly not every emergency at such a facility is a concern of the TCPA and subject to the expansive and onerous planning provisions of the proposed rule. At a minimum, the emergencies referred to in the proposed N.J.A.C. 7:31-3.5 should be restricted to those involving an EHS.

RESPONSE: The requirements concerning emergencies specified in N.J.A.C. 7:31-3.5, Standard operating procedures, are intended to refer only to EHS emergencies. The Department does not believe that it is necessary to add the term "EHS" as the intent is clear from the context of the rule.

COMMENT: The requirements for standard operating procedures proposed in N.J.A.C. 7:31-3.5 are too lengthy, cumbersome, confusing and unusable in practice. What is included is the entire process documentation. Standard operating procedures should be a concise, clear, useable guide which provides the operator with information necessary to handle normal and abnormal conditions, which may reference additional information needed. Material Safety Data Sheets (MSDS) and detailed equipment descriptions do not belong in standard operating procedures. Standard operating procedures are minimal operating codes designed to ensure adequate operating conditions, rather than protect the health of those in the community. However, the requirement should go further and standard operating procedures should be reviewed by the Department or an independent consultant with the health of the community as a priority objective.

RESPONSE: The Department agrees that the standard operating procedure should be a clear, concise, and useable guide, but it should also include all the information necessary for an operator to understand and carry out all duties in a safe manner. The Department believes that MSDS's and detailed equipment descriptions, along with each of the other fifteen items listed in N.J.A.C. 7:31-3.5(c), are necessary and that they meet this criteria. The standard operating procedures as organized and outlined in N.J.A.C. 7:31-3.5(c), properly indexed and tabbed, are essential for the safe operation of the facility. Thus, the standard operating procedures will indeed be reviewed with the health and safety of the community as the primary objective.

COMMENT: The proposed N.J.A.C. 7:31-3.5(c)9 regarding sampling procedures should refer to the taking of samples by personnel. The intent of this requirement relates to potential personnel exposure, and not to self-contained sampling systems.

RESPONSE: N.J.A.C. 7:31-3.5(c)9 is intended to cover both sampling by personnel and self-contained sampling systems. The standard operating procedures should address the potential for an EHS release during the sampling procedure and the measures to prevent such a release. For example, if sampling is done off the bottom of a storage tank, there should be procedures or other safeguards to prevent a catastrophic release in the event of a valve or line failure, or operator failure. Therefore, no change has been made.

COMMENT: In N.J.A.C. 7:31-3.5(c)14, "statement of EHS manpower needs . . .", should be eliminated, since the same information is emulated in paragraph 15. The commenter also did not know what to expect with respect to labor negotiations.

RESPONSE: N.J.A.C. 7:31-3.5(c)14 refers to the number of operators required to safely perform the various operations, whereas N.J.A.C. 7:31-3.5(c)15 requires that an EHS operator be in attendance, be able to acknowledge alarms and take action to prevent an accident at all times during EHS handling, use, manufacturing, storage, or generation except for three specific exemptions. The operator required by N.J.A.C. 7:31-3.5(c)15 should be included in the number required by N.J.A.C. 7:31-3.5(c)14. If a registrant, due to a safety policy or as a result of a hazard analysis or risk assessment, has established a staffing requirement for a certain job function, then it should be stated in the standard operating procedures. For example there may be a requirement that two operators be present during the hookup or disconnect of EHS containers. If so, this should be stated in the standard operating procedures. With regard to the labor-management relations statement, the Department is not establishing any maximum or minimum staffing standards, other than the one operator required by N.J.A.C. 7:31-3.5(c)15. Therefore, this subsection should have little or no impact on the registrant's labor-management relations.

COMMENT: A fourth provision should be added to the proposed N.J.A.C. 7:31-3.5(c)15 to cover storage tanks with secondary containment greater than or equal to the volume of the tank, where the EHS stored in the tank is neither a gas nor a volatile organic substance. To post an employee at a site for the sole purpose of watching a storage tank while no activity is occurring is both wasteful and unsafe.

RESPONSE: N.J.A.C. 7:31-3.5(c)15 mandates that an EHS operator be in attendance at all times during EHS handling, use, manufacturing, storage or generation and provides only three exemptions to this requirement. The secondary containment described in this comment is not considered a sufficient basis for granting an exemption, as many of the EHS's are very volatile chemicals.

However, a registrant with such a storage tank does have a choice of either having an operator in attendance at all times or using monitoring equipment containing alarms which report to a continuously attended station and thus satisfying the requirements for the exemption provided by N.J.A.C. 7:31-3.5(c)15iii.

COMMENT: Please provide the rationale regarding the requirement for a risk assessment in the proposed N.J.A.C. 7:31-3.5(c)15ii, but not in the proposed N.J.A.C. 7:31-3.5(e)15i and iii.

RESPONSE: The Department believes that the probability of a catastrophic release under the conditions covered by N.J.A.C. 7:31-3.5(c)15i and iii is such that a risk assessment is not necessary. The staffing exemption provided by N.J.A.C. 7:31-3.5(c)15i applies to water treatment facilities using chlorine gas out of containers of less than 2100 pounds capacity and requires trained employees to be available at all times to acknowledge alarms and take corrective action in the event of a leak. The exemption provided by N.J.A.C. 7:31-3.5(c)15iii applies to quiescent storage only, and requires that the monitoring equipment contain alarms reporting to a continually attended station. However, for the staffing exemption provided by N.J.A.C. 7:31-3.5(c)15ii, which applies to EHS storage requiring refrigeration, circulation, agitation, or inert gas blanketing, the Department has determined that, even with an EHS monitoring alarm reporting to a station continuously staffed by personnel trained to prevent an accident, the degree of risk is still serious enough to require a risk assessment before the exemption can be granted.

COMMENT: Concerning the proposed N.J.A.C. 7:31-3.5(c)15iii, monitoring equipment does not exist for all EHS's.

RESPONSE: If a facility is storing an EHS for which there is no existing suitable monitoring equipment, then an operator must be in attendance at all times as specified in N.J.A.C. 7:31-3.5(c)15.

COMMENT: Add a new paragraph 16 to the proposed N.J.A.C. 7:31-3.5(c) providing "A list be developed and specified in the operating instructions specifying such EHS related instrumentation which must be fully functional and if not, the unit must be shut down until repairs have been made."

RESPONSE: N.J.A.C. 7:31-3.5(c)8 requires that all EHS safety instrumentation be described in the standard operating procedures and therefore constitutes a listing of all EHS related instrumentation.

N.J.A.C. 7:31-3.4(d)2 requires that all inoperable EHS instrumentation be returned to operational status immediately. However, the Department does not believe that a blanket requirement that the unit must be shutdown until repairs are made is appropriate as this requirement could introduce a greater hazard than that presented by the inoperative instrument itself. Therefore, no change has been made.

COMMENT: The proposed N.J.A.C. 7:31-3.6(a) requiring that the entire program documentation be written is too restrictive. A computer data base for tracking preventive maintenance with hard copy reporting should be allowed.

RESPONSE: While N.J.A.C. 7:31-3.6(a) specifies that the preventive maintenance program be written, the Department has not mandated the method of implementation. A computer data base for tracking preventive maintenance which includes all required preventive maintenance program documents, with an updated hard copy available at all times, is acceptable under the rule as written.

COMMENT: Preventive maintenance programs as proposed in N.J.A.C. 7:31-3.6 are not the only maintenance programs that might prove effective. For example, considerable emphasis is now being placed on reliability centered maintenance in both the airline and nuclear industries.

RESPONSE: The preventive maintenance program is one of the requirements of the risk management program mandated by the Act, at N.J.S.A. 13:1K-21i. In N.J.A.C. 7:31-3.6, preventive maintenance is used as a general term and is not intended to refer to a specific type of maintenance program. Any program that fulfills the requirements listed in N.J.A.C. 7:31-3.6 is acceptable, no matter what it is named by the registrant.

COMMENT: The proposed N.J.A.C. 7:31-3.6(a)12 regarding the system for maintaining accurate records to perform equipment reliability studies should include the root causes of each component or equipment failure, the number of actual operating hours for the equipment, and repair time; and should also separate out diagnosis, parts procurement, actual repair time, testing, and miscellaneous delays before restoration to service.

RESPONSE: The Department prefers to leave it to the discretion of the registrant as to what data is necessary for reliability studies. Only data associated with equipment failure potentially resulting in an EHS release is of concern. The requirement is that the data be adequate to perform reliability studies of EHS equipment.

COMMENT: The proposed N.J.A.C. 7:31-3.6 requires the preventive maintenance program to be responsible for and establish controls over actions which are not within the program's functional jurisdiction. Examples of such inconsistencies are control of modifications, commissioning and decommissioning of EHS equipment, periodic testing of standby emergency equipment, training maintenance personnel, and control of contractors. The wording should be general to allow other departments, such as operations, maintenance, and training, to be responsible for certain elements consistent with their functional responsibilities.

RESPONSE: The items referred to may or may not fall under the jurisdiction of one specific department or program at a site. This depends on the management philosophy or policies existing at the site. The Department has not spelled out who in the facility is responsible for carrying out these requirements, as this is best left to the site management. However, all of the items mentioned do impact the preventive maintenance program, and the Department's concern is that they be included in the preventive maintenance program and the overall risk management program.

COMMENT: The wording of the proposed N.J.A.C. 7:31-3.6(a)4 should not be construed to require annual testing in all cases. Similarly "annually" should be deleted from the proposed N.J.A.C. 7:31-3.6(a)5 so that instrumentation checks occur only after turnarounds, which may be the only practical time to test them without serious business interruptions.

RESPONSE: The commenter has misinterpreted the frequency of testing requirements. N.J.A.C. 7:31-3.6(a)4 and 5 do not require annual testing or inspections of safety relief devices or safety instrumentation in all cases. The requirement is that they be inspected or tested at a frequency established by the facility and listed in its criteria for design and operation. If a facility has established frequencies, they should be documented. The frequencies shall be based on reliability studies, rather than on equipment turnarounds solely for the purpose of preventing business interruptions. This is to insure that the frequencies are known and being followed by those individuals responsible for completing the inspections or testing. Only if such frequencies have not been established or documented are annual testing, inspections, or checks for proper operation required by N.J.A.C. 7:31-3.6(a)4 and 5.

COMMENT: The proposed N.J.A.C. 7:31-3.6(a)5 should refer to "critical instrumentation".

RESPONSE: The Department prefers the term "safety" rather than "critical" to indicate the type of instrumentation referred to in N.J.A.C. 7:31-3.6(a)5 which, in the event of failure, could result in an EHS accident. The term "critical" could either be construed too narrowly to include only certain crucial instrumentation, or could be construed to refer to other instrumentation such as that critical to production output or quality control. Therefore, no change has been made.

COMMENT: The proposed N.J.A.C. 7:31-3.6(a)7 covers the testing of a wide array of emergency equipment and such testing should not be required on a weekly schedule in all cases. Either monthly testing or independent testing frequencies should be allowed for this diverse equipment.

RESPONSE: If a facility has established and documented a frequency of testing for its equipment from published codes or standards in the criteria for design and operation, then weekly testing is not required. If no frequency has been established, then weekly testing to establish reliability data on each type of equipment is required. Weekly testing of such equipment as fire pumps and emergency generators is not uncommon. Therefore, no change will be made.

COMMENT: The proposed N.J.A.C. 7:31-3.6(a)3 requires internal and external inspections of EHS equipment. Internal inspections are not always possible or advisable, as the very act of cleaning out a tank could cause an environmental problem or accelerate corrosion, for example, thionyl chlorine. Exceptions should be made for these cases. This provision should also state that inspection of vessels and pipelines should include where appropriate, but not be limited to, such testing procedures as radiography, ultrasonics and acoustics emissions.

RESPONSE: As the Department believes that regularly scheduled internal inspections of EHS equipment are an important part of an effective preventive maintenance program, no exceptions from the requirements of N.J.A.C. 7:31-3.6(a)3 will be made. However, the Department recognizes that in certain cases methods other than an internal visual inspection may be advisable due to the difficulties of preparing certain vessels or pipelines for internal visual inspections. For this reason, radiography, ultrasonics and acoustic emissions inspection methods which have proven equal or superior to visual internal inspections for evaluating the integrity of piping and vessels may be used either to complement or as an alternative to internal visual inspections. The rule has been changed to permit these additional inspection methods.

COMMENT: Training requirements are overly restrictive with respect to qualifying trainers, recordkeeping, and documentation of training activities.

RESPONSE: The requirements of N.J.A.C. 7:31-3.7 covering EHS operator training are not overly restrictive as they merely establish an outline of the various types of training and the subjects to be covered which are required to ensure that EHS operators receive the minimum training needed to operate the EHS facility safely. Registrants are encouraged to go beyond these minimum requirements in implementing their own EHS operator training programs. Regarding the qualifying of trainers, N.J.A.C. 7:31-3.7(d) only specifies that the personnel responsible for training EHS operators must meet the qualifications established by the registrant. Finally, N.J.A.C. 7:31-3.7(e) and (f) require the registrant to maintain only that documentation needed by the Department to verify compliance with the operator training requirements established by the registrant.

COMMENT: The training requirements listed in the proposed N.J.A.C. 7:31-3.7(b) should be required for operators with responsible charge of a process, but should not be required for support workers. For example, workers whose only job is to deliver raw materials, to remove product from vessels, or to clean equipment should not require the extensive training listed.

RESPONSE: The training requirements listed in N.J.A.C. 7:31-3.7(b) apply to and have been defined for all EHS operators, and the term EHS operator is defined at N.J.A.C. 7:31-1.5 as "an employee or employees at an EHS facility who is directly involved with an EHS and qualified and trained in, or being trained in the operations of an EHS facility". Due to the fact that the operators are dealing with extraordinarily hazardous substances, the specific training requirements listed in N.J.A.C. 7:31-3.7(b) apply to all EHS facility personnel, and EHS operators whose only job assignment is to deliver raw materials, to remove product from vessels, or to clean equipment must receive all of the training required by N.J.A.C. 7:31-3.7(b). Of course, the on-the-job training for newly assigned EHS operators required by N.J.A.C. 7:31-3.7(b)3 should be

adapted to each EHS operator's specific job duties. Therefore, no change will be made in the training requirements.

COMMENT: The annual refresher training proposed in N.J.A.C. 7:31-3.7(b)4 with specific classroom requirements is much too frequent, impractical and unproductive. Formal training once every three years in conjunction with ongoing on-the-job refresher training is more practical. Also, the frequency of training should be consistent with batch plant operating conditions.

RESPONSE: The Department has determined that the annual refresher training for all operators handling extraordinarily hazardous substances required by N.J.A.C. 7:31-3.7(b)4 is the minimum necessary to ensure that the operators are kept up to date on all changes. Annual refresher training also provides the operators with an opportunity to resolve any questions or uncertainties they may have about the operation of the facility. Although the rule specifies the subjects which are required to be covered in the refresher training, it does not specifiy the method of instruction which is left to the discretion of the registrant. Therefore, a registrant may elect to cover these subjects through on-the-job training. For batch plants, as well as all other EHS facilities, the time period for refresher training can be interpreted as at least once per operating year. Of course, the Department encourages more frequent training if batch plant operating conditions change significantly during the year. No change in the rule has been made.

COMMENT: The proposed N.J.A.C. 7:31-3.7(c) requiring written testing of operators implies a literacy requirement. This is a violation of equal employment opportunities.

RESPONSE: The entire section concerning standard operating procedures is based on the premise that employees assigned the responsibility of operating EHS equipment will be able to read and understand the standard operating procedures. The written testing referred to in N.J.A.C. 7:31-3.7(c) covers the standard operating procedures, and should include such things as operating conditions of pressure, temperature and flows, an understanding of which is essential for anyone assigned to operate EHS equipment. The TCPA was enacted to prevent toxic catastrophes from occurring at facilities handling extraordinarily hazardous substances; and the Act and the rule are legitimate exercises of the State's police powers designed to safeguard the public's health, safety, and welfare. Because of the extremely toxic nature of the EHS's, it is vital that all EHS operators be able to read and understand standard operating procedures and emergency procedures. The testing requirements under N.J.A.C. 7:31-3.7(c) are thus not in violation of the equal employment opportunity laws and, therefore, no changes will be made in this requirement.

COMMENT: In N.J.A.C. 7:31-3.8 a timeframe should be specified to initiate an EHS accident investigation.

RESPONSE: While the rule itself does not specify a timeframe to initiate an EHS accident investigation, N.J.A.C. 7:31-3.8(a)2 specifies that the registrant's EHS accident investigation procedures shall include a schedule for the initiation of EHS accident investigations. The purpose of this is to allow management to establish an appropriate timeframe for initiation of all EHS accident investigations.

COMMENT: The Department needs to realize that the records of employee errors will be kept consistent with existing contractual agreements between registrants and employee bargaining units. Accordingly, the retention period for such information will be limited to a specific time period ranging in most cases between one to three years. The proposed N.J.A.C. 7:31-3.8(a) should reflect this.

RESPONSE: N.J.A.C. 7:31-3.8(a)5v and (c)3 are not intended to conflict with any contractual limitations regarding the retention of employee disciplinary records for the purposes of administering progressive discipline. The records of EHS accident reports are required to be maintained in a separate file for the TCPA program and not in the individual's personnel file. The purpose of this recordkeeping requirement is to highlight those employees who have been involved in EHS accidents to determine if action, such as retraining, reassignment, etc., is required as part of the facility's EHS accident prevention program. As this recordkeeping requirement is imposed pursuant to the TCPA, no change will be made.

COMMENT: N.J.A.C. 7:31-3.8(b)7 should be changed to include the following: "iii. Faulty or inadequate designs which were not identified or recognized as being potentially significant contributors to an EHS release; and iv. Unsafe or incorrect standard operating conditions not previously recognized as being potentially significant contributors to an EHS release."

RESPONSE: The recommended addition to N.J.A.C. 7:31-3.8(b)7 of faulty or inadequate design as being a contributor to an EHS release is unnecessary as faulty design is adequately covered by subparagraph (b)7ii. However, N.J.A.C. 7:31-3.8(b)7iii has been added to cover standard operating procedures and EHS operator training procedures as the Department considers operating and training procedures to be of vital importance to any effective RMP. In addition, references to procedural inadequacy have been added to N.J.A.C. 7:31-3.8(b)6 and (c)4ii, which concern identification of the causes of accidents and the categorizing of EHS accidents in the end of year summary report, respectively.

COMMENT: The information requested in the proposed N.J.A.C. 7:31-3.8(c)4iii and iv is already covered under N.J.A.C. 7:31-3.8(b)6 and 8 and is summarized and reviewed on a monthly basis under N.J.A.C. 7:31-3.8(c)2. Redundant reporting must be eliminated.

RESPONSE: N.J.A.C. 7:31-3.8(c)4iii and iv are parts of the registrant's annual accident summary report which is included in its annual report submitted to the Department pursuant to N.J.A.C. 7:31-3.13(a)8. The EHS accident reports required by N.J.A.C. 7:31-3.8(b) and the EHS accident investigation records required by N.J.A.C. 7:31-3.8(c)2 are necessary for complete and effective investigations of accidents and provide the basis for the identification and implementation of corrective actions. N.J.A.C. 7:31-3.8(c)2 requires only a monthly list updating the implementation status of recommended corrective actions. The annual statement of progress on corrective actions required by N.J.A.C. 7:31-3.8(c)4iv represents an overview of the monthly status reports and is included in the annual report to the Department. All of these requirements are necessary to ensure that the risk management program includes effective EHS accident investigation procedures, and the reporting requirements are not redundant. Therefore, no change has been made to the rule.

COMMENT: The requirement for a hazard analysis on each new operating alternative or modification as proposed in N.J.A.C. 7:31-3.9(a) is unnecessary and should be deleted.

RESPONSE: Some of the most serious incidents involving hazardous chemicals have resulted from changes in equipment or procedures that were not properly analyzed for potential hazards. Therefore, the requirement that a hazard analysis must be conducted on each new operating alternative or modification to identify potential hazards that may result from the proposed change will not be deleted.

COMMENT: In the proposed N.J.A.C. 7:31-3.9(b), the frequency of the hazard analysis should be "five years" rather than "three years" since an annual safety review is done and modifications are strictly reviewed and assessed. Also, after "a hazard analysis shall be conducted", add the phrase "or updated and recertified" for similar reasons.

RESPONSE: In response to this comment, the frequency of the required hazard analysis has been changed from three years to four years. The Department believes this is a reasonable period of time to develop and consider changes in site specific failure data, to carry out a trend analysis, and to conduct a reliability study which would justify the rationale of the risk reduction measures previously implemented. The Department further believes that a five year cycle of hazard analysis is simply too long a period of time due to the rapidly changing conditions in and around EHS facilities and the potential of increased hazards going undetected.

However, the Department does not agree that updating and recertifying hazard analyses on any basis is sufficient. Updating and recertifying does not take into consideration a review of the current sound engineering practices and technology, including the revision of current codes and practices in the light of risk reduction and cost effectiveness.

COMMENT: The proposed N.J.A.C. 7:31-3.9(c) specifies the types of analytical methods which may be used to do the hazard analysis of an EHS facility. The wording should be revised in such a way as to allow the usage of other methods, particularly if they can be shown to be better or more efficient. As an example, the analytical method "Hazards Analysis of Petroleum Systems" (HAPS) could serve as well as or better than the particular methods listed.

RESPONSE: The definition of hazard analysis is a "systematic identification of the potential conditions that may result in an EHS accident using singly or in combination a Hazard and Operability Study (HAZOP), Failure Mode and Effect Analysis (FMEA), qualitative Fault Tree Analysis (FTA), or "What If/Check List". These techniques have been established as the standard accepted methods in the work of the Center for Process Safety, the oil companies study group for Conservation of Clean Air and Water, Europe (CONCAWE), the World Bank and Knowlton. The Department believes it is necessary to specifically identify the techniques of hazard analysis as this is an integral part of the determination of whether a facility has an established RMP. In addition to the fact that the above four techniques are well documented and established, the Department believes that it is necessary to limit the

hazard analysis to these four techniques in order to standardize the review and approval of RMP's. The Department recognizes that hazard analysis is a rapidly expanding field and is currently studying other techniques and criteria which will be considered for possible inclusion in the future. To avoid redundancy, the Department has deleted the recitation of the four techniques in N.J.A.C. 7:31-3.9(c), since they are already set forth in the "hazard analysis" definition at N.J.A.C. 7:31-1.5.

COMMENT: The requirements of the proposed N.J.A.C. 7:31-3.9(c)2i regarding hazard analyses should be limited to identifying possible EHS releases which are equal to or greater than the registration quantity. The intent of the TCPA deals solely with prevention of catastrophic events. The Act neither implies nor requires that measures be taken to deal with those releases of an EHS in less than the registration quantity.

RESPONSE: A properly conducted hazard analysis would by definition identify all possible EHS release events. Once these release events and their corresponding release quantities are identified, any further action required will depend on the potential release quantity and its consequences. The Department believes that it is still necessary to identify all releases, including small releases of less than the registration quantity, as the prevention of small releases contributes to the prevention of catastrophic releases.

COMMENT: The idea of a state of the art search, as proposed in the N.J.A.C. 7:31-3.9(c)3, is good, but there must be some mechanism for external input into this process. N.J.A.C. 7:31-3.9(c)1 states that the hazard assessment team can be composed exclusively of company staff persons. A Department approved consultant, or Department employee should be included in this process.

RESPONSE: The Department maintains that performance of a hazard analysis is the responsibility of the registrant as a part of its risk management program. The Department will, of course, review all hazard analysis and risk assessment reports to ensure compliance with N.J.A.C. 7:31-3.9.

COMMENT: No definition of the level of risk that the Department would find acceptable is provided in the rule for the risk assessments conducted pursuant to the proposed N.J.A.C. 7:31-3.9. Quantification of the probability of a release is at best speculative and largely useless. What does one do with this probability when estimated? What is the role of the State and what can the State do in the process of judging what is and what is not a good risk? It would be helpful if the Department could spell out their approach to this issue. On what basis will the registrant or the Department decide whether risk reduction measures are necessary?

RESPONSE: The Act, at N.J.S.A. 13:1K-26a, mandates that the Department, by regulation, establish criteria or quantitative standards for determining risk, which criteria and standards shall reflect, among other factors, the size of the potentially exposed population and the gravity of the consequence. The Department has been working on developing this criteria, and expects to publish it as an amendment to the rule in the future. In the meantime each registrant will have the burden of demonstrating to the Department that the risks have been identified and that the risk reduction efforts, which have been taken or are planned, are commensurate with the identified risk and the site's environment. Quantification of the probability component of a risk contrary to the assertion of the commenter, has been found very useful in risk manangement programs. The likelihood of a risk is an important consideration when selecting from options of risk reduction techniques. In addition, the process of quantifying the risk requires several steps which reveal the depth of the state of knowledge of the risk, which is also important information for decision makers in selecting among methods of mitigating the risk. It also forces the analysis of a range of scenarios which may result in the release. Even probability data which are based on such estimates contribute to risk management since they can be compared with probabilities of similar events for which a higher degree of certainty exists.

COMMENT: The proposed inclusion of risk quantification (probability analysis) in the RMP assumes that failure rates and error rates exist for equipment and operators, respectively. Generally, these rates do not exist for many specific pieces of equipment, services and operator tasks. Practitioners have been forced to use rates for similar equipment and services. The determination of absolute probability risk quantification is not usually possible and the determination of relative risk among equipment options will not establish the safety of an operation.

RESPONSE: The Department agrees that the determination of absolute probability risk quantification is not generally possible; however, the use of failure rate data to quantify the likelihood of a hazard and thus define a risk is well established in many developed nations as a means used to promote safe operations. Data for assigning failure rates and error rates is increasingly being published. While such data is primarily focused on nuclear power stations and other power plants, the publications do include data that can be applied to EHS equipment and procedures. The Department recognizes that some rate data may have to be used with a high level of uncertainty when adequate failure history is lacking. As facility specific evidence increases, the uncertainties in the corresponding failure rate data will decrease.

COMMENT: The Department should issue a specific guidance, in an appendix to the proposed rule, as to which models are acceptable for which conditions for the dispersion modeling required pursuant to the proposed N.J.A.C. 7:31-3.9(f)2. Also, the option should be provided to use alternate models which are acceptable to the Department. The chemical industry does not know of a valid dispersion model to use for all compounds or, in particular, for hydrogen fluoride. The model described by the Department in the background document is not suitable for hydrogen fluoride and will give erroneous and misleading results. This requirement should be changed and a dispersion model should be required only if it has been proven to be reasonably accurate for the chemical for which it is to be used.

RESPONSE: The Department will not issue an appendix to the rule providing specific guidance as to which dispersion models may be used for which conditions because of the difficulty in cataloging the various site conditions, quantities of EHS's present, etc. However, the Department will allow the use of the U.S. Environmental Protection Agency's (EPA) public domain dispersion models and any dispersion models offered by private industry, which demonstrate results comparable to the EPA's dispersion models. The Department agrees that hydrogen fluoride dispersion presents unique dispersion characteristics, and specific guidance may be issued in the future for calculating ambient air concentrations of hydrogen fluoride. When a particular chemical does have unique dispersion characteristics, the Department will consider all credible scientific evidence to assist in the dispersion modeling study. Proving that a model is specifically accurate for every chemical being modeled is impossible. Actual releases and ambient air measurements of extraordinarily hazardous substances would have to be performed (i.e., a field validation study) to prove that the model is accurate for a particular chemical. Atmospheric dispersion models are more generally validated in the scientific community by the type of cloud that would be formed after the accidental release of a specific category of chemicals, such as heavier than air gas releases.

As the Department believes that the accuracy of the currently available dispersion models and dispersion algorithms is sufficient to permit an effective dispersion analysis to be conducted on each of the EHS's listed in Table I at N.J.A.C. 7:31-2.3, no change to the rule will be made.

COMMENT: Please clarify the proposed N.J.A.C. 7:31-3.9(f)4 regarding estimating the probability of an EHS release occurrence.

RESPONSE: The estimate of the probability of an EHS release required by N.J.A.C. 7:31-3.9(f)4 could be calculated by a registrant using equipment failure data based upon generic data available in published documents, or registrants can use their own site specific failure data, if available. In the absence of any such data, it is to be assumed that the probability of such an EHS release incident is 100 percent, and the consequences have to be analyzed.

COMMENT: The proposed N.J.A.C. 7:31-3.9(f)5 should include a requirement for an evaluation of the adequacy of current risk control measures. The rule as written implies that all facilities will have to reduce risk. This presents an unnecessary burden to those companies which have been practicing prudent risk analysis reduction.

RESPONSE: N.J.A.C. 7:31-3.9(f)5 provides for an evaluation of current risk reduction measures. If a registrant has previously recognized a potential hazard and taken risk reduction measures, then these measures will be reflected both in the state of the art search and the reduced probability of the event occurring. Consideration of current and previous risk control measures is also provided for in N.J.A.C. 7:31-3.9(i)1ii and iii. N.J.A.C. 7:31-3.9(i)1iii allows the registrant to describe how past and current risk reduction and control measures have reduced the risk to a level such that, in the opinion of the registrant, no further risk reduction measures are necessary.

COMMENT: The proposed N.J.A.C. 7:31-3.9 potentially conflicts with the Superfund Amendments and Reauthorization Act (SARA Title III) requirements in that both are concerned with conditions outside the plant boundaries. It is at least repetitive of SARA Title III.

RESPONSE: While SARA Title III and the TCPA are both concerned with conditions outside the plant boundaries, N.J.A.C. 7:31-3.9 describes the risk assessment program for specific pieces of EHS equipment or operating alternatives, with a goal of preventing catastrophic releases, while SARA Title III primarily addresses off-site emergency response

planning. The two programs are thus compatible, rather than conflicting. SARA Title III clearly does not contain any requirements for the review of hazard analyses, safety reviews, or risk assessments with the intent of identifying potentially catastrophic releases and implementing appropriate risk reduction measures.

COMMENT: Dispersion analyses required pursuant to the proposed N.J.A.C. 7:31-3.9 should be conducted by the Department, and not by the registrant, at least for an initial period in the interests of efficiency and economy. It is well established that current models are either misleading or even wildly inaccurate in predicting concentrations at points outside of the EHS facility. This is particularly true for heavier-than-air plumes, aerosol releases, etc. It is totally inappropriate to require a dispersion analysis when the EHS involved is a dense gas such as chlorine. Neutral buoyancy models are simply inadequate and their use makes little or no contribution to the science. In addition, the vagaries of weather and topography are such that there is no need for the time, effort, and expense required for such analyses by the registrant. If at some future time, dispersion models with reasonable accuracy and utility are developed, and their validity demonstrated, the Department could repropose their use by registrants at that time. Appropriate emergency response plans can be developed without the use of air dispersion models.

RESPONSE: While the Department has neither the personnel nor the resources necessary to adequately perform dispersion analyses for every registrant in the TCPA program, requiring that each registrant conduct their own dispersion analysis is not unduly burdensome. Dispersion analyses are widely used for predictive purposes despite varying degrees of accuracy for certain applications. In a large majority of cases, current models are capable of predicting concentrations which, when compared to toxicological standards, provide useful information for prevention or abatement of negative health effects. This includes heavier-than-air or aerosol releases.

Although the Department did use a neutral buoyancy model to determine the registration quantities for the expanded list of EHS's, it is not the intent of the Department to require that this type of model be used in all cases. There will be instances, however, when this would be the appropriate type of model to use.

The need for and usefulness of a dispersion analysis, despite varying meteorology and topography, has been firmly established by professionals currently conducting risk assessments. The Department believes that the models currently available to the public are sufficiently accurate at this time to produce valid and useful results. To wait until more advanced models are developed would neglect an extremely useful tool in risk assessment. The Department's main intent for requiring dispersion and consequence analysis in the TCPA program is to assist in identifying when risk reduction measures may need to be taken. Thus, the development of an emergency response plan is not the only use of a dispersion model. Therefore, no changes will be made to the rule.

COMMENT: The proposed requirements of N.J.A.C. 7:31-3.10 should be modified to account for the level of public protection afforded by SARA Title III. There is considerable overlap between the proposed rule and the federal Emergency Planning and Community Right-to Know Act of 1986; and, imposing two levels of regulations for the same hazard unnecessarily multiplies the burden imposed on private and governmental resources. The facilities covered by SARA Title III should be exempt from similar provisions of the proposed rule to eliminate a duplication of effort. Also, the emergency notification procedures of the proposed rule should be consistent with N.J.A.C. 7:27-20.5, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Section 103(a) and SARA Title III, Section 304.

RESPONSE: SARA Title III was taken into account by the Department in drafting the rule, and the emergency response procedures outlined at N.J.A.C. 7:31-3.10 are complementary to the SARA Title III requirements. They neither conflict with nor duplicate the requirements of the federal program. The responsibility for emergency response planning under SARA Title III is on the State and local governments, especially the local emergency planning committee. Industry, under SARA Title III, is required to appoint a facility emergency coordinator and to provide to the local emergency planning committee any information necessary for the development or implementation of the local emergency plan. Immediate notification of an accidental release by a facility owner or operator to the local and state response personnel is also specified.

Under SARA Title III, the local emergency plan deals with the off-site response to accidental release situations, whereas the TCPA emergency response section requires facility owners and operators to be prepared to deal with the on-site emergency response activities. The rule is thus complementary to the federal requirements and enhances emergency response preparedness throughout the State. In fact, N.J.A.C. 7:31-3.10(a)15 specifies the establishment of a program to coordinate the site's emergency response plan with the emergency response plan of the local emergency planning committee.

Overlap does exist in the notification requirements of the two laws and the appointment of a facility emergency coordinator. These requirements, however, do not contradict each other in any way. The immediate notification to the state by a facility of an accidental release can be accomplished by one phone call to a central state number. The requirements of three laws, SARA Title III, the TCPA, and the New Jersey Air Pollution Control Act's air contaminant release notification requirement, at N.J.S.A. 26:2C-19e, do not contradict one another, but rather reiterate the importance of immediate notification to authorities in the event of release.

The burden on private and governmental resources is not increased, as a party satisfying the notification requirements of one regulation will meet the requirements of the other regulation. While separate regulations exist at the federal and state levels, and both the federal and state law require notification of the release to the Department, no extra notification requirements are being added by the rule. It is noted that SARA Title III, Section 304(b) also requires notification of a release to the community emergency coordinator. The addition of this rule, however, provides an enforcement mechanism for the Department, and allows an added level of protection by requiring a facility to notify the Department of potential release situations.

COMMENT: In the proposed N.J.A.C. 7:31-3.10(a), the requirement for an emergency response committee is without statutory authority and should be deleted. Registrants should be allowed flexibility as to how they should develop and monitor an emergency response plan. Many companies do not have all the functions listed as separate departments. Do they have to reorganize to achieve compliance?

RESPONSE: The reference to an emergency response committee in N.J.A.C. 7:31-3.10(a) has been deleted. The Department agrees that it is not necessary for the registrant to appoint an emergency response committee from specific elements of the facility in order to develop and implement the required emergency response program. While the registrant is still required to develop and implement an emergency response program and plan in accordance with N.J.A.C. 7:31-3.10, the means by which this requirement is satisfied is left to the discretion of the registrant.

COMMENT: In the proposed N.J.A.C. 7:31-3.10(b)3, regarding the written emergency response plan, the phrase "and process flow diagrams" should be deleted. These documents contain highly confidential and proprietary information and their distribution on a site is closely controlled. Emergency response personnel are not trained to read them.

RESPONSE: The citation of N.J.A.C. 7:31-3.10(b) has been changed to N.J.A.C. 7:31-3.10(a). The Department agrees that process flow diagrams do not have to be distributed to emergency response personnel, as a process flow diagram will be maintained at the site in accordance with N.J.A.C. 7:31-3.3(c). In addition, the standard operating procedures will also contain a simplified flow diagram pursuant to N.J.A.C. 7:31-3.5(c). Therefore, N.J.A.C. 7:31-3.10(a)3 has been changed to eliminate the requirement for preparation and distribution of process flow diagrams. In view of this change to the rule, it is not necessary to address the issue of the confidential and proprietary nature of the process flow diagrams. However, other comments concerning confidentiality will be responded to in the notice of adoption of the proposed confidentiality rules, N.J.A.C. 7:31-5.

COMMENT: The proposed N.J.A.C. 7:31-3.10 should be amended as follows: to N.J.A.C. 7:31-3.10(b)7, add the qualifier "wherever possible"; to N.J.A.C. 7:31-3.10(b)8iii, add "if commercially available"; to N.J.A.C. 7:31-3.10(b)9iii, add "where applicable"; and to N.J.A.C. 7:31-3.10(b)10, add "as appropriate to their functional responsibilities".

RESPONSE: The citation for N.JA.C. 7:31-3.10(b) has been changed to N.J.A.C. 7:31-3.10(a). Regarding the suggested change to the required recording of the sequence of events for incidents, N.J.A.C. 7:31-3.10(a)7, this record is necessary to establish the facts essential for a thorough accident investigation and such a record is a requirement for any effective emergency response plan. With regard to N.J.A.C. 7:31-3.10(a)8iii, which requires a determination of the number of and distribution of portable monitors and detectors, procurement is addressed at N.J.A.C. 7:31-3.10(a)14, which already includes the suggested change. Regarding the requirement concerning the use of emergency response protective equipment, N.J.A.C. 7:31-3.10(a)9iii, almost all EHS emergency response situations require some type of protective equipment, and no change will therefore be made to this section. Finally, N.J.A.C. 7:31-3.10(a)10 does require that all members of the emergency response team receive training

in all the items listed, as these items are considered to be basic requirements for the emergency response team. However, team members must be trained more intensively in their own areas of responsibility to insure satisfactory performance in the event of an actual emergency. Thus, the suggested language will not be added to N.J.A.C. 7:31-3.10(a)10.

COMMENT: As written, the proposed N.J.A.C. 7:31-3.10(b)11i implies that a site with 20 EHS facilities with a 4 shift operation would involve the outside response organization in drills 80 times per year. This requirement should be that all groups involved in an EHS response will participate in a drill at least two times in one year, or even one drill a year would be sufficient. It is assumed that the training drills can be done in conjunction with other regulatory drills such as RCRA and SARA Title III.

RESPONSE: The citation for N.J.A.C. 7:31-3.10(b) has been changed to N.J.A.C. 7:31-3.10(a). N.J.A.C. 7:31-3.10(a)11 does not require that emergency response drills be conducted with outside response agencies. N.J.A.C. 7:31-3.10(a)11 merely requires that all of the registrant's EHS emergency response personnel be involved in a minimum of two EHS drills per year. This is the minimum necessary to insure that team members are adequately trained to perform their duties in the event of an EHS emergency. These drills can be conducted either independently or in conjunction with outside agencies and can be used to satisfy the requirements of other regulatory programs as well. The Department, of course, encourages joint drills with outside agencies whenever possible, as this will improve cooperation during an actual emergency.

COMMENT: The proposed N.J.A.C. 7:31-3.10(b)14 regarding on-site hand held or mobile EHS detection equipment should include the phrase "and shall establish a maintenance and calibration schedule for such equipment to ensure its readiness in the event of an actual EHS release".

RESPONSE: The cite for N.J.A.C. 7:31-3.10(b) has been changed to N.J.A.C. 7:31-3.10(a). While N.J.A.C. 7:31-3.10(a)4 concerns the procurement of on-site hand held or mobile EHS detection equipment, N.J.A.C. 7:31-3.10(a)8iii requires the registrant to determine not only the number and distribution of portable EHS gas monitors and detectors needed at the site, but also to provide calibration and maintenance schedules for them. Therefore, no change in the rule is necessary.

COMMENT: The installation of a weather station has apparently not been included in the economic analysis and could be a substantial economic burden to install and maintain. Installation of a weather station with recording ability would run on the order of $100,000. The time for installation of the station should be extended to 360 days, and only a continuous indication, as opposed to continuous record, of wind speed and direction should be provided. Also, these stations should only be required on a case-by-case basis as this expense is unwarranted for facilities handling one EHS, such as chlorine or facilities isolated from large populations. As an alternative, a wind sock near EHS equipment could be required to indicate wind direction.

RESPONSE: The citation for N.J.A.C. 7:31-3.10(b) has been changed to N.J.A.C. 7:31-3.10(a). The Department's economic analysis of the costs to the regulated community resulting from the TCPA program determined that the estimated cost of a weather station having the capabilities that the Department desires is approximately $5,000. The maintenance cost of the weather station is considered to be minimal. The suggested 360 day timeframe to allow for installation of the weather station is not appropriate as these stations are not difficult to install, and the 180 day time period from the operative date of the rule specified at N.J.A.C. 7:31-3.10(a)13 provides sufficient time to satisfy this requirement. If a registrant should not complete installation in the required timeframe, this would be considered a material deficiency during the detailed review of its RMP.

The Department believes that the recording of the wind speed and direction is necessary and that only a current indication of this information would be inadequate. If a release should occur, this information would be extremely valuable to the emergency response teams. Various types of recording devices can be purchased, including continuous strip chart recorders and digital and analog devices that record time-averaged or quantized data on a magnetic recording medium. The Department has revised N.J.A.C. 7:31-3.10(a)13 so that each registrant must install only sufficient meteorological stations to cover its sites, rather than having one at each site. However, the Department does not believe that these stations should be required only on a case-by-case basis, or that it is an unwarranted requirement for facilities which handle only one EHS such as chlorine or which are isolated from large populations. Any facility handling an EHS in an amount greater than the registration quantity has the potential for a toxic catastrophe. In the event of a release, the information and data provided by the meteorological station would be invaluable to emergency response personnel, as it would assist in determining whether a downwind population may be exposed and also the concentrations of the EHS to which that population may be exposed. For this reason, the alternative of a wind sock is not considered acceptable.

COMMENT: The requirements of the proposed N.J.A.C. 7:31-3.10(b)14 regarding hand-held or mobile EHS detection equipment are vague and need further definition. Also, this provision should be amended to indicate that this equipment is to be used only where already available and operable, as this type of equipment may not be available for all EHS's.

RESPONSE: The citation for N.J.A.C. 7:31-3.10(b) has been changed to N.J.A.C. 7:31-3.10(a). N.J.A.C. 7:31-3.10(a)14 simply requires that EHS facilities purchase either hand held or mobile detection equipment so that levels of air contamination during an EHS release can be determined. This information is necessary to determine the potential consequences of the release and may be used by agencies responsible for offsite evacuations and emergency medical response. N.J.A.C. 7:31-3.10(a)14 does not only apply to monitoring equipment which is already available and operable at a site, as this may not be adequate to provide the information needed during an EHS emergency. It does, of course, apply only to equipment that is commercially available. Therefore, no change has been made to this paragraph.

COMMENT: In the proposed N.J.A.C. 7:31-3.10(c)5, 6, 7i and 7ii(2), delete the words "Name and Title" and replace with "Job Title". These site persons are different for each shift, and they also frequently change with reassignments and promotions.

RESPONSE: The citation for N.J.A.C. 7:31-3.10(c) has been changed to N.J.A.C. 7:31-3.10(b). In view of the fact that the site personnel or governmental responders referred to in N.J.A.C. 7:31-3.10(b)5, 6, and 7i will vary from shift to shift and may frequently change due to reassignments, etc., the rule has been changed to delete the requirement to include the person's name and to require only the individual's job title instead. This change should make it easier to administer the emergency response plan and should not have a significant adverse impact on coordination between site personnel and government responders during an emergency. The reference to the name, position, and telephone number of the caller in N.J.A.C. 7:31-3.10(b)7ii(2) will not be deleted, as this requirement relates to the notification of the Department during a release or imminent release and is needed to provide the Department with an on-site point of contact during the initial phase of such incident.

COMMENT: Requiring a community warning system, remote access by the State, and evacuation planning beyond the site boundary are all beyond the plant's capability. Also, are all elements of the plan required to be filed in one location and, if so, why?

RESPONSE: The rule does not include any of the requirements referred to as being beyond the plant's capability, and therefore no change is necessary. In accordance with the amended N.J.A.C. 7:31-2.6(e), a copy of a site's emergency response plan is required to be submitted to the Department or reviewed at the site as part of the detailed review of an RMP that has been accepted for further review by the Department. Also, N.J.A.C. 7:31-3.3(c) requires that a registrant maintain or make available for review, either at the site or at the Department's offices in the discretion of the Department, the site wide emergency response plan. While the plan is not necessarily required to be filed in one location, the Department encourages registrants to keep one complete, updated copy available for Department review at the site.

COMMENT: Add the following words at the end of the proposed N.J.A.C. 7:31-3.10(c)7iii(1): "Note: applies to the situation where sufficient time exists to contact NJDEP. NJDEP contacts to be made after local emergency response plan has been implemented." This reflects the first priority in an emergency.

RESPONSE: The citation for N.J.A.C. 7:31-3.10(c) has been changed to N.J.A.C. 7:31-3.10(b). The importance of the earliest possible notification of the Department can not be overemphasized, particularly in an ALERT situation. The requirement for immediate notification of the Department emergency communications center in the event of an ALERT, which means that an EHS release is imminent and will probably occur, is based on precedent established by N.J.S.A. 26:2D-37, the Radiation Accident Response Act and the New Jersey Radiological Emergency Response Plan. The New Jersey statute is in turn based on Guidance on Emergency Response Planning (10 CFR Part 50, Appendix E. Part 4). The Department may well have knowledge or access to information which local responders may not and which may be of vital importance in preventing, minimizing or responding to an imminent release. For these reasons the rule will not be changed.

Also, the Air Pollution Control Act, at N.J.S.A. 26:2C-19(e), provides "a person who causes a release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints shall immediately notify the department . . ." One call to the Department's emergency hotline will satisfy both of these requirements.

COMMENT: The following changes are recommended in the proposed N.J.A.C. 7:31-3.10(c): (1) in N.J.A.C. 7:31-3.10(c)7iii(2) and (3), change "emergency" to "release"; (2) in N.J.A.C. 7:31-3.10(c)8 add "if commercially available"; (3) in N.J.A.C. 7:31-3.10(c)12 add "and/or safe haven plan"; and (4) in N.J.A.C. 7:31-3.10(c)12iv replace "sufficient transport vehicles" with "moving personnel to a safe area".

RESPONSE: The citation for N.J.A.C. 7:31-3.10(c) has been changed to N.J.A.C. 7:31-3.10(b). N.J.A.C. 7:31-3.10(b)7iii(2) and (3) are part of a site's emergency notification requirements and refer to potential emergency and emergency conditions. To change site emergency to site release or general emergency to general release would not be a significant change; however the Department prefers to use the term "emergency" because of the potential threat posed by extraordinarily hazardous substances. N.J.A.C. 7:31-3.10(b)8 requires a description of and procedures for handheld or mobile monitors which are on-site. The actual requirement to procure such monitors is at N.J.A.C. 7:31-3.10(a)14, which includes the suggested phrase, "where commercially available". N.J.A.C. 7:31-3.10(b)12 lists the requirements for the evacuation of site personnel, and includes a requirement for on-site notification procedures capable of identifying areas, rather than specifying the entire site, to be evacuated. Thus, a change requiring the addition or the alternative of providing a safe haven is unnecessary, as neither the term "evacuation" nor the rule necessarily requires that the assembly areas be outside the site boundary. Therefore, a safe haven may be included in a registrant's emergency response plan without changing the language of the rule. Finally, in accordance with the suggested change to N.J.A.C. 7:31-3.10(b)12iv the rule has been amended to provide for moving personnel to designated assembly areas, and the requirement to provide sufficient transport vehicles has been deleted as it may not be appropriate for all EHS facilities.

COMMENT: The requirement for immediate release notification to the Department and follow-up notification within 15 minutes is unreasonable. At most only one notification within 15 minutes should be required.

RESPONSE: The Department has reviewed the notification requirements and has determined that they are both reasonable and necessary. The Air Pollution Control Act at N.J.S.A. 26:2C-19e, requires "immediate" notification of a release which poses a threat to the public health and welfare. Immediate notification alerts the Department emergency response team which can then begin to assist in reducing the potential consequences of a release. Immediate notification is essential to an effective response program. The second notification is an update to advise the Department's emergency response personnel of the extent of the incident and the mitigation steps being carried out. The Department must also have accurate and current information regarding the quantity and concentration of the EHS released and the present weather conditions on site in order to respond effectively to a release involving the potential catastrophic threat posed by the substance regulated by the Act and the rules. Therefore, no change has been made to the notification requirements.

COMMENT: The second notification to the Department following a release should be made within 30 minutes, as opposed to 15 minutes, of the first notification.

RESPONSE: The Department considers 30 minutes to be too long a period of time to wait for an update on the release situation by the site emergency coordinator. Significant changes could occur in a 30 minute period, such as changes in the extent of the release, wind direction, secondary incidents, etc., which could change the complexity of the threat and render the Department's initial response plans inappropriate. Therefore, no change has been made.

COMMENT: Nothing in the Act addresses the reporting of releases to the Department. Does the Department have the power under this law to require notification? Reporting is addressed by other programs and should not be included in the proposed rules. Duplication of reporting already exists in various Federal and State programs.

RESPONSE: While the Act does not refer to release reporting, it does provide, at N.J.S.A. 13:1K-21, that emergency response planning is one of the eight elements of an RMP. Also, the Legislature declared, at N.J.S.A. 13:1K-20, that although it is not the single most effective effort toward prevention of EHS accidents, that a strengthened capacity to minimize and abate discharges once they occur and efficient plans to evacuate populations if those discharges cannot be contained are vital components of a comprehensive public protection program. In order for the emergency response planning element of an RMP to be effective and to permit the Department with its resources of trained personnel and emergency response equipment to act effectively in a release situation, prompt notification of the Department is necessary. The particular information required to be reported by N.J.A.C. 7:31-3.10(c)7iv is different from that required in reporting releases under other programs and is vital to the Department's ability to respond effectively to an EHS release. Although various federal and state programs, such as SARA Title III, Section 104 and N.J.A.C. 7:1E-2.1, enacted pursuant to the New Jersey Spill Act, N.J.S.A. 58:10-23.11 et seq., also require immediate notification, such reporting is made to the same Department hotline, (609) 292-7172, and duplication of effort is thus avoided. One call to the Department will satisfy all requirements. Therefore, no change has been made.

COMMENT: The frequency of Department audits for compliance with RMP's should be based on the number of releases reported and the results of previous audits.

RESPONSE: While the Department will not audit facilities, internal audits must be performed by either the registrant's staff or an independent consultant. However, the Department plans to inspect each facility annually for compliance with the requirements of the risk management program. Criteria such as the number of hazard units, frequency of releases, results of previous audits, and compliance records will be considered when determining areas of emphasis for facility inspections.

COMMENT: Referring to the proposed N.J.A.C. 7:31-3.11(b)2, in the future audits should always include Department approved consultants or Department site inspectors to ensure complete impartiality.

RESPONSE: The validity of the annual audit will be ensured by the limitation in the participation of registrant employees directly involved on a daily basis with the EHS facility, and by the requirement for the double certification of the RMP checklist. Mandated use of outside consultants would increase the cost of implementing the TCPA program and may interfere with the timely completion of the audits. Part of the Department's annual site inspection will be to determine whether audit requirements are being properly met. The Department does not believe that the benefits obtained by requiring Department approved consultants to perform the audit would justify the costs involved. Therefore, no change has been made.

COMMENT: Mandatory auditing as required by N.J.A.C. 7:31-3.11 is a new precedent and exceeds statutory intent.

RESPONSE: The requirement for auditing is based on N.J.S.A. 13:1K-21i, which clearly defines a risk management program as including internal and external audit procedures to ensure that programs are being executed as planned. N.J.A.C. 7:31-3.11(b) merely requires that the registrant prepare written requirements for auditing, and permits the registrant to establish much of its own auditing program. These requirements clearly do not exceed the authority of the Act.

COMMENT: In the proposed N.J.A.C. 7:31-3.12(a)1, delete "which demonstrates how each program element of the Risk Management Program meets the requirements of N.J.A.C. 7:31-3.4 through 3.11." The RMP checklist was designed to clearly and concisely show each element of a registrant's RMP complied with the requirements of N.J.A.C. 7:31-3. Requiring the same information is redundant and a violation of the paperwork reduction act. Items addressed in the checklist should not require detailed written reports, and items as hazards analyses, risk assessments, and emergency response plans would be available at the site for the Department's review. This approach would reduce the amount of confidential and proprietary information the Department would have to store and protect. Also, the proposed N.J.A.C. 7:31-3.12(a)2 and 3, should be deleted as an overview of these can be found in the RMP checklist, and they contain confidential and proprietary information. Finally, the initial RMP statement should focus on the present situation, and must not require a registrant to go back and produce documents retroactively.

RESPONSE: N.J.A.C. 7:31-3.12(a)1 has been amended and no longer requires an RMP description which demonstrates how each program element of the risk management program meets the requirements of N.J.A.C. 7:31-3.4 through 3.11. What is now required to be submitted is what the Department believes is only the minimum information needed to determine if a registrant has an established RMP. While the State of New Jersey does not have a paperwork reduction act and the Federal Paperwork Reduction Act, 44 USC 3501 et seq., does not apply to the states, the Department has, by this change, attempted to minimize the paperwork burden for both the regulated community and itself.

N.J.A.C. 7:31-3.12(a)2 and 3 have also been amended to require the submission of reports on only the most recent safety reviews, hazard analyses, and risk assessments, rather than all of these reports for the last two or four year periods, respectively. In addition, N.J.A.C. 7:31-3.12(a)4 and 5 have been deleted, as the Department believes that the site's emergency response plan and the catalog listing of the documents required by N.J.A.C. 7:31-3.3(c), (d) and (e) are not necessary for the initial review of the summary risk management program statement. However, the Department will review these documents if and when the RMP has been accepted for further review as reflected in the addition of these documents to the further review provisions at N.J.A.C. 7:31-2.6(e). Regarding the suggestion that items such as hazard analyses, risk assessments, and emergency response plans be available only at the site for the Department's review, the Department reserves the right to require that such items be submitted to its Trenton offices to allow for a thorough review. With reference to the confidential and proprietary nature of items such as safety reviews, hazard analyses, risk assessment and emergency response plans, it is noted that the Department has proposed adequate procedures for the safe handling of such information in its proposed Confidentiality rule, N.J.A.C. 7:31-5, which was published in the February 16, 1988 N.J. Register at 20 N.J.R. 350(a). It is anticipated that this rule will be adopted before any confidential information is required to be submitted to the Department. All comments concerning confidentiality and trade secrets will be responded to in the notice of adoption of the Confidentiality rule, N.J.A.C. 7:31-5. Finally, while the summary risk management program statement as amended now focuses on the present situation at the site by only requiring the most recent reports of safety reviews, etc., in accordance with N.J.A.C. 7:31-3.3(c), registrants are still required to maintain for Department review reports of safety reviews, hazards analyses and risk assessments performed during the previous six years. This requirement to maintain historical records will give the Department a valuable overview of the development of the registrant's existing RMP as adopted.

COMMENT: The proposed requirements of N.J.S.A. 7:31-3.13 for an annual report are too extensive. The checklist concisely and clearly defines and certifies a registrant's position versus compliance with the rules as well as the registrant's plans for corrective action. In particular safety reviews, hazard analyses and risk assessments should not be submitted. These could be reviewed at the site if essential.

RESPONSE: The purpose of the annual report is to allow the Department to review the registrant's overall status and compliance regarding its RMP and to prepare for the site inspection. The check list alone does not provide sufficient detail to determine the current status of the registrant's RMP. Therefore, the hazard analysis, safety review and risk assessment reports are also required to satisfy this purpose. Of course, these reports are only required to be submitted if they have not previously been submitted during the preceding twelve months. Again, the Department has reserved the right to require that these reports be submitted to its Trenton office, rather than be made available at the site, in order to allow for a thorough review. Therefore, no change will be made in response to this comment. However, the Department has changed the currency requirement for the risk management program checklist from 12 months to three months to more accurately reflect the conditions at the facility at the time the annual report is submitted to the Department.

SUBCHAPTER 4. WORK PLAN REQUIREMENTS

COMMENT: In the proposed N.J.A.C. 7:31-4.3(a) change the words "The EHSARA will result in" to "The EHSARA may result in". The decision to proceed with a risk management program should be made based on the results of the accident risk assessment which is consistent with the wording of the Act.

RESPONSE: The Department agrees with the thrust of the first part of the comment and has amended N.J.A.C. 7:31-4.3(a) to indicate that the EHSARA will result in a recommended risk reduction plan that will include "any" deficiencies that when corrected will result in a risk management program. It is possible that the EHSARA will result in a recommended risk reduction plan that includes no deficiencies.

With regard to the comment concerning the decision to proceed with an RMP being based on the results of the EHS accident risk assessment, the underlying purpose of the TCPA program is to ensure that registrants with at least the registration quantity of an EHS at their facilities, which do not already have risk management programs, will establish them. A registrant required to perform an EHSARA does not have a risk management program. The purpose of the extraordinarily hazardous substance risk reduction work plan, extraordinarily hazardous substance accident risk assessment, and the extraordinarily hazardous substance risk reduction plan is clearly the development of an effective RMP. Therefore, no other change will be made.

COMMENT: The proposed N.J.A.C. 7:31-4.3(b) should be changed to describe the EHS risk reduction work plan as set forth in the Act, N.J.S.A. 13:1K-24, and should address the recommended risk reduction plan and implementation schedules specifically.

RESPONSE: The intent of N.J.A.C. 7:31-4.3(b) is merely to present a generic table of contents of the three parts of the work plan: site data; scope of work and report of extraordinarily hazardous substance accident risk assessment. The detailed description of each part of the work plan is presented in N.J.A.C. 7:31-4.4, and 4.5 and 4.6, respectively. The scope of work requirement in N.J.A.C. 7:31-4.5 and the report specified in N.J.A.C. 7:31-4.6 require reporting on the subjects set forth in the Act, at N.J.S.A. 13:1K-24. The recommended risk reduction plan and an implementation schedule are provided for at N.J.A.C. 7:31-4.6(b)6, as part of the EHSARA report. The risk reduction plan which includes the listing of all deficiences, the remedial actions recommended, and the schedule for implementation cannot be addressed specifically. Flexibility must be allowed to permit a case-by-case determination as to the requirements of the risk reduction plan, as the scope of work entailed may vary widely from facility to facility. Therefore, the rule has not been changed.

COMMENT: The proposed N.J.A.C. 7:31-4.5(a)4iv and v should not arbitrarily mandate retrofit of existing facilities with existing codes and standards. For example, there are hundreds, even thousands, of buildings in the State which do not conform with the latest national Fire Protection Association (NFPA) codes, but which did conform with the codes in existence at the time they were built. N.J.A.C. 7:31-4.5(a)4iv should allow for the review to determine conformance with the most current edition of the National Electrical Code, ANSI, NFPA 70-1987 and, applicable electrical codes in existence at the time of construction or modification. Likewise, N.J.A.C. 7:31-4.5(a)4v should allow for the review to determine conformance with current design practices, and applicable codes and standards at the time of construction or modification.

RESPONSE: N.J.A.C. 7:31-4.5(a)4iv and v do not absolutely mandate retrofit of existing facilities with the latest codes and standards. Rather, what is required is a step-by-step consideration of codes and standards which may or may not result in updating or other risk reduction measures. The first step of the safety review is the preparation of a criteria for design and operation of the EHS facility from the codes and standards either in effect at the time when the facility was originally built or modified, or the codes and standards which it will meet in its current state. This will satisfy the requirements of N.J.A.C. 7:31-3.4(b) and (d). The second step of the safety review is to determine how the EHS facility differs from the latest codes and design practices in effect at the time of the EHSARA, which would include items in the National Electrical Code and fire water and sewer system design practices. The differences found would be reported as deficiences in the report of EHSARA. Such deficiencies may or may not be required to be corrected in the risk reduction plan prepared by the Department from its review of the report of EHSARA, as the Department will consider practicality and feasibility as well as the size of the potentially exposed population and the gravity of the consequences posed by the risk to be reduced. Therefore, no change has been made to the rule.

COMMENT: A new paragraph should be added to N.J.A.C. 7:31-4.5(a)4 stating, "A comparison of registrants' inspection requirements and procedures for EHS processing vessels and pipelines against, but not limited to, such state of the art, non-destructive testing procedures as radiography, ultrasonics, and acoustic emissions, etc."

RESPONSE: The expansion of N.J.A.C. 7:31-4.5(a)4 is not necessary as the intent of the suggestion is covered by the reference in N.J.A.C. 7:31-4.5(a)7 to N.J.A.C. 7:31-3.6. N.J.A.C. 7:31-3.6 has been clarified and now includes use of non-destructive testing methods and procedures as inspection techniques where applicable. Consequently, the EHSARA report may include findings on the use of these techniques at the EHS facility.

COMMENT: The proposed N.J.A.C. 7:31-4.6(b)6 requiring a risk reduction plan in the contents of the EHSARA should be deleted. The Act defines an EHSARA as a review and safety evaluation of those operations at a facility which involve the generation, storage, or handling of an extraordinarily hazardous substance. The EHSARA is a review and evaluation. The Act specifically spells out the Department's responsibility to review the EHSARA and, if appropriate, order the owner or operator to undertake a risk reduction plan. The Act does not call for either the consultants or the Department to develop a risk reduction plan.

RESPONSE: N.J.A.C. 7:31-4.6(b)6, which requires a risk reduction plan in the contents of the EHSARA report, has been retained as it

embodies a specific requirement of the Act. The Act, at N.J.S.A. 13:1K-24, requires that the performer of the EHSARA (the Department or a consultant) report any alternate processes, procedures or equipment which might reduce the risk of a release of an extraordinarily hazardous substance while yielding the same or commensurate results and the specific reasons they are not employed. The results of this report through the EHSARA are to be translated by the Department into a risk reduction plan. The Act, at N.J.S.A. 13:1K-26a, specifically requires that the Department, if appropriate, order the owner or the operator of the facility to undertake an extraordinarily hazardous substance risk reduction plan. This requirement is repeated in the rule at N.J.A.C. 7:31-2.9(k).

DEPARTMENT INITIATED CLARIFICATIONS

As the result of the Department's review of the proposed rules, the following changes were made to correct typographical errors and incorrect references, or to clarify the meaning of the rule to avoid misunderstandings.

1. In N.J.A.C. 7:31-1.5, the definition of "risk reduction plan" has been amended to specify the means by which the plan will be developed.

2. In N.J.A.C. 7:31-2.3(a), the CAS# designated for Hydrogen fluoride and Hydrofluoric acid has been corrected, and a typographical error has been corrected by replacing "Phosphorous" with "Phosphorus".

3. In N.J.A.C. 7:31-2.4(e)1ii, a reference to Section E of the registration form which was inadvertently omitted has been included for clarity.

4. A paragraph has been added at N.J.A.C. 7:31-2.4(i) to clarify that EHS's in Part II of Table I of N.J.A.C. 7:31-2.3 are not affected by the rule except for registration and fee requirements until June 30, 1989.

5. In N.J.A.C. 7:31-2.5(a), the date by which owners or operators of EHS facilities which have EHS's listed in Part II of Table I in N.J.A.C. 7:31-2.3 must register has been included to clarify the deadline for submission of registration forms to the Department.

6. In N.J.A.C. 7:31-2.5(g)5 a typographical error has been corrected by moving a comma to the end of the phrase.

7. In N.J.A.C. 7:31-2.16 the time frame for submittal of fees has been changed from a fiscal year basis to a calendar year basis and each reference to "fiscal" has been changed to "calendar" accordingly. The basis for this change is the fact that the rule was not adopted at the beginning of the calendar year as originally planned, and the collection of annual fees on a calendar year basis will simplify the administration of fees.

8. In N.J.A.C. 7:31-3.5(a)15 the reference to "facility" has been amended to "site" to clarify the Department's intent that an EHS operator be in attendance at the EHS site; and the exceptions to the staffing requirement have been amended to clarify those situations which the Department deems appropriate for treatment as exceptions to the requirement that an EHS operator be in attendance at all specified times.

9. In N.J.A.C. 7:31-3.8(b)6 the reference to "it" has been clarified by replacing it with "EHS accident".

10. N.J.A.C. 7:31-3.9(c)2i has been clarified by deleting the term "possible" and inserting the phrase "all EHS requirements, potential" to better describe what the hazard analysis term shall identify.

11. N.J.A.C. 7:31-3.9(c)2iii has been clarified by deleting the term "possible" and inserting the term "potential".

12. For organizational and clarity purposes in N.J.A.C. 7:31-3.9(c)2, the phrase "from which it will recommend risk reduction measure" has been removed from subparagraph (c)2iv and been replaced by the phrase "develop a risk reduction plan" which has been added to subparagraph (c)2v.

13. N.J.A.C. 7:31-3.9(c)2v has been amended to clarify that as a result of a hazard analysis, a risk reduction plan that incorporates state of the art risk reduction measures must be developed to reduce the risks identified at the site. The requirement that a registrant develop a risk reduction plan using state of the art risk reduction measures is essentially the same requirement which was deleted by the amendment to the definition of "material deficiency".

14. N.J.A.C. 7:31-3.9(c)4i has been clarified by adding the phrase "and all EHS equipment" to require specifics as to what has been subjected to a hazard analysis.

15. N.J.A.C. 7:31-3.9(f)6 has been deleted and N.J.A.C. 7:31-3.9(g) has been amended to clarify that as a result of the risk assessment, a risk reduction plan that incorporates state of the art risk reduction measures must be developed to reduce the risks identified at the site. The requirement that a registrant develop a risk reduction plan using state of the art risk reduction measures is essentially the same requirement which was deleted by the amendment to the definition of "material deficiency". The requirement to include the recommendations for remedial actions and a schedule for their implementation which was deleted from N.J.A.C. 7:31-3.9(f)6 has been included in N.J.A.C. 7:31-3.9(g) for organizational and clarity purposes.

16. The Risk Management Program Checklist, Appendix I, has been amended to correspond to the changes made in Subchapter 3. On page 1 of the Risk Management Program Checklist the Department has clarified the requirement to provide the facility I.D. number, by deleting the Plant I.D. No. entry and replacing it with entries for the N.J. Employer ID #, Air Pollution Emission Data System (APEDS) #, New Jersey Pollutant Discharge Elimination System (NJPDES) #, and Potable Water System (PWS) #.

17. In reconstituting the hearing and penalty provisions of proposed N.J.A.C. 7:31-2.19 and 2.20 as N.J.A.C. 7:31-6, the Department has not retained the provisions of proposed N.J.A.C. 7:31-2.20(m), as these are already set forth in the Act at N.J.S.A. 13:1K-30c, but has added for clarity purposes the provisions of N.J.A.C. 7:31-6.4(b), taken from the Act at N.J.S.A. 13:1K-30b.

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 31
TOXIC CATASTROPHE PREVENTION ACT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:31-1.1 Scope and applicability

(a) This chapter shall constitute the rules for the Department's Toxic Catastrophe Prevention Act Program.

(b) All owners or operators of facilities required to register with the Department because they handle, use, manufacture, store or have the capability to generate an extraordinarily hazardous substance in at least the *[reportable]* ***registration*** quantity established for such substance or chemical compound on the Extraordinarily Hazardous Substance List set forth in Table I of N.J.A.C. 7:31-2.3, are subject to, and shall comply with, the provisions of this chapter and the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

7:31-1.2 Construction

(a) These rules shall be liberally construed to permit the Department to discharge its statutory functions.

(b) The Commissioner may amend or repeal this chapter in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30-1 et seq.

7:31-1.3 Purpose

(a) The general purpose of this chapter is to protect the public from catastrophic accidents from chemical releases of extraordinarily hazardous substances to the environment by anticipating the circumstances that could result in such releases and requiring precautionary and preemptive actions to prevent such releases.

(b) In order to achieve this general purpose, this chapter establishes:

1. The extraordinarily hazardous substance list which, among other things, is used to determine the facilities subject to the Toxic Catastrophe Prevention Act program;

2. The procedures to be followed by owners or operators subject to the program;

3. The minimum requirements for an acceptable risk management program;

4. The requirements for an extraordinarily hazardous substance risk reduction work plan and accident risk assessment;

5. The criteria for selecting an independent consultant to perform an extraordinarily hazardous substance accident risk assessment;

6. Fees for the administration of the TCPA Program;

7. The requirements for emergency response plans;

8. The reporting requirements for owners and operators subject to the Toxic Catastrophe Prevention Act Program; and

9. Administrative penalties for those facilities which violate the Act, this chapter or any order or consent agreement issued pursuant thereto.

7:31-1.4 Program information

Unless otherwise specified, any questions concerning the TCPA Program should be directed to:

Assistant Director
Release Prevention and Emergency Response Element
Division of Environmental Quality
New Jersey Department of Environmental Protection
CN 027
Trenton, New Jersey 08625

7:31-1.5 Definitions

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

"Abnormal condition" means any deviation in the operation of an EHS facility from that prescribed in the standard operating procedure for normal *[operation]* ***operating ranges***, which, if not corrected, could result in an EHS accident.

"Act" means the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

"Acute toxicity concentration" or "ATC" means a minimum lethal concentration which is greater than the Threshold Limit Value (TLV) or the Short Term Exposure Limit (STEL), as defined by the American Conference of Governmental Industrial Hygienist, and equivalent to the lowest of the following three categories: one-tenth of the median lethal concentration (LC_{50}); or one times the lowest lethal concentration (LC_{L0} of test data for any mammalian species in test periods up to eight hours; or the Immediately Dangerous to Life and Health (IDLH) concentration. LC_{50}, LC_{L0}, IDLH, TLV, and STEL have been defined by the U.S. Department of Health and Human Services in the "Registry of Toxic Effects of Chemical Substance" (RTECS) and the National Institute of Occupational Safety and Health (NIOSH) "Pocket Guide to Chemical Hazards".

"ANSI" means the American National Standards Institute.

"Audit" means an annual review of the registrant's risk management program conducted by an audit team to assess the overall implementation and effectiveness of the risk management program to insure that all risk management program elements are in place, up-to-date, and being executed as planned.

"Audit team" means those persons who perform the audits of the registrant's risk management program.

"CAS #" means a number assigned by the Chemical Abstracts Service Division of the American Chemical Society to identify a specific compound.

"Commissioner" means the Commissioner of the Department of Environmental Protection or the person delegated to act on his behalf.

"Consensus standard" means a standard adopted by national organizations which publish standard engineering practices developed by a process including peer review and public comment which results in a standard which reflects agreement among participants with diverse interests and expertise.

"Consequence analysis" means the determination of the potential consequence of an EHS release on the surrounding population by comparison of the concentration of extraordinarily hazardous substances, determined by dispersion analysis, to a toxicological base criteria.

"Criteria for design and operation" means any code, consensus or governmentally mandated standard applicable to the particular EHS facility's design and operation. It also includes documented guidelines, practices or procedures adopted by the registrant when codes and standards are nonexistent or need supplementation. These guidelines, practices or procedures shall be based on sound engineering practices supported by documentation demonstrating their successful application to the particular EHS service.

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

"Dispersion analysis" means the calculation, by means of a model acceptable to the Department, of the ambient concentrations of an EHS after its release, taking into account the physical and chemical states and properties of the EHS***, the release scenario*** and the geographical, topographical, geological and meteorological characteristics of the environment, which will influence the migration, movement, dispersion, or degradation of the EHS in the environment.

"EHS accident" means an unplanned, unforeseen or unintended incident, situation, condition, or set of circumstances which ***directly or indirectly*** results in *[a direct or indirect]* ***an*** EHS release.

"EHS equipment" means that equipment systematically integrated within an EHS facility whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment.

"EHS facility" means a facility which handles, uses, manufactures or stores an EHS, or has the capacity to generate an EHS within one hour, in a quantity equal to or greater than the *[minimum reportable]* ***registration*** quantity for that EHS in Table I of N.J.A.C. 7:31-2.3.

"EHS operator" means an employee or employees at an EHS facility who is directly involved with an EHS and qualified and trained in, or being trained in, the operations of an EHS facility.

"EHS release" means a discharge or emission of an EHS into the environment, excluding discharges or emissions occurring pursuant to and in compliance with the conditions of any State permit or a regulation promulgated pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.

"EHS service" means the handling, use, manufacture, storage or generation of a specific EHS.

"Electrical one-line diagram" means a diagram including legend of the electrical power distribution system that could contribute to an EHS release showing such items as power consumers, the chain of supply back through starters, distribution centers, substations to the main feeder, emergency power supply, and connections to various components. For complex systems, the one-line diagram may be a group of drawings.

"Emergency condition" means any situation at a facility during which an EHS release is in progress or will occur because no preventive measures would be effective.

"Emergency response team" means those employees at the site appointed by the *[emergency response program committee]* ***registrant*** who are responsible for implementing the site's emergency response plan in the event of an EHS accident.

"Equipment failure" means any event associated with EHS equipment which results in an EHS accident even though the equipment is being maintained and operated in accordance with the approved risk management program.

"***Existing*** EHS equipment" means ***all EHS equipment that is not new EHS equipment.*** *[that equipment systematically integrated within an EHS facility whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment.]*

"External forces and events" means forces of nature or sabotage or such events as neighboring fires or explosions, neighboring EHS releases, electric power failures, and intrusions of external transportation vehicles such as aircraft, ships, trucks or automobiles.

"Extraordinarily hazardous accident risk" means a potential for an EHS release which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability.

"Extraordinarily hazardous substance accident risk assessment" or "EHSARA" means a review and safety evaluation of those operations at a facility which involve the generation, storage, or handling of an extraordinarily hazardous substance.

"Extraordinarily hazardous substance" or "EHS" means any substance or chemical compound used, manufactured, stored, or capable of being produced from onsite components in this State in sufficient quantities at a single site, such that its release into the environment would produce a significant likelihood that persons exposed will suffer acute health effects resulting in death or permanent disability. Any substance or chemical on the extraordinarily hazardous substance list in Table I in N.J.A.C. 7:31-2.3 is an extraordinarily hazardous substance.

"Extraordinarily Hazardous Substance List" means the list of substances and chemical compounds set forth in Table I of N.J.A.C. 7:31-2.3.

"Extraordinarily Hazardous Substance Risk Reduction Work Plan" or "work plan" means the document developed by the Department for each facility at which is generated, stored, or handled an extraordinarily hazardous substance, setting forth the scope and detail of the EHSARA to which the facility will be submitted.

"Facility" means a building, equipment, and contiguous area. Facility shall not include a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person.

"Fact sheet" means a document which describes, at a minimum, the chemical and physical properties and the physical and health hazards of a substance, prepared by the New Jersey Department of Health pursuant to N.J.S.A. 34:5A-1 et seq.

"Failure mode and effects analysis" or "FMEA" means a specifically designed method to identify the conceivable ways that EHS equipment or its components can fail and the effect of the failure on the system with respect to an EHS release. The failure and effects are determined *[by]* ***in*** a study of updated ***piping and instrument diagrams that describe the EHS facility taking into consideration*** process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, *[piping and instrument]* ***electrical one-line*** diagrams and other *[design]* documents *[that describe the EHS facility]*. The resulting qualitative analysis is translated into a quantitative FMEA when probabilities of the failure of components are assigned from which the probability of an EHS release would be estimated. The results of the FMEA are reported for a unit or system of an EHS facility on an FMEA table. The results entered on a FMEA table for each equipment item or component studied are as follows: the identification number of the item, the name of the item, entries of failure modes of the item and for each entry of failure mode, the other equipment potentially affected with the equipment identification number and the effect of the failure on that equipment, a classification of the criticality ranking of the failure based on quantity or rate of the potential EHS release, the probability of the failure and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure.

"Fault tree analysis" or "FTA" means the ***analysis of the*** logic diagram constructed from a study of the updated ***piping and instrument diagrams that describe the EHS facility taking into consideration*** process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, *[piping and instrument]* ***electrical one-line*** diagrams and other *[design]* documents *[that describe the EHS facility]*. The logic diagram will contain the conceivable human or mechanical event sequences that could result in an EHS accident. The logic diagram is called a fault tree and represents a qualitative analysis of the hazards. Results of the FTA are reported for a unit or system on a table. Entered on the table are the descriptions of the various combinations of equipment or procedural failures that can lead to an EHS release *[and]** **The combinations are determined by solving the fault tree logic diagram for the fault tree logic diagram for the minimal cut sets, that is, the smallest combination of equipment or procedural failures, which if all occur, will result in the "top event", that is the EHS release. The table is also entered with*** a criticality ranking based on the quantity or rate of the potential EHS release, a probability for the respective failures and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure. ***The analysis of the logic diagram includes the identification of "minimal cut sets".*** When probabilities are assigned to each element of the event sequence, a quantitative fault tree is obtained which gives the probability ***or frequency of occurrence*** of the EHS release.

"Hazard analysis" means a systematic identification of the potential conditions that may result in an EHS accident using singly or in combination a Hazard and Operability Study, Failure Mode and Effect Analysis, qualitative Fault Tree Analysis or What If Check List.

"Hazard and operability study" or "HAZOP" means a systematic study of updated ***piping and instrument diagrams that describe the EHS facility taking into consideration*** process chemistry, standard operating procedures, maintenance procedures, EHS operator job descriptions, process flow diagrams, EHS inventory tabulations, *[piping and instrument]* ***electrical one-line*** diagrams and other *[design]* documents *[that describe the facility]*. The study is performed by a multidisciplinary team to identify hazard or operability problems that would result in an EHS accident. Deviations from the design value of key parameters (flow, temperature, composition, time, quantity, etc.) of each segment of the EHS facility and its procedures are studied using guide words (such as, more of, less of, none of, part of, more than and other) to control the examination and evaluation. The study team shall consist of trained personnel knowledgeable in the technology and operations, such as the process chemistry, the design of the system, the procedures of its operation and maintenance, and the related codes, standards and practices. In addition, the study team shall have technical expertise to answer most questions of the review without resorting to further expertise. The study team shall include a study leader specifically qualified for his ***or her*** leadership role by training or previous experience in HAZOP studies and a team secretary who shall record the results of the study. Persons who occupy these study team positions shall be technically trained and be available for the duration of the study. Results of the HAZOP study shall be reported by tabulation for a unit by key equipment, such as vessels or pipelines, and process parameter. The results are entered on the table as follows: guide word, causes of the deviation, consequences of the deviation in terms of a potential EHS release, the criticality based on the quantity or rate of potential release and the suggested action in terms of equipment or procedure to mitigate the deviation.

["Hazard unit" means a quantity of EHS held in inventory at a site or a quantity of EHS capable of being generated in one hour equal to the minimum reportable quantity of an EHS as listed in Table I of N.J.A.C. 7:31-2.3.]

"Human error" means human action or omission deviating from any established procedures of the registrant which results or could result in an EHS accident.

"Material safety data sheet" or "MSDS" means a document which describes, at a minimum, the chemical and physical properties and the physical and health hazards of a substance, prepared pursuant to 29 CFR 1910.1200(g).

"Modification" means any change in existing EHS equipment or procedures which are directly involved with an EHS, including additions or deletions. Modification does not include routine maintenance or replacement in kind.

"Material deficiency" means the failure of a registrant's risk management program to meet each of the requirements of N.J.A.C. 7:31-3, or the failure of a registrant to use a state of the art risk reduction measure commensurate with the site's environment.

"NFPA" means National Fire Protection Association.

"New EHS equipment" means any equipment to be placed into EHS service or any EHS equipment to be placed into new EHS service after the operative date of this chapter. New EHS equipment remains new EHS equipment until all reviews and approvals required by this chapter for the particular piece of new EHS equipment have been completed and the equipment has been placed into EHS service.

"Operating alternative" means an alternative procedure, schedule or process chemistry or a combination thereof.

"Piping and instrument diagram" or "P&ID" means ***one or more*** detailed *[documents]* ***diagrams*** *[properly cross-referenced]* including legends ***and citations of referenced documents,*** showing: every item of EHS equipment and its identification number (including installed spare equipment); every pipe including size, flow direction, identification number and indication of ***ANSI*** piping specification ***and break between piping specifications*** *[change]*; ***symbols and identification of*** every instrument including instrument function to show trips and interlocks represented in accordance with Instrument Society of America standards ***or a standard adequate for the conduct of a safety review or hazard analysis with an appropriate symbol legend shown***; every valve; the failsafe position of control valves or non-hand operated valves in the case of instrument air or

power failure; steam traps; representation of insulation or heat tracing of piping, EHS equipment and instruments; sizes of all important equipment nozzles with location shown schematically to reflect function and elevation, such as, drains, vents, flushing connections and steam connections; references to inter-facing with other diagrams describing process, service, treatment, disposal, or utility systems; *[data on materials of construction and pressure rating per ANSI code for every pipe (such as, pipe line list);]* data on type, size, and set pressures of every relief valve and relieving device; instruments to monitor early detection of abnormal conditions or an EHS release; ***where*** critical***, the*** relative elevations between equipment and of key piping; notes or symbols on such items as slope of ***critical*** piping to avoid pockets, or***, where critical,*** symmetrical piping; notes on each item of EHS equipment, such as, material of construction, design temperature, design pressure, design thermal duty of heat exchangers, design capacity and dynamic head of rotating equipment, etc.*[; data on insulation and steam tracing of piping, equipment and instruments.]*

"Process chemistry" means the chemical reactions *[involving EHSs that occur or could occur at the site under normal, abnormal, and emergency conditions,]* ***which are relevant to possible scenarios of EHS release,*** including information on raw materials, intermediates, products, and waste products.

"Process flow diagram" means a diagram including a legend of any EHS facility which depicts the use, generation, storage or handling of an EHS showing items of equipment (groups of duplicate equipment may be represented by one symbol, if desired)*,* *[showing]* flow of material from item to item *[and including details of operating conditions, material balance, flows, temperatures and pressures, raw materials, products]*, ***simplified,*** basic control loops or major control schemes, points of discharge to the environment, and *[operating cycles and batch sizes where applicable.]* ***showing, or cross-referencing documents which give details of material balance, flows, raw materials, products, intermediates, treatment chemicals, operating conditions of temperature, pressure, and stream characteristics, operating cycles and batch sizes where applicable.***

"Registrant" means an owner or operator of a site who has registered one or more EHS facilities at that site with the Department pursuant to the Act or this chapter.

"Registration quantity" means the minimum quantity of an EHS handled, used, manufactured, stored, or capable of being produced in one hour at a single site that determines whether or not a facility must register under the program.

"Reliability study" means the determination of the probability of a piece of EHS equipment performing its required function in the desired manner under all relevant conditions and on the occasion or during the time intervals when it is required to so perform. It includes the analysis of the failure of EHS equipment to perform its normal required function.

"Responsible manager" means the member of the registrant's management who is responsible for the management of the registrant's risk management program at the site and who shall possess sufficient corporate authority and technical background to adjudicate issues relating to the execution of the risk management program based on information provided by manufacturing, engineering, maintenance, safety and environmental representatives.

"Risk assessment" means the evaluation of the results of quantitative analyses to facilitate development of an effective risk reduction plan. The quantitative analyses shall consist of an estimate of the quantity of EHS released, a dispersion analysis, a consequence analysis, and an estimate of the probability or frequency of the undesired event.

"Risk management program" or "RMP" means the sum total of programs for the purpose of minimizing extraordinarily hazardous accident risks, including, but not limited to, requirements for safety review of design for new and existing equipment, requirements for standard operating procedures, requirements for preventive maintenance programs, requirements for operator training and accident investigation procedures, requirements for risk assessment for specific pieces of equipment or operating alternatives, requirements for emergency response planning, and internal or external audit procedures to ensure programs are being executed as planned.

"Risk reduction plan" means the plan developed as a result of *[the EHSARA based on review of process chemistry, safety and hazard analyses, maintenance, operator training, accident investigation, emergency response, and audit procedures,]* ***a hazard analysis, risk assessment or EHSRA*** which identifies the deficiencies *[in the program,]* ***or risk reduction measures,*** recommends corrective actions, and provides for scheduling and implementation of remedial actions.

"Safety procedures" means the rules of conduct to safeguard personnel at a site from injury or ill effect on health.

"Site" means the entire plot of contiguous land upon which the registrant operates or locates one or more facilities.

"Site plan" means a diagram of the site showing exact locations to scale of all units or areas, warehouses, buildings, roads, access ways, walkways, parking areas, fences, gates and property lines plus the EHS facility and area handling an EHS.

"Standard operating procedures" or "SOP" means the document setting forth the operating procedures covering all details of operation involving an EHS that are currently in effect at the facility.

"State of the art" means up-to-date technology reflected in equipment or procedures that, when applied at a registrant's EHS facility, will result in a significant reduction of risk. The technology *[may]* ***represents an advancement in reproduction of risk and shall*** have been demonstrated at a similar referenced facility to be reliable in commercial operation or in a pilot operation on a scale large enough to be translated into commercial operation. The technology *[may]* ***shall*** be in the public domain or otherwise available at reasonable cost ***commensurate with the reduction of risk achieved***.

"Wastewater treatment system" means any structure or structures by means of which domestic, or combined domestic and industrial liquid wastes or sewage are subjected to any process in order to remove or so alter constituents as to render the wastes less offensive or dangerous to public health, safety, welfare, comfort, property or environment of the State or any inhabitants of the State before discharge of the resulting effluent either directly or indirectly into any waters of the State. Such term includes: any collection, treatment, storage and discharge facilities under control of the operator of such system and used primarily in connection with such system.

"Water treatment system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system.

"What If Checklist" means a method of hazard analysis based on a systematic study of updated ***piping and instrument diagrams that describe the EHS facility taking into consideration*** process chemistry, standard operating procedures, maintenance procedures, EHS operator job descriptions, process flow diagrams, EHS inventory tabulations, *[piping and instrument]* ***electrical one-line*** diagrams and other *[design]* documents *[that describe the EHS facility]*. The study is performed by a multidisciplinary team to identify hazards or operability problems that could result in an EHS accident. The study is composed of a comprehensive list of questions prepared in advance from study of the documents by team members either in conference or independently usually corresponding to their individual background. The study team shall consist of trained personnel knowledgeable in the technology and operations, such as the process chemistry, the design of the equipment, the procedures of operation and maintenance and the related criteria for design and operation. In addition, they shall have technical expertise to answer most of the questions of the review without recourse to further expertise. The team shall include a person assigned to lead the study and a person to record the results who are technically trained and will be available for the duration of the study. Results of the study shall be reported for a unit on a table. The results are entered on the table as follows: the "what if" question and its corresponding consequence/hazard, the criticality based on the quantity or rate of the potential release and the recommended action in terms of equipment or procedure to mitigate the consequence/hazard.

7:31-1.6 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby and shall remain in full force and effect.

SUBCHAPTER 2. GENERAL REQUIREMENTS, PROHIBITIONS AND PROCEDURES

7:31-2.1 Scope and applicability

(a) This subchapter establishes programatic requirements, prohibitions and procedures applicable to all facilities subject to the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

(b) This subchapter is applicable to all owners or operators of facilities required by the Act or this chapter to register with the Department because they handle, use, manufacture, store or have the capability to generate one or more of the substances or chemical compounds listed in N.J.A.C. 7:31-2.3.

7:31-2.2 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To establish an extraordinarily hazardous substance list;
2. To establish the procedures and time schedules each owner or operator, or registrant shall follow to comply with the Act and this chapter;
3. To establish the fee schedule;
4. To establish the penalty schedule;
5. To establish the standard for initial evaluation of risk management programs by the Department;
6. To establish the procedures and standards for reviewing proposed new EHS facilities and modifications to existing EHS facilities;
7. To establish the requirements for the registrant's annual report to the Department; and
8. To establish the criteria for selecting an independent consultant to perform an extraordinarily hazardous substance accident risk assessment.

7:31-2.3 Extraordinarily hazardous substance list

(a) The substances and chemical compounds listed in Table I below shall constitute the Department's extraordinarily hazardous substance list:

TABLE I

Name of Extraordinarily Hazardous Substance	CAS #	*[Minimum Reportable]* ***Registration*** Quantity in Pounds
PART I		
Hydrogen chloride (HCl)	7647-01-0	2,000
Hydrochloric acid 36 percent by weight or more HCl	7647-01-0	5,600
Allyl chloride	107-05-1	2,000
Hydrogen cyanide	74-90-8	500
Hydrogen fluoride (HF)	7664-*[84-1]***39-3***	500
Hydrofluoric acid 70 percent by weight or more HF	7664-*[84-1]***39-3***	700
Chlorine	7782-50-5	500
Phosphorus trichloride	7719-12-2	500
Hydrogen sulfide	7783-06-4	500
Phosgene	75-44-5	100
Bromine	7726-95-6	100
Methyl isocyanate	624-83-9	100
Toluene-2, 4-diisocyanate	584-84-9	100
PART II		
Acetaldehyde	75-07-0	4,900
Acrolein	107-02-8	200
Acrylonitrile	107-13-1	2,300
Allylamine	107-11-9	1,200
Ammonia (NH_3)	7664-41-7	5,200
Ammonium hydroxide 28 percent by weight or more NH_3	1336-21-6	19,000
Arsine	7784-42-1	60
bis (Chloromethyl) ether	542-88-1	80
Boron tribromide	10294-33-4	10,000
Boron trichloride	10294-34-5	1,700
Boron trifluoride	7637-07-2	200
Bromine chloride	13863-41-7	800
Bromine pentafluoride	7789-30-2	1,300
Carbon monoxide (CO) 10 percent by volume or more CO	630-08*[0]*-0	12,000
Carbonyl fluoride	353-50-4	1,700
Chlorine dioxide	10049-04-4	500
Chlorine pentafluoride	13637-63-3	500
Chlorine trifluoride	7790-91-2	600
Chloromethyl methyl ether	107-30-2	300
Chloropicrin	76-06-2	900
Chloroprene	126-99-8	12,000
Crotonaldehyde	123-73-9	450
Cyanogen	460-19-5	1,300
Cyanogen chloride	506-77-4	200
Diazomethane	334-88-3	300
Diborane	19287-45-7	60
Dichloroacetylene	7572-29-4	125
Dichlorosilane	4109-96-0	2,000
Diethylamine	109-89-7	9,600
Dimethylamine	124-40-3	6,600
1,1-Dimethylhydrazine	57-14-7	800
Epoxypropane	75-56-9	7,700
Ethylamine	75-04-7	7,500
Ethylene oxide	75-21-8	2,700
Ethylenimine	151-56-4	800
Ethyl mercaptan	75-08-1	13,000
Fluorine	7782-41-4	450
Formaldehyde (gas)	50-00-0	175
Furan	110-00-9	200
Hexafluoroacetone	684-16-2	3,300
Hydrogen bromide (HBr)	10035-10-6	2,900
Hydrobromic acid 62 percent by weight or more HBr	10035-10-6	4,800
Hydrogen selenide	7783-07-5	125
Isopropylamine	75-31-0	3,300
Ketene	463-51-4	50
Methacrylaldehyde	78-85-3	1,300
Methyl acrylonitrile	126-98-7	175
Methylamine	74-89-5	2,300
Methyl bromide	74-83-9	1,800
Methyl chloride	74-87-3	12,000
Methyl chloroformate	75-22-1	350
Methyl dichlorosilane	75-54-7	27,000
Methyl fluoroacetate	453-18-9	90
Methyl fluorosulfate	421-20-5	50
Methylhydrazine	60-34-4	125
Methyl iodide	74-88-4	2,900
Methyl mercaptan	74-93-1	2,400
Methyl vinyl ketone	78-94-4	10
Nickel carbonyl	13463-39-3	125
Nitric acid (HNO_3) 94.5 percent by weight or more HNO_3	7697-37-2	450
Nitrogen Oxides Nitrogen dioxide (NO_2) 10 percent by volume or more as NO_2	10102-44-0	200 as NO_2
Nitric oxide 10 percent by volume or more as NO_2	10102-43-9	200 as NO_2
Nitrogen tetroxide 10 percent by volume or more as NO_2	10544-72-6	200 as NO_2
Nitrogen trioxide 10 percent by volume or more as NO_2	10544-73-7	200 as NO_2
Nitrogen trifluoride	7783-54-2	10,000
Oleum 65 percent by weight or more free sulfur trioxide (SO_3)	8014-95-7	800

Osmium tetroxide	20816-12-0	4,500
Oxygen difluoride	7783-41-7	10
Ozone	10028-15-6	15
Pentaborane	19624-22-7	15
Perchloromethyl mercaptan	594-42-3	125
Perchloryl fluoride	7616-94-6	2,900
Phosphine	7803-51-2	30
Phosphorus trifluoride	7783-55-3	34,000
Phosphoryl chloride	10025-87-3	800
Propylamine	107-10-8	11,000
Selenium hexafluoride	7783-79-1	700
Stibine	7803-52-3	250
Sulfur dioxide (SO_2)		
10 percent by volume or more SO_2	7446-09-5	4,600
Sulfur monochloride	10025-67-9	2,800
Sulfur pentafluoride	5714-22-7	175
Sulfur tetrafluoride	7783-60-0	150
Sulfur trioxide	7446-11-9	500
Sulfuryl fluoride	2699-79-8	22,000
Tellurium hexafluoride	7783-80-4	175
Tetrafluorohydrazine	10086-47-2	3,800
Tetramethyl lead	75-74-1	800
Tetranitromethane	509-14-8	900
Thionyl chloride	7719-09-7	250
Titanium tetrachloride	7550-45-0	600
Trichlorosilane	10025-78-2	2,700
Trifluorochloroethylene	79-38-9	7,300
Trimethoxysilane	2487-90-3	1,100
Trimethylamine	75-50-3	11,000
Trimethylchlorosilane	75-77-4	1,400
Vinyl trichlorosilane	75-94-5	7,700

7:31-2.4 Prohibitions

(a) No owner or operator of a facility shall handle, use, manufacture or store *[a substance or chemical compound in amounts greater than or equal to the reportable quantity]* or have the capability to generate, within one hour, at least the *[reportable]* ***registration*** quantity or greater of an EHS listed in Part I of Table I in N.J.A.C. 7:31-2.3 unless registered pursuant to the Act with the Department.

(b) No owner or operator of a facility shall handle, use, manufacture or store *[a substance or chemical compound in amounts greater than or equal to the reportable quantity]* or have the capability to generate*[,]* within one hour, at least the *[reportable]* ***registration*** quantity of an EHS listed in Part II of Table I in N.J.A.C. 7:31-2.3, unless registered pursuant to this chapter with the Department *[within 90 days after the operative date of this subchapter]* ***by October 19, 1988*** or within 90 days after an EHS has been added to Table I of N.J.A.C. 7:31-2.3.

(c) No owner or operator shall construct a new EHS facility unless the owner or operator has:

1. Registered with the Department pursuant to N.J.A.C. 7:31-2.5;

2. Complied with the requirements of N.J.A.C. 7:31-2.10; and

3. Received written Departmental approval to construct the new EHS facility.

(d) No registrant of a new EHS facility shall begin operating that facility until the Department and the registrant have executed an administrative consent agreement containing an approved risk management program.

(e) No registrant with an approved risk management program shall operate a new EHS facility or utilize an existing facility for a new EHS service:

1. Before submitting to the Department:

i. An amendment to the RMP description prepared in accordance with N.J.A.C. 7:31-3.12;

ii. An update of Section D ***and E*** of the registrant's registration form;

iii. The documentation required by N.J.A.C. 7:31-2.10(b); and

iv. The fee required by N.J.A.C. 7:31-2.16(e).

2. Before receiving written Departmental approval to operate the EHS facility.

(f) No registrant with an approved site risk management program shall implement a modification to an existing EHS facility at its site without completing the requirements of its ***established*** risk management program ***as determined by the Department or its approved EHSARA workplan*** and performing a safety review and a hazard analysis in accordance with N.J.A.C. 7:31-3.4 and 3.9.

(g) No registrant shall handle, use, manufacture, generate or store an EHS, except in a manner which complies with the Act and this chapter.

(h) No registrant with an approved risk management program shall handle, use, manufacture, store or generate an EHS except in a manner which complies with the approved risk management program.

(i) Subsections (c), (d), (e), and (f) above will not apply to EHS's listed on Part II of Table I of N.J.A.C. 7:31-2.3 until June 30, 1989.

7:31-2.5 Registration

(a) Each owner or operator of a site handling, using, manufacturing or storing at least the *[reportable]* ***registration*** quantity of an EHS, or who has the capability to generate, within one hour, at least the *[reportable]* ***registration*** quantity of an EHS on the EHS list in Part II of Table I in N.J.A.C. 7:31-2.3, shall register with the Department on forms provided by the Department *[within 90 days after the substance or chemical compound has been added to the EHS list]* ***by no later than October 19, 1988***.

(b) Each owner or operator of a site which has handled, used, manufactured, stored or generated at least the *[reportable]* ***registration*** quantity of one or more of the EHSs included in Table I of N.J.A.C. 7:31-2.3 at the same site and plans to handle, use, manufacture, store or generate such substances in the future, may register all the substances with the Department on the forms provided by the Department *[within 90 days after the substances are added to Table I of N.J.A.C. 7:31-2.3]*.

(c) Each owner or operator of a site planning to construct a new EHS facility which will handle, use, manufacture or store an EHS in at least the *[reportable]* ***registration*** quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3, or which will have the capability of generating an EHS within one hour in at least the *[reportable]* ***registration*** quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3 shall register with the Department at least 90 days prior to construction and comply with the requirements of N.J.A.C. 7:31-2.10(a).

(d) Each registrant with an RMP previously approved by the Department planning to construct a new EHS facility at its site, or to utilize an existing EHS facility for a new EHS service, shall submit an updated registration form at least 90 days prior to the scheduled placing of the equipment into EHS service and comply with the requirements of N.J.A.C. 7:31-2.10(b).

(e) Each registrant shall submit an updated registration form ***exclusive of items 1, 2 and 3 of section F,*** to the Department within 30 days after a change occurs which makes *[the EHS facility's]* ***a section of the*** registration form incorrect or incomplete.

(f) Each registrant shall indicate on its registration form whether or not it has a risk management program.

1. A registrant which indicates that it has an RMP shall submit the RMP to the Department for review in accordance with N.J.A.C. 7:31-2.6.

2. A registrant which indicates that it does not have an RMP shall assist the Department in the preparation of the required work plan in accordance with N.J.A.C. 7:31-2.9.

(g) Each registrant shall provide the following information in the appropriate section of the registration form:

1. Section A of the registration form shall contain:

i. Legal name of owner or operator of the EHS site;

ii. The nature of the registrant's business;

iii. The identification number assigned by the Department's Air Pollution Enforcement Data System (APEDS) for the facility or the Employer Identification Number issued by the New Jersey Department of Labor if APEDS is not available;

iv. The site's geographic address;

v. The site's mailing address; and

vi. The name, title and telephone number of the responsible manager.

2. Section B of the registration form shall contain responses to the following questions:

i. Does the site handle, use, manufacture, store or generate at any time any of the EHSs listed in Table I of N.J.A.C. 7:31-2.3; and

ii. For those sites with an EHS, does the site handle, use, manufacture, or store at least the *[minimum reportable]* ***registration*** quantity established for that EHS, or does it generate within one hour at least the *[minimum reportable]* ***registration*** quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3.

3. Section C of the registration form shall contain the names, titles, certifications and signatures of the signatories as required by N.J.A.C. 7:31-2.17.

4. Section D of the registration form shall contain the inventory of EHSs or the quantity of EHS capable of being generated in one hour for each facility on the site.

5. Section E of the registration form shall contain the process description of*[,]* and principal equipment used with*[,]* each EHS at the site*,* by facility, and the Standard Industrial Classification Code for that type facility published by the United States Department of Commerce.

6. Section F of the registration form shall contain:

i. Answers to the questions regarding the registrant's risk management program, safety reviews and hazard analyses;

ii. An identification of the major elements included in the registrant's RMP;

iii. An identification of any risk reduction efforts and safety measures undertaken by the registrant to minimize the risks of an accidental release at the site;

iv. An identification of the position titles, expertise and affiliation of the persons involved with the development of the risk management program; and

v. A description and profile of the area surrounding the site, including the population and proximity to water supplies.

7. Section G of the registration form shall identify the insurance carriers underwriting the site's environmental liability and workers compensation insurance policies including the address of the carrier, the type of policy, the amount of insurance and limitations or exclusions to the policy.

7:31-2.6 Risk management program procedures

(a) No risk management program of a registrant shall be approved by the Department until it meets*[, to the satisfaction of the Department,]* all the requirements of N.J.A.C. 7:31-3. ***Approval of a RMP shall be made by the signing of a consent agreement as described in (h) below or by the registrant's implementation of requirements of an administrative order issued pursuant to either (i) below or N.J.A.C. 7:31-2.9(k).****

(b) Each registrant with an EHS listed in Part I of Table I in N.J.A.C. 7:31-2.3, who has indicated on its registration form that it has a risk management program, shall submit a summary risk management program statement containing the information required by N.J.A.C. 7:31-3.12 to the Department within 60 days after the operative date of this chapter.

(c) Each registrant with an EHS listed in Part II of Table I in N.J.A.C. 7:31-2.3, who indicates on its registration form that it has a risk management program, shall submit a summary risk management program statement containing the information required by N.J.A.C. 7:31-3.12 to the Department *[between October 1 and October 31, 1988]* ***by June 30, 1989****.

(d) Each submitted summary risk management program statement will be initially reviewed to determine if the registrant has a risk management program that meets the standard established in N.J.A.C. 7:31-2.7(b).

(e) *[Each risk management program accepted for further review shall be reviewed for its compliance with N.J.A.C. 7:31-3. The review shall consist of a review of documents and a site inspection. Any documents to be reviewed may be reviewed at the site or at the Department at the discretion of the Department.]*

The review of each established risk management program accepted for further review shall consist of a review of documents and a site inspection. Any documents to be reviewed may be reviewed at the site or at the Department at the discretion of the Department. Each registrant shall submit upon the request of the Department the following documentation:

1. A description of each program element which includes the registrant's policies, standards and procedures for that program element and the persons or positions responsible for ensuring their implementation;

2. A copy of the site's emergency response plan prepared in accordance with N.J.A.C. 7:31-3.10(b);

3. A catalog listing the documents required by N.J.A.C. 7:31-3.3(c), (d) and (e) and their location at the site; and

4. An updated risk management program checklist for the site prepared in accordance with N.J.A.C. 7:31-3.14.*

(f) Upon completion of its review of a registrant's risk management program, the Department will develop, and send to the registrant, a draft consent agreement which will contain:

1. The portions of the registrant's risk management program which are approvable;

2. *[The]***Any*** portions of the registrant's risk management program that are materially deficient;

3. *[The]***Any*** proposed actions that must be taken to correct the material deficiencies; and

4. The proposed time schedule for taking the actions to correct the deficiencies.

(g) Within 60 days after the registrant receives the draft consent agreement, the registrant shall submit its proposals to correct *[the]* ***any*** deficiencies.

(h) If the Department and registrant reach agreement on the risk management program, the registrant shall enter into a consent agreement with the Department and shall comply with the consent agreement.

(i) If the Department and registrant cannot reach agreement on the measures necessary to correct the deficiencies or omissions in the risk management program, the Department shall:

1. Prepare and send to the registrant an administrative order incorporating the approvable portions of the risk management program, the actions required to bring the risk management program into compliance with N.J.A.C. 7:31-3, and the time schedule to implement the required actions; and

2. Advise the registrant of its rights to an adjudicatory hearing pursuant to N.J.A.C. *[7:31-2.19]* ***7:31-6.3(b)****.

7:31-2.7 Initial evaluation of the risk management program

(a) In order to determine if a registrant has *[a]* ***an established*** risk management program, the Department shall review the RMP description, and the reports of safety reviews, hazard analyses and risk assessments of existing EHS facilities included in the summary risk management program statement (see N.J.A.C. 7:31-3.12) submitted by the registrant for compliance with the requirements of N.J.A.C. 7:31-3.4 and 3.9.

(b) Each registrant whose summary risk management program statement contains at least one ***report of a*** safety review prepared in the past two years on each EHS facility at the site which the Department determines meets the requirements of N.J.A.C. 7:31-3.4, and at least one ***report of a*** hazard analysis and, where required, risk assessment prepared in the past four years on each EHS facility at the site which the Department determines meets the requirements of N.J.A.C. 7:31-3.9, shall be notified that *[its RMP]* ***it has an established RMP and it*** is accepted for further review in accordance with the procedure beginning at N.J.A.C. 7:31-2.6(e).

(c) Each registrant whose summary risk management program statement does not meet the standard established in (b) above shall be notified in writing that *[its]* ***it does not have an established*** risk management program *[is unacceptable]* and that it shall follow the procedures in N.J.A.C. 7:31-2.9 for developing and implementing an extraordinarily hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan.

7:31-2.8 (Reserved)

7:31-2.9 Extraordinarily hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan

(a) Each registrant who indicated on the registration forms that it did not have a risk management program, or *[whose risk management program was determined to be unacceptable]* ***who does not have an established risk management program as determined*** by the Department pursuant to N.J.A.C. 7:31-2.7, shall assist the Department in developing a work plan.

(b) A registrant assisting the Department in the development of the required work plan shall compile the site data required by N.J.A.C. 7:31-4.4 and submit them to the Department:

1. Within 30 days after receipt of a request for the data from the Department for registrants who indicated on their registration form that they did not have a risk management program; or

2. *[Within 30 days after receipt of notice of the determination of the unaccepatability of its risk management program for registrants whose risk management program is determined to be unacceptable by the Department;]* ***Within 30 days after receipt of notice of the determination by the Department that it does not have an established risk management program;***

(c) Upon review of the documents submitted by the registrant, the Department will schedule a meeting with the registrant for the purpose of:

1. Reviewing any other documents the registrant is required to bring to the meeting with the Department;

2. Identifying any other documents the registrant must submit to the Department;

3. Discussing and adapting the work plan ***to be*** developed in accordance with the requirements of N.J.A.C. 7:31-4 to the registrant's EHS facility;

4. Explaining the consultant selection process as described in (e) below to the registrant;

5. Determining any limits on the scope or details of the work plan;

6. Identifying the members of the registrant's staff who will assist in the work of the EHSARA under the direction of the independent consultant or the Department;

7. Setting an end-date of the EHSARA that will be included in the registrant's request for proposal to independent consultants; and

8. Reviewing the instructions to bidders to be included in the registrant's request for proposal document to which the work plan will be attached.

(d) The Department will authorize one of the following types of personnel to perform the extraordinarily hazardous substance accident risk assessment on a registrant's EHS facility:

1. Department personnel;

2. A consultant hired by the Department and paid by the registrant; or

3. An independent consultant nominated by the registrant, chosen by the Department and hired and paid by the registrant.

(e) Each registrant authorized to nominate three consultants as candidates to perform the EHSARA shall submit the names and proposals of three consultants, who meet the requirements set forth in N.J.A.C. 7:31-2.18 and are willing and able to perform the EHSARA in accordance with the schedule set forth in the work plan, to the Department within 60 days after receipt of the finalized work plan from the Department pursuant to (c) above;

(f) The Department, within 15 days after receipt of the names and proposals from the registrant, shall:

1. Select one of the consultants to perform the Extraordinarily Hazardous Substance Accident Risk Assessment on the Registrant's EHS facility; or

2. After determining that none of the consultants' proposals submitted by the registrant meet the requirements in N.J.A.C. 7:31-2.18, direct the registrant to submit, within 60 days, the names and proposals of an additional three consultants to the Department for its selection of one of the consultants to perform the extraordinarily hazardous substance accident risk assessment on the registrant's EHS facility.

(g) The registrant shall execute a contract with the consultant chosen by the Department within *[30]* ***45*** days after receipt of the name of the consultant from the Department.

(h) The consultant or Department shall perform the extraordinarily hazardous substance accident risk assessment of the registrant's EHS facility and develop a recommended risk reduction plan which will include the identification of those activities necessary to create a risk management program. These shall be performed in conformity with the work plan developed and explained at the meeting held pursuant to (c) above. Members of the registrant's staff may participate in the work preparatory to the EHSARA.

(i) Upon completion of the extraordinarily hazardous substance accident risk assessment, the consultant or the Department shall prepare an EHSARA report in accordance with N.J.A.C. 7:31-4.6, including its recommendations to reduce risks at the EHS facility.

(j) The original EHSARA report shall be submitted to the Department and a copy of the EHSARA report shall be submitted to the registrant.

(k) The Department shall review the EHSARA report and prepare a risk reduction plan which will be incorporated into an administrative order which will be issued to the registrant. The administrative order shall direct the registrant to implement the risk reduction plan which shall include:

1. A list of risks at the EHS facility that must be reduced; and

2. The actions the registrant is to take to reduce the risks including those necessary to complete a risk management program meeting the requirements of N.J.A.C. 7:31-3 and the schedule within which the registrant shall take the actions.

(l) Any registrant aggrieved by the administrative order issued pursuant to (k) above may request an adjudicatory hearing by following the procedures set forth at N.J.A.C. *[7:31-2.19]* ***7:31-6.3(b)***.

7:31-2.10 New EHS facilities

(a) Each owner or operator of a site planning to construct a new EHS facility shall:

1. Register with the Department in accordance with N.J.A.C. 7:31-2.5(c);

2. Submit a ***report of a*** safety review of the new EHS facility prepared in accordance with N.J.A.C. 7:31-3.4 and a ***report of a*** hazard analysis and ***a report of a*** risk assessment *[report]* on the new EHS facility prepared in accordance with N.J.A.C. 7:31-3.9 to the Department at least 90 days prior to construction of the EHS facility;

3. Submit a summary risk management program statement for the new EHS facility prepared in accordance with N.J.A.C. 7:31-3.12 at least 90 days prior to the date the equipment is scheduled to be placed into EHS service; and

4. Submit to the Department the fees required by N.J.A.C. 7:31-2.16(d).

(b) Each registrant with an RMP previously approved by the Department planning to construct a new EHS facility at its site, or to utilize an existing facility for a new EHS service shall:

1. Register with the Department in accordance with N.J.A.C. 7:31-2.5(d);

2. Submit a revised RMP description meeting the requirements of N.J.A.C. 7:31-3.12(a)1, a ***report of a*** safety review of the new EHS facility or service prepared in accordance with N.J.A.C. 7:31-3.4, and a ***report of a*** hazard analysis and ***a report of a*** risk assessment of the new EHS facility or service prepared in accordance with N.J.A.C. 7:31-3.9 at least 90 days prior to the scheduled placing of the equipment into EHS service. The equipment placed into EHS service shall be placed into service as represented in the reports of safety review, hazard analysis and risk assessment submitted to the Department; and

3. Submit to the Department the fees required by N.J.A.C. 7:31-2.16(e).

7:31-2.11 Modification to an EHS facility

(a) A registrant with an *[approved site risk management program]* ***established or approved risk management program as determined by the Department*** planning to implement a modification to an existing EHS facility at its site shall comply with the requirements of its risk management program and perform a safety review and a hazard analysis in accordance with the requirements of N.J.A.C. 7:31-3.4 and 3.9.

(b) The registrant shall submit ***the reports of*** the safety review, the hazard analysis and the risk assessment on the modification to the Department at least 60 days prior to the date of placing the equipment or procedure in EHS service if the hazard analysis on the modification identifies an increase in the potential for a release in an amount which within one hour either will be equal to or greater than five times the *[minimum reportable]* ***registration*** quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3 *[or will be equal to twice the potential release that existed before the modi-

fication, whichever is smaller]*. The equipment placed into EHS service shall be placed into service as represented in the reports of safety review, hazard analysis and risk assessment submitted to the Department.

7:31-2.12 Inspections

(a) The Department shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the act, this chapter, or any order or consent order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the site, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute, and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested. Owners, operators or registrants, and any employees or representatives thereof, shall not hinder or delay, and shall assist, the Department and its representatives in the performance of all aspects of any inspection.

(b) The Department plans to inspect a site at least annually to verify the registrant's compliance with the Act, this chapter and the risk management program or risk reduction plan.

(c) Within a reasonable time after an inspection, the registrant or owner or operator shall be furnished with an inspection report which will list any deficiencies found.

7:31-2.13 Prevention of catastrophic accidents

(a) The Department may take such actions as it deems necessary in order to protect human health from an EHS release. Such actions may include, but shall not be limited to, issuing such orders as may be necessary to protect the health of persons who may be subject to such a release.

(b) The Department may include in the orders, at its discretion, the following:

1. A requirement that the owner or operator or registrant immediately submit a facility's risk management program to the Department for review;

2. A requirement that the owner or operator or registrant perform a safety review, hazard analysis or risk assessment;

3. A requirement that the owner or operator or registrant immediately take risk reduction actions or implement a risk reduction plan;

4. A requirement that the owner or operator or registrant cease operating until the identified risk or risks have been abated; or

5. Any other requirement the Department determines is necessary to carry out the purposes of the Act or this chapter.

(c) When the Department issues an order or takes other appropriate action pursuant to this section, such order or action shall not be deemed to affect the availability of, or preclude the use of, any other enforcement provision.

7:31-2.14 Annual report

Each registrant with an approved risk management program shall submit on or before each anniversary of the initial approval of its risk management program an annual report meeting the requirements of N.J.A.C. 7:31-3.13.

7:31-2.15 Release of information by insurance carriers

(a) After a review of documents and an EHS facility inspection, the Department may determine that a registrant shall authorize the facility's environmental liability or workers compensation insurance carrier to supplycertain information to the Department.

(b) The determination will be based on a finding that the insurance information is necessary for the Department to evaluate effectively the facility's EHS management practices.

(c) The information to be supplied to the Department by the insurance carrier shall include, but not be limited to:

1. Reports of inspections for compliance with mandated codes or standards;

2. Reports of safety and environmental inspections or audits;

3. Reports of inspections of fire protection equipment;

4. Reports of any additional studies conducted which evaluated the adequacy of the registrant's management of EHSs; and

5. The reports requested in (c)1 through 4 above shall include a summary of any deficiencies found and any recommended remedial actions.

(d) Upon written request from the Department, the registrant shall, within 30 days, authorize the insurance carrier to release the information requested to the Department. The insurance company shall forward to the Department the requested information within 30 days of the receipt of the authorization to do so from the registrant.

7:31-2.16 Fees

(a) Each registrant shall pay an annual fee to the Department.

(b) Each registrant with an EHS on Part I of Table I of N.J.A.C. 7:31-2.3 shall submit *[its annual]* ***a*** fee for ***calendar year January 1, 1988 to December 31, 1988*** *[fiscal year July 1, 1987 to June 30, 1988, computed in accordance with (i) through (m) below, 60 days after the operative date of this rule.]* ***by no later than August 19, 1988. The fee for calendar year 1988 shall be computed in accordance with (i) through (m) below and prorated and calculated from May 22, 1988.****

(c) Each registrant with an EHS on Part II of Table I of N.J.A.C. 7:31-2.3 shall begin paying annual fees in *[the fiscal year July 1, 1988 to June 30, 1989]* ***calendar year 1989****. The fees shall be computed in accordance with (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.

(d) Each owner or operator of a new EHS facility at a site with no EHSs registered who registers an extraordinarily hazardous substance with the Department subsequent to the dates specified in (b) and (c) above, shall submit the annual fee for that *[fiscal]* ***calendar*** year computed in accordance with (i) through (m) below with the registration forms.

(e) Each registrant registering a new EHS facility at a site with previously registered EHSs shall submit the inventory derived fee for the incremental EHS inventory, computed in accordance with (i), (l) and (m) below, with the amended registration forms.

(f) The annual fees are assessed on the basis of the State's *[fiscal]* ***calendar*** year and shall not be prorated or refunded.

(g) Except for the fees due for *[fiscal year 1987/1988]* ***calendar year 1988*** which shall be submitted in accordance with (b) above and the fees submitted pursuant to (d) and (e) above, the Department, during the month of *[July]* ***January***, will send each registrant a bill stating the fee for that *[fiscal]* ***calendar*** year.

1. Fees shall be calculated based on the inventory reported in Section D of the registrant's registration form on file with Department as of the previous December 1.

(h) Each registrant shall pay its fee by check or money order, payable to "Treasurer, State of New Jersey" prior to *[August 31]* ***February 28*** of the year in which it is billed. The check or money order shall be submitted to:

New Jersey Department of Environmental Protection
Bureau of Revenue
Division of Financial Management, Planning and General Services
CN 402
Trenton, New Jersey 08625

(i) For the purpose of calculating fees, "inventory" as used in (j), (k), (l) and (m) below means the maximum quantity for each EHS reported by the registrant on Section D of the registration form it submitted to the Department as part of its initial registration and its subsequent annual report in compliance with N.J.A.C. 7:31-2.5 and 2.14.

(j) Each registrant of a water treatment system and wastewater treatment system shall pay a base fee of $4,000 ***per system*** annually plus an EHS inventory derived fee; ***except***

1. Registrants with a water treatment system or wastewater treatment system located on a site which is also covered by (k) below shall only pay the fee required by that subsection.

(k) All other registrants not included in (j) above shall pay *[a]* ***one*** base fee of $4,000 per site annually plus an EHS inventory derived fee.

(l) The inventory derived fee at each site, water treatment system and wastewater treatment system is determined in the following manner:

1. The inventory of each EHS is divided by the *[minimum reportable]* ***registration*** quantity for that EHS as set forth in Table I in N.J.A.C. 7:31-2.3;

2. The number resulting from the division required by (l)1 above is the number of hazard units for that EHS;

3. The number of hazard units for each EHS is multiplied by $5.75 per hazard unit to determine the fee for each EHS.

(m) The annual fee for each registrant shall be the sum of the base fee and the sum of each EHS inventory derived fee.

7:31-2.17 Required signatories and certifications

(a) All registration forms, risk management program descriptions and risk management program checklists shall contain the following signatures and two-part certification which provides the following:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

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

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and/or imprisonment."

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

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

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

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

(b) All other reports required by this chapter, the risk management program and other information requested by the Department shall be signed by a person described in (a)1i above or the responsible manager, and the person who signs the report shall make the certification set forth in (a)1 above.

7:31-2.18 Criteria for selecting independent consultants

(a) A registrant required to nominate consultants capable of performing an EHSARA on its facility and submit their names to the Department shall initially obtain proposals from at least three consultants.

(b) The registrant shall not submit the name of any consultant who:

1. Is owned or controlled by the registrant or by a firm which owns or controls both the registrant and the consultant or owns or controls the registrant;

2. Was the designer of any EHS facility at the site; or

3. Is debarred or suspended pursuant to N.J.A.C. 7:1-5 or on the New Jersey Department of Treasury's list of firms debarred or suspended from engaging in work with the State.

(c) The registrant in its contract with the consultant chosen by the Department shall prohibit the subcontracting of any of the work involved in the EHSARA unless approved in writing by the Department.

(d) Each proposal shall explain in a clear and concise manner how the consultant is going to address each task in the registrant's workplan.

(e) Each proposal shall demonstrate the consultant's ability to perform the EHSARA set forth in N.J.A.C. 7:31-4 and shall include:

1. The consultant's qualifications in:

i. Process engineering;

ii. Safety engineering;

iii. Preparation of operating procedures;

iv. Preparation or review of maintenance procedures;

v. Preparation or review of safety procedures;

vi. Preparation or review of operator training programs;

vii. Performance or review of accident investigations;

viii. Performance of hazard analyses;

ix. Performance of risk assessments;

x. Preparation or review of emergency response plans;

xi. Performance of audits of risk management programs;

xii. Knowledge of state of the art; and

xiii. With respect to each of the above qualifications, the following:

(1) Name of consultant's client; ***if the client's name cannot be divulged, than a description of the client;****

(2) Name of client's contact person***, if available***;

(3) Date and duration of work;

(4) Names of consultant's employees who performed the work;

(5) Schedule of the work; and

(6) Brief description of the work.

2. The qualifications and experience of additional staff who may be assigned on an as needed basis; and

3. The level of effort to be dedicated and schedule for performing each workplan task item including:

i. Names of staff assigned;

ii. Expected starting and completion dates;

iii. Estimated personhours; and

iv. Scope and extent of usage of collateral items such as computer use, outside consultants, etc.

(f) The resumes of *[members of]* ***the consultant or*** the consultant's staff who are to be committed to the work plan agreed to by the registrant and the Department shall be submitted to the Department and shall demonstrate that *[collectively]* ***the consultant or*** the consultant's staff implementing the workplan has the following qualifications, at a minimum:

1. At least one previous project in each of the 12 areas of experience listed in (e)1 above;

2. Key staff members each having at least five years of professional experience and one key staff member who is a licensed professional engineer;

3. A task force leader with at least 36 months of accumulated experience as a project manager of multidisciplinary technical teams;

4. A technical leader of the hazard analysis and risk assessment portions of the work who has at least 12 months aggregate experience at such work; and

5. *[Assisting]****Any assisting*** staff *[with]* ***shall have*** at least three years of professional work experience and at least six months accumulated experience on the type of work involved in the portion of the EHSARA to which they will contribute.

*[7:31-2.19 Adjudicatory hearings; general

(a) Within 20 calendar days from receipt of an executed administrative order, except those issued pursuant to N.J.A.C. 7:31-2.20, or a letter from the Department withholding approval of a new EHS facility or rejecting a modification, the registrant may submit a written request to the Department for an adjudicatory hearing to contest such action.

1. Any request for an adjudicatory hearing shall be based on specific relevant issues raised by the registrant.

2. The registrant shall include the following information in a request for an adjudicatory hearing:

i. The name, address and telephone number of the registrant or its authorized representative;

ii. The Department's identification number for the EHS facility, as specified in Section A of the registrant's registration form;

iii. A statement of the legal authority and jurisdiction under which the hearing is to be held;

iv. A reference to the particular sections of the statutes and rules involved;

v. A short and plain statement of the matters of law and fact asserted;

vi. The registrant's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to contested conditions as well as suggested revised or alternative conditions and an estimate of the amount of hearing time necessary to adjudicate each factual issue;

vii. Information supporting the registrant's factual position and proposed conditions and copies of other written documents relied upon to support the request for a hearing; and

viii. (Reserved).

(b) If the registrant fails to include all the information required by (a)2 above, the Department shall deny the request for a hearing and the administrative order or the letter withholding approval of a new EHS facility or the letter rejecting a modification shall be the Department's final decision on the matter.

(c) If it grants the request, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(d) During the pendency of the review and hearing on an administrative order issued pursuant to N.J.A.C. 7:31-2.9, the timetable for compliance with these conditions being appealed in the order shall be suspended.

7:31-2.20 Adjudicatory hearings; enforcement

(a) The Department, prior to assessing a civil administrative penalty, shall, by means of an administrative order or notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. This notice shall:

1. Identify the provisions of the Act, this chapter, consent agreement, administrative order or administrative consent order that have been violated;

2. Concisely state the facts which constitute the violation;

3. Specify the amount of civil administrative penalties to be imposed; and

4. Advise the violator of the right to request an adjudicatory hearing.

(b) If the violator wishes to request an adjudicatory hearing to contest the assessment of the penalty and the findings of fact, the violator, within 20 days following receipt of the Department's administrative order or notice of civil administrative penalty assessment, shall submit a written request to the Department which meets the requirements of (c) below.

(c) The violator shall include the following information in a request for an adjudicatory hearing:

1. The name, address and telephone number of the violator or its authorized representative;

2. The Department's identification number for the EHS facility, as specified in Section A of the registrant's registration form;

3. The violator's defenses to each of the findings of fact stated in short and plain terms;

4. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. Any denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings;

5. A statement of the legal authority and jurisdiction under which the hearing is to be held;

6. A reference to the particular sections of the statutes and rules involved;

7. A short and plain statement of the matters of law and fact asserted;

8. (Reserved.)

9. Information supporting the request and copies of other written documents relied upon to support the request for a hearing.

(d) If the violator fails to include all the information required by (c) above, the Department shall deny the request for a hearing and the administrative order or notice of civil administrative penalty assessment shall become a final order.

(e) If it grants the request, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(f) The Department, after the hearing and upon a finding that a violation has occurred, shall issue a final order specifying the amount of the penalty to be assessed.

(g) If no hearing is requested, the administrative order or notice of civil administrative penalty assessment shall become a final order on the twenty-first day following receipt of the administrative order or notice of civil administrative penalty assessment by the violator.

(h) Payment of the civil administrative penalty is due upon issuance by the Department of a Final Order or, where no adjudicatory hearing is requested, after expiration of the 20 day period following receipt of the notice of civil administrative penalty assessment.

(i) Any person who violates the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq., this chapter, a consent agreement, administrative consent order or an administrative order issued by the Department shall be subject to the civil administrative penalties set forth in Table II:

TABLE II

Categories of Offense	Penalty in U.S. Dollars By Offense Category: First Offense	Second Offense	Third Offense
A. Failure to register a new or existing EHS facility as set by the total hazard units at the site:			
1. Less than 10 hazard units	$ 2,000	$ 4,000	$25,000
2. 10 through 49 hazard units	5,000	10,000	25,000
3. 50 and more hazard units	10,000	20,000	50,000
B. Failure to pay annual fee:	25 percent of fee up to 10,000	50 percent of fee up to 20,000	75 percent of fee up to 50,000
C. Failure to submit summary risk management program statement on time:	2,000	5,000	10,000
D. Failure to execute contract with consultant within 30 days of receipt of notification:	5,000	10,000	25,000
E. Failure to initiate an EHSARA according to the schedule in the work plan:	5,000	10,000	25,000
F. EHSARA not performed according to the schedule in the work plan:	2,000	5,000	10,000
G. Failure to implement a risk reduction plan:	10,000	20,000	50,000
H. Failure to comply with the requirements of an approved RMP, each requirement:	up to 5,000	up to 10,000	up to 20,000
I. Failure to comply with conditions of a consent agreement or administrative order, see condition:	up to 5,000	up to 10,000	up to 20,000
J. Failure to provide information requested by the Department:	2,000	5,000	10,000
K. Failure to grant access to Departmental employees or agents for inspections:	5,000	10,000	25,000
L. Failure to provide information or grant access to Departmental employees or agents during an emergency condition:	10,000	20,000	50,000
M. Falsification of information submitted to the Department:	10,000	20,000	50,000
N. Failure to submit an annual report:	5,000	10,000	25,000
O. Construction of a new EHS facility without Departmental approval:	10,000	20,000	50,000
P. Startup of a new EHS facility without an approved risk management program:	10,000	20,000	50,000
Q. For a site with an approved RMP, placing a new EHS facility into service or placing an existing facility in different			

EHS service without Departmental approval:	5,000	10,000	25,000

(j) The penalty for each offense set forth in Table II in (i) above subsequent to the third offense shall be $50,000 per offense.

(k) If no subsequent offense occurs within a three year period of an offense, the next penalty will be assessed at the level of the last offense.

(l) If the violation is of a continuing nature, each day during which it continues constitutes an additional, separate and distinct offense.

(m) The Department may compromise and settle any claim for a penalty imposed pursuant to the Act or this chapter in such amount in the discretion of the Department as may appear appropriate and equitable under all the circumstances including the posting of a performance bond by the violator.

(n) Neither the assessment of a civil administrative penalty nor the payment of any such assessment shall be deemed to affect the availability of any other enforcement provision provided for by this Act or any other statute, in connection with the violation for which the assessment is levied.

(o) Each violator shall pay its penalty by check or money order, payable to "Treasurer, State of New Jersey". The check or money order shall be submitted to: New Jersey Department of Environmental Protection, Environmental Enforcement Element, CN-027, Trenton, New Jersey 08625.]*

7:31-2.*[21]**19* Exemptions for non-contiguous EHS equipment

(a) A registrant may request that non-contiguous EHS equipment be exempted from the requirements of N.J.A.C. 7:31-3 provided that the following conditions are met:

1. The equipment has only the capability to contain or generate in one hour less than the *[minimum reportable]* ***registration*** quantity of the EHS as listed in Table I, N.J.A.C. 7:31-2.3; ***and***

2. The equipment is located a minimum of 100 meters from the property line and other EHS equipment; *[and]* ***or***

3. The registrant demonstrates to the satisfaction of the Department by dispersion and consequence analyses that a release of the contained or generated quantity of the EHS will not result in acute health effects to persons exposed *[at]* ***beyond*** the site boundary, which is the boundary closest to the point of release.

*[(b) The request for exemption shall include the results of the dispersion and consequence analyses and may be submitted as appropriate, either with:

1. The initial summary risk management program statement;

2. The revised summary risk management program statement; or

3. The annual report.]*

1. A plot plan to scale of the site, showing location of the EHS equipment and quantity of the EHS contained in the equipment for which an exemption is being requested and the distance from this EHS equipment to other EHS equipment and the site boundaries, or:

2. The results of the dispersion and consequence analysis.

(c) The request for exemption and supporting documents shall be submitted either:

1. With the initial or subsequent updated registration forms; or

2. With the summary risk management program statement.*

*[(c)]***(d)* The Department shall grant the exemption only if the registrant demonstrates to the satisfaction of the Department that the requirements of (a) above are met.

SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A RISK MANAGEMENT PROGRAM

7:31-3.1 Scope and applicability

(a) This subchapter establishes the Department's minimum requirements for an approvable risk management program.

(b) All risk management programs shall meet the requirements of this subchapter before being approved by the Department.

(c) Risk management programs that do not comply with the requirements of this subchapter shall not be approved by the Department.

7:31-3.2 Purpose

This subchapter is promulgated for the purpose of reducing the risk of catastrophic releases of extraordinarily hazardous substances by establishing minimum requirements for risk management programs.

7:31-3.3 Risk management program

(a) Each registrant's risk management program shall, at a minimum, include:

1. Safety review of design for new and existing EHS facilities;
2. Standard operating procedures;
3. Preventive maintenance program;
4. Operator training;
5. Accident investigation procedures;
6. Risk assessments for specific pieces of EHS equipment or operating alternatives;
7. Emergency response planning; and
8. Internal or external risk management program audit procedures.

*[(b) Each registrant with a risk management program shall appoint a responsible manager for each site who shall be responsible for the following activities regarding EHS facilities for each site:

1. Approval of all safety reviews;
2. Approval of all standard operating procedures;
3. Approval of preventive maintenance procedures;
4. Approval of operator training procedures;
5. Approval of accident investigation procedures;
6. Approval of all hazard analyses and risk assessments;
7. Approval of all modifications;
8. Approval of all new EHS construction;
9. Approval of emergency response plans;
10. Approval of internal and external audit procedures; and
11. Submission of all reports to the Department.]*

(b) Each registrant with a risk management program shall appoint a responsible manager for each site who shall be responsible for insuring compliance with the risk management program, the Act and this chapter. The responsible manager shall be the individual who submits all reports to the Department.*

(c) Each registrant shall maintain and make available for Department review, either at the site or at the Department's offices in the discretion of the Department, the following updated documentation including revision dates covering process information involving EHSs in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Process chemistry and process design criteria;
2. Facility inventory of each extraordinarily hazardous substance;
3. Reports of hazard analyses, risk assessments, safety reviews and audits performed during the previous six years;
4. Accident investigation reports covering accidents at EHS facilities for the past six years;
5. Updated process flow and piping and instrumentation diagrams;
6. Standard operating procedures;
7. Site-wide safety procedures; and
8. Site-wide emergency response plan.

(d) Each registrant shall maintain and make available for Department review, either at the site or at the Department's offices in the discretion of the Department, the following updated EHS operating training documentation in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Job classifications and job descriptions for EHS operators;
2. Description of the EHS operator training program and its records; and
3. Annual tabulation of EHS operator training conducted.

(e) Each registrant shall maintain and make available for Departmental review, either at the site or at the Department's offices in the discretion of the Department, the following updated engineering and maintenance documentation in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Topographic maps;
2. Site plan;
3. EHS equipment specifications including instrument and piping specifications;

4. National Electrical Code area classification diagrams for the *[site]* ***EHS facility and the adjoining areas on the site which can pose a threat of EHS release due to a fire hazard***;
5. *[EHS e]***E***lectrical one line diagrams;
6. Fire water system piping diagrams for the site;
7. Sewer system piping diagrams for the site;
8. List of criteria for design and operation used at the site;
9. Preventive maintenance program procedures and records covering EHS equipment; and
10. Annual tabulations of EHS equipment inspected and tested versus EHS equipment scheduled to be inspected and tested.

7:31-3.4 Safety review of new and existing facilities

(a) All new EHS facilities or modifications shall be designed, installed and operated in accordance with the state of the art and criteria for design and operation.

(b) The requirements for safety review of design of new EHS facilities or modifications shall include:

1. Comparison of the following information describing the EHS equipment and operations with state of the art and criteria for design and operation:
i. Process description and process chemistry;
ii. Process flow sheets;
iii. Piping and instrumentation diagrams;
iv. Facility location map, site plans and equipment layout;
v. Electrical one-line diagrams;
vi. Electrical area classification drawing;
vii. Specifications of safety relief devices and interlocks and controls;
viii. Specifications for materials of construction;
ix. EHS inventories;
x. EHS equipment specifications; and
xi. External forces and events data;
2. Documentation of the safety review and its findings; and
3. A report of the safety review of design of new EHS facilities or modifications. The report may be prepared by the designers and shall:
i. Contain a list of the criteria for design and operation upon which the design is based;
ii. Identify the new EHS facility or modification, the EHS equipment items reviewed, the drawings and documents reviewed, and the name, position and affiliation of the persons who performed the review; and
iii. Explain where the design of the new EHS facility or modification deviates from the listed consensus standards of the criteria for design and operation and the reasoning for such a deviation.

(c) There shall be an annual safety review performed on each existing EHS facility.

(d) The requirements for the annual safety review of existing EHS facility shall include:

1. A visual inspection of the EHS facility or review of up-to-date inspection records against process flow diagrams, piping and instrument diagrams, and electrical one line diagrams to determine whether the diagrams reflect actual conditions with respect to EHS equipment, runs and sizes of pipe, location and function of instruments, and location, function and size of valves. Deviations found shall constitute an unauthorized modification and shall be immediately discontinued from service until the requirements of this chapter for a modification are satisfied;
2. A visual inspection of the facility or review of up-to-date inspection records against design documents to determine whether safety relief devices and emergency systems such as deluges, interlocks, controls, back-up systems and alarms are functioning or capable of functioning as designed. EHS safety systems or devices found to be inoperable shall be returned to operational status immediately;
3. A review of actual operating conditions of flow, temperature and pressure, process chemistry and raw material feeds and specifications against design documents to determine whether the actual conditions are within the limits of the design criteria of individual equipment items. Deviations found shall be immediately discontinued;
4. An inspection of the EHS facility and procedures and interviews of site personnel to determine whether actual conditions reflect standard operating procedures. Deviations found to be unauthorized shall be immediately discontinued;
5. Documentation of the deviations of procedure or equipment found by (d)1 through 5 above;
6. A report of the results of the safety review by the registrant shall be written and shall:
i. Identify the EHS facility;
ii. Identify the EHS equipment, procedures, drawings and documents reviewed;
iii. Describe the deviations found and the corresponding actions taken pursuant to (d) above; and
iv. Identify the name, position and affiliation of the persons who performed the review; and
7. Distribution of the report to the responsible manager.

7:31-3.5 Standard operating procedures

(a) The standard operating procedures shall be written in English in a manner understandable by EHS operators and shall also be written in the language of fluency of EHS operators not fluent in English.

(b) A copy of the standard operating procedures shall be readily available to EHS operators.

(c) The standard operating procedures shall include, but not be limited to:

1. Simplified process flow sheets and a process description defining the operation and showing flows, temperatures and pressures;
2. Procedures and conditions for normal operations;
3. A description of abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions;
4. A description of emergency conditions which could occur including the control and mitigating procedures to be followed to reduce the impact of the emergency conditions;
5. Pre-startup procedures covering, at a minimum, testing for leak tightness prior to placing into EHS service;
6. Startup procedures including conditions to be maintained during startup;
7. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of equipment to be maintained after shutdown;
8. A description of the type, location and purpose of safety relief devices, interlocks and alarms with their respective activation points indicated;
9. Sampling procedures addressing apparatus and specific steps involved in the taking of samples;
10. Safety procedures related to each specific operation in the standard operating procedures;
11. Procedures to prepare EHS equipment for maintenance and inspection of maintenance work upon completion and prior to placement of equipment in EHS service;
12. Material safety data sheets or fact sheets for each EHS used in the operation;
13. Logsheets and checklists where appropriate to the operation;
14. A statement as to the number of EHS operators required to meet safety needs for each operation with requirements for shift coverage; and
15. A requirement that an EHS operator be in attendance at the EHS *[facility]* ***site***, be able to acknowledge alarms and take corrective action to prevent an accident at all times during EHS handling use, manufacturing, storage, or generation except:

i. *[That the requirement that an EHS operator be in attendance d]***D***uring chlorination of water using chlorine vapor out of a supply vessel *[does not apply]**,* if the Department determines that chlorine monitoring equipment is provided with alarms reporting to a *[station continuously attended by the registrant's employees who]* ***continuously attended station whose personnel*** are trained to take action to prevent an EHS accident and the online supply vessel capacity is less than 2,100 pounds;

ii. *[That the requirement that an EHS operator be in attendance on the site d]***D***uring EHS storage requiring refrigeration, circulation, agitation or inert gas blanketing *[does not apply]**,* if the

Department determines that EHS monitoring equipment is provided with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an accident, and a risk assessment demonstrates that an EHS operator is not necessary on-site during the specified activity; or

iii. *[That the requirement that an EHS operator be in attendance on site d]**D*uring storage not requiring refrigeration, circulation, agitation or inert gas blanketing *[does not apply]**,* if the Department determines that EHS monitoring equipment *[contains]* ***is provided with*** alarms reporting to a continuously attended station.

(d) Modifications to the standard operating procedures shall be made in accordance with N.J.A.C. 7:31-2.11.

(e) Modifications to the standard operating procedures shall be incorporated into the standard operating procedure prior to their implementation.

(f) A current index of the EHS standard operating procedures with corresponding latest dates of issue shall be maintained, filed and distributed to the responsible manager.

7:31-3.6 Preventive maintenance program

(a) The preventive maintenance program shall be written, be kept at the site and include all preventive maintenance program documents. Requirements of the preventive maintenance program shall include, but not be limited to, the following:

1. Identification of all EHS equipment to be included in the preventive maintenance program;

2. A procedure insuring that only modifications approved and authorized by the responsible manager are made and that communications are maintained between the maintenance, production, safety and engineering departments;

3. Schedules for internal and external inspections of EHS equipment at intervals necessary to prevent the failure of the equipment. ***Internal inspections may include radiography, ultrasonics and acoustics emissions, or other methods, when these methods have proven equal or superior to visual internal inspections when evaluating internal integrity of piping and vessels.*** Schedules for inspections shall be based on equipment histories, suppliers recommendations, standards of the industry as available or corrosion rates of the construction materials;

4. Inspection or testing of all pressure safety devices in EHS service at least as frequently as the frequency set forth in the criteria for design and operation applicable to the particular EHS involved. In the absence of frequencies in the criteria for design and operation, inspections or tests shall be performed, at a minimum, annually;

5. Checks for proper operation of all safety instrumentation in EHS service such as interlocks, pressure, temperature and flow alarms and shut down devices at least as frequently as recommended in the criteria for design and operation for the particular EHS involved. In the absence of frequencies in the criteria for design and operation, checks for proper operation shall be performed annually and after extended shutdowns, or more frequently as conditions require;

6. Procedures for commissioning new or modified EHS equipment and decommissioning existing EHS equipment;

7. Testing of standby emergency equipment such as power generators, fire pumps and lighting as frequently as specified in the criteria for design and operation. In the absence of frequencies in the criteria for design and operation, testing shall be done weekly;

8. Training on codes and practices pertinent to the particular extraordinarily hazardous substance including materials of construction, material safety data sheets and EHS accident reports for employees assigned to perform maintenance work on equipment in extraordinarily hazardous substance service. This is in addition to the standard maintenance training existing at the site;

9. Procedures to insure that work performed by outside contractors will be done in accordance with the requirements of the preventive maintenance program;

10. Use of permits and check lists for all EHS equipment entries, lockouts, welding and burning operations.

11. Documentation and centralized filing at the site of all inspection, maintenance and testing reports, and training information; and

12. A system for maintaining accurate records of all inspections, breakdowns, repairs and replacements of EHS equipment with the means of data retrieval and analysis to perform equipment reliability studies.

(b) A tabulation of EHS equipment inspected and tested versus EHS equipment scheduled to be inspected and tested during the previous calendar year shall be prepared by the registrant, filed at the site and submitted to the responsible manager.

7:31-3.7 EHS operator training

(a) The training program for EHS operators shall be written and, at a minimum, including the following:

1. A written job description which includes the duties and responsibilities for each position and the education, experience and training necessary to qualify for the position;

2. Procedures to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position; and

3. Specified time periods of in-house training for each position covering orientation, specific EHS training and on-the-job training, trainee evaluation, final qualification and periodic refresher training. A procedure shall be established for tracking the progress of each EHS operator at regular intervals. In addition, the maximum period of time for each training program shall be established within which the EHS operator must achieve qualified status.

(b) The training which EHS operators will receive shall, at a minimum, include:

1. General orientation and initial training of new employees beforeassignment to EHS equipment and EHS procedures which shall include instruction on the general site rules and practices, safety procedures and equipment, and emergency procedures;

2. Classroom training for newly assigned EHS operators on specific EHS activities. This training shall cover the details of standard operating procedures and safety training specific to an EHS including a detailed review of the EHS material safety data sheets or fact sheets, the safe handling practices for the EHS, the hazards of the operations involving the EHS, and emergency procedures regarding fires, explosions and leaks;

3. On-the-job training for newly assigned EHS operators at the specific EHS facility shall include, but not be limited to, the following:

i. Equipment familiarization;

ii. Operating data collection and entry;

iii. Actual equipment startup and shutdown;

iv. Control and adjustment of operating conditions; and

v. The application of the standard operating procedure to actual conditions; and

4. Refresher training at least once a year which shall present an overview and updated information on the standard operating procedures, EHS material safety data sheets, safe handling of the EHS, EHS emergency procedures and review of EHS accident reports.

(c) The EHS operator's performance will be evaluated by a supervisor having operational and technical knowledge of the facility. The evaluation will be based on both oral and written tests on the standard operating procedures and a demonstration by the trainees of their ability to perform the job. The employee must qualify within the established maximum period established for training in each EHS position.

(d) The training program shall specify the qualifications required for the personnel responsible for training EHS operators.

(e) Documentation of all training, evaluations and qualifying activities for each employee shall be kept at the site.

(f) A tabulation of EHS operator training performed during the previous year shall be prepared by the registrant, filed and submitted to the responsible manager. The tabulation shall include identification of EHS operators trained, their job titles and facility designation, subjects covered and training dates.

7:31-3.8 EHS accident investigation procedures

(a) There shall be written procedures for investigating all EHS accidents which shall include the following:

1. The identification by title or position of personnel responsible for investigating the accident and reporting the findings of the EHS accident investigation;
2. The schedule for initiating EHS accident investigations, key milestones and projected completion dates;
3. The preparation of a written report on all EHS accidents;
4. The record keeping requirements including a requirement to retain EHS accident reports for a minimum of six years;
5. The methods of implementing recommendations for risk reduction resulting from analysis of EHS accident investigations including:
i. Procedures for management review of EHS accident reports;
ii. Decision procedures for implementing EHS accident investigation recommendations;
iii. Procedures for establishing a timetable for implementing recommendations for risk reduction;
iv. Procedures to ensure that recommendations are implemented such as the use of status reports; and
v. Procedures for evaluating the need for employee retraining or reassignment based on the record of employee errors; and
6. Review of EHS accident reports as part of the EHS operator training refresher course and maintenance training course.
(b) All EHS accident reports shall be written and shall include, at a minimum, the following:
1. The date, time, and location of the EHS accident;
2. The identity, amount and duration of the EHS release or potential EHS release;
3. The equipment, materials, procedures or personnel involved;
4. A detailed description of the EHS accident in chronological order providing all the facts related to the EHS accident;
5. The consequences of the EHS accident including the number of evacuees, injured and fatalities, and the impact on the community;
6. An identification of basic and contributory causes, either direct or indirect, of the EHS accident and a determination of whether *[it]* ***the EHS accident*** was caused by *[either]* human error ***a procedural inadequacy*** or equipment failure;
7. Recommended actions to be implemented to prevent a recurrence which shall include the following, as appropriate:
i. Employee retraining and human error analysis where the accident cause was determined to be due to human error; *[and]*
ii. Equipment redesign based on considerations of state of the art or revisions of preventive maintenance procedures when the cause of the EHS accident was determined to be due to equipment failure; ***and***
iii. Revisions to standard operating procedures or training procedures when the cause of the EHS accident was determined to be due to following inappropriate operating or training procedures;
8. Schedule for implementation of recommended actions; and
9. Signatures and position titles of the investigators.
(c) EHS accident investigation records shall include:
1. A separate file of all EHS accident reports for the Toxic Catastrophe Prevention Act Program;
2. A monthly list updating the implementation status of all active recommendations for corrective action;
3. An updated record of employee errors including a list of each employee by EHS facility involved in an EHS accident caused by human error; and
4. An end of year summary report which shall be prepared, filed on site, distributed to the responsible manager, and shall consist of:
i. A list containing a brief description of each EHS accident;
ii. A categorization of EHS accidents as being caused by human error ***procedural inadequacies*** or equipment failure;
iii. A schedule for implementation of corrective actions; and
iv. A statement of progress on corrective action to date.

7:31-3.9 Risk assessment program for specific pieces of EHS equipment or operating alternatives

(a) A hazard analysis shall be conducted on each new EHS facility, new operating alternative and modification.
(b) A hazard analysis shall be conducted on existing EHS facilities at least once every *[three]* ***four*** years.
(c) *[The procedure for a hazard analysis shall be a What If Checklist, HAZOP, FMEA, or FTA]* ***Each hazard analysis shall be*** performed in accordance with the following:
1. The hazard analysis shall be conducted either by a team trained to perform the hazard analysis and comprised of members of the registrant's staff, an outside qualified consulting firm chosen by the registrant or by a combination thereof;
2. The hazard analysis team shall:
i. Identify ***all EHS equipment potential*** possible EHS releases, the points of possible EHS releases, the corresponding approximate quantity or rate of EHS release and corresponding cause of the EHS release;
ii. Consider EHS equipment failure data and EHS accident reports of the EHS facility that have been prepared since the last hazard analysis in its identification of possible EHS releases;
iii. Determine the instances of *[possible]* ***potential*** EHS release on which further study by risk assessment will be performed based on the criteria set forth in (d) below:
iv. For the instances where the criteria in (d) below does not require a risk assessment, conduct a state of the art technology search from which it will recommend risk reduction measures; and
v. *[Recommend risk reduction measures as a result of any other findings of the hazard analysis team;]* ***Develop a risk reduction plan, utilizing state of the art risk reduction measures for those scenarios which pose an extraordinarily hazardous accident risk.***
3. The hazard analysis team shall document its findings of possible EHS releases, estimates of quantity or rate of EHS releases, findings of the state of the art technology search and risk reduction recommendations. Documentation of the recommended risk reduction measures shall include an explanation of the onsite control, secondary containment or other state of the art equipment or procedures to be implemented with a schedule and the date of implementation. When state of the art technology is not used, an explanation of its exclusion shall be documented;
4. The team shall prepare a report of each hazard analysis performed on each existing EHS facility. The report shall:
i. Identify the EHS facility ***and all EHS equipment*** that is subject to hazard analysis, the procedure followed and the names, positions and affiliations of the persons who performed the hazard analysis;
ii. Identify the points of potential EHS release, and the potential cause, rate and quantity of EHS release;
iii. Include the findings of the state of the art technology search;
iv. Identify the EHS accident risks, present the risk reduction plan and the dates of implementation; and
v. Explain why an EHS accident risk is not addressed in the risk reduction plan; and
5. The team shall prepare a report of the hazard analysis performed on each new EHS facility, new operating alternative or modification. The report shall:
i. Identify the EHS facility ***and all EHS equipment*** that is subject to hazard analysis, the procedure followed and the names, positions and affiliations of the persons who performed the hazard analysis;
ii. Identify the points of potential EHS release, and the potential cause, rate and quantity of EHS release;
iii. Include the findings of the state of the art technology searches;
iv. Identify the EHS accident risks, present the risk reduction measures incorporated in the design; and
v. Explain why an EHS accident risk is not addressed by the risk reduction measures.
(d) The registrant shall perform a risk assessment on:
1. EHS equipment or operating alternatives identified by a hazard analysis as having a potential for EHS release in an amount within one hour which is equal to or greater than five times the *[minimum reportable]* ***registration*** quantity for the particular EHS listed in Table I of N.J.A.C. 7:31-2.3; and
2. A modification identified by a hazard analysis as having an increase in the potential for an EHS release in an amount which within one hour will be equal to or greater than five times the *[minimum reportable]* ***registration*** quantity established for that EHS listed in Table I of N.J.A.C. 7:31-2.3 or will be twice the potential release that existed before the modification, whichever is smaller.

(e) The registrant shall maintain at the site a written statement designating the site's procedures for risk assessment which will include the records and documentation used in risk assessment.

(f) The risk assessment shall include, but not be limited to:

1. An estimate of potential EHS release quantity;

2. A dispersion analysis;

3. A consequence analysis involving surrounding populations;

4. An estimate of the probability of EHS release occurrence or the assumption that the probability of the EHS release occurrence is 100 percent; ***and***

5. An evaluation of state of the art, including alternate processes, procedures or equipment which would reduce probability or consequences of an EHS release or control the discharge of an EHS within the facility. The evaluation of the alternatives shall be based on estimates of their respective EHS release quantity and probability of occurrence along with corresponding dispersion and consequence analyses that should be precise enough to arrive at a selection decision*[; and]***.***

[6. Preparation of a risk reduction plan including the recommendations for remedial actions and a schedule for their implementation in each instance.]

(g) ***Based on the findings in (f) above, the registrant shall develop a risk reduction plan utilizing state of the art risk reduction measures which will reduce the probability or consequence of the release and a schedule for its implementation in each instance.*** The registrant shall document all estimates and analysis performed as part of the risk assessment.

(h) The registrant shall prepare a report of the risk assessment for each new EHS facility or modification. The report shall:

1. Identify the facility that is the subject of the risk assessment and the name, position and affiliation of persons who performed it;

2. Present the EHS accident risks identified, the features incorporated in the constructed facility that reflect current state of the art and the lowered possible risk commensurate with the neighboring environment;

3. Evaluate each incorporated feature of the risk reduction plan; and

4. Explain why an EHS accident risk is not addressed in the risk reduction plan.

(i) The registrant shall prepare a report of the risk assessment of each existing EHS facility which shall be kept at the site.

1. The report shall:

i. Identify the EHS facility whose equipment or procedure is the subject of the risk assessment and the name, position and affiliation of the persons who performed it;

ii. Present the EHS accident risks identified, the recommended risk reduction plan that reflects consideration of state of the art and the lowered possible risk commensurate with the environment of the site, a proposed schedule of implementation, a summary of the evaluation of each recommended item of the risk reduction plan; and

iii. Explain why an EHS accident risk is not addressed in the risk reduction plan.

(j) Each report of hazard analysis and report of risk assessment shall be submitted to the responsible manager.

(k) The responsible manager shall implement the risk reduction plan.

7:31-3.10 Emergency response program

[(a) Each registrant shall have an emergency response committee consisting of representatives from management, production supervision, safety and emergency services, environmental and industrial hygiene services, plant maintenance and public relations. This committee shall develop and implement the emergency response program prepared in accordance with (b) below. The program shall include an emergency response plan prepared in accordance with (c) below:]

*[(b)]***(a)*** Each registrant shall *[have]* ***develop and implement*** a written emergency response program which shall include, at a minimum, requirements and procedures for:

1. Distribution of copies of the emergency response plan;

2. Procurement and distribution of plot plans and maps of the surrounding community;

3. Preparation and distribution of EHS material safety data sheets or fact sheets *[and process flow diagrams]*;

4. Determining the need for and arrangement of equipment capable of sensing the imminence or existence of an EHS release and of a continuously attended station where such equipment would be monitored;

5. Determining the need for and distribution of two way radio equipment;

6. Determining the need for and location of emergency lighting equipment;

7. Recording the sequence of events for each incident for which the emergency response plan is implemented and the emergency response drill involving the emergency response team by using log books or tape recorders;

8. Determining the quantity needed and distribution of:

i. Self contained breathing apparatus;

ii. Fire fighting equipment;

iii. Portable EHS gas monitors and detectors, including calibration and maintenance schedules;

iv. Emergency medical supplies; and

v. Protective clothing;

9. Emergency response training for all site employees including schedules for initial and annual refresher training in:

i. Alarm identification and response;

ii. Response to EHS release;

iii. Use of emergency response protective equipment; and

iv. Evacuation procedures;

10. Emergency response training for the site's emergency response team including a schedule for initial and annual refresher training in:

i. Alarm identification and response;

ii. Response to EHS release;

iii. Use of emergency protective equipment;

iv. Rescue procedures;

v. Evacuation procedures;

vi. Medical assistance;

vii. Action plans for dealing with specific scenarios; and

viii. Specifically assigned emergency response duties;

11. Emergency response drills including, but not limited to:

i. A schedule with a minimum of two drills per year; and

ii. The establishment of preplanned EHS release criteria for the drill;

12. A written assessment of the emergency response plan after each implementation or emergency response drill, including, but not limited to:

i. The adequacy of the emergency response plan;

ii. The implementation of the emergency response plan;

iii. The performance of the site personnel and the site emergency response team;

iv. The adequacy of treatment of exposed personnel at the site and at offsite facilities;

v. The adequacy of onsite and offsite emergency response communication systems; and

vi. The adequacy of emergency power and lighting systems;

13. The installation, *[within 180 days of the operative date of this chapter]* ***by January 17, 1989***, of a*[n onsite]* meteorological station ***owned by the registrant*** capable of providing, at a minimum, a continuous record of wind speed and direction ***for the site***;

14. The procurement, within 180 days of the operative date of this chapter, of onsite hand held or mobile EHS detection equipment where commercially available; and

15. The establishment of a program to coordinate the site's emergency response plan with the emergency response plan of the local emergency planning committee.

*[(c)]***(b)*** Each registrant shall have a written emergency response plan that includes, but is not limited to, the following:

1. A description and location of the extraordinarily hazardous substances at the site;

2. A list, updated every six months, of the emergency response equipment and supplies and their location at the site;

3. The names and titles of the site emergency coordinator and alternates selected by the registrant, who shall be responsible for

emergency response coordination with State and local agencies on a 24 hour basis;

4. An organization chart showing key site individuals making up the site's emergency response team with their titles, emergency positions and primary and backup telephone numbers;

5. An organization chart showing offsite contract or mutual aid responders to an emergency at the site identifying their emergency roles, the respective organization, telephone numbers, the expected time it will take each responder to arrive at the site after notification and the *[name and title]* ***job title*** of the site person to whom each shall report;

6. An organization chart showing governmental responders to an emergency at the site, identifying their emergency roles, the respective organization and the *[name and]* ***job*** title of the site person to whom each shall report;

7. A description of the site's emergency notification system which shall include the following requirements for reporting an emergency:

i. Designation of emergency operators, on a 24 hour basis, at the site or central control station, by *[name and]* ***job*** title to be notified in case of an EHS release or imminent EHS release at the site, and the internal procedures to be followed in making that notification;

ii. Immediate notification of the Department's emergency communications center at 609-292-7172 by the emergency operator of an EHS release or imminent EHS release at the site. The notification shall include the following information:

(1) Name and address of site where the EHS release will or has occurred;

(2) Name, position, and telephone number of caller;

(3) The time of, or anticipated time, of EHS release and the projected duration;

(4) The chemical name of the EHS released;

(5) The actual quantity or, if not known, the estimated quantity and whether it will have an off-site impact; and

(6) Weather conditions, including wind direction and speed and expected off-site effects, if any;

iii. In addition to the information required by (c)7ii above, the emergency operator shall state that the notification is:

(1) An ALERT which means an EHS release is imminent and will probably occur;

(2) A SITE EMERGENCY which means an EHS release has occurred which will probably not have an off-site impact; or

(3) A GENERAL EMERGENCY which means an EHS release has occurred which will probably have an off-site impact; and

iv. The site emergency coordinator shall place a second call to the Department within 15 minutes of the first notification and provide the Department's emergency communications center with an update which shall include the following information:

(1) Name and address of site where the EHS release will or has occurred;

(2) Name, position and telephone number of caller;

(3) Location of the point of EHS release, a description of the source, cause and type of EHS release, quantity and concentration of the EHS released, and whether the EHS release is of a continuing nature;

(4) Measures taken to terminate the EHS release or to mitigate its effect, and the effectiveness of such measures; and

(5) Update on weather conditions;

8. A description of the onsite hand held or mobile EHS monitoring equipment including the procedures for their use during an emergency;

9. A description of potential EHS accidents which would have offsite impacts, and the specific procedures to be followed by the response team to mitigate the effects of the accident;

10. Procedures for timely and appropriate notification of and coordination with the emergency coordinator for local emergency planning committee;

11. Procedures for treatment of exposed personnel including first aid at the site and medical treatment at offsite medical facilities;

12. A detailed plan of evacuation of on site personnel, including but not limited to, the following:

i. On site notification procedure capable of identifying areas to be evacuated;

ii. Map exhibits of primary and alternate routes of evacuation;

iii. Designation of primary and alternate assembly areas after evacuation; and

iv. Provisions for *[sufficient transport vehicles]* ***moving personnel to designated assembly areas***; and

13. A detailed plan for reentry and site recovery including, but not limited to, procedures and equipment for the safe cleanup and decontamination of the site and removal of waste materials.

7:31-3.11 Audit requirements for risk management programs

(a) The registrant shall conduct an annual audit of its risk management program for each site to insure that all elements of the program are being planned, scheduled, updated and executed in compliance with the Act, this chapter and the approved risk management program;

(b) The registrant shall prepare written requirements for auditing which shall include, at a minimum:

1. Audit scope and procedures including:

i. Completion of risk management program checklist established in N.J.A.C. 7:31-3.14;

ii. A list of deficiencies found in completing the check list;

iii. Recommendations for remedial actions;

iv. Submission of audit report to the responsible manager; and

v. Requirements for review and implementation of remedial actions, including schedule, by the facility; and

2. The audit team shall be employees of the registrant or an independent consultant. Only a minority of the members of the audit team may be involved in the day-to-day operation or management of the EHS facility being audited.

7:31-3.12 Summary risk management program statement

(a) The summary risk management program statement shall contain:

1. An RMP description which describes ***in brief*** each of the eight program elements of the risk management program defined in N.J.A.C. 7:31-3.3(a)*[, which demonstrates how each program element of the registrant's RMP meets the requirements of N.J.A.C. 7:31-3.4 through 3.11. The description of each program element shall include the registrant's policies, standards and procedures for that program element and the persons or positions responsible for ensuring their implementation.]* The description of any program element may reference other submittals included in the summary risk management program statement which are applicable to the particular element.

2. The reports of *[all]* ***the most recent*** safety reviews of design of new and existing EHS equipment for each EHS facility meeting the requirements of N.J.A.C. 7:31-3.4 conducted on each EHS facility during the previous two years.

3. *[Reports of all]***The report of the most recent*** hazard *[analyses]* ***analysis*** and risk assessment*[s]* meeting the requirements of N.J.A.C. 7:31-3.9 performed on each existing EHS facility within the past four years; ***and***

*[4. A copy of the site's emergency response plan prepared in accordance with N.J.A.C. 7:31-3.10(c);

5. A catalog listing the documents required by N.J.A.C. 7:31-3.3(c), (d) and (e), and their location at the site; and]*

*[6.]*****4.*** A completed risk management program checklist for the site prepared in accordance with N.J.A.C. 7:31-3.14.

7:31-3.13 Annual reports

(a) The annual report shall contain:

1. An update of the RMP description prepared in conformance with N.J.A.C. 7:31-3.12(a)1 showing by additions or deletions any revisions to the risk management program;

2. A complete update of Section D of the registration form;

3. A risk management program checklist for the site, prepared in accordance with N.J.A.C. 7:31-3.14, and completed during the previous *[12]* ***3*** months;

4. A list of all safety reviews conducted in accordance with N.J.A.C. 7:31-3.4 during the previous 12 months;

5. Reports of hazard analyses and risk assessments required by N.J.A.C. 7:31-3.9(b), conducted during the previous 12 months which have not been previously submitted to the Department;

6. A list of all hazard analyses required by N.J.A.C. 7:31-3.9(a) conducted during the previous 12 months, the report of which has not been previously submitted to the Department;

7. A copy of the changes to the site's emergency response plan implemented during the previous 12 months;

8. A copy of the end of year summary report regarding EHS accidents required by N.J.A.C. 7:31-3.8(c)4; and

9. Updated catalogs or updated pages for the catalogs prepared pursuant to N.J.A.C. 7:31-3.3(c), (d) and (e).

7:31-3.14 Risk management program checklist

(a) Each registrant shall answer the questions on the Risk Management Program Checklist, DEQ-092, as set forth in Appendix I and made a part of these rules. The Risk Management Program Checklist shall be submitted:

1. As part of the registrant's initial submittal of its risk management program as required by N.J.A.C. 7:31-3.12; and

2. As part of the registrant's annual report required by N.J.A.C. 7:31-3.13.

(b) The questions shall be answered in the affirmative or the negative, and when the answer is negative the registrant shall provide an explanation using separate pages, if necessary.

SUBCHAPTER 4. WORK PLAN REQUIREMENTS

7:31-4.1 Scope and applicability

(a) This subchapter establishes the Department's minimum requirements for an extraordinarily hazardous substance risk reduction work plan.

(b) All work plans developed by the Department in conjunction with the registrant shall meet the minimum requirements of this subchapter.

7:31-4.2 Purpose

This subchapter is promulgated for the purpose of reducing the risk of catastrophic releases of extraordinarily hazardous substances by establishing the minimum requirements for an extraordinarily hazardous substance risk reduction work plan.

7:31-4.3 Extraordinarily Hazardous Substance Risk Reduction Work Plan

(a) Each work plan shall consist of the site data required by N.J.A.C. 7:31-4.4 and the detailed scope of work necessary to perform an extraordinarily hazardous substance accident risk assessment. The EHSARA will result in a recommended risk reduction plan that will include *[the]* ***any*** deficiencies that when corrected will result in a risk management program;

(b) Each registrant's work plan shall at a minimum address each of the following:

1. Site data;

2. Scope of work with implementation schedule; and

3. Report of EHSARA including identification of findings, recommended risk reduction plan and implementation schedule.

7:31-4.4 Site data

The Registrant shall submit to the Department the EHS facility documents and lists of site documents set forth in N.J.A.C. 7:31-4.7.

7:31-4.5 Generic scope of work

(a) The scope of work in the work plan for each registrant required to have an EHSARA performed by a consultant or the Department shall include the following:

1. A general description of how the registrant uses EHSs at the site;

2. A requirement for the verification of the quantities and methods of handling all EHSs at the site against the registration submitted by the registrant;

3. A requirement for the following reviews and, where necessary, the completion or creation of the documents necessary to perform the reviews:

i. A process chemistry review to define all the possible chemical reactions involving EHSs at the site; and

ii. A review of EHS process flow diagrams, piping and instrument diagrams including those of process, utility or service units at the site that are interactive with the EHS piping and instrument diagrams, electrical one-line diagrams and site and plot plans for:

(1) Completeness as defined in N.J.A.C. 7:31-1.5 for each document referred to in (a)3ii above;

(2) Legibility;

(3) Uniformity of symbols;

(4) Drawing title; and

(5) Revision number and date;

4. A requirement for a safety review which shall meet the requirements of N.J.A.C. 7:31-3.4(b) and (d). In addition, the safety review shall include at a minimum the following:

i. Annotation or preparation of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams and electrical area classification drawings as necessary to reflect actual conditions. The annotation of the piping and instrument diagrams shall be limited to EHS equipment, run and size of piping, location and function of instruments and location, function and size of valves;

ii. Completion or creation of the standard operating procedures necessary to comply with the requirements of N.J.A.C. 7:31-3.5;

iii. A site plan review to determine at a minimum the following:

(1) Conformance of location of the EHS equipment with the criteria for design and operation relative to parameters of flammability, reactivity and toxicity;

(2) Accessibility for operations, maintenance and emergency response including corridors, roadways and walkways; and

(3) The measures and precautions designed for the purpose of protecting the EHS facility from external forces and events and for the purpose of controlling EHS releases within the site;

iv. An electrical area classification review to determine conformance with the most current edition of the National Electrical Code, ANSI/NFPA 70-1987;

v. A review of fire water and sewer system drawings to determine if these systems as built conform with current design practices;

vi. A mechanical design review comparing the specifications of installed EHS equipment and instrumentation against current state of the art and criteria for design and operation including but not limited to:

(1) Pressure and temperature ratings;

(2) Materials of construction;

(3) Corrosion allowance;

(4) Safety relief devices;

(5) Leak tightness and pressure testing; and

(6) Potential points of EHS releases due to failure of EHS equipment, such as, seal systems, packings, sight glasses, expansion joints and rotameters;

vii. A review and detailed analysis of any EHS accidents that occurred in the past six years for the purpose of identifying problem areas;

viii. A determination of the nature and age of EHS equipment and an examination of their physical integrity by visual inspection for evidence of deterioration or distortion by processes such as corrosion, erosion, vibration and fluid leaks; and

ix. An examination of the EHS facility for evidence of inadequate equipment and piping supports;

5. A requirement for a hazard analysis meeting the requirements of N.J.A.C. 7:31-3.9 on each EHS facility using the method of analysis specified in the work plan by the Department. The hazard analysis will determine, at a minimum, the circumstances that would have to occur in order for there to be an EHS release;

6. A requirement for risk assessments meeting the requirements of N.J.A.C. 7:31-3.9 on specific pieces of EHS equipment or operating procedures identified by the hazard analysis as having the potential to have an EHS release at least five times the *[reportable]* ***registration*** quantity for that particular EHS established in Table I of N.J.A.C. 7:31-2.3;

7. A requirement for a review of the registrant's preventive maintenance program by inspection of internal documents, cor-

respondence and standard forms and by interviews with the registrant's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.6;

8. A requirement for review of the registrant's operator training program by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.7;

9. A requirement for review of the registrant's EHS accident investigation procedures by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.8;

10. A requirement for review of the registrant's emergency response program by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.10;

11. A requirement for review of the registrant's audit program by comparing the registrant's internal documents, correspondence and standard forms with the risk management program checklist required by N.J.A.C. 7:31-3.11; and

12. A requirement for preparation and submittal of progress reports to the Department detailing the status of implementation of the scope of work at intervals to be established by the Department and included in the work plan.

7:31-4.6 EHSARA report

(a) The consultant or the Department shall, upon completion of the requirements of the scope of work, prepare an EHSARA report.

(b) The EHSARA report shall contain, but not be limited to, the following:

1. The findings of the verification required by N.J.A.C. 7:31-4.5(a)2;

2. The findings of the review required by N.J.A.C. 7:31-4.5(a)3;

3. The findings of the safety reviews required by N.J.A.C. 7:31-4.5(a)4 including any deficiencies that are identified by the reviews performed pursuant to N.J.A.C. 7:31-4.5(a)4iii through ix;

4. The reports of the hazard analyses and risk assessments required by N.J.A.C. 7:31-4.5(a)5 and 6;

5. The findings of the reviews required by N.J.A.C. 7:31-4.5(a)7 through 11; and

6. The recommended risk reduction plan including the listing of all of the deficiencies identified in (b)1 through 5 above, the remedial actions recommended to correct the deficiencies and the schedule for implementation.

(c) The report required by (a) above shall be submitted to the Department and the registrant at the same time.

7:31-4.7 Site documentation

(a) The following lists of site documents, if existing, shall be submitted by the registrant prior to the registrant's meeting with the Department to establish the work plan. Lists of documents shall be grouped by operating or utility unit or area at the EHS facility giving their document number, name, the EHS involved, most recent revision number and date, file location at the site, and code of sheet size according to ANSI Y14.1-1980 (A, B, C, D, or E) or Deutsche Institut Fuer Normung (DIN) 823-1965 (A4, A3, A2, A1, or A0):

1. Equipment list;
2. Instrument list;
3. Pipe line list;
4. List of process flow diagrams;
5. List of process chemistry documents;
6. List of piping and instrument diagrams;
7. List of site plans and topographic maps;
8. List of equipment specifications or fabrication drawings;
9. List of piping material specifications;
10. List of instrument specifications;
11. List of trip and interlock logic sheets;
12. List of electrical one-line diagrams;
13. List of electrical area classification drawings;
14. List of fire water system diagrams;
15. List of sewer system diagrams;
16. List of criteria for design and operation used at the facility;
17. List of hazard analysis reports;
18. List of emergency response program documents;
19. List of equipment testing schedules;
20. List of preventive maintenance procedure documents;
21. List of standard operating procedures;
22. List of descriptions of relief and control systems and secondary containments;
23. List of audit procedures documents;
24. List of equipment and instrumentation maintenance records including the data necessary for reliability studies;
25. List of operator training procedures;
26. List of EHS accident investigation procedures; and
27. List of safety procedures.

SUBCHAPTER 5. (RESERVED)

*SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:31-6.1 Authority and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq., including violations of any rule, consent agreement or administrative order issued pursuant to the Toxic Catastrophe Prevention Act. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order or a written notice from the Department withholding approval of a new EHS facility or rejecting a modification.

(b) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by N.J.S.A. 13:1K-30 or any other statute, in connection with the violation for which the assessment is levied.

7:31-6.2 Procedures for assessment of civil administrative penalties

(a) To assess a civil administrative penalty under the Toxic Catastrophe Prevention Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, consent agreement or administrative order violated;

2. Concisely state the facts which constitute the violation;

3. Specify the amount of the civil administrative penalty to be imposed; and

4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:31-6.3.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case or when a notice of civil administrative penalty assessment otherwise becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:31-6.3, the notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator; or

2. If the Department denies the hearing request, a notice of civil administrative penalty assessment becomes a final order upon the violator's receipt, by certified mail or personal service, of notice of such denial.

7:31-6.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings

(a) Within 20 calendar days from receipt of an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Toxic Catastrophe Prevention Act, the violator may request an adjudicatory hearing to contest such administrative order and/or penalty assessment by submitting a written request to the De-

partment which shall include the following information except as provided in (b) below:

1. The name, address, and telephone number of the violator, and its authorized representative, if any;

2. The Department's identification number for the EHS facility as specified in section A of the registrant's registration form (if applicable);

3. The violator's defenses to each of the findings of fact stated in short and plain terms;

4. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part of a qualification or a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

5. Information supporting the request and copies of other written documents relied upon to support the request;

6. An estimate of the time required for the hearing (in days and/or hours); and

7. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) Within 20 calendar days from receipt of an administrative order issued by the Department pursuant to N.J.A.C. 7:31-2.6(i) or N.J.A.C. 7:31-2.9(k), or of a written notice from the Department withholding approval of a new EHS facility or rejecting a modification, issued pursuant to the Toxic Catastrophe Prevention Act, the registrant may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the registrant, and its authorized representative, if any;

2. The Department's identification number for the EHS facility as specified in section A of the registrant's registration form;

3. The registrant's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to contested conditions as well as suggested revised or alternative conditions;

4. Information supporting the registrant's factual position and proposed conditions and copies of other written documents relied upon to support the request for a hearing;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for disabled persons.

(c) A hearing request not received within 20 days after receipt by the registrant or violator of the notice of a civil administrative penalty assessment and/or the administrative order and/or a written notification from the Department withholding approval of a new EHS facility or rejecting a modification being challenged, shall be denied by the Department.

(d) During the pendency of the review and hearing on an administrative order issued pursuant to N.J.A.C. 7:31-2.9, the timetable for compliance with those conditions being appealed in the order shall be suspended.

(e) If the violator fails to include all the information required by (a) or (b) above, the Department may deny the hearing request.

(f) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:31-6.4 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $10,000 for the first offense, not more than $20,000 for the second offense, and up to $50,000 for the third and each subsequent offense for each violation of the Toxic Catastrophe Prevention Act and for violations of any rule, consent agreement or administrative order issued pursuant thereto.

(b) Each violation of the Toxic Catastrophe Prevention Act or any rule, consent agreement or administrative order issued pursuant thereto, shall constitute an additional, separate and distinct offense.

(c) If the violation is of a continuing nature, each day during which it continues constitutes an additional, separate and distinct offense.

(d) The Department shall determine the amount of the civil administrative penalty for violations of the Toxic Catastrophe Prevention Act and rule, consent agreement and administrative order issued pursuant thereto on the basis of the category of offense and the frequency of the violation as follows:

TABLE II

Categories of Offense	Penalty in U.S. Dollars By Offense Category: First Offense	Second Offense	Third Offense
A. Failure to register a new or existing EHS facility as set by the total hazard units at the facility:			
1. Less than 10 hazard units	$ 2,000	$ 4,000	$25,000
2. 10 through 49 hazard units	5,000	10,000	25,000
3. 50 and more hazard units	10,000	20,000	50,000
B. Failure to pay annual fee:	25 percent of fee up to 10,000	50 percent of fee up to 20,000	75 percent of fee up to 50,000
C. Failure to submit summary risk management program statement on time:	2,000	5,000	10,000
D. Failure to execute contract with consultant within 45 days of receipt of notification:	5,000	10,000	25,000
E. Failure to initiate an EHSARA according to the schedule in the work plan:	5,000	10,000	25,000
F. EHSARA not performed according to the schedule in the work plan:	2,000	5,000	10,000
G. Failure to implement a risk reduction plan:	10,000	20,000	50,000
H. Failure to comply with the requirements of an approved RMP, each requirement:	up to 5,000	up to 10,000	up to 20,000
I. Failure to comply with conditions of a consent agreement or administrative order, each condition:	up to 5,000	up to 10,000	up to 20,000
J. Failure to provide information requested by the Department:	2,000	5,000	10,000
K. Failure to grant access to Department employees or agents for inspections:	5,000	10,000	25,000
L. Failure to provide information or grant access to Department employees or agents during an emergency condition:	10,000	20,000	50,000
M. Falsification of information submitted to the Department:	10,000	20,000	50,000
N. Failure to submit an annual report:	5,000	10,000	25,000
O. Construction of a new EHS facility without Departmental approval, when required:	10,000	20,000	50,000
P. Startup of a new EHS facility without an approved risk management program:	10,000	20,000	50,000
Q. For a site with an approved RMP, placing a new EHS facility into service or placing an existing facility in different EHS service without Departmental approval:	5,000	10,000	25,000

(e) The civil administrative penalty for each offense set forth in (d) above subsequent to the third offense shall be $50,000 per offense;

(f) If no subsequent offense occurs within a three year period of an offense, the next penalty will be assessed at the level of the last offense.*

APPENDIX I
NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
Division of Environmental Quality
CN 027, Trenton, N.J. 08625
"TOXIC CATASTROPHE PREVENTION ACT"
RISK MANAGEMENT PROGRAM CHECKLIST

*[Facility Name (Full Business Name) _____

Nature of Business _____

SIC Code _____ Plant I.D. No. _____

Facility Location _____
No. Street

_____
City County State Zip

_____
Lot No. Block No.

Facility Mailing
Address _____
No. Street

_____
City State Zip

Name of Responsible Manager _____

Title _____ Telephone No. (____)_____]*

***Legal Name of Registrant** _____

Facility Name (Full Business Name) _____

Nature of Business _____

N.J. Employer ID # _____ **APEDS #** _____

NJPDES # _____ **PWS #** _____

Facility Location _____
No. Street

_____
City County State Zip

Registrant's Mailing Address _____
No. Street

_____
City State Zip

Name of Responsible Manager _____

Title _____ **Telephone No.** (____)_____*

CERTIFICATIONS

Highest Ranking Official on Site:

I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment.

Signature _____ Date _____

Name (Print) _____ Title _____

Principal Executive Officer, General Partner or Proprietor, Ranking Elected Official:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and/or imprisonment.

Signature _____ Date _____

Name (Print) _____ Title _____

Check One: ☐ Initial Submittal

☐ Annual Submittal—Covering Period
from _____ to _____

RISK MANAGEMENT CHECKLIST

Questions shall be answered in the affirmative or the negative, and when the answer is negative the registrant shall provide an explanation. Use separate pages.

DOCUMENTATION

The following are the questions on supporting documentation (see N.J.A.C. 7:31-3.3):	Yes	No	Comments
1. Is the following updated documentation including appropriate revision dates covering process information maintained at the site and available for inspection by the Department:			
i. Process chemistry and process design criteria?	___	___	_____
ii. Facility inventory of each extraordinarily hazardous substance?	___	___	_____
iii. Reports of hazards analyses, risk assessments, safety revies and audits performed during the previous five years?	___	___	_____
iv. Accident investigation reports covering accidents at EHS facilities for the past five years?	___	___	_____
v. Process flow and piping instrumentation diagrams, with appropriate dates indicated?	___	___	_____
vi. Standard operating procedures?	___	___	_____
vii. Site wide safety procedures?	___	___	_____
viii. Site wide emergency response plan?	___	___	_____
2. Is the following updated EHS operator training documentation maintained at the site and available for inspection by the Department:			
i. Job classifications and job descriptions for EHS operators?	___	___	_____
ii. Description of the EHS operator training program and its records?	___	___	_____
iii. Annual tabulation of EHS operator training conducted?	___	___	_____
3. Is the following updated engineering and maintenance documentation maintained at the site and available for inspection by the Department:			
i. Topographic maps?	___	___	_____
ii. Site plan?	___	___	_____
iii. EHS equipment specifications including instrument and piping specifications?	___	___	_____
iv. National Electrical Code area classification diagrams for the ***[site]* *EHS facility and adjoining areas***?	___	___	_____
v. *[EHS e]**E*lectrical one-line diagrams?	___	___	_____
vi. Fire water system piping diagrams for the site?	___	___	_____
vii. Sewer system piping diagrams for the site?	___	___	_____
viii. List of criteria for design and operation used at the site?	___	___	_____
ix. Preventive maintenance program, procedures and records covering EHS equipment?	___	___	_____
x. Annual tabulations of EHS equipment inspected and tested versus scheduled?	___	___	_____

SAFETY REVIEW

The following are the questions on safety review of new EHS facilities and modifications (see N.J.A.C. 7:31-3.4):

1. Are all new EHS facilities or modifications designed, installed and operated in accordance with the state of the art and criteria for design and operation? ___ ___ ___
2. Have the state of the art and criteria for design and operation been identified for each new EHS facility and modification, and have they been compared with the following information describing the EHS equipment and operations:
   i. Process description and process chemistry? ___ ___ ___
   ii. Process flow sheet? ___ ___ ___
   iii. Piping and instrumentation diagrams? ___ ___ ___
   iv. EHS facility location maps, site plans and equipment layout? ___ ___ ___
   v. Electrical one-line diagrams? ___ ___ ___
   vi. Electrical area classification drawing? ___ ___ ___
   vii. Specifications of safety relief devices and interlocks and controls? ___ ___ ___
   viii. Specifications for materials of construction? ___ ___ ___
   ix. EHS inventories? ___ ___ ___
   x. EHS equipment specifications? ___ ___ ___
   xi. External forces and events data? ___ ___ ___
3. Has the identification and comparison required in 2 above been documented? ___ ___ ___
4. Has a report of the results of each safety review of design of each new EHS facility or modification been prepared?
   i. Has each report been distributed in accordance with N.J.A.C. 7:31-2.5, 2.10 or 2.11 as appropriate? ___ ___ ___
   ii. Does each report contain a list of the criteria for design and operation upon which the design is based? ___ ___ ___
   iii. Does each report explain where the design of the new EHS facility or modification deviates from the state of the art or listed consensus standards *[of]* ***or*** the criteria for design and operation? ___ ___ ___
   iv. Does each report explain the reasoning upon which an intended deviation from the state of the art or listed consensus standard is based? ___ ___ ___
   v. Does each report identify the new EHS facility or modification, the EHS equipment items reviewed, the drawings and documents reviewed, and the name, position and affiliation of the persons who performed the review? ___ ___ ___

The following are the questions on safety review of existing EHS equipment (see N.J.A.C. 7:31-3.4):

1. Has a safety review of each existing EHS facility been performed during the past 12 months? ___ ___ ___
2. Has each safety review included:
   i. A visual inspection of the EHS facility or review of up-to-date inspection records to determine if process flow diagrams, piping and instrument diagrams, and electrical one-line diagrams reflect actual conditions with respect to EHS equipment, runs and sizes of pipe, location and function of instruments; and location, function and size of valves? ___ ___ ___
   ii. An inspection of the facility or review of up-to-date inspection records to determine if safety relief devices and emergency systems such as deluges, interlocks, controls, back-up systems and alarms are functioning as designed? ___ ___ ___
   iii. A review to determine if actual operating conditions of flow, temperature and pressure, process chemistry and raw material feeds and specifications are within the limits of the current design criteria of individual equipment items? ___ ___ ___
   iv. Inspections and interviews of EHS facility personnel to determine if standard operating procedures reflect actual conditions? ___ ___ ___
3. Have the deviations of procedure or EHS equipment found by each safety review been documented? ___ ___ ___
4. Have deviations found as a result of the visual inspections or reviews specified in 2i, iii and iv above been immediately discontinued? ___ ___ ___
5. Have the safety systems found to be inoperable during the inspection specified in 2ii above been immediately returned to operational status? ___ ___ ___
6. Has a report of the results of each safety review of an existing EHS facility been prepared? ___ ___ ___
   i. Does each report identify the existing EHS facility, the equipment items and procedures reviewed, the drawings and documents, and the name, position and affiliation of the persons who performed the review? ___ ___ ___
   ii. Has each report been distributed to the responsible manager? ___ ___ ___
   iii. Does each report identify the deviations found and corresponding actions taken as the result of a safety review? ___ ___ ___

STANDARD OPERATING PROCEDURES

The following are the questions on Standard Operating Procedures (see N.J.A.C. 7:31-3.5):

1. Are the standard operating procedures written in plain English? ___ ___ ___
2. Are there versions of each of the standard operating procedures written in the language of fluency of EHS operators not fluent in English? ___ ___ ___
3. Is each standard operating procedure readily available to EHS operators? ___ ___ ___
4. Does each standard operating procedure include:
   i. Simplified process flow sheets and a process description defining the operation and showing flows, temperatures and pressures? ___ ___ ___
   ii. Procedures and conditions for normal operations? ___ ___ ___

iii. A description of abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions? ___ ___ ___

iv. A description of emergency conditions which could occur including the control and mitigating procedures to be followed to reduce the impact of the emergency conditions? ___ ___ ___

v. Pre-start procedures covering testing for leak tightness prior to charging the EHS? ___ ___ ___

vi. Startup procedures including conditions to be maintained during startup? ___ ___ ___

vii. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of EHS equipment to be maintained after shutdown? ___ ___ ___

viii. A description of the type, location and purpose of safety relief devices, interlocks and alarms with their respective activation points indicated? ___ ___ ___

ix. Sampling procedures addressing apparatus and specific steps involved in the taking of samples? ___ ___ ___

x. Safety procedures related to each specific operation in the standard operating procedure? ___ ___ ___

xi. Procedures to prepare EHS equipment for maintenance? ___ ___ ___

xii. Material safety data sheets for each EHS used in the operation? ___ ___ ___

xiii. Logsheets and checklists where appropriate to the operation? ___ ___ ___

xiv. A statement as to the number of EHS operators required to meet safety need for each operation with requirements for shift coverage? ___ ___ ___

xv. A requirement that an EHS operator be in attendance at the *[facility]* ***EHS site*** and be able to acknowledge alarms and take corrective action at all times during specified activities of EHS handling, use, manufacture, storage or generation? ___ ___ ___

5. Have modifications to the standard operating procedures been made in accordance with N.J.A.C. 7:31-2.11? ___ ___ ___

6. Have modifications been incorporated in the standard operating procedure before being implemented? ___ ___ ___

7. Has a current index of the standard operating procedures with corresponding latest dates of issue been maintained and filed in accordance with N.J.A.C. 7:31-3.3? ___ ___ ___

PREVENTIVE MAINTENANCE

The following are the questions for the preventive maintenance program (see N.J.A.C. 7:31-3.6):

1. Have the preventive maintenance program documents been written, filed at the site, and are they available for inspection by the Department? ___ ___ ___

2. Has all EHS equipment needed to be included in the preventive maintenance program been identified? ___ ___ ___

3. Have all modifications been approved and authorized by the responsible manager? ___ ___ ___

4. Have the internal and external inspection of EHS equipment prescribed by the preventive maintenance program been performed as scheduled? ___ ___ ___

i. Are the frequencies of inspection sufficient to prevent the failure of the equipment? ___ ___ ___

5. Have the inspections or tests prescribed by the preventive maintenance program for pressure safety devices in EHS service been performed as scheduled? ___ ___ ___

6. Has the safety instrumentation in EHS service been checked for proper operation, as prescribed by the preventive maintenance program? ___ ___ ___

7. Have the procedures for commissioning new or modified EHS equipment and decommissioning existing EHS equipment prescribed by the preventive maintenance program been followed? ___ ___ ___

8. Have emergency power supply systems been tested in accordance with the schedule prescribed by the criteria for design and operation? ___ ___ ___

9. Has the training of the employees assigned to perform maintenance work on EHS equipment been performed in accordance with the requirements of the preventive maintenance program? ___ ___ ___

10. Have the procedures to insure that work performed by outside contractors is done in accordance with the requirements of the preventive maintenance program been followed? ___ ___ ___

11. Have the permits and checklists for all EHS equipment entries, lockouts, and welding and burning operations required by the preventive maintenance program been used? ___ ___ ___

12. Have all inspections reports, and preventive maintenance testing and training information been filed in a centralized location as required by the preventive maintenance program? ___ ___ ___

13. Has the record keeping system prescribed by the preventive maintenance program been followed? ___ ___ ___

OPERATOR TRAINING

The following are the questions for the EHS operator training program (see N.J.A.C. 7:31-3.7):

1. Has the training program for EHS operators been written? ___ ___ ___

2. Has a job description been written for each EHS operator position which includes the duties and responsibilities, the education, experience and training necessary to qualify for that position? ___ ___ ___

3. Have the evaluation procedures prescribed by the EHS operator training program to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position been used? ___ ___ ___

4. Have the time periods prescribed by the EHS operator training program for in house training for each position been followed?
   i. Has the plan established for tracking the training progress of each EHS operator at regular intervals prescribed by the EHS operator training program been followed? ___ ___ _____
5. Has the training EHS operators received during the previous 12 months included:
   i. For new employees, general orientation and initial training as prescribed by the EHS operator training program? ___ ___ _____
   ii. For newly assigned EHS operators, the training on specific extraordinarily hazardous substance activities prescribed by the EHS operator training program? ___ ___ _____
   iii. For newly assigned EHS operators, the on-the-job training at a specific EHS facility as prescribed by the EHS operator training program? ___ ___ _____
   iv. The refresher training prescribed by the EHS operator training program? ___ ___ _____
6. Have the evaluations of EHS operators included oral and written tests? ___ ___ _____
7. Have EHS operators qualified within the maximum periods established for training in each EHS position? ___ ___ _____
8. Do all personnel responsible for training and evaluating EHS operators meet the qualifications prescribed for instructors and evaluators by the EHS operator training program? ___ ___ _____
9. Have all training, evaluations and qualifying activities been documented as prescribed by the EHS operator training program? ___ ___ _____

ACCIDENT INVESTIGATION

The following are the questions for the EHS accident investigation program (see N.J.A.C. 7:31-3.8):

1. Have the written procedures for investigating all EHS accidents prescribed by the accident investigation program been followed for each accident? ___ ___ _____
2. Were the EHS investigations completed within the time frame prescribed by the EHS accident investigation program? ___ ___ _____
3. Is there a written accident investigation report of each EHS accident that occurred during the past 12 months? ___ ___ _____
4. Did management review each EHS accident report completed during the past 12 months? ___ ___ _____
5. Did management implement the recommendations in each EHS accident investigation report? ___ ___ _____
6. Is there a requirement to include the review of EHS accident reports in operator refresher training and maintenance training? ___ ___ _____
7. Does each EHS accident report include:
   i. The date, time and location of the EHS accident? ___ ___ _____
   ii. The identity, amount and duration of the release or potential EHS release? ___ ___ _____
   iii. The EHS equipment, materials, procedures and personnel involved? ___ ___ _____
   iv. A detailed chronological description of the accident including all the facts related to the EHS accident? ___ ___ _____
   v. The consequences of the EHS accident including the number of people injured or killed and the impact on the community? ___ ___ _____
   vi. The identity of the basic and contributory causes of the EHS accident? ___ ___ _____
   vii. The determination of whether the EHS accident was caused by human error *[or]* *,* equipment failure **or procedural inadequacy***? ___ ___ _____
   viii. Recommend actions addressing human error *[and]* *,* equipment failure **and procedural inadequacy*** to be implemented to prevent a recurrence? ___ ___ _____
   ix. Schedule for implementation of recommended actions? ___ ___ _____
   x. Signatures and position titles of investigators? ___ ___ _____
8. Do the EHS accident investigation files include:
   i. A separate file of EHS accident reports for the Toxic Catastrophe Prevention Act program? ___ ___ _____
   ii. A monthly list on which the implementation status of all active recommendations for corrective action is updated? ___ ___ _____
   iii. An updated list of employees involved in EHS accidents? ___ ___ _____
   iv. End of year summary reports consisting, at a minimum*,* of the following:
      (1) A list and brief description of each EHS accident? ___ ___ _____
      (2) An identification of the cause of each EHS accident as human error *[or]* *,* equipment failure **or procedural inadequacy*** or both? ___ ___ _____
      (3) A consolidated schedule of implementation and completion status covering all EHS accidents? ___ ___ _____

RISK ASSESSMENT

The following are the questions for the risk assessment program for specific pieces of EHS equipment or operating alternative (see N.J.A.C. 7:31-3.9):

1. Was a hazard analysis conducted on each new EHS facility, operating alternative or modification required by N.J.A.C. 7:31-2.10 and 2.11? ___ ___ _____
2. Was each EHS facility subjected to a hazard analysis during the last *[three]* ***four*** years? ___ ___ _____
3. Was the procedure used for hazard analysis:
   i. A "What If" checklist? ___ ___ _____
   ii. A HAZOP? ___ ___ _____

iii. A*[n]* FMEA?, or ____ ____ ____
iv. A*[n]* FTA? ____ ____ ____

4. Was the qualified team which conducted the hazard analysis composed of personnel of:
The registrant's staff? ____ ____ ____
A consulting firm?*, or* ____ ____ ____
The registrant's staff and a consulting firm? ____ ____ ____

5. Did each hazard analysis team:
i. Review EHS equipment failure data and EHS accident reports of the existing facility? ____ ____ ____
ii. Identify ***EHS equipment*** the point of possible ***potential*** EHS releases, the corresponding approximate quantity or rate of EHS releases and the corresponding cause *[of EHS releases]*? ____ ____ ____
iii. Determine the instances of possible EHS releases on which further study of risk assessment must be performed using the criteria set forth in N.J.A.C. 7:31-3.9(d)? ____ ____ ____
iv. Conduct a state of the art technology search for the instances not requiring a risk assessment? ____ ____ ____

6. Did each hazard analysis team:
i. Document its findings of *[possible]* EHS ***equipment potential*** releases, estimates of quantity or rate of EHS releases, findings of the state of the art technology search and risk reduction recommendations? ____ ____ ____
ii. Provide an explanation for the exclusion of state of the art technology from its risk reduction recommendations? ____ ____ ____

7. Did each hazard analysis team prepare a report of hazard analysis of each *existing* EHS facility? ____ ____ ____
i. Identifying the EHS facility ***and EHS equipment*** that is subject to hazard analysis? ____ ____ ____
ii. Identify the procedure followed in hazard analysis? ____ ____ ____
iii. Listing the names, positions and affiliation of the persons who performed the hazard analysis? ____ ____ ____
iv. Presenting the findings of *[possible]* ***EHS equipment, potential*** points of *[EHS]* release, and the corresponding causes and quantities or rates of *[possible]* ***potential*** EHS release? ____ ____ ____
v. Presenting the findings of the state of the art technology search? ____ ____ ____
vi. Presenting the risk reduction plan and the dates of implementation, scheduled and actual? ____ ____ ____

8. Did each hazard analysis team prepare a report of hazard analysis of *new* EHS facilities or modifications? ____ ____ ____
i. Identifying the EHS facility ***and EHS equipment*** that is subject to hazard analysis? ____ ____ ____
ii. Identifying the procedure followed in hazard analysis? ____ ____ ____
iii. Listing the names, positions and affiliation of the persons who performed the hazard analysis? ____ ____ ____
iv. Presenting the findings of *[possible]* ***EHS equipment, potential*** points of *[EHS]* release, and the corresponding causes and quantities or rates of *[possible]* ***potential*** EHS release? ____ ____ ____
v. Presenting the findings of the state of the art technology search? ____ ____ ____
vi. Presenting the risk reduction measures incorporated into the design? ____ ____ ____

9. Have risk assessments on the new EHS equipment, operating alternatives or modifications *[identified by a hazard analysis as having a potential for an EHS release in an amount within one hour which is equal to or greater than five times the minimum reportable quantity for that EHS listed in Table I of N.J.A.C. 7:31-2.3]* been performed ***in accordance with the requirements of N.J.A.C. 7:31-3.9(d)****? ____ ____ ____

10. Is a written statement defining the procedures for risk assessment including the records and documentation used in risk assessment maintained at the site? ____ ____ ____

11. Did each risk assessment include:
i. An estimate of potential EHS release quantity? ____ ____ ____
ii. A dispersion analysis? ____ ____ ____
iii. A consequence analysis involving surrounding populations? ____ ____ ____
iv. An estimate of the probability of the occurrence of an EHS release? ____ ____ ____
v. An evaluation of state of the art, including alternate processes, procedures or equipment which would reduce the risk of the probability or consequence of an EHS release? ____ ____ ____
(1) Are the evaluations of the alternates based on estimates of their respective EHS release quantity and probability of occurrence along with corresponding dispersion and consequence analysis precise enough to arrive at a selection decision? ____ ____ ____
vi. Preparation of a risk reduction plan including the recommendations for remedial actions and a schedule for their implementation in each instance? ____ ____ ____

12. Have all estimates and analyses performed as part of the risk assessment been documented? ____ ____ ____

13. Did the persons performing the risk assessment on the *new* EHS facilities or modifications prepare a report of the risk assessment? ____ ____ ____
i. Identifying the EHS facility that is the subject of the risk assessment? ____ ____ ____
ii. Listing the names, positions and affiliations of persons who performed it? ____ ____ ____
iii. Presenting the risks identified? ____ ____ ____

iv. Identifying the features incorporated in the constructed EHS facility that reflect current state of the art and the lowered possible risk commensurate with the environment of the site? ___ ___ _____
v. Evaluating each incorporated feature of the risk reduction plan? ___ ___ _____

14. Did the persons performing the risk assessment of each *existing* EHS facility meeting the criteria of N.J.A.C. 7:31-3.9 prepare a report of the risk assessment:
i. Identifying the EHS facility that is the subject of the risk assessment? ___ ___ _____
ii. Listing the names, positions and affiliations of the persons who performed it? ___ ___ _____
iii. Presenting the risks identified? ___ ___ _____
iv. Recommending a risk reduction plan that reflects consideration of state of the art incuding a proposed schedule of implementation? ___ ___ _____
v. Presenting a summary of the evaluation of each recommended item of the risk reduction plan? ___ ___ _____

EMERGENCY RESPONSE

The following are the questions for emergency response planning (see N.J.A.C. 7:31-3.10):

1. Has the approved written emergency response program been updated to reflect changes approved by the responsible manager during the past 12 months? ___ ___ _____

*[2. Has the membership of the emergency response program committee been maintained at the level required by the emergency response program? ___ ___ _____

3. Has the emergency response program committee maintained and updated the emergency response plan? ___ ___ _____]*

*[4.]**2.* Have the copies of the distributed emergency response plan been maintained in an up-to-date condition? ___ ___ _____

*[5.]**3.* Have up-to-date plot plans and maps of the surrounding community been distributed as prescribed in the site's emergency response program? ___ ___ _____

*[6.]**4.* Have up-to-date EHS material safety data sheets *[and process flow diagrams]* been distributed as prescribed in the site's emergency response program? ___ ___ _____

*[7.]**5.* Has equipment capable of sensing the imminence or existence of an EHS release been maintained in working order? ___ ___ _____

*[8.]**6.* Has the two-way radio equipment been maintained in working order? ___ ___ _____

*[9.]**7.* Has the emergency lighting equipment been maintained in working order? ___ ___ _____

*[10.]**8.* Have the procedures for recording sequence of events during emergency conditions been utilized during the past 12 months? ___ ___ _____

*[11.]**9.* Has the self-contained breathing apparatus been maintained in working order and distributed in accordance with the emergency response program? ___ ___ _____

*[12.]**10.* Has the fire fighting equipment been maintained in working condition? ___ ___ _____

*[13.]**11.* Have the *portable* EHS gas monitors and detectors been maintained in working conditions and calibrated in accordance with the approved schedule in the emergency response program? ___ ___ _____

*[14.]**12.* Have the emergency medical supplies been inspected, maintained and, where necessary, replenished? ___ ___ _____

*[15.]**13.* Has the protective clothing been inspected, maintained and, where appropriate, replaced? ___ ___ _____

*[16.]**14.* Has the scheduled initial and refresher emergency response training for all site employees been performed? ___ ___ _____
i. Did the emergency response training include:
(1) Alarm identification and response? ___ ___ _____
(2) Response to EHS release? ___ ___ _____
(3) Use of emergency response protective equipment? ___ ___ _____
(4) Evacuation procedures? ___ ___ _____

*[17.]**15.* Has the scheduled initial and refresher emergency response training for the site's emergency response team been performed? ___ ___ _____
i. Did emergency response training include:
(1) Alarm identification and response? ___ ___ _____
(2) Response to EHS release? ___ ___ _____
(3) Use of emergency protective equipment? ___ ___ _____
(4) Rescue procedures? ___ ___ _____
(5) Evacuation procedures? ___ ___ _____
(6) Medical assistance? ___ ___ _____
(7) Training in specific assigned emergency response duties? ___ ___ _____

*[18.]**16.* Have the two scheduled emergency response drills been performed? ___ ___ _____

*[19.]**17.* Has there been a written assessment of the emergency response *[program]* ***plan*** including, but not limited to:
i. The adequacy of the emergency response plan? ___ ___ _____
ii. The implementation of the emergency response plan during the two drills and any emergencies that occurred during the past 12 months? ___ ___ _____

iii. The performance of the site personnel and the site emergency response team during the two drills and any emergencies that occurred during the past 12 months? ___ ___ _____

iv. The adequacy of first aid and medical treatment procedures during the two drills and any emergency that occurred during the past 12 months? ___ ___ _____

v. The adequacy of the on-and-off site emergency response communications system? ___ ___ _____

vi. The adequacy of emergency power and lighting systems? ___ ___ _____

*[20.]**18.* Has the onsite meteorological station been properly maintained in working condition? ___ ___ _____

*[21.]**19.* Has the site's emergency response plan been coordinated with the emergency response plan of the local emergency planning committee during the past 12 months? ___ ___ _____

*[22.]**20.* Has a written emergency response plan been prepared in accordance with N.J.A.C. 7:31-3.10(b) and is it maintained at the site? ___ ___ _____

*[23.]**21.* Has the list of the emergency response equipment and supplies and their location at the site been updated in the last six months? ___ ___ _____

*[24.]**22.* Are the names and titles of the site emergency coordinator and alternates current? ___ ___ _____

*[25.]**23.* Is the designation of emergency operators required by N.J.A.C. 7:31-3.10(b)*[6i]* **7i* current? ___ ___ _____

*[26.]**24.* Has the Department's emergency control center been notified immediately for each EHS release or imminent EHS release at the site as prescribed by the plan? ___ ___ _____

*[27.]**25.* Has the site's emergency coordinator placed a second call to the Department within 15 minutes of each EHS release or imminent EHS release at the site as prescribed by the emergency response plan? ___ ___ _____

HEALTH

(a)

Community Health Services
Youth Camp Safety Act Standards
Readoption with Amendment: N.J.A.C. 8:25

Proposed: March 7, 1988 as 20 N.J.R. 463(a).
Adopted: April 29, 1988 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health.
Filed: May 19, 1988 as R.1988 d.269, **without change.**
Authority: N.J.S.A. 26:12-1 et seq. specifically N.J.S.A. 26:12-5.

Effective Date: May 19, 1988 (Readoption), June 20, 1988 (Amendment).
Expiration Date: May 19, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:25.

Full text of the adopted amendment to the readoption follows.

8:25-3.2 Physical examinations
(a) (No change.)
(b) Required health history records shall be on file in the camp for review by the staff of the Department.

HOSPITAL REIMBURSEMENT

(b)

Procedural and Methodological Regulations Graduate Medical Residents; Implementation Schedule; Cost Appeal Option
Adopted Amendments: N.J.A.C. 8:31B-3.22, 3.31 and 3.51

Proposed: March 21, 1988 at 19 N.J.R. 594(a).
Adopted: May 20, 1988 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: May 25, 1988 as R.1988 d.277, **with substantive changes** not requiring additional public notice. (See N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: June 20, 1988.
Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:
COMMENT (St. Joseph's Hospital and Medical Center): The requirement that graduates of foreign medical schools who seek post-graduate training in New Jersey must pass the Foreign Medical School Graduate Examination in the Medical Sciences (FMGEMS) in three attempts is not related to any educational criteria.

RESPONSE: The requirement that FMGEMS be passed in three attempts for PGY-1 residents was adopted October 6, 1987 and therefore, for first year residents, is not an issue in the rule changes now being proposed. Following the recommendations of AGMEC (Advisory Graduate Medical Education Council) that all residents graduating from foreign medical schools be required to pass FMGEMS in three attempts, the Department sought and received H.C.A.B. approval to incorporate this condition into the rules. The current proposal establishes a phase-in schedule to ensure uniform compliance by 1992.

COMMENT (St. Joseph's Hospital and Medical Center): The transition period for compliance with the GME certification requirements is insufficient because First and Second Year Residents have already been accepted into residency programs. Program disruptions could occur if they were forced to leave because of inadequate compliance.

RESPONSE: When the rule requiring passage of FMGEMS in three attempts was approved by the Health Care Advisory Board on September 11, 1987, implementation of this portion was delayed until July 1, 1988. Applicants for the July 1, 1988 Resident Class had ample time to meet these reimbursement criteria, if they did not at the time of its adoption. First Year Residents at the time of the September adoption were likewise put on notice that by July 1, 1988, they would need to meet the criteria. The Department recognizes that there may be some July 1, 1988 first year residents who cannot meet the requirement that FMGEMS be passed within three attempts, therefore, for this class only, the requirement has been modified to require passage of FMGEMS before January 1, 1989. The three attempts requirement will be waived for this group. Changes have been made at N.J.A.C. 8:31B-3.22(b)6.iii to allow this group of First Year Residents in New Jersey additional opportunities to pass the FMGEMS.

COMMENT (St. Joseph's Hospital and Medical Center, Our Lady of Lourdes Medical Center, St. Francis Medical Center): Clarification is needed regarding the subtraction of approved costs associated with residency positions unfilled as a result of a hospital's inability to recruit qualified residents.

RESPONSE: Regulatory language at N.J.A.C. 8:31B-3.51(b)2.i(4), regarding this subject, was adopted on October 5, 1987 and is not an issue in the current proposal.

COMMENT (Health Care Financing Administration (HCFA), of the Department of Health and Human Services (DHHS)): Because the proposed changes do not affect Medicare's inpatient hospital payment rates, no comments are offered.

RESPONSE: The Department concurs.

COMMENT (Elizabeth General Medical Center): Allowing transfer of Commission-approved resident positions, but precluding movement to a higher teaching status peer group is inequitable.

RESPONSE: The comment addresses text contained in a proposal to amend N.J.A.C. 8:31B-3.31, which was adopted July 7, 1986. The comment does not address the current proposed and adopted change to N.J.A.C. 8:31B-3.31(c), which deletes the conditional accept or not accept requirement for appeal and adds the opportunity to appeal under any option to increase the number of resident positions.

COMMENT (Morristown Memorial Hospital, New Jersey Hospital Association (NJHA)): Clarification of two statements is requested. The last sentence of 8:31B-3.31(c) states that, " 'The approved costs associated with a transferred resident position may not increase solely as a result of the transfer.' It would appear that this refers to the fact that hospitals may not move to a higher teaching status as a result of adding residents, which is understood. However, the last paragraph of 8:31B-3.51(b)1. adds that, 'A hospital whose increased costs are solely the result of increases in the number of graduate medical residents will be allowed to appeal for those costs under the accept option.' A clarification is needed."

RESPONSE: The Department accepts this comment and has revised section 8:31B-3.51 to refer to section 8:31B-3.31 to define appeal rights regarding residency positions under the Accept Option. The intent of the rule is both to limit movement to a higher teaching peer group and to limit the approved costs associated with a residency to those approved for the hospital dropping the residency position. For example, a residency slot approved for $30,000 at one institution cannot be transferred to a second institution and receive approval for more than the $30,000. The Department points out that the rule disallowing higher costs simply through transfer was passed at an earlier date.

COMMENT (St. Francis Medical Center): Clarification of test titles in the proposed rule is needed.

RESPONSE: The rule states that Second through Sixth Year Residents must meet the same certification requirements as First Year Residents during the 1988-1992 phase-in period. Thus residents who began training (PGY 1) in New Jersey hospitals in July 1987 may submit either FMGEMS (Foreign Medical Graduate Examination in the Medical Services) or ECFMG (Educational Commission for Foreign Medical Graduates) credentials as appropriate certification. Residents entering PGY 1 in July of 1988 or later are allowed only FMGEMS for certification.

COMMENT (New Jersey Hospital Association, Morristown Memorial Hospital): Support is expressed for the proposed amendment to allow hospitals to add residents through transfer, not in excess of the statewide limit, and to appeal for these additional costs under the accept option.

RESPONSE: The Department agrees with this comment.

COMMENT (Morristown Memorial Hospital): Support is expressed for Hospital Reimbursement movement toward The Board of Medical Examiner's plan to require educational certification for residents.

RESPONSE: The Department agrees with this comment.

COMMENT (New Jersey Hospital Association): Support is expressed for dropping the language which allows the Hospital Rate Setting Commission to deduct costs associated with residents in excess of the approved number.

RESPONSE: The Department agrees with this comment.

COMMENT (Our Lady of Lourdes Medical Center): The Medical Center believes that there has not been a formal communication to the Medical Center, by the Rate-Setting Commission, of the number of approved residency slots at its hospital, nor is there any mechanism of appeal provided for addressing discrepancies or inaccurate counting of affiliated residency slots.

RESPONSE: None of the proposed changes addresses the manner of counting residency slots approved for reimbursement. The hospital's approved number of residency slots consists of the number in the 1982 Base Year plus any approved by the Hospital Rate Setting Commission through appeals through the 1986 rate year. If the hospital believes that an incorrect number of slots is allotted, then the hospital's rate setting analyst should be contacted. The usual process to correct data base errors is open to the hospital (see N.J.A.C. 8:31B-3.16, 3.51 and 3.52).

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

8:31B-3.22 Standard costs per case

(a) (No change.)

(b) Classification of Teaching (Major, Minor) and Non-Teaching Hospitals.

1.-5. (No change.)

6. All residents initially employed as first year residents (PGY1) by hospitals on July 1, 1987 or later must meet either criteria (b)6i and ii, or criteria (b)6 i and iii listed below, in order to be included among those residents used to determine teaching categories described in (b)1 and 2 above. To be similarly included, second-year residents (PGY2) must meet these same minimum requirements by July 1, 1988; third-year residents (PGY3), by July 1, 1989; fourth-year residents (PGY4), by July 1, 1990; fifth year residents (PGY5), by July 1, 1991; and all residents by July 1, 1992.

i.-ii. (No change.)

iii. Graduation from a foreign medical school and passage of the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) within three attempts. For residents beginning PGY 1 ***in the State of New Jersey*** in July 1987 only, an Educational Commission for Foreign Medical Graduates (ECFMG) certificate may be substituted for FMGEMS*[.]****, and passage of FMGEMS, mandatory before January 1, 1989, will not be limited to three attempts.***

7. (No change.)

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

8:31B-3.31 Commission adjustments and approvals

(a) (No change.)

(b) The Commission shall approve adjustments to hospitals' Schedules of Rates for 1988 and subsequent years as necessary to subtract approved costs associated with residents not meeting the minimum requirements as defined in N.J.A.C. 8:31B-3.22(b)6; for any costs associated with residents in programs which have lost accreditation as defined in N.J.A.C. 8:31B-3.22(b)7; and for any costs associated with previously approved but now vacant residency positions which are unfilled as a result of a hospital's inability to recruit residents meeting these minimum standards. These costs shall include, but not be limited to, resident salaries and fringes, faculty salaries, malpractice and supplies.

(c) The Commission may approve hospital appeals to transfer Commission approved resident positions and associated costs between hospitals. A hospital may appeal under any option to reduce or increase the number of resident positions by transfer. An addition of resident positions by transfer may not result in a change to a higher teaching status peer group. A reduction of resident positions by transfer may result in a change to a lower teaching status peer group. The approved costs associated with a transferred resident position may not increase solely as a result of the transfer.

(d) (No change.)

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1. Accept the Certified Revenue Base: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount will be fixed and included as an indirect cost in the mark-up factor. A hospital with an overall direct patient care disincentive

will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital's being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. Subject to approval, acceptance provides the right of the hospital to appeals set forth under N.J.A.C. 8:31B-3.55 through 3.58 ***and 8:31B-3.31(c)***, and, in 1988 only, 8:31B-3.24. *[A hospital whose increased costs are solely the result of increases in the number of graduate medical residents will be allowed to appeal for those costs under this accept option, if the increase results from a transfer of residents from one institution to another, and does not increase the total number of residents or the total costs approved for reimbursement under the Chapter 83 Reimbursement System.]*

2.-3. (No change.)

4. Notwithstanding the above, effective for the 1986 Proposed Schedule of Rates, hospitals may only appeal under the not accept option for statewide increases in costs associated with numbers of graduate medical residents in excess of the total number of FTE residents approved by the Commission for reimbursement for the period beginning July 1, 1985.

(a)

Financial Elements and Reporting
Adopted Amendment: N.J.A.C. 8:31B-4.38

Proposed: November 16, 1987 at 19 N.J.R. 2092(c).

Adopted: May 20, 1988 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: May 25, 1988 as R.1988 d.276, **with technical changes** not requiring additional public notice. (See N.J.A.C. 1:30-4.3.)

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: June 20, 1988.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT (Jersey City Medical Center, Morristown Memorial Hospital, St. Joseph's Hospital and Medical Center and Shore Memorial Hospital): These hospitals support the proposed rule because it will assure continued access to outpatient dialysis services to all patients regardless of their ability to pay.

RESPONSE: No response is necessary.

COMMENT (New Jersey Hospital Association (NJHA) and Community Memorial Hospital): The commenters agree with the concept of reimbursement for uncompensated care for outpatient dialysis services, but propose amendments which would reimburse hospitals on a different basis other than the Medicare composite rate. Medicare regulations specify that Medicare outpatient dialysis bad debts will only be reimbursed up to their "reasonable costs". Therefore, hospitals that are efficient providers of outpatient dialysis services, which is defined as those with costs per treatment lower than the composite rate, may not be able to collect Medicare bad debts even though they followed proper collection procedures. N.J.H.A.'s proposed amendment is to reimburse uncompensated care at charges which would permit hospitals in these circumstances to collect the Medicare bad debts, as well as all other bonafide uncompensated care, through the establishment of charges for these services. Community Memorial favors amending the rule to allow for coverage of Medicare co-insurance bad debts where Medicare will not reimburse for them due to the Medicare "reasonable cost" rule.

RESPONSE: The intention of the Department's proposal was to reimburse hospitals for bonafide uncompensated care for outpatient dialysis services, not to rectify any perceived inequities in the Medicare program. The notion of requiring the other payers to subsidize Medicare payments is difficult to support when it would enable these hospitals to receive an amount greater than reasonable cost: this may be viewed by the non-federal payers as contributing to excess revenues. Therefore, the Department has adopted the rule as proposed to reimburse uncompensated care at Medicare payment rates.

COMMENT (Our Lady of Lourdes Medical Center): The commenter takes exception to the limitation of the rate to "the lower of the hospital charges or the prospectively determined composite rate as established by Medicare". Instead, the commenter suggests that the approved Chapter 83 rates be used for reimbursement of uncompensated care in order to assure that the hospital will receive a reasonable cost for these services through its preliminary cost base.

RESPONSE: The deregulation of outpatient dialysis services, effective September 1, 1987, precluded the use of Chapter 83 rates in future rate years. The current proposal was not intended to assure that hospitals would be paid for uncompensated care at the former approved rates, but to assure access to these services by reimbursing hospitals for this unpaid care. The Department considers the Medicare composite rate to be adequate reimbursement, since HCFA indicated that there were incentives built into this rate structure. Further, HCFA noted in the Federal Register in May of 1986 that the number of facilities providing outpatient dialysis services has continued to increase which supports the contention that facilities are able to operate under the composite rate system.

COMMENT (Jersey City Medical Center): The proposed rules do not indicate how indirect costs will be calculated for these services, and do not specify which year's data will be used. The commenter notes that trust fund payments are currently based on 1985 costs, and suggests that 1985 cost report data be used for the calculation of indirect cost.

RESPONSE: This comment actually seems to be addressing the previously approved amendment which excluded outpatient dialysis services from Chapter 83 reimbursement. In the context of the current proposal, this comment does not apply.

COMMENT (Blue Cross and Blue Shield of New Jersey, Health Insurance Association of America and New Jersey State Department of Human Services (Medicaid Program): The commenters believe that since outpatient dialysis services became an excluded health care service under Chapter 83 effective September 1, 1987, coverage of uncompensated care for outpatient dialysis would be inconsistent with regulations governing all other services excluded from Chapter 83. Specifically, the commenters believe that the outpatient dialysis should not be included in the monies for the Uncompensated Care Trust Fund.

RESPONSE: Since outpatient dialysis services are essential for the treatment of end-stage renal disease patients, the Department feels that these services are unique and that patients' access to care, regardless of ability to pay, should be assured. It has been noted previously that Medicare is the predominant payer of these services, and Medicare does not reimburse charity care or non-Medicare bad debts. Since Medicaid follows Medicare's principles of reimbursement for outpatient dialysis services, recoupment of uncompensated care would be achieived through the rates charged to the other payers. Depending upon the amount of uncompensated care to be covered in the rates by the non-federal payers, the charge needed to cover unpaid care may be prohibitively high or may be otherwise fully or partially uncollectable from these payers. A more rational mechanism to collect for uncompensated care is through the Trust Fund. The uncompensated care in the Trust Fund is collected from the hospitals as a level statewide percentage which is included in the rates charged to hospital inpatients and outpatients.

COMMENT (Blue Cross and Blue Shield of New Jersey, Inc., Health Insurance Association of America and New Jersey State Department of Human Services (Medicaid Program): The commenters believe that the hospitals should share the burden of financing uncompensated care for outpatient dialysis services. They suggest that many hospitals enjoy "significant excess revenues" generated from provision of these services, and that these excess revenues should be offset against bona fide uncompensated care for these services.

RESPONSE: None of the commenters submitted documentation which supports this position. The Department has analyzed 1984 audited Medicare cost report data and found that, in the aggregate, costs for these services exceed payments by over $1 million in 1984. This is particularly significant considering that Medicare is the predominant payer of these services, covering up to 90 percent of the patients with chronic renal disease. It should also be noted that the Medicaid program currently also reimburses based on Medicare principles.

Since the cost of providing these services exceeds payments for all federal payers who reimburse for the majority of hospital patients, it appears unlikely that there would be excess revenue to offset against uncompensated care.

COMMENT (Blue Cross and Blue Shield of New Jersey, Inc.): An analysis of seven hospitals yielded significant excess revenues if all revenues were collected. Projecting this study to 21 hospitals suggests that excess revenues could reach $10,000,000. While actual revenues may be less, the commenter believes these excess revenues will more than offset incurred bad debt.

RESPONSE: The data provided by Blue Cross to substantiate the estimate of 10 million dollars in excess revenues was inconclusive. The schedule compared outpatient dialysis charges to cost; in this context, charges are not meaningful. A more valid comparison would have been payments to cost, since payments represent reimbursement whereas charges represent billings.

Further, the $3,400,000 in excess revenues which correspond to the seven hospitals were assumed to represent a proxy which could be applied to the remaining 14 hospitals. This approach assumes that in most respects all 21 providers are essentially the same. This assumes that all providers' programs had roughly an equivalent size and cost which is untrue. Therefore, the extrapolation of $10,000,000 is not valid.

COMMENT (Blue Cross and Blue Shield of New Jersey, Inc.): The Department's projected economic impact of $2,000,000 is based upon incomplete data. A review of the Department's data and calculations yielded the following comments:

1. At least one hospital reported Medicare bad debt, which should have been excluded.

2. Another hospital had uncompensated care in excess of its Chapter 83 revenue.

3. The assumption that non-reporting providers had a like amount of uncompensated care is questionable. Failure to respond to the survey implies little or no uncompensated care.

4. The uncompensated care amounts are overstated since they are based upon historical gross changes under Chapter 83 rules rather than cost pursuant to the treatment of these "excluded health care services".

5. Only one hospital supplied a detailed listing supporting their reported uncompensated care amounts. Some hospitals estimated these amounts from allowance provisions.

The commenter does not accept the Department's projection because it is believed that the evaluation indicates that the uncompensated care amount should be considerably less than originally reported to the Health Care Administration Board.

RESPONSE: The Department sent a memorandum to the hospitals which requested the reporting of both charity care and bad debt amounts of gross revenue for outpatient and home dialysis services for 1986. Eleven of the 21 affected hospitals responded to this survey, which the Department used to estimate the 1987 estimate of $2,000,000 for uncompensated care for these services.

Blue Cross requested copies of all of the survey documentation as well as the workpapers supporting this projection. The comments above made by Blue Cross are the result of their review of this documentation. The Department's responses are as follows:

1. It is true that at least one hospital reported Medicare bad debt in response to the survey. However, the Department did not request that hospitals specifically exclude Medicare bad debts. Therefore, it is not incorrect if the respondents included Medicare bad debts in the reported amounts.

2. Several hospitals had Chapter 83 rates set in 1982 which were below the Medicare composite rate of $138.00. The particular hospital cited did, in fact, have a very low Chapter 83 rate and reported uncompensated care at a level equal to or greater than Chapter 83 revenue for 1986. In this case, it appears that the hospital billed a rate higher than the approved Chapter 83 rate and that the uncompensated care amount reported may be incorrect.

3. The methodology used for projecting 1987 uncompensated care was based on developing a percentage of uncompensated care to total Chapter 83 revenue for the 11 reporting hospitals are applying that percentage to total Chapter 83 revenue for all 21 dialysis hospitals. This method does assume that the percentage based on the 11 providers is fairly representative of the total population. Ideally, this may not be the best method to project uncompensated care, but based on the information available to us and the timeframe involved, this projection represented our best estimate.

It cannot be assumed that the hospitals that did not respond to the survey had little or no uncompensated care. In fact, three hospitals responded with letters indicating that their internal reporting systems were not set up to provide this information, but did not indicate that the amount would be minimal or non-existent.

4. For 1986, the uncompensated care amounts were, and should be, based on Chapter 83 gross income because outpatient dialysis services were part of the system in that rate year. However, the Department does not necessarily believe that the 1986 historical basis overstates the uncompensated care. Our detailed analysis of the hospitals Chapter 83 rates compared to their Medicare costs showed that there were many cases where the Chapter 83 rates were substantially different. It should be noted that in many cases the Chapter 83 rates were lower, which would thereby substantially mitigate any overstatement. It is true that the number would be different after deregulation, but for 1987 only for the last four months. Once again, this projection was done with the best information available at the time.

5. It is possible that some hospitals estimated these amounts from allowance provisions, but the Department cannot determine this from the data provided by the hospitals.

To summarize, the Department concluded from the responses that most of the hospitals did not keep detailed records on uncompensated care which were categorized by service. Therefore, their responses in some cases were estimates. The Department recognizes that there may be limitations as to the accuracy of 1987 projection of uncompensated care, but considers the percentage of 3.64 percent of total Chapter 83 outpatient dialysis revenue used to be reasonable.

COMMENT (New Jersey State Department of Health, Health Care for the Uninsured Program): The Program is concerned about the establishment of hospital reporting requirements for uncompensated care for outpatient dialysis services. A change to the annual cost report forms will be necessary for the time periods covered by the rules with explicit instructions to hospitals that only auditable, verifiable outpatient dialysis uncompensated care accounts are to be reported on the SHARE Actual forms for reimbursement through the Trust Fund.

RESPONSE: The Hospital Reimbursement Program intends for the proposed amendment to be effective in tandem with the previous deregulation of this service, which was on September 1, 1987. If adopted, the new reporting requirements would be treated as a supplemental report for the 21 affected hospitals in 1987 and 1988, since the cost report forms and instructions have already been developed for those rate years. For 1989 and beyond, these changes will be incorporated into the cost report forms and instructions.

COMMENT (Department of Health and Human Services, Health Care Financing Administration (HCFA)): The Department provided HCFA with a copy of the proposal and indicated an estimated impact on the Medicare program of a savings of $252,000 for 1987. HCFA indicated that since outpatient dialysis services are no longer reimbursed under Chapter 83 rules and regulations, but are subject to the Medicare principles of reimbursement which would only reimburse hospitals for Medicare's uncollectable deductible and co-insurance amounts. Therefore, HCFA indicated that Medicare payments would not be affected by this proposal.

RESPONSE: Chapter 83 hospitals currently collect uncompensated care through inpatient and outpatient rates based on a statewide percentage. The Chapter 83 system considers uncompensated care a reimbursable cost element, and the Trust Fund which operates as a vehicle to collect and reallocate these funds does not distinguish them among service areas. However, the Medicare program has been reimbursing for all outpatient services based on its own principles of reimbursement since 1985. To that extent, Medicare's outpatient payments do not include an assessment for Chapter 83 uncompensated care. From this perspective, the statement can be made that Medicare outpatient payments, including outpatient dialysis, will not be affected by this proposal.

Summary of Changes Made Between Proposal and Adoption:

A phrase is being added to express clearly that the rule applies to services delivered on or after September 1, 1987. This will assure continuous coverage of uncompensated care for renal dialysis services which were excluded from Chapter 83 reimbursement as of September 1, 1987. It was clearly understood by all parties at the time the rule was proposed and approved by the Health Care Administration Board for publication in the New Jersey Register that this rule would apply to services rendered on or after September 1, 1987, in conjunction with the rule excluding renal dialysis services from Chapter 83 reimbursement.

Full text of the adoption follows (additions shown in boldface with asterisks ***thus***).

8:31B-4.38 Uncompensated care

(a) Uncompensated care includes the reasonable cost of the following:

1-3. (No change.)

4. Charity care, as defined by following N.J.A.C. 8:31B-4.39(a)8 and bad debts, provided appropriate collection procedures are followed pursuant to N.J.A.C. 8:31B-4.40, for outpatient dialysis services provided ***after September 1, 1987*** to patients ineligible for Medicare coverage. Reasonable costs shall be limited to the lower

of the hospital's charges or the prospectively determined composite rate as established by Medicare. The amount reported by the hospital as uncompensated care shall not include Medicare co-insurance amounts since Medicare will reimburse providers for that amount provided reasonable collection efforts are pursued.

(b) (No change.)

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Long Term Care Licensing Standards

Adopted Repeal: N.J.A.C. 8:39

Adopted New Rules: N.J.A.C. 8:39

Proposed: March 7, 1988 at 20 N.J.R. 469(a).

Adopted: May 24, 1988 by Molly Joel Coye, M.D., Commissioner, Department of Health, and the Health Care Administration Board.

Filed: May 26, 1988 as R.1988 d.280, **with substantive and technical changes** not requiring additional public review and comment. (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: June 20, 1988.

Expiration Date: June 20, 1993.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Department of Health received 45 sets of comments from interested persons and agencies. Many comments addressed several subchapters of the proposed rules.

The Department made twelve changes that it regards as substantive. These changes were approved by the Department's Nursing Home Advisory Group, a joint private-public sector body that has been deeply involved in the development of these rules through the Department's Licensure Reform Project.

These substantive changes include the following:

COMMENT: There were several comments on N.J.A.C. 8:39-9.2(f) (mandatory administration) to the effect that 30 days is not sufficient to hire a qualified nursing home administrator. Because this is a high-level health care administration position, ample time may be necessary to recruit and bring on board a new person.

RESPONSE: "30 days" has been changed to "90 days". This change would give the directors, trustees, or owners of a facility three months to obtain a qualified new administrator after the departure of the previous administrator. During the interregnum, the facility would be required to have a consultant administrator.

COMMENT: In comments submitted to the Department, the State Board of Nursing objected to the second sentence in N.J.A.C. 8:39-11.1, which addresses patient assessments and care plans. The Board believed that this sentence could be interpreted as permitting LPN's to serve as the chief nursing care planner for a patient.

RESPONSE: The second sentence of N.J.A.C. 8:39-11.1 has been deleted. This change omits specific authorization for licensed practical nurses (LPN's), acting under supervision by registered professional nurses (RN's), to prepare nursing care plans that would subsequently be approved by an RN. The change still permits facilities to assign qualified LPN's, acting under RN supervision, to initiate written preparation of a care plan that reflects the clinical judgment of the RN who subsequently will sign and approve the plan.

COMMENT: The Board of Nursing also objected to N.J.A.C. 8:39-12.1, advisory patient assessment and care plan. Specifying that an RN prepares the care plan as an advisory standard implies that it is permissible for an LPN to prepare the plan.

RESPONSE: N.J.A.C. 8:39-12.1 has been deleted. Instead of making it advisory for RN's to prepare the nursing care plan, and permissible for LPN's to prepare the plan, the rules in their final form focus on the role of the RN as the individual responsible for the plan.

COMMENT: There were several comments on N.J.A.C. 8:39-19.2(a), five opposing it and one supporting it. The objections were that Mantoux testing is overly burdensome to long term care facilities, increases the risk of lawsuits due to allergic reactions, and is not cost-effective due to the low incidence of tuberculosis.

RESPONSE: This standard in its entirety will be moved to the advisory section at N.J.A.C. 8:39-20.1(a) pending the outcome of new legislation A.424. In making this change, however, the Department reasserts its interest in adequate protection against tuberculosis and notes indications of its increased prevalence in nursing homes.

COMMENT: Comments on N.J.A.C. 8:39-19.5, mandatory health history and examinations, reflected several considerations. First, the effectiveness of these physical examinations depends largely on which diagnostic laboratory tests are conducted, so that there is no clear, tremendous benefit of a provision that would require pre-employment physicals. Second, the cost of pre-employment physicals may be substantial, given that many prospective employees could obtain physicals before even starting work and then could decide to take another job.

RESPONSE: In response to these comments, the standard has been changed as follows: change "within two weeks prior to the first day of employment" to "within two weeks prior to the first day of employment or upon employment". This change permits facilities to administer a physical examination to new employees within a short time after the beginning of employment, instead of requiring pre-employment physical examinations. It is hoped that if facilities are free to administer physical examinations after employment begins they may be more willing to provide more comprehensive examinations that would provide greater protection than an earlier, less complete examination would provide.

COMMENT: Small facilities objected to N.J.A.C. 8:39-23.1(a), which requires them to name a medical director, because of the difficulty in finding a highly qualified physician to spend considerable time directing medical affairs in a small facility, and because small facilities are less likely to require formal coordination of medical services. This is an administrative position for which, in small facilities, the benefit may not exceed the cost.

RESPONSE: Two changes have been made in response to these comments. First, change "The facility shall have" to "Each facility with more than 60 beds shall have". This change permits small facilities to provide medical services through patients' individual physicians, without appointing a single physician as medical director. Second, a new advisory standard, N.J.A.C. 8:39-24.1(c), has been created to encourage small facilities to appoint a medical director.

COMMENT: It was asserted that directors of nursing should have baccalaureate or masters degrees in nursing.

RESPONSE: While the current nursing shortage, and the incumbency of many competent RN's who received their training through non-academic programs, prevent the Department from realistically mandating a highly educated director of nursing, it is agreed that such a highly qualified individual would have a beneficial effect on the quality of patient care. It was therefore decided that higher qualifications be included in an advisory standard at N.J.A.C. 8:39-26.4 which states:

The director of nursing should have a baccalaureate or masters degree in nursing (BSN or MSN).

This addition would encourage facilities to appoint academically prepared RN's to their top nursing position.

COMMENT: Nursing home administrators commented that N.J.A.C. 8:39-27.1(b), on mandatory patient care, was subject to interpretation and difficult to regulate. Communication with families is a difficult area to clearly define, since family situations differ widely and communication is hard to document.

RESPONSE: The provision has been included as an advisory standard at N.J.A.C. 8:39-28.1(d), and reworded as follows:

> The family **or guardian should** be notified when a physician initiates an order that the patient will be physicially **or chemically** restrained.

This change makes the standard advisory instead of mandatory, expands the standard to include guardians among those who would be notified of restraint orders, and further expands the standard to provide information about the use of prescribed drugs intended to moderate patients behavior. Such a change is especially justifiable as this standard is intended more for the benefit of families than for the benefit of patients; although it is important, the standard is not truly essential for quality patient care.

COMMENT: With respect to N.J.A.C. 8:39-29.1(b)1. and 8:39-29.1(b)2., Mandatory pharmacy, small facilities commented that the volume of relevant issues that tend to arise in small facilities make quarterly pharmacy and therapeutics committee meetings relatively less productive, and furthermore that quarterly meetings are difficult for small facilities to arrange. It was further pointed out that, if small facilities are not required to have a medical director, then small facilities should not be required to have the medical director on the pharmacy and therapeutics committee.

RESPONSE: New N.J.A.C. 8:39-29.1(b)2 has been added as follows:

In facilities with 60 or fewer beds, the committee shall hold scheduled meetings at least annually and shall maintain minutes that include the dates of meetings, attendance, activities, findings, and recommendations.

The effect of this change, combined with other minor clarifications, is to permit small facilities to continue to hold meetings of their pharmacy and therapeutics committee on an annual instead of a quarterly basis. In addition, a wording change is being made in (b)1. to clarify that small facilities need not include the medical director in this committee, because, as previously noted, small facilities will not be required to have a medical director.

COMMENT: Several commenters believed that the Department should accept patient activities directors who do not have the qualifications listed in N.J.A.C. 8:39-7.3(a), as long as they receive consultation or have sufficient experience. Leaving the standard as it is would force many nursing homes to replace dedicated, competent patient activities directors of long standing.

RESPONSE: Many nursing homes find it difficult to hire patient activities staff; requiring stringent qualifications that would force nursing homes to replace dedicated, competent patient activities directors of long standing would not serve the interests of nursing home patients or the intent of the standard. An additional paragraph has been added at N.J.A.C. 8:39-7.3(a)3 to allow current patient activities directors to remain in their positions as long as they remain at the same facility. The paragraph states:

Serves as director of patient activities for the facility on June 20, 1988.

COMMENT: As with patient activities, several commenters believed that the social worker qualifications detailed in N.J.A.C. 8:39-39.1 were too strict and would cause nursing homes to replace competent social workers who have gained their expertise through experience or alternative training.

RESPONSE: The standard, now codified at 8:39-39.2(a), has been changed to allow social work directors who are currently working in a nursing home to continue in the position, as long as there is expert consultation. Specifically, added to the end of the first sentence of 8:39-39.2(a):

or who on June 20, 1988 served in the facility as a social work designee, with consultation of at least 8 hours per month from an individual who holds a masters degree in social work.

COMMENT: A comment from the Department of Community Affairs (DCA) clarified the jurisdiction for enforcement of subchapters 41 and 42 and suggested an alternative means to duplicating standards already required by N.J.A.C. 5:23, while still including the standards for informational purposes. DCA initially requested a hearing on its concerns but has withdrawn its request.

RESPONSE: In accordance with the Department of Community Affairs recommendations, N.J.A.C. 8:39-41.1 was given a new title: "Mandatory compliance with codes" and was split into three sections, one detailing the jurisdiction of the Department of Community Affairs, one describing the codes used by Department of Health officials for plans review and a third delineating the code used by Department of Health surveyors for annual inspections. The first two only are designated as being informational only; the third will be used as the basis for licensure actions.

A second area of substantive change is N.J.A.C. 8:39-41.4, which was renamed as "Mandatory safety requirements", contains those safety standards deemed essential by the Department of Health that do not appear in codes administered by the Department of Community Affairs. A substantial number of standards that cited the National Fire Protection Association Life Safety manual, the Uniform Construction Code and the Uniform Fire Code were deleted, as they were deemed duplicative of codes already referenced in 8:39-41.1.

Finally, in response to a specific concern of the DCA, kerosene heaters were explicitly prohibited.

COMMENT: A detailed set of requirements was received from the Ombudsman for the Institutionalized Elderly. The Ombudsman sought to revise N.J.A.C. 8:39-27.3(c) to clarify requirements involving withdrawal and withholding of life-sustaining treatments; make N.J.A.C. 8:39-6.1(d) on admission waiting lists mandatory; strengthen certain provisions regarding patient rights and clarify whether patients may waive their rights; specify an air temperature range for facilities; clarify requirements for notifying the Ombudsman of suspected incidents under N.J.A.C. 8:39-9.2(e)3.; eliminate all advisory standards or make them mandatory; restrict non-emergency admissions to normal business hours under N.J.A.C. 8:39-10.1(e); and add a requirement that the facility ensure that the patient receive quality care.

RESPONSE: The Department believes that the wording on life-sustaining treatments, originally supplied by the Office of the Ombudsman, most clearly articulates nursing home responsibilities in this area; a nursing home that did not comply with established law in this area would be vulnerable to penalties under subchapters 4 and 27, and the additional statement in N.J.A.C. 8:39-27.3(c) specifying that the Department will not penalize facilities for complying with such established law further clarifies the situation. The Department did not feel free to require admission waiting lists, as this whole area is governed by statute and involves other agencies. On patient rights, the Department changed N.J.A.C. 8:39-4.1(a)7 to delete the word "limited" in "limited power of attorney" and changed 4.1(a)10 to assure that guardians have access to patients' property only under proper authorization. The regulations remain silent on the issue of whether specific patient rights may be waived, although these are mandatory rules. Also on patient rights, the regulations are silent on the issue of whether patients may be required to purchase medications only through the nursing home; this issue is new to the Licensure Reform Project and could be explored subsequently on an inter-agency basis. Air temperatures are not directly specified but most conform with federal requirements under N.J.A.C. 8:39-41.2(g). The notification provision in N.J.A.C. 8:39-9.2(e)3. was changed in accordance with the comment. Advisory standards have been much expressed as a concept and are intended to encourage facilities to exceed merely minimal requirements, in line with the desire to use positive reinforcement methods as recommended by an Institute of Medicine committee (Institute of Medicine, **Improving the Quality of Care in Nursing Homes** [Washington DC: National Academy Press, 1986], p. 188). The Nursing Home Advisory Group recommended that, due to difficulties in arranging medical and family transportation during business hours, evening discharges frequently are preferable, with patient or family consent. Lastly, although the Ombudsman would have the Department create a single rule requiring quality of care, the entire chapter is intended to serve that purpose.

The Department received additional comments as follows:

COMMENT: Two commenters requested changing N.J.A.C. 8:39-4.1(a)22 to permit facilities to expel or refuse to admit disruptive visitors.

RESPONSE: Procedures exist outside the force of these rules for facilities to intervene in exceptional circumstances to protect patients, staff, and other visitors from disorderly behavior.

COMMENT: One commenter suggested modifying N.J.A.C. 8:39-5.1(a) to authorize facilities to place indigent patients in relatively small or less comfortable rooms.

RESPONSE: Such discrimination would violate federal and state public policy.

COMMENT: Several commenters wanted to reduce, while many other commenters supported, an increase in the ratio of full-time equivalent patient activities staff to patients from 1:60 to 1:53 (specified in N.J.A.C. 8:39-7.4(a)).

RESPONSE: The rule does permit facilities to credit toward this ratio the use of part-time or consultant activities personnel in such programs as pet therapy, sing-alongs, discussion groups and art therapy.

COMMENT: Several commenters wanted N.J.A.C. 8:39-8.1(a) made mandatory, so that facilities would be required to include patient activities staff in patient care conferences.

RESPONSE: Patient care conferences are themselves advisory and not mandatory, under N.J.A.C. 8:39-12.2(b).

COMMENT: One commenter objected, for reasons of cost, to the requirements in N.J.A.C. 8:39-9.1(c) that facilities with more than 240 beds assign a full time administrative supervisor to the evening shift.

RESPONSE: The likelihood of problems arising in large facilities during evening hours, and requiring administrative intervention, is sufficiently high to justify the presence of a supervisor who is not performing patient care and therefore is free to circulate throughout all patient care units. Representatives of other large facilities indicated that this practice is normal. In other facilities that do not have evening supervisors, the estimated incremental cost of this standard, even assuming that the facility does not even have a part-time supervisor working evenings, is less than 50 cents per patient day.

COMMENT: Two comments were submitted in response to N.J.A.C. 8:39-10.3(a), which promotes staff education. One commenter believed

this standard should be mandatory while the other opposed inclusion of the standard at all.

RESPONSE: The provision of financial remuneration or compensatory time off to attend educational programs is an advisory feature of nursing home administration. Some education also is mandated, in N.J.A.C. 8:39-13.4.

COMMENT: Several commenters recommended that N.J.A.C. 8:39-12.2(b) be changed to exclude nurse aides and licensed practical nurses (LPN's) from participation in interdisciplinary team conferences.

RESPONSE: Nurse aides and LPN's should participate in these conferences since they provide 90 percent of direct care to nursing home residents. This standard is only advisory.

COMMENT: One commenter wanted N.J.A.C. 8:39-13.2(a) changed to an advisory standard because many facilities are unable to participate in the development of a care plan.

RESPONSE: This standard requires that patients and families be provided the opportunity to participate in the development and implementation of the care plan. It does not mandate their participation.

COMMENT: One commenter requested that N.J.A.C. 8:39-14.4(a)-(e) be made mandatory, in order to assure that employees are competent to safely perform the tasks related to their position.

RESPONSE: These are advisory standards that go beyond the mandatory requirements of N.J.A.C. 8:39-13.4(a)-(e), which ensure that employees are able to provide safe patient care.

COMMENT: Two commenters suggested adding a clause to N.J.A.C. 8:39-17.4(a) to exempt smaller facilities from the need to increase dietary staffing, while several other commenters strongly supported this standard as proposed.

RESPONSE: The use of therapeutic diets is increasing in facilities of all sizes. This necessitates an increase in dietary staffing. The implementation of N.J.A.C. 8:39-17.4(a) will be delayed until July 1, 1989, as outlined in Subchapter 43.

COMMENT: One commenter thought it may be difficult to comply with N.J.A.C. 8:39-18.4(b) due to the unavailability of fresh fruits and vegetables on a daily basis.

RESPONSE: This is only an advisory standard.

COMMENT: Two commenters recommended N.J.A.C. 8:39-19.1(b) be changed to allow LPNs or other staff members to function as the infection control officer.

RESPONSE: This standard does not prevent LPN's or other staff members from being designated as the infection control officer, provided they either have received education or have had experience in infection control or epidemiology.

COMMENT: A commenter indicated that the requirement of N.J.A.C. 8:39-21.3(b) that the housekeeping staff wear clean clothes imposed a dress code upon employees.

RESPONSE: It is not the intent of this standard to impose a dress code or to require that uniforms be worn by housekeeping staff. The intent of the rule is to ensure cleanliness.

COMMENT: Several commenters felt it was not necessary for the medical director to review all individual incident reports as required by N.J.A.C. 8:39-23.2(d), since this would be very time-consuming.

RESPONSE: Because incident reports provide insight into potential problem areas that may require attention, this standard should remain mandatory. The incident reports may be presented to the medical director in a form that facilitates easy review.

COMMENT: Comments were received in opposition to both N.J.A.C. 8:39-24.3(a) and (d) stating that it would be logistically difficult to implement these standards, which involve scheduled physician visits and posted physician fee schedules.

RESPONSE: These standards are advisory standards, which reflect superior achievement or excellence.

COMMENT: Four commenters expressed opinions about N.J.A.C. 8:39-25.2(b) specifying mandatory nurse staffing levels; two in support of this standard, one in support if appropriate reimbursement is provided to implement the nurse staffing increases, and one opposed.

RESPONSE: Adequate nurse staffing is critical to safe provision of quality care to nursing home residents. It is not the intent of the Department to impose increased nurse staffing requirements upon facilities without adequate reimbursement. Therefore, this standard will not become operative until July 1, 1989, as delineated in N.J.A.C. 8:39-43.

COMMENT: Two comments expressed concern that N.J.A.C. 8:39-26.3(d), addressing training and orientation of nurse aides, would be costly to implement and in some cases unnecessary.

RESPONSE: Training and orientation of nurse aides ensures the provision of quality care to nursing home residents. This is an advisory standard, meant to encourage facilities to do more than merely meet minimal standards.

COMMENT: Three commenters suggested that N.J.A.C. 8:39-27.3(d) should not specify five pounds of weight gain or loss as the point at which a note should be entered into the medical record. It was suggested that the term "a significant weight gain or loss" would be a more appropriate trigger for a medical record entry.

RESPONSE: A five pound weight change is significant. The use of a numerical figure is clear, objective, and easy to measure.

COMMENT: One comment suggested that N.J.A.C. 8:39-29.4(i) be expanded to require shift-to-shift counts and declining inventory sheets for controlled substances, even under unit dose systems.

RESPONSE: The requirements set forth in N.J.A.C. 8:39-29.4(i) mandate that each facility have procedures in place for the inventory of controlled substances in accordance with law. The Department believes that this rule sufficiently addresses the concern raised by this commenter.

COMMENT: Four comments were received on N.J.A.C. 8:39-30.2, two advocating that the standard be made mandatory, and two requesting that the standard be deleted. The standard involves pharmacist certification.

RESPONSE: The requirement for certification of the consultant pharmacist or director of pharmaceutical services is an advisory standard intended to encourage facilities to hire staff with credentials above those minimally required.

COMMENT: One commenter wanted to know whether N.J.A.C. 8:39-32.1 prohibited smoking throughout the facility.

RESPONSE: This advisory standard encourages facilities to restrict smoking by staff members to areas used solely by staff members.

COMMENT: One commenter was concerned that N.J.A.C. 8:39-37.3 would not allow facilities sufficient time to obtain Medicaid approval for a physical therapy evaluation.

RESPONSE: Medicaid approval is not required for a physical therapy evaluation.

COMMENT: Three commenters suggested that N.J.A.C. 8:39-38.1(b) allow Certified Occupational Therapy Assistants (COTA's) to provide occupational therapy to residents.

RESPONSE: This advisory standard, which encourages the use of registered occupational therapists (OTR's), does not preclude the use of COTA's.

COMMENT: One commenter disputed the estimates of the fiscal impact of the new rules.

RESPONSE: The commenter did not understand the difference between the impact on total costs of nursing home care in New Jersey and the impact of New Jersey Medicaid expenditures.

COMMENT: In subchapter 2, commenters proposed technical changes to the construction plans review process.

RESPONSE: The plans review process is not under reevaluation by the Licensure Reform Project.

COMMENT: In subchapter 3, commenters questioned the method of implementing advisory standards.

RESPONSE: The Department will be formulating a method to report results of inspection surveys that include advisory standards. A clause requiring written Commissioner approval of such a method was deleted in response to comments. Wording on enforcement methods in N.J.A.C. 8:39-3.1(b)3 also was clarified.

COMMENT: In subchapter 4, many commenters requested changes in the enumeration of patient rights.

RESPONSE: Patient rights are primarily specified by statute. The Department did change N.J.A.C. 8:39-4.1(a)12 to permit patient room reassignments that may not be in each patient's best interests, so long as the reassignment is not arbitrary or capricious.

COMMENT: In subchapter 5, commenters questioned the meaning of "statewide occupancy level" in N.J.A.C. 8:39-5.1(c) and sought to include all responsible parties as recipients of patient financial records.

RESPONSE: The term is defined in the statute referenced in the rule. A change in N.J.A.C. 8:39-5.2(d) has been made in response to the comment.

COMMENT: In subchapter 6, there was a comment about discrimination in N.J.A.C. 8:39-6.1(b) and a suggestion to make 8:39-6.1(d) mandatory.

RESPONSE: The rule does not authorize discrimination. Mandatory standards are those that have been validated by an extremely extensive process, conducted by the Department's Licensure Reform Project, to assure that they are important to patient care.

COMMENT: In subchapter 7, commenters expressed divided opinions about increased staffing levels. They also wanted a time frame specified for care plans, a change in wording about the role of patient activities staff, and a waiver for small facilities from the requirements of a dedicated activities room.

RESPONSE: The staffing issue is discussed above. The time frame for care plans is specified in subchapter 11. "Provide a diversity of programs" was changed to "arrange a diversity of programs" in N.J.A.C. 8:39-7.5(a). The exemption for small facilities was granted in N.J.A.C. 8:39-7.6.

COMMENT: In subchapter 8, some commenters wanted several provisions made mandatory, while others asserted that certain standards are too costly.

RESPONSE: Mandatory regulations are those that have been validated as highly important to patient care in New Jersey. Advisory standards are considered desirable achievements that have not been firmly validated.

COMMENT: In subchapter 9, there were several diverse comments about wording, and a claim that administrators should not be required by rule to provide a copy of Health Department inspection survey reports to facility owners and governing boards.

RESPONSE: N.J.A.C. 8:39-9.2(a) has been changed to require facilities to provide patient financial records to patients only during normal business hours or by prior arrangement. N.J.A.C. 8:39-9.2(e)1 has been changed to require facilities to notify the Department of interruption of only those physical plant services that are basic. N.J.A.C. 8:39-9.2(e)3 has been changed to require immediate notification of authorities in cases of suspected patient abuse. The Department considers administrators responsible for informing their superiors about the results of state inspections.

COMMENT: In subchapter 10, questions were raised about staff training in cardiopulmonary resuscitation (CPR), interest-bearing accounts, and the placement of certain standards.

RESPONSE: The standards have been changed to encourage facilities to have CPR-competent staff available throughout the facility at all times on a timely basis, and to exclude very small patient accounts from those for which the facility is encouraged to obtain interest accruing to the patient.

COMMENT: In subchapter 11, diverse opinions were raised about the role of licensed practical nurses (LPN's) in care planning and about different aspects of care planning. The role of geriatric nurse practitioners also was questioned.

RESPONSE: The change in the LPN role has been noted previously. N.J.A.C. 8:39-11.1 also has been changed to clarify that the RN must approve only the nursing portion of the patient's care plan. Questions about care planning appeared to reflect concerns about regulations other than these licensing provisions. Geriatric nurse practitioners are currently permitted to conduct patient reassessments, but not initial assessments.

COMMENT: In subchapter 12, commenters wanted certain provisions made mandatory or moved from social work to nursing care assessment, and wanted communication methods clarified.

RESPONSE: "Written or oral communication" in N.J.A.C. 8:39-12.2(a) has been changed to "written notes or oral conferences." The social work scope of practice is well established by education, current practice, and myriad federal and state regulations.

COMMENT: In subchapter 13, changes in the language of N.J.A.C. 8:39-13.1(d) were requested. Also, one commenter contended that the requirement in N.J.A.C. 8:39-13.3(b) that staff be able to communicate effectively with patients would be racially discriminatory.

RESPONSE: The somewhat imprecise requirement of "prompt" notification in case of an "emergency" does leave room for discretion, which the Department considers necessary. The comment about racial discrimination appears to assume that people of one race or another are less able to communicate effectively.

COMMENT: In subchapter 14, commenters expressed mixed opinions about whether particular standards should be made mandatory, kept as advisory, or deleted.

RESPONSE: The Department places a high value on staff education, as delineated in this subchapter. The Department recognizes that opinions in this area are divided.

COMMENT: In subchapter 17, there were diverse comments about the wisdom or necessity of increased staffing levels, especially with regard to small facilities.

RESPONSE: The Department found no compelling reason to exempt small facilities from dietary staffing requirements, although one change has been made in N.J.A.C. 8:39-17.2(a) to permit small facilities that do not have medical directors to establish dietary manuals without medical director approval. Food service director qualifications in N.J.A.C. 8:39-17.3(b) have been relaxed to permit qualified individuals to serve as directors without taking a particular state-approved course.

COMMENT: In subchapter 18, commenters expressed reservations about specific standards that they thought do not permit adequate flexibility.

RESPONSE: N.J.A.C. 8:39-18.4(d) and 18.5 have been changed to include patient access to food through staff and to exclude picnics from occasions when nondisposable dishes are used. Flexible interpretation of other provisions is anticipated.

COMMENT: In subchapter 19, objections were raised that certain provisions were too prescriptive.

RESPONSE: The Department made four changes in subchapter 19 to clarify that extensive specialized education is not required for infection control officers, permit effective hand sanitation techniques other than the use of common soap, clarify that double check valves are required only for potable well water, and permit medium weight plastic trash bags for noninfectious waste.

The Department is not prepared to relax the proposed requirement that patients have an opportunity to wash their hands before eating meals.

COMMENT: In subchapter 20, a question about wording and a misunderstanding about advisory standards emerged.

RESPONSE: The Department prefers the term "infection control officer" to "designee." Facilities are not required to comply with advisory standards.

COMMENT: In subchapter 20, a commenter claimed that written cleaning schedules are unenforceable through the survey process.

RESPONSE: Written schedules are eminently enforceable through the survey process.

COMMENT: In subchapter 23, a loosening of the proposed (and current) rules was requested to reduce required notifications of physicians.

RESPONSE: The rules do permit physicians to specify circumstances under which they would be informed of such events as patient refusal of medications. The requirement in N.J.A.C. 8:39-23.1(b) that the medical record contain an explicit justification of a physician visit frequency of less than 30 days appears to be a reasonable approach that is less stringent than what some people desire and more stringent than what some facilities would like.

COMMENT: In subchapter 24, a commenter opposed several items as difficult to achieve, and different wording was sought for nurse gerontologists.

RESPONSE: Advisory standards are difficult to achieve almost by definition, but many facilities already meet these standards. Wording has been changed from "nurse gerontologist" to "gerontological nurse practitioner" to conform with terminology used by the State Board of Nursing.

COMMENT: In subchapter 25, approximately 25 comments were received, ranging from full agreement with the subchapter to opposition to several rules. Some commenters wanted to strengthen provisions for round-the-clock RN coverage, require that all RN's have baccalaureate degrees, and retain the provision for certification of all nurse aides. Other commenters wanted to weaken provisions for round-the-clock nursing coverage, include the director of nursing's time in the computation of staff-patient ratios, and eliminate the provision for nurse aide certification. Minor modifications also were sought.

RESPONSE: Changes have been made to clarify that the nursing director's direct care hours can be included in the staffing computation, except in large facilities, and to exempt small facilities under limited special circumstances from having an RN on duty during the day shift. N.J.A.C. 8:39-25.2(d) has been changed to permit hourly visual observation of all patients by any patient care staff member, and to clarify that each observation need not be documented. In general, the issue of nurse staffing is of critical importance and extreme sensitivity, and these rules are the product of a very high level of participation by Department authorities, nursing home administrators and nurses, and representatives of other agencies.

COMMENT: In subchapter 26, objections included a need for higher reimbursement and a claim that these provisions intrude on the prerogatives of management.

RESPONSE: Reimbursement levels are not set by the Department of Health. While management is free to ignore these advisory provisions, certain of them, such as the primary nurse aide system specified in N.J.A.C. 8:39-26.2(b), are strongly favored in the interest of high quality patient care. The nurse aide training provision in N.J.A.C. 8:39-26.3(d) has been modified to permit aides with experience in other facilities to begin work before undergoing a formal training program in the facility.

COMMENT: In subchapter 27, many commenters expressed opinions about specific aspects of patient care.

RESPONSE: Wording requiring that clothing be seasonal and well-fitting has been deleted in the interest of patient choice, and wording about double restraints has been deleted as being redundant and confusing. Although many of the rules are not as specific in certain cases as some might hope—for example, one commenter sought a provision requiring heating of water mattresses, and another wanted to know precisely what treatment for dehydration would be acceptable—the rules contemplate most questions that ordinarily arise in complaints about patient care that are presented to the Department.

COMMENT: In subchapter 28, objectins included the use of the term "bath book", a provision that uniforms are worn by nurses but not by other patient care staff; and the concern that privacy for conjugal visits should be restricted to competent patients.

RESPONSE: The Department has changed "bath book" to "bath record." The other comments conflicted with the apparent majority view and no changes have been made.

COMMENTS: In subchapter 29, many wording changes were advocated. The suggested changes would affect labeling of repackaged medications, communications with provider pharmacies, drug destruction, and other standard pharmacy procedures.

RESPONSE: The Department has made changes in this subchapter, besides those noted previously, to delete the redundant word "accurately" in N.J.A.C. 8:39-29.2(c); delete the inappropriate phrase "and drug withholding occurrences" in N.J.A.C. 29.3(b); add the clarifying phrase "and communicated to the provider pharmacy if a provider pharmacy is used" to N.J.A.C. 8:39-29.3(c); specify precise mechanisms for notifying physicians and pharmacies of medication errors in N.J.A.C. 8:39-29.3(f); add a clarifying sentence to N.J.A.C. 8:39-29.4(a) permitting pharmacies to avoid duplicate labeling of medications; specify repackaging requirements in N.J.A.C. 8:39-29.4(e); and require timely staff access to emergency kits under N.J.A.C. 8:39-29.4(d).

COMMENT: In subchapter 30, commenters sought flexibility in the use of unit dose systems and favored mandatory use of emergency carts. A new standard also was suggested.

RESPONSE: A definition of unit dose system has been added to permit flexibility appropriate to nursing home settings. Emergency kits, but not carts, are mandatory in subchapter 29. The Department added a standard at N.J.A.C. 8:39-30.4 for pharmacy review of the records of new patients within the first week of admission and renumbered the existing standard N.J.A.C. 8:39-30.4.

COMMENT: In subchapter 31, commenters wanted private rooms exempted from the requirement of privacy curtains around beds, door alarms that could sound at the doors instead of at nurses' stations, clarification of a provision that appeared to require emergency generators, and a wording change involving refrigeration of biological products.

RESPONSE: All these suggested changes have been made.

COMMENT: In subchapter 32, commenters asked for deletion of a provision for footstools in each patient room. They further requested inclusion of silk flowers in a standard promoting the use of flowers and plants, because many patients prefer silk arrangements. Commenters also asked for a definition of "aesthetically attractive" as applied to wall hangings and, in one case, asked that a prohibition on smoking be made mandatory.

RESPONSE: Changes have been made to delete the provision about footstools and to include silk flowers. Gradual movement toward smoke-free environments in New Jersey health facilities is anticipated. Hangings presumably will be considered "aesthetically attractive" if patients and staff find them enjoyable to view.

COMMENT: In subchapters 33 and 34, a commenter expressed concern about documentation requirements and asked for a definition of patient classification systems, as used in N.J.A.C. 8:39-34.1(d).

RESPONSE: The only documents required in subchapter 33 are a quality assurance (QA) plan, summary findings, evidence that information is obtained from patients and visitors, evidence of evaluation of staff education programs, evidence of review of inventory controls and maintenance reports, and procedures involving incidents and hazards. Meeting minutes would be among the types of evidence that would be acceptable. Patient classification systems typically categorize patients by level of acuity or need for intensive staff services.

COMMENT: In subchapter 35, commenters made suggestions about the wording of N.J.A.C. 8:39-35.2(d)4 involving physical examinations and expressed concerns about specific situations and compliance with Medicaid regulations.

RESPONSE: The section on physical examinations has been clarified with a cross-reference to another rule, and a requirement that it include weight has been deleted. The Health Department is not responsible for developing Medicaid regulations, which in some instances involving documentation may be more stringent than those enforced by the Health Department.

COMMENT: In subchapter 37, relaxation of the requirement that physical therapy evaluation occur within two days of the initial physician order, in N.J.A.C. 8:39-37.3 was suggested.

RESPONSE: Delays in the initiation of physical therapy can be detrimental to patients. A punctuation change was made to clarify that small facilities are totally exempt from the two-day rule.

COMMENT: In subchapter 39, several commenters expressed skepticism about the value of social workers or requested that people with diverse education backgrounds should be permitted to function as social workers. Another commenter found the subsection headings confusing.

RESPONSE: Support for social work among health care authorities far exceeds opposition to it. For example, a recent Institute of Medicine committee strongly recommended more regulatory emphasis on social work. (Institute of Medicine, Improving the Quality of Care in Nursing Homes [Washington DC: National Academy Press, 1986], pp. 99-100). The section as a whole has been reordered, as specified at the end of this summary.

COMMENT: In subchapter 40, two commenters expressed concern that advisory standards are requirements, and two commenters wondered about the meaning of social worker availability during business hours under N.J.A.C. 8:39-40.2(e).

RESPONSE: Advisory standards represent superior achievement and are not mandated. The concept of availability has been articulated more fully in N.J.A.C. 8:39-40.2(a) to provide an opportunity for families and other visitors to arrange to meet with a social worker during evenings or weekends, without requiring that a social worker be present in the facility every day and evening.

COMMENT: In subchapter 41, a commenter asked for more liberal smoking provisions, and another commenter made a lengthy series of remarks about preventive maintenance and related issues.

RESPONSE: Reasonable application of the preventive maintenance requirements is anticipated. The smoking provisions are considered minimal at this time. This entire subchapter has been rewritten, as noted above, to meet concerns expressed by the Department of Community Affairs.

COMMENT: In subchapter 42, concerns were expressed about the qualifications of the maintenance supervisor specified in N.J.A.C. 8:39-42.1(b) and about the content of a heat emergency action plan under N.J.A.C. 8:39-42.2(e) (adopted as N.J.A.C. 8:39-42.2(d)).

RESPONSE: The Department is encouraging the use of highly qualified maintenance supervisors. Rigorous adherence to the spirit of heat emergency legislation is also desired. Like subchapter 41, this subchapter has been extensively reworked for the same reason.

COMMENT: In subchapter 43, a commenter addressed the nature of regulation and suggested a research design under N.J.A.C. 8:39-43.2.

RESPONSE: The question of a research design remains undetermined and is not sharply circumscribed by this rule.

COMMENT: The Department of Human Services, Division of Medical Assistance and Health Services, requested that portions of subchapter 11 be revised to conform with Medicaid requirements. In particular, the Division wanted specific time frames and requirements for patient assessments and reassessments based on its own rules, such as reassessment cycles of 30 days for all patients classified as skilled nursing facility (SNF) patients, 60 days for all patients classified as intermediate care facility level "A" (ICF-A) patients, and 90 days for all ICF-B patients.

RESPONSE: This issue has been discussed in the Nursing Home Advisory Group since 1986, and Group members other than the Medicaid representatives have not been persuaded by their position. There are several reasons for this. First, the licensing rules presented in this notice apply to all nursing homes in the State. Many facilities do not participate in the Medicaid program and therefore ought not to be expected to comply with Medicaid requirements, unless those requirements are otherwise valid for licensure purposes. This is especially true in the case of SNF and ICF classifications, which are used for Medicaid purposes only. Second, specified and inflexible cycles for reassessment do not necessarily ensure high quality care. The interval between assessments, like the content of the care plan, is reasonably affected by clinical judgments that will differ among individual patients. Third, especially during a period of nursing shortages, forced adherence to rigid documentation requirements could compromise patient care as nurses spend a great deal of time

meeting paperwork requirements and consequently have limited time left for personal contact involving patients. Fourth, while uniform Medicaid and licensing requirements are generally desirable, the Advisory Group has not been persuaded that licensing rules therefore must be adjusted to conform with Medicaid requirements, in lieu of more balanced accommodations.

COMMENT: The Department of Human Services, Division of Mental Health and Hospitals, asked that N.J.A.C. 8:39-5.1(e) be changed to delete a reference to individuals who have been placed in an institution through a legal commitment process. The Division further asked that N.J.A.C. 8:39-5.2(c) be changed to reflect local commitment processes. Finally, the Division asked that N.J.A.C. 8:39-6.1 be made mandatory.

RESPONSE: The first change has been made as requested. The second change has not been made, because, in the opinion of the Advisory Group and the Department, based on reaction group meetings and results of a statewide written survey conducted to assure the validity of licensing rules, the use of independent physicians and a social worker would be useful in determining whether specific patients should stay in a particular nursing home or be placed elsewhere. This rule should not be interpreted as conflicting with commitment requirements. Finally, admission waiting lists are maintained as advisory standards based on previous communication with the Department of Human Services and a desire not to interfere with enforcement of relevant legislation.

Because the formating of standards in subchapters 39 and 40 appeared incommensurate with the formating of other subchapters, the revised social work standards were reordered for clarity. As noted above, subchapter 41 was revised to meet concerns expressed by the Department of Community Affairs. A table summarizing the recodification of these rules appears below preceding N.J.A.C. 8:39-39.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

CHAPTER 39
MANUAL OF STANDARDS FOR LONG-TERM CARE

Subchapter Contents:

SUBCHAPTER 1. GENERAL PROVISIONS

8:39-1.1 Scope and purpose

(a) This chapter contains rules and standards intended to assure the high quality of care delivered in long-term care facilities, commonly known as nursing homes, throughout New Jersey. Components of quality of care addressed by these rules and standards include access to care, continuity of care, comprehensiveness of care, coordination of services, humaneness of treatment, conservatism in intervention, safety of the environment, professionalism of caregivers, and participation in useful studies.

(b) These rules and standards apply to each licensed long-term care facility. They are intended for use in State surveys of the facilities and any ensuing enforcement actions. They are also designed to be useful to consumers and providers as a mechanism for privately assessing the quality of care provided in any long-term care facility.

8:39-1.2 Definitions

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

"Bed" or "licensed bed" means, with reference to a patient, the item of furniture assigned to no more than one patient for sleeping, resting, relaxing, or otherwise used for the patient's personal comfort or convenience, and with reference to a facility, one of the total number of beds for which each licensed long-term care facility is approved for patient care by the Commissioner of the New Jersey Department of Health.

"Facility" means a facility or distinct part of a facility licensed by the New Jersey State Department of Health to provide health care under medical supervision and continuous nursing care for 24 or more consecutive hours to two or more patients who are not related to the members of the governing authority by marriage, blood, or adoption; who do not require the degree of care and treatment which a hospital provides; and who, because of their physical or mental condition, require continuous nursing care and services above the level of room and board.

"Patient" means a person who is under medical care and treatment in the facility and who is assigned a bed in the facility.

"Each service" refers to all personnel assigned managerial responsibility for the provision within the facility of medical, nursing, patient activities, pharmaceutical, social work, dietary, or, if specified, rehabilitative (including physical therapy), dental, or housekeeping (or environmental) services to patients.

SUBCHAPTER 2. LICENSURE PROCEDURE

8:39-2.1 Certificate of Need

(a) According to the Health Care Facilities Planning Act, P.L. 1971, c.136 and 138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Review and Comment Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with the Health Care Facilities Planning Act, P.L. 1971, c.136 and 138, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:39-2.2 Application for licensure

(a) Following acquisition of a Certificate of Need, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

(b) The Department shall charge a nonrefundable fee of $500.00 plus $3.00 per bed for the filing of an application for licensure of a long-term care facility. The Department shall also charge a nonrefundable fee of $500.00 plus $3.00 per bed for the annual renewal of the license.

(c) Any person, organization, or corporation considering application for license to operate a facility shall make an appointment

for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

(d) Any applicant denied a license to operate a facility shall have the right to a fair hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

8:39-2.3 Newly constructed or expanded facilities

(a) The application for a license pursuant to N.J.A.C. 8:39-2.2 for the operation of a new facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction Service
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN *[360]* ***367***
Trenton, NJ 08625-036*[0]*****7***

(b) A final on-site inspection of the construction of the physical plant shall be made by representatives of the Health Care Facilities Construction Service and the Health Facilities Inspection Program, to verify that the building has been constructed in accordance with the final architectural plans approved by the Department.

(c) Any health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Service of the Department for review and approval prior to the initiation of any work.

8:39-2.4 Surveys and temporary license

(a) When the written application for licensure pursuant to N.J.A.C. 8:39-2.2 is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility meets the standards set forth in this chapter.

1. The Health Facilities Inspection Program of the Department shall notify the facility in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license shall be issued to the operator of a facility when the following conditions are met:

1. An office conference for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who have been advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with the Health Care Facilities Planning Act, P.L. 1971 c.136 and 138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system; and

4. Survey(s) by representatives of the Department indicate that the facility meets the mandatory standards set forth in this chapter.

(c) No health care facility shall accept patients until the facility has written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) The facility shall accept only that number of patients for which it is approved and/or licensed.

(e) Survey visits shall be made to a facility at any time by authorized staff of the Department. Such visits shall include, but are not limited to, the review of all facility documents and patient records and conferences with patients.

(f) A temporary license shall be issued to the operator of a facility for a period of six months and shall be renewed as determined by the Department.

1. The temporary license shall be conspicuously posted in the facility.

2. The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:39-2.5 Full license

(a) A full license shall be issued to the operator on expiration of the temporary license, if the surveys by the Department have determined that the health care facility is operated as required by the Health Care Facilities Planning Act, P.L. 1971, c.136 and 138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department in accordance with (a) above.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless sooner suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the licensure date.

1. The facility shall receive a request for renewal fee as provided in N.J.A.C. 8:39-2.2(b) 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

2. The license may not be renewed if local regulations or any other requirements are not met.

8:39-2.6 Surrender of license

The facility shall obtain any required Certificate of Need and shall directly notify each patient, the patient's physician, and any guarantors of payment concerned at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of licensure. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven calendar days from voluntary surrender, order of revocation, expiration, or suspension of license, whichever is applicable.

8:39-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of the Health Care Facilities Planning Act, P.L. 1971, c.136 and 138, N.J.S.A. 26:2H-1 et seq. and amendments thereto, and the standards in this chapter, waive sections of this chapter if, in his or her opinion, such waiver would not endanger the life, safety, or health of the patient or public.

(b) A facility seeking a waiver of the standards in this chapter shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written application for waiver shall include the following:

1. The nature of the waiver requested;

2. The specific standards for which a waiver is requested;

3. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon full compliance;

4. An alternative proposal which would ensure patient safety; and

5. Documentation to support the application for waiver.

(d) The Department reserves the right to request additional information before processing an application for waiver.

8:39-2.8 Action against licensee

(a) Violations of this subchapter may result in action by the New Jersey State Department of Health to impose a fine, cease admissions to a facility, remove patients from a facility, revoke a license, and/or impose other lawful remedies.

(b) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(c) The Commissioner may order the immediate removal of patients from a facility whenever he or she determines imminent danger to any person's health or safety.

(d) This section shall apply to all facilities.

(e) Any licensee made subject to action by the Department under terms of this section shall have the right to a fair hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1-1 et seq.

SUBCHAPTER 3. COMPLIANCE WITH MANDATORY RULES AND ADVISORY STANDARDS

8:39-3.1 Mandatory rules

(a) Mandatory rules contain minimum and essential requirements of care provided by a facility.

(b) Failure to comply with any mandatory rule specified in this chapter shall constitute a deficiency for which the New Jersey State Department of Health may take any or all of the following measures or any other lawful remedy:

1. Action to impose a fine;
2. Cessation of all admissions;
3. Removal of patients from the facility when *[any person's health or safety so requires]* ***there is an imminent danger to any person's health and safety***; and
4. Revocation of the license held by the facility's operator.

8:39-3.2 Advisory standards

(a) Advisory standards contain benchmarks of excellence or superior attainment in providing care of high quality.

(b) Facilities are strongly encouraged to use advisory standards in striving to provide the highest quality of care possible.

(c) Failure to comply with any or all advisory standards shall not constitute a deficiency or result directly or indirectly in any fine, cessation of admissions, removal of patients, or revocation of a license, imposed pursuant to action by the New Jersey State Department of Health.

(d) Compliance with advisory standards shall not be used as an indication of whether the facility is in compliance with mandatory rules or whether a facility should be made subject to a penalty or other action to protect patients.

8:39-3.3 Reporting compliance with advisory standards

(a) The New Jersey State Department of Health, Division of Health Facilities Evaluation and Licensing, shall develop a method to report facilities' individual compliance with advisory standards specified in this chapter.

(b) Reports of individual facilities' compliance with advisory standards shall be made available by the New Jersey State Department of Health to the general public for inspection beginning no earlier than six months after the adoption of this chapter *[and only after the Commissioner of the Department of Health orders, in writing, that such reports be issued]*. Prior to such issuance, such reports shall be made available only to Department of Health personnel and consultants for official purposes and, for each report, to the specific facility that the individual report covers.

SUBCHAPTER 4. MANDATORY PATIENT RIGHTS

8:39-4.1 Patient rights

(a) Each patient shall be entitled to the following rights:

1. To retain the services of a physician the patient chooses, at the patient's own expense or through a health care plan.

2. To have a physician explain to the patient, in language that the patient understands, his or her complete medical condition, the recommended treatment, and the expected results of the treatment. If this information would be detrimental to the patient's health, the explanation must be provided to his or her next of kin or guardian and documented in the patient's medical record.

3. To participate, to the fullest extent that the patient is able, in planning his or her own medical treatment and care.

4. To refuse medication and treatment after the patient has been informed, in language that the patient understands, of the possible consequences of this decision. The patient may also refuse to participate in experimental research, including the investigations of new drugs and medical devices. The patient will be included in experimental research only when he or she gives informed, written consent to such participation.

5. To be free from physical and mental abuse.

6. To be free from chemical and physical restraints, unless they are authorized by a physician for a limited period of time to protect the patient or others from injury. Under no circumstances will the patient be confined in a locked room or restrained for punishment, for the convenience of the nursing home staff, or with the use of excessive drug dosages.

7. To manage his or her own finances or to have that responsibility delegated to a family member, an assigned guardian, the nursing home administrator, or some other individual with *[a limited]* power of attorney. The patient's authorization must be in writing, and must be witnessed in writing *[by someone who is not affiliated with the nursing home]*.

8. To receive a written statement describing the services provided by the nursing home and the related charges. This statement must also include the nursing home's policies for payment of fees, deposits, and refunds. The patient must receive this statement prior to or at the time of admission, and afterward whenever there are any changes.

9. To receive a quarterly written account of all the patient's funds and itemized property that are deposited with the facility for the patient's use and safekeeping. This record must also show the amount of property in the account at the beginning and end of the accounting period, as well as a list of all deposits and withdrawals, substantiated by receipts given to the patient or his or her guardian.

10. To have daily access during specified hours to the money and property that the patient has deposited with the nursing home. *[The patient's guardian also has the same right of access.]* ***The patient also may delegate this right of access to his or her representative.***

11. To live in safe, decent, and clean conditions in a nursing home that does not admit more residents than it can safely accommodate while providing adequate nursing care.

12. To be treated with courtesy, consideration, and respect for the patient's dignity and individuality. The nursing home may not move the patient to a different bed or room in the facility if the relocation is arbitrary and capricious*[, or detrimental to the patient's best interests]*.

13. To wear his or her own clothes, unless this would be unsafe or impractical. All clothes provided by the nursing home must fit *[properly]* ***in a way that is not demeaning to the patient***.

14. To keep and use his or her personal property, unless this would be unsafe, impractical, or an infringement on the rights of other residents. The nursing home must take precautions to ensure that the patient's personal possessions are secure from theft, loss, and misplacement.

15. To have physical privacy. The patient must be allowed, for example, to maintain the privacy of his or her body during medical treatment and personal hygiene activities, such as bathing and using the toilet, unless the patient needs assistance for his or her own safety.

16. To have reasonable opportunities for private and intimate physical and social interaction with other people, including arrangements for privacy when the patient's spouse visits. If the patient and his or her spouse are both residents of the same nursing home, they must be given the opportunity to share a room, unless this is medically inadvisable, as documented in their records by a physician.

17. To confidential treatment of information about the patient. Information in the patient's records shall not be released to anyone outside the nursing home without the patient's approval, unless the patient transfers to another health care facility, or unless the release of the information is required by law, a third-party payment contract, or the New Jersey State Department of Health.

18. To receive and send mail in unopened envelopes, unless the patient requests otherwise. The patient also has a right to request and receive assistance in reading and writing correspondence ***unless it is medically contraindicated***.

19. To have *[private]* access to a telephone *[and]* ***without anyone deliberately listening to the conversation, and, if technically feasible,*** to have a private telephone in his or her living quarters at the patient's own expense.

20. To stay out of bed as long as the patient desires and to be wakened for routine daily care no more than two hours before breakfast is served, unless a physician recommends otherwise and specifies the reasons in the patient's medical record.

21. To receive assistance in awakening, getting dressed, and participating in the facility's activities, unless a physician specifies reasons in the patient's medical record.

22. To meet with any visitors of the patient's choice between 8 a.m. and 8 p.m. daily. If the patient is critically ill, he or she may receive visits at any time from next of kin or a guardian, unless a physician documents that this would be harmful to the patient's health.

23. To take part in nursing home activities, and to meet with and participate in the activities of any social, religious, and community groups, as long as these activities don't disrupt the lives of other patients.

24. To leave the nursing home during the day with the approval of a physician and with the patient's whereabouts noted on a sign-out record. Arrangements may also be made with the nursing home for an absence overnight or longer.

25. To refuse to perform services for the nursing home.

26. To request visits at any time by representatives of the religion of the patient's choice and, upon the patient's request, to attend outside religious services at his or her own expense. No religious beliefs or practices may be imposed on any patient.

27. To participate in meals, recreation, and social activities without being subjected to discrimination based on age, race, religion, sex, nationality, or disability. The patient's participation may be restricted or prohibited only upon the written recommendation of his or her physician*[, and only with the patient's consent]*.

28. To organize and participate in a Resident Council that presents residents' concerns to the administrator of the facility.

29. To discharge himself or herself from the nursing home by presenting a release signed by the patient. If the patient is an adjudicated mental incompetent, the release must be signed by his or her next of kin or guardian.

30. To be transferred or discharged only for one or more of the following reasons and the reason for the transfer or discharge must be recorded in the patient's medical record:

i. In an emergency, with notification of the patient's physician and next of kin or guardian.

ii. For medical reasons or to protect the patient's welfare or the welfare of others.

iii. For nonpayment of fees, in situations not prohibited by law.

31. To receive written notice at least 30 days in advance when the nursing home requests the patient's transfer or discharge, except in an emergency. Written notice must also be provided to the patient's next of kin or guardian 30 days in advance.

32. To be given a written statement of all patient rights as well as any additional regulations established by the nursing home involving patient rights and responsibilities. The nursing home shall require each patient or his or her guardian to sign a copy of this document. In addition, a copy must be posted in a conspicuous, public place in the nursing home. Copies must also be given to the patient's next of kin and distributed to staff members. The nursing home is responsible for developing and implementing policies to protect patient rights.

33. To retain and exercise all the constitutional, civil, and legal rights to which the patient is entitled by law. The nursing home must encourage and help each patient to exercise these rights.

34. To voice complaints without being threatened or punished. Each patient is entitled to complain and present his or her grievances to the nursing home administrator and staff, to government agencies, and to anyone else without fear of interference, discharge, or reprisal. The nursing home is required to provide each patient and his or her next of kin or guardian with the names, addresses, and telephone numbers of the government agencies to which a patient can complain and ask questions, including the New Jersey State Department of Health and the Office of the Ombudsman for the Institutionalized Elderly. These names, addresses, and telephone numbers must also be posted in a conspicuous place near every public telephone and on all public bulletin boards in the nursing home.

(b) Each patient, patient's next of kin, and patient's guardian shall be informed of the patient rights enumerated in this subchapter, and each shall be explained to him or her. None of these rights shall be abridged or violated by the facility or any of its staff.

SUBCHAPTER 5. MANDATORY ACCESS TO CARE

8:39-5.1 Mandatory admission policies and procedures

(a) The facility shall make available to indigent individuals at least five percent of its beds or, if the facility is licensed for 100 or more beds, at least 10 percent of its beds. For purposes of this paragraph, an individual is "indigent" if he or she is an applicant for admission or a current resident of the facility, and if he or she would otherwise meet the eligibility requirements of Medicaid reimbursement or county or municipal financial assistance for nursing home care.

(b) The facility shall not deny a patient immediate readmission to the facility at the conclusion of a period of temporary discharge, if payment or reimbursement for the patient's care includes a period of temporary discharge. For purposes of this rule, a period of temporary discharge begins with a transfer to a hospital or other health facility and lasts 10 or fewer days.

(c) The facility, if it is a Medicaid provider whose Medicaid occupancy level is less than the statewide occupancy level, shall comply with N.J.S.A. 10:5-12.2 by not denying admission to a qualified Medicaid applicant when a bed becomes available.

(d) Whenever the facility denies admission to an applicant for admission, the facility, within 14 days of the denial, shall provide written notice to the applicant or person applying on the applicant's behalf of the denial and the reason for denial.

(e) The facility shall not deny admission to any applicant for admission *[(other than a person currently committed to an institution in accordance with law)]* based on health care needs if the applicant's health care needs are commensurate with the services provided by a licensed long-term care facility as specified in this chapter unless:

1. The facility currently treats a high proportion of patients whose diagnosed health problems clearly require more intensive care than is ordinarily provided to most long-term care patients.

2. The facility could provide health care to the applicant at an acceptable level of quality of care only by reducing the quality of care that is currently provided to other patients.

8:39-5.2 Mandatory policies and procedures for access to care

(a) There shall be no discrimination against any patient or group of patients based on method of payment.

(b) The facility shall meet all currently applicable conditions attached to any Certificate of Need that has been granted to it.

(c) If a facility has reason to believe, based on a patient's behavior, that the patient poses a danger to himself or herself or others, and that the facility is not capable of providing proper care to the patient, then an evaluation shall be performed by two independent physicians and a social worker to determine whether the patient is appropriately placed in that facility; locate a new placement if necessary; and initiate civil commitment procedures if no other placement can be made.

(d) The facility shall maintain a current written record of all financial arrangements with the patient, next of kin, or guardian, with copies furnished to the patient ***or responsible party*** at least quarterly.

SUBCHAPTER 6. ADVISORY ACCESS TO CARE

8:39-6.1 Advisory admission policies and procedures

(a) The date of application should be included for each listing on any admission waiting list. When a vacancy occurs, the facility should contact the applicant with the earliest date of application and should document the contact. Such contacts should include an offer of admission, subject to the applicant's acceptance of the facility's lawful conditions of admission, if the facility is a medically appropriate setting of care for the patient.

(b) A record of each pre-admission application interview, including the disposition and stated reason if admission is denied, should be kept for one year.

(c) Before admission, the patient's physician, the facility's social worker, the facility's admissions officer (if different from the social worker), and a registered professional nurse should discuss the appropriateness of the placement.

(d) An admission waiting list should exist and should be implemented.

SUBCHAPTER 7. MANDATORY PATIENT ACTIVITIES

8:39-7.1 Mandatory structural organization for patient activities

The director of patient activities shall supervise all other patient activities staff and coordinate all patient activity programs.

8:39-7.2 Mandatory policies and procedures for patient activities

An individualized patient activities plan shall be developed and implemented to fit the patient's level of functioning, needs, and personal interests.

8:39-7.3 Mandatory staff qualification for patient activities

(a) The facility shall have a director of patient activities who holds at least one of the following *[two]* ***three*** qualifications:

1. A baccalaureate degree from an accredited college or university with a major area of concentration in recreation, creative arts therapy, therapeutic recreation, art, art education, psychology, sociology, or occupational therapy;

2. A high school diploma and three years of experience in patient activities in a health care facility and satisfactory completion of an activities education program approved by the New Jersey State Department of Health.

3. Serves as director of patient activities for the facility on June 20, 1988.

8:39-7.4 Mandatory staffing amounts and availability for patient activities

(a) Operative July 1, 1989, at least 45 minutes of patient activities staff time per patient per week shall be devoted to patient activities. (This is an average. It is equal to one full-time equivalent patient activities staff member for every 53 patients.)

(b) Prior to July 1, 1989, patient activities staffing shall be provided pursuant to N.J.A.C. 8:39-43.3(b).

8:39-7.5 Mandatory patient activities services

(a) Patient activities staff shall *[provide]* ***arrange*** a diversity of programs to maintain patients' sense of usefulness and self-respect. Included shall be activities in each of the following categories:

1. Social (for example, parties, club meetings, picnics, and other special events);

2. Physical (for example, exercise, sports, dancing, and swimming);

3. Creative (for example, crafts, poetry, drama, music therapy, art therapy, and gardening);

4. Educational and cultural (for example, discussion groups, guest speaker programs, concerts and other forms of live entertainment, and international meals);

5. Spiritual, such as religious services;

6. Awareness, including cognitive and sensory individual and group stimulation for confused and disoriented patients; and

7. Community-integrating (for example; visits by community volunteers, visits by nursery school classes, exchange visits with other health care facilities, participation in senior citizen organization meetings or support group sessions, and participation in adopt-a-grandparent programs).

(b) Patient activity programs shall take place in individual, small group, and large group settings.

(c) Patient activities shall be scheduled for seven days each week. Religious services shall be considered patient activities for purposes of complying with this requirement.

(d) Patients shall participate in the activities program regardless of their financial status.

(e) At least weekly, a listing of all scheduled activities shall be posted in a conspicuous place in the facility.

8:39-7.6 Mandatory space and environment for patient activities

[The] ***Each*** facility ***with more than 60 beds*** shall have an activities room that is equipped with arts and crafts supplies, games, and reading materials ***except that a multipurpose room may be used for activities in facilities that were constructed before a regulation requiring a separate activities room was in effect.***

SUBCHAPTER 8. ADVISORY PATIENT ACTIVITIES

8:39-8.1 Advisory policies and procedures for patient activities

(a) Patient activities staff should be included in routine patient care conferences.

(b) Participation in activities should be encouraged, and levels of patient involvement should be monitored and discussed by the patient activities staff.

(c) Each patient's responses to patient activities programs should be periodically assessed.

8:39-8.2 Advisory staff qualifications for patient activities

(a) The director of patient activities should possess a baccalaureate degree from an accredited college or university with a major area of concentration in therapeutic recreation or creative arts therapy.

(b) The director of patient activities should hold current certification from the National Certification Council for Activity Professionals.

8:39-8.3 Advisory staffing amounts and availability for patient activities

(a) At least 55 minutes of patient activities staff time per patient per week should be devoted to patient activities. (This is an average. It is equal to one full-time equivalent staff member for every 44 patients.)

(b) The facility should maintain an active volunteer program that includes scheduled visits held on at least a weekly basis.

8:39-8.4 Advisory patient services for patient activities

(a) Patient activity programs should be conducted during at least two evenings per week.

(b) Transportation should be provided for field trips for selected patients who choose to participate unless their participation would not be feasible.

(c) Organized outdoor recreation should be provided.

(d) There should be a pet therapy program for interested patients with safeguards to prevent interference in the lives of other patients, and the program should comply with guidelines for pet facilitated therapy issued by the New Jersey State Department of Health.

(e) A menu committee composed of patients should participate in meal planning.

(f) The facility should have an organized program for visits to patients by school or pre-school children.

(g) Patient activities programs should be developed and modified partly on the basis of input from patients.

SUBCHAPTER 9. MANDATORY ADMINISTRATION

8:39-9.1 Mandatory structural organization

(a) The facility shall inform the New Jersey State Department of Health of the ownership and management of the facility and its location, and proof of ownership shall be available at the facility.

1. In the case of group or corporate management of a facility, the facility shall specify:

i. Name and address of the firm or corporation; and,

ii. Names and addresses of all directors and of the firm or corporation.

2. Any proposed change in ownership shall conform with N.J.A.C. 8:33.

(b) The facility shall not be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

(c) In a facility with more than 240 beds, in addition to the licensed administrator, there shall be a full-time administrative supervisor who is assigned the evening shift and reports directly to the licensed administrator.

(d) The administrator shall serve full-time in an administrative capacity within the facility in facilities with more than 240 beds. The administrator shall work full-time in the facility, although not necessarily in an administrative capacity, in facilities with between 60 and 240 beds. The administrator shall be administratively responsible for all aspects of the facility.

8:39-9.2 Mandatory policies and procedures for administration

(a) The facility shall maintain a written record of all financial arrangements with the patient, next of kin, and/or guardian. Copies of the record shall be accessible to the patient or guardian ***during normal business hours or by prior arrangement***.

(b) The facility shall provide the patient with 30 days prior written notice of charges, expenses, or other financial liabilities that are in addition to the agreed per diem rate. The patient's prior written approval for additional charges shall not be required in the event of a health emergency that requires the patient to receive immediate special services or supplies.

(c) The administrator shall provide to the owner and/or governing body of the facility a copy of the licensing survey report and any additional survey-related data sent by the New Jersey State Department of Health to the administrator of the facility.

(d) An annual financial report or a Medicaid cost report shall be submitted to the New Jersey State Department of Health.

(e) The facility shall notify the New Jersey State Department of Health immediately by telephone (609) 588-7725, or (609) 392-2020 after office hours, followed within 72 hours by written confirmation of any of the following:

1. Interruption for three or more hours of ***basic*** physical plant services.

2. Termination of employment of the administrator or the director of nursing, and the name and qualifications of the proposed replacement.

3. All alleged or suspected crimes related to patients, which same have also been reported at the time of occurrence to the police department. In addition, the State Office of the Ombudsman for the Institutionalized Elderly shall be ***immediately*** notified of any suspected patient abuse *[of]***, neglect or,*** exploitation of patients aged 60 or older, pursuant to P.L. 1983 c.43, N.J.S.A. 52:27G-7.1, and the Department of Health shall be ***immediately*** notified for patients under the age of 60.

4. All fires, disasters, deaths, and imminent dangers to a patient's life or health resulting from accidents or incidents in the facility.

(f) When a vacancy exists in the position of administrator for 48 hours or more, the facility shall arrange for licensed administrative supervision on a consultant basis. A new licensed administrator shall be appointed within *[30]* ***90*** days of the appointment of the consultant.

(g) The facility shall make all policy and procedure manuals available to patients, families, and guardians during normal business hours or by prior arrangement.

(h) The facility shall make available, on demand, during normal business hours and visiting hours, the results of the most recent annual licensure survey conducted by the New Jersey Department of Health.

8:39-9.3 Mandatory staff qualifications

(a) The facility shall be directed by an individual who holds a current New Jersey license as a nursing home administrator.

(b) A nursing home administrator whose license is either suspended or revoked, pursuant to N.J.S.A. 25:2H-27 and 26:2H-28 (Chapter 356, P.L. 1968) shall not be appointed or retained in the facility in any administrative, managerial, supervisory, or similar position.

(c) All personnel who require licensure or authorization in order to provide patient care shall be licensed or authorized under applicable laws and regulations of the State of New Jersey. The licenses or authorizations shall be verified by the facility.

(d) The facility shall check one or more references of each new employee to confirm suitability for employment in a health care setting.

8:39-9.4 Staffing amounts and availability

The administrator or an *[alternative]* ***alternate*** designated in writing by the administrator shall be on the premises at all times to direct operations.

SUBCHAPTER 10. ADVISORY ADMINISTRATION

8:39-10.1 Advisory policies and procedures for administration

(a) Results of the most recent licensure survey conducted by the New Jersey State Department of Health should be available for inspection by any visitor during all visiting hours. A notice announcing the availability of those results during all visiting hours should be conspicuously posted in diverse areas of the facility.

(b) The owner and/or governing authority should establish and implement a written plan for evaluating the performance of the administrator on an annual basis in accordance with explicit criteria.

(c) Funds deposited with a facility for a particular patient's use and safekeeping should be held in an interest-bearing account, with interest accruing to the patient ***if the funds exceed a minimum dollar amount for interest-bearing accounts as determined by the financial institution***.

(d) Each of at least five service directors should participate in facility planning through preparation of annual budgets and annual reports, and should participate in annual budget conferences among all service directors and the administrators.

(e) No patient should be discharged between 5:00 p.m. and 8:00 a.m., except in an emergency or with the consent of the patient or family.

(f) Policies for transfer should include method of *[transporation]* ***transportation***, transfer forms, and copies of medical records to accompany or follow the patient, procedures for security of the patient and his or her personal effects, and timeliness of transfer. These policies should be followed.

8:39-10.2 Advisory staff qualifications

(a) *[The facility should have on duty at all times an individual certified in and competent to perform cardiopulmonary resuscitation (CPR).]* ***Cardiopulmonary resuscitation (CPR) services should be available in the facility to all patients, at all times, and on a timely basis.***

(b) Credentials of all administrators, physicians, nurses, social workers, dietitians, pharmacists, patient activities personnel, and rehabilitation therapists on staff in the facility should be verified in writing.

(c) All staff members should be clean and attired in a manner that corresponds with their function.

(d) Each staff member should wear an easily readable name tag.

8:39-10.3 Advisory staff education and training

(a) The facility should encourage personnel involved in activities related to patient care to attend at least one education program each year by such means as fee reimbursement, compensatory time off, distribution of notices of continuing education programs, and maintenance of records of continuing education services attended.

(b) The facility should conduct a tuition aid program directed toward the career development and upward mobility of staff.

(c) The facility should be a teaching nursing home, that is, the site of an internship, externship, or residency training program for health professionals, as part of the curriculum of an accredited or state-approved school or training program.

(d) The facility should maintain a collection of textbooks and/or recent periodicals on long-term care, geriatric care, nursing, and other disciplines that is accessible to staff.

SUBCHAPTER 11. MANDATORY PATIENT ASSESSMENT AND CARE PLANS

8:39-11.1 Mandatory structural organization for patient *[care]* assessment and ***care plans***

A registered professional nurse (RN) shall assess the nursing needs of each patient, prepare a nursing diagnosis, and approve, in writing, the *[patient's]* ***nursing*** care plan. *[A licensed nurse (RN or licensed practical nurse) shall prepare a nursing care plan.]*

8:39-11.2 Mandatory policies and procedures for patient assessment ***and care plans***

(a) A physician shall provide orders for each patient's care beginning on the day of admission.

(b) Each patient shall be examined by a physician within five days before, or 48 hours after, admission.

(c) An initial assessment and care plan shall be developed on the day of admission and include at least personal hygiene, immediate dietary needs, medications, and ambulation.

(d) The complete assessment and care plan shall be based on oral or written communication and assessments *[proided]* ***provided*** by nursing, dietary, patient activities, and social work staff; and when ordered by the physician, assessments shall also be provided by other health professionals. The care plan shall include specific, measurable goals, based on the patient's care needs and means of achieving each goal.

(e) The complete care plan shall be established and implementation shall begin within 14 days, and shall include, at least, rehabilitative/restorative measures, preventive intervention, and training and teaching of self-care.

(f) The assessment and care plan shall reflect the patient's medical history, the medical diagnosis, results of laboratory tests, a previous discharge summary if the patient has come from another facility, and patient information regarding smoking, substance abuse, allergies, behavioral problems, mental state, and rehabilitation potential.

(g) If a patient is discharged to a hospital and returns to the facility within 30 days of discharge, reassessment shall be conducted in those areas where the patient's needs have changed substantially. A complete reassessment shall be performed if the patient was discharged for more than 30 days.

(h) There shall be a scheduled comprehensive reassessment in each service involved in the initial assessment, plus other areas which the physician or interdisciplinary team indicates are necessary. Reassessments shall be performed according to time frames established in the previous care plan.

(i) A reassessment shall be performed in response to all substantial changes in the patient's condition, such as fractures, onset of debilitating chronic diseases, loss of a loved one, or recovery from depression.

(j) The facility shall have a written transfer agreement with one or more hospitals for emergency care and inpatient and outpatient services.

8:39-11.3 Mandatory patient services for discharge and transfer

(a) Discharge plans, for those patients considered to be likely candidates for discharge into the community or a less intensive care setting, shall be developed by the interdisciplinary team prior to discharge and shall reflect communication with the patient and the patient's family.

(b) The facility shall arrange for transfer of patients to other health care facilities, and to health care services provided outside the long-term care facility, in accordance with the physician's orders.

SUBCHAPTER 12. ADVISORY PATIENT ASSESSMENT AND CARE PLAN

*[8:39-12.1 Structural organization

A registered professional nurse should prepare each patient's nursing care plan.]*

*[8:39-12.2]****8:39-12.1*** Advisory policies and procedures for patient assessment and care ***plan***

(a) The assessment and reassessment processes for each patient should include written *[or oral communication]* ***notes or oral communication*** among members of an interdisciplinary team that includes, at least, nursing, medical, pharmacy, social work, patient activities, dietary, and physical or occupational therapy staff.

(b) The patient care plan should be developed at a conference held by an interdisciplinary team that includes staff under each service providing care to the patient, as well as a nurse aide and a registered professional nurse or licensed practical nurse.

(c) The facility should develop and implement guidelines for evaluating the reassessment process with respect to: frequency, comprehensiveness, accuracy, implementation, and interdisciplinary approach.

(d) Social work and patient activities assessments of each patient should avoid value judgments about the patient and should avoid value-laden descriptors of the patient.

(e) The patient activities assessment should include at least a history of the patient's lifestyle and a description of the patient's interests and the personal needs underlying those interests.

(f) The social work assessment of each patient should include:

1. An initial comprehensive social history incorporating significant events in the patient's life;
2. Circumstances of placement in the facility;
3. Evaluation of adjustment in relation to physical and mental functioning;
4. Coping patterns;
5. Changes in social situation;
6. Analysis of the family dynamics and family support; and
7. Identification of patient and family needs and social work intervention to address those needs.

(g) The intervals between reassessments of a particular patient should not exceed six months in any service which is providing care to the patient.

*[8:39-12.3]****8:39-12.2*** Advisory patient services for outpatients

The facility should provide and/or arrange for someone to accompany each patient during scheduled visits to outpatient services.

SUBCHAPTER 13. MANDATORY COMMUNICATION

8:39-13.1 Mandatory communication policies and procedures

(a) Each service shall maintain a current manual of policies and procedures for providing services.

(b) Each facility shall establish and implement a system for evaluating employees, including special procedures for evaluating new employees, as needed, and at least annually in written form.

(c) The administrative staff shall retain a written current manual of policies and procedures for the facility as a whole and for each individual service.

(d) The facility shall notify any family promptly of an emergency affecting the health or safety of a patient.

8:39-13.2 Mandatory patient communication services

(a) Patients and their families shall be supplied with the opportunity to participate in the development and implementation of the care plan, and their involvement shall be documented in the patient's medical record.

(b) Before or on the day of admission, patients and families shall be informed in writing about services provided by the facility, charges imposed for services at the facility, the availability of financial assistance, the rights and responsibilities of patients and families, and the role of each service on the health care team; and they shall be given a tour of patient care units in the facility.

8:39-13.3 Mandatory staff communication qualifications

(a) Staff shall always communicate with patients and families in a respectful way.

(b) The facility shall ensure that all staff including staff members not fluent in English are able to communicate effectively with patients and families.

8:39-13.4 Mandatory staff education and training for communication

(a) Each service shall conduct an orientation program for new employees of that service unless the orientation program is conducted by the administrator.

1. For purposes of complying with this requirement, "new employees" shall be defined to include all permanent and temporary patient care personnel, nurses retained through an outside agency, and persons providing services by contract.

2. The orientation program shall begin on the first day of employment.

3. The orientation program for all staff shall include orientation to the facility and the service in which the individual will be employed, at least a partial tour of the facility, a review of policies and

procedures, identification of individuals to be contacted under specified circumstances, and procedures to be followed in case of emergency.

(b) Each service shall provide education or training for all employees in the service at least four times per year and in response to patient care problems, implementation of new procedures, technological developments, changes in regulatory standards, and staff member suggestions.

(c) At least one education training program each year shall be held for all employees on each of the following topics:

1. Procedures to follow in case of emergency;
2. Infection control; and
3. Patient rights.

*[(e)]**(d)* The facility shall maintain attendance lists for all education or training programs conducted in, or sponsored by, the facility.

SUBCHAPTER 14. ADVISORY COMMUNICATION

8:39-14.1 Advisory communication structural organization

(a) Each service should maintain a current table of organization.

(b) Each service should maintain a current set of job descriptions.

(c) The entire facility should maintain a current table of organization.

8:39-14.2 Advisory policies and procedures for communication

Each service should conduct periodic meetings as needed.

8:39-14.3 Patient services

(a) The quality assurance program should review needs and make recommendations to improve interdisciplinary communication.

(b) The facility should have one or more wellness programs open to the community, such as programs to reduce or prevent smoking, alcohol and drug abuse, elder abuse, obesity, or hypertension.

(c) Periodic discussions should be held among staff, patients, and families to discuss any problems, encourage the patient to reach his or her potential, examine the goals and expectations of different individuals, describe how questions and complaints can be presented, and review the concept of interdisciplinary care.

(d) Provision should be made for patients to retain membership, join, and/or participate in community activities. These should include organizations, community projects, holiday observances, or charitable events.

8:39-14.4 Advisory staff education and training for communication

(a) Prior to assuming full responsibility in his or her position, each new employee should demonstrate competence in the performance of tasks related to that position, including presentation of related educational and professional credentials.

(b) Annual education, such as training programs, orientation sessions, and floor meetings, should be held among staff in each service, including housekeeping or environmental services, to discuss ways to encourage patients to make decisions affecting their lives.

(c) The facility should establish and implement a written plan for all education and training of staff.

(d) Education and training of staff should include a program in cardiopulmonary resuscitation (CPR) which should be reviewed annually.

(e) Each service should establish and implement education or training programs for members of other services on diverse topics.

(f) At least one education or training session per year should be held on the subject of interacting with patients in a respectful, rather than condescending, manner.

(g) Orientation of all new staff members should include education or training in patient rights.

SUBCHAPTER 15. MANDATORY DENTAL SERVICES

8:39-15.1 Mandatory policies and procedures for dental services

(a) Each patient's medical record shall include:

1. The results of a dental assessment performed within six months before or after admission; and
2. A description of dental care provided.

(b) Each patient's assessment and care plan shall include oral health.

(c) All patient dentures shall be labelled.

8:39-15.2 Mandatory patient dental services

(a) The facility shall provide or arrange for emergency dental care to relieve pain and infection.

(b) The facility shall assist interested patients in making arrangements to receive dental examinations, routine prophylaxis, and care.

(c) The facility shall ensure that arrangements are made to transport patients for routine and emergency dental care.

SUBCHAPTER 16. ADVISORY DENTAL SERVICES

8:39-16.1 Advisory patient dental services

(a) The facility should provide in-house dental services, including treatment and prophylactic care.

(b) The facility should follow established protocols for providing all patients with regularly scheduled routine prophylactic dental services and treatments when indicated, delivered by a dentist or a dental hygienist, except for patients whose medical records contain an explanation of why such services would not benefit the patient.

(c) All patients should receive an annual examination for oral cancer and other oral diseases.

SUBCHAPTER 17. MANDATORY DIETARY SERVICES

8:39-17.1 Mandatory structural organization for dietary services

(a) The dietitian shall be responsible for the direction, provision and quality of the dietary services.

(b) Menus shall be planned and scheduled by the food service director or the dietitian, and shall be approved by the dietitian at least 14 days in advance.

(c) The dietitian shall perform the dietary assessment and reassessment, which shall include examination of and communication with the patient if the patient's condition permits.

(d) Services that are provided by a food service company shall be covered by a written contract.

8:39-17.2 Mandatory policies and procedures for dietary services

(a) The facility shall make available a current dietary manual which shall have been approved by the *[medical director and the dietitian]* ***dietician and in facilities with more than 60 beds, the medical director***.

1. The facility shall serve diets which are consistent with the dietary manual.

(b) Food shall be prepared by cutting, chopping, grinding, or blending to meet the needs of each patient.

(c) The facility shall post current menus with portion sizes in the food preparation area.

1. The facility shall keep menus for 30 days with any changes accurately recorded.

(d) At least 10 percent of the day's total calories shall be routinely provided by protein.

(e) The facility shall designate responsibility for observation and documentation of meals refused or missed by a patient.

(f) A dietitian shall adhere to an established system of nutritional assessment, which shall include examination of and communication with the patient if the patient's condition permits.

(g) Tube feedings shall consist of a nutritionally complete formula given in sufficient quantity to assure adequate nutrition.

(h) All meals shall be attractive when presented to patients.

(i) Meals shall be scheduled in such a way that no more than 14 hours elapse between an evening meal and breakfast the next morning and that the first meal shall not be served before 7:00 a.m. unless requested by the patient.

(j) All food service facilities shall operate with safe food handling practices in accordance with Chapter XII of the New Jersey Sanitary Code.

8:39-17.3 Mandatory staff qualifications for dietary services

(a) The dietitian shall possess a bachelor's degree from an accredited college or university with a major area of concentration in

a nutrition-related field of study, and one year of full-time professional experience or graduate-level training in nutrition.

(b) There shall be a full-time food service director or manager who has met the requirements of a dietitian or has graduated from a New Jersey State-approved course in food service management ***or its equivalent***.

8:39-17.4 Mandatory staffing amounts and availability for dietary services

(a) Operative July 1, 1989, the dietitian shall spend an average of at least 15 minutes per patient each month providing dietary services in the facility. (This is an average. It is equal to one full-time equivalent dietitian for every 693 patients.)

1. Prior to July 1, 1989 dietary services staffing shall be provided pursuant to N.J.A.C. 8:39-43.3(b).

(b) Dietary service personnel shall be present for a period of at least 12 hours each day.

8:39-17.5 Mandatory patient dietary services

(a) Each patient shall receive a diet which:

1. Corresponds to the physician's order, the dietitian's instructions, and patient's food preferences;

2. Is served in the proper consistency and at the proper temperature; and

3. Provides nutrients and calories based upon current recommended dietary allowances of the National Academy of Sciences, adjusted for the patient's age, sex, weight, physical activity, physiological function, and therapeutic needs.

(b) The facility shall provide between-meal and bedtime nourishment, and beverages shall be available at all times for each patient unless contraindicated by a physician as documented in the patient's medical record.

(c) The facility shall offer substitute foods and beverages to all patients who refuse the food served at meal times. Such substitutes shall be of equivalent nutritional value.

(d) No patient shall have to wait for assistance in eating for more than 15 minutes following delivery of a tray to the patient.

(e) The facility shall select foods and beverages, which include fresh and seasonal foods, and shall prepare menus with regard to the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal preference of patients.

SUBCHAPTER 18. ADVISORY DIETARY SERVICES

8:39-18.1 Advisory structural organization for dietary services

(a) A registered dietitian should perform the patient dietary assessment.

(b) A registered dietitian should participate in the interdisciplinary conference to develop the patient care plan.

8:39-18.2 Advisory staff qualifications for dietary services

(a) The director of dietary services should be registered by the Commission on Dietetic Registration of the American Dietetic Association (R.D.).

(b) The food service director should have completed a New Jersey State-approved course in Sanitation.

8:39-18.3 Advisory staffing amounts and availability for dietary services

(a) Personnel in addition to nurses should regularly assist patients in eating at mealtimes.

(b) The dietitian should spend an average of at least 20 minutes per patient each month providing dietary services in the facility. (This is an average. It is equal to one full-time equivalent dietitian for every 520 patients.)

8:39-18.4 Advisory patient dietary services

(a) There should be dietary observances for national and/or religious holidays.

(b) Fresh fruits and vegetables should be served in season on a daily basis.

(c) The facility should operate a dining room for patients with special needs who would not receive sufficient supervision in the main dining room.

(d) Patients should have access to a refrigerator or snack bar ***directly or through staff***.

(e) Patients should be consulted on at least a quarterly basis about their food preferences.

(f) The facility should sponsor a guest meal program.

8:39-18.5 Supplies and equipment

The facility should provide nondisposable dishes and cutlery at all meals ***except for special meal activities such as picnics***.

SUBCHAPTER 19. MANDATORY INFECTION CONTROL AND SANITATION

8:39-19.1 Mandatory organization for infection control and sanitation

(a) The facility shall have an infection prevention and control program conducted by an infection control committee which shall include representatives from at least administrative, nursing, medical, dietary, housekeeping or environmental services, and pharmacy staffs.

(b) Responsibility for infection surveillance shall be assigned to an employee with education *[and/or experience]**, ***training, completed course work, or experience*** in infection control or epidemiology or shall be provided by contract. The individual who is assigned such responsibility shall be designated the infection control officer.

(c) The infection control committee shall approve and implement written policies and procedures for collection, storage, handling, and disposal of medical waste, which is defined to be any waste containing the following:

1. Liquid and solid culture media generated in the microbiological laboratory;

2. Needles, syringes, and sharps;

3. All pathology specimens, including tissues, organs, and body parts;

4. Bulk blood, blood products, and body fluids ("bulk" is defined as 20 CCs or more);

5. All waste generated from rare or unusual cases involving communicable diseases, where the New Jersey State Department of Health supplies the facility with a list, in advance, of which cases are deemed rare or unusual.

(d) If the facility's medical waste is processed by another facility, there shall be a written agreement between the facilities that stipulates the responsibilities of each facility to ensure proper and safe handling. This agreement shall be implemented.

(e) If medical waste is processed outside the facility, there shall be a written contract to ensure that processing complies with any applicable State Department of Health and State Department of Environmental Protection regulations.

8:39-19.2 Mandatory employee health policies and procedures for infection control and sanitation

*[(a) Each new employee shall receive, upon employment, a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions shall be employees with documented negative Mantoux skin test results (0-9 mm. of induration) within the previous year, and employees with a documented positive Mantoux skin test result (10 or more mm. of induration) who have received appropriate medical treatment for tuberculosis.

1. If the Mantoux tuberculin skin test is negative, the test shall be repeated one to three weeks later. If the second tuberculin skin test is negative, subsequent tests shall be performed at the discretion of the facility.

2. If the first or second Mantoux skin test is positive, a chest x-ray shall be performed, and, if necessary, followed by chemoprophylaxis or therapy.

3. All Mantoux test results, including transverse diameter of induration in mm., follow-up test results and treatments, if any, shall be recorded in the employee's medical record.]*

*[(b)]**(a)* Employees who have signs or symptoms of a communicable disease shall not permitted to perform functions that expose patients to risk of transmission of the disease.

*[(c)]**(b)* If a communicable disease prevents the employee from working for a period of more than three days, a physician's statement

approving the employee's return shall be required prior to the employee's return to work.

*[(d)]**(c)* The facility shall develop and implement procedures for the care of employees who become ill while at work or who have a work-related accident.

8:39-19.3 Mandatory waste removal policies and procedures

(a) Blood, blood products, and body fluids other than urine that are collected in bulk (20 CCs or more) in patient care areas shall be disposed of directly into a flushing rim sink. This standard applies to the contents of suction canisters.

(b) All waste generated from rare or unusual cases involving highly communicable diseases shall be autoclaved or incinerated, where the New Jersey State Department of Health previously shall have determined which cases are deemed rare or unusual and shall have notified the facility.

(c) Medical waste that is not incinerated or disposed of as outlined in (a) or (b) above shall be sterilized by steam sterilization, or by a method approved by the New Jersey State Department of Health. Maintenance, repair, and biological monitoring of steam sterilizers used for medical waste shall be carried out in accordance with Department of Health autoclave standards for hospitals.

(d) Medical waste sterilized in a steam autoclave shall be sterilized using at least the following minimum exposure times and temperatures:

Temperatures	Spore-Kill Time
240	60 minutes
245	36 minutes
250	30 minutes
257	16 minutes
270	4 minutes

(e) Medical wastes shall be stored in a room where unauthorized persons do not have access to or contact with the waste.

(f) All reusable containers used for storage of medical waste shall be *[santized]* ***sanitized***.

(g) The infection control committee shall develop and implement written policies and procedures for collection, storage, handling, and disposal of all solid waste that is not medical waste.

(h) All waste that is non-medical solid waste, including vacutainers, shall be disposed of in a sanitary landfill approved by the Department of Environmental Protection. Disposal shall be as frequent as necessary to avoid creating a nuisance.

8:39-19.4 Mandatory general policies and procedures for infection control and sanitation

(a) The facility shall comply with Federal Centers for Disease Control category I guidelines for initiating and implementing infection control and isolation procedures.

(b) The facility shall comply with Federal Centers for Disease Control guidelines for prevention of catheter-associated urinary tract infections, intravenous therapy-related infections, and nosocomial pneumonia.

(c) The infection control officer shall provide continuous collection and analysis of data, including determination of nosocomial infections, epidemics, clusters of infections, infections due to unusual pathogens, and any occurrence of nosocomial infection that exceeds the usual baseline levels.

(d) The infection control officer shall make recommendations for corrective actions based on surveillance and data analysis.

(e) The facility shall have a system for investigating, evaluating, and reporting the occurrence of all reportable infections and diseases as specified in Chapter II of the State Sanitary Code (N.J.A.C. 8:57-1.1 to 8:57-1.12).

(f) The facility shall maintain listings of all patients and personnel who have reportable infections, diseases, or conditions.

(g) High-level disinfection techniques approved by the New Jersey State Department of Health shall be used for all reusable respiratory therapy equipment and instruments that touch mucous membranes.

(h) Disinfection procedures for items that come in contact with bed pans, sinks, and toilets shall conform with established protocols for cleaning and disinfection.

(i) All patients shall be provided with an opportunity to wash their hands before each meal and shall be encouraged to do so. Staff shall wash their hands before each meal and before assisting patients in eating.

(j) Personnel who have had contact with patient excretions, secretions, or blood, whether directly or indirectly, in activities such as performing a physical examination, providing catheter care, and emptying bedpans, shall wash their hands with soap and warm water for between 10 and 30 seconds ***or use other effective hand sanitation techniques*** immediately after such contact.

(k) Effective and safe controls shall be used to minimize and eliminate the presence of rodents, flies, roaches, and other vermin in the facility. The premises shall be kept in such condition as to prevent the breeding, harborage, or feeding of vermin. All openings to the outer air shall be effectively protected against the entrance of insects.

8:39-19.5 Mandatory staff qualifications: health history and examinations

The facility shall require all employees to complete a health history and to receive an examination performed by a physician within two weeks prior to the first day of employment ***or upon employment***. The facility shall establish criteria for determining the completeness of physical examinations for employees.

8:39-19.6 Mandatory staffing amounts and availability for infection control

The facility shall assign one or more individuals with responsibility for initiating isolation procedures.

8:39-19.7 Mandatory space and environment for water supply

(a) The water supply used for drinking or culinary purposes shall be adequate in quantity, of a safe sanitary quality, and from a water system which shall be constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and N.J.A.C. 7:10 et seq. and local laws, ordinances, and regulations. Copies of the Safe Drinking Water Act can be obtained from the Department of Environmental Protection, Bureau of Potable Water, CN 209, Trenton, New Jersey 08625.

(b) If required by the Department of Environmental Protection, the facility shall adhere to the water sampling schedule and the chemical and biological monitoring requirements of the water supply system set by the New Jersey State Department of Environmental Protection, and records shall be maintained.

(c) There shall be no cross connections between city and well water supplies. When the facility uses well water *[for every day purposes,]* ***for potable water every day,*** a double check valve shall be permitted if the facility has approval for such use from the water company and the New Jersey State Department of Environmental Protection.

(d) Equipment requiring water drainage, such as ice machines, shall be properly drained to a sanitary connection.

(e) Hot (90 to 110 degrees Fahrenheit) and cold running water shall be provided.

8:39-19.8 Mandatory space and environment for sanitation and waste management

(a) Solid waste shall be stored in clean, solidly constructed containers with tight-fitting lids for the storage of solid wastes.

(b) Storage areas for solid waste containers shall be kept clean. Waste shall be collected from all storage areas regularly to prevent nuisances such as odors, flies, or rodents.

(c) Solid wastes not incinerated shall be disposed of in a sanitary landfill approved by the New Jersey State Department of Environmental Protection with sufficient frequency to avoid creating a nuisance.

(d) There shall be no back siphonage conditions present.

(e) All food service facilities shall be maintained in conformance with Chapter XII of the New Jersey State Sanitary Code.

(f) If the facility has an incinerator, it shall operate with the necessary permits from the New Jersey State Department of Environmental Protection and shall not create a nuisance to the facility or the community.

(g) No medical waste shall be transported in such a way as to create a contamination hazard.

(h) Non-medical solid waste shall be stored within the containers provided for it outside the facility or in a separate room that is maintained in a clean and sanitary condition. Waste shall be collected from the storage room regularly to prevent nuisances such as odors, flies, or rodents, and so that the waste shall not overflow or accumulate beyond the capacity of the storage containers.

(i) Garbage compactors shall be located on an impervious pad that is graded to a drain. The drain shall be connected to the sanitary sewage disposal system.

(j) Plastic bags shall be used for solid waste removal from patient care units and supporting departments. *[Bags used for all solid waste removal either shall be three mils in thickness or shall have a dry load capacity of at least 40 pounds and a liquid load capacity of at least 40 pounds.]* ***Bags used for all solid waste removal shall be designated by the manufacturer as "medium" or "heavy" weight or its equivalent.***

8:39-19.9 Mandatory supplies and equipment for infection control and sanitation

(a) The sewage disposal system shall be maintained in good repair and operated in compliance with state and local laws, ordinances, and regulations.

(b) Water piping carrying non-potable water shall be clearly labeled.

(c) Commercial sterile supplies shall be used in accordance with manufacturers' recommendations, and before expiration dates, and packages shall be inspected to ensure integrity.

(d) Bed pan washers shall be in good working order and properly maintained.

(e) Toilet tissue and proper waste receptacles shall be provided.

(f) Suitable hand cleanser and sanitary towels or approved hand-drying machines shall be provided.

(g) Equipment and supplies used for sterilization, disinfection, and decontamination purposes shall be maintained according to manufacturers' specifications.

8:39-19.10 Mandatory staff education and training for infection control and sanitation

All staff members shall be informed about the facility's infection control procedures, including personal hygiene requirements.

SUBCHAPTER 20. ADVISORY INFECTION CONTROL AND SANITATION

8:39-20.1 Advisory policies and procedures for infection control

[(a) Each employee who has been tested for tuberculosis as described in N.J.A.C. 8:39-19.2 should be retested on an annual basis according to the procedures described in that section.]

*[(e)]***(a)*** Each patient should receive, upon admission to the facility, a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions should be patients with documented negative Mantoux skin test results (0 to 9 mm. of induration) within the previous year, and patients with a documented positive Mantoux skin test result (10 or more mm. of induration) who have received appropriate medical treatment for tuberculosis.

1. If the Mantoux tuberculin skin test is negative, the test should be repeated one to three weeks later. If the second tuberculin skin test is negative, subsequent tests should be performed at the discretion of the facility.

2. If the first or second Mantoux tuberculin skin test is positive, a chest x-ray should be performed and, if necessary, followed by chemoprophylaxis or therapy.

3. All Mantoux test results, including transverse diameter of induration in mm., as well as follow-up tests and treatment, if any, should be recorded in the patient's medical record.

4. Each employee who has been tested for tuberculosis as described in N.J.A.C. 8:39-19.2 should be retested on an annual basis according to the procedures described in that section.

(b) Yearly influenza immunization should be offered to employees at no charge.

(c) Employees should undergo periodic or annual health screening.

(d) The facility should maintain records documenting contagious diseases contracted by employees during employment.

8:39-20.2 Advisory staff education and training for infection control

At least two education or training programs on infection control should be held every year so that all staff members are fully informed about infection control requirements that apply to them.

8:39-20.3 Advisory infection control quality assurance

The infection control officer should perform at least monthly checks of handwashing practices throughout the facility.

8:39-20.4 Space and environment

Storage containers for solid waste should be kept covered.

SUBCHAPTER 21. MANDATORY LAUNDRY AND HOUSEKEEPING SERVICES

8:39-21.1 Mandatory laundry policies and procedures

(a) Soiled laundry shall be stored in a ventilated, vermin-proof, and vermin-free area, separate from other supplies, and shall be stored, sorted, rinsed, and laundered only in areas specifically designated for those purposes.

(b) All soiled laundry from patient rooms and other service units shall be stored, transported, collected, and delivered in a covered laundry bag or cart. Laundry carts shall be in good repair, kept clean, and identified for use with either clean or soiled laundry.

(c) Soiled laundry from isolation, septic surgical cases, and other critical areas of the facility shall be bagged separately and processed according to established protocols.

(d) Clean laundry shall be protected from contamination during processing, storage, and transportation within the facility.

(e) Soiled and clean laundry shall be kept separate. An established protocol shall be followed to reduce the number of bacteria in the fabrics. Equipment surfaces that come into contact with laundry shall be sanitized.

8:39-21.2 Mandatory housekeeping policies and procedures

(a) The facility shall have a written schedule that determines the frequency of cleaning and maintaining all equipment, structures, areas, and systems.

(b) Mattresses, mattress pads and coverings, pillows, bedsprings, and other furnishings shall be properly maintained and kept clean. They shall be thoroughly cleaned and disinfected on a regular schedule and whenever a new patient is using them.

(c) Scatter rugs shall be not permitted and floors shall be coated with slip-resistant floor finish.

8:39-21.3 Mandatory staff qualifications for laundry and housekeeping

(a) Facilities that contract with a commercial laundry or housekeeping service shall use quality assurance measures to ensure that the laundry-related requirements of these regulations are met.

(b) Each member of the housekeeping staff shall wear clean clothes and shall use good personal hygiene.

8:39-21.4 Mandatory space and environment for laundry facilities

(a) If a laundry chute system is used, it shall be maintained in good repair and cleaned, and there is no build-up of visible soil.

(b) If the facility has an in-house laundry, it shall provide a receiving, holding, and sorting area with hand-washing facilities. The walls, floors, and ceilings of the area shall be clean and in good repair. The flow of ventilating air shall be from clean to soiled areas, and ventilation shall be adequate to prevent heat and odor build-up.

(c) All equipment and environmental surfaces shall be clean to sight and touch.

8:39-21.5 Mandatory supplies and equipment for laundry and housekeeping

(a) The facility shall have a supply of sheets, pillow cases, drawsheets, towels, and washcloths that is at least three times the number of patients.

(b) The facility shall have a supply of blankets that is at least two times the number of patients.

(c) Fabric pH shall be mainained at 7.0 or below after souring when built detergents are used.

(d) There shall be a list of all cleaning and disinfecting agents used in the facility.

1. The facility's list of all cleaning and disinfecting agents used shall be maintained with an accompanying list of corresponding antidotes.

(e) All cleaning and disinfecting agents shall be correctly labeled as to the product and its use, including agents that have been repackaged from a bulk source.

(f) Housekeeping and cleaning supplies shall be selected, measured, and used correctly and in accordance with manufacturers' instructions.

(g) When not in use, cleaning and disinfecting agents shall be stored separate from other supplies and shall be inaccessible to patients.

(h) All toilets and bathrooms shall be kept clean to sight and touch, in good repair, and free of odors that reflect poor housekeeping practices.

8:39-21.6 *[Quality]* ***Mandatory quality*** assurance ***for laundry***

If the facility has an in-house laundry service, the service shall be evaluated as part of the quality assurance program. This evaluation shall include sour testing to ensure neutralization of alkaline residues from built detergents on at least a monthly basis.

SUBCHAPTER 22. ADVISORY LAUNDRY AND HOUSEKEEPING SERVICES

8:39-22.1 Advisory housekeeping space and environment

Surfaces throughout the facility should be polished and free of smudges and dust.

SUBCHAPTER 23. MANDATORY MEDICAL SERVICES

8:39-23.1 Mandatory structural organization for medical services

(a) *[The facility]* ***Each facility with more than 60 beds*** shall have a medical director who is currently licensed to practice medicine by the New Jersey State Board of Medical Examiners.

1. The medical director shall coordinate medical care and direct the administrative aspects of medical care in the facility.

2. The medical director shall approve all medical care policies and procedures. These policies and procedures shall be followed.

3. The medical director shall participate in the facility's quality assurance program through meetings, interviews, and/or preparation or review of reports.

4. The medical director shall be an active participant on the facility's infection control committee, pharmacy and therapeutics committee, and a committee that is responsible for developing policies and procedures for patient care.

(b) A physician shall visit each patient at least every 30 days unless the medical record contains an explicit justification for not doing so.

8:39-23.2 Mandatory policies and procedures for medical services

(a) The medical director shall ensure that for each patient there is a designated primary and an alternate physician who can be contacted when necessary.

(b) Each physician order shall be properly entered into the patient's medical record and shall be executed by the nursing, dietary, social work, activities, rehabilitation or pharmacy service. If a physician's order is not executed, the record shall contain an explanation, and the physician shall be notified within 24 hours or as specified by the physician.

(c) Each patient's medical director or attending physician shall review the patient's medical record on a scheduled basis to ensure that care plans and medical orders are properly followed.

(d) The medical director shall review all incident reports.

(e) The medical director, or physicians designated by the medical director, shall respond quickly and effectively to medical emergencies which are not handled by another attending physician.

SUBCHAPTER 24. ADIVSORY MEDICAL SERVICES

8:39-24.1 Advisory structural organization for medical services

(a) A nurse practitioner or *[nurse gerontologist]* ***gerontological nurse practitioner*** should be on the staff to take histories, to perform physical examinations, and to provide consultation to other staff members.

(b) If the facility has one or more renal dialysis patients, arrangements should be made for periodic visits by a qualified nephrologist.

(c) If the facility has 60 or fewer beds, it should have a medical director.

8:39-24.2 Advisory medical staff qualifications

The medical director should be board-certified in a primary care specialty, such as family medicine or general internal medicine.

8:39-24.3 Advisory patient medical services

(a) The facility should arrange for physician visits in the facility on a scheduled appointment basis in an office provided for that purpose and with a nurse present.

(b) A physician should visit each patient at least once every 30 days.

(c) The facility should maintain a list of consultant physicians who are available for referrals made by the attending physician.

(d) Current physician fee schedules for medical staff members should be maintained and made available to patients and families.

SUBCHAPTER 25. MANDATORY NURSE STAFFING

8:39-25.1 Mandatory policies and procedures for nurse staffing

(a) There shall be a full-time director of nursing or nursing administrator who is a registered professional nurse licensed in the State of New Jersey, who has at least two years of supervisory experience in providing care to long-term care patients, and who supervises all nursing personnel.

(b) When the director of nursing is not present, there shall be a registered professional nurse or a licensed practical nurse on duty who shall be designated in writing as an alternate to the director of nursing, temporarily responsible for supervising all nursing personnel.

8:39-25.2 Mandatory nurse staffing amounts and availability

(a) The facility shall provide nursing services and licensed nursing personnel at all times.

(b) Operative July 1, 1989, registered professional nurses, licensed practical nurses, and nurse aides shall spend the following amounts of time on professional duties *[(excluding the administrative time of the director of nursing, and in facilities with more than 150 beds)]* ***(the hours of the director of nursing are not included in this computation except for the direct care hours of the director of nursing in facilities with fewer than 150 beds)***:

1. Total number of patients multiplied by 2.5 hours/day; plus

2. Total number of patients receiving each service listed below, multiplied by the corresponding number of hours per day:

Tracheostomy	1.25 hours/day
Use of respirator	1.25 hours/day
Head trauma stimulation/ advanced neuromuscular/ orthopedic care	1.50 hours/day
Intravenous therapy	1.50 hours/day
Wound care	0.75 hour/day
Oxygen therapy	0.75 hour/day
Nasogastric tube feedings and/or gastrostomy	1.00 hour/day

3. Prior to July 1, 1989, nurse staffing shall be provided pursuant to N.J.A.C. 8:39-43.3(a).

(c) In facilities with 150 licensed beds or more, there shall be an assistant director of nursing who is a registered professional nurse.

(d) There shall be visual observation by a member of the *[nursing]* ***patient care*** staff of each patient at least once per hour. ***These observations need not be documented.***

(e) A registered professional nurse shall be on duty at all times in facilities with more than 150 licensed beds and in facilities with specialized units that have been approved as such by the New Jersey State Department of Health.

(f) At least 20 percent of the hours of care required by (b) above shall be provided by individuals who are either registered professional nurses or licensed practical nurses.

(g) Medications shall be administered by authorized personnel in accordance with State and Federal laws and regulations.

(h) The nurse aide component of the facility's total hourly nurse staffing requirement, as specified in (b) above, shall be met by nurse aides who have *[obtained certification in a nurse aide certification program approved by the New Jersey State Department of Health]* ***completed a nurse aide training course approved by the New Jersey State Department of Health and have passed the New Jersey Aide Certification Examination***.

8:39-25.3 Mandatory nursing staff qualifications

(a) There shall be at least one registered professional nurse on duty in the facility during all day shifts ***except under special circumstances in facilities that have fewer than 60 beds, in which case the registered professional nurse shall be on duty during the evening or night shift***.

(b) There shall be at least one registered professional nurse on duty or on call during all evening and night shifts.

8:39-25.4 Mandatory nursing staff education and training

A program shall be established and implemented for individualized orientation of nurse aides, including patient care problem simulations, training and demonstrations in basic nursing skills, and an internship of two to five days, depending on experience.

SUBCHAPTER 26. ADVISORY NURSE STAFFING

8:39-26.1 Advisory structural organization for nurse staffing

(a) Facilities with more than 200 licensed beds should employ at least one full-time equivalent staff educator.

(b) Facilities with between 100 and 200 licensed beds should employ at least a half-time staff educator.

(c) Facilities with fewer than 100 licensed beds should employ a staff educator at least one-fifth time.

8:39-26.2 Advisory policies and procedures for nurse staffing

(a) The facility should establish and implement a system for assigning nursing personnel to patients on the basis of a classification system involving patient acuity.

(b) The facility should use a primary nurse aide system under which each patient, except for those patients meeting specified written criteria for exceptions, is assigned a specific nurse aide. These assignments should be permanent or rotated no more frequently than once per week.

8:39-26.3 Advisory nurse staffing amounts and availability

(a) A registered professional nurse should be on duty at all times in facilities with fewer than 150 licensed beds.

(b) The facility should provide direct nursing services pursuant to N.J.A.C. 8:39-25.2(b) of this chapter and should be increased by at least ten percent.

(c) At least 50 minutes per patient per day of patient care should be provided by licensed nurses, that is, registered professional nurses and licensed practical nurses. (This is an average. It is equal to one full-time equivalent nurse for every ten patients.)

(d) All nurse aides working in the facility should have completed a relevant training and orientation program of at least two weeks' full-time duration***, either within the facility or elsewhere,*** prior to their deployment in the facility.

(e) Each patient care unit in the facility should meet the nurse staffing requirements mandated in N.J.A.C. 8:39-25.2(b) of this chapter.

***8:39-26.4 Advisory qualifications for nurse staffing**

The director of nursing should have a baccalaureate or masters degree in nursing (BSN or MSN).*

SUBCHAPTER 27. MANDATORY PATIENT CARE

8:39-27.1 Mandatory restraint policies and procedures

(a) Physical restraints shall not injure or discomfort the patient, and opportunity for motion and exercise shall be provided for at least ten minutes during each two-hour period that the restraint is in use.

[(b) The family shall be notified when a physician initiates an order that the patient will be physically restrained.]

*[(c)]***(b)*** Restraints shall not be used for punishment or for the convenience of the facility or staff.

8:39-27.2 Mandatory post-mortem policies and procedures

(a) Deceased patients shall be removed in a timely fashion from rooms where other patients are staying.

(b) Deceased patients shall receive post-mortem care, including cleaning and shrouding in conformance with each patient's religious practices. Prostheses shall accompany the body out of the facility.

(c) The next of kin or guardian shall be notified at the time of a patient's death. The deceased shall not be discharged from the facility until pronounced dead with the death documented in the patient's medical record.

(d) The body of a deceased patient who, at the time of death, had a communicable disease such as tuberculosis, as defined in N.J.A.C. 8:57-1.2, or AIDS shall be tagged accordingly before being released from the facility.

8:39-27.3 Mandatory policies and procedures for patient care

(a) All patient care policies shall be written and developed by a patient care committee and shall be available to physicians, staff, patients, their relatives or guardians, and the public.

(b) Patients under 18 years of age shall only be admitted to an area within the facility that has been approved for such occupancy by the New Jersey State Department of Health.

(c) Elderly, incompetent nursing home patients shall have the right to refuse life-sustaining medical treatment under certain circumstances as determined by surrogate decision makers acting according to judicial guidelines following an investigation by the Office of the Ombudsman for the Institutionalized Elderly. A lawful failure to force-feed, feed intravenously, feed through a nasogastric or gastroscopy tube, administer medication, attach to an artificial respirator, or medically treat any patient, out of respect for his or her right to die with dignity, shall not violate any requirement of this chapter notwithstanding any other provision herein.

(d) Patients shall be weighed accurately every month. Whenever there is a gain or loss of five or more pounds, a note shall be entered into the medical record stating whether the care plan should be modified.

(e) Nonambulatory patients shall be repositioned at least once every two hours.

(f) The facility shall take preventive measures against the development of decubitus ulcers, including assessing the patient's skin daily and minimizing friction and pressure against clothing and bed linens.

(g) Decubitus ulcers shall be identified, documented, and treated by:

1. Following physician orders;
2. Frequent repositioning in good body alignment;
3. Hand-washing to prevent transmission of infection; and
4. Proper cushioning techniques.

(h) The facility shall conduct a bladder and bowel retraining program for selected patients on a 24-hour basis with results documented.

(i) Precautions shall be taken to prevent complications resulting from the use of nasogastric or gastrostomy tube feedings.

8:39-27.4 Mandatory staffing amounts and availability for patient care

For each meal, the facility shall assign staff on the basis of patient needs to help patients who require assistance in eating.

8:39-27.5 Mandatory patient services for personal care

(a) Effective and safe measures shall be taken to ensure that patients do not harbor parasitic insects.

(b) Effective and safe measures shall be taken to ensure that patients are not malodorous.

(c) Any dehydrated patient shall be accurately evaluated and effectively treated.

(d) Oral hygiene care of the patient shall be performed by staff or the patient on a daily basis.

(e) The patient's hair and nails shall be groomed.

(f) Each patient shall be kept clean and dry.

(g) Each patient shall receive at least one bath (tub or shower) per week unless contraindicated, and all baths shall be documented.

(h) Each patient's bed shall be made daily. Clean linen shall be provided for each patient at least once a week or whenever linens are soiled or wet.

(i) Each patient shall have access to fresh drinking water or juice at all times unless contraindicated.

(j) Non-bedfast patients shall be provided with the means for leaving and returning to their beds and rooms each morning and afternoon.

(k) Patients shall be assisted in performing either passive or active range-of-motion exercises every day, unless their level of physical activity makes this unnecessary.

(l) Toileting needs of all patients shall be met.

(m) Measures to prevent contractures shall be used, and contractures shall be identified, documented, and managed by rehabilitative nursing and physical therapy.

(n) Indwelling catheters shall not be used for the convenience of staff.

8:39-27.6 Mandatory general patient services

(a) The facility shall post and maintain visiting hours from 8:00 A.M. to 8:00 P.M. daily.

1. If the patient is critically ill, he or she shall be allowed visits from next of kin and/or sponsor and/or guardian at any time, unless there is a medical contraindication documented by a physician and noted in the patient's medical record.

2. Members of the clergy shall be contacted by the facility and shall be admitted at any time at the request of the patient or, unless overruled by the patient, at the request of the patient's next of kin or guardian.

3. Access to privacy shall be afforded for visits with family, friends, clergy, social workers, and counsel, as well as for professional or business purposes.

(b) Patients shall be afforded the opportunity to eat in a group setting unless contraindicated with the reasons noted in the patient's medical record. The need for feeding assistance shall not constitute an acceptable contraindication.

(c) The facility shall enable eligible patients to vote in public elections.

(d) Clothing, including undergarments and footwear, shall be *[seasonal, well-fitting,]* clean, comfortable, and personally assigned to each patient, and shall reflect personal preference.

(e) Patients shall be encouraged and helped to select the clothing they will wear each day.

(f) Transportation of the deceased within and from the facility shall be conducted in a dignified manner.

(g) Personal effects and financial accounts of deceased patients shall be safeguarded.

8:39-27.7 Mandatory space and environment for access to privacy

Each patient shall have access to privacy for some period every day.

8:39-27.8 Mandatory supplies and equipment for patient care

(a) Prostheses, including eyeglasses, dentures, and hearing aids shall be functional, available, and individualized, unless the patient specifically rejects their use.

(b) All drinking water containers shall be washed daily and sanitized weekly. Containers that cannot be sanitized shall be discarded.

(c) Self-help feeding devices shall be available to patients who can benefit from their use.

(d) The facility shall maintain at least one bag-valve-mask resuscitator.

(e) Bath thermometers or other temperature controls shall be used to monitor the temperatures of each bath.

(f) Locked restraints, *[double restraints on the same body part,]* sheet restraints, four-point restraints, and confinement in a locked or barricaded room shall not be permitted.

SUBCHAPTER 28. ADVISORY PATIENT CARE

8:39-28.1 Advisory policies and procedures for patient care

(a) All nursing staff members should wear uniforms.

(b) The facility should conduct scheduled interdisciplinary staff discussions, and discussions with patients and families, about the right of patients to die with dignity.

(c) The facility should maintain a bath *[book]* ***record***.

(d) The family or guardian should be notified when a physician initiates an order that the patient will be physically or chemically restrained.

8:39-28.2 Advisory patient care services

(a) There should be patient programs provided on at least a quarterly basis, open to families, for the maintenance of physical and mental well-being, the prevention of deterioration, and the teaching of self-care.

(b) Patients should be afforded privacy for conjugal visits.

SUBCHAPTER 29. MANDATORY PHARMACY

8:39-29.1 Mandatory pharmacy structural organization

(a) A licensed pharmacist shall serve as director of pharmaceutical services or as consultant pharmacist.

(b) The facility shall have a multidisciplinary pharmacy and therapeutics committee, appointed by and reporting to the administrator and consisting of, at least: the medical director; the administrator; a representative of the nursing staff; and the director of pharmaceutical services. If pharmaceutical services are provided by contract, the consultant pharmacist, if one is appointed, and either the provider pharmacist or a ***registered pharmacist*** representative of the pharmacy shall serve on the committee.

1. *[The]* ***In facilities with more than 50 beds the*** committee ***shall include the medical director and*** shall hold scheduled meetings at least quarterly and shall maintain minutes that include the dates of meetings, attendance, activities, findings, and recommendations.

2. In facilities with 60 beds of fewer, the committee shall hold scheduled meetings at least annually and shall maintain minutes that include the dates of meetings, attendance, activities, findings, and recommendations.

(c) If the facility keeps emergency injectable controlled substances, a current Drug Enforcement Administration and Controlled Dangerous Substance license for that location shall be available.

8:39-29.2 Mandatory drug administration policies and procedures

(a) The pharmacy and therapeutics committee shall establish and enforce procedures for documenting drug administrations in accordance with law.

(b) Medications shall be released to patients at discharge only upon written authorization of the prescriber.

(c) Patients shall be *[accurately]* identified as the intended recipients before any drug is administered.

(d) Self-administration of drugs shall be permitted only as specified by the recommendations of the pharmacy and therapeutics committee.

(e) Medications shall be accurately administered by properly authorized individuals to the right patient in the right amount through the right route at the right time.

8:39-29.3 Mandatory pharmacy reporting policies and procedures

(a) The director of pharmaceutical services or consultant pharmacist shall enter monthly notes or comments in the medical record of every patient receiving medication, on a pharmacist consultation sheet, or another portion of the medical record.

(b) Drug product defects *[and drug withholding occurrences]* shall be reported in accordance with the ASHP-USP-FDA (American Society of Hospital Pharmacists, United States Pharmacopoeia, Food and Drug Administration) Drug Product Defect Reporting System.

(c) Drug allergies shall be documented in the patient's medical record and on its outside front cover ***and communicated to the provider pharmacy if a provider pharmacy is used***.

(d) Drugs that are not specifically limited as to duration or use or number of doses shall be controlled by automatic stop orders. The patient's attending physician shall be notified of the automatic stop order prior to the last dose so that he or she may decide whether to continue use of the drug.

(e) If medication is withheld, the reason for withholding the medication shall be documented in the patient's medical record.

(f) Medication errors and adverse drug reactions shall be reported immediately to the director of nursing or the alternate to the director of nursing, and a description of the error or adverse drug reaction shall be entered into the medical record before the end of the employee shift. ***If the patient has erroneously received medication, the patient's physician shall be notified immediately. If a medication error originated in the pharmacy, the pharmacy shall be notified immediately.***

8:39-29.4 Mandatory pharmacy control policies and procedures

(a) The label of each patient's individual medication container shall be permanently affixed and contain the patient's full name, physician's name, prescription number, name and strength of drug, lot number, date of issue, expiration date, manufacturer's name if generic, and cautionary and/or accessory labels. If a generic substitute is used, the drug shall be labeled according to the Drug Utilization Review Council Formulary, N.J.S.A. 24:6E-1 et seq. ***Required information appearing on individually packaged drugs or within an alternate medication delivery system need not be repeated on the label.***

(b) If the facility uses and contracts with a provider pharmacy, only over-the-counter medications shall be kept as stock. Stock over-the-counter medications shall be approved by the pharmacy and therapeutics committee and labeled to include drug name, drug strength, manufacturer's name, lot number, expiration date, recommended dosage, and applicable cautionary and/or accessory labels.

(c) The director of pharmaceutical services or consultant pharmacists shall make monthly inspections of all areas in the facility where medications are dispensed, administered, or stored, shall document any problems and shall propose solutions to these problems.

(d) The contents of emergency kits shall be approved by the pharmacy and therapeutics committee. Emergency kits shall be stored at each nursing unit, checked after each use, and checked at least monthly by the director of pharmaceutical services or the consultant pharmacist. Emergency kits shall not be accessible to patients but shall be accessible to staff ***in a timely manner***.

(e) All medications repackaged by the pharmacy shall be labeled with an expiration date***, name and strength of drug, lot number, date of issue, expiration date, manufacturer's name if generic, and cautionary and/or accessory labels***.

(f) The pharmacy and therapeutics committee shall establish and enforce procedures for removal of discontinued, unused, expired, recalled, deteriorated, and unlabelled drugs and intravenous solutions and for removal of containers of medications with worn, illegible, damaged, incomplete, or missing labels.

(g) All medications shall be stored in accordance with manufacturers' requirements.

(h) The pharmacist consultant or director of pharmaceutical services and a registered professional nurse shall witness all drug destruction in the facility.

(i) The pharmacy and therapeutics committee shall establish and enforce procedures for the inventory of controlled substances in accordance with law.

(j) The facility shall implement written methods and procedures for obtaining prescribed medications and biologicals from a pharmacy licensed by the New Jersey State Board of Pharmacy. The telephone number of pharmacy procedures for obtaining drugs shall be posted at each nursing unit.

8:39-29.5 Mandatory pharmacy staff qualifications

If the facility maintains a pharmacy in-house, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the New Jersey State Department of Health.

8:39-29.6 Mandatory patient pharmacy services

The facility shall provide pharmaceutical services, either directly or by contract with a provider pharmacy, 24 hours a day, seven days a week.

8:39-29.7 Mandatory pharmacy supplies and equipment

(a) Medication containers shall be handled properly to prevent damage, injury, and harm.

(b) Needles and syringes shall be stored, used, and disposed of in accordance with New Jersey State law, and a record shall be maintained of the purchase, storage, and disposal of needles and syringes.

(c) Controlled substances shall be stored, and records shall be maintained, in accordance with the Controlled Dangerous Substances Act and all other Federal and State laws and regulations concerning procurement, storage, dispensation, administration, and disposition. Controlled substances shall be stored separately from all other substances except in a unit dose drug distribution system.

(d) All medications shall be kept in locked storage areas, and medications shall be refrigerated, if required, in conformance with U.S.P. (United States Pharmacopoeia) requirements.

(e) Pharmaceutical reference materials and other information sources about drugs, including investigational drugs, if used, shall be approved by the pharmacy and therapeutics committee. These reference materials, along with antidote information, and the telephone number of the regional poison control center, shall be available in the pharmacy and/or each nursing unit.

8:39-29.8 Mandatory pharmacy quality assurance

The pharmacy and therapeutics committee shall review medication errors and adverse drug reactions.

SUBCHAPTER 30. ADVISORY PHARMACY

8:39-30.1 Advisory pharmacy structural organization

(a) If the facility does not maintain an in-house pharmacy, the facility should appoint a consultant pharmacist who is not also the director of pharmaceutical services or pharmacist provider.

(b) If the facility has 60 or fewer beds, it should hold multidisciplinary pharmacy and therapeutics committee meetings at least quarterly and include the medical director in these meetings.

8:39-30.2 Advisory pharmacy staff qualifications

The consultant pharmacist or director of pharmaceutical services should hold current certification by the Joint Board of Certification of Consultant Pharmacists.

8:39-30.3 Advisory pharmacy staffing amounts and availability

The facility should operate a pharmaceutical program that makes clinical consultation services available to the medical staff, schedules periodic drug regimen evaluations, and provides mandatory educational seminars for medical and nursing staffs to update skills and practices relative to drug therapy.

***8:39-30.4 Advisory pharmacy patient services**

The consultant pharmacist or director of pharmacy services should review the records of all newly admitted patients within seven days of admission.*

*[8:39-30.4]***8:39-30.5*** Advisory pharmacy supplies and equipment

(a) The facility should use a unit dose drug *[distribution system]* ***packaging or distribution system in which each dose of medication is individually packaged in a hermetically sealed, tamper-proof container and carries full manufacturer's disclosure information on each discrete dose, including but not limited to product name and strength, lot number and expiration date, and manufacturer's or distributor's name. This delivery system is not limited to a 24-hour exchange system.***

SUBCHAPTER 31. MANDATORY PHYSICAL ENVIRONMENT

8:39-31.1 Mandatory space and physical environment: all facilities

(a) All exit doors to the facility shall be kept externally locked from 8:00 P.M. until 6:30 A.M.

(b) All patients shall have, in their rooms:

1. A bed and a mattress of the correct size to fit the bed;
2. A bedside table with drawer;
3. A separate closet area and shelves for personal needs;
4. A privacy curtain around the bed ***excepting private rooms***;
5. An unobstructed doorway;
6. Window coverings that are properly mounted and maintained;
7. Night lights; and
8. Call bells immediately accessible to the patient in bed or an individual at bedside.

(c) Bathrooms shall be shared only by patients of the same sex, except for cohabitants.

(d) Glare from windows and reflections on floors and tables in the multi-purpose or dining room shall be controlled.

(e) If the facility is not air-conditioned, the facility shall provide means to ensure air circulation in all areas used by patients.

(f) All supplies and equipment in the facility shall be of such quality as not to break or tear easily.

8:39-31.2 Mandatory space and physical environment: facilities with more than 60 beds

(a) Each facility with more than 60 beds shall provide, and facilities with 60 beds or fewer may provide but shall not be required to provide:

1. Well-lighted parking areas.
2. Sounding devices *[at the nurses' stations]* or visual monitoring for all exit doors.
3. A cushioned chair for each patient in his or her room for use by the patient or patient's visitors.
4. An individual light for each patient in a room.
5. Connection of *[emergency]* ***life sustaining*** equipment, *[including refrigerators for biological products]* ***such as ventilators***, to a generator.

8:39-31.3 Mandatory supplies and equipment

(a) All patients shall have, in their rooms:

1. Sheets, blankets, a pillow, and additional pillow if required or desired;
2. Supplies for oral needs, including a denture cup, if needed, and a clean toothbrush; and
3. A basin, comb, soap dish, and bedpan and/or urinal unless clearly unnecessary, stored at bedside.

(b) All patient rooms shall have a waste receptacle.

(c) A walker or a tripod cane shall be available to each patient who requires mechanical assistance to walk.

(d) A wheelchair shall be available to each patient who is not fully ambulatory.

(e) All supplies in the facility shall be in working order. All equipment in the facility shall be in good repair.

(f) All supplies and equipment in the facility shall be:

1. Up-to-date;
2. Free of hazards;
3. In conformance with applicable Federal standards;
4. Properly stored and maintained in accordance with manufacturers' instructions; and
5. Readily available when needed.

(g) Buildings and grounds shall be maintained in a clean and safe condition.

SUBCHAPTER 32. ADVISORY PHYSICAL ENVIRONMENT

8:39-32.1 Advisory smoking policies and procedures

There *[shall]* ***should*** be no smoking by staff members in public areas of the facility or patient rooms.

8:39-32.2 Advisory physical environment for patient services

Areas should be color coded or accented for purposes of identification, function, or safety.

8:39-32.3 Advisory space ***and*** environment for all facilities

(a) All patient rooms should have aesthetically attractive wall hangings.

(b) No more than four patients should be assigned to the same bathroom.

(c) The multi-purpose or dining room should receive sunlight.

(d) The facility should have attractive grounds, including shaded seating, gardens, and trees.

(e) Contrasting colors should be used between table tops and floors, walls and floors, walls and doors, bathroom doors and other doors, and stairways and treads.

(f) Sound-absorbing materials should be used throughout the facility (for example, rough texture, pile, acoustic tile, soft drapery).

(g) Task lighting should be used. The general lighting should create a pleasant environment.

(h) A multi-purpose room other than the dining room should be available for group activities.

(i) There should be live ***or silk*** plants and flowers *[tended]* in the facility.

(j) A discrete and protected area of the facility should be dedicated to free ambulation by confused and disoriented patients.

8:39-32.4 Advisory space and environment for facilities with 60 or fewer beds

(a) Facilities with 60 or fewer beds should provide the following:

1. A well-lighted parking area;
2. Exit doors that have sounding devices at the nurses' station or are monitored visually;
3. A cushioned chair for each patient or his or her visitors;
4. An individual light for each patient; and
5. Connection of emergency equipment to a generator.

8:39-32.5 Advisory supplies and equipment

(a) All patients' rooms should have*[:]* ***hand washing facilities.***

*[1. A footstool; and
2. Hand-washing facilities.]*

(b) All patients should have, in their rooms:

1. Disposable personal items such as bedpans, basins, and water pitchers;
2. A bedspread; and
3. A lap robe.

SUBCHAPTER 33. MANDATORY QUALITY ASSURANCE

8:39-33.1 Mandatory quality assurance structural organization

(a) Quality assurance procedures shall be developed and implemented through a written plan which specifies time frames.

(b) Responsibility for the quality assurance program shall be assumed by one or more designated individuals reporting directly to the administrator.

(c) Summary findings of the quality assurance program shall be submitted in writing to the administrator, and the administrator shall take action which includes staff education or training on the basis of the program's findings.

(d) The quality assurance program shall review at least inventory control, maintenance inspections and reports, procedures for reporting incidents and hazards, and procedures for emergency response to incidents and hazards.

(e) Quality assurance findings shall be presented to the administrator with recommendations for corrective actions to address problems.

8:39-33.2 Mandatory quality assurance policies and procedures

(a) The quality assurance program shall identify problems in the care and services provided to the patients and shall include the audit of medical records.

(b) The quality assurance program shall monitor the performance of each service.

8:39-33.3 Mandatory quality assurance patient services

The quality assurance program shall include the gathering of patient care information from patients and visitors.

8:39-33.4 Mandatory quality assurance staff education and training

The quality assurance program shall evaluate staff education programs.

SUBCHAPTER 34. ADVISORY QUALITY ASSURANCE

8:39-34.1 Advisory quality assurance policies and procedures

(a) The quality assurance program should monitor the performance of administrative services.

(b) All of the quality assurance program's findings should be presented to the administrator with recommendations for corrective actions to address problems.

(c) The quality assurance program should monitor trends in infections.

(d) The quality assurance program should use a patient classification system to monitor outcomes.

(e) Part of the quality assurance program should include an ongoing study of patient falls to determine why they occur and what preventive measures should be taken.

8:39-34.2 Advisory quality assurance staff qualifications

The quality assurance programs should monitor trends in staff turnover.

8:39-34.3 Advisory quality assurance patient services

(a) The quality assurance program should maintain a suggestion box.

(b) The quality assurance program should monitor trends in the following:

1. The prevalence of decubitus ulcers and skin breakdowns;
2. Psychotropic drug use;
3. Transfers to hospitals;
4. Medication errors;
5. Catheterization rates and catheterization care;
6. Weight loss and fluid intake;
7. Infection rates in catheterized patients;
8. Patient depression;
9. Restoration of function following specific types of events, such as hip fractures;
10. Use of restraints; and
11. Other possible indicators of level of quality care not listed in this subchapter.

(c) The quality assurance program should include periodic surveys of patients to ascertain patients' satisfaction, suggestions, knowledge of their health conditions and treatments, and/or knowledge of facility policies and staff members' roles.

SUBCHAPTER 35. MANDATORY MEDICAL RECORDS

8:39-35.1 Mandatory structural organization for medical records

At least 14 days before a facility plans to cease operations, it shall notify the New Jersey State Department of Health in writing of the location and method of retrieval of medical records.

8:39-35.2 Mandatory policies and procedures for medical records

(a) Each active medical record shall be kept at the nurses' station for the patient's unit.

(b) The facility shall maintain for staff use a current list of abbreviations commonly used in the facility's medical records.

(c) Medical records shall be organized with a uniform format across all records.

(d) A medical record shall be initiated for each patient upon admission and include at least the following information when such information becomes available:

1. Legible identifying data, such as patient's name, date of birth, sex, address, and next of kin, and person to notify in an emergency;
2. Name, address, and telephone number of the patient's physician, an alternate physician, and dentist;
3. Complete transfer information from the sending facility, including results of diagnostic, laboratory, and other medical and surgical procedures;
4. A history and results of a physical examination, including *[height and]* weight, performed by the physician on admission, **in accordance with N.J.A.C. 8:39-11.2(b),*** and results of the most recent *[previous]* examination;
5. An assessment and plan of care made by each discipline involved in the patient's care;
6. Clinical notes for the past three months' incorporating written, signed and dated notations by each member of the health care team who provided services to the patient, including a description of signs and symptoms, treatments and/or drugs given, the patient's reaction, and any changes in physical or emotional condition entered into the record when the service was provided;
7. All physician's orders for the last three months;
8. Telephone orders, each of which shall be countersigned by a physician within seven days, except for orders for non-prescription drugs or treatments, which shall be signed at the physician's next visit to the patient;
9. Records of all medications and other treatments which have been provided during the last three months;
10. Consultation reports for the last six months;
11. Records of all laboratory, radiologic, and other diagnostic tests for the last six months;
12. Records of all admissions, discharges, and transfers to and from the facility that occurred in the last three months;
13. Signed consent and release forms;
14. A discharge plan for those patients identified by the facility as likely candidates for discharge into the community or a less intensive care setting; and
15. A discharge note written on the day of discharge for patients discharged to the community, a less intensive care setting, another nursing home or hospital, which includes at least the diagnosis, prognosis, and psychosocial and physical condition of the patient.

(e) Each entry into the patient's medical record shall be dated and signed in ink with name and title.

(f) The record shall be protected against loss, destruction, or unauthorized use. Medical records shall be retained for the duration required by N.J.S.A. 26:8-5.

(g) If part of a care plan is not implemented, the record shall explain why.

SUBCHAPTER 36. ADVISORY MEDICAL RECORDS

8:39-36.1 Advisory policies and procedures for medical records

(a) Medical records of all patients should be characterized by attention to continuity of care as reflected by precise descriptions of the patient's status, tracking of the patient's status through time, and follow-up remarks on specific events.

(b) The name by which the patient wishes to be called should be entered on the cover or first page of the medical record.

(c) Medical records of all patients admitted within the past year should be updated by nursing staff at least once per shift during the patient's first five days in the facility; at the end of five days the records should be updated once per week for the next four weeks. After the patient's first five weeks in a facility, the medical records of all patients should be updated at intervals based on the seriousness of each patient's condition.

(d) There should be a comprehensive discharge summary with statistical and narrative information from each service within 30 days of discharge unless the patient is readmitted during that 30 day period.

(e) Telephone orders should be countersigned by a physician within 48 hours, except for orders for non-prescription drugs or treatments, which should be countersigned within seven days.

8:39-36.2 Advisory staff education and training for medical records

The facility should maintain for staff use a current list of all abbreviations used in medical records.

SUBCHAPTER 37. MANDATORY REHABILITATION

8:39-37.1 Mandatory policies and procedures for rehabilitation

(a) Physician orders for speech therapy, physical therapy, occupational therapy, and audiology services shall include specific modalities and the frequency of treatment, and shall be entered into the patient's medical record.

(b) Physician orders for medically appropriate speech therapy, physical therapy, and audiology services shall be properly followed, and the results of these services shall be entered into the patient's medical record.

8:39-37.2 Mandatory rehabilitation staff qualifications

(a) Speech-language pathology and audiology services shall be provided by individuals who meet the prerequisite qualifications for a Certificate of Clinical Competence by the American Speech-Language-Hearing Association, in all facilities with more than 60 beds.

(b) Physical therapy shall be provided by one or more licensed physical therapists.

8:39-37.3 Mandatory rehabilitation staffing amounts and availability

Physical therapy evaluation shall take place within 48 hours of the original physician order, excluding weekends*,* in all facilities with more than 60 beds.

8:39-37.4 Supplies and equipment

Physical therapy equipment available to the patients shall include at least parallel bars and stairs in all facilities with more than 60 beds.

SUBCHAPTER 38. ADVISORY REHABILITATION

8:39-38.1 Advisory rehabilitation staff qualifications

(a) Speech-language pathology and audiology services should be provided by individuals who hold a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

(b) Occupational therapy should be provided by a registered occupational therapist.

(c) If the facility has 60 or fewer beds, it, nevertheless, should provide:

1. Speech-language pathology and audiology services by one or more individuals who meet the prerequisite qualifications for a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association;

2. Physical therapy evaluation within 48 hours of the original physician order, excluding weekends; and

3. Physical therapy equipment including at least parallel bars and stairs.

8:39-38.2 Advisory rehabilitation space and environment

The facility should have an examination and treatment room for physical therapy.

8:39-38.3 Advisory rehabilitation supplies and equipment

In addition to parallel bars and stairs, physical therapy equipment available to patients should include a hydroculator, *[pool,]* whirlpool for hydrotherapy, paraffin, and ultrasound.

NOTE: The complete text of subchapters 39 and 40 as recodified and including any changes from proposal follows.

SUBCHAPTER 39. MANDATORY SOCIAL WORK

The following table notes the recodification of subchapter 39.

Codification as Proposed	Recodified upon Adoption
8:39-39.1(a)	8:39-39.2(a)
8:39-39.2(a)	8:39-39.4(a)
8:39-39.2(b)	8:39-39.1
8:39-39.2(c)	8:39-39.4(c)
8:39-39.2(d)	8:39-39.4(d)
8:39-39.3	8:39-39.4(b)
8:39-39.4(a) and (a)(1)	8:39-39.3(a) and (a)(1)
8:39-39.4(b)	8:39-39.4(e)
8:39-39.4(c)	8:39-39.3(b)
8:39-39.5(a)	8:39-39.4(f)
8:39-39.5(b)	8:39-39.4(g)
8:39-39.5(c)	8:39-39.4(h)
8:39-39.6	8:39-39.5

8:39-39.1 Mandatory social work policies and procedures

A social worker shall develop and implement specific criteria to identify patients who are likely candidates for discharge into the community or a less intensive care setting and to coordinate discharge planning.

8:39-39.2 Mandatory social work staff qualifications

(a) Social work services shall be provided by one or more social workers who possess a bachelor's degree or a master's degree in social work, psychology, sociology, or counseling from an accredited university or education program ***or who on June 20, 1988 served in the facility as a social work designee, with consultation of at least eight hours per month from an individual who holds a masters degree in social work.*** If the social worker has a bachelor's degree in psychology, sociology, or counseling, and no master's degree, then one year of social work experience in a geriatric setting also shall be required.

8:39-39.3 Mandatory social work amounts and availability

(a) Operative July 1, 1989, the facility shall provide an average of at least 20 minutes of social work services per week for each patient. (This is an average. It is equal to one full-time equivalent social worker for every 120 patients.)

1. Prior to July 1, 1989, social work staffing shall be provided pursuant to N.J.A.C. 8:39-43.3(b).

(b) A social worker shall assist staff in coping with the personal needs and demands of particular patients.

8:39-39.4 Mandatory patient social work services

(a) A social worker shall interview the patient and family within 14 days before or after admission to the facility to identify any social work needs or problems, and to take a social history that includes family, education, and occupational background, adjustment and level of functioning, interests, support systems, and observations.

(b) A social worker shall provide counseling for patients and families.

(c) A social worker shall facilitate communication between staff and non-English speaking patients.

(d) A social worker shall offer information and help to each patient and family on obtaining financial assistance and on the meaning *[and consequences of signing or refusing to sign administrative forms and releases]* ***of administrative forms and releases to be signed by the patient or family*.**

(e) A social worker shall coordinate the facility's outreach services to the families of patients.

(f) A social worker shall coordinate *[services for patients discharged for home care]* ***discharge services for patients*.**

(g) A social worker shall perform advocacy services on behalf of the patients to ensure that concrete needs are met, such as clothing, laundry, and the patient's personal needs allowance if one is maintained.

(h) A social worker shall help patients and families identify and gain access to community services, using resource materials and a knowledge of the patient's needs and abilities.

8:39-39.5 Mandatory space and environment for social work

The facility shall provide visual and auditory privacy for patient or family social service interviews, and for confidential telephone calls by social workers.

SUBCHAPTER 40. ADVISORY SOCIAL WORK

The following table notes the recodification of subchapter 40.

Codification as Proposed	Recofified upon Adoption
8:39-40.1(a)	8:39-40.1(a)
8:39-40.1(b)	8:39-40.5
8:39-40.2(a)	8:39-40.3(a)
8:39-40.2(b)	8:39-40.3(b)
8:39-40.2(c)	8:39-40.3(c)
8:39-40.2(d)	8:39-40.3(d)
8:39-40.2(e)	8:39-40.2(a)
8:39-40.3(a)	8:39-40.3(e)
8:39-40.3(b)	8:39-40.3(f)
8:39-40.3(c)	8:39-40.3(g)

8:39-40.4	8:39-40.4
8:39-40.5(a)	8:39-40.2(c)
8:39-40.5(b)	8:39-40.2(b)

8:39-40.1 Advisory staff qualifications for social work

(a) A social worker should have a master's degree in social work from an accredited university or education program. He or she should provide consultant services at least eight hours per month, or be on the facility's staff.

8:39-40.2 Advisory staff amounts and availability for social work

(a) *[There should be a social worker present in the facility seven days per week and available for interaction with patients and families during facility visiting hours]* ***A social worker should be available to the facility on evenings and weekends at scheduled times or by previously arranged appointments for interaction with patients and families, and should be available seven days a week in cases of emergency or serious need***.

(b) A social worker should assist staff with problems and issues related to aging and illness.

(c) A social worker should orient nurse aides to the social needs of new patients before the patient's arrival in the facility.

8:39-40.3 Advisory patient social work services

(a) A social worker should meet with the patient on the day of admission.

(b) A social worker should conduct support groups for families.

(c) A social worker should conduct group counseling sessions for patients and families.

(d) A social worker should participate in pre-admission planning with patients and families prior to their admission to the nursing home.

(e) The facility should provide clinical social work or psychological services to patients and families.

(f) The social worker should encourage and monitor a regular visiting pattern by families and provide outreach services to families where the visiting pattern has changed.

(g) The facility should promote patients' sense of personal control in acquiring clothing, for example, through the establishment of a clothing concession in the facility, the arrangement of shopping excursions, and/or the use of catalogue shopping by patients.

8:39-40.4 Advisory space and environment for social work

Social workers should be provided with a private office equipped with a telephone or, in facilities with 60 or fewer licensed beds, with access to a private office equipped with a telephone.

8:39-40.5 Advisory social work staff education and training

The facility should encourage the social worker to participate in community agency associations and other professional organizations.

SUBCHAPTER 41. MANDATORY PHYSICAL PLANT

8:39-41.1 *[Mandatory requirements for physical plant

(a) The facility shall comply with the following:

1. The regulations contained in the current edition of the Uniform Construction Code, N.J.A.C. 5:23-1 through 5, as mandated by the New Jersey Department of Health;

2. The applicable edition of the Bureau of Community Affairs Basic National Building Code and current supplements as adopted by the Department of Community Affairs and mandated by the New Jersey State Department of Health;

3. The current edition of the Bureau of Community Affairs Basic Energy Conservation Code, N.J.A.C. 5:23-3.18, as adopted by the Department of Community Affairs;

4. The 1983/1984 edition of Guidelines for Construction and Equipment for Hospital and Medical Facilities, DHHS Publication No. (HRS-M-HF) 84-1;

5. The 1985 edition of the National Fire Protection Association "Life Safety Code," N.F.P.A. 101, Chapters 12 and 13 and as referenced in that document where Chapter 12 refers to new construction and Chapter 13 refers to existing construction;

6. The current edition of the Fire Protection Subcode, N.J.A.C. 5:23-3.17;

7. The 1981 edition of the National Fire Protection Association "Air Conditioning and Ventilating Systems," N.F.P.A.-90A;

8. The 1983 edition of the National Standard Plumbing Code, N.J.A.C. 5:23-3.16;

9. The 1987 edition of the National Electrical Code, N.F.P.A. No. 70, N.J.A.C. 5:23-3.16; and

10. The current edition approved by the State Department of Health of the Commercial/Industrial Energy Subcode Compliance Manual.

(b) Questions regarding (a) above may be directed to the Supervising Architect at Health Facilities Construction Services at (609) 292-8760 or to:

New Jersey State Department of Health
Health Facilities Construction Services
CN-360
Trenton, NJ 08625-0360]*

***Mandatory compliance with Codes**

(a) New construction, alterations and additions of Long Term Care Facilities shall comply with the current edition of the Uniform Construction Code (N.J.A.C. 5:23) as adopted by the New Jersey Department of Community Affairs (this provision is presented here for informational purposes only).

(b) Fire safety maintenance and retrofit of Long Term Care Facilities shall comply with the current edition of the Uniform Fire Safety Code (N.J.A.C. 5:18) as adopted by the New Jersey Department of Community Affairs (this provision is presented here for informational purposes only).

(c) Required annual maintenance inspections by the Department of Health shall be conducted in accordance with the 1985 Life Safety Code, however, this code shall not be enforced to exceed the requirements of the Uniform Construction Code referenced in (a) above.

(d) The New Jersey Uniform Construction Code may be obtained from the Construction Code Element of the Department of Community Affairs, CN 805, Trenton, New Jersey 08625-0805.

(e) The New Jersey Uniform Safety Code may be obtained from the Fire Safety Element of the Department of Community Affairs, CN 809, Trenton, New Jersey 08625-0809.

(f) Questions regarding (a) above with respect to review of plans and specifications or (c) above may be directed to the New Jersey Department of Health, Health Facilities Construction Services, CN 367, Trenton, New Jersey 08625-0367.*

8:39-41.2 Mandatory general maintenance

(a) Personnel engaged in general maintenance activities shall receive orientation upon employment and, at least once a year, education or training in principles of asepsis, cross-infection control, and safe practices.

(b) A current, written preventive maintenance program shall be implemented. Records of inspections and repairs shall be maintained for at least one year.

(c) Written instructions for operating and maintaining equipment shall be systematically retained and followed.

(d) The facility shall be kept in good repair and maintained without harm or jeopardy to patients.

(e) There shall be a maintenance contract on elevators that includes routine maintenance inspections.

(f) Electrical emergency generators shall be checked weekly, tested under load monthly, and serviced annually.

(g) Temperature and humidity shall be in accordance with requirements specified in the edition of Guidelines for Construction and Equipment for Hospital and Medical Facilities issued by the U.S. Department of Health and Human Services, Health Resources Administration that apply, depending on the time the building was constructed.

(h) There shall be a comprehensive, written preventive maintenance program for the electrical system that is documented and followed.

8:39-41.3 Mandatory fire and emergency preparedness

(a) Employees shall be trained in procedures to be followed in a master fire plan and instructed in the use of fire fighting equipment and patient evacuation of the buildings as part of their initial orientation and at least annually thereafter.

(b) Fire drills shall be conducted a total of 12 times per year, with at least one drill on each shift and one drill on a weekend. At least one drill shall be conducted in conjunction with the local fire department. An actual alarm shall be considered a drill if it is documented.

(c) Fire regulations and procedures shall be posted in each unit and/or department.

1. A written evacuation diagram that includes evacuation procedures and locations of fire exits, alarm boxes, and fire extinguishers shall be posted conspicuously on a wall in each patient care unit and/or department throughout the facility.

[(d) Exits, stairways, doors, and corridors shall be kept free of obstructions.]

*[(e)]**(d)* There shall be a procedure for investigating and reporting fires. All fires shall be reported to the New Jersey State Department of Health immediately by phone and followed up in writing within 72 hours. In addition, a written report of the investigation by the fire department containing all pertinent information shall be forwarded to the Department of Health as soon as it becomes available.

*[(f) Portable fire extinguishers shall be provided in accordance with N.F.P.A. Standard 10. Fire extinguishers shall be inspected at least annually and recharged, repaired, and hydrotested as required by manufacturers' instructions, and labeled with the date of the last inspection.

(g) There shall be a comprehensive, current, written preventive maintenance program for fire detectors, alarm systems, and fire suppression and protection systems. This program shall be documented and followed.

1. Fire detectors and alarm systems shall be inspected and tested at least twice a year by an individual or individuals who are approved and certified by a licensed fire subcode official. Written reports of the last two inspections shall be available for review.

2. Fire suppression and protection systems shall be tested no less than twice a year by an approved and certified testing agency. A written report of the inspection shall be kept on file.]*

*[(h)]**(e)* Smoking regulations shall be developed, implemented, and enforced in accordance with N.J.S.A. 26:3D-1 et seq. Designated smoking areas shall be prominently marked.

1. There shall be no smoking by staff in the presence of patients unless the patients are smoking as well.

*[(i)]**(f)* The facility shall have a written comprehensive emergency evacuation plan. This plan shall:

1. Identify potential hazards that could necessitate an evacuation, including natural disasters, national disasters, industrial and nuclear accidents, and labor work stoppage;

2. Identify the facility and an alternative facility to which patients would be relocated;

3. Include the estimated number of patients, staff, and staff family members who would require relocation;

4. List the supplies, equipment, records, and medications that would be transported as part of an evacuation; and

5. Identify essential personnel who would be required to remain on duty during the period of relocation.

*[(j)]**(g)* There shall be a written plan for receiving patients who are being relocated from another facility due to a disaster. This plan shall include at least an estimate of the number and type of patients the facility would accommodate and how staffing would be handled at different occupancy levels.

*[(k)]**(h)* Copies of the current plans for receiving and evacuating patients in the event of a disaster shall be sent to municipal and county emergency management officials and to the designated receiving facilities.

*[(l)]**(i)* The administrator shall serve as, or appoint, a disaster planner for the facility.

1. The disaster planner shall meet with county and municipal emergency management coordinators at least once each year to review and update the written comprehensive evacuation plan; or if county or municipal officials are unavailable for this purpose, the facility shall notify the state Office of Emergency Management.

2. While developing the facility's evacuation plan, the disaster planner shall coordinate with the facility or facilities designated to receive relocated patients.

*[(m)]**(j)* Any staff member who is designated as the acting administrator shall be knowledgeable about and authorized to implement the facility's plans in the event of an emergency.

*[(n)]**(k)* All staff shall be oriented to the facility's current plans for receiving and evacuating patients in the event of a disaster, including their individual duties.

*[(o)]**(l)* The facility shall ensure that patients receive nursing care throughout the period of evacuation and return to the original facility.

1. The facility shall ensure that evacuated patients who are not discharged are returned to the facility after the emergency is over.

*[(p)]**(m)* The facility shall maintain at least a three-day supply of food and have access to an alternative supply of water in case of an emergency.

*[(q)]**(n)* The facility shall conduct at least one evacuation drill each year, either simulated or using selected patients. State, county, and municipal emergency management officials shall be invited to attend the drill at least 48 hours in advance.

[(r) The facility shall have an emergency power generator with enough fuel to maintain power for at least three days.]

8:39-41.4 Mandatory *[life]* safety ***requirements***

*[(a) Corridors and horizontal exits shall be in compliance with the following requirements:

1. The capacity of horizontal exits shall be in accordance with N.F.P.A. 101 (12-2.3.2);

2. Wherever exit travel is over stairs, exiting capacity shall be in accordance with N.F.P.A. 101 (12-2.3.2);

3. The clear width of all horizontal exit doors shall be in accordance with N.F.P.A. 101 (12-2.2.4);

4. All required aisles and corridors shall be unobstructed and have a clear width in accordance with N.F.P.A. 101 (12-2.3.3) or N.F.P.A. 101 (13-2.3.3);

5. Every corridor shall provide access to approved means of egress from the building in compliance with N.F.P.A. 101 (12-2.5.5) or N.F.P.A. 101 (13-2.5.5);

6. There shall be no corridor dead ends exceeding the length specified in regulation 8-10.2 in Bureau of Community Affairs (BOCA) Basic National Building Code and current supplements (1987 edition);

7. All the facility's sleeping rooms shall have a door leading to a corridor that provides access to an exit in accordance with N.F.P.A. 101 (12-2.5.1) or N.F.P.A. 101 (13-2.5.1);

8. The travel distances from the door of any room to an exit and the travel distance from any point in any room to an exit shall not exceed the distances specified in N.F.P.A. 101 (12-2.6.2) or N.F.P.A. 101 (13-2.6.2);

9. There shall be at least two exits, remote from each other, provided for each floor or fire section, with at least one of the exits leading directly outside the building or to an interior stairway leading directly outside the building; and

10. Every aisle, passageway, corridor discharge exit, exit location, and access shall have a readily available egress leading to the exit.

(b) Doors shall be in compliance with the following requirements:

1. The width of exit doorways and all doors between patient care rooms and required exits shall be in accordance with N.F.P.A. 101 (12-2.3.4) or N.F.P.A. 101 (13-2.3.4);

2. Patient room doors shall be constructed of materials and be of a thickness in accordance with N.F.P.A. 101 (12-3.6.3) or N.F.P.A. 101 (13-3.6.3);

3. Every door in a fire protection, horizontal exit, and smoke-stop partition shall be capable of being opened and closed manually. If such a door is held open, it shall be held open only by electromagnetic devices that are connected into the fire alarm system in accordance with N.F.P.A. 101 (12-2.11.5) or N.F.P.A. 101 (13-2.11.5);

4. All doors to stairway enclosures or to walls separating hazardous areas shall be kept closed and not be equipped with hold-open devices, as specified in N.F.P.A. 101 (5-2.1.8);

5. All stairway doors shall be kept closed and have an appropriate sign indicating that this is a fire exit and shall be kept closed, as specified in N.F.P.A. 101 (5-10.4.2.2); and

6. All hazardous area doors, vertical openings, and assemblies shall be Class B (rated for one and a half hours), in accordance with N.F.P.A. 101 (12-3.1) or N.F.P.A. 101 (13-3).

(c) Windows shall be in compliance with the following requirements:

1. The size, material, and framing material of all glazed openings shall be in accordance with N.F.P.A. 101 (13-2.6.3) or N.F.P.A. 101 (13-3.6.3); and

2. Every patient's bedroom, unless it has a door leading directly outside the building, shall have at least one outside window, which can be opened from the inside without the use of tools, in accordance with N.F.P.A. 101 (12-3.8.1) or N.F.P.A. 101 (13-3.8.1).

(d) Stairs shall be in compliance with the following requirements:

1. All stairs serving as required means of egress shall be of construction in accordance with N.F.P.A. 101 (5-2); and

2. Every stair and smoke tower shall be Class B construction (rated for one and a half hours), in accordance with N.F.P.A. 101 (5-2).

(e) Exit identifications shall be in compliance with the following requirements:

1. Exitways shall be clearly marked and adequately illuminated at angles, intersections, landings of stairs, and exit doors at all times, as specified in N.F.P.A. 101 (12-2.8.1) or N.F.P.A. 101 (13-2.8.1); and

2. All exits shall be clearly identified and lighted exit signs shall be kept lighted at all times, as specified in N.F.P.A. 101 (12-2.8) or N.F.P.A. 101 (13-2.8).

(f) Buildings shall be in compliance with the following fire resistance requirements:

1. Buildings of one-story construction shall be one-hour protected noncombustible construction, two-hour fire resistive construction, one-hour protected ordinary construction, one-hour protected wood frame construction, heavy timber construction, or unprotected noncombustible construction, as specified in N.F.P.A. 101 (12-1.6);

2. Buildings two stories or more in height shall be of at least two-hour fire resistive construction, as specified in N.F.P.A. 101 (12-1.6); and

3. Corridor enclosures between patient rooms and treatment areas shall be separated by construction with a fire resistance rating in accordance with N.F.P.A. 101 (12-3.6.1) or N.F.P.A. 101 (13-3.6.1).

(g) Buildings shall be in compliance with the following smoke barriers and fire separation requirements:

1. All floors used for sleeping rooms for more than 30 patients, and any floors greater than 22,500 square feet in size regardless of the number of patients, shall be divided into at least two sections by a smoke barrier unless provided with a horizontal exit, as specified in N.F.P.A. 101 (12-3.7) or N.F.P.A. 101 (13-3.7);

2. Ample space shall be provided on each side of a smoke barrier for the total number of patients on both sides, as specified in N.F.P.A. 101 (12-3.7) or N.F.P.A. 101 (13-3.7);

3. Corridors without smoke barriers or horizontal exits shall not exceed the lengths specified in N.F.P.A. 101 (12-3.7) or N.F.P.A. 101 (13-3.7);

4. Exterior walls and all openings in exterior walls separating the facility from a non-complying building shall have a fire rating in accordance with N.F.P.A. 101 (12-1.1.4.1) or N.F.P.A. 101 (13-1.1.4.1);

5. All smoke barriers shall have at least a fire rating specified in N.F.P.A. 101 (12-3.7.3) or N.F.P.A. 101 (13-3.7.3);

6. Smoke barriers shall be continuous from wall to wall and floor to floor or roof deck above, as specified in N.F.P.A. 101 (6-3); and

7. All linen and trash chutes shall be sealed by fire resistive construction with at least the fire rating specified in N.F.P.A. 101 (12-3.1.1) or N.F.P.A. 101 (13-3.1.1).

(h) Buildings shall be in compliance with the following fire protection requirements:

1. An automatic sprinkler system shall be provided where required in U.C.C. guidelines and N.F.P.A. 101, Chapters 13 and 13A;

2. If there is an automatic sprinkler system, it shall be electrically connected to the fire alarm system, as specified in N.F.P.A. 101, Chapters 13 and 13A;

3. If there is an automatic sprinkler system, the main sprinkler control valve shall be electrically supervised, as specified in N.F.P.A. 101, Chapters 13 and 13A; and

4. Every hazardous area shall have automatic fire protection and/or be separated by construction with at least a one-hour rating, as specified in N.F.P.A. 101 (12-3.2.1) or N.F.P.A. 101 (13-3.2.1).

(i) Buildings shall be in compliance with the following emergency power and lighting requirements:

1. The facility shall have at least a primary source of power and an emergency generator;

2. An outlet that is connected to an emergency power supply shall be available wherever life-sustaining equipment is in operation; and

3. Emergency lighting with an independent power source shall be required and shall be automatic.

(j) All finishes shall be in compliance with the following requirements:

1. All interior finishes shall be of a Class A or Class B nature, in accordance with N.F.P.A. 101 (12-3.3.1) or N.F.P.A. (13-3.3.1);

2. All floor covering in patient rooms and corridors shall have a flame spread rating in accordance with N.F.P.A. 101 (6-5);

3. All draperies, curtains, and waste baskets shall be maintained flame retardant; and

4. All decorations shall be flame retardant. Open flames used for decoration or religious ceremonies shall not be left unsupervised.

(k) The following fire prevention measures shall be taken by the facility:

1. Cooking equipment shall be properly installed and maintained;

2. Portable heating comfort devices shall be permitted if they are provided by the facility and operated in accordance with hospital policies regarding their use, purchase, maintenance, and inventory. Staff and patient-owned devices shall not be permitted;

3. Extension cords shall not be permitted unless they are provided by the maintenance or engineering department of the facility, inspected regularly, and inventoried by the maintenance and engineering department. Extension cords shall be for temporary use only in patient care areas; and

4. Products of combustion devices shall be vented to the outside.]*

***(a) An outlet that is connected to an emergency power supply shall be available wherever life-sustaining equipment is in operation.**

(b) All draperies, curtains, and waste baskets shall be maintained flame retardant.

(c) All decorations shall be flame retardant. Open flames used for decoration or religious ceremonies shall not be left unsupervised.

(d) Cooking equipment shall be properly installed and maintained.

(e) Kerosene heaters and staff and patient-owned devices shall not be permitted.

(f) Extension cords shall not be permitted unless they are provided by the maintenance or engineering department of the facility, inspected regularly, and inventoried by the maintenance and engineering department. Extension cords shall be for temporary use only in patient care areas.*

SUBCHAPTER 42. ADVISORY PHYSICAL PLANT

8:39-42.1 Advisory general maintenance

(a) Routine interdisciplinary inspections or rounds should be conducted on all units and areas for maintenance problems. Results of these rounds should be reported to an interdisciplinary committee composed of representatives of each service.

(b) Maintenance services should be under the supervision of an employee with at least one of the following:

1. Five years of experience in maintaining a physical plant;

2. A baccalaureate degree in engineering from an accredited college or university and two years of experience in maintaining a physical plant; or

3. Professional licensure in New Jersey as an engineer with one year of experience in maintaining a physical plant.

8:39-42.2 Advisory fire and emergency preparedness

(a) The facility should maintain at least a seven-day supply of food in case of emergency.

(b) The facility should conduct at least two evacuation drills each year, either simulated or using selected patients, at least one of which is conducted on a weekend or during an evening or night work shift. Results of the drills should be summarized in a written report, which is shared with the county and municipal emergency management coordinators.

(c) A municipal, county, or State emergency management official should conduct an education or training program in the facility on disaster planning and emergency preparedness at least once a year.

[(d) The facility should have an emergency power generator with enough fuel to maintain power for at least seven days.]

[(e)]*(d)** The facility should establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is 85 degrees Fahrenheit or higher for a continuous period of four hours or longer. These procedures should include the immediate notification of the New Jersey State Department of Health. The facility should submit such a plan to the Department of Health for approval at least once per year.

[(f)]*(e)** Fire drills should be conducted annually on each weekend shift.

8:39-42.3 Advisory *[life]* safety

*[(a) Exit doorways and all doors between patient rooms and the required exits should be 46 to 48 inches wide.

(b) All hazardous area doors and assemblies should be Class A (rated for two hours).

(c) All vertical shafts should have Class A construction.]*

[(d)]*(a)** Extension cords and portable heaters should not be permitted in the facility.

[(e)]*(b)** The facility should maintain records of flame retardancy of all furniture. There should be a policy on the flame retardancy of newly acquired furniture.

SUBCHAPTER 43. IMPLEMENTATION OF STAFFING REQUIREMENTS

8:39-43.1 Delay of implementation of staffing requirements

N.J.A.C. 8:39-7.4(a), 17.4(a), 25.2(b)1, and (b)2., and 39.4(a), mandatory staffing amounts for patient activities, dietary, nursing, and social work, shall become operative July 1, 1989 unless the Commissioner of Health determines through a written finding on the basis of research conducted or sponsored by the Department of Health that these staffing amounts are infeasible or would not assure high quality care.

8:39-43.2 Research on staffing amounts

Prior to July 1, 1989, the Department shall conduct or sponsor empirical research to demonstrate whether the staffing amounts prescribed in N.J.A.C. 8:39-7.4, 17.4(a), 39.4(a), and, in particular, 25.2(b) are feasible and would assure high quality care as reflected in patient-specific outcomes of care. The Department of Health shall seek the cooperation of the Department of Human Services in such research.

8:39-43.3 Interim mandatory staffing amounts

(a) Prior to July 1, 1989, the facility shall provide nurse staffing in at least the following amounts:

1. There shall be nursing and ancillary nursing personnel on each nursing unit to provide at least 2.75 hours of direct nursing care for each skilled nursing patient, 2.5 hours for each ICF-A patient, and 1.25 hours for each ICF-B patient, during a 24-hour period. Direct nursing care shall be limited to nursing duties.

2. There shall be at least one registered professional nurse on the day shift seven days a week.

3. Computation of direct nursing care time shall not include the hours of the director of nursing services, except in facilities with 45 or fewer beds.

4. No member of the nursing staff shall be counted in the staffing pattern of more than one nursing unit per shift.

5. Of the total nursing personnel, the ratio of registered professional nurse hours to ancillary nursing hours shall not be less than one to five, with 25 percent credit for licensed practical nurse hours. Professional and licensed nursing personnel shall be distributed on each shift.

6. There shall be at least two nursing personnel awake and on duty at all times.

(b) Prior to July 1, 1989, the facility shall provide patient activities, dietary, and social work staffing in at least the following amounts:

1. Forty minutes of patient activities staff time devoted to patient activities per patient per week. (This is an average. It is equal to one full-time equivalent patient activities staff member for every 60 patients.)

2. Eight hours of dietary services by a dietitian each month.

3. Ten minutes of social work services per patient per week. (This is an average. It is equal to one full-time equivalent social worker for every 240 patients.) If the social worker has a bachelor's degree in psychology, sociology, or counseling and no master's degree, then social work consultation shall be provided to the facility for at least eight hours per month by a social worker who has a master's degree in social work from an accredited university.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Psychiatric Inpatient Beds
Adult Open Acute Psychiatric Bed Standards
Inpatient Screening Psychiatric Bed Standards
Intermediate Adult and Special Psychiatric Bed Standards

Adopted Amendments: N.J.A.C. 8:43E-2.4, 2.5, and 5.20
Adopted New Rules: N.J.A.C. 8:43E-2.19, 2.20, 3.19, and 3.20

Proposed: March 21, 1988 at 20 N.J.R. 617(a), 618(a), 619(a).
Adopted: May 20, 1988 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: May 25, 1988 as R.1988 d.278, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: June 20, 1988.
Expiration Date: December 11, 1992.

Summary of Public Comments and Agency Responses:

These proposed amendments to three rules were originally published separately in the New Jersey Register. The comments and responses are being consolidated because the comments pertain to all three and because the amendments are similar and interrelated.

Written comments were received from the following: the New Jersey Department of Human Services, the Mental Health Association in New Jersey, the Association of County Mental Health Administrators, and the New Jersey Psychiatric Association.

COMMENT: The Department of Human Services states that it supports the changes requiring the batching of adult open acute and screening psychiatric beds. The Department anticipates that the competitive review of applications will result in successful applicants that will commit to offering the best access to patients and will assure linkages with community services for continuity of care.

COMMENT: The Department of Human Services states that it supports the requirement for linking the development of open and closed acute psychiatric bed development. This will promote the development of involuntary bed capacity in acute care hospitals and will assist the Department of Human Services to comply with N.J.S.A. 30:4-27.1 et seq. (P.L. 1987, Chapter 116, the Screening and Commitment Law).

COMMENT: The Department of Human Services states its support of the competitive review criteria, especially with regard to access for indigent clients.

COMMENT: The Mental Health Association in New Jersey states that it supports the proposed amendments for all three rules and strongly urges that the rules be adopted as currently proposed.

COMMENT: The Mental Health Association states that the expansion of adult closed acute psychiatric units in general hospitals, which

the amendments will promote, is a critically needed and currently underdeveloped feature of the community mental health system. An essential component of such a system is the availability of involuntary beds in general acute hospitals as an alternative to state institutionalization.

COMMENT: The Mental Health Association states that it supports the amendments that favor projects which propose to develop inpatient screening and intermediate and special psychiatric beds in close affiliation with adult open and closed units, through the Certificate of Need process.

COMMENT: The Association of County Mental Health Administrators states its strong support of amendments, which will promote the development of adult closed acute psychiatric units in general acute hospitals by linking creation of such beds to projects which propose to add open acute beds.

COMMENT: The Association of County Mental Health Administrators also states that it supports the requirement that the Certificate of Need process give priority to applications for adult open acute units that offer inpatient screening and intermediate and special psychiatric beds which include assurances of effective linkage with adult open and closed acute units.

RESPONSE: The Department of Health appreciates the expressions of support from the Department of Human Services, the New Jersey Mental Health Association, and the Association of County Mental Health Administrators.

COMMENT: The New Jersey Psychiatric Association states that it strongly objects to the amendment linking new open adult acute beds with closed acute beds. The association further states that this rule represents an effort by the State to force hospitals to comply with its "master plan" to close state hospitals. The rule precludes hospitals from choosing their own option in developing units and levels of care as they feel they can best provide.

RESPONSE: The Department of Health, as well as the Department of Human Services, believes that the linking of these two closely related services is necessary for promoting continuity of care, treatment effectiveness and cost efficiencies. The availability of both open and closed acute psychiatric beds in one facility will allow a substantial number of involuntarily admitted patients to be evaluated, treated, and converted to voluntary status without the disruption caused by transfers to other hospitals. This linkage is cost effective in that costly diagnostic procedures do not have to be duplicated upon transfer. The Department also believes that new open adult acute psychiatric beds should be linked to closed adult acute beds until the need for closed beds in a service area is satisfied. Failure to link these categories might result in the subsequent approval of excess open beds. Closed beds are not as effective if they are operated without open beds, thereby necessitating the possible approval of further open beds in excess of need.

COMMENT: The New Jersey Psychiatric Association states that the concept of requiring a hospital to provide all levels of care exists in no other specialty in medicine and questions why the Department of Health is singling out psychiatry in such an inappropriate manner.

RESPONSE: The Department of Health requires the provision of related services when the relationship is logical and promotes access and effectiveness of care. An example is the provision of clinic services in conjunction with the related inpatient service. The linkage between closed and open beds applies only to new providers or those applying to expand their capacity. There is no requirement that existing providers must adhere to this requirement.

COMMENT: The Psychiatric Association states that the idea that adult closed acute psychiatric beds will be reviewed based on need is erroneous because the Division of Mental Health and Hospitals has already determined that almost every area of the state has a need for new beds.

RESPONSE: The Department of Health will require applicants to use a need calculation contained in the Mental Health Plan Element of the State Health Plan when they apply for adult closed acute psychiatric beds. There is a need for such beds in counties that do not have sufficient capacity to admit involuntary patients as required by N.J.S.A. 30:4-27.1 et seq. (P.L. 1987, Chapter 116, the Screening and Commitment Law). The Department has approved 101 beds in 16 hospitals capable of serving involuntarily committed patients. In areas served by these units, this section of the rule may not be applicable.

COMMENT: The Psychiatric Association states that having adult closed acute and adult open acute psychiatric services located in one facility will not be cost efficient. The Association states that the care provided in closed units is more expensive. By linking both categories of beds, there will be an increase in costs.

RESPONSE: The Department of Health believes that the effective linkage of mental health services will lead to cost savings to the health care system by decreasing inappropriate admissions, shortening lengths of stay, improving the effectiveness of treatment, and involving the family in the treatment process.

COMMENT: The Psychiatric Association states that it favors a stepdown concept where a patient can go from a closed unit to an open unit which is contiguous with the closed unit. However, the Association states that patients do not often transfer from an open to a closed unit.

RESPONSE: The Department of Health also favors a stepdown concept and is proposing this amendment to provide closed acute services from which patients can step down to adult open acute beds or other psychiatric services. There is no assumption on the part of the Department that any appreciable number of patients would move in the reverse direction.

COMMENT: The Psychiatric Association states that the Division of Mental Health and Hospitals in recent years has focused exclusively on the severely mentally ill who had been previously treated in state psychiatric institutions. The Association maintains that this group of patients is only a small percentage of the population in New Jersey who are in need of psychiatric services. The chronically mentally ill, the focus of the Division, are being forced into and treated in the community and the general hospitals since the concept of deinstitutionalization was put into practice. This has placed a tremendous burden and strain on the psychiatric units of general hospitals to provide care for these patients, who often need longer lengths of stay. It has also led to an unwillingness of many members of the community, that is, the middle class, to receive services in the same hospital unit. The latter groups are forced to go to private psychiatric hospitals elsewhere in the state or even out of state where the costs are much higher and thus away from family, friends, community, and their own physicians.

RESPONSE: The Department of Health believes that the provision of mental health services at the community level is appropriate for all individuals with psychiatric disorders. The Department is also responding to the mandate for community based involuntary admission and screening services as reflected in P.L. 1987, Chapter 116, the Screening and Commitment Law. The Department has a public responsibility to provide access to the mental health system regardless of "class" or economic status.

COMMENT: The Psychiatric Association states that the use of out of community private facilities is opposite to the concept of the Division of Mental Health and Hospitals for treating patients in hospitals as close to home as possible. What is being created is a two tiered system for the delivery of psychiatric care. By linking open and closed beds, it is diverting more patients from state hospitals and inappropriately treating them in the community. There are many patients who just cannot or should not be treated in a general hospital.

RESPONSE: The Department of Health favors a New Jersey mental health system that serves all patients. The ability to obtain services at private hospitals in or out of the community is generally limited to persons with sufficient resources for direct payment to providers or to persons with costly private insurance coverage. Persons with more limited funds, limited insurance coverage, or who are medically indigent are largely served by New Jersey's acute care hospitals. The Department is aware that third party reimbursement for psychiatric services is not comprehensive or available to everyone. These rules and the proposed amendments are designed to assure equal access; they cannot address the utilization of costly out of community services allowed by the existing health care reimbursement system.

COMMENT: The Psychiatric Association states that the emphasis on caring for the medically indigent and persons under cost based insurance creates another significant problem. There is absolutely no provision for payment to the psychiatrists who will be caring for these patients. The result has been that many psychiatrists across the state are either reducing or giving up their admitting privileges at the general hospitals; and therefore, there will be fewer psychiatrists to treat the patients in the units being created. The New Jersey DRG system reimburses hospitals (not M.D.s) for uncompensated care which will result in more psychiatric units operating at a loss. This will be tremendously increased in 1989 when New Jersey loses the Medicare Waiver, and the Federal DRG system which does not cover indigent care comes into effect.

RESPONSE: The Department of Health recognizes that third party payor rules, including Medicare, preclude payments to hospitals that incorporate reimbursement of physicians for services provided to inpatients. This rule applies to all medical services, not solely psychiatry. It is beyond the scope of these certificate of need regulations to address

this issue. It remains the policy of the State to assure access for the indigent to acute care services through an all payor reimbursement system.

COMMENT: The Psychiatric Association states that the methodology used to calculate the need for new beds is flawed in many ways. One of the most blatant is that all the patients who go out of state for psychiatric care, (and this is a significant number), because not enough beds are available in the general hospitals or private hospitals, are not included. This is also true for the methodology used for children and adolescent beds.

RESPONSE: The amendments being proposed at this time do not address the calculation of need. However, the Department does believe that any projected additional need for adult open acute psychiatric beds should be met in conjunction with closed beds. The Department also believes that the rules for intermediate and special psychiatric beds will add sufficient capacity to the system when applications are approved and implemented.

Full text of the adoption follows.

8:43E-2.4 Bed Need

(a) Each applicant for Adult Open Acute Psychiatric Beds shall demonstrate the need for additional bed capacity through application of the adult open acute bed need methodology, attached herein as Appendix A. The applicant must also develop Adult Closed Acute Psychiatric beds, unless that need has been satisfied in the proposed service area.

(b) (No change.)

8:43E-2.5 Continuity of Care

(a) Linkages with community mental health agencies and State or county hospitals for purposes of referral and follow-up must be adequately documented by the facility. Evidence should be attached indicating that formal transfer and/or program linkages agreements will be adopted with existing Adult Open Acute, Adult Closed Acute and Inpatient Screening Units, with State and/or county hospitals, each community mental health center, and with other State or county-funded mental health resources within the facility's service area particularly including:

1. Partial hospitalization;
2. Emergency/screening;
3. Outpatient care programs;
4. Residential care programs;
5. Adult Closed Acute Psychiatric Units.

(b) The facility should assure that patients for whom an application for involuntary commitment is sought shall be referred for admission to a facility which accepts involuntary commitments through the appropriate channel for the sending facility's service area. Where the New Jersey Division of Mental Health and Hospitals has identified an unmet need for Adult Closed Acute Beds, the direct provision of such beds by the applicant is required.

8:43E-2.19 Submission of certificate of need applications

Applications for the establishment of new Adult Open Acute Psychiatric Beds will be competitively reviewed pursuant to batching procedures set forth in N.J.A.C. 8:33. The following batching schedule will apply for the submission of Certificate of Need applications for Adult Open Acute Psychiatric Beds:

Deadline for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15

8:43E-2.20 Competitive review

(a) Where the need in a service area for additional Adult Open Acute Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1. Full compliance with all the standards and guidelines in this rule;
2. The highest level of access to services by the medically indigent and by persons under cost based insurance;
3. Projects which can be implemented in the most cost effective and efficient manner, measured by capital costs, projected per diem charges, and reduction of excess acute care bed capacity in the area;
4. The most effective integration of services with Adult Closed Acute Psychiatric Beds and with Inpatient Screening Psychiatric Beds;
5. Closest conformity to the need for Adult Open Acute Psychiatric Beds and Adult Closed Acute Psychiatric Beds;
6. Provision of the highest level of quality in the proposed clinical programs; and
7. The endorsement of the Health Systems agencies, County Mental Health Board(s), and mental health providers in the proposed service area.

8:43E-3.19 Submission of certificate of need applications

Applications for the establishment of new Inpatient Screening Psychiatric Beds will be competitively reviewed pursuant to batching procedures set forth in N.J.A.C. 8:33. The following batching schedule will apply for the Certificate of Need applications for Inpatient Screening Psychiatric Beds:

Deadline for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15

8:43E-3.20 Competitive review

(a) Where the need in a service area for additional Inpatient Screening Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need application to establish such services, the Department may approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1. Full compliance with all the standards and guidelines in this rule;
2. The highest level of access to services by the medically indigent and by persons covered by cost based insurance;
3. Projects which can be implemented in the most cost effective and efficient manner, measured by capital costs, projected per diem charges, and reduction of excess acute care bed capacity in the area;
4. The most effective integration of services with Adult Open Acute and with Adult Closed Acute Psychiatric Beds;
5. Closest conformity to the need for Inpatient Screening Psychiatric Beds;
6. Provision of the highest level of quality in the proposed clinical programs; and
7. The endorsement of the Health Systems Agencies, County Mental Health Board(s), and mental health providers in the proposed service area.

8:43E-5.20 Competitive Review

(a) Where the need in a service area for additional Intermediate Adult and/or Special Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applications necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, most clearly demonstrate the fullest level of compliance with the following criteria:

1.-6. (No change.)

7. Development of or most effective linkage with Adult Closed Acute and Adult Open Acute Psychiatric Units.

DRUG UTILIZATION REVIEW COUNCIL

(a)

Interchangeable Drug Products
Adopted Amendment: N.J.A.C. 8:71

Proposed: January 19, 1988 at 20 N.J.R. 146(a).
Adopted: May 17, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: May 25, 1988 as R.1988 d.273, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: June 20, 1988.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:
I. CONCERNING GENERIC SCHEDULE II SUBSTANCES

A. Verbal comments at the hearing:

(1) Mr. C. Gardner, representing DuPont, voiced support for the use of generics in general, but was opposed the use of generic substitutes for Schedule II substances in general, and specifically opposed to substitution for oxycodone with aspirin and oxycodone with acetaminophen products. He stated that DuPont will file written comments, and noted that the Drug Utilization Review Council has adopted an informal policy against substitution for Schedule IIs. Mr. Gardner also listed these objections: (1) pharmacists would have problems stocking such generics, and (2) a recent article in American Druggist voiced opposition to such substitution due to increased chances of pharmacies being robbed, as evidenced by Drug Enforcement Administration data showing armed robberies and "break-ins" of Maryland's pharmacies having increased from 1985 to 1986.

(2) Dr. F. Shainfeld, representing Halsey, supported the inclusion of generic substitutes for Schedule II products. He pointed out that the Council has previously approved at least one such substitute, that generics per se don't cause break-ins, and that consumers (especially those in hospices) should be able to obtain generic Schedule II substances.

B. Written comments received:

(1) The New Jersey Pharmaceutical Association, representing 3500 pharmacists, reiterated their earlier objections to the proposed Schedule II because increased inventories of such substances will become known to drug abusers and occasion an increased threat to community pharmacists.

(2) DuPont voiced opposition to Schedule IIs, making these allegations:

a. The impetus to substitute on Schedule IIs comes from the Federal MAC program, but categories of drugs can be exempted by New Jersey authorities.

b. The January, 1988 issue of American Druggist decries the new HCFA rules.

c. Such substitution may increase drug diversion.

d. DEA data shows increases in armed robberies and employee thefts of controlled substances.

e. The additional paperwork associated with Schedule IIs will offset any savings.

f. Diversions of oxycodone in Maryland increased from 7,741 dosage units in 1985 to 25,520 dosage units in 1986, following addition of oxycodone to the state formulary.

g. Little savings accrue to patients from substitution of Schedule IIs: prescription size is small and they are not renewable. Further, Schedule IIs represent a small percentage of total prescription volume.

(3) A number of pharmacy and physician practitioners wrote in a timely manner in opposition to substitution for Schedule IIs, as follows:

Six physicians objected, all based on lack of efficacy or poor quality of the Schedule II generics.

Five pharmacists objected, primarily emphasizing potential inventory problems and threats to security.

(4) One East Brunswick Township Council member also objected, relating increased inventories to more robberies.

(5) The Halsey Drug Company provided dissolution data on their Demerol substitutes, in support of adding them to the Formulary.

C. Comments at the Drug Utilization Review Council meeting:

Mr. Alvin Geser of the New Jersey Pharmaceutical Association reiterated their strong and long-standing objections to the addition of additional Schedule IIs to the generic formulary, based on their members' perception that such additional stock will invite increased robberies.

Mr. C. Gardner, a representative from the DuPont Company, reiterated their opposition to Schedule IIs being placed into the formulary.

Dr. F. Shainfeld, representing Halsey, voiced support for the proposed Schedule IIs, citing the DEA's focus on the extensive abuse of two drugs not presently proposed: glutethimide and APAP with codeine.

Mr. L. Bowser noted that New Jersey's statistics on losses of controlled dangerous substances show that almost 65 percent of losses are related to thefts **by employees** of pharmacies and practitioners, which means that the major "loss" problem is not due to armed robberies or break-ins.

Dr. Culkin informed the Council that the Drug Enforcement Administration's data on Maryland's Schedule II drug losses, which was presented by DuPont in support of their contention that addition of Schedule II drugs to the Maryland Formulary in early 1985 resulted in increased losses of such drugs in 1986, was a totally incorrect correlation. Mr. Charles Tregoe, administrator of Maryland's generic formulary program, who is also head of their Controlled Dangerous Substances Program, told Dr. Culkin that Schedule II drugs were added to the Maryland generic formulary in **1981**, thus any contention that the 1986 data reflected increased losses attributable to a 1985 formulary action were totally erroneous. Further, Mr. Tregoe was quoted as saying that the increased losses in 1986 were not related to having Schedule IIs in the formulary in any way, in his opinion.

D. The Council's response:

The Council does not agree with those practitioners who voiced opposition based on their contention that generics are less efficacious or generally inferior in quality to their branded counterparts. The several letters objecting to the proposal were largely based on unsubstantiated allegations of lack of therapeutic equivalency, which neither the FDA nor even the manufacturer of the brand supports.

While acknowledging that many pharmacists may perceive an increased threat of robberies due to the stocking of additional Schedule II drugs, the Council saw no evidence to support that fear. Further, there are no bioequivalency problems associated with this group of drugs. The Council therefore acted to add several highly prescribed Schedule II drugs to the generic substitution formulary.

II. CONCERNING TRIAMTERENE/HYDROCHLOROTHIAZIDE TABLETS

A. Comments at the Hearing:

Lederle objected to the proposed substitutes for the branded product, Maxzide, and asked that the Council not consider any such generic product, on the following bases:

1. Maxzide's labeling allows use before or after a meal, the generic's labeling does not.

2. An FDA comment indicates that generics should obtain food challenge studies when the brand has labeling allowing the brand to be taken with food.

B. Comments at the Drug Utilization Review Council meeting:

Lederle reiterated their objections as given above, as well as stating that their complaints had been made to the FDA's Dr. Peter Rheinstein.

Dr. Culkin told of his conversations with two FDA employees involved with this issue—Dr. Dighe and Dr. Pelsor. Both persons had no knowledge of any new FDA requirement that the currently marketed generics must conduct additional "with food" biostudies.

C. The Council's Response:

The Council cannot withhold a bioequivalent generic from the public while Lederle pursues a lengthly argument with the FDA. If the FDA changes their requirements and forces the manufacturers of these generics to perform additional biostudies, the Council will then review that data. There being no other potential bioequivalency problems with these drugs, the Council acted to add them to the Formulary.

The following products and their manufacturers were **adopted**:

Cephalexin for susp 250/5 ml	**Teva**
Chlorzoxazone tabs 500 mg	**Lemmon**
Desipramine tabs 25, 50, 75, 100 mg	**PharmBasics**
Megestrol acetate tabs 20, 40 mg	**PharmBasics**
Meperidine tabs 50, 100 mg	**Halsey**
Methadone HCl tabs 5, 10 mg	**Roxane**
Oxazepam caps 10, 15, 30 mg	**Purepac**
Oxycodone 5 mg/APAP 325 mg tabs	**Roxane**
Oxycodone/APAP tabs 5/325	**Halsey**
Oxycodones 4.88 mg/Aspirin 325 mg	**Roxane**

Oxycodones/ASA tabs 4.88/325	**Halsey**
Sulfasalazine tabs 500 mg	**Mutual**
Thioridazine conc. 30 mg/ml & 100 mg/ml	**Copley**
Thiothixene caps 1, 2, 5, 10 mg	**Amer. Ther.**
Thiothixene oral solution 5 mg/ml	**Copley**
Triamterene/HCTZ tabs 75/50	**Cord**
Triamterene/HCTZ tabs 75/50	**Quantum**
Trimipramine caps 25, 50, 100 mg	**PharmBasics**

The following products were **not adopted**:

Oxazepam caps 10, 15, 30 mg	Mylan

The following products were **not adopted, but are still pending**:

Cefadroxil caps 500 mg	Biocraft
Cefadroxil for susp 125 5, 250 5, 500 5	Biocraft
Cephalexin for susp 125 5 ml	Teva
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Diphenhydramine liquid 12.5 mg 5 ml	LuChem
Fluphenazine tabs 1, 2.5, 5, 10 mg	Chelsea
Flurazepam caps 15, 30 mg	Chelsea
Guaifenesin PPA tabs 400 75	LuChem
Hydromorphone HCl tabs 2, 4 mg	Roxane
Ibuprofen tabs 400, 600, 800 mg	LuChem
Isosorbide dinitrate tabs 20, 30 mg	Chelsea
Levorphanol tartrate tabs 2 mg	Roxane
Lorazepam tabs 0.5, 1, 2 mg	Chelsea
Meperidine HCl syrup 50 mg 5 ml	Roxane
Oxazepam caps 10, 15, 30 mg	Amer. Ther.
Oxazepam caps 10, 15, 30 mg	Barr
Oxtriphylline elixir 100 mg 5 ml	Barre
Propranolol tabs 10 mg	Lemmon
Triamterene HCTZ tabs 75 50	Cord
Trifluoperazine tabs 1, 2, 5, 10 mg	Cord
Valproic acid caps 250 mg	Chelsea

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notice of adoption may be found at 20 N.J.R. 900(a).

(a)

Interchangeable Drug Products
Adopted Amendment: N.J.A.C. 8:71

Proposed: October 19, 1987 at 19 N.J.R. 1878(a).
Adopted: May 17, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: May 25, 1988 as R.1988 d.274, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: June 20, 1988.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

CONCERNING TRIAMTERENE/HYDROCHLOROTHIAZIDE TABLETS

A. Comments at the Hearing:

Lederle objected to the proposed substitutes for the branded product, Maxzide, and asked that the Council not consider any such generic product, on the following bases:

Maxzide's labeling allows use before or after a meal, the generic's labeling does not.

An FDA comment indicates that generics should obtain food challenge studies when the brand has labeling allowing the brand to be taken with food.

B. Comments at the Drug Utilization Review Council meeting:

Lederle reiterated their objections as given above, as well as stating that their complaints had been made to the FDA's Dr. Peter Rheinstein.

Dr. Culkin told of his conversations with two FDA employees involved with this issue—Dr. Dighe and Dr. Pelsor. Both persons had no knowledge of any new FDA requirement that the currently marketed generics must conduct additional "with food" biostudies.

C. The Council's Response:

The Council cannot withhold a bioequivalent generic from the public while Lederle pursues a lengthy argument with the FDA. If the FDA changes their requirements and forces the manufacturers of these generics to perform additional biostudies, the Council will then review that data. There being no other potential bioequivalency problems with these drugs, the Council acted to add them to the Formulary.

The following product was **adopted**:

Triamterene/HCTZ tabs 75/50	**Barr**

The following products were **not adopted but are still pending**:

Chlorthalidone tabs 25, 50 mg	Sidmak
Flurazepam caps 15, 30 mg	Cord
Lactulose syrup 10 g 15 ml	My-K
Leucovorin calcium tabs 5, 15, 25 mg	Par
Methyldopa susp 250 mg 5 ml	My-K
Prednisone oral solution 5 mg 5 ml	My-K
Propranolol HCTZ tabs 40 25, 80 25	Schering
SMZ TMP tabs 400 80, 800 160	PFI
SMZ TMP tabs 400 80, 800 160 mg	PharmBasics
Theophylline E.R. tabs 200, 300 mg	Inwood
Thiothixene oral solution 5 mg ml	My-K

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notices of adoption may be found at 20 N.J.R. 191(b), 654(b) and 899(a).

(b)

Interchangeable Drug Products
Adopted Amendment: N.J.A.C. 8:71

Proposed: August 17, 1987 at 19 N.J.R. 1488(a).
Adopted: May 17, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.
Filed: May 25, 1988 as R.1988 d.275, **with portions of the proposal not adopted and portions not adopted but still pending.**

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

Effective Date: June 20, 1988.
Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

The following products and their manufacturers were **adopted**:

Trazodone tabs 50, 100 mg	**Purepac**

The following products were **not adopted but are still pending**:

Allopurinol tabs 100 mg	Interpharm
Amantadine HCl caps 100 mg	Pharmacaps
Amitriptyline perphenazine 4 10, 4 25, 4 50	Mylan
Amitriptyline perphenazine 2 10, 2 25	Mylan
Carbamazepine tabs 200 mg	Barr
Carbamazepine tabs 200 mg	Interpharm
Cephalexin caps 250, 500 mg	Purepac
Chlorzoxazone APAP tabs 250 300	Interpharm
Clorazepate dipot. tabs 3.75, 7.5, 15 mg	Mylan
Cyproheptadine tabs 4 mg	Interpharm
Diazepam tabs 2, 5, 10 mg	Ferndale
Doxepin caps 10, 25, 50, 75, 100, 150 mg	Par
Dyphylline guaifenesin syrup	Barre-National
Erythromycin ethylsuccinate 200 5 susp	Barre-National
Furosemide oral solution 10 mg ml	Barre-National
Haloperidol tabs 2 mg	Lemmon
Indomethacin caps 25, 50 mg	Interpharm
Iodinated glycerol drops 50 mg ml	Barre-National
Isosorbide dinitrate oral tabs 20 mg	Cord
Lactulose syrup 10 g 15 ml	Barre-National
Metoclopramide tabs 10 mg	Mylan
Minoxidil tabs 2.5, 10 mg	Par
Nystatin oral susp 100,000 U ml	Lemmon
Oxtriphylline guaifenesin syrup	Barre-National
Phenylephrine ophth. soln 10%	Steris
Prednisone tabs 5, 10, 20 mg	Amer. Ther.
Prednisone tabs 5, 20 mg	Cord
Procainamide E.R. tabs 750 mg	Copley
Propranolol tabs 10, 20, 40, 60, 80, 90	Halsey
Thiothixene caps 20 mg	Cord

Tolazamide tabs 100 mg	Cord
Trazodone tabs 50, 100 mg	Mylan
Verapamil tabs 80, 120 mg	Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notices of adoption can be found at 19 N.J.R. 2279(b), 2401(a) and at 20 N.J.R. 190(a), 655(a) and 899(b).

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

Sale of Animals

Adopted Repeal: N.J.A.C. 13:45A-12.1 and 12.2
Adopted New Rules: N.J.A.C. 13:45A-12.1, 12.2, and 12.3

Reproposed: March 7, 1988 at 20 N.J.R. 501(b).
Adopted: May 6, 1988 by James J. Barry, Jr., Director, Division of Consumer Affairs.
Filed: May 23, 1988 as R.1988 d.271, **with technical and substantive changes** not requiring additional public notice and comment pursuant to N.J.A.C. 1:30-4.3(c).
Authority: N.J.S.A. 56:8-4.
Effective Date: June 20, 1988.
Expiration Date: December 16, 1990.

Summary of Public Comments and Agency Responses:

The New Jersey Division of Consumer Affairs afforded all interested persons the opportunity to comment by April 6, 1988, on the reproposed new rules concerning the sale of animals in the State of New Jersey, N.J.A.C. 13:45A-12. Notice of this opportunity appeared in the March 7, 1988, edition of the New Jersey Register at 20 N.J.R. 501(b). Announcements were also forwarded to the Star Ledger and the Trenton Times.

A full record of this opportunity to be heard can be inspected by contacting:

James J. Barry, Jr., Director
Division of Consumer Affairs
1100 Raymond Boulevard, Room 504
Newark, New Jersey 07102

During the comment period, 162 comments were received. The majority of these comments came from members of the public and members of animal welfare groups who both felt the reproposal should be adopted without delay. There were also a number of comments received from members of the pet industry who believe the current rules are more than adequate and should be left in force. The non-supportive comments are summarized and appear below along with the Division's responses.

COMMENT: Some of the comments received complained that the definition of "pet dealer" is unfairly biased toward pet stores and should be expanded to include all cats and dogs adopted as well as sold in the State.

RESPONSE: The Division has reviewed the proposed language of this definition and believes it to be an adequate and fair representation of the desired purpose and scope of the proposed rule.

COMMENT: Certain industry comments suggested that the addition of "congenital or hereditary" to the definition of "unfit for purchase" will do more harm than good and will only serve to open a Pandora's box of problems between pet dealers and veterinarians. Because of the varied and numerous degrees, grades, and severities of conditions such as heart murmurs, hip dysplasia, and patellar luxations, both sides will constantly be battling over the meaning of these two terms.

RESPONSE: When this comment was first made in response to the original proposal the Division was careful to add qualifying language to the definition to lessen the possibility of confusion. The Division believes that the same concerns raised here during the reproposal's comment period have been met by the addition of the qualifying language "severely affects the health of the animal".

COMMENT: Many of the non-supportive comments received by the Division from the pet industry have suggested that requiring pet dealers to deliver the pedigree registration papers within 90 days is unfair. They state that the present proposal fails to take into consideration those instances where the delay beyond the 90 day period is caused by circumstances beyond the pet dealer's control.

RESPONSE: While the Division believes that 90 days is sufficient time for pet dealers to provide the necessary pedigree registration documents to the consumer, the pet dealer's position has been considered; and in the interest of fairness the Division has extended the time period from the proposed 90 days to 120 days. In addition, the Division was careful to consider whether this extension of time to 120 days would have any adverse effect on the consumer. While the Division has received complaints concerning the pedigree registration, the majority of these complaints centered upon the consumers' never receiving the pedigree registration documents. Furthermore, the actual necessity of having possession of the pedigree registration documents is not triggered until the consumer wishes to breed the new puppy or kitten and this event cannot take place until the animal reaches maturity some six or seven months later. Thus, the Division is confident that this extension will have no adverse effect on the consumer.

COMMENT: Some comments suggested that the requirement that an animal be examined by a licensed New Jersey veterinarian prior to its sale is unnecessary because the Federal Government already requires animals to be examined prior to interstate shipment. Therefore, they claim the proposal's requirement is unduly duplicative and burdensome.

RESPONSE: This requirement was established as a result of numerous complaints received by the Division, as well as the Division's concerns about the accuracy of the certificates of good health issued to the animals prior to shipment to New Jersey. Also, the Division believes it is extremely important to establish the condition of the animal's health as close to the time of sale as is reasonably feasible.

COMMENT: By far the most numerous of the non-supportive comments were those concerning the cage labeling requirement of the new proposal. Virtually every opposing letter, as well as 61 identically worded postcards, specifically mentioned this requirement. The general feeling of the pet industry is that some of the information required by N.J.A.C. 13:45A-12.3(a)2 is proprietary and they should not be forced to publicly disclose this information prior to the animal's sale. In addition, many breeders believe the requirement unnecessarily invades their privacy. The two points of disclosure opposed by these comments are N.J.A.C. 13:45A-12.3(a)2i and ii.

RESPONSE: In response to these comments the Division has decided to remove the supplier's name and address and the breeder's name and address from the cage labeling requirements of N.J.A.C. 13:45A-12.3(a)2. The Division agrees with the pet industry that this information is unnecessarily duplicative because it is required to be given to the consumer at the time of sale in the animal history.

COMMENT: Some of the letters received during the reproposal's comment period stated that the new requirements dealing with the quarantining of sick animals would be prohibitively expensive. Others asserted that this new section is an area best left to the State Department of Health and that the Department of Health has already regulated such quarantines.

RESPONSE: In response to these comments the Division has eliminated N.J.A.C. 13:45A-12.3(a)3.i.-ii., as well as 13:45A-12.3(a)4. While the Division believes that it has the authority to specify quarantine standards in connection with the sale of dogs and cats within the State, it believes that pet dealers should be permitted to employ standards which would be specific to their individual situations.

COMMENT: Another point brought up by the comments received by the Division was the issue of requiring animals to be reexamined by a licensed New Jersey veterinarian where the animal's initial examination took place more than 14 days prior to the date of its purchase. These commenters claimed that in review of the other safeguards provided by the reproposed rules this requirement is unnecessary and redundant.

RESPONSE: The Division has thoroughly reviewed this issue and believes there may be some confusion among the pet dealers as to how and when this requirement comes into play. The second examination required by N.J.A.C. 13:45A-12.3(a)6 is only applicable where the animal's initial examination by a licensed New Jersey veterinarian took place more than 14 days before the purchase date. Where the purchase date falls within the 14 day period no second examination is necessary. The requirement is vital to the rule in order to determine the condition of the animal's health at or as close as possible to the time of sale; absent this requirement, it would be more difficult to properly enforce the new rules.

COMMENT: Some of the comments received stated that the proposed six month liability period for congenital or hereditary diseases and conditions was still too burdensome. The comments noted that despite the addition of a liability ceiling, the reproposed rules expose the pet dealer to a far greater liability for veterinary fees than do the existing ones. N.J.A.C. 13:45A-12.4 of the current pet sale rules limits the pet dealer's economic exposure to veterinary "examination and diagnostic fees." Many of the individuals commenting believe this limitation should be retained in the new proposal. In addition, they feel a reasonableness standard as to fees should be inserted to guard against veterinarians padding their bills.

RESPONSE: After extensive research on the issue of congenital and hereditary conditions and diseases the Division has determined that the time period will remain six months. This requirement and the other requirements of N.J.A.C. 13:45A-12.3(a)7 are crucial to the reproposed regulation's effectiveness. The Division has the responsibility to protect the consumers of New Jersey from unnecessary loss through misrepresentation, fraud and other unscrupulous practices. The remedies provided the consumer in N.J.A.C. 13:45A-12.3(a)7 are fair and will facilitate the Division's ability to protect consumers who purchase dogs or cats in the State. Additionally, the Division believes that the pet dealer's interests are protected by the liability ceiling which limits a pet dealer's liability for veterinary fees to the purchase price, including sales tax, of the animal. N.J.A.C. 13:45A-12.3(a)7, therefore, has been adopted as it was reproposed on March 7, 1988.

COMMENT: Some of the commenters stated that the five day time period in the current reproposal, during which the consumer must deliver the veterinarian's certificate of unfit for purchase to the pet dealer, is unnecessarily long. The current rules provide for a three business day time period which most of these commenters felt was more than adequate. In addition, they claimed that a shorter period is more beneficial to all those concerned, especially the animals, because once it is determined the animal is so ill as to warrant issuing a veterinary certificate, the animal should receive immediate medical attention.

RESPONSE: The Division believes the five day time period established by the reproposal should remain as it is and that no reduction in the time is warranted. The original proposal had allowed a ten day period which was reduced to a five day period in the current reproposal. The Division concurs with those individuals who believe that an animal sick enough to be certified as unfit for purchase should receive immediate medical attention; however, it should be pointed out that in order to be certified, the animal had to have been seen by a licensed New Jersey veterinarian and therefore the five day period cannot hinder the animal from receiving the necessary care and treatment.

Summary of changes made upon adoption.

As a result of the industry comments three changes have been made in the reproposal. First, the time period during which the pet dealer must deliver the proper pedigree registration papers to the consumer has been expanded from the current 90 days to 120 days. This was done to ease the burden on the pet dealer and to provide an added safety valve for those instances where the delay in providing the necessary pedigree registration documents to the consumer was not the fault of the pet dealer.

Second, in response to comments made by members of the pet industry subparagraphs i. and ii. were removed from N.J.A.C. 13:45A-12.3(a)2. This section requires that all cages be labeled with the name and address of both the supplier and the breeder, the sex and breed of the animal, the date and place of the animal's birth, and the name and address of the attending licensed New Jersey veterinarian, as well as the date of the initial examination. The Division agreed with the commenters that since the name and address of the breeder and supplier are required to be given to the consumer in the animal history, at the time of sale, there was no need to require that the same information appear on the cage labels.

The third change is the deletion of certain portions of N.J.A.C. 13:45A-12.3(a)3 which established the specific requirements for a quarantine area, as well as the deletion of N.J.A.C. 13:45A-12.3(a)4 which also dealt with quarantine requirements. Although the Division believes that it has authority to specify quarantine standards in connection with the sale of dogs and cats in this State, the Division believes that, as a first step, pet dealers should be permitted to employ dealer-specific quarantine standards.

In addition to the changes mentioned above, the written notice which N.J.A.C. 13:45A-12.3(a)11 requires pet dealers give to the consumer has been changed to reflect the extension of N.J.A.C. 13:45A-12.2(a)7 time period of 120 days from the current 90 days.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A-12.1 and 12.2.

Full text of the adoption follows (additions to the reproposal indicated in boldface with asterisks ***thus***; deletions from the reproposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 12. SALE OF ANIMALS

13:45A-12.1 Definitions

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

"Animal" means a dog or cat.

"Consumer" means any natural person purchasing a dog or cat from a pet dealer.

"Division" means the Division of Consumer Affairs, Department of Law and Public Safety.

"Kennel" means the business of boarding dogs or cats or breeding dogs or cats for sale.

"Person" means any person as defined by N.J.S.A. 56:8-1(d).

"Pet dealer" means any person engaged in the ordinary course of business in the sale of animals for profit to the public.

"Pet shop" means the business of selling, offering for sale or exposing for sale dogs or cats.

"Quarantine" means to hold in segregation from the general animal population any dog or cat because of the presence or suspected presence of a contagious or infectious disease.

"Unfit for purchase" means any disease, deformity, injury, physical condition, illness or defect which is congenital or hereditary and severely affects the health of the animal, or which was manifest, capable of diagnosis or likely to have been contracted on or before the sale and delivery of the animal to the consumer. The death of an animal within 14 days of its delivery to the consumer, except death by accident or as a result of injuries sustained during that period shall mean such animal was unfit for purchase.

13:45A-12.2 General provisions

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., the following acts, practices or omissions shall be deceptive practices in the conduct of the business of a pet dealer:

1. To sell an animal within the State of New Jersey without an animal history and health certificate and without providing the consumer with a completed animal history and health certificate. The animal history and health certificate shall be signed by the pet dealer, his agent or employee, and shall contain the following information:

i. The animal's breed, sex, age, color, and birth date;

ii. The name and address of the person from whom the pet dealer purchased the animal;

iii. The breeder's name and address, and the litter number of the animal;

iv. The name and registration number of the animal's sire and dam;

v. The date the pet dealer took possession of the animal;

vi. The date the animal was shipped to the pet dealer, where such date is known by the dealer;

vii. The date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment, if any, taken or given to the animal;

viii. A statement of all vaccinations and inoculations administered to the animal, including the identity and quantity of the vaccine or inoculum administered, the name and address of the person or licensed veterinarian administering the same, and the date of administering the vaccinations and inoculations; and

ix. A 10-point bold-face type warning in the following form:

WARNING

The animal which you have purchased (check one) ☐ has ☐ has not been previously vaccinated or inoculated. Vaccination or inoculation neither guarantees good health nor assures absolute immunity against disease. Examination by

a veterinarian is essential at the earliest possible date to enable your veterinarian to insure the good health of your pet.

2. To fail to maintain a copy of the animal history and health certificate signed by the consumer for a period of one year following the date of sale and/or to fail to permit inspection thereof by an authorized representative of the Division upon two days' notice (exclusive of Saturday and Sunday).

3. To include in the animal history and health certificate any false or misleading statement.

4. To directly or indirectly refer, promote, suggest, recommend or advise that a consumer consult with, use, seek or obtain the services of a licensed veterinarian unless the consumer is provided with the names of not less than three licensed veterinarians of whom only one may be the veterinarian retained by the pet dealer for its purposes.

5. To describe or promote the operation of the business as a "kennel" unless the business operation falls within the definition contained in N.J.A.C. 13:45A-12.1 or the operation of the business as a "kennel" has been authorized by the issuance of a license pursuant to N.J.S.A. 4:19-15.8. In the absence of meeting such criteria, a pet dealer shall be considered to be engaged in the operation of a "pet shop" and shall, where the name for the business operation includes the word "kennel," indicate the following disclaimer in proximate location to the name for the business operation in all promotional or advertising activities:

"This business only engages in the operation of a pet shop."

6. To use or employ a name for the business operation which suggests or implies that such business operation is engaged in or is associated with any organization which registers or certifies the pedigree or lineage of animals and/or to represent, expressly or by implication, approval by or affiliation with such organization, unless the following disclaimer, as appropriate, appears in proximate location to the name for the business operation:

"This business only engages in the operation of a pet shop."

"This business only engages in the operation of a kennel."

7. To state, promise or represent, directly or indirectly, that an animal is registered or capable of being registered with an animal pedigree registry organization, followed by a failure either to effect such registration or provide the consumer with the documents necessary therefor *[90]* **120*** days following the date of sale of such animal. In the event that a pet dealer fails to effect registration or to provide the necessary documents within *[90]* **120*** days following the date of sale, the consumer shall, upon written notice to the pet dealer, be entitled to choose one of the following options:

i. To return the animal and to receive a refund of the purchase price plus sales tax; or

ii. To retain the animal and to receive a partial refund of 75 percent of the purchase price plus sales tax.

8. A pet dealer's failure to comply with the consumer's election pursuant to (a)7 above within 10 days of written notice thereof shall be deemed a separate deceptive practice for purposes of this section.

9. To fail to display conspicuously on the business premises a sign not smaller than 22 inches by 18 inches which clearly states to the public in letters no less than one inch high the following:

KNOW YOUR RIGHTS

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. Read your animal history and health certificate, the Statement of New Jersey Law Governing the Sale of Dogs and Cats and your Contract. In the event of a complaint you may contact: Division of Consumer Affairs, 1100 Raymond Boulevard, Newark, New Jersey 07102. (201) 648-3622.

(b) It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions contained in (a) above.

13:45A-12.3 Required practices related to the health of animals and fitness for sale and purchase

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., it shall be a deceptive practice for a pet dealer to sell animals within the State of New Jersey without complying with the following minimum standards relating to the health of animals and fitness for sale and purchase:

1. A pet dealer shall have each animal examined by a veterinarian licensed to practice in the State of New Jersey prior to the sale of the animal. The name and address of the examining veterinarian, together with the findings made and treatment (if any) ordered as a result of the examination, shall be noted on each animal's history and health certificate as required by N.J.A.C. 13:45A-12.2(a)1vii.

2. A pet dealer shall label and identify each cage as to the:

*[i. Supplier's name and address;

ii. Breeder's name and address;]*

*[iii.]***i.*** Sex and breed of animal;

*[iv.]***ii.*** Date and place of birth of each animal; and

*[v.]***iii.*** Name and address of the attending licensed New Jersey veterinarian and the date of initial examination.

3. A pet dealer shall be required to quarantine any animal diagnosed as suffering from a contagious or infectious disease, illness or condition until such time as a licensed New Jersey veterinarian determines that such animal is free from contagion or infection. All animals requiring quarantining shall be placed in a quarantine area separated from the general animal population. *[The quarantine area shall:

i. Be a separate physically defined space of cages removed from the holding area of the general animal population;

ii. Not to be used for any other purpose other than the segregation of sick animals because of the presence or suspected presence of a contagious or infectious disease; and

iii. Have an exhaust fan which creates air movement from the quarantine area to an area outside the premises of the pet dealer. Such removal of exhaust air from the quarantine area may be accomplished by the use of existing heating and air conditioning ducts provided no exhaust air is permitted to enter or mix with fresh air for use by the general animal population.

4. A pet dealer required to quarantine any animal under (a)3 above shall ensure that individuals who enter the quarantine area:

i. Wear separate protective clothing on their bodies, hands, and feet while handling any quarantined animal. All such protective clothing shall not be removed from the quarantine area except for cleaning purposes. Under no circumstances shall the protective clothing be worn in the holding area for the general animal population; and

ii. Wash their hands after handling quarantine animals and prior to the handling of any member of the general animal population.]*

*[5.]***4.*** A pet dealer shall be permitted to inoculate and vaccinate animals prior to purchase only on the order of a veterinarian licensed to practice in the State of New Jersey. A pet dealer, however, shall be prohibited from representing, directly or indirectly, that he is qualified to engage in or is engaging in, directly or indirectly, the following activities: diagnosing, prognosing, treating, administering, prescribing, operating on, manipulating or applying any apparatus or appliance for disease, pain, deformity, defect, injury, wound or physical condition of animals after purchase for the prevention of, or to test for, the presence of any disease in such animals. These prohibitions include but are not limited to the giving of inoculations or vaccinations after purchase, the diagnosing, prescribing and dispensing of medication to animals and the prescribing of any diet or dietary supplement as treatment for any disease, pain, deformity, defect, injury, wound or physical condition.

*[6.]***5.*** A pet dealer shall have any animal which has been examined more than 14 days prior to purchase reexamined by a licensed New Jersey veterinarian for the purpose of disclosing its condition at the time of purchase. Such examination shall take place within 72 hours of delivery of the animal to the consumer unless the consumer waives this right to reexamination in writing. The written waiver shall be in the following form and a copy shall be given to the consumer prior to the signing of any contract or agreement to purchase the animal:

KNOW YOUR RIGHTS

To ensure that healthy animals are sold in this State, New Jersey law requires that a dog or cat be examined by a licensed New Jersey veterinarian prior to its sale by a pet dealer and within 72 hours of the delivery of the dog or cat to a consumer who has purchased the animal where the initial examination took place more than 14 days prior to the date of purchase. A pet dealer need not have the animal reexamined if you, the consumer, decide that you do not want such a reexamination performed.

If you do not want a reexamination performed, please indicate your decision below.

WAIVER OF REEXAMINATION RIGHT

I understand that I have the right to have my animal reexamined within 72 hours of its delivery to me. I do not want to have such a reexamination performed.

Consumer's Name (Print)	Consumer's Signature
	Date
Pet Dealer's or Agent's Name (Indicate Title or Position) (Print)	Pet Dealer's or Agent's Signature
	Date

*[7.]**6.* If at any time within 14 days following the sale and delivery of an animal to a consumer, a licensed veterinarian certifies such animal to be unfit for purchase due to a non-congenital cause or condition or within six months certifies an animal to be unfit for purchase due to a congenital or hereditary cause or condition, a consumer shall have the right to elect one of the following options:

i. The right to return the animal and receive a refund of the purchase price, including sales tax, plus reimbursement of the veterinary fees incurred prior to the consumer's receipt of the veterinary certification. The pet dealer's liability for veterinary fees under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal;

ii. The right to retain the animal and to receive reimbursement for veterinary fees incurred prior to the consumer's receipt of the veterinary certification, plus the future cost of veterinary fees to be incurred in curing or attempting to cure the animal. The pet dealer's liability under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal;

iii. The right to return the animal and to receive in exchange an animal of the consumer's choice, of equivalent value, plus reimbursement of veterinary fees incurred prior to the consumer's receipt of the veterinary certification. The pet dealer's liability for veterinary fees under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal;

iv. In the event of the animal's death within 14 days of its delivery to the consumer, except where death occurs by accident or injury sustained during that period, the right to receive a full refund of the purchase price plus sales tax for the animal, or in exchange an animal of the consumer's choice of equivalent value, plus reimbursement of veterinary fees incurred prior to the death of the animal. The pet dealer's liability for veterinary fees under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal.

*[8.]**7.* The pet dealer shall accept receipt of a veterinary certification of unfitness which has been delivered by the consumer within five days following the consumer's receipt thereof, such certification to contain the following information:

i. The name of the owner;

ii. The date or dates of examination;

iii. The breed, color, sex and age of the animal;

iv. A statement of the veterinarian's findings;

v. A statement that the veterinarian certifies the animal to be "unfit for purchase";

vi. An itemized statement of veterinary fees incurred as of the date of the certification;

vii. Where the animal is curable, the estimated fee to cure the animal;

viii. Where the animal has died, a statement setting forth the probable cause of death; and

ix. The name and address of the certifying veterinarian and the date of the certification.

*[9.]**8.* When a consumer presents a veterinary certification of unfitness to the pet dealer, the pet dealer shall confirm the consumer's election in writing. The election shall be in the following form and a copy shall be given to the consumer upon signing:

UNFITNESS OF ANIMAL—ELECTION OF OPTION

I understand that, upon delivery of my veterinarian's certification of unfitness, I have the right to elect one of the following options. I am aware of those options and I understand each of them. I have chosen the following option:

☐ 1. Return of my animal and receipt of a refund of the purchase price, including sales tax for the animal, plus reimbursement of the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness. The reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax of my animal.

☐ 2. Retention of my animal and reimbursement for the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness, plus the future cost to be incurred in curing or attempting to cure my animal. The total reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax for my animal.

☐ 3. Return of my animal and receipt of an animal of my choice of equivalent value in exchange plus reimbursement of veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness. The reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax of my animal.

☐ 4. DEATH OF ANIMAL ONLY. (check one) ☐ Receipt of a full refund of the purchase price, including sales tax for the animal, or in exchange an animal of my choice of equivalent value plus reimbursement of the veterinary fees incurred prior to the death of the animal. The reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax of my animal.

Consumer's Name (Print)	Consumer's Signature
	Date
Pet Dealer's or Agent's Name (Indicate Title or Position) (Print)	Pet Dealer's or Agent's Signature
	Date

*[10.]**9.* A pet dealer shall comply with the consumer's election as required by (a)7i through iv above not later than 10 days following receipt of a veterinary certification. In the event that a pet dealer wishes to contest a consumer's election, he shall notify the consumer and the Director of the Division of Consumer Affairs in writing within five days following the receipt of the veterinarian's certification, and he may require the consumer to produce the animal for examination by a veterinarian of the dealer's choice at a mutually convenient time and place. The Director shall, upon receipt of such notice, provide a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to determine why the option elected by the consumer should not be allowed.

*[11.]**10.* A pet dealer shall give the following written notice to a consumer prior to the delivery of the animal. Such notice, signed by both the pet dealer and the consumer, shall be embodied in a separate document and shall state the following in 10 point boldface type:

KNOW YOUR RIGHTS—A STATEMENT OF NEW JERSEY LAW GOVERNING THE SALE OF DOGS AND CATS

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. In the event that a licensed veterinarian certifies your animal to be unfit for purchase within 14 days following receipt of your animal or within six months in the case of a congenital or hereditary cause or condition, you may:

i. Return your animal and receive a refund of the purchase price including sales tax; or

ii. Keep your animal and attempt to cure it; or

iii. Return your animal and receive an animal of your choice of equivalent value.

Further, in the event of your animal's death within this 14-day period, except where death occurs by accident or as a result of injuries sustained after delivery, you may choose to receive either a full refund of the purchase price plus sales tax or an animal of your choice of equivalent value. In addition, veterinary fees limited to the purchase price, including sales tax, of the animal must be paid by the pet dealer.

In order to exercise these rights, you must present to the pet dealer a written veterinary certification that the animal is unfit for purchase and an itemized bill of all veterinary fees incurred prior to your receipt of the certification. Both of these items must be presented no later than five days after you have received the certification of unfitness. In the event that the pet dealer wishes to contest the certification or the bill, he may request a hearing at the Division of Consumer Affairs. If the pet dealer does not contest the matter, he must make the refund or reimbursement not later than ten days after receiving the veterinary certification.

Although your dog or cat is required to be examined by a licensed New Jersey veterinarian prior to sale, symptoms of certain conditions may not appear until after sale. If your dog or cat appears ill, you should have it examined by a licensed veterinarian of your choice at the earliest possible time.

If the pet dealer has promised to register your animal or to provide the necessary papers and fails to do so within *[90]* ***120*** days following the date of sale, you are entitled to return the animal and receive a full refund of the purchase price plus sales tax or to keep the animal and receive a refund of 75 percent of the purchase price plus sales tax.

*[12.]**11.* It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions of this section except as specifically authorized under (a)6 above.

TRANSPORTATION

(a)

CONSTRUCTION AND MAINTENANCE

Contract Administration

Readoption: N.J.A.C. 16:44

Proposed: April 18, 1988 at 20 N.J.R. 889(a).
Adopted: May 19, 1988 by Charles T. Edson, Assistant Commissioner for Construction and Maintenance.
Filed: May 25, 1988 as R.1988 d.279, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 14A:1-1 and 14:15-2.
Effective Date: May 25, 1988.
Expiration Date: May 25, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:44.

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Readoption with Amendments: N.J.A.C. 19:3 and 4
Readopted New Rules: N.J.A.C. 19:4A

Proposed: April 4, 1988 at 20 N.J.R. 743(a).
Adopted: May 25, 1988 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Executive Director.
Filed: May 26, 1988 as R.1988 d.281, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i).
Effective Date: N.J.A.C. 19:3 readoption, May 26, 1988; amendments, June 20, 1988. N.J.A.C. 19:4 readoption, May 26, 1988; amendments, June 20, 1988. N.J.A.C. 19:4A, June 20, 1988.
Expiration Date: N.J.A.C. 19:3 and 4, May 26, 1993, N.J.A.C. 19:4A, June 20, 1993.

Summary of Public Comments and Agency Responses:
The Hackensack Meadowlands Development Commission (Commission) received six comment letters, in addition to comments made at the April 20, 1988 public hearing on this proposed readoption.

COMMENT: A letter from the Hackensack Meadowlands Mayors Committee endorsed the proposed readoption with amendments.

RESPONSE: The Commission acknowledges and appreciates the endorsement.

COMMENT: Three comment letters, including one from the Department of Environmental Protection, expressed concerns about the definition of wetlands, wetland buffers, and the new method for calculating the minimum height of the lowest building floor. Regarding the wetlands definition and the lowest building floor height, the commenters suggested that the Commission adopt language consistent with definitions used by the Department of Environmental Protection. It was also suggested that the tributaries where wetlands buffers are required should be listed specifically.

RESPONSE: The Commission, after consultation with its environmental staff, disagreed with the concerns about the definition of wetlands and the wetlands buffers along tributaries. The wetlands in the Meadowlands District are regulated by many State and Federal agencies, and the Meadowlands District wetlands are unique. Therefore, it would not be appropriate to limit the methodology of wetlands determination to one agency. With respect to the buffer requirements along tributaries, an applicant should assume that the buffer requirement is applicable unless specifically waived by the Chief Engineer.

The Commission tentatively agreed with the suggestions concerning minimum finished floor elevation. However, due to the lateness of the comments and the need of further clarification, the proposed language will remain the same.

COMMENT: A commenter suggested that the 100 feet rear yard requirement and the words "off street parking and loading" in the light industrial zone should be deleted in certain circumstances.

RESPONSE: The Commission believes these requirements should be retained because they are necessary for assuring high aesthetic standards in the District and providing adequate improvements to serve the permitted uses.

COMMENT: One commenter suggested that permitted sign sizes and heights should be increased.

RESPONSE: The Commission believes these requirements should be retained because they are necessary for assuring high aesthetic standards in the District and providing adequate improvements to serve the permitted uses.

COMMENT: Commenters suggested that some of the proposed landscaping requirements were burdensome, and one felt that dangerous fence toppings should be allowed at the discretion of the Chief Engineer.

RESPONSE: Some of the comments concerning landscaping and fencing were incorporated into the rules to clarify requirements for surveys or site plans of existing conditions and proposed site work.

COMMENT: One commenter felt that the requirements for office space on the first floor of certain buildings should be deleted.

RESPONSE: The Commission believes these requirements should be retained because they are necessary for assuring high aesthetic standards in the District and providing adequate improvements to serve the permitted uses.

COMMENT: A commenter suggested that septic tanks not be permitted.

RESPONSE: The Commission agrees, and has removed the possible exemption for using qualified septic tanks as temporary wastewater facilities in N.J.A.C. 19:4-6.15(c)3.

COMMENT: A letter from Public Service Electric and Gas Company contained objections to the new light siting standards at N.J.A.C. 19:4-6.18(l) concerning light pole materials, wiring and pole height.

RESPONSE: The Commission made several minor changes to the N.J.A.C. 19:4-6.18(l) site lighting standards to address the company's concerns.

COMMENT: One letter comment requested that the zoning code allow more flexibility for light public utility uses.

RESPONSE: The Commission does not believe that this is the proper time to allow more flexibility for light public utility uses. This suggestion is more appropriately addressed during the revision of the Hackensack Meadowlands District Master Plan.

Commission Initiated Change

1. In the N.J.A.C. 19:4-2.2 definition of "automobile service station", the description of accessory use as, "the sale and installation of lubricants, tires, batteries, and similar auto accessories" was deleted, so that accessory uses could include non-automotive products and services, such as convenience foods.

2. The inclusion of a "permanently connected mobile home" in the definition of "dwelling" was changed to a "mobile home permanently connected to utilities and on a permanent foundation" to clarify the Commission's intention in amending the provision.

3. Definitions of "dwelling-high-rise" "dwelling-low-rise" and "dwelling-mid-rise" were added in recognition of the fact that new development will involve these types of structures. These definitions were drawn from the planning text, "Illustrated Book of Development Definitions" by Harvey Moskowitz.

4. A definition of "neighborhood retail center" was added upon adoption in recognition of a real potential for their inclusion in new developments in certain areas.

5. For clarification purposes, "at the time of the damage" was added as the determinative point for market value in the definitions of "partial destruction" and "substantial destruction".

6. N.J.A.C. 19:4-1.67(e), 4.76(e), 4.86(e) and 4.96(e) were clarified by the inclusion of a reference to the Office of the Chief Engineer's power to limit temporary warehouse sales.

7. In N.J.A.C. 19:4-4.134(b)5i, the requirement that a survey include, "all natural features including plant material over three inch caliper" was changed to, "all natural features including plant material over four inch caliper" upon consideration that three inch caliper material was too small to be included in a survey.

8. The sealing requirement for landscape plans at N.J.A.C. 19:4-4.134(b)8, that all such plans be sealed by a New Jersey Certified Landscape Architect, was changed to also allow an "otherwise qualified professional" to seal the plans. This change recognizes that there are persons fully competent to draft landscape plans who are not Certified Landscape Architects, and allows for a case-by-case review of such persons' background for a determination as to whether they are a "qualified professional".

9. In N.J.A.C. 19:4-4.135(a)5, the proposed requirement that a proposed drainage system not adversely affect any adjacent or adjoining "developed" lands was changed to delete the developed qualifier and retain the existing reference to "development" lands. The proposed language, upon further consideration, was viewed as inappropriate to the Commission's practice and intent to examine both developed and undeveloped lands for proposed drainage system effects. Both land types can be development lands.

10. The proposed qualifier "by weight" following the 250 mg/l five day B.O.D. maximum in N.J.A.C. 19:4-6.15(b)1 was deleted as an inappropriate measure.

11. In N.J.A.C. 19:4-6.15(b)10, the maximum lead discharge allowed was changed from .05 mg/l to .5 mg/l, as the latter figure is much more in keeping with current environmental standards.

12. The term "artisans" was deleted from N.J.A.C. 19:4-6.18(j)1iv as inappropriate in light of the occupations preceding it, and replaced with professionals.

13. Proposed N.J.A.C. 19:4-6.18(k)8 was deleted and replaced with a clearer provision demonstrating the Commission's recognition of the difficulty of meeting exact specifications for pants. N.J.A.C. 19:4-6.18(k)9 was added to codify a long-standing Commission policy utilized to avoid costly delays.

14. The references to "barbed wire" were deleted in N.J.A.C 19:4-6.18(m)1 and 5 to eliminate the conflict between the two paragraphs relating to that wire type.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:3, 4 and 4A.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 3
FIRST STAGE OF THE MASTER PLAN FOR THE COMPREHENSIVE DEVELOPMENT OF THE HACKENSACK MEADOWLANDS DISTRICT

SUBCHAPTER 1. REVISED FEE SCHEDULE

19:3-1.2 Zoning

(a) Zoning fees are as follows:

1.-8. (No change.)

9. A fee of $500.00 is charged for permit extensions.

(b) (No change.)

CHAPTER 4
DISTRICT ZONING REGULATIONS

SUBCHAPTER 2. CONSTRUCTION AND DEFINITIONS

19:4-2.2 Definitions

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

. . .

"C.P." means commercial park.

. . .

"P.P." means planned park.

. . .

"Abandonment" means the relinquishment of property, or a cessation of the use of the property, by the owner or lessee, for reasons other than an act of God, without the intention of transferring property rights to another owner or lessee or resuming a use of the property. Abandonment shall mean the use has not operated for 12 continuous months.

"Accessory use or structure" means a use or structure which is customarily subordinate and incidential to a principal use in area, extent, or purpose and which contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal structure or use served. An accessory use or structure shall be located on the same lot as the principal use or structure.

"Accessory retail sales" means a use occupying not more than 10 percent of the total floor area of a building's warehouse floor area and engaged in the selling to the general public of goods or merchandise stored in the warehouse.

. . .

"Automobile service station" means any building, land area or other premises, or portion thereof, used or intended to be principally used for the retail dispensing or sales of vehicular fuels, and which

may include *[as an accessory]* use**s*** *[the sale and installation of lubricants, tires, batteries, and similar auto accessories]*.

. . .

"Bulk requirements" means standards that control the height, density, intensity and location of structures.

"Buffer" means an undeveloped strip of land used to separate use areas.

. . .

"Canopy" means any structure, movable or stationary, of a maximum six foot width, attached to and deriving its support from framework or posts or other means independent of a connected structure for the purpose of shielding a platform, stoop or sidewalk from the elements, or a roof like structure of a permanent nature which projects from the wall of a structure and overhangs the public way.

. . .

"Child care center" means a commercial establishment where care is given to six or more children under the age of six, not related to the operator by close ties of blood, marriage, or legal adoption, outside their home during any part of the day.

. . .

"District" means the Hackensack Meadowlands District.

"Duplex" means a residential building containing two, semi-attached dwelling units.

"Dwelling" means a building or portion thereof, including a *[permanently connected]* mobile home ***permanently connected to utilities and on a permanent foundation***, designed or used for residential occupancy.

"Family" means either:

1. An individual, or two or more persons related by blood, marriage or adoption, living together as a single housekeeping unit; or

2. Two or more individuals not related by blood, marriage, or adoption, living together as a single housekeeping unit. A family may include any number of gratuitous guests or minor children not related by blood, marriage, or adoption and usual domestic servants.

"Floor area" means the sum of the areas of all floors of a building or buildings, measured from the faces of the exterior walls, no including porches, balconies, patios, terraces, breezeways, and enclosed pedestrian walkways.

"Floor area ratio (F.A.R.)" means the gross floor area of all buildings and structures on the lot divided by the lot area.

. . .

"Heliport" means a location where helicopters may pick up or discharge passengers, take on fuel, are stored for extended periods of time, and undergo maintenance.

"Helistop" means a designated accessory landing pad where helicopters stop momentarily solely to pick up or discharge passengers, and no maintenance or storage functions take place.

. . .

"Housing for low-income families" means housing that is *[economically]* ***financially*** feasible for families whose income levels are categorized as low *[within]* ***by*** the standards promulgated by the United States Department of Housing and Urban Development or the appropriate State Housing Agency.

"Housing for moderate-income families" means housing that is *[economically]* ***financially*** feasible for families whose income levels are categorized as moderate *[within]* ***by*** the standards promulgated by the United States Department of Housing and Urban Development or the appropriate State Housing Agency.

. . .

"Landscaping" means the improvement of a lot, parcel or tract of land with plant material such as trees, shrubs and groundcovers, and other natural and man-made features in accordance with the Commission adopted Landscape Design Guidelines. Landscaping may include berms, decorative fences, gardens, plazas, roof terraces, certain outdoor recreational facilities, pedestrian walks, and other features such as fountains and gazebos designed to address a range of functional and visual considerations.

"Lot" means a designated parcel, tract, or area of land established by a plat or otherwise as permitted by law and to be used, developed, or built upon as a unit. Such lot may consist of a single lot of record, a portion of a lot of record, or a combination of the above.

. . .

"Lot of record" means a lot which exists as shown or described on a plat or deed in records of local and county registry of deeds.

. . .

"Minor truck repair" means repair of trucks not normally involving overnight storage or long-term repair. The following are not considered minor truck repairs; and body work, suspension and chassis repair, transmission and motor rebuilding or trailer repairs.

"Mixed use development" means a tract of land which includes one or more buildings or structures with two or more permitted uses which is planned, constructed, and managed as a single entity.

"Motor freight facility" means truck terminal.

. . .

"Nonconforming lot" means a lot in which the area, dimension or location was lawful prior to the adoption, revision or amendment to the HMDC Zoning Regulations but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

"Nonconforming structure" means a structure in which the size, dimension or location was lawful prior to the adoption, revision or amendment to the HMDC Zoning Regulations but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

"Nonconforming use" means a use or activity which was lawful prior to the adoption, revision or amendment to the HMDC Zoning Regulations but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

. . .

"Open space" means a landscaped or naturally preserved area such as a wetland, tidal marsh or waterway which the Commission has determined should be preserved. This open space includes any uses required to be conducted within the open space by the applicable district regulations, but not including vehicular parking or loading areas, or driveways. Curbed, landscaped safety islands with a minimum dimension of five feet in any direction and a minimum of 50 square foot area shall be considered open space.

"Outdoor storage" means the storage of goods, materials and containers outside of any building or structure.

. . .

"Partial destruction" means a building or structure which is damaged to the extent that repairs to restore the building or structure to its original form and use would not require the expenditure of more than 50 percent of the market value of the building or structure ***at the time of the damage***.

. . .

"Professional office" means the office of an engineer, doctor, dentist, attorney, architect, or other similarly recognized professional.

. . .

"Substantial destruction" means a building or structure which is damaged to the extent that repairs to restore the building or structure to its original form and use would require the expenditure of 50 percent or more of the market value of the building or structure ***at the time of the damage***.

"Trailer" means a structure standing on wheels, towed or hauled by another vehicle and used for carrying materials, goods or objects, or as a temporary sales or construction office in connection with construction projects.

"Tributary" means any stream, manmade or natural, which contributes to the flow of the Hackensack River.

"Truck terminal" means an establishment primarily engaged in furnishing, hauling, or transfer services without long-term product or cargo storage and where trucks load and unload products or cargo for transshipment or reshipment. A truck terminal may also include accessory areas for the repair, service, maintenance, temporary storage, or parking of trucks.

. . .

"Vehicular area" means the total lot area used for vehicular movement, transportation systems, parking and loading. Vehicular parking areas shall be defined as that area within vehicular overhang

areas. Curbed, landscaped safety islands with a minimum dimension of five feet in any direction and a minimum of 50 square foot area shall not be considered vehicular area.

"Warehouse" means a building used primarily for the storage of goods, products, cargo, and materials with provision for truck loading and unloading facilities but not primarily engaged in hauling or transfer services. Warehousing may include truck storage, repairs, or servicing of trucks where such storage, repairs, or servicing is minor in nature and is accessory to the principal use and where such vehicles are owned or leased by the owner or tenant of the warehouse.

"Wetland" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (*Federal Register,* Vol. 42, p. 37128). Under some circumstances, disturbed or previously filled areas may not completely meet the above criteria and may still be classified as wetland.

. . .

"Yard: front" means a yard extending along the full length of a front lot line and back to a line paralleling the front lot line and intersecting the front of the building at its farthest point from the front lot line. Each yard that abuts a front lot line shall be considered a front yard.

. . .

SUBCHAPTER 3. APPLICATION OF REGULATIONS

19:4-3.1 Territorial application

(a) (No change.)

(b) The Hackensack Meadowlands District shall be divided into the following districts, the location of which shall be determined by reference to the Official Zoning Map, with all notations and attached boundary descriptions*[,]* if any, kept in the Office of the Chief Engineer*[,]* ***and*** hereby adopted as part of these regulations.

1. Zones:

i.-xiii. (No change.)

xiv. Public Utilities Zone;

xv. Planned Park and Recreational 1 Zone;

xvi. Commercial Park Zone.

2. (No change.)

SUBCHAPTER 4. ZONE REGULATIONS

19:4-4.6 Number of structures on a lot

(a) Not more than one single-family detached or two-family detached dwelling shall be located on a single lot. For all other uses permitted by these zoning regulations, more than one principal structure may be located on a single lot provided the lot has a minimum area of one acre. Total floor area ratio, building coverage and other regulations relating to intensity of use shall not be exceeded.

(b) Minimum distance between structures and the arrangement and location of structures, open space, landscaping, parking and circulation on a single lot shall be determined as part of site plan review and shall be consistent with good planning and engineering practice. Adequate light and air, fire and other safety considerations, privacy, circulation and parking shall be provided.

19:4-4.8 Obstructions in required yards

(a) The following shall not be considered to be obstructions and shall be permitted when located in a required yard:

1. In all yards: Open terraces not over four feet above the average level of the adjoining ground, but not including a permanently roofed-over terrace or porch; awnings or canopies; steps four feet or less above grade which are necessary for access to a permanent structure or for access to a lot from a street or alley; one-story bay windows and overhanging eaves and gutters projecting 30 inches or less into the yard; arbors; flag poles; signs, when permitted by N.J.A.C. 19:4-6.18; sidewalks; and fences when permitted by N.J.A.C. 19:4-6.18.

2. In any yard except a required front yard: Accessory uses permitted by N.J.A.C. 19:4-4.145 and meeting the applicable minimum side yard requirements; recreational and laundry drying equipment; and parking and loading facilities, provided that a minimum distance of six feet of landscaping is maintained between parking facilities and buildings.

(b) Private roads serving uses on other lots shall only be permitted in side or rear yards and may only traverse the front yard perpendicular to the front property line. All required setbacks shall be measured from the private road. Private roads within low density residential zones must comply with N.J.A.C. 19:4-4.31.

19:4-4.9 (Reserved)

19:4-4.10 Office trailers

(a) The use of trailers in any zone in connection with site construction shall be permitted subject to the following restrictions and regulations:

1. Trailers may be used as temporary offices, condominium sales offices, and/or field offices although not more than one night watchman or similar person may live in temporary residence in one such trailer.

2. A trailer shall not be moved onto a construction site until 60 days prior to the date upon which site work actually commences and shall be removed from a site on or before the issuance of a final certificate of occupancy unless a later removal is authorized by the Office of the Chief Engineer.

3. A permit for the location and use of any trailer shall be obtained from the Office of the Chief Engineer, in conjunction with a zoning certificate for the proposed construction.

4. The Office of the Chief Engineer may impose reasonable conditions relating to location, parking, access, signs and aesthetics with respect to trailers.

(b) Office trailers not associated with site construction are not permitted.

19:4-4.15 Marshland preservation zone; use limitations

(a) (No change.)

(b) (No change.)

19:4-4.23A Planned park zone 1; bulk regulations

(a) The bulk regulations for the planned park zone are:

1.-4. (No change.)

5. Minimal final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.30 Low density residential zone; bulk regulations

(a) Bulk regulations in the low density residential zone include:

1. (No change.)

2. Minimum open space:

i. Single and two-family dwellings: 50 percent;

ii. Multiple-family dwellings: 35 percent;

iii. Other permitted uses and special exceptions: 35 percent.

3.-4. (No change.)

5. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.31 Low density residential zone; design of structures and other improvements

The design of all structures and other improvements shall comply with the requirements of *[Subchapter 6]* ***N.J.A.C. 19:4-6****. No land which is located in the low density residential zone shall be used for a driveway, walkway or access purpose to any land which is located in any zone created by N.J.A.C. 19:4-4.45 through 4.156.

19:4-4.39 Waterfront recreation zone; bulk regulations

(a) The bulk regulations in the waterfront recreation zone are:

1. (No change.)

2. The minimum open space is 40 percent. Open space in this zone may include landscaped gravel and sand areas, tidally-affected marsh, open water, boardwalks and walkways, in addition to landscaping. Portions of the open space area may be used for temporary winter boat storage.

3. (No change.)

4. Floor area ratio (F.A.R.): 0.75;
5. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.49 Highway commercial zone; bulk and density regulations
(a) The bulk and density regulations in the highway commercial zone are:
1.-6. (No change.)
7. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Floor Insurance Rate Maps (FIRM).

19:4-4.59 Service-highway commercial zone; bulk regulations
(a) The bulk regulations for the service-highway commercial zone are:
1.-4. (No change.)
5. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.61 Service-highway commercial zone; environmental performance standards
(a) (No change.)

19:4-4.67 Research park zone; use limitations
(a)-(c) (No change.)
(d) At least five percent of the first floor of any building containing warehouse facilities shall be designed and used for office space.
(e) Temporary warehouse sales are permitted *[no more than]* ***a maximum of*** four times a year for a period not exceeding three days per event. *[Applications for sales shall]* ***The Office of the Chief Engineer may limit the number of sales permitted; thus, applications will*** be approved on a first come, first served basis.

19:4-4.69 Research park zone; bulk regulations
(a) The bulk regulations in the research park zone are:
1.-4. (No change.)
5. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.71 Research park zone; design of structures and buffer requirements
(a) (No change.)
(b) There shall be a 25 foot wide strip of landscaped open space, with heavy vegetative screening where any development borders a specially planned area, a residential planned unit development, the park and recreation zone, or the low density zone.
(c) Where any development borders the Hackensack River or any of its tributaries there shall be a 50 foot wide strip of wetland necessary to insure proper drainage and edge effect at such border.

19:4-4.76 Research distribution park zone; use limitations
(a) (No change.)
(b) *[No retail sales shall be permitted.]* Trucking operations are only permitted to the minimum extent necessary as incidental and accessory to a permitted or special permit use.
(c)-(d) (No change.)
(e) *[Temporary]***No retail sales are permitted except for temporary*** warehouse sales ***which*** are permitted *[no more than]* ***for a maximum of*** four times a year for a period not exceeding three days per event. *[Applications for sales shall]* ***The Office of the Chief Engineer may limit the number of sales permitted; thus, applications will*** be approved on a first come, first served basis.

19:4-4.78 Research distribution park zone; bulk regulations
(a) The bulk regulations in the research distribution park zone are:
1.-3. (No change.)
4. Yards:
i. (No change.)
ii. (No change.)
iii. Minimum rear yard: 100 feet.
5. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.81 Research distribution park zone; buffer strip
(a) There shall be a 25-foot wide strip of landscaped open space, with heavy vegetative screening where any development borders a specially planned area, a residential planned unit development, *[the]* ***a*** park and recreation zone, or *[the]* ***a*** low density residential zone.
(b) Where any development borders the Hackensack River or any of its tributaries, there shall be a 50-foot wide strip of wetland necessary to insure proper drainage and edge effect at such border.

19:4-4.86 Light industrial zone A; use limitations
(a) (No change.)
(b) No motor freight facilities or trucking operations shall be permitted, except as incidental and accessory to a permitted or special permit use.
(c) (No change.)
(d) Accessory retail sales are permitted in accordance with other provisions in these regulations.
(e) Temporary warehouse sales are permitted *[no more than]* ***for a maximum of*** four times a year for a period not exceeding three days per event. *[Applications for sales shall]* ***The Office of the Chief Engineer may limit the number of sales permitted; thus, applications will*** be approved on a first come, first served basis.

19:4-4.88 Light industrial zone A; bulk regulations
(a) The bulk regulations in light industrial zone A are:
1.-3. (No change.)
4. Yards:
i. (No change.)
ii. (No change.)
iii. Minimum rear yard: 100 feet, except for office or any special exception: 75 feet.
5. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.91 Light industrial zone A; design of structures and other improvements
The design of all structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6.18.

19:4-4.96 Light industrial zone B; use limitations
(a) All operations, activities and storage (except landing areas for helistops, off-street parking and loading, mobile home, boat and auto sales/rental yards, and accessory lumber yards and home improvement centers) shall be conducted within completely enclosed buildings.
(b) No motor freight facilities or trucking operations shall be permitted, except as incidental and accessory to a permitted or special permit use.
(c) (No change.)
(d) Accessory retail sales are permitted in accordance with other provisions of these regulations.
(e) Temporary warehouse sales are permitted *[no more than]* ***for a maximum of*** four times a year for a period not exceeding three days per event. *[Applications for sales shall]* ***The Office of the Chief Engineer may limit the number of sales permitted; thus, applications will*** be approved on a first come, first served basis.

19:4-4.98 Light industrial zone B; bulk regulations
(a) The bulk regulations in light industrial zone B are:
1.-4. (No change.)
5. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.107 Heavy industrial zone; bulk regulations
(a) The bulk regulations in the heavy industrial zone are:
1.-4. (No change.)
5. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.117 Airport facilities zone; bulk regulations
(a) The bulk regulations in the airport facilities zone include:
1.-3. (No change.)
4. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.123 Sports complex zone; land not exempt
(a) Land not exempt from the jurisdiction of the Commission under N.J.A.C. 19:4-4.122 herein shall be rezoned by the Commission from the sports complex zone classification within three months after the occurrence of any of the following:
1.-2. (No change.)

19:4-4.129 Public utilities zone; bulk regulations
(a) The bulk regulations in the public utilities zone are:
1.-3. (No change.)
4. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

19:4-4.134 Application for zoning certificate
(a) (No change.)
(b) Every application for a zoning certificate shall include:
1. A plat, in triplicate, of the lot, drawn to scale and showing the actual dimensions of the lot;
2.-4. (No change.)
5. For the construction or moving of any structure or addition thereto, a site plan, as follows:
i. A survey of the tract that is to be developed showing existing features of the property, including building setback lines, land uses, public right-of-ways, alleys, easements, utility lines, general topography and drainage, watercourse locations, and all natural features including plant material over *[three]* ***four*** inch caliper;
ii. (No change.)
iii. A statement or notation giving the proposed total gross floor area of all buildings, the percentage of the development which is to be occupied by structures, and such other information as is necessary to show compliance with the applicable lot size requirements and bulk regulations.
6.-7. (No change.)
8. Landscape plans and plant schedules showing the existing and proposed landscaping of the site and all areas to be devoted to open space. All such plans are to be sealed by a New Jersey Certified Landscape Architect if landscaped open space area is greater than 20,000 square feet.
9. A total architectural lighting plan including lighting at all entranceways, exits, pedestrian and parking areas;
10. If the land covered by the site plan is not to be subdivided, information sufficient to show that the requirements of *[Subchapters 5 and 6 of the subdivision regulations]* ***N.J.A.C. 19:5-5 and 6*** have been complied with;
11. Other such information as may be reasonably required.

19:4-4.135 Review and approval of application for a zoning certificate
(a) Within two weeks after the receipt of the complete application, the Office of the Chief Engineer shall approve the application by letter to the applicant and to the municipality in which the development is located which shall serve as a zoning certificate, if the application complies with the following standards:
1.-4. (No change.)
5. The proposed drainage system will be adequate for the proposed use and structures, will not adversely affect any adjacent or adjoining *[developed]* lands and will be completely enclosed. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM). If no base flood evaluation is provided by FEMA, then the final finished floor elevation shall not be less than 10 feet above mean sea level based on U.S. Coast and Geodetic datum.
(b)-(c) (No change.)

19:4-4.136 Period of validity
A zoning certificate shall become null and void one year after the date on which it is issued, unless within such one year period, construction, moving, remodeling or reconstruction of a structure, or addition thereto, is commenced, or a legal use is commenced. Additional extensions not exceeding one year each, may be granted by the Office of the Chief Engineer upon written application.

19:4-4.140 Landscaping and maintenance of open space
(a)-(c) (No change.)
(d) In the event that the applicant or his successors shall at any time after the issuance of an occupancy certificate fail to maintain any open space, the Office of the Chief Engineer may serve written notice setting forth any failure to maintain the open space in a reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within four weeks thereof and shall state the date and place of any hearing thereon which may be held. If the deficiencies set forth in the original notice or in the modifications thereof are not cured within said four weeks or any extension thereof, the Office of the Chief Engineer, in order to preserve the taxable values of the surrounding properties and to prevent the open space from becoming a public nuisance, may enter upon the open space and maintain the same for a period of one year. Before the expiration of said year, the Office of the Chief Engineer shall, upon its initiative or upon the request of the applicant, call a public hearing at which the applicant shall show cause why such maintenance by the Office of the Chief Engineer shall not, at the election of the Office of the Chief Engineer, continue for a succeeding year. If the Office of the Chief Engineer shall determine that the applicant is ready and able to maintain the open space during the next succeeding year, and subject to a similar hearing and determination, in each year thereafter, the maintenance responsibility shall revert to the owner.
(e) (No change.)

19:4-4.141 Special exceptions
(a)-(c) (No change.)
(d) A special exception permit shall not be granted unless specific written findings of fact are made based directly upon the particular evidence presented which support conclusions that:
1. The proposed special exception complies with all applicable requirements of these regulations.
2.-7. (No change.)
(e)-(h) (No change.)

19:4-4.142 Variances
(a)-(c) (No change.)
(d) The Office of the Chief Engineer shall select a reasonable time and place at which to hold a public hearing in accordance with N.J.A.C. 19:4-6.22.
(e)-(k) (No change.)

19:4-4.145 Accessory uses
(a) (No change.)
(b) Accessory structures and uses include, but are not limited to, the following:
1. Accessory uses not permitted on open space.
i. Private garages or carports.
ii.-v. (No change.)
vi. Off-street parking and loading spaces, as regulated by 19:4-6.18;
vii. (No change.)
2. Accessory uses permitted on open space.
i. (No change.)
ii. A private swimming pool and bath house;

(1) No part of the surface area of a private swimming pool shall be closer than 10 feet to the rear lot line nor closer than five feet to the side lot line and shall not be located in the front yard.

(2) The entire swimming pool area shall be fenced. The fence shall be a minimum of four feet in height and a maximum of six feet in height and shall be of such design that it controls access to the pool area. Where the pool is installed on a corner lot and the fence is not a solid fence, the side nearest the street shall be screened with shrubs not less than four feet in height and forming a visual barrier.

(3) No pool shall drain into a public sanitary sewer or be located in such a manner that the water from the pool drains onto another property.

iii.-v. (No change.)

(c) Bulk regulations are as follows:

1. Accessory structures shall comply with the bulk regulations applicable to principal structures in the zone in which they are located, except in the LDR zone where a five foot lot line setback is required.

2. No accessory structure or use shall be permitted in any required front yard unless it is a permitted obstruction within the meaning of N.J.A.C. 19:4-4.8(a).

19:4-4.148 Commercial park zone: permitted uses

(a) The following are permitted uses in the commercial park zone:

1. Office buildings which must include a minimum of five percent of the total floor area (not including parking structures) to be utilized for restaurants, with cocktail lounges, banks, retail shops, and/or theaters, all of which shall be oriented toward use by those employees within the same lot of record, but not limited thereto.

2.-3. (No change.)

19:4-4.152 Commercial park zone: bulk regulations

(a) The following are bulk regulations in the commercial park zone:

1.-4. (No change.)

5. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Inusrance Rate Maps (FIRM).

6. (No change.)

19:4-4.153 Commercial park zone: buffer requirements

(a) There shall be a 25-foot wide strip of landscaped open space, with heavy vegetative screening, where any development borders a specially planned area, a residential planned unit development, the park and recreation zone, or the low density residential zone.

(b) Where any development borders the Hackensack River or any of its tributaries, there shall be a 50-foot wide strip of wetland necessary to insure proper drainage and edge effect at such border.

SUBCHAPTER 5. SPECIALLY PLANNED AREA REGULATIONS

19:4-5.2 The parkside residential specially planned areas: PR-1, PR-2 and PR-3

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

(d) No general plan for any PR shall be approved under N.J.A.C. 19:4-5.8, no development plan shall be approved under N.J.A.C. 19:4-5.9, and no implementation plan shall be approved under N.J.A.C. 19:4-5.10 unless it contains the following types and amounts of development.

1. Residential development:

i.-viii. (No change.)

ix. The applicant shall make every possible effort before, during, and within five years after completion of the PR to provide, or cause others to provide, housing that will result in a community with a mix and balance of income levels that shall reflect regional housing needs and the range of job opportunities available in the Hackensack Meadowlands District. The Development Board may publish guidelines regarding the appropriate range of housing needs in the District and file them with the Office of the Chief Engineer. In preparing such guidelines, the Development Board shall consider the experience of developers of economically-integrated housing in the region as to what type of mix creates a stable and viable community, the profitability of other uses required and permitted in the PR, Federal and State guidelines, and other criteria and data that the Development Board determines to be appropriate. Although the amount of housing for the elderly and for low and moderate income families shall be substantial, it shall not be of such a high proportion as will make the conventionally-financed units unmarketable and the proposed development economically unfeasible; and it shall be commingled with conventionally-financed units in substantially the same proportion in each section of the PR unless such commingling will render the conventionally-financed units unmarketable.

2. (No change.)

3. Common open space:

i. (No change.)

ii. Intra-neighborhood open space shall be located in one or more clusters within each neighborhood or intermingled among the uses of the PR. It shall contain recreation areas, facilities and playgrounds for children sufficient to meet the recreation needs of the residents of the neighborhood. A fee may be charged for recreational uses such as golf courses which require a substantial expenditure for maintenance. Intra-neighborhood common open space not allocated for recreational purposes should, wherever possible, incorporate into its design configuration and maintenance, the ecological characteristics of the wetlands. All intra-neighborhood common open space not used for recreational and/or natural wetland purposes, shall contain landscaped areas and may contain watercourses or other amenities. Every effort shall be made to preserve existing tide watercourses and their natural meanders. Landscaped areas shall contain lawn, tree and shrubbery, and pedestrian paths, ways and malls, and may contain flower and rock gardens, statues and sculpture, bicycle paths, and whatever other matter enhances the quality of the landscaped area. Cooperative gardening may be permitted in these open spaces. Landscaped areas contiguous to tidal watercourses shall promote, wherever possible, natural wetlands vegetation. Structures for neighborhood meetings and activities and cultural activities may be built upon intra-neighborhood common open space.

iii.-vi. (No change.)

4-13. (No change.)

(e)-(g) (No change.)

19:4-5.6 The special use specially planned areas: SU-1 and SU-2

(a)-(g) (No change.)

19:4-5.10 Implementation plan

(a) An applicant shall file an implementation plan or plans covering sections or subsections of a specially planned area for which a development plan or plans has already been approved as follows:

1.-3. (No change.)

4. Minimum final finished floor elevations shall comply with the applicable 100 year base elevations determined by the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps (FIRM).

SUBCHAPTER 6. GENERAL PROVISIONS

19:4-6.1 Performance standards; noise

(a) (No change.)

(b) The instrument shall be set to the A-weighted response scale and the meter to the slow response. Measurements shall be conducted in accordance with American National Standards Institute S1.2—1962 "American Standard Method for the Physical Measurements of Sound".

(c) Impact noise shall be measured with an impact noise analysis meeting the standards of the American National Standards Institute or the International Electrotechnical Commission.

(d)-(g) (No change.)

(h) Noises under the indirect and direct control of a use are included in the above limitations.

(i) Construction on other temporary (60 days or less) uses which exceed the above limitation may be permitted if a noise mitigation plan is approved by the Office of the Chief Engineer.

19:4-6.5 Airborne emissions

(a) (No change.)

(b) The emission of visible steam (having an equivalent capacity of 60 percent or higher) from all stacks, chimneys, processes, and devices shall not exceed the limitations set forth in Table III.

Table III (No change.)

(c) The emission of *[particular]* ***particulate*** matter from all stacks, vents, chimneys, flues and openings of all sources of air pollution on a lot shall not exceed the limitations set forth in Table IV or the New Jersey State Standards, whichever is more restrictive.

Table IV (No change.)

(d) In a planned unit development or specially planned area, the emission limit shall apply to the development as a whole, based on the total area of land and water in the development.

(e) If any toxic matter is emitted which is listed by the American Conference of Governmental Hygienists or any other lists published by the State of New Jersey or U.S. Government, the applicant shall satisfy the Office of the Chief Engineer that the quantity and type of emission of this matter will be safe to the general population.

(f) No odor shall be emitted that is detectable by the human olfactory sense at or beyond an adjacent lot line.

19:4-6.7 Performance standards; hazardous materials, liquids and chemicals

(a) In all zones and specially planned areas, any activity involving the manufacture, utilization, or storage of explosive, flammable, highly combustible, highly toxic, corrosive, or unstable materials shall be conducted in accordance with the regulations of the New Jersey Uniform Construction Code, N.J.A.C. 5:23*[-1.1 et seq.]*; the New Jersey Uniform Fire Code, N.J.A.C. 5:18*[-1.1 et seq.]* and the New Jersey Right-to-Know Law, N.J.S.A. 47:1A-1 et seq.

(b) (No change.)

(c) Category A standards:

1. All uses that are classified as high hazard under the New Jersey Uniform Construction Code shall not be permitted.

(d) Category B standards ***are as follows***:

1. The storage and/or utilization (but not manufacture) of materials and products which decompose by detonation may be allowed in quantities of five pounds or less only as a special exception. The storage, utilization and manufacture of materials and products which decompose by detonation in excess of five pounds is not permitted.

2. The storage, utilization and manufacture of hazardous materials, liquids and chemicals (other than materials or products which decompose by detonation) shall be permitted as an accessory to the principal use provided the area devoted to such accessory use does not occupy more than 10 percent of the building floor area.

3. The storage, utilization or manufacture of hazardous materials, liquids and chemicals (other than materials or products which decompose by detonation) may be allowed as a principal use only as a special exception.

(e) Category C standards ***are as follows***:

1. The storage and/or utilization (but not manufacture) of materials and products which decompose by detonation may be allowed in quantities of five pounds or less only as a special exception. The storage, utilization and manufacture of materials and products which decompose by detonation in excess of five pounds is not permitted.

2. The storage, utilization or manufacture of hazardous materials, liquids and chemicals (other than materials or products which decompose by detonation) shall be permitted as an accessory to the principal use provided the area devoted to such accessory use does not occupy more than 10 percent of the lot area. Said materials or products may be stored outdoors provided such storage is set back at least 50 feet from all lot lines and is properly screened.

3. The storage, utilization or manufacture of hazardous materials, liquids and chemicals (other than materials or products which decompose by detonation) may be allowed as a principal use only as a special exception. Said materials or products may be stored outdoors provided such storage is set back at least 50 feet from a lot line and is properly screened.

(f) Whenever any facility or part thereof, including storage dike, which stores, utilizes or manufactures hazardous materials, liquids and chemicals is within 300 feet from another zone, the more restrictive of the environmental performance standards for the two districts shall apply.

19:4-6.8 Definitions regarding hazardous materials

All definitions regarding hazardous materials, liquids, and chemicals shall be in accordance with nationally recognized codes and standards.

19:4-6.9 Performance standards; glare

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

19:4-6.11 Performance standards; radioactive materials

(a) (No change.)

(b) Performance standard category A: The manufacture, storage, or utilization of unsealed radioactive materials shall be limited to one million (10^6) times the quantities listed in Table IX.

(c) Performance standard category B: The manufacture, storage, or utilization of unsealed radioactive materials shall be limited to ten million (10^7) times the quantities listed in Table IX.

(d) Performance standard category C: The manufacture, storage, or utilization of unsealed radioactive materials shall not be limited as to quantity except as regulated in the New Jersey Radiation Protection Code.

19:4-6.14 Performance standards; water

(a) It is the objective of these water standards that the waters of the Hackensack Meadowlands District be suitable for secondary contact recreation but not primary contact recreation, the maintenance and propagation of fish populations, the migration of anadromous fish, the maintenance of wildlife, and other reasonable uses in conformance with N.J.A.C. 7:9-7.19 et seq.

(b) Permanent sewage facilities: All uses established or changed, or any structure which is constructed, moved, remodeled, or reconstructed in the Hackensack Meadowlands District after the effective date of this resolution shall discharge liquid waste into *[the]* ***a*** central sewerage system as developed. No liquid wastes may be discharged into the Hackensack River or its tributaries *[as]* ***after*** sewer interceptors become available. Discharges from *[the]* ***a*** central sewerage system into the Hackensack River shall comply with the standards of this subsection. No discharge from *[the]* ***a*** public sewerage system shall be made into any tributary of the Hackensack River. All discharges into *[the]* ***a*** public sewerage system shall meet the following values as a minimum:

1. A five-day B.O.D. not to exceed 250 mg/l *[by weight,]* during any period of discharge;
2. Suspended solids shall not exceed 270 mg/l;
3. Chemical oxygen demand shall not exceed 500 mg/l;
4. Fats, oils, and grease shall not exceed 100 mg/l;
5. Temperature of discharge shall not exceed 100°F;
6. pH shall not be less than 6.0 or greater than 9.0;
7. Phenols shall not exceed 1.0 mg/l. Sulphites shall not exceed 1.5 mg/l;
8. No discharge shall have a chlorine demand exceeding 20 mg/l;
9. Radioactive compounds shall not be permitted in a public sewerage system;
10. The discharge of the following toxic compounds shall not exceed: cyanides 1.0 mg/l, cadmium .02 mg/l, lead *[.05]* ***.5*** mg/l, mercury .05 mg/l, and chromium .50 mg/l.

i. Compliance with these values shall be determined by a daily composite sample, in accordance with "Standard Methods for Examination of Water and Wastewater", latest revision.

ii. Discharges of industrial wastewaters into a public sewerage system shall be analyzed for a 28 day B.O.D. A graph of dissolved oxygen versus time in days shall be used to display the 28 day B.O.D. Based on data from this analysis, the Office of the Chief Engineer may require additional chemical and physical analyses.

iii. Exclusions: Nothing contained in this subsection shall prevent discharges into a public sewerage system where the quality of the effluent is at variance with the standards contained herein provided, however, that:

(1) The amount and quantity of the wastewater discharged complies with the standards established by the United States En-

vironmental Protection Agency, 40 FR Part 128, and 40 FR Part 133, or their latest revision; and

(2) The sewerage authority treating such effluent has agreed, in writing, to accept such effluent. The applicant can also demonstrate to the Chief Engineer that the quantity and quality of the pollutants discharged will not cause the sewerage authority to violate its pollution limitations pursuant to their NJPDES Permit.

(3) In the absence of a limitation for a particular pollutant, the applicant shall demonstrate to the Office of the Chief Engineer that the treatment plant is able to reduce the pollutant to a level which will not interfere with the use of the waters of the Hackensack Meadowlands District for secondary contact recreation, the propagation, maintenance and migration of fish and wildlife and other reasonable uses.

(c) Temporary wastewater facilities: Prior to the availability of public sewerage facilities, uses established or changed, or any structure which is constructed, moved or remodeled, or reconstructed in the Meadowlands District after *[the effective date of this resolution]* ***June 20, 1988*** can be utilized only with the following temporary sewerage facilities:

1. Temporary wastewater facilities may discharge directly into the Hackensack River or its tributaries under the following conditions:

i. The discharge conforms with the standards of this subsection;

ii. The discharge will not impair and/or interfere with the functioning of the river, its tributaries, or the marsh-estuarine ecosystem of the Hackensack Meadowlands District; and

iii. Application is made pursuant to (e) below.

2. Temporary wastewater facilities which hold or contain wastewater and do not discharge directly into the Hackensack River or its tributaries may be permitted upon a showing of the following requirements:

i. The wastewater facility has a volumetric capacity of less than five daily volumes of wastewater;

ii. The wastewater facility is constructed of materials which are impervious, watertight, and non-corrosive; and

iii. Copies of a contract indicating the terms, conditions, and firm or entity engaged to maintain the wastewater facility are provided.

3. Septic tanks shall not be permitted *[for use as a temporary wastewater facility unless it can be demonstrated to the Office of the Chief Engineer that such facilities comply with the standards set forth in this subsection]*.

(d) Prior to the availability of public sewerage system facilities, uses established or changed, or any structure which is constructed, moved, remodeled, or reconstructed in the Meadowlands District after the effective date of this resolution may discharge into the Hackensack River or its tributaries only under the following conditions:

1. The discharge conforms with the standards of this subsection;

2. The discharge will not impair and/or interfere with the functioning of the Hackensack River or its tributaries;

3. Application is made pursuant to (e) below.

(e) The Office of the Chief Engineer may upon application and in connection with an application for a Zoning Certificate pursuant to N.J.A.C. 19:4-4.134 issue a permit for construction and operation of a temporary sewerage facility. The application shall contain:

1. A written statement by the governing body or appropriate public agency of the municipality within which the premises are located that a connection to a public sewerage system cannot be made available to the applicant prior to the issuance of a certificate of occupancy, as provided in N.J.A.C. 19:4-4.139;

2. A written statement by the applicant of their willingness and ability to make connection with a public sewerage system when it is made available;

3. Data sufficient to show that any temporary sewerage facilities to be constructed will be able to treat the discharge so that it will conform with the standards of this subsection*[.]* ***;and***

4. (No change.)

(f) Each permit shall be valid for a period of six months and may be renewed upon application for additional periods of time, each period of time not to exceed six months.

(g) If an applicant has installed a temporary sewerage facility pursuant to a validly issued permit, the Chief Engineer shall issue, upon compliance with the requirements established herein, a certificate of occupancy pursuant to the provisions of N.J.A.C. 19:4-4.139 said permit to be valid and remain in effect so long as the applicant has a valid permit to construct and operate a temporary sewerage facility. Upon the applicant's demonstration to the satisfaction of the Chief Engineer that a permanent connection *[with]* ***to*** a public sewerage system has been made, the Office of the Chief Engineer shall consider an application to issue a permanent certificate of occupancy.

(h) The flow from any pipe, conduit, or any other source discharging into the river or its tributaries shall meet the following values:

1.-15. (No change.)

19:4-6.16 Wetlands buffer strip; water quality

(a) Where any development borders the Hackensack River or any of its tributaries, there shall be a 50 foot wide strip of wetland to insure proper drainage and edge effect at such border. Buffer strips along the Hackensack River and/or one of its tributaries should serve a biological function by contributing ecologically to the river and/or its tributaries and wetlands.

(b) Buffer strips in (a) above are to be measured from the mean high water line. Required buffer strips from manmade watercourses or channels shall be determined by the Office of the Chief Engineer based upon ecological and engineering considerations.

19:4-6.18 Design of structures: provision and design of other improvements, including parking and loading facilities, landscaping, lighting, fencing and signs

(a) The design of buildings, including roofs, should maximize aesthetic values. The most farsighted and imaginative architecture concepts for building design should be used. The following principles of design should be considered in judging whether any building is in compliance with this section: balance; proportion of mass and detail; harmony—facade elements must be in harmony with each other (the achievement of such relationships may include the enclosure of space in conjunction with other buildings and the creation of focal points with respect to avenues of approach, terrain features, or other buildings) and structures shall not create disharmony with other structures and with their other surroundings; scale of structures to the surroundings; and the relation and use of voids and solids, lines, shapes shadow and light, colors, and building materials. The Chief Engineer may also require additional fire and life safety design standards as appropriate.

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

(e) Parking design standards include:

1. Off-street parking spaces, dimensions, aisle widths, driveways and any dimensions for various parking configurations shall be as indicated in the HMDC Guidelines. All parking stalls shall be a minimum of 8½ feet in width and 18 feet in depth, and two feet in any stall length may be provided as a landscaped overhang area, provided full depth concrete curbing is installed.

2. Each required off-street parking space shall open directly upon an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to such parking space in accordance with HMDC Guidelines. Parking spaces which back-out directly into the street are prohibited except for one and two-family dwellings.

3. The number and dimensions of parking spaces for the handicapped shall meet the requirements set forth in the State Department of Community Affairs, Barrier Free Subcode, N.J.A.C. 5:23-7*[.1 et seq]*. The property owner shall notify the respective municipality of the location of handicapped parking spaces provided on site.

4. Entrances and exits shall be well defined and clearly marked with appropriate directional arrows and/or signs. All parking stalls shall be marked with two inch wide lines (minimum).

5. Entrances and exits shall be located in a safe and convenient pattern with minimal impact on traffic movement on adjacent streets. They shall not be located within the required line-of-sight triangle of an intersection as defined in the HMDC subdivision regulations or less than 50 feet from the projected intersecting curb lines, except in the Low Density Residential Zone.

6. No motor vehicle repair work or service of any kind shall be permitted in connection with any non-residential off-street automobile parking facilities.

7. The Office of the Chief Engineer may require that certain areas be maintained for fire fighting or other emergency purposes, and those areas shall be appropriately designated.

8. Adequate pedestrian circulation shall be provided between parking areas and the buildings that they are designed to serve. Such circulation shall include raised sidewalks on center islands, designated and striped areas, and similar methods to separate pedestrian from vehicular traffic.

9. Parking areas, loading areas and driveways, except for one and two-family detached residences shall be curbed with full depth concrete or granite block and paved or otherwise improved with an all-weather, dustless material in accordance with HMDC Guidelines.

10. All parking areas shall be drained so as to direct surface water runoff to a stormwater drainage system for eventual subsurface or stream disposal. All drainage and grading plans shall be approved by the Office of the Chief Engineer.

(f) (Reserved)

(g) Off-street parking spaces accessory to the uses hereinafter designated shall be provided as follows:

1. Hotels and motels: At least one parking space but not more than 1.25 for each rental unit, plus such spaces as are required for restaurants, assembly rooms and affiliated facilities;

2. (No change.)

3. Multiple-family dwellings: at least two parking spaces for each dwelling unit;

4. (No change.)

5. (Reserved)

6. (No change.)

7. Automobile service stations: at least two parking spaces but not more than three parking spaces for each service bay, plus one for each employee, but not less than five parking spaces;

8. Medical and dental clinics: at least two parking spaces for each examination or treatment room, plus one for each doctor and employee of the building, but not to exceed one parking space per 200 square feet;

9. Office, professional and public administration or service buildings: at least two and one-half parking spaces for each 1,000 square feet of floor area, but no more than three and one-half parking spaces for each 1,000 square feet of floor area;

10. Cartage, express, parcel delivery and freight terminal establishments: at least one parking space but no more than one and one-half for each two employees as related to the working period when the maximum number of persons are employed on the premises, and one parking space for each vehicle maintained on the premises;

11. Establishments handling the sale and consumption on the premises of food, beverages, and refreshments: at least 0.33, but not more than 0.75 parking space for each person based upon the maximum number of persons that can be accommodated at the same time in accordance with the designed capacity, provided that drive-in restaurants shall have a minimum of 10 parking spaces;

12. Establishments utilizing open sales lots, such as motor vehicle sales lots: at least one parking space for each 400 square feet of enclosed floor area and at least one parking space for each 3,000 square feet of open lot area devoted to the sale and display of merchandise, provided that the maximum shall not exceed that required by these regulations for such use by more than 25 percent;

13. Manufacturing, production, processing, assembly, disassembly, cleaning, servicing, testing, or repairing of goods, materials or products: at least one parking space for each two employees as related to the working period when the maximum number of persons are employed on the premises, or at least one parking space for every 1,000 square feet, whichever is greater. Warehouses, storage and wholesale establishments, one parking space for every 1,500 square feet, provided that the maximum shall not exceed that required by these regulations for such use by more than 10 per cent;

14. Automobile laundries: at least three but not more than four and one-half parking spaces for each stall in a self-service establishment, and at least two and one-half but not more than three and one-half parking spaces for each 20 linear feet in attendant operated establishments;

15. Theatres and auditoriums: at least one parking space for each four seats, but not more than one parking space for each two seats;

16. Secondary schools, public or private: at least one and one-half but not more than two and one-half parking spaces for each three faculty members and at least 0.75 but not more than 1.25 for each eight students, based upon the maximum number of students attending classes on the premises at any one time in any 24-hour period;

17. Primary and intermediate schools, nursery schools, and group day care centers, public or private: at least one but not more than 1.5 parking spaces for each three faculty members and other full-time employees;

18. Hospitals: at least one parking space for each two hospital beds, plus one parking space for each two employees (other than doctors), plus one parking space for each doctor assigned to the staff provided that the maximum shall not exceed three parking spaces per bed;

19. Nursing and convalescent homes: one parking space for each three patients, based on the designed maximum capacity, plus one parking space for each two employees or staff members but the maximum is not to exceed one parking space for each two patients;

20. Churches and temples: at least one parking space for each eight seats in the main place of worship, but not to exceed one parking space for each five seats;

21. Private clubs and lodges: at least one parking space for each four persons, based on the maximum number that can be accommodated at the same time in accordance with designed capacity but not to exceed one parking space for each two and one-half persons;

22. Public swimming pools and private swim clubs: one parking space for each 38 square feet of water area, or 15 spaces per acre of site area, whichever is greater;

23. Gymnasiums and other places of assembly: at least one parking space for each three persons, but not to exceed one parking space for each two persons, based upon the designed maximum capacity;

24. Parking spaces for other permitted uses, special uses, or special labor intensive uses, not listed above shall be provided in accordance with the determination of the Chief Engineer with respect to the number of spaces that are required to serve employees and/or the visiting public at each such use;

25. Shared off-street parking facilities for separate uses with different peak generator hours may be provided collectively. The total number of spaces furnished shall not be less than the sum of the spaces required for those uses during peak generator hours, based upon a submitted and approved traffic study and provided that all regulations covering the location of accessory parking spaces in relation to the use served are adhered to. However, land for the sum of the separate parking requirements for each use must be allocated in the form of either excess open space or future parking deck. This arrangement must be recorded in the form of a Deed Restriction;

26. When determinations of the number of off-street parking spaces required by these regulations result in a requirement of a fractional space, the fraction of 1/2 or less may be disregarded, and a fraction in excess of 1/2 shall be counted as one parking space.

(h) Off-street loading standards include the following:

1.-3. (No change.)

4. All open on-site loading shall be improved with a compacted select gravel base, not less than seven inches thick, surfaced with an all-weather, dustless material.

5. All off-street loading facilities shall be so located or effectively screened so as not to be visible from any point in any specially planned area, planned unit development, public right-of-way or residential use or zone and shall be otherwise screened to insure privacy or protect property values.

6. (No change.)

7. Any lighting used to illuminate off-street loading areas shall be directed away from residential properties in such a way as not to interfere with the residential use.

8. On-site loading facilities shall comply with such other design standards as may be established from time to time by the Development Board. On-site loading facilities may be open to the sky or enclosed in a building.

9. No major truck repair work or service of any kind shall be permitted in conjunction with any on-site loading facilities except in the heavy Industrial zone.

(i) On-site loading berth requirements include:

1. (No change.)

2. On the same lot with every building, or part thereof, erected hereafter in any zone or in close proximity to any use erected in a specially planned area for which loading spaces are required, there shall be provided adequate space for motor vehicles to load and unload in order to avoid interference with the public streets or alleys. Such space shall include the following minimum loading spaces;

i.-ii. (No change.)

iii. For all other uses in the planned park and recreation 1, waterfront recreation, commercial park, highway commercial, and service-highway commercial zones, for all nonresidential and nonindustrial uses in all planned unit developments, loading facilities shall be provided in accordance with the following table:

Gross Floor Area of Establishments in Thousands of Square Feet	Required Number and Size of Loading Berths
1-10	1-(10' x 25')
10-25	2-(10' x 25' each)
25-40	2-(10' x 60' each)
40-100	3-(10' x 60' each)

(1) For each additional 200,000 square feet of gross floor area, or any fraction thereof over 100,000 square feet of gross floor area, one additional loading berth shall be provided. Each such additional loading berth shall be at least 10 feet in width by 60 feet in length.

iv. (Reserved)

v. For all uses in the research park, research distribution park, light industrial and distribution A and B, heavy industrial, and (except for hotels and motels) airport facilities zones and for all industrial uses in planned unit developments, loading facilities shall be provided in accordance with the following table:

Gross Floor Area of Establishments in Thousands of Square Feet	Required Number and Size of Loading Berths
1-10	1-(10' x 25')
10-40	1-(10' x 60')
40-100	2-(10' x 60' each).

(1) For each additional 100,000 square feet of gross floor area, or any fraction thereof over 100,000 square feet of gross floor area, one additional loading berth shall be provided. Each such additional berth shall be at least 10 feet in width by 60 feet in length.

3. (No change.)

(j) No sign, unless exempt under (j)3 below, shall hereafter be constructed, erected, moved, remodeled, or expanded until a zoning certificate for such sign, indicating compliance with these regulations, has been obtained, or unless it is part of an approved implementation plan. No zoning certificate for any sign shall be issued unless the sign complies with the following:

1. Sign definitions (sign functions):

i. Advertising sign means a sign which directs attention to a business, commodity, service or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located or to which it is affixed.

ii. Bulletin board means a sign that indicates the name of an institution or organization on whose premises it is located and which contains the name of the institution or organization, the name or names of persons connected with it, and announcements of persons, events or activities occurring at the institution, or other greeting or similar message.

iii. Business sign means a sign which directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or an entertainment offered, on the premises where the sign is located or to which it is affixed.

iv. Construction sign means a temporary sign indicating the names of architects, engineers, landscape architects, contractors, and similar *[artisans]* ***professionals*** involved in the design and construction of a structure or project erected only during the construction period and only on the premises on which the construction is taking place.

v. Identification sign means a sign giving the name and/or address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily recognized symbol.

vi. Nameplate means a sign giving the name and/or address of the owner or occupant of a building or premises on which it is located, and, where applicable, a professional status.

vii. Real estate sign means a sign pertaining to the sale or lease of the lot or tract of land on which the sign is located, or to the sale or lease of one or more structures or a portion thereof located thereon.

2. Structural sign types:

i. Awning: Any sign mounted or painted on or attached to an awning, canopy,
or marquee that is otherwise permitted by these regulations. No such sign shall project above, below or beyond the physical dimensions of the awning, canopy or marquee.

ii. Ground: Any sign placed upon or supported by the ground independent of the principal or accessory building or structure on the property.

iii. Pole: Any sign that is mounted on a free-standing pole, the bottom edge of which sign is six feet or more above ground level.

iv. Projecting: Any sign that is wholly or partly dependent upon a building for support and which projects more than 12 inches from such building.

v. Wall and Window: Any sign fastened to a wall or structure in such a manner that the wall becomes merely the support***ing*** structure or forms the background surface, and which does not project more than 12 inches from such building.

vi. Roof: Any sign that is fastened to or painted on the roof of a building or structure.

3. Exemptions:

i. The following signs shall be exempt from the requirements of this subsection:

(1) Flags or emblems of a government or of a political, civic, philanthropic, education or religious organization, displayed on private property, provided no sign exceeds 250 square feet;

(2) Signs of a duly constituted governmental body including traffic or similar regulatory devices, legal notices, warnings at railroad crossings and other instructional or regulatory signs having to do with health, hazards, parking, swimming, dumping and so forth;

(3) Memorial signs and tablets displayed on private property;

(4) Address numerals and other signs required to be maintained by law or governmental order, rule or regulation, provided that the content and size of the sign do not exceed the requirements of such law, order, rule or regulations;

(5) Signs not exceeding five square feet in area displayed on private property for the convenience of the public, including signs to identify entrance and exit drives, parking area, one-way drives, rest rooms, freight entrances and the like.

ii. The following signs are exempt from the zoning certificate requirement of *[(j)1 above]* ***this subsection***, but shall comply with all other requirements of this subsection:

(1) Nameplate signs not exceeding two square feet in gross surface area accessory to a multiple-family dwelling;

(2) Identification signs not exceeding 20 square feet in gross surface area accessory to a multiple-family dwelling;

(3) Bulletin board signs not exceeding 20 square feet in gross surface area accessory to a church, school or public or non-profit organization;

(4) Temporary banner sales signs not exceeding 20 square feet shall be permitted for a period not to exceed seven days;

(5) Real Estate signs not exceeding 20 square feet and displayed no longer than 30 days within a 60 day period.

4. General standards:

i. The area of a wall sign, which consists of letters mounted on a wall, shall be deemed to be the area of the smallest rectangular

figure which can encompass all of the letters, and their supporting elements, if any. For other signs, the sign area shall be the area of the background structure which supports the message. These areas shall not include any structural elements lying outside the limits of such signs and which do not form an integral part of the display, but shall include logos, symbols, etc. as part of the sign. The gross area of a multi-faced sign displaying the same message on all faces shall be the total area of all faces of the sign. These signs shall be considered to be one sign and their total area shall not exceed the maximum permitted sign area as per applicable zone regulations.

ii. (No change.)

iii. Signs shall be shaded wherever it is deemed necessary by the HMDC to avoid casting bright light upon property located in any residence or residential district or upon any public right-of-way or park. Any illuminated sign located on a lot adjacent to or across a right-of-way from any residence or residential zone or specially planned area, which sign is visible from such residence or residential zone or specially planned area, shall not be illuminated between the hours of 11:00 P.M. and 7:00 A.M.

iv. (No change.)

v. (Reserved)

vi. (No change.)

vii. No signs shall be permitted on trees, bridges, radio towers, and similar structures or elements.

viii. Window signs designed to be read from the exterior of a building shall be included as part of the maximum sign area.

ix. All signs shall be kept in good repair which shall include replacement or repair of broken structural elements, casings, or faces, maintenance of legibility and all lighting elements. Whenever the Office of the Chief Engineer shall determine that a sign has become structurally unsafe or endangers the safety of the building or public, the Office of the Chief Engineer shall order such sign to be made safe or removed. Such order shall be complied with within 10 days of the receipt thereof by the owner of the building or premises on which such unsafe sign is affixed or erected. If the sign is not made safe or removed within the requisite 10 days, the Office of the Chief Engineer, in order to protect the public safety, may enter upon the property and take the required actions. The cost of this safety action shall be assessed against the property maintained and shall become a lien on said property. The Office of the Chief Engineer at the time of entering upon the property for the purpose of correcting safety violations, shall file notice of such lien in the Office of the appropriate County Clerk upon the property affected by such lien. The owner of the premises upon which a sign is located shall be responsible for keeping the area surrounding signs neat, clean, and landscaped.

x. Building facade shall be the total area measured from side to side and from the ground level to the top of the roof, excluding parapets, of flat roof structures and top of the highest occupied story on peak roof structures.

5. Specially planned areas, multi-tenanted structures, or multi-structure developments shall be governed by the following sign regulations:

i. A sign plan shall be submitted for each development to the Office of the Chief Engineer. Such sign plan shall include details on:

(1) Lettering style;
(2) Lighting;
(3) Color;
(4) Construction and materials;
(5) Heights of signs;
(6) Heights above grade or below roof line;
(7) Locations; and
(8) Light poles.

ii. The sign plan shall be based on an integrated design theme to include all of the elements ***in (j)5i***(1) through (8) above. All of the above elements shall be designed to be harmonious and consistent with each other, the architecture and materials of principal structures, and the landscape plan.

iii. Maximum area of any sign is five percent of the building's front facade. The Office of the Chief Engineer may permit additional signs and a total sign area of up to 10 percent of the building(s) front facade, if in its opinion, such additional area shall assist in developing a harmonious and integrated sign plan in accordance with the goals and objectives of this section. For the purpose of these calculations, no building shall have more than one front facade.

iv. Maximum height of sign shall be the wall-height of structure. Roof, pole, and ground signs may be a maximum of 30 feet above ground level.

v. Minimum setback of sign shall be 15 feet.

6. Gasoline service stations shall be permitted to display only the following signs:

i. One temporary sign, located inside the property line, specifically advertising special or seasonal servicing of motor vehicles, provided such sign does not exceed 10 square feet in size.

ii. One ground or pole sign advertising the name of the station or garage and/or the principal products sold, including any special company or brand name, insignia or emblem, provided that the actual sign area does not exceed 60 square feet in size, 120 square feet if double sided, and further provided that such sign shall be more than 10 feet but less than 25 feet above ground level and is no closer than 10 feet to any property line. A reader board with a 36 square foot maximum area, indicating fuel name, price, etc., may also be installed on the pole signs.

iii. A gasoline service station may have either canopy or wall signs, but not both, in accordance with the following:

(1) Canopy signs may be on all faces of the canopy, provided they are not larger than 20 inches in height, and total sign area does not exceed 1/3 of the total canopy face area. Maximum canopy face depth is 30 inches.

(2) Wall signs shall be no larger than five percent of the total front yard building facade.

7. All other signs shall be regulated in accordance with Table 1:

TABLE 1—SIGN REGULATIONS

ZONE:	MP P&R	LDR	WR	HC, RP, RDP	SHC	LI&D (A&B) HI,AF,PU	SU, PR, IR, PPR, BBC, TC, CP
1) Advertising[a]	N	No	No	No	X	X	S
2) Bulletin Bd.	O	20 sq.ft.	X	X	X	X	E
3) Business	N	No	X	X	X	X	C
4) Construction	E	60 sq.ft.	X	X	X	X	T
5) Identification		20 sq.ft.	X	X	X	X	I
6) Nameplate	P	2 sq.ft.	X	X	X	X	O
7) Real Estate	E	6 sq.ft./d.u.	X	X	X	X	N
	R	60 sq.ft. max.					
Structural Type	M						5
1) Awning	I	No	X	X	X	X	
2) Ground	T	X	X	X	X	X	R
3) Pole	T	X	X	X	X	X	E
4) Projecting	E	No	No	No	X	X	G
5) Wall & Window	D	X	X	X	X	X	U
6) Roof		No	No	X	X	X	L
Maximum Height		15'	wall-height of structure; ground/pole 15'	wall-height of structure; roof/pole/ ground-30' above ground level	wall-height of structure; roof/pole/ ground-30' above ground level	wall-height of structure; roof/pole/ ground-30' above ground level	A T I O N S
Setback		15'	15'	15'	15'	15'	
Illumination		None, except bulletin boards may be indirectly illuminated	Yes	Yes	Yes	Yes	A P P L Y
Maximum Area of Any Single Sign[b][c][d]		See Functional Types Above	5% of front yard building facade. 100 sq.ft. max. for any single sign.	5% of front yard building facade. 200 sq.ft. max. for any single sign.	5% of front yard building facade. 300 sq.ft. max. for any single sign.	5% of front yard building facade. 300 sq.ft. max. for any single sign.	
Signs/Front Yd[c]		1	2	2	2	2	

(a) Max. of 1 advertising sign per lot. Section 5 is not applicable to advertising signs.
(b) For vacant land, one (1) sq.ft. of sign area shall be permitted for each linear foot of street frontage.
(c) For mixed use, multi-tenanted structures, or multi-structure development, see Section 5 for controlling regulations.
(d) For the purpose of this calculation, no building shall have more than one front facade.
Note: For gasoline service stations, see Section 6 for controlling regulations.
X = Permitted

(k) Landscaping:

1. All landscape plans shall be prepared in accordance with the Commission adopted landscape design guidelines.

2. Only open space areas which have a minimum dimension of three feet in any direction and a minimum of a 50 square foot area shall be considered to fulfill open space requirements. Safety islands within parking lots must have a minimum dimension of five feet in any direction in order to fulfill open space requirements.

3. Screening:

i. All off-street parking areas containing six or more parking spaces shall be effectively screened from public or private right of ways by a decorative fence or wall, landscaped berm, or a densely planted evergreen material sufficient to reduce headlight glare. Deciduous shrubs may be utilized for screening in conjunction with earth berming, minimum height 2½ feet integrated into the existing land form.

ii. All parking areas shall be screened from adjacent residential open space and dwelling areas by a solid and continuous fence, wall, landscaped berm or evergreen plant material not less than six feet in height. Plant material selected must be capable of maturing to a minimum six foot height.

iii. All off-street loading areas shall be located or effectively screened with evergreen plant material capable of maturing to a height sufficient to screen such areas, and vehicles within the areas, from adjacent properties and public right of ways.

iv. All outdoor storage or work areas, other than an automobile service station, shall be enclosed by a solid and continuous decorative fence, wall or evergreen plant material sufficient to screen such activity from adjacent properties and public right of ways.

v. All utility improvements, such as transformer compounds, external heating and cooling equipment, and refuse areas, etc. shall be sufficiently screened from adjacent properties and public right of ways.

4. Concrete or granite block safety islands, with a minimum dimension of five feet*,* shall be provided between the ends of a parking bay and any driveway, aisle or other areas as deemed necessary by the Office of the Chief Engineer and appropriately landscaped with shade trees.

5. All parking areas shall be arranged and designed so as to prevent damage to adjacent fences, walls, plantings and lighting standards.

6. Shade trees:

i. A minimum of one major shade tree shall be provided per 10 parking stalls or one shade tree per 3,000 square feet of parking area, whichever is greater, and shall be distributed evenly throughout the parking area.

ii. Adjacent parking areas on separate properties with 10 or more parking spaces shall be delineated by a shade tree lined landscape strip. A five foot landscape strip is to be provided by each property owner where such parking lots are adjacent to one another.

7. Plant standards:

i. All plants shall conform to the standards as set forth in American Standard for Nursing Stock, published by the American Association of Nurserymen, Washington, D.C., and the hardiness zones developed by the United States Department of Agriculture.

ii. All shade trees shall not be less than 2½ to 3 inches caliper, 12 to 14 feet in height at the time of planting.

iii. All evergreen trees shall not be less than five feet in height at the time of planting.

iv. All minor deciduous trees shall not be less than six feet in height at the time of planting.

v. All evergreen shrubs used for screening shall not be less than two feet in height at the time of planting.

8. *[Under special circumstances, landscaping shall be provided in accordance with the determination of the Office of the Chief Engineer.]* ***The dimensions, sizes and heights are to be considered approximations. Under certain circumstances, the requirements listed above may be waived by the Office of the Chief Engineer.***

9. All landscaping shall be completed before Occupancy Certification is issued by the Office of the Chief Engineer. Delay in performance may be permitted by the posting of sufficient security in a form acceptable to the Office of the Chief Engineer to insure completion of this requirement.*

(l) Lighting:

1. Illumination levels shall be as follows:

i. All off-street parking areas containing six or more parking spaces shall be adequately and properly lighted as follows:

(1) An evenly distributed, average illumination level between one and two footcandles shall be maintained throughout the *[entire]* ***parking*** lot***s***.

(2) *[A minimum of one lighting fixture, plus one for every 30 stalls, shall be installed throughout the lot.]* ***An evenly distributed average illumination level between four and five footcandles shall be maintained at loading, unloading and material handling areas.****

(3) An evenly distributed, average illumination level between two and three footcandles shall be maintained at driveway entrances and exits.

ii. An evenly distributed, average illumination level between 0.5 and 1 footcandle shall be maintained in pedestrian ***walkway*** areas.

iii. An evenly distributed, average illumination level of not more than 20 footcandles shall be maintained at gas station pump and service areas.

iv. A minimum of one lighting fixture, plus one for every 30 stalls, shall be installed throughout the parking lot.*

2. Sources shall be located as follows:

i. All light sources shall be arranged so as to reflect illumination levels greater than one footcandle away from adjacent properties.

ii. All light sources shall be shielded ***or positioned*** so as *[not to be]* ***to prevent glare from being*** a hazard or nuisance *[to]* *, ***or negatively impacting site users,*** adjacent properties or the traveling public.

3. ***Site lighting*** poles shall meet the following requirements:

i. Poles shall be rustproof metal, cast iron, fiberglass, *[or]* finished wood *[and utilize underground wiring]*, ***or similar decorative material***.

ii. Poles in pedestrian ***walkway*** areas shall not be greater than 15 feet.

*[(1)]***iii.*** Poles in all other areas*, ***except as deemed warranted due to technical reasons by the Office of the Chief Engineer,*** shall not be greater than 25 feet in height. ***Even in these areas, no poles shall be greater than 40 feet.****

4. All site lighting poles shall utilize underground wiring unless the Office of the Chief Engineer determines that a pole height greater than 25 feet is warranted due to technical reasons.*

(m) Fences or walls in excess of 18 inches in height shall be permitted in accordance with the following standards:

1. Fences or walls are not permitted in required front yards except that in the low density residential zone fences or walls with a maximum height of four feet are permitted provided that they are not chain link fences. In all other zones, fences or walls are permitted to be erected at the front building line of a principal structure extending to the side or rear lot lines provided that they do not exceed a maximum height of eight feet including barbed wire, etc.

2. Fences and walls are permitted in side and rear yards provided they do not exceed a height of six feet in residential zones and eight feet in all other zones.

3. No fence, wall, hedges, or other landscaping shall be constructed or installed so as to constitute a hazard to traffic or safety.

4. The face or finished side of a fence or wall shall face the adjacent property.

5. No fence or wall shall be constructed with barbed wire, metal spikes, or topped with concertina or razor wire, broken bottles or similar materials, or constructed in such manner as to be dangerous to animals or humans.

19:4-6.22 Public hearing

(a) Within a reasonable time after the filing of a complete general plan, a public hearing on such plan shall be held by the Development Board. Within a reasonable time after the filing of a complete application for a special exception or variance, a public hearing on such application shall be held by the Executive Director or his designee, who shall serve as the hearing officer.

(b) At least 10 days in advance of a public hearing, the applicant, upon instruction of the Development Board or hearing officer, whichever is holding the hearing, shall publish notice of hearing in a newspaper of general circulation and shall give notice personally, or by certified mail, return receipt requested, to the following:

1. For variances or special exception applications, owners of property and appropriate officials of constituent municipalities within 200 feet of the subject property as shown on the most recent tax list of the municipality in which the subject property is situated and any adjacent municipalities;

2. For specially planned area or planned unit development applications, owners of property and appropriate officials or constituent municipalities within 500 feet of the planned unit development, as shown on the most recent tax lists of the municipality in which the subject property is situated, and any adjacent municipalities;

3. Any other person, agency, or organization that has filed a request to receive notice of hearings, specifying the type of hearing and project;

4. (No change in text.)

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

(e) Reports on the applications for special exceptions, variances or general plan may be prepared by the Commission staff and filed with the Office of the Chief Engineer, where they shall be of public record, not less than one week before the public hearing.

(f) (No change.)

(g) All testimony by witnesses at any hearing shall be given under oath, and every party of record at a hearing shall have the right to present evidence and to examine and to cross-examine witnesses on all relevant issues, but the Development Board or hearing officer, whichever is holding the hearing, may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony and cross-examination. The Development Board or hearing officer, whichever is holding the hearing, may call witnesses. At least one member of the Commission's staff and more if the Development Board or hearing officer, whichever is holding the hearing, deems it necessary, may be required to testify at the hearing on their respective reports.

(h) A transcript of the hearing shall be caused to be made by the Development Board or hearing officer, whichever is holding the hearing, costs of which shall be borne by the applicant, and all exhibits accepted in evidence shall be properly identified and the reason for the exclusion clearly noted in the record. The transcript of the hearings shall be filed with the Office of the Chief Engineer and shall be of public record.

(i) (No change.)

(j) Notwithstanding the provisions of this section, in cases of variances from the area and bulk regulations of this chapter, the Office of the Chief Engineer may waive a public hearing but may not waive notification requirements, provided, however, that the applicant submit written comments relative to the application to the Office of the

Chief Engineer prior to such public notifications. Public comment will be accepted within 10 days of the date of publication.

19:4-6.23 Nonconformities

(a) Nonconforming lots of record: In any zone, notwithstanding the regulations imposed by any other provision of this chapter, a building designed for any permitted use may be erected on a lot that is not less than 25 feet in width and that consists entirely of a tract of land that:

1. Has less than the prescribed minimum lot area, width or depth;

2.-3. (No change.)

(b) (No change.)

(c) In no case shall any side yard be less than 10 feet, provided, however, that any side yard for a single or two family dwelling shall not be less than five feet.

(d) Nonconforming structures: Any structure in a zone which is devoted to a use which is permitted in the zone in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements so as not to comply with the applicable bulk regulations, and any structure in a specially planned area or planned unit development which has not been made part of an approved implementation plan, may be continued so long as it remains otherwise lawful, subject to the limitations of (e) below.

(e) Limitations include the following:

i. (No change.)

2. Damage or destruction: In the event that any such structure is substantially damaged or destroyed, by any means, such structure shall not be restored unless it shall thereafter conform to the regulations for the zone in which it is located; or would be consistent with the approved implementation plan covering the section in which it is located; provided that, in zones, structures located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements in (a) above.

3. (No change.)

(f) Unlawful nonconforming use: No structure or use which was not lawfully existing at the time of the adoption of these regulations shall become or be made lawful solely by reason of the adoption of these regulations and to the extent that, and in any respect that said unlawful structure or use is in conflict with the requirements of these regulations, said structure or use remains unlawful hereunder and shall be discontinued.

(g) Lawful nonconforming uses include:

1. Authority to continue: Any use of part or all of a structure or any use of land, not involving a structure or only involving a structure which is accessory to such use of land, lawfully nonconforming under the zoning regulations applicable just prior to the adoption of these regulations or lawfully conforming under such zoning regulations but, in the zones, not conforming with all the applicable requirements of these regulations (including the environmental performance standards), and, in the specially planned areas or planned unit developments, not made part of an approved implementation plan, may be continued, if otherwise lawful, subject to the following limitations.

2. Limitations on continued use include:

i. Ordinary repair and maintenance: Normal maintenance and incidental repair, installation, or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a lawful nonconforming use; provided, however, that these provisions shall not be deemed to authorize any violation of *[(3)]**(g)*2ii through vii. Nothing in these regulations shall be deemed to prevent the strengthening or restoring to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition (where such restoration will not be in violation of (g)2v below.

ii. Remodeling: No structure that is devoted in whole or in part to a nonconforming use shall be remodeled unless the entire structure and use thereof shall thereafter conform to all regulations of the zone in which it is located or be consistent with the implementation plan covering the section within which it is located.

iii. Extension: A nonconforming use shall not be extended, expanded, enlarged, or increased in intensity, or otherwise altered so as to increase the degree of nonconformity.

iv. Enlargement: No structure that is devoted in whole or in part to a nonconforming use shall be enlarged or added to in any manner unless such structure and the use thereof shall thereafter conform to the regulations of the zone in which it is located or be consistent with the implementation plan covering the section within which it is located.

v. Damage or destruction: In the event that any structure that is devoted in whole or in part to a nonconforming use is substantially damaged or destroyed, by any means, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zone in which it is located or be consistent with the implementation plan covering the section within which it is located. When partial damage or destruction occurs, no repairs or restoration shall be made unless a zoning certificate is obtained, and restoration is actually begun within one year after the date of such partial destruction and is diligently pursued to completion.

vi. Moving: No structure that is devoted in whole or in part to a nonconforming use shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zone in which it is located after being so moved or be consistent with the implementation plan covering the section within which it will be located. No nonconforming use of land shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zone in which it is located after being so moved or be consistent with the implementation plan covering the section within which it will be located.

vii. Change in use: A nonconforming use shall not be changed to any use other than a use permitted in the zone in which the use is located or other than one consistent with the implementation plan under which the section or subsection of the specially planned area within which it is located was developed. When a nonconforming use has been changed to any permitted or consistent use, it shall not thereafter be changed back to a nonconforming use.

viii. Abandonment or discontinuance: When a nonconforming use of land or a structure is discontinued or abandoned for 12 continuous months, any subsequent use or occupany of the land or structure shall comply with all regulations of the zone in which such land or structure is located or be consistent with the implementation plan under which the section or subsection of the specially planned area within which it is located was developed.

ix. Nonconforming accessory use: No use which is accessory to a principal nonconforming use shall continue after such principal use shall cease or terminate.

x. Nonconforming residential use: Notwithstanding the provisions of (g)2iii through vi above, any structure which is devoted to a residential use in any district may be remodeled, extended, expanded or enlarged; provided that after any such remodeling, extension, expansion or enlargement, such structure shall not be used to accommodate a greater number of dwelling or lodging units that such structure accommodated prior to any such work.

(h) Special exceptions: When a use exists at the effective date of these regulations and is permitted by these regulations only as a special exception in the zone in which it is located, such use shall not be deemed to be a nonconforming use if it complies with applicable use limitations and other regulations, but shall, without further action, be deemed a lawful nonconforming use in such zone.

19:4-6.24 Fees, penalties and enforcement

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

(e) If a complaint is received regarding an alleged violation of any of the environmental performance standards, and the Office of the Chief Engineer does not believe that there is a reasonable probability that such a violation actually exists, the Chief Engineer may, as a condition precedent to further investigation, require that the complainant post an escrow deposit in the amount of $200.00 to defray the

cost of employing a qualified technician or technicians to perform such investigations, measurements, and analyses as may be necessary to determine whether or not such violation exists. In the event that the complaint is substantiated, the escrow deposit shall be refunded to the depositor, and the reasonable fees incurred in retaining the qualified technician or technicians shall be recovered in the manner provided in (d) above. In the event that the complaint proves unfounded, such fees shall be paid from the complainant's escrow deposit. Any remainder of such deposit shall be refunded to the complainant upon completion of an investigation.

19:4-6.25 Appeals

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

(c) An appeal shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made and shall toll all applicable time limits, with the exception of fines, which will continue to accrue, unless the Chief Engineer certifies to the Commission, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, such stay and tolling would in his opinion cause imminent peril to life or property: In such case, proceedings shall not be stayed and time limits shall not be tolled other than by a restraining order which may be granted by the Commission or by the Superior Court on application to the Chief Engineer on due cause shown.

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

CHAPTER 4A
FLOOD PLAIN MANAGEMENT REGULATIONS

SUBCHAPTER 3. DEFINITIONS

19:4A-3.1 Words and phrases defined

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"Appeal" means a request for a review of the Commission's interpretation of any provision of this chapter or a request for a variance.

. . .

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

. . .

"Elevated building" means a non-basement building which is:

1. In the case of a building in an Area of Special Flood Hazard, built to have the top of the elevated floor; or in the case of a building in a Coastal High Hazard Area, built to have the bottom of the lowest horizontal structural member of the elevated flood elevated above the ground level by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water; and

2. Adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood.

In an Area of Special Flood Hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In Areas of Coastal High Hazard "elevated building" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1.-2. (No change.)

. . .

"Lowest floor" means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, useable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of other applicable non-elevation design requirements.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plan management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

"Manufactured home park or manufactured home subdivision" means a parcel, or contiguous parcels, of land divided into two or more manufactured home lots for rent or sale.

. . .

"Start of construction" for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearings, grading, and filling, nor does it include the excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure.

"Structure" means a walled and roofed building, a manufactured home or a gas or liquid storage tank, that is principally above ground.

. . .

SUBCHAPTER 5. ADMINISTRATION

19:4A-5.3 Duties and responsibilities of the Office of the Chief Engineer

(a) The Office of the Chief Engineer shall administer the provisions of this chapter in the manner set forth herein and in furtherance of such authority, shall, but not be limited to:

1.-5. (No change.)

6. When base flood elevation data has not been provided in accordance with N.J.A.C. 19:4A-4.2, Basis for establishing the areas of special flood hazard, the Office of the Chief Engineer shall obtain, review, and reasonably utilize any base flood data available from a Federal, State or other source, in order to administer N.J.A.C. 19:4.

7. (No change.)

19:4A-6.2 Buildings

(a) (No change.)

(b) Non-Residential Construction: New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to or above base flood elevation, or together with utilities shall:

1. Be floodproof, so that below the flood level the structure is water tight with walls impermeable to the passage of water;

2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy; and

3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the Chief Engineer.

(c) Manufactured homes shall be anchored in accordance with N.J.A.C. 19:4A-6.5. All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(d) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on

a permanent foundation such that the top of the lowest floor is at or above the base floor elevation.

19:4A-6.5 Anchoring

(a) (No change.)

(b) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

19:4A-6.7 Utilities

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

(d) Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

19:4A-6.8 Enclosure openings

(a) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

2. The bottom of all openings shall be no higher than one foot above grade; and

3. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

EMERGENCY ADOPTIONS

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

General Assistance Manual
Emergency Assistance
Adopted Emergency Amendment: N.J.A.C. 10:85-4.6

Emergency Amendment Adopted: May 31, 1988 by Drew Altman, Commissioner, Department of Human Services.
Gubernatorial Approval (N.J.A.C. 52:14B-4(c)): June 2, 1988.
Emergency Amendment Filed: June 2, 1988, as R.1988 d.291.

Authority: N.J.S.A. 44:8-111(d).

Emergency Amendment Effective Date: June 2, 1988.
Emergency Amendment Operative Date: June 2, 1988.
Emergency Amendment Expiration Date: June 30, 1988.

The agency emergency adoption follows:

Summary

The Department of Human Services recently announced, as one of a series of steps to address the problems of homeless individuals receiving Emergency Assistance (EA) benefits, that there will be a one-time, one month, extension of General Assistance (GA) EA benefits for those individuals whose benefits expire on May 31, 1988.

The Department adopted new rules on January 4, 1988 (at 20 N.J.R. 96(a)) which dramatically broadened coverage under EA, and also permitted municipal welfare departments to extend EA for up to two additional months in situations where all reasonable efforts to secure permanent shelter by both the municipal welfare agency and the client proved unsuccessful.

This emergency amendment expands the provisions of EA to allow those individuals who had been receiving GA since prior to February 1988 to receive an additional one month extension of benefits. This extension of benefits for a sixth month for those individuals exhausting their maximum entitlement (five months) to EA on May 31, 1988 is a unique situation.

Approximately 100 individuals were housed in hotels, motels, or congregate shelters and were faced with a May 31, 1988 expiration of their EA benefits. The addition of this one month extension of those individuals in receipt of EA benefits prior to February 1988 is to provide an added opportunity to place such individuals in permanent housing.

Social Impact

This emergency amendment will have a positive social impact in that it will provide an additional month of EA benefits to a targeted group, approximately 100 individuals. While providing needed short term assistance to those individuals, this amendment, because of its temporary nature, will not lead to the creation of an additional public assistance program, nor will it foster residence in hotels and motels as a way of life. It will, however, provide an added opportunity to enhance the partnership efforts of localities and community based organizations in assisting homeless individuals to secure permanent shelter.

Economic Impact

The maximum anticipated cost of this one-time, one month extension for these 100 individuals is $80,500.

Regulatory Flexibility Statement

This emergency adoption has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This rulemaking imposes no compliance requirements on small businesses, therefore, a regulatory flexibility statement is not required.

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

10:85-4.6 Emergency grants

(a) (No change.)

(b) Standards for emergency grants are:

1. Emergency shelter: The authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed the two calendar months following the month in which the state of homelessness first becomes known to the municipal welfare department. Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.

i.-v. (No change.)

vi. Time Limited Extension for a Six Month Benefit: A one month extension shall be granted for a sixth month to those individuals exhausting their maximum entitlement (five months) to EA on May 31, 1988. Such one-time, one month, extension of benefits is time limited and shall commence on June 2, 1988 and end June 30, 1988. This one time benefit granted under this provision is unconditional and not subject to the requirements set forth in v. above.

[vi.]**vii.** (No change in text.)

2.-4. (No change.)

(c)-(f) (No change.)

TRANSPORTATION

(b)

TRANSPORTATION OPERATIONS
Restricted Parking and Stopping
Route N.J. 57 in Warren County
Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 16:28A-1.36

Emergency Amendment Adopted: May 26, 1988, Hazel Frank Gluck, Commissioner, Department of Transportation.
Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): June 1, 1988.
Emergency Amendment Filed: June 3, 1988 as R.1988 d.293.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 52:14B-1 et seq.

Emergency Amendment Effective Date: June 3, 1988.
Emergency Amendment Expiration Date: August 2, 1988.
Concurrent Proposal Number: PRN 1988-330.

Submit comments by July 20, 1988 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transporation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency emergency adoption and concurrent proposal follows:

Summary

The adopted emergency amendment and concurrent proposal will establish "no stopping or standing" zones along Route N.J. 57 in Washington Township, Warren County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Drivers of tractor-trailers were parking their vehicles along the side of Route 57 in order to patronize a nearby coffee shop. This practice caused blockage of the line of sight exiting the Warren County Community College driveway, and created a traffic hazard. Amendments to the rules were suggested which would assure a sufficient line of sight from the college driveway to enhance the safety of the motoring public.

Based upon the request from the local government officials, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no stopping or standing" zones along Route N.J. 57 in Washington Township, Warren County was warranted.

The Department therefore has amended N.J.A.C. 16:28A-1.36, based upon the request from the local government officials and the traffic investigation.

Social Impact

The amendment will establish "no stopping or standing" zones along Route N.J. 57 in Washington Township, Warren County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zone signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

Full text of the emergency amendment and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

16:28A-1.36 Route 57

(a) The certain parts of State highway Route 57 described in this subsection are designated and established as "no stopping or standing" zones.

1.-5. (No change.)

6. No stopping or standing in Washington Township, Warren County:

i. Along both sides:

(1) From Little Philadelphia Road (County Road 648) to the Washington Township-Franklin Township Corporate line.

(b)-(c) (No change.)

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

PINELANDS COMMISSION

Extension for Review of Petition for Rulemaking Pinelands Land Capability Map

N.J.A.C. 7:50-5.3(a)24

Petitioners: Leisure Technology, Inc.
Authority: N.J.S.A. 13:18A-65.

Take notice that on May 23, 1988, Leisure Technology, Inc. filed a request for the Pinelands Commission to delay its action on a pending petition for rulemaking.

Leisure Technology, Inc. filed a petition for rulemaking with the Pinelands Commission on March 8, 1988. A notice of the petition was published on April 18, 1988 at 20 N.J.R. 936(a). The Pinelands Commission was originally scheduled to receive a report on the petition from the Commission's Executive Director and decide whether the petition warranted a formal rulemaking proposal at its meeting on June 3, 1988. Because Leisure Technology, Inc. believes that an adjoining property owner, Homeland Corporation, may also submit a petition for rulemaking which may contain information relevant to its petition, Leisure Technology, Inc. has requested that the Pinelands Commission not take action for an additional 30 days.

Take further notice that the Executive Director of the Pinelands Commission has agreed to the 30 day extension. If Homeland Corporation does **not** submit a petition for rulemaking on or before June 27, 1988, the Leisure Technology, Inc. petition will be scheduled for Pinelands Commission action at its July 8, 1988 meeting. If a petition for rulemaking from Homeland Corporation is received on or before June 27, 1988, both petitions will be reviewed and considered simultaneously by the Pinelands Commission within approximately 90 days thereafter. A notice of petition for rulemaking will be published if this second petition is received.

HEALTH

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Change of Long-term Care Bed Additions/New Construction Certificate of Need Batching Cycle

Public Notice

Take notice that the Commissioner of Health, in cooperation with the Health Care Administration Board, has changed for one time only the batching cycle scheduled to begin September 15, 1988 for certificate of need applications for long-term care bed additions/new construction projects. This batching cycle has a deadline of August 1, 1988 for the filing of applications.

Applications for projects to serve AIDS patients will not be affected by this notice and will be accepted by the Department of Health. This will enable the Department to process projects which address the extraordinary considerations surrounding the provision of services to AIDS patients.

The batching cycle for certificate of need applications scheduled to begin on September 15, 1988 will be deferred indefinitely. No further certificate of need applications for long-term care bed additions/new construction will be accepted for processing until further notice. This change is for one time only and shall have no effect on subsequent batching cycles for certificate of need applications for long-term care bed additions/new construction projects.

This deferral of the batching cycle of September 15, 1988 is being implemented in order to permit adequate time to complete processing of applications pending before the Department of Health from the batching cycles of November 15, 1987 and March 15, 1988. Processing of these pending applications has been stayed by order of the Commissioner issued on April 29, 1988, until the conclusion of an investigation being conducted by the Attorney General's Office of Program Integrity into certificates of need for nursing homes. Since it is unknown when the investigation will be completed, the deferral of this batching cycle will allow for a timely and thorough review of existing applications at the conclusion of the investigation. Additionally, it is the Department's intent to process all applications affected by the current stay according to their designated batching cycle. This approach will prevent confusion as to the bed need data used in considering each individual batch and provide for the more orderly development and review of long-term care applications.

Any inquiries should be directed to:

John A. Calabria, Chief
Health Systems Review
New Jersey Department of Health
Room 604
CN 360
Trenton, NJ 08625

HUMAN SERVICES

(c)

THE COMMISSIONER

Availability of Funds
Elderly and Disabled Persons Protective Services Program

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. **Name of grant program:** The Adult Protective Services Program.

B. **Purpose** for which the grant program funds shall be used: To fund the expansion of the current Adult Intervention Project, now functioning as an 11 county pilot project, into a statewide adult protective services program to include the counties of Burlington, Cumberland, Gloucester, Hudson, Mercer, Monmouth, Morris, Union, Salem and Warren.

C. **Amount of money in the grant program:** Up to approximately $1.5 million to be allocated on the basis of population. Disbursement of grant funds will be approximately 58 percent to fund new county programs, 27 percent to supplement funds in the eleven existing county programs (these are not subject to the request for proposal process), 10 percent to be used for administrative costs and 5 percent for public information. The funds to be awarded in each of the 10 new counties will be awarded through established county Human Services Advisory Council request for proposal procedures.

D. **Groups** or entities **which may apply** for the grant program: Office of county government and other public or private agencies located in the counties of Burlington, Cumberland, Gloucester, Hudson, Mercer, Monmouth, Morris, Union, Salem and Warren and which are experienced in the prevention and alleviation of elderly and disabled abuse. Note: One protective service provider will be selected from each of the above counties.

E. **Qualifications needed by an applicant** to be considered for the grant program: An applicant must be an established, licensed or certified health and/or social service agency capable of developing, providing and coordinating a comprehensive county-wide adult protective services program.

F. **Procedure for eligible entities to apply** for grant funds: Agencies interested in applying for these funds should contact their county Human Services Advisory Councils, listed below, as soon as possible for a request for proposal (RFP).

G. **Address** of division, office or official receiving the application: The completed RFP is to be returned to the Human Services Advisory Council in the county where the applicant is applying. Please direct any questions concerning the administration of the program to:

Elga Lee, Supervisor
Adult Intervention Program
Office of Adult and County Social Services
Division of Youth and Family Services, CN 717
Trenton, New Jersey 08625

H. **Deadline** by which applications must be submitted to the appropriate Human Services Advisory Council: Thirty days from the date this notice appears in the New Jersey Register.

I. **Date by which applicants shall be notified** whether they will receive funds under the grant program: Within 45 days of receipt of a completed application package by the appropriate Human Services Advisory Council.

MAILING ADDRESSES OF COUNTY HUMAN SERVICES ADVISORY COUNCILS

Atlantic:	Steve F. Katzen, Project Administrator Atlantic County Health Department Case Management Unit Stillwater Building 201 South Shore Road Northfield, New Jersey 08225
Bergen:	Tom McKenna, Director Bergen County Division of Social Services 355 Main Street Hackensack, New Jersey 07601
Burlington:	Gary Miller, Director Burlington County Medical Health and Human Services Woodlane Road Mount Holly, New Jersey 08060
Camden:	Catherine DeCheser, Director Community Planning and Advocacy Council Human Services Coalition of Camden County Northgate I 7th and Linden Streets Camden, New Jersey 08102
Cape May:	Patricia Devaney Cape May County HSAC CN 907 Central Mailroom Cape May, Court House, New Jersey 08242
Cumberland:	Eva Moffat, Staff Cumberland County HSAC 790 East Commerce Street Cumberland Drive Bridgeton, New Jersey 08302
Essex:	Annette O'Flaherty Essex County Department of Citizens Services 15 South Munn Street East Orange, New Jersey 07018
Gloucester:	Carmen C. Woods, Staff Gloucester County Office of Government Services 251 North Delsea Drive Deptford, New Jersey 08096
Hudson:	Leon Socha, Staff Hudson County Department of Health & Social Services 595 County Avenue Secaucus, New Jersey 07094
Hunterdon:	Angelo DiOrio, Staff Hunterdon Department of Human Services Administration Building Main Street Flemington, New Jersey 08822
Mercer:	Ann Miner, Staff Mercer Department of Human Services Administration Building CN 850 P.O. Box 850 Trenton, New Jersey 08650
Middlesex:	Wayne Wirta, Acting Exec. Director Middlesex Department of Human Services 96 Bayard Street P.O. Box 273 New Brunswick, New Jersey
Monmouth:	Gabrielle Lehne, Staff Monmouth County Board of Social Services Hall of Records Annex Rm. 207 Main Street Freehold, New Jersey 07728
Morris:	Gary Barrett, Planner Morris County Department of Human Services Planning Court House Morristown, New Jersey 07960
Ocean:	Marcella DeRosa, Planner Ocean County Department of Human Services Ocean County Administration Building 101 Hooper Avenue Toms River, New Jersey 08753
Passaic:	Pamela Goar, Planner/Coordinator Passaic County Department of Human Services County Administration Building 317 Pennsylvania Avenue Paterson, New Jersey 07503
Salem:	Raymond Bolden, Exec. Director Salem Interagency Council on Human Services 92 Market Street Salem, New Jersey 08079
Somerset:	Kathie O'Brien, Planner Somerset County Richard Hall Community Mental Health Center 500 North Bridge Street Bridgewater, New Jersey 08807
Sussex:	Kathleen Wood, Community Planner Sussex County Human Services Council 175 High Street Newton, New Jersey 07860
Union:	Charles Gillon, Staff Union County Department of Human Services Administration Building Elizabethtown Plaza Rahway Avenue Elizabeth, New Jersey 07207
Warren:	Kathleen Rosanoff, Director Warren County Department of Human Services Court House Annex, P.O. Box 15 Belvidere, New Jersey 07823

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax; Coupons

Public Notice

Take notice that the following guidelines will be applied by the Division of Taxation to retail sale transactions in New Jersey involving the use of coupons:

Where a vendor issues a coupon entitling a purchaser to a discounted price on the item purchased, or a free or reduced price on an additional item, **and the vendor receives no reimbursement,** the sales tax is due from the purchaser on only the discounted price which is the actual receipt.

Example 1: A store issues a coupon entitling the holder to purchase a product for $0.10 less than the regular sales price. The retailer would bill as follows:

Regular price	$1.00
Store coupon	.10
Taxable receipt	$ .90
Sales tax at 6% rate	.06
Amount due from purchaser	$ .96

Example 2: A store issues a coupon entitling the holder to receive two items for the price of one. The retailer would bill as follows:

Regular price for one item	$1.00
Store coupon for free item	
Taxable receipt	$1.00
Sales tax at 6% rate	.06
Amount due from purchaser	$1.06

Where a store issues a coupon, entitling a purchaser to pay a reduced price on an item purchased, **and the vendor is reimbursed by a manufacturer, distributor, or other third party,** the tax is due on the full regular price of the item. The receipt is composed of the amount paid and the amount of the coupon value.

Example: A store issues a coupon labeled "mfr," entitling the holder to purchase an item for $0.10 less than the regular purchase price. The retailer would bill as follows:

Regular price	$1.00
Sales tax at 6% rate	.06
	$1.06
Manufacturer coupon	.10
Amount due from purchaser	$ .96

Where a manufacturer issues a coupon entitling a purchaser to pay a reduced price on an item purchased, the tax is due on the full regular price of the item. The receipt is composed of the amount paid and the amount of the coupon value. The coupon value reflects a payment or reimbursement by another party to the vendor.

Example: A manufacturer issues a coupon entitling the holder to purchase an item from a retailer for $0.10 less than the regular purchase price. The retailer would bill as follows:

Regular price	$1.00
Sales tax at 6% rate	.06
	$1.06
Manufacturer coupon	.10
Amount due from purchaser	$ .96

Please refer questions concerning this notice to the Taxpayer Information Service at (609) 292-6400 or write: 1464 Prospect Street, Trenton, NJ 08646.

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection
Notice of Assignments—Month of April 1988

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated March 31, 1988.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
P562	Potable Water System Renovations Lake Ocquittunk Cabins & Camping Area Stokes State Forest	Maitra Associates, Inc.	$100,000
P571	Structural, Mechanical, Electrical Repairs Hermitage House Ho-Ho-Kus, NJ	Maitra Associates	$125,000
P566	Exterior Renovations to Old County Store Long Pond Iron Works State Park Passaic County, NJ	David V. Abramson & Associates	$95,000
C312-02	Testing/Inspection Services Additions & Alterations Adult Diagnostic Treatment Center Avenel, NJ	Certified Testing Labs	$14,005 Services
I037	Asbestos Removal East Campus Kean College of New Jersey Union, NJ	Princeton Testing Laboratory	$6,750 Services
M628	Testing/Inspection Services Additions & Renovations Middlesex Day Care Center Avenel, NJ	United States Testing Associates	$8,000 Services
H775	Inspection and Monitoring Services Re-roofing of Hunziker Hall William Paterson College Wayne, NJ	ARMM Designs, Inc.	$16,950 Services
F051	Facility Consultant—FY 88 Montclair State College Upper Montclair, NJ	Mylan-Valk Partnership	$15,000 Services
D049	Facility Consultant—FY 88 Dept. of Corrections	William F. Selders, PE	$10,000 Services
I039	Asbestos Removal Three Buildings Glassboro State College Glassboro, NJ	Testwell Craig Testing Labs, Inc.	$80,000
	COMPETITIVE PROPOSALS		
	Testwell Craig Testing Labs	$18,750 Lump Sum	
	Northeastern Analytical Corp.	$25,265 Lump Sum	
	Princeton Testing Lab	$37,875	
C365	Roof Replacement 15 Buildings Leesburg State Prison Leesburg, NJ	S & ME	$3,000,000
	COMPETITIVE PROPOSALS		
	S & ME	5.90%	
	Goldberg Associates, PA	5.90%	
	EI Associates, PA	6.30%	
	Zywotow & Eckert	7.00%	
I023	Asbestos Removal in Six Buildings & Fourteen Utility Manholes Montclair State College Upper Montclair, NJ	Biospherics, Inc.	$400,000
	COMPETITIVE PROPOSALS		
	Biospherics, Inc.	$87,420 Lump Sum	
	O'Brien & Gere	$98,000 Lump Sum	
	Kaselaan & D'Angelo	$186,300 Lump Sum	
E187	Asbestos Removal Marie Katzenbach School for the Deaf W. Trenton, NJ	Testwell Craig Testing Labs, Inc.	$18,500 Services
	COMPETITIVE PROPOSALS		
	Testwell Craig Testing Labs	$18,500 Lump Sum	
	Northeastern Analytical Corp.	$32,280 Lump Sum	
	Gaudet Associates	$39,900 Lump Sum	
	BCM Eastern	Non Responsive	
P561	New Bathhouse/Concession Facility High Point State Park	Nadaskay-Kopelson	$900,000
	COMPETITIVE PROPOSALS		
	Nadaskay-Kopelson	8.6%	
	Lindemon, Winckelman, Martin	14.882%	
	Kolbe & Poponi	19.97%	
P565	New Entrance Road Ringwood State Park	Ebasco Services, Inc.	$1,800,000
	COMPETITIVE PROPOSALS		
	Ebasco Services, Inc.	6.07%	
	Purcell Associates	6.74%	
	HNT & B	6.9%	
I034	Asbestos Removal Residential Buildings Trenton State College Trenton, NJ	O'Brien & Gere Engineers, Inc.	$36,000 Services
	COMPETITIVE PROPOSALS		
	O'Brien & Gere Engineers, Inc.	$36,000 Lump Sum	
	Gaudet Associates	$51,020 Lump Sum	
	Biospherics, Inc.	$52,000 Lump Sum	
	Kaselaan & D'Angelo	No Response	

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Petition for Rulemaking
Verification Procedures for Travelers Checks
N.J.A.C. 19:45-1.25

Petitioner: Division of Gaming Enforcement.

Authority: N.J.S.A. 5:12-69(c), 5:12-70(g), 52:14B-4(f); and N.J.A.C. 1:30-3.6.

Take notice that on May 16, 1988, the Division of Gaming Enforcement ("Division") filed a rulemaking petition with the Casino Control Commission suggesting a substantive change to a proposed amendment to N.J.A.C. 19:45-1.25(e), which had been previously published in the January 4, 1988 New Jersey Register. See 20 N.J.R. 51(a). The proposed amendments relate to verification procedures to be followed by casino licensees prior to the acceptance of recognized travelers checks from a casino patron.

Specifically, the Division would amend Alternative I of the original proposal by establishing a threshold amount of $200.00 over which casino licensees would be required, as part of the verification procedure, to contact the travelers check issuer or an independent verification service. The petitioner contends that this modification would simply codify the current practice of 10 casinos who have already established similar threshold encashment procedures. With this addition, the Division believes that the adoption of the revised Alternative I amendment to N.J.A.C. 19:45-1.25(e) would retain present casino procedures that have proven to be a reasonably effective method to determine the validity of travelers checks and to deter or detect the encashment of fraudulently obtained travelers checks.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the requirements of N.J.S.A. 52:14B-4.

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 2, 1988 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.1988 d.1 means the first rule adopted in 1988.

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 18, 1988

NEXT UPDATE: SUPPLEMENT MAY 16, 1988

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
19 N.J.R. 1007 and 1120	June 15, 1987	20 N.J.R. 1 and 124	January 4, 1988
19 N.J.R. 1121 and 1258	July 6, 1987	20 N.J.R. 125 and 220	January 19, 1988
19 N.J.R. 1259 and 1352	July 20, 1987	20 N.J.R. 221 and 320	February 1, 1988
19 N.J.R. 1353 and 1474	August 3, 1987	20 N.J.R. 321 and 434	February 16, 1988
19 N.J.R. 1475 and 1588	August 17, 1987	20 N.J.R. 435 and 570	March 7, 1988
19 N.J.R. 1589 and 1676	September 8, 1987	20 N.J.R. 571 and 692	March 21, 1988
19 N.J.R. 1677 and 1758	September 21, 1987	20 N.J.R. 693 and 842	April 4, 1988
19 N.J.R. 1759 and 1858	October 5, 1987	20 N.J.R. 843 and 950	April 18, 1988
19 N.J.R. 1859 and 1926	October 19, 1987	20 N.J.R. 951 and 1018	May 2, 1988
19 N.J.R. 1927 and 2086	November 2, 1987	20 N.J.R. 1019 and 1126	May 16, 1988
19 N.J.R. 2087 and 2224	November 16, 1987	20 N.J.R. 1127 and 1316	June 6, 1988
19 N.J.R. 2225 and 2324	December 7, 1987	20 N.J.R. 1317 and 1500	June 20, 1988
19 N.J.R. 2325 and 2510	December 21, 1987		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:30-1.2, 2.8	Agency rulemaking: use of appendices	20 N.J.R. 1021(a)		
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)		
Most recent update to Title 1: TRANSMITTAL 1988-2 (supplement March 21, 1988)				
AGRICULTURE—TITLE 2				
2:5-2	Equine infectious anemia control	20 N.J.R. 695(a)		
2:23	Gypsy moth control: voluntary suppression program	20 N.J.R. 845(a)		
2:32-2.1, 2.3, 2.5, 2.8, 2.10, 2.12, 2.13, 2.14, 2.19, 2.20, 2.22, 2.25, 2.27, 2.33	Sire Stakes Program	20 N.J.R. 323(a)	R.1988 d.189	20 N.J.R. 975(a)
2:48-3	Sale of milk in new container sizes	20 N.J.R. 1129(a)		
2:69-1.11	Commercial values of primary plant nutrients	20 N.J.R. 696(a)	R.1988 d.284	20 N.J.R. 1343(a)
2:71	Grades and standards	20 N.J.R. 953(a)		
2:71-2.4, 2.5	Jersey Fresh Logo program	20 N.J.R. 1129(b)		
2:72	Licensing and bonding of buyers of perishable commodities	20 N.J.R. 955(a)		
2:73-2	Eggs: Seal of Quality program	20 N.J.R. 956(a)		
2:74-1	Controlled atmosphere storage for apples	20 N.J.R. 956(b)		
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 324(a)		
Most recent update to Title 2: TRANSMITTAL 1988-1 (supplement March 21, 1988)				
BANKING—TITLE 3				
3:1-1.1	Maximum interest rate on first mortgages on residences with one to six units	19 N.J.R. 2089(a)	R.1988 d.282	20 N.J.R. 1343(b)
3:1-2.17	Repeal (see 3:32-1)	20 N.J.R. 697(a)		
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)		
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	20 N.J.R. 1025(a)		
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)		
3:11-12	Commercial loans by savings banks	19 N.J.R. 1679(b)	R.1988 d.230	20 N.J.R. 1075(a)
3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11	Conversion of savings and loan associations from mutual to capital stock	20 N.J.R. 697(a)		
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)		
Most recent update to Title 3: TRANSMITTAL 1988-2 (supplement April 18, 1988)				
CIVIL SERVICE—TITLE 4				
4:1-6, 7, 10.1, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)		
4:1-8, 9, 10.2–10.5, 11, 12, 13, 14, 15, 16.13	Repeal (see 4A:4)	20 N.J.R. 327(a)	R.1988 d.259	20 N.J.R. 1183(b)
4:1-16.1–16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:2-6.3, 11, 13, 14.1, 15.1	Repeal (see 4A:4)	20 N.J.R. 327(a)	R.1988 d.259	20 N.J.R. 1183(b)
4:2-6.4–6.10, 7, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4:3-2	Repeal (see 4A:3)	20 N.J.R. 846(a)		
4:3-6.4, 11.1, 13.2, 14	Repeal (see 4A:4)	20 N.J.R. 327(a)	R.1988 d.259	20 N.J.R. 1183(b)
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
	Most recent update to Title 4: TRANSMITTAL 1988-1 (supplement January 19, 1988)			
PERSONNEL—TITLE 4A				
4A:1-1.3	Definitions	20 N.J.R. 326(a)	R.1988 d.258	20 N.J.R. 1183(a)
4A:1-1.3	State and local departments defined	20 N.J.R. 845(b)		
4A:3	Classification, services, and compensation	20 N.J.R. 846(a)		
4A:4	Selection and appointment	20 N.J.R. 327(a)	R.1988 d.259	20 N.J.R. 1183(b)
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)		
4A:6-1.3, 1.10	Sick leave, leave without pay: extension of comment period	20 N.J.R. 341(a)		
4A:8	Layoffs	19 N.J.R. 1363(a)		
	Most recent update to Title 4A: TRANSMITTAL 1988-1 (supplement January 19, 1988)			
COMMUNITY AFFAIRS—TITLE 5				
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:19-6.3, 8	Continuing care retirement communities: application fees; nonbinding reservation agreements	20 N.J.R. 347(a)	R.1988 d.190	20 N.J.R. 976(a)
5:23-2.5	Uniform Construction Code: increase in structure size	20 N.J.R. 1026(a)		
5:23-2.38, 3.11, 7.2, 7.3, 7.100–7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.6	Uniform Construction Code: manufacturer's recommendations	20 N.J.R. 699(a)	R.1988 d.283	20 N.J.R. 1343(c)
5:23-3.14, 3.20	Uniform Construction Code: 1988 building and mechanical subcodes	20 N.J.R. 575(a)	R.1988 d.270	20 N.J.R. 1344(a)
5:23-3.18	Energy Subcode	20 N.J.R. 699(b)		
5:23-8.17	Asbestos safety control monitor: correction	———	———	20 N.J.R. 1115(a)
5:23-9.1, 9.2	UCC interpretations: Plumbing Subcode and manufactured housing	20 N.J.R. 224(a)	R.1988 d.195	20 N.J.R. 977(a)
5:24-2.3	Senior citizens and disabled protected tenancy: taxable income	20 N.J.R. 349(a)	R.1988 d.191	20 N.J.R. 978(a)
5:24-2.5	Senior citizen and disabled protected tenancy: review of determination documents	20 N.J.R. 1026(b)		
5:24-2.7	Senior citizen and disabled protected tenancy: appeal procedure	20 N.J.R. 437(a)		
5:23-3.21	Uniform Construction Code: one and two-family dwelling subcode	20 N.J.R. 1130(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:29-2.1, 2.2	Termination of lease by tenant because of disabling illness or accident	20 N.J.R. 1139(a)		
5:30	Local Finance Board rules	20 N.J.R. 1027(a)		
5:80-26.1, 26.2, 26.3, 26.11, 26.16, 26.21	Housing affordability controls	20 N.J.R. 862(a)		
5:91-13.4	Council on Affordable Housing: motion procedure	20 N.J.R. 864(a)		
5:92-1.3, 17	Council on Affordable Housing: rehabilitation of indigenous need	20 N.J.R. 864(b)		
5:92-8.4	Council on Affordable Housing: developer agreements	20 N.J.R. 865(a)		
5:92-11.2	Council on Affordable Housing: excess funds in regional contribution agreements; age restricted units	20 N.J.R. 1140(a)		
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)		
	Most recent update to Title 5: TRANSMITTAL 1988-4 (supplement April 18, 1988)			
DEFENSE—TITLE 5A				
	Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)			
EDUCATION—TITLE 6				
6:3	School districts	20 N.J.R. 1027(b)		
6:3-1.23	Principal certification	20 N.J.R. 437(b)		
6:3-2	Transfer of pupil records	20 N.J.R. 133(b)	R.1988 d.199	20 N.J.R. 978(b)
6:11-3.3	Certification fees	20 N.J.R. 865(b)		
6:11-3.25, 4.2, 5.7, 10	Principal certification	20 N.J.R. 437(b)		
6:22-1.2	School site approval	20 N.J.R. 1032(a)		
6:27-1.14	Repeal (see 6:30)	20 N.J.R. 700(a)		
6:28-11.12	Special Education Pilot Project: moderate behavior handicap class types	20 N.J.R. 1141(a)		
6:30	Adult education programs	20 N.J.R. 700(a)		
6:31-1.10	Bilingual education and English as a second language programs: exit testing and reentry process	20 N.J.R. 1034(a)		
6:44-2, 3, 4	Repeal (see 6:30)	20 N.J.R. 700(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:46-2.3, 4.13	Corrections concerning vocational school designation criteria and private school advertising	———	———	20 N.J.R. 1296(b)
	Most recent update to Title 6: TRANSMITTAL 1988-2 (supplement April 18, 1988)			
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1I	Sanitary Landfill Facility Contingency Fund	20 N.J.R. 443(a)		
7:2	State Park Service	20 N.J.R. 714(a)		
7:2	State Park Service: extenstion of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7A	Freshwater Wetlands Protection Act rules	19 N.J.R. 2330(a)	R.1988 d.267	20 N.J.R. 1235(a)
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7A-15, 16	Freshwater Wetlands Protection Act rules: fees, penalties and hearings	20 N.J.R. 576(a)		
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)		
7:7E-3.41, 3.46, 7.41, 8.11	Hudson River waterfront development: extension of comment period	20 N.J.R. 552(a)		
7:9-1	Sewer systems and wastewater treatment plants	19 N.J.R. 2227(b)	R.1988 d.205	20 N.J.R. 980(a)
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:11	New Jersey Water Supply Authority: policies and procedures	20 N.J.R. 448(a)	R.1988 d.264	20 N.J.R. 1285(a)
7:11-2.2, 2.3, 2.9, 2.13	New Jersey Water Supply Authority rates and charges	20 N.J.R. 144(a)	R.1988 d.265	20 N.J.R. 1286(a)
7:12	Shellfish growing waters	20 N.J.R. 450(a)	R.1988 d.206	20 N.J.R. 980(b)
7:14-8	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:19-6.14	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)		
7:22-3.4, 3.6-3.11, 3.13, 3.32, 4.4, 4.6-4.11, 4.13, 4.32, 5.11	Wastewater Treatment Financing Program	19 N.J.R. 1600(a)	R.1988 d.210	20 N.J.R. 1076(a)
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)	R.1988 d.263	20 N.J.R. 1287(a)
7:25-1	Shellfishing license program	19 N.J.R. 2358(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	20 N.J.R. 460(a)	R.1988 d.266	20 N.J.R. 1292(a)
7:25-5	1988-89 Game Code	20 N.J.R. 1035(b)		
7:25-18.5	Drifting and anchored gill net seasons; netting mesh in staked gill net fishery	19 N.J.R. 1609(a)	R.1988 d.285	20 N.J.R. 1344(a)
7:25-18.5	Gill net seasons; staked gill net fishery: extension of comment period	20 N.J.R. 715(a)		
7:25-18.5	Marine fisheries: bait net license and conditions	20 N.J.R. 866(a)	R.1988 d.286	20 N.J.R. 1345(a)
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)		
7:26-1.4, 9.8–9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)		
7:26-12.12	Hazardous waste facilities and public participation in permit process	20 N.J.R. 715(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)	R.1988 d.268	20 N.J.R. 1346(a)
7:30	Pesticide Control Code	20 N.J.R. 579(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program	19 N.J.R. 1687(a)	R.1988 d.272	20 N.J.R. 1356(a)
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program: extension of comment period	19 N.J.R. 2092(b)		
7:31-2.12, 2.15, 5	Toxic Catastrophe Prevention Act program: confidentiality and trade secrets	20 N.J.R. 350(a)		
7:31-2.12, 2.15, 5	Confidentiality and trade secrets: correction and extension of comment period	20 N.J.R. 554(a)		
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 552(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 869(a)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		
7:45	Delaware and Raritan Canal review zone: extension of comment period	20 N.J.R. 552(c)		
7:50-2.11, 3.32, 4.1, 4.40, 4.66, 5.22–5.26, 5.30, 5.43, 5.47, 6.7, 6.84, 6.107, 6.123, 6.131, 6.132, 6.133	Pinelands Comprehensive Management Plan	20 N.J.R. 716(a)		

Most recent update to Title 7: TRANSMITTAL 1988-4 (supplement April 18, 1988)

HEALTH—TITLE 8

8:7-1.2	Public Health Licensing and Examination Board	20 N.J.R. 364(a)	R.1988 d.236	20 N.J.R. 1204(a)
8:24	Chapter XII, State Sanitary Code: retail food establishments	20 N.J.R. 365(a)	R.1988 d.204	20 N.J.R. 982(a)
8:25	Youth Camp Safety Act standards	20 N.J.R. 463(a)	R.1988 d.269	20 N.J.R. 1428(a)
8:26-1.2, 1.3, 2.10, 3.15, 3.17, 4.3, 4.4, 5.1, 5.2, 5.3, 5.7, 5.10, 5.11, 6.4, 7.9, 8.9, 8.10	Public recreational bathing	20 N.J.R. 464(a)	R.1988 d.229	20 N.J.R. 1079(a)
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical residents	20 N.J.R. 594(a)	R.1988 d.277	20 N.J.R. 1428(b)
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-3.45	Hospital reimbursement: submission of uniform bill-patient summaries	20 N.J.R. 1143(a)		
8:31B-4.37, 4.39	Uncompensated Care Trust Fund: charity care eligibility	20 N.J.R. 595(a)		
8:31B-4.38	Hospital reimbursement: uncompensated care coverage for outpatient dialysis	19 N.J.R. 2092(c)	R.1988 d.276	20 N.J.R. 1430(a)
8:31B-4.62	Hospital reimbursement: outpatient HealthStart maternal and pediatric care	19 N.J.R. 2365(a)	R.1988 d.213	20 N.J.R. 1082(a)
8:33B-1.3	Demonstration of extracorporeal shock wave lithotripsey services	20 N.J.R. 869(b)		
8:33E-1.1, 1.2	Cardiac diagnostic facilities: complex electrophysiology studies	20 N.J.R. 467a)		
8:33E-2.2, 2.3, 2.4	Cardiac surgery centers: complex electrophysiology studies	20 N.J.R. 468(a)		
8:42B	Drug treatment facilities: standards for licensure	20 N.J.R. 598(a)		
8:39	Long-term care licensing standards	20 N.J.R. 469(a)	R.1988 d.280	20 N.J.R. 1432(a)
8:43E-2.4, 2.5, 2.19, 2.20	Adult open acute psychiatric beds: need review	20 N.J.R. 617(a)	R.1988 d.278	20 N.J.R. 1458(a)
8:43E-3.19, 3.20	Inpatient screening psychiatric beds: need review	20 N.J.R. 618(a)	R.1988 d.278	20 N.J.R. 1458(a)
8:43E-5.20	Intermediate adult and special psychiatric beds: need review	20 N.J.R. 619(a)	R.1988 d.278	20 N.J.R. 1458(a)
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-5 (12:120-5)	Asbestos worker and supervisor permits	20 N.J.R. 728(a)	R.1988 d.261	20 N.J.R. 1232(b)
8:65-1.3, 6.6, 8.13	Handling of sodium pentobarbital in animal humane facilities	20 N.J.R. 366(a)		
8:65-10.1	Scheduling of controlled dangerous substances	———	———	20 N.J.R. 1000(a), 1000(b), 1001(a)
8:70-1.4	Drug Utilization Review Council: notice of action on a drug product	20 N.J.R. 870(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a); 20 N.J.R. 190(a), 655(a), 899(b))	19 N.J.R. 1488(a)	R.1988 d.275	20 N.J.R. 1462(a)
8:71	Interchangeable drug products (20 N.J.R. 191(b), 654(b), 899(a))	19 N.J.R. 1878(a)	R.1988 d.274	20 N.J.R. 1462(b)
8:71	Interchangeable drug products (see 20 N.J.R. 900(a))	20 N.J.R. 146(a)	R.1988 d.273	20 N.J.R. 1461(a)
8:71	Interchangeable drug products	20 N.J.R. 871(a)		

Most recent update to Title 8: TRANSMITTAL 1988-4 (supplement April 18, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
HIGHER EDUCATION—TITLE 9				
9:7-4	Garden State Scholarship Program	20 N.J.R. 720(a)		
9:9-11	Guaranteed Student Loan Program: compliance evaluation of participating institutions	20 N.J.R. 872(a)		
9:11-1.5	Educational Opportunity Fund: maximum income levels for undergraduate eligibility	20 N.J.R. 722(a)		
	Most recent update to Title 9: TRANSMITTAL 1988-3 (supplement April 18, 1988)			
HUMAN SERVICES—TITLE 10				
10:1-2	Public comment procedure and petitions for rulemaking	20 N.J.R. 1050(a)		
10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:13	Legal Assistance for Medicare Patients (LAMP)	20 N.J.R. 873(a)		
10:14	Statewide Respite Care Program	19 N.J.R. 1712(a)	R.1988 d.226	20 N.J.R. 1107(a)
10:14-1.4, 4.1, 6.3	Statewide Respite Care Program	20 N.J.R. 1051(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:49-1.1	Presumptive Medicaid eligibility for pregnant women	20 N.J.R. 367(a)	R.1988 d.192	20 N.J.R. 983(a)
10:49-1.1, 1.2	Medical assistance for aged, blind and disabled	20 N.J.R. 548(a)	R.1988 d.212	20 N.J.R. 1103(a)
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:49-6.9	Medicaid providers and administrative charges and service fees	20 N.J.R. 518(a)		
10:50-1.1–1.5, 2.3–2.8, 3.1, 3.2	Livery service for ambulatory Medicaid patients	19 N.J.R. 2103(a)	R.1988 d.262	20 N.J.R. 1214(a)
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: covered products	20 N.J.R. 875(a)		
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:60-2.2	Personal care assistant services: provider reimbursement	20 N.J.R. 1143(b)		
10:62-1, 2, 3	Vision Care Manual	20 N.J.R. 956(c)		
10:63-1.11, 1.19	Use of personal needs allowance in long-term care facilities	20 N.J.R. 1144(a)		
10:66-1.3, 3	Mental health services: partial care	20 N.J.R. 1054(a)		
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:69	Hearing Aid Assistance for Aged and Disabled (HAAAD)	20 N.J.R. 519(a)	R.1988 d.250	20 N.J.R. 1220(a)
10:69A	Pharmaceutical Assistance to the Aged and Disabled	20 N.J.R. 369(a)	R.1988 d.211	20 N.J.R. 1106(a)
10:69C	(see 10:14)	19 N.J.R. 1712(a)	R.1988 d.226	20 N.J.R. 1107(a)
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only computation amounts and income eligibility standards	20 N.J.R. 207(a)	R.1988 d.193	20 N.J.R. 985(a)
10:72-1.1, 1.2, 2.1, 2.3, 2.7, 3.4, 3.5, 4.3, 4.4, 4.5	Medical assistance for aged, blind and disabled	20 N.J.R. 548(a)	R.1988 d.212	20 N.J.R. 1103(a)
10:72-6	Presumptive Medicaid eligibility for pregnant women	20 N.J.R. 367(a)	R.1988 d.193	20 N.J.R. 983(a)
10:81-3.38–3.42, 3.46	PAM: client resources in AFDC program	20 N.J.R. 1056(a)		
10:81-4.5	AFDC program: transportation costs incident to education or training	20 N.J.R. 620(a)	R.1988 d.253	20 N.J.R. 1221(a)
10:81-7.40	AFDC program: fraudulent receipt of assistance	20 N.J.R. 722(a)		
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:81-11.18	Child support guidelines: spousal support obligation	20 N.J.R. 1058(a)		
10:82-3.2, 3.6, 3.7	ASH: client resources in AFDC program	20 N.J.R. 1059(a)		
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:85-3.2, 3.3	GAM: travel costs for job seeking or training	20 N.J.R. 879(a)		
10:85-4.6	Emergency Assistance benefits extension	Emergency (expires 6-30-88)	R.1988 d.291	20 N.J.R. 1484(a)
10:85-5.2	General Assistance: payment of inpatient hospital bills	20 N.J.R. 521(a)	R.1988 d.251	20 N.J.R. 1222(a)
10:85-8.4	GAM: Pharmaceutical Assistance (PAAD) program information	20 N.J.R. 522(a)	R.1988 d.252	20 N.J.R. 1222(b)
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:89-3.5, 3.6, 5.3	Home Energy Assistance program	20 N.J.R. 1060(a)		
10:123-3.2	Residential health care facilities and boarding homes: personal needs allowance of residents	20 N.J.R. 225(b)	R.1988 d.201	20 N.J.R. 985(b)
10:127	Residential child care facilities	20 N.J.R. 1149(a)		
	Most recent update to Title 10: TRANSMITTAL 1988-4 (supplement April 18, 1988)			
CORRECTIONS—TITLE 10A				
10A:1-2	Rulemaking and rule exemption authority of Commissioner	20 N.J.R. 493(a)	R.1988 d.240	20 N.J.R. 1222(c)
10A:1-11	Personal property of inmates	20 N.J.R. 494(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:4-1.2, 13	Inmate discipline: Boy's Unit at Skillman	20 N.J.R. 496(a)	R.1988 d.239	20 N.J.R. 1224(a)
10A:4-11.9, 12	Inmate discipline: appeal to Office of Administrative Law	20 N.J.R. 496(b)		
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:9-1.3, 5.6	Work credits for I.S.P. violators housed in county facilities	20 N.J.R. 879(b)		
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:17-2, 5, 6	Social services: Volunteer Service Program; religion; institutional chaplaincy	20 N.J.R. 167(a)	R.1988 d.241	20 N.J.R. 1224(b)
10A:18-8.7	Use of telephone by inmates	20 N.J.R. 496(c)	R.1988 d.238	20 N.J.R. 1229(a)
10A:22-2	Inmate and parolee records	20 N.J.R. 723(a)		
10A:71-3.2, 3.4, 3.18–3.23, 3.25–3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)		

Most recent update to Title 10A: TRANSMITTAL 1988-4 (supplement April 18, 1988)

INSURANCE—TITLE 11

11:1-20, 22	Cancellation and nonrenewal requirements and practices	20 N.J.R. 1061(a)		
11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)		
11:2-17.3, 17.10	Replacement parts for damanged automobiles	20 N.J.R. 1159(a)		
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-16.6	Basic hospital expense coverage	20 N.J.R. 172(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-19	Optional coverage for pregnancy and childbirth benefits	20 N.J.R. 43(a)		
11:4-30	Hospital preadmission certification programs (HPCPs)	20 N.J.R. 880(c)		
11:5-1.13	Control of real estate brokerage files	20 N.J.R. 883(a)		
11:5-1.15	Real estate advertising practices	20 N.J.R. 497(a)	R.1988 d.237	20 N.J.R. 1205(a)
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal	19 N.J.R. 2238(a)		
11:5-1.23	Real estate services to handicapped	20 N.J.R. 725(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)	R.1988 d.254	20 N.J.R. 1205(b)
11:5-1.27	Educational requirements for real estate licensure	20 N.J.R. 725(b)		
11:5-1.28	Certification as real estate instructor; classroom procedure	20 N.J.R. 1161(a)		
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:16-1	Fraud prevention: verification and claim form statements	20 N.J.R. 1062(a)		
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)		
11:18	New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge: pre-proposed new rules	20 N.J.R. 242(a)		

Most recent update to Title 11: TRANSMITTAL 1988-3 (supplement April 18, 1988)

LABOR—TITLE 12

12:16A-11	Unemployment and Disability Insurance group accounts	20 N.J.R. 1071(b)		
12:17-2.6	Noncompliance with quality control reviews of unemployment insurance claims	20 N.J.R. 884(a)		
12:45–49	Vocational rehabilitation	20 N.J.R. 620(a)	R.1988 d.235	20 N.J.R. 1230(a)
12:60-6.1	Recordkeeping by public work project employers	20 N.J.R. 1164(a)		
12:60-7	Apprentice to journeymen ratios for public work projects	20 N.J.R. 1164(b)		
12:100-4.2, 5.2, 6.2	Public employee safety and health	20 N.J.R. 726(a)	R.1988 d.260	20 N.J.R. 1232(a)
12:112	Public Employees' Occupational Safety and Health Review Commission	20 N.J.R. 1165(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-5 (8:60-5)	Asbestos worker and supervisor permits	20 N.J.R. 728(a)	R.1988 d.261	20 N.J.R. 1232(b)
12:195	Carnival-amusement rides	20 N.J.R. 1072(a)		

Most recent update to Title 12: TRANSMITTAL 1988-3 (supplement March 21, 1988)

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:12-2.3, 2.7	Local Development Financing Fund: project set-asides	20 N.J.R. 1171(a)		
12A:12-3	Tourism Matching Grant Program	20 N.J.R. 172(b)	R.1988 d.215	20 N.J.R. 1082(a)
12A:50-1	Cogeneration: reporting by non-utility generators	19 N.J.R. 2383(a)		
12A:54	Cogeneration equipment and use tax exemption: technical sufficiency standards	20 N.J.R. 1073(a)		

Most recent update to Title 12A: TRANSMITTAL 1988-2 (supplement April 18, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
LAW AND PUBLIC SAFETY—TITLE 13				
13:1	Police Training Commission rules	20 N.J.R. 622(a)		
13:3-1, 2, 3, 4, 7	Amusement games control	20 N.J.R. 627(a)	R.1988 d.227	20 N.J.R. 1085(a)
13:3-3.4, 3.5, 3.6	Amusement games: preproposal concerning player fees and value of prizes	20 N.J.R. 44(a)		
13:4-3.4, 3.5, 8.2	Discrimination complaints: confidentiality of parties' identities	20 N.J.R. 499(a)		
13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)		
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)		
13:27-3, 4	Architectural practice; definitions	19 N.J.R. 1783(b)		
13:27-5.4	Licensure of out-of-state architects	20 N.J.R. 884(b)		
13:27-5.8, 8.7, 8.8, 8.15	Certification of landscape architects	20 N.J.R. 885(a)		
13:27A	Repeal (see 13:28)	20 N.J.R. 370(b)	R.1988 d.214	20 N.J.R. 1088(a)
13:28	Board of Cosmetology and Hairstyling	20 N.J.R. 370(b)	R.1988 d.214	20 N.J.R. 1088(a)
13:28-5.1	Board of Cosmetology and Hairstyling: fee schedule	20 N.J.R. 886(a)		
13:29-5	Board of Accountancy: Quality Enhancement Program	19 N.J.R. 2240(a)		
13:34-3.6	Marriage counseling: temporary permit holders	20 N.J.R. 501(a)	R.1988 d.228	20 N.J.R. 1095(a)
13:35-1.5	Participation in medical residency programs	19 N.J.R. 2243(a)	R.1988 d.203	20 N.J.R. 986(a)
13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)		
13:39	Board of Pharmacy rules	19 N.J.R. 1952(a)		
13:39	Board of Pharmacy rules: extension of comment period	20 N.J.R. 244(a)		
13:40-3.1	Professional engineers and land surveyors: conflict of interest; approval of work	20 N.J.R. 736(a)		
13:44-1.2, 2.1	Licensure and practice of veterinary medicine	20 N.J.R. 1171(b)		
13:44C	Practice of audiology and speech-language pathology	20 N.J.R. 244(b)		
13:45A-12.1, 12.2, 12.3	Sale of animals	20 N.J.R. 501(b)	R.1988 d.271	20 N.J.R. 1463(a)
13:46-1A.3	Athletic Control Board: weighing of boxers	20 N.J.R. 380(a)		
13:70-1.30	Thoroughbred racing: horsemen associations	20 N.J.R. 1172(a)		
13:70-6.55	Thoroughbred racing: respiratory bleeders	20 N.J.R. 506(a)	R.1988 d.245	20 N.J.R. 1207(a)
13:70-14A.9	Thoroughbred racing: competition by bleeders	20 N.J.R. 506(b)	R.1988 d.244	20 N.J.R. 1207(b)
13:70-29.50	Thoroughbred racing: Daily Triple wagering	20 N.J.R. 1173(a)		
13:71-1.25	Harness racing: horsemen associations	20 N.J.R. 1174(a)		
13:71-6.14	Harness racing: trainers leaving the paddock	20 N.J.R. 1175(a)		
13:71-11.9	Harness racing: respiratory bleeders	20 N.J.R. 507(a)	R.1988 d.246	20 N.J.R. 1207(c)
13:71-27.54	Harness racing: Daily Triple wagering	20 N.J.R. 1175(b)		
13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)		
13:76	Training requirements for arson investigators	20 N.J.R. 963(a)		
13:80-1	Hazard Waste Management Information Awards	20 N.J.R. 507(b)		
	Most recent update to Title 13: TRANSMITTAL 1988-4 (supplement April 18, 1988)			
PUBLIC UTILITIES—TITLE 14				
14:3-7.5	Interest on customer deposits	20 N.J.R. 737(a)		
14:3-7.13	Collection activity on disputed charges; interest on overpayments	20 N.J.R. 963(b)		
14:11-6	Interest on fuel clause overrecoveries	19 N.J.R. 1967(c)		
14:18-3	Cable TV: pre-proposal for telephone service standards	19 N.J.R. 2125(b)		
14:18-15.1	Preproposal: Statewide cable TV access channel for educational and public affairs programming	20 N.J.R. 1063(a)		
	Most recent update to Title 14: TRANSMITTAL 1988-1 (supplement January 19, 1988)			
ENERGY—TITLE 14A				
14A:3-7	Individual electric metering in residential buildings: repeal	19 N.J.R. 2247(a)	R.1988 d.188	20 N.J.R. 991(a)
14A:6-2	Business Energy Improvement Program	20 N.J.R. 250(b)	R.1988 d.197	20 N.J.R. 991(b)
14A:22-1.2, 2.1, 3.1, 3.2, 3.8, 4.1, 5.1, 8.1	Commercial and apartment conservation service program	19 N.J.R. 2247(b)	R.1988 d.187	20 N.J.R. 995(a)
	Most recent update to Title 14A: TRANSMITTAL 1988-1 (supplement February 16, 1988)			
STATE—TITLE 15				
15:2-1	Commercial recording: expedited services	20 N.J.R. 522(b)	R.1988 d.202	20 N.J.R. 997(a)
15:10-6	Voting accessibility for elderly and handicapped	19 N.J.R. 2249(a)		
	Most recent update to Title 15: TRANSMITTAL 1987-1 (supplement February 17, 1987)			
PUBLIC ADVOCATE—TITLE 15A				
	Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)			
TRANSPORTATION—TITLE 16				
16:25	Utility accommodation on highway rights-of-way	19 N.J.R. 1064(a)		
16:25A	Soil erosion and sediment control on DOT projects	19 N.J.R. 2126(a)		
16:28	Speed limits on State highway system	20 N.J.R. 887(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28-1.13, 1.15, 1.30, 1.93	Speed limit zones along Routes 13, 20, 44, and 70	20 N.J.R. 630(a)	R.1988 d.217	20 N.J.R. 1095(b)
16:28-1.26, 1.41	Speed limit zones along U.S. 9 and Route 185	20 N.J.R. 632(a)	R.1988 d.219	20 N.J.R. 1096(a)
16:28-1.31	Speed limits along Route 56 in Cumberland and Salem counties	20 N.J.R. 964(a)		
16:28-1.41	Speed limits along U.S. 9 in Cape May County	Emergency (expires 6-24-88)	R.1988 d.225	20 N.J.R. 1113(a)
16:28-1.49	Speed limits along Route 35 in Bay Head	20 N.J.R. 965(a)		
16:28-1.112	Speed limit zones along Route 156 in Hamilton	20 N.J.R. 632(b)	R.1988 d.220	20 N.J.R. 1097(a)
16:28-1.158	Speed limits along Route 179 in Hunterdon County	20 N.J.R. 1176(a)		
16:28A	Restricted parking and stopping	20 N.J.R. 887(a)		
16:28A-1.2, 1.7, 1.15	Bus stop zones along U.S. 1 and 9 in North Bergen, U.S. 9 in Howell, and Route 23 in Wayne	20 N.J.R. 965(b)		
16:28A-1.7, 1.18, 1.57	Restricted parking along U.S. 9, Route 27, and U.S. 206	20 N.J.R. 633(a)	R.1988 d.218	20 N.J.R. 1097(b)
16:28A-1.7, 1.46	Stopping restrictions along U.S. 9 in Cape May and U.S. 130 in Mercer County	20 N.J.R. 887(b)		
16:28A-1.9, 1.32	Bus stop zones along Route 17 in Lyndhurst and U.S. 46 in Elmwood Park	20 N.J.R. 1177(a)		
16:28A-1.28, 1.41	Restricted parking along U.S. 40 and Route 77 in Upper Pittsgrove Township	20 N.J.R. 508(a)	R.1988 d.208	20 N.J.R. 1098(a)
16:28A-1.33	Route 47 in Franklin: correction	_____	_____	20 N.J.R. 1001(c)
16:28A-1.34	Bus stops along Route 49 in Salem and Fairfield	20 N.J.R. 888(a)		
16:28A-1.36	Restricted parking on Route 57 in Washington Township, Warren County	Emergency (expires 8-2-88)	R.1988 d.293	20 N.J.R. 1484(b)
16:28A-1.46	No parking bus stop along U.S. 130 in Edgewater Park	20 N.J.R. 634(a)	R.1988 d.222	20 N.J.R. 1098(b)
16:28A-1.46, 1.98	Parking restrictions along U.S. 130 in Salem and Burlington counties, and Route 56 in Vineland	20 N.J.R. 1064(a)		
16:28A-1.51	Parking restrictions along Route 168 in Gloucester Township	20 N.J.R. 1065(a)		
16:28A-1.61	No parking bus stop along U.S. 9W in Alpine	20 N.J.R. 634(b)	R.1988 d.223	20 N.J.R. 1098(c)
16:28A-1.70	No parking bus stop along Route 439 in Elizabeth	20 N.J.R. 635(a)	R.1988 d.221	20 N.J.R. 1099(a)
16:29	No passing zones	20 N.J.R. 887(a)		
16:30	Miscellaneous traffic rules	20 N.J.R. 887(a)		
16:30-3	Pre-proposal: Exclusive bus lane on Routes 3 and 495	19 N.J.R. 1421(b)		
16:30-3.6	Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan	20 N.J.R. 737(b)		
16:30-4.2	Bicycle restrictions along Route 88 in Point Pleasant	19 N.J.R. 2254(a)		
16:30-10.6, 10.7	Midblock crosswalks along Routes 35 and 37 in Seaside Heights	20 N.J.R. 509(a)	R.1988 d.207	20 N.J.R. 1099(b)
16:30-10.8	Midblock crosswalk along Route 88 in Point Pleasant	20 N.J.R. 1177(b)		
16:31	No left turns	20 N.J.R. 887(a)		
16:31A	Prohibited right turns on red	20 N.J.R. 888(b)		
16:41B	Newspaper boxes on State highways	20 N.J.R. 1178(a)		
16:44	Contract administration	20 N.J.R. 889(a)	R.1988 d.279	20 N.J.R. 1467(a)
16:53C	Rail Freight Program	20 N.J.R. 966(a)		
16:55	Licensing of aeronautical activities	20 N.J.R. 967(a)		
16:60	Aircraft safety: issuance of summons and designation of peace officer	20 N.J.R. 968(a)		
16:61	Aircraft accidents	20 N.J.R. 968(b)		
16:75	NJ TRANSIT: bus allocation guidelines	20 N.J.R. 635(b)	R.1988 d.249	20 N.J.R. 1207(d)
	Most recent update to Title 16: TRANSMITTAL 1988-4 (supplement April 18, 1988)			
TREASURY-GENERAL—TITLE 17				
17:1	Division of Pensions: general administration	20 N.J.R. 636(a)	R.1988 d.243	20 N.J.R. 1208(a)
17:1-1.10	Pension administration: bad balances in withdrawn accounts	20 N.J.R. 1181(a)		
17:1-2.36	Alternate Benefit Program: transfers and interest	20 N.J.R. 969(a)		
17:1-4.37	Applications for disability retirement	20 N.J.R. 510(a)	R.1988 d.231	20 N.J.R. 1208(b)
17:2-2.2	Public Employees' Retirement System: multiple enrollments	20 N.J.R. 969(b)		
17:3	Teachers' Pension and Annuity Fund	20 N.J.R. 1181(b)		
17:5-6.1	State Police Retirement System: transfer of service credit	20 N.J.R. 47(b)		
17:9-4.2	State Health Benefits Program: full-time employee defined	20 N.J.R. 741(a)		
17:9-6.1	State Health Benefits Program: continuation of coverage into retirement	20 N.J.R. 1182(a)		
17:10	Judicial Retirement System administrative rules	20 N.J.R. 510(b)	R.1988 d.242	20 N.J.R. 1208(c)
17:10-6.1	Judicial Retirement System: transfer of service credit	20 N.J.R. 179(b)	R.1988 d.182	20 N.J.R. 998(a)
17:16-32.12	Common Pension Fund A: permitted investment	20 N.J.R. 741(b)	R.1988 d.248	20 N.J.R. 1208(d)
17:16-36.12	Common Pension Fund B: permitted investment	20 N.J.R. 742(a)	R.1988 d.247	20 N.J.R. 1208(e)
17:19-10.4, 10.5, 10.7, 10.9	Architect/engineer selection procedures	20 N.J.R. 180(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:20-6.3	State Lottery: confidentiality of individual agent's operation	20 N.J.R. 48(a)	R.1988 d.198	20 N.J.R. 998(b)
	Most recent update to Title 17: TRANSMITTAL 1988-3 (supplement April 18, 1988)			
TREASURY-TAXATION—TITLE 18				
18:2-2	Post tax amnesty	19 N.J.R. 2255(b)		
18:5-1.1, 6.2, 12.5	Sale of tobacco to minors	20 N.J.R. 970(a)		
18:5-12.2	Post tax amnesty	19 N.J.R. 2255(b)		
18:7-3.15, 11.12, 13.1, 13.7, 13.12, 13.13, 14.1, 14.3, 14.7, 14.13–14.17, 14.20	Post tax amnesty	19 N.J.R. 2255(b)		
18:7-3.18	Corporation business tax: recycling equipment credit	20 N.J.R. 48(b)		
18:8-4.5, -8	Post tax amnesty	19 N.J.R. 2255(b)		
18:9	Business Personal Property Tax	20 N.J.R. 511(a)		
18:9-8.5–8.7	Post tax amnesty	19 N.J.R. 2255(b)		
18:12–17	Local property taxation	20 N.J.R. 1066(a)		
18:18-8.11, 12.5, 12.7	Post tax amnesty	19 N.J.R. 2255(b)		
18:22-2.4, 8.4	Post tax amnesty	19 N.J.R. 2255(b)		
18:24	Sales and Use Tax	20 N.J.R. 512(a)		
18:26	Transfer inheritance tax and estate tax	20 N.J.R. 637(a)		
18:26-8.4, 9.8	Post tax amnesty	19 N.J.R. 2255(b)		
18:35	Gross Income Tax: Setoff of Individual Liability	20 N.J.R. 514(a)		
18:35-1.24	Gross income tax: investment fund distributions	20 N.J.R. 742(b)		
18:35-1.9, 1.18, 1.19, 1.20	Post tax amnesty	19 N.J.R. 2255(b)		
18:35-1.21, 1.22, 1.23	Gross Income Tax: employee defined; employer withholding; business expenses	20 N.J.R. 515(a)		
18:37-2.1, 2.2, -3, -4	Post tax amnesty	19 N.J.R. 2255(b)		
	Most recent update to Title 18: TRANSMITTAL 1988-2 (supplement March 21, 1988)			
TITLE 19—OTHER AGENCIES				
19:3, 4, 4A	Hackensack Meadowlands Development Commission rules	20 N.J.R. 743(a)	R.1988 d.281	20 N.J.R. 1467(a)
19:4-6.28	Rezoning in East Rutherford	19 N.J.R. 1975(a)		
19:8	Use and administration of Garden State Parkway	20 N.J.R. 890(a)		
19:9-1.6	Sleeping in parked vehicles	19 N.J.R. 1637(b)		
19:9 Exh. A	Prequalification of bidders for widening contracts	19 N.J.R. 2129(b)		
19:17	Appeal Board rules concerning majority representation fee in lieu of dues	20 N.J.R. 891(a)		
19:25-19.3	Personal financial disclosure: reporting of earned income	19 N.J.R. 1541(a)		
19:25-19.3	Reporting of earned income: withdrawal of proposal	20 N.J.R. 762(a)		
	Most recent update to Title 19: TRANSMITTAL 1988-1 (supplement April 18, 1988)			
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-2	Access to information maintained by casino licensees	20 N.J.R. 1068(a)		
19:41	Applications	20 N.J.R. 763(a)	R.1988 d.255	20 N.J.R. 1209(a)
19:41-9.9A, 9.11A	Junket enterprise and representative license fees	20 N.J.R. 381(a)	R.1988 d.200	20 N.J.R. 998(c)
19:42	Hearings	20 N.J.R. 764(a)	R.1988 d.256	20 N.J.R. 1209(b)
19:45-1.1, 1.10, 1.11, 1.12, 1.16, 1.17, 1.32, 1.33, 1.36, 1.37, 1.38, 1.42, 1.44	Slot machine bill changer system	20 N.J.R. 765(a)		
19:45-1.1, 1.10, 1.11, 1.12, 1.16, 1.17, 1.32, 1.33, 1.36, 1.37, 1.38, 1.42, 1.44	Slot machine bill changer system: 90-day implementation	Expires 7-10-88	———	20 N.J.R. 769(a)
19:45-1.2, 1.46	Reporting of complimentary items and services	19 N.J.R. 1975(b)	R.1988 d.209	20 N.J.R. 1102(a)
19:45-1.14, 1.36, 1.39, 1.40B, 1.45	Internal casino controls	20 N.J.R. 1069(a)		
19:45-1.25	Verification of travelers checks	20 N.J.R. 51(a)		
19:45-1.25	Verification of travelers checks: public hearing	20 N.J.R. 1071(a)		
19:45-1.33, 1.42, 1.43	Count times for cash and coin	19 N.J.R. 2265(a)		
19:45-1.34, 1.36, 1.37, 1.44	Use of slot tokens not redeemable for cash	20 N.J.R.516(a)	R.1988 d.224	20 N.J.R. 1099(c)
19:46	Gaming equipment	20 N.J.R. 638(a)	R.1988 d.232	20 N.J.R. 1209(c)
19:46-1.5, 1.25, 1.26, 1.33	Use of slot tokens not redeemable for cash	20 N.J.R. 516(a)	R.1988 d.224	20 N.J.R. 1099(c)
19:46-1.19	Dealing shoes	20 N.J.R. 1069(a)		
19:46-1.25, 1.26	Slot machine bill changer system	20 N.J.R. 765(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:46-1.25, 1.26	Slot machine bill changer system: 90-day implementation	Expires 7-10-88	———	20 N.J.R. 769(a)
19:46-1.29	Approval of slot machine modifications	20 N.J.R. 52(a)		
19:47	Rules of the games	20 N.J.R. 639(a)	R.1988 d.233	20 N.J.R. 1209(d)
19:47-1.11	Rules of the games: craps	19 N.J.R. 1542(a)		
19:47-5.3	Roulette and "no more bets" procedure	19 N.J.R. 1638(a)		
19:50	Casino hotel alcoholic beverage control	20 N.J.R. 770(a)	R.1988 d.257	20 N.J.R. 1210(a)
19:53	Equal employment opportunity and affirmative action	20 N.J.R. 640(a)	R.1988 d.234	20 N.J.R. 1214(a)
19:53-1.3, 1.13	Casino licensee's EEO/AA office: reproposal	20 N.J.R. 970(b)		
19:53-1.5	Pre-proposal: Affirmative action employment goals for handicapped or disabled persons	19 N.J.R. 1182(a)		

Most recent update to Title 19K: TRANSMITTAL 1988-2 (supplement April 18, 1988)