



NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 24 NUMBER 13
July 6, 1992 Indexed 24 N.J.R. 2315-2486
(Includes adopted rules filed through June 12, 1992)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JUNE 15, 1992
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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **August 5, 1992**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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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 Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, \$125 (\$215 by First Class Mail); back issues when available, \$15 each. Make checks payable to OAL Publications.

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

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(CITE 24 N.J.R. 2316)

NEW JERSEY REGISTER, MONDAY, JULY 6, 1992

EXECUTIVE ORDER

(a)

**OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 61(1992)**

**Creation of the Office on the Prevention of Violence
Against Women**

Issued: June 11, 1992.
Effective: June 11, 1992.
Expiration: Indefinite.

WHEREAS, the phenomenon of violence in society is of extreme concern to the people of this State; and

WHEREAS, women are the majority of victims of certain categories of physical and psychological violence, such as domestic violence, sexual assault, and sexual harassment; and

WHEREAS, New Jersey has been in the forefront of the legal and public policy response to violence against women, particularly by the State's adoption of a progressive domestic violence prevention law; and

WHEREAS, New Jersey seeks to continue improving its response to, and care of, victims of all crimes and especially victims of violence against women; and

WHEREAS, society is acknowledging through recent laws and a change of societal attitudes that such categories of violence against women are not merely acts between individuals but are manifestations of a socialization process which promotes violence against women; and

WHEREAS, society is increasingly aware of the wide extent of such acts of violence against women; and

WHEREAS, violence against women is a component of other major social problems, such as rising health care costs, law enforcement costs, homelessness, substance abuse, child abuse and neglect, and other concerns; and

WHEREAS, a key component to addressing the problem of violence against women is a greatly increased prevention effort, involving public education, training of professionals, programs for offenders and victims, and other activities;

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

1. There is hereby created an Office on the Prevention of Violence Against Women (hereinafter "Office") in the Division on Women of the Department of Community Affairs.

2. This Office shall function in collaboration with the other State agencies and affiliate groups which are dealing with issues of violence against women.

3. The existing Domestic Violence Prevention Program within the Division on women will continue to function as a component of the proposed Office.

4. The responsibilities and functions of the Office shall include, but not be limited to:

a. Research-based policy and program development leading to implementation of strategies to prevent violence against women and to explore violence prevention initiatives.

b. Development and implementation of training courses and public education initiatives, with particular focus on the socialization process which promotes violence against women.

c. Provision of staff and fiscal support to the statutorily established Advisory Council on Domestic Violence.

d. Reporting to the Governor on an ongoing basis with respect to issues, programs, and the setting of policy priorities regarding the prevention of violence against women.

5. The Office is authorized to call upon any department, office, division or agency of this State to supply it with data and any other information or assistance it deems necessary to discharge its duties under this Order. Each department, office, division or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate with the Office and furnish it with such assistance as is necessary to accomplish the purpose of this Order.

6. The Office is authorized to establish task forces or workgroups to address specific issues as they arise and develop policy recommendations pertaining to those issues.

7. This Order shall take effect immediately.

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Commercial Fertilizers and Soil Conditioners Plant Food Nutrient Values

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

Authorized By: State Board of Agriculture and Arthur R. Brown,
Jr., Secretary, Department of Agriculture.

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

Proposal Number: PRN 1992-294.

Submit comments by August 5, 1992 to:
Patrick J. Mullen, Deputy Director
Division of Regulatory Services
New Jersey Department of Agriculture
CN 330
Trenton, NJ 08625
Telephone: (609) 292-5575

The Agency proposal follows:

Summary

The purpose of this proposed amendment is to comply with the statutorily mandated annual up-date of the commercial values of primary plant nutrients. The current values have been reviewed and no change in the values is proposed at this time. However, the effective dates are being changed to reflect the annual update. The assessed penalties for deficient fertilizers are based on the values and charged to the manufacturer. The State Treasury will receive all unclaimed penalty fees.

Social Impact

All consumers of fertilizers have more monetary protection when deficient fertilizers are detected. Manufacturers exhibit more care in controlling their formulating processes to avoid a penalty.

Economic Impact

All consumers of fertilizer are equitably compensated for their losses because these values are accurately adjusted to current market prices.

Regulatory Flexibility Analysis

Both large and small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by the values of the fertilizers. However, differing standards are not deemed necessary because the change in the effective date is not burdensome and the values reflect the current market value of the nutrients. Furthermore, the nutrient values are used in setting the penalties of manufacturers for compensation to farmers, all of whom are considered small businesses under the Act, when they purchase products that do not meet the analysis as advertised. The rule in that way provides some measure of protection to small businesses.

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

2:69-1.11 Commercial values

(a) (No change.)

(b) These values shall be effective from [July 1, 1991] **September 8, 1992** through June 30, [1992]**1993**.

(b)

DIVISION OF REGULATORY SERVICES

Jersey Fresh Quality Grading Program Products and Manner of Use

Proposed Amendments: N.J.A.C. 2:71-2.2, 2.4, 2.5 and 2.6

Authorized By: State Board of Agriculture and Arthur R. Brown,
Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.

Proposal Number: PRN 1992-299.

Submit comments by August 5, 1992 to:
Patrick J. Mullen, Deputy Director
Division of Regulatory Services
New Jersey Department of Agriculture
CN 330
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments to the rules for the voluntary "Jersey Fresh Quality Grading Program" were developed to enhance the marketability of products bearing the "Jersey Fresh" logo by requiring that all products marked with the "logo" meet certain grade standards and to aid the packers of alfalfa sprouts, beet greens, broccoli rabe, bunched Italian sprouting broccoli, cantaloupes, cauliflower, celery root, horseradish roots, leeks, bibb lettuce, parsnips, fresh peas, cheese peppers, pumpkins, rhubarb, rutabagas, spinach (bunched), plum tomatoes, and shell eggs to market a uniformly recognized, high grade product. The newly added produce items were included at the request of growers; shell eggs were added at the request of a large egg producer. Uniform, high grade products have greater acceptance by the consumer and ultimately increase the demand for the superior quality of these New Jersey grown products. Two new "logos" were added in order to provide more flexibility in the marketing of containers to those participating in the program. In addition the packer's registration number is being deleted to ease in the marking of these containers.

Social Impact

The people affected by these amendments will be the packers using the logo and consumers. Products packed under the logo will enhance the promotion of uniformly packed high quality New Jersey farm products to the benefit of the packers and consumer. Packers will gain new markets for their products, while consumers will have more quality products available. The proposed amendment will provide for the ability of New Jersey shell egg producers to market their product under the "Jersey Fresh Quality Grading Program" logo.

Economic Impact

The economic impact on voluntary logo packers will be unchanged since this is a voluntary program and these rules do not impose any additional charges beyond the current \$30.00 license fee.

Regulatory Flexibility Statement

The proposed amendments primarily affect farmers, most of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, the amendments do not impose any reporting, recordkeeping, or other compliance requirements on farmers, unless they voluntarily elect to participate in the "Jersey Fresh Quality Grading Program." Should a farmer choose to participate, the cost of participating should be offset by prices received for the produce.

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

2:71-2.2 Use of [the] **"Jersey Fresh" as the logo for the "Jersey Fresh Quality Grading Program" and "Jersey Fresh Quality Premium Program" [Logos]** (referred to as the "logos") on containers of certain fresh fruits and vegetables **and shell eggs**

(a) The New Jersey Department of Agriculture approves the use

of Jersey Fresh in conjunction with the New Jersey map symbol under provisions of N.J.S.A. 4:10-5 as an official emblem for identifying New Jersey produced agricultural commodities.

(b) The configuration of the Jersey Fresh Quality Grading Program [Logo] Logos and the Jersey Fresh Quality Grading Program Premium Logo are as follows:

(Agency Note: The following logos are proposed for deletion):



(Agency note: The following logos are proposed as new):



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

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program and Premium Program

(a) Only the following products may be packed in the Quality Grading Program: Sweet anise (fennel), apples, alfalfa sprouts, asparagus, beets (bunched), beets (topped), beet greens, blueberries, broccoli greens, broccoli rabe (rapini), bunched Italian sprouting broccoli, cabbage (domestic, savoy and red), cabbage (Chinese), cantaloupes, cauliflower, celery root, collard greens, green corn, cubanelle peppers, cubanelle peppers (red), cucumbers, cucumbers (cukes), cucumbers (pickling type), cucumbers (slicing type), dandelion greens, eggplants, endive, escarole, herbs (fresh), horseradish roots, kale, kohlrabi, leeks, bibb lettuce, [bib] big Boston lettuce, iceberg lettuce, lettuce (green leaf and red leaf), mustard greens, nectarines, okra, common green onions, parsley, parsnips, peaches, fresh peas, cheese peppers, hot peppers (green or red), sweet peppers (green and red, bell type), sweet peppers (yellow, bell type), sweet potatoes, white potatoes, pumpkins, radishes (bunched), raspberries, rhubarb, romaine, rutabagas, shallots (topped), snap beans, spinach (bunched), spinach plants, strawberries, summer squash (yellow or green), fall and winter type squash (butternut, acorn and spaghetti), swiss chard, tomatoes (fresh market), cherry tomatoes, plum tomatoes, turnips (topped), turnip greens, [and] watermelons (sugar baby), and shell eggs.

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

2:71-2.5 Commodity Grades, packing requirements, packer identification and containers

(a) Each container bearing the "logo" shall have the name and address of the packer in letters not less than three-eighths inches in height. [Each container stamped or imprinted with the "logo" must be identified by the licensed packer's registration number, which also shall be no less than three-eighths inch in height. The registration number shall be printed or marked on the carton in close proximity to the "logo" or the name and address of the registrant.] All imprinted containers must also have "Produce of U.S.A. (NJ)"

imprinted no less than three-eighths inch in height. All containers, packages and packaging materials shall be new.

(b) Commodities shall be graded, packed, identified and contained as follows:

1. (No change.)

2. Alfalfa Sprouts shall consist of sprouts which are fresh, young and tender, clean and which are free from decay and not materially affected by overmaturity of leaf buds, discoloration, freezing, foreign material, disease, insects, mechanical or other means. All containers shall have a fairly tight pack. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight are provided. Not more than a total of five percent in any lot may fail to meet the required specifications, including not more than one-half on one percent for decay. For application of tolerances, see N.J.A.C. 2:71-2.6.

[2.]3. (No change in text.)

[3. Blueberries shall be U.S. No. 1 grade. Size shall meet the requirements of at least Large with a maximum of 129 berries per standard two gill cup. Individual cups shall be well filled.]

4.-5. (No change.)

6. Beet greens shall be U.S. No. 1 grade, consisting of either plants (with or without attached roots) or cut leaves. In the case of beet greens with roots attached, the maximum diameter of the root shall not be larger than five-eighths inch. The leaf blades shall not be larger than six and one-half (6-1/2) inches. The pack shall be for 12 or 24 bunches per container. All containers shall have at least a fairly tight back.

7. Blueberries shall be U.S. No. 1 grade. Size shall meet the requirements of at least Large with a maximum of 129 berries per standard two gill cup. Individual cups shall be well filled.

[6.]8. (No change in text.)

9. Broccoli rabe (rapini) shall consist of leaves and buds of similar varietal characteristics which are fresh, clean and which are free from decay and not materially affected by overmaturity of buds, discoloration of buds or leaves, freezing, foreign material, disease, insects, mechanical or other means. The pack shall be for 12 to 14 bunches per container. All containers shall have a tight pack. Tolerance for defects—In order to allow for variations incident to proper grading and handling, not more than a total of ten percent, by weight, for bunches or individual shoots when packed loose in any lot which fails to meet the required specifications, including not more than two percent for bunches or individual shoots when packed loose which are affected by decay. For application of tolerances, see N.J.A.C. 2:72-2.6.

10. Bunched Italian sprouting broccoli shall be U.S. Fancy grade. Each bunch shall be neatly and fairly evenly cut off at the base, and closely trimmed. All containers shall have a least a tight pack.

[7.]11. (No change in text.)

Recodify existing 8. and 9. as 12. and 13. (No change in text.)

14. Cantaloupes shall be U.S. No. 1 except for very good internal quality. Shall be fairly uniform in size. All container shall have a tight pack.

15. Cauliflower shall be U.S. No. 1 grade. All containers shall have at least a tight pack.

16. Celery root (celeriac) with tops or topped, shall consist of root crowns of similar varietal characteristics. If packed with tops, tops shall not be wilted and be free from decay and not materially affected by discoloration, disease, insects and other injury. If topped, tops shall be cut so that they extend no more than one-half inch beyond the point of attachment. Roots or root crown shall be free from decay and not materially affected by discoloration, growth cracks, dirt, freezing, disease, insects, mechanical or other injury. Each root crown shall have a minimum of two inches in diameter. All containers shall have at least a fairly tight pack. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight are provided. Not more than a total of 10 percent in any lot may fail to meet the required specifications, including not more than five percent for defects seriously affecting the lot including not more than one percent for decay. In order to allow for variations incident to proper sizing not more than a total of five percent by weight of root crowns in any lot may be undersize. For application of tolerances, see N.J.A.C. 2:71-2.6.

Recodify existing 10.-22. as 17.-29. (No change in text.)

30. Horseradish roots shall be U.S. No. 1 grade. All containers shall have a tight pack.

Recodify existing 23.-27. as 31.-35. (No change in text.)

36. Bibb lettuce shall be U.S. No. 1 grade. The heads shall be fairly uniform in size. The pack shall be of 24 heads per container. All containers shall have a tight pack.

Recodify existing 28.-34. as 37.-43. (No change in text.)

44. Parsnips shall be U.S. No. 1 grade. Minimum diameter of each root shall not be less than one and one-half inches. All containers shall have at least a fairly tight pack.

Recodify existing 35. as 45. (No change in text.)

46. Fresh peas shall be U.S. No. 1 grade. All containers shall be at least well filled.

47. Cheese peppers (green or red) shall be U.S. No. 1 grade as specified by the U.S. Standard for sweet peppers, for defects and tolerances. Minimum diameter shall be not less than two and one-half inches. Minimum length shall be not less than two inches. In lots designated as red shall have 100 percent of the peppers showing full red color. All containers shall be at least fairly well filled.

[36.]48. Hot peppers (green or red) shall consist of peppers of similar varietal characteristics which are firm; long hot peppers may have curved shape; all other varieties must be fairly well shaped for the variety and free from sunscald and decay, and not materially affected by freezing injury, hail, scars, sunburn, discoloration, disease, insects, mechanical or other injury. In lots designated as green shall be full green color for the variety[.]; in lots designated as red[.], 100 percent of the peppers shall show full red color. In order to allow for variations incident to proper grading and handling, the following tolerance, by count, are provided. Ten percent in any lot which fails to meet the requirements, but not more than one-half of this amount, or five percent, shall be allowed for peppers which are seriously affected, including therein not more than two percent for peppers affected by decay. All containers shall be fairly well filled. For application of tolerance, see N.J.A.C. 2:71-2.6.

Recodify existing 37.-38. as 49.-50. (No change in text.)

[39.]51. Sweet [Potatoes] potatoes shall be U.S. [Extra] No. 1 grade. Maximum diameter shall not be more than three and one-quarter half inches. Maximum weight shall not be more than [18] 20 ounces. Length shall not be less than three or more than nine inches. Minimum diameter shall not be less than one and three-quarter inches. All containers shall be at least fairly well filled.

[40.]52. (No change in text.)

53. Pumpkins shall be U.S. No. 1 grade, and shall be fairly uniform in size. All containers shall have at least a tight pack.

Recodify existing 41.-42. as 54.-55. (No change in text.)

56. Rhubarb shall be U.S. Fancy grade. The diameter of each stalk is not less than one inch, and the length not less than 10 inches. All containers shall be at least tight.

[43.]57. (No change in text.)

58. Rutabagas shall be U.S. No. 1 grade with a minimum diameter of one and three-quarter inches. All containers, except for sacks, shall be at least fairly well filled.

Recodify existing 44.-45. as 59.-60. (No change in text.)

61. Spinach (bunched) shall be U.S. No. 1 grade. Pack shall be for 24 bunches per container. All containers shall have at least a fairly tight pack.

[46.]62. (No change in text.)

[47.]63. Squash, Fall and Winter (acorn, butternut and spaghetti) shall be U.S. No. 1 grade and shall meet the following size specifications: acorn shall be a minimum of one pound and a maximum of three pounds in weight. Butternut shall be minimum of one and one-half pounds and a maximum of four pounds in weight. Spaghetti must have a creamy yellow color, pack shall be for 12 to 16 squash per container[, with no more than one under or one over the specified count, but the average must meet the count specified for the pack]. All containers shall be well filled.

Recodify existing 48.-50. as 64.-66. (No change in text.)

[51.]67. Tomatoes (fresh market) shall be U.S. No. 1 grade "Mixed Colors." Containers shall be marked with either "Maximum Large" or "Extra Large" or "Large" in accordance with the following

size specifications: "Maximum Large" shall have a three and fifteen thirty-second inch minimum diameter; "Extra Large" shall have a two and twenty-eight thirty-second inch minimum diameter and three and fifteen thirty-second inch maximum diameter; "Large" shall have a two and seventeen thirty-second inch minimum diameter and two and twenty-eight thirty-second inch maximum diameter. Containers shall also be marked as follows, in accordance with the facts, "Large to Extra Large" or "Extra Large and Larger". Containers shall be at least fairly well filled. Cherry tomatoes shall be U.S. No. 1 grade, color turning to full [red] color. All [Container] containers shall be at least [fairly] well filled.

68. Plum tomatoes shall be U.S. No. 1 grade. Minimum diameter shall not be less than one and one-quarter inches. Color turning to full color. All containers shall be at least fairly well filled.

Recodify existing 52.-54. as 69.-71. (No change in text.)

72. Shell eggs shall be consumer grade A and shall consist of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than one percent may be B quality due to air cells over three-eighths (3/8) inch, blood spots (aggregating not more than one-eighths (1/8) inch in diameter), or serious yolk defects. Not more than five percent checks are permitted and not more than 0.50 percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.30 percent. Other types of loss are not permitted. Only weight classes listed below may be packed with the Jersey Fresh Quality logo:

- i. Extra large—minimum net weight per dozen 27 ounces, minimum net weight for individual eggs at rate per dozen 26 ounces;
- ii. Large—minimum net weight per dozen 24 ounces, minimum net weight for individual eggs at rate per dozen 23 ounces; and
- iii. Medium—minimum net weight per dozen 21 ounces, minimum net weight for individual eggs at rate per dozen 20 ounces.

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Application of tolerances" means, in the case of alfalfa sprouts, broccoli rabe (Rapini), cabbage (Chinese), celery root, kohlrabi, hot peppers (green and red), shallots (topped), swiss chard, leeks and herbs (fresh), that the contents of individual packages in the lot are subject to the following limitations:

1.-2. (No change.)

"Closely trimmed" means, in the case of Italian sprouting broccoli (bunched), when not more than a total of five percent by weight, of the bunches, consists of attached stems and leaves longer than the average length of the bunch, regardless of point attachment or loose leaves and stems.

"Fairly tight" means, in the case of alfalfa sprouts, eggplants, beets (bunched), beet greens, broccoli greens, collard greens, celery root, dandelion greens, endives, escarole, herbs, kale, kohlrabi, lettuce (green and red leaf), mustard greens, common green onions, parsnips, radishes (bunched), spinach (bunched), spinach plants, swiss chard and turnip greens, that the package is sufficiently filled to prevent any appreciable movement of the product and that they are in contact with the lid or cover. In the case of apples, that the apples are of the proper size for molds or cell compartments in which they are packed, and that the molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The pad over the top layer of apples shall be not more than three-quarter inch below the top edge of the carton. In the case of nectarines and peaches packed in mold or cell compartments, that they are of the proper size for the mold or cell compartments in which they are packed and that the molds or cells are filled in such a way that there is no more than slight movement within the mold or cells and that the pad or tray over the top layer must be in contact with the lid.

"Fairly uniform in size" means, in the case of bibb lettuce, big Boston lettuce and iceberg lettuce, that not more than 10 percent of the heads in a container may vary appreciably from the standard size head for the count pack. In the case of cantaloups and

pumpkins, one size above or one size below the size of most of the cantaloups or pumpkins in the container.

"Fairly well filled" means that in the case of beets (topped), cucumbers, okra, **cheese peppers (green or red)**, cubanelle peppers (green or red), **hot peppers (green or red)**, sweet peppers (green, red or yellow, bell type), sweet potatoes, squash (summer), shallots (topped), tomatoes (fresh market), [and] turnips (topped), and **rutabagas**, except in sacks, are not in contact with the lid or cover, but not more than one-half inch below the lid or cover. In the case of **nectarines and peaches**, the container is level full and there is practically no movement of the fruit when the container is closed. In the case of nectarines, the contents of the container may be slightly below the top edge but not more than one-half inch.

"Over maturity" means, in the case of alfalfa sprouts, that leaf buds (head) are on the verge of opening. In the case of broccoli rabe (rapini), bunched or individual shoots when packed loose would be materially affected if it has more than two open buds or most buds are on the verge of opening.

"Tight" means, in the case of bibb lettuce, iceberg lettuce and Big Boston lettuce, that the layers are completely and tightly filled without injury to the heads. In the case of green corn, when packed in crates, the package is filled sufficiently to prevent any movement of the product within the package and it has the proper bulge without causing bruised kernels. In the case of asparagus (loose), **Italian sprouting broccoli (bunched)**, **broccoli rabe (rapini)**, cabbage (domestic, savoy, red and chinese), **cantaloups**, **cauliflower**, fennel, **horseradish roots**, leeks, parsley, **pumpkins**, [and] romaine and **rhubarb**, that the packages are sufficiently well filled so as to prevent the product from moving in the container but not overly filled so that injury to the product results.

"Well filled" means, in the case of blueberries, cherry tomatoes, raspberries and strawberries, that the fruit be one-quarter to one-half inch above the rim of the cup. In the case of **peas**, snap beans and fall and winter squash (acorn, butternut and spaghetti), they shall be in contact with the cover.

"Well trimmed" means, in the case of asparagus, that at least two-thirds of the butt of the stalk is smoothly trimmed in a plane approximately parallel to the bottom of the container and that the butt is not stringy or frayed. In the case of endive and escarole, that the roots are neatly cut near the point of attachment of the outer leaf stems. In the case of romaine, that the stem is trimmed off close to the point of attachment of the outer leaves. In the case of cabbage, that the head shall not have more than four wrapper leaves. In the case of Sweet Anise (Fennel) that not more than one coarse outer branch is left on each side of the bulb to protect the tender inside portion, and the portion of the root remaining is not more than one-half inch in length. Tops may be either full length or cut back to not less than [ten] 10 inches except that not more than five of the outer branches may be cut back to less than 10 inches if necessary to facilitate proper packing, but not more than three of these may be on the same side of the bulb. **In the case of shallots, that the tops are no longer than one-quarter inch.**

(a)

DIVISION OF REGULATORY SERVICES

Grades and Standards

Fruit and Vegetable Fees and Charges

Proposed Amendments: N.J.A.C. 2:71-2.28 and 2.29

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary Department of Agriculture.

Authority: N.J.S.A. 4:10-6.

Proposal Number: PRN 1992-295.

Submit comments by August 5, 1992 to:

Patrick J. Mullen, Deputy Director

Division of Regulatory Services

New Jersey Department of Agriculture

CN 330

Trenton, NJ 08625

Telephone: (609) 292-5575

The agency proposal follows:

Summary

The proposed amendments increase some of the fees charged for the inspection and grading of farm products in accordance with standards established and promulgated by the Department of Agriculture. The fees are increased as follows: the five-day week inspections for not more than one commodity from \$380.00 to \$400.00; the per hour overtime from \$14.25 to \$15.00, for the same; the five-day week inspections for more than one commodity from \$760.00 to \$800.00; and the per hour overtime from \$28.50 to \$30.00 for the same.

Excess charges are altered as follows: the excess fruit and vegetable per package charge for seven-day week, one commodity, is increased from 3,170 to 3,334 packages; for seven-day week, more than one commodity, from 6,335 to 6,667 packages.

Inspection and grading services are provided to applicants pursuant to their request. Recipients of the services voluntarily agree to pay the fees for such charges prior to requesting the Department of Agriculture's inspection and classification.

Social Impact

The people most directly affected by these amendments will be the users of the voluntary inspection and grading services. These services help to maintain and promote agricultural commodities of the highest quality for the consumer. As a result of the grading service, perishable fresh fruits and vegetables, of uniform grade and standards, are more readily available for the consumer.

Economic Impact

Increases in salaries and overhead costs in the last several years necessitate the increased fees. The Department of Agriculture must maintain the inspection program on a "break-even basis" if it is to continue to offer this program to the users.

There will be a slight adverse economic impact on the users of these voluntary inspection and grading services. The increases are minimal in relation to the economic value of the graded product at present. These charges have not been increased since June 1990.

Regulatory Flexibility Analysis

The great majority of the participants in the voluntary inspection and grading program of the New Jersey Department of Agriculture are small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For such participants, the proposed amendments increase the program's produce inspection fees. Given the reasons for the fee increases, as set forth in the Economic Impact statement above, and the preponderance of small business participants in the program, no lesser fees or exemptions can be provided small businesses and still maintain the program's viability and efficiency.

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

2:71-2.28 Charges for inspection or grading and certification services; written agreements for single commodity inspection

(a) Charges for inspection or grading and certification services of five or more consecutive days duration, performed pursuant to a written agreement between the New Jersey Department of Agricul-

ture and the requestor of the services, shall be made according to the following schedule:

1. Basic schedule for all products:
 - i. A charge of ~~[\$380.00]~~**\$400.00** per five day week (Monday through Friday) or 40 hours or less for each inspector;
 - ii. A charge of ~~[\$14.25]~~ **\$15.00** per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;
 - iii. An addition charge of \$14.75 per hour, or portion thereof, for the actual hours worked by each inspector on legal State holidays occurring Monday through Friday;
 - iv. A charge of \$14.25 per hour, or portion thereof, for each inspector working on Saturday and/or Sunday. There will be a four hour minimum charge for each inspector working on Saturday and/or Sunday;
 - iii. There will be at least a four hour minimum charge of **\$60.00** assessed for each inspector assigned work on Saturday and/or Sunday; and a charge of **\$15.00** per hour, or portion thereof, for the actual hours worked by each inspector on Saturday and/or Sunday in excess of four hours.
 - iv. There will be at least a four hour minimum charge of **\$60.00** assessed for each inspector assigned work on legal State holidays occurring Monday through Friday; and a charge of **\$15.00** per hour, or portion thereof, for the actual hours worked by each inspector on legal State holidays occurring Monday through Friday in excess of four hours; and
 - v. (No change.)
2. Charges for inspection or grading and certification of fruit and vegetables other than potatoes for fresh market:
 - i. A charge of \$0.06 will be made for all packages (other than potatoes) inspected or graded and certified in excess of [3,170] **3,334** packages during the seven day week (Saturday through Friday).
 3. (No change.)

2:71-2:29 Written agreements for multiple commodity inspection

(a) Charges for written agreements shall be made according to the following schedule:

- i. A charge of ~~[\$760.00]~~ **\$800.00** per five day week (Monday through Friday) of 40 hours or less for each inspector for the inspection and/or grading of more than one commodity.
- ii. A charge of ~~[\$28.50]~~ **\$30.00** per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;
- iii. There will be at least a four hour minimum charge of ~~[\$114.00]~~ **\$120.00** assessed for each inspector assigned work on Saturday and/or Sunday;
- iv. A charge of ~~[\$28.50]~~ **\$30.00** per hour, or portion thereof, for the hours worked by each inspector on legal State holidays occurring Monday through Friday;
- v. There will be at least a four hour minimum charge of ~~[\$114.00]~~ **\$120.00** assessed for each inspector assigned work on legal State holidays occurring Monday through Friday; and
- vi. A charge of \$0.06 will be made for all packages (other than potatoes) inspected or graded and certified in excess of [6,335] **6,667** packages during the seven day week (Saturday through Friday).

COMMUNITY AFFAIRS

(a)

OFFICE OF THE COMMISSIONER

Department Contracts

Proposed Readoption with Amendment: N.J.A.C. 5:4

Authorized By: Melvin R. Primas, Jr., Commissioner,
Department of Community Affairs.

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

Proposal Number: PRN 1992-287.

Submit written comments by August 5, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX (609) 633-6729

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules entitled "Rules of Administration," N.J.A.C. 5:4, are scheduled to expire on October 5, 1992. The Department has reviewed these rules and finds that they continued to be necessary in order to properly regulate the Department's contracting process. The chapter is, however, to be re-entitled "Department Contracts," since that is a more specific description of the rules that it contains.

N.J.A.C. 5:4 currently contains one subchapter, which concerns debarment and suspension from contracting. It continues to be necessary in order to keep people who have demonstrated their unsuitability, from the standpoint of the public interest, from receiving benefits through Department contracts.

Social Impact

Failure to readopt this chapter would make it possible for persons with a history of offenses, or of failure or inadequacy of performance with regard to previous contracts, to contract with the Department. This would be detrimental to the integrity of the contracting process and to the public interest.

Economic Impact

Failure to readopt this chapter might make it possible for money to be loaned or granted to persons who would have been disbarred or suspended from contracting had the chapter continued in effect, thereby risking loss of public funds.

Regulatory Flexibility Analysis

Any person contracting with the Department is subject to the requirements of the rules in this chapter, which concerns debarment and suspension from contracting, and includes provisions for appeal or contest of the debarment or suspension. This chapter requires regulates to act in accordance with specified laws, contract terms or any other factor affecting responsibility as a DCA contractor. No costs can be specifically attributed to the requirements of this chapter. While many of the Department's contractors may be considered small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the requirements of this chapter, are in no way affected by business size.

Unsuitable persons must be kept out of the Department's contracting process, regardless of whether or not they might qualify as "small businesses" under the New Jersey Regulatory Flexibility Act. No special provision for "small businesses" is therefore appropriate in this context.

Full text of the proposed readoption can be found at N.J.A.C. 5:4.

Full text of the proposed amendment follows (addition indicated in boldface thus; deletion indicated in brackets [thus]):

CHAPTER 4

[RULES OF ADMINISTRATION] DEPARTMENT CONTRACTS

5:4-1 and 2 (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Educational Improvement Plans in Special Needs Districts

Proposed New Rules: N.J.A.C. 6:8-9

Authorized By: State Board of Education, John Ellis, Secretary,
State Board of Education and Commissioner, Department of
Education.

Authority: N.J.S.A. 18A:7D-3, 27, 28, 32 and 35.

Proposal Number: PRN 1992-288.

A public testimony session will be held for the purpose of receiving public comment on this proposal on:

Wednesday, July 15, 1992 from 4:00 P.M. to 6:00 P.M.
State Board Conference Room
Department of Education
225 West State Street
Trenton, New Jersey

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, July 10, 1992.

Submit written comments by August 5, 1992 to:

Irene Nigro, Rules Analyst
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The Quality Education Act of 1990 (QEA), P.L. 1990, c.52, with its subsequent amendments, P.L. 1991, c.62, provides increased funding for education to poorer urban districts in New Jersey. Based on the definition of special needs districts in the law, 30 districts have been designated as special needs districts. These 30 districts receive an additional five percent of foundation aid as a result of this designation. The formula in the law was designed so that by the 1995-96 school year, the per pupil expenditures in the poorer urban districts will be equalized with those in the wealthy suburban districts.

At the same time that the law increases fiscal resources to the poorer urban districts, it also requires increased accountability for the use of the funds by the special needs districts. The educational improvement plans required by the law are the mechanisms for that increased accountability. The QEA required the Commissioner to appoint an external review team to examine all aspects of the district's operations and to make recommendations for improvement. The educational improvement plans in the special needs districts respond to recommendations made by the external review teams which visited special needs districts in fall 1990 as required by the law.

The new rules proposed here are intended to strengthen the educational improvement plans to ensure district and school accountability and to encourage significant school reform in the special needs districts.

A review of the new rules follows:

N.J.A.C. 6:8-9.1 District educational improvement plans

This section specifies requirements for district educational improvement plans (EIPs). EIPs are developed using a collaborative process and are based on an analysis of needs at the district and school levels, including the results of external review team visits. They are designed to improve educational outcomes for all students. Districts must allocate adequate funds to their EIPs to implement demonstrably effective programs. District EIPs are submitted annually for approval by the Commissioner.

N.J.A.C. 6:8-9.2 School educational improvement plans

Beginning with the 1993-94 school year, each school in a special needs district must develop an educational improvement plan. The school planning team coordinates the development, implementation and evaluation of school plans. The planning team must consist of a majority of teachers and at least 25 percent parents. Each district must develop a process to review and approve school educational improvement plans.

N.J.A.C. 6:8-9.3 District and school educational improvement plan development

Requirements for the development of school and district EIPs include the identification of specific student outcome goals, indicators and measurable objectives; the development of school-level data bases for analyzing needs and evaluation success; and the selection of demonstrably effective improvement strategies and programs.

N.J.A.C. 6:8-9.4 Assistance by the Division of Urban Education

This section outlines the assistance provided to the special needs districts by the Division of Urban Education. This assistance includes the identification of exemplary programs, training on school-based planning and linking schools to resources.

N.J.A.C. 6:8-9.5 Verification and evaluation of educational improvement plans in the special needs districts

This section defines the responsibility of the Division of Urban Education to verify the implementation of EIPs, and specifies informal monthly visits and annual verification visits to ensure that the district is successfully implementing each objective in the EIP. EIPs can be amended upon approval of the district board of education and the Department. Failure to satisfactorily implement the EIP can result in appropriate sanctions, including, but not limited to, withholding State aid.

The rules also require that the district develop and implement a process to verify the progress of each school in implementing the EIP. This process is reviewed by the Division of Urban Education during the verification visits.

An annual evaluation report is required of each district to communicate district and school progress in meeting the student outcomes targeted in the EIPs.

Finally, this section requires the Department of Education to collect data which is necessary for the creation of comprehensive school-level profiles of each school in the special needs districts.

N.J.A.C. 6:8-9.6 Waivers to rules

This section specifies conditions under which the State Board of Education may approve waivers to its rules, on a case by case basis, when rules interfere with the ability of the district to implement programs to improve student outcomes.

Social Impact

The new rules proposed here directly affect the nearly 300,000 students in the approximately 450 schools in the 30 special needs districts of New Jersey. They regulate the development of educational improvement plans to improve educational outcomes for all students in the special needs districts.

In a broader sense, however, the rules affect all New Jersey citizens because the improvement of student outcomes in the special needs districts is in everybody's best interest. The EIPs are mechanisms for district and school accountability. They direct the educational reform efforts in the schools and districts to ensure that the funds provided by the Quality Education Act will result in improved student outcomes.

Economic Impact

As a result of the new rules, districts and schools will engage in more comprehensive and long-range planning aimed at the improvement of educational outcomes for all students in the special needs districts. Such improved planning will result in more cost-effective decision-making in the districts and schools.

Meaningful, collaborative planning, however, requires that funds be allocated to support these efforts. School-based planning requires that a significant amount of time be set aside on a regular basis for parents, community members, teachers, administrators, other staff, and sometimes students to meet. Expenditures associated with this planning time can include substitute pay, stipends, child care costs, and consultant costs. In addition, school planning teams need significant training in order to operate effectively. Staff from the Division of Urban Education will be providing training and technical assistance to support planning efforts at the school and district levels.

Since the EIPs are designed to improve students' outcomes, districts, schools and the Department of Education need more sophisticated technology which will enable the tracking of progress. Many schools in the special needs districts do not now have in place the technology needed to effectively analyze student needs and follow student progress in meeting a variety of indicators. Therefore, districts may need to allocate funds to improve their systems for information management.

The development of comprehensive school profiles by the Department of Education will require that the technological capabilities of the De-

partment be expanded. In the long run, the costs for upgrading Department technology will result in a significantly more efficient operation.

Regulatory Flexibility Statement

The adoption of these new rules will impose no reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-1-16, et seq. All requirements of these new rules affect only the 30 special needs public school districts in New Jersey.

Full text of the proposed new rules follows:

**SUBCHAPTER 9. EDUCATIONAL IMPROVEMENT PLANS
IN SPECIAL NEEDS DISTRICTS**

6:8-9.1 District educational improvement plans

(a) Each board of education in a special needs district shall submit annually as part of the annual school district budget an educational improvement plan for the district. The plan shall be:

1. Based on student outcome goals consistent with State educational goals pursuant to N.J.A.C. 6:8;
2. Responsive to recommendations made by the Department of Education, analysis of student performance, and other evaluation reports and studies of district, school and student needs, including recommendations of external review teams;
3. Consistent with the elements and indicators required for district certification through the monitoring process pursuant to N.J.A.C. 6:8-4;
4. Designed to support comprehensive district-level planning to improve student outcomes through improvement of management, governance, finance and facilities;
5. Designed to support and coordinate school-level planning and other reform efforts;
6. Developed collaboratively by staff, parents, community members, and students, where appropriate;
7. Adequately funded; and
8. Formally adopted by the district board of education.

(b) The chief school administrator shall be responsible for developing, implementing and evaluating the district educational improvement plan.

(c) The plan shall be reviewed by the director of the urban assistance center and the county superintendent and approved by the Commissioner based on the requirements specified in (a) above and N.J.A.C. 6:8-9.3.

(d) In the case of State-operated school districts, the corrective action plan, required pursuant to N.J.A.C. 6:8-5.2, shall substitute for the district educational improvement plan.

(e) The Commissioner shall review each line item in the district budget to determine if the expenditure is appropriate. The Commissioner shall reallocate funds from any line item to ensure that demonstrably effective programs which will improve specific educational outcomes for students are implemented in the district.

(f) For special needs districts, the district educational improvement plan shall substitute for required district-level planning objectives required pursuant to N.J.A.C. 6:8-4.2.

6:8-9.2 School educational improvement plans

(a) Beginning with the 1993-94 school year, an educational improvement plan shall be developed for each school in a special needs district.

(b) Each school shall establish and maintain a planning team to coordinate the development, implementation and evaluation of the plan.

1. The district shall ensure that time and resources are allocated to support planning team activities.
2. Membership on the planning team shall include, but not be limited to, the principal, teachers and parents. A majority of the planning team shall be composed of classroom teachers and 25 percent of the team shall be composed of parents.
3. The board of education shall establish fair and reasonable policies and procedures by which teachers shall select their representatives and parents shall select their representatives.

(c) School educational improvement plans shall be approved at the district level before the beginning of the school year.

(d) Beginning with the 1994-95 school year, the district shall submit for Department approval, a review and approval process, consistent with N.J.A.C. 6:8-9.3 and with other State-mandated local planning requirements as per N.J.A.C. 6:8.

(e) The Division of Urban Education shall conduct an on-site review of selected school plans each year.

(f) For schools where students are not meeting minimum State requirements on student performance as per N.J.A.C. 6:8, objectives in the areas of deficiency shall be integrated into the school educational improvement plan.

6:8-9.3 District and school educational improvement plan development

(a) District and school educational improvement plans shall be developed using a process which includes the following components:

1. Involvement of broad-based representation from different parts of the educational community, including administrators, supervisors, teachers, parents, community members, and students, where appropriate, in the development and implementation of the plan;
2. Input from parents and community members at a public meeting;
3. Analysis of student performance at the district and school levels;
4. Identification of specific student outcomes goals, indicators for the outcomes, and measurable objectives based on these indicators;
5. Development of a school-level data base which allows analysis of needs and evaluation of success of all students in reaching targeted student outcomes;
6. Selection of demonstrably effective improvement strategies and programs which could reasonably be expected to result in improvements in student learning based on research results. Such demonstrably effective strategies and programs include, but are not limited to, the following areas:
 - i. Early childhood;
 - ii. Instructional uses of technology;
 - iii. Drop-out prevention;
 - iv. School-based management;
 - v. Staff development;
 - vi. Enriched curricula;
 - vii. Increased instructional time;
 - viii. Interagency collaboration; and
 - ix. Student/family support services; and
7. Specification of activities, needed resources, staff responsibility, timelines, costs, and evaluation strategies.

6:8-9.4 Assistance by the Division of Urban Education

(a) Staff from the Division of Urban Education shall assist district and school staff in developing, implementing and evaluating the district and school board educational improvement plans by:

1. Providing technical assistance to school planning teams, task forces, and district facilitators;
2. Identifying exemplary programs and practices;
3. Providing training on school-based planning to district and school staff and parents; and
4. Linking districts and schools to resources.

6:8-9.5 Verification and evaluation of educational improvement plans in the special needs districts

(a) The district educational improvement plan shall be implemented as approved. The educational improvement plan can be formally amended only upon approval of the district board of education and the Department. The district, with the approval of the district board of education, requests substantive amendments to the plan, such as changes in response to budget adjustments, by writing to the director of the urban assistance center and the county superintendent. The Assistant Commissioners of the Divisions of County and Regional Services and Urban Education shall approve the amendments prior to their implementation.

(b) Staff from the Division of Urban Education are responsible for verifying the implementation of district educational improvement plans as follows:

1. Each special needs district shall be visited monthly by a Division liaison to assess progress and identify needs in implementing the

district educational improvement plan. Each visit shall be documented by a written progress report completed by the liaison and sent to the district, chief school administrator and the county superintendent.

2. An annual verification visit shall be conducted in each special needs district. Within two weeks of completion of the visit, a findings letter shall be sent by the director of the urban assistance center to the chief school administrator. This letter shall analyze the extent to which the district is successfully implementing each objective in the district educational improvement plan and shall include commendations, and recommendations which must be acted upon within a designated time frame.

3. A special needs district which fails to satisfactorily implement the district educational improvement plan shall be subject to appropriate sanctions, including, but not limited to, the withholding of State aid.

(c) The district shall develop and implement a process to verify the progress of each school educational improvement plan, beginning with the 1993-94 school year. The verification process shall include the use of the school planning team in tracking and reporting progress at the school to the chief school administrator. During the verification visits for the district educational improvement plans, the Division of Urban Education shall review the process and shall visit schools to ensure that the process is being implemented.

(d) Each district and each school shall communicate with the parents and community on a quarterly basis to report on the implementation and evaluation of the educational improvement plan.

(e) The district shall submit to the director of the urban assistance center on August 15 of each year an evaluation report which:

1. Assesses district and school progress in meeting the student outcomes targeted in the educational improvement plan;
2. Identifies specific accomplishments; and
3. Addresses progress in implementing recommendations from the external review team, where appropriate.

(f) The evaluation report shall be distributed to parents, staff and communities in September of each year.

(g) The Department shall collect annually the data which is necessary to create comprehensive school-level profiles of each school in the special needs districts. These school profiles shall include data on:

1. Student performance, including assessed knowledge, student attainment and participation;
2. Student population characteristics;
3. Programs and services; and
4. Staff characteristics.

6:8-9.6 Waivers to rules

(a) Under no circumstances will waiver be allowed of this title or any of its subchapters in their entirety. The Commissioner may, however, on a case by case basis, recommend the approval of waivers of specific rules contained in Title 6, Education to the State Board of Education, if the application of those rules interferes with the ability of a special needs district to implement demonstrably effective programs to improve educational outcomes, as specified in the educational improvement plan.

1. The district may request a waiver by submitting a written request signed by the chief school administrator and approved by the district board of education. Such requests shall include:

- i. Conditions or reasons for the waiver of the specific rule(s);
- ii. Duration of the waiver; and
- iii. Supporting documentation, including, where appropriate, notice to affected parties.

2. Upon recommendation from the Commissioner, the State Board of Education may act to relax or waive, with or without conditions, such rules in the specific circumstance presented, if the State Board is satisfied that:

- i. The spirit and intent of Title 18A and applicable Federal laws and regulations are served by the granting of such waiver;
- ii. The provision of a thorough and efficient education to the pupils in the district is not compromised as a result of the waiver; and

iii. There will be no risk to pupil welfare and safety by granting such waiver.

3. Waivers shall not be granted for a duration of more than three years.

(a)

STATE BOARD OF EDUCATION

Notice of Administrative Correction

Standards for Buses Used for Pupil Transportation Color

Reproposed New Rule: N.J.A.C. 6:21-6A.6

Take notice that the Department of Education has discovered an error in the text of repoposed new rule N.J.A.C. 6:21-6A.6 as published in the June 15, 1992 issue of the New Jersey Register at 24 N.J.R. 2109(a), 2112. The last sentence of the rule as published appears as, "The grille shall be chrome or National School Bus Yellow." However, as explained in the Summary of the repoposal, and as appearing in the original notice of proposal filed with the Office of Administrative Law, PRN 1992-250, that sentence should have appeared as, "The grille shall be chrome, silver, gray, or National School Bus Yellow." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected repoposed new rule follows:

6:21-6A.6 Color

The chassis, including front bumper, shall be black. The cowl, fenders and hood shall be National School Bus Yellow. The hood may be painted non-reflective National School Bus Yellow. Wheels and rims shall be black, gray, white, or silver. The grille shall be chrome, silver, gray, or National School Bus Yellow.

(b)

STATE BOARD OF EDUCATION

Nonpublic Nursing Services Code

Proposed New Rules: N.J.A.C. 6:29-8

Authorized By: State Board of Education, John Ellis, Secretary,
State Board of Education and Commissioner, Department of
Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:40-23 et
seq., N.J.S.A. 26:1A-7 and 26:1A-15.

Proposal Number: PRN 1992-289.

A public testimony session will be held for the purpose of receiving public comment on this proposal on:

Wednesday, July 15, 1992 from 4:00 P.M. to 6:00 P.M.
State Board Conference Room
Department of Education
225 West State Street
Trenton, New Jersey

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, July 10, 1992.

Submit written comments by August 5, 1992 to:

Irene Nigro, Rules Analyst
NJ Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

On July 26, 1991, the New Jersey State Legislature determined that the welfare of the State requires that all school-aged children be assured equal access to appropriate nursing services. To achieve this objective, P.L. 1991, c.226 (N.J.S.A. 18A:40-23 et seq.) was signed into law. This law requires that basic nursing services be provided for children in nonpublic schools. Current State Board of Education rules do not include provisions for providing nonpublic school pupils with access to nursing services. The proposed new rules will provide Statewide standards for district boards of education to provide nursing services to nonpublic school students.

A review of each of the sections of N.J.A.C. 6:29-8 follows:

N.J.A.C. 6:29-8.1 sets forth the purpose of the subchapter. It is the intent of these rules to establish Statewide standards for district boards of education to provide required nursing services, and additional medical services to nonpublic school pupils, in accordance with N.J.S.A. 18A:40-23 et seq.

N.J.A.C. 6:29-8.2 requires district boards of education to adopt policies and procedures for providing nursing services to nonpublic school pupils. These nursing services include: assistance with medical examinations; conducting screening of hearing examinations; maintenance of student health records; conducting scoliosis examinations of pupils between the ages of 10 and 18; and extending the emergency care provided to public school pupils to those pupils who are enrolled full-time in the nonpublic school who are injured or become ill at school, or during participation on a school team or squad pursuant to N.J.A.C. 6:29-1.3(a)1. This section further requires that such nursing services be provided by a professional registered nurse licensed in the State of New Jersey. The authorizing legislation requires equal access to appropriate health care services for nonpublic school students. Within the public schools, the school nurse may also provide classroom instruction which requires the nurse to be certified. Such instructional services are prohibited by N.J.S.A. 18A:40-23 et seq. in the nonpublic school, eliminating the need that services be provided by a certified school nurse.

N.J.A.C. 6:29-8.3 identifies the means through which public school districts will confer with nonpublic schools in establishing nursing services for nonpublic school pupils. This section also specifies the areas to be addressed at the conference between the public school district and the nonpublic school.

N.J.A.C. 6:29-8.4 establishes the administrative procedures to be followed by both public and nonpublic schools in implementing policies and procedures for nonpublic school nursing services.

N.J.A.C. 6:29-8.5 limits the administrative costs for nonpublic school nursing services to six percent of the funds allocated for each participating nonpublic school. This section sets limits on the provision of nursing services, based upon the funds available for this purpose.

N.J.A.C. 6:29-8.6 establishes the procedures to be used by district boards of education in reporting annually on the implementation of nursing services to nonpublic school pupils.

N.J.A.C. 6:29-8.7 requires the district board of education responsible for providing the nursing services to disseminate copies of N.J.S.A. 18A:40-23 et seq. and this subchapter to the nonpublic school which receives nursing services.

Social Impact

The social impact of the proposed new rules will be positive. It will benefit nonpublic school students by providing access to basic nursing services equivalent to those in public schools.

Economic Impact

The proposed new rules will have no significant economic impact on school districts. N.J.S.A. 18A:40-23 et seq. does not require a district to make expenditures for the purposes of the Act in excess of the amount of State aid received. Districts will receive funds annually, based upon the enrollment of the nonpublic schools within their jurisdiction and the amount of State aid appropriated. Ten million dollars was appropriated for FY 1992.

Regulatory Flexibility Statement

The rules impact upon New Jersey school districts and nonpublic schools receiving nursing services as provided for in N.J.S.A. 18A:40-23 et seq. Some nonpublic schools may be considered small businesses. However, these rules do not impose any reporting, recordkeeping, capital or compliance costs, or professional services requirements on nonpublic schools, for these requirements are the responsibility of the public school district. Private schools for the handicapped are not affected by these rules as they are governed by the same standards as public schools which include the provision of nursing services.

These rules will further impact upon independent educational consulting firms and independent nursing services or agencies, some of which may be considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and may be eligible to contract with school districts for the provision of nursing services to nonpublic schools. Recordkeeping and reporting requirements would be minimal and would not discourage small businesses from contracting with school districts. It is anticipated that only a small number of school districts will contract for the nursing services with such independent agencies. For the above stated reasons, no differing standards based on business sizes are offered.

Full text of the proposed new rules follows:

(CITE 24 N.J.R. 2326)

SUBCHAPTER 8. NURSING SERVICES TO NONPUBLIC SCHOOLS

6:29-8.1 Purpose

These rules are designed to provide standards for district boards of education for the provision of required nursing services to nonpublic school pupils and for additional medical services which may be provided to nonpublic school pupils, according to N.J.S.A. 18A:40-23 et seq.

6:29-8.2 Adoption of policies and procedures

(a) District boards of education having nonpublic schools within their district boundaries shall adopt and implement policies and procedures for the following:

1. The extension of nursing services provided to public school pupils to those pupils who are enrolled full-time in the nonpublic school within the limits of funds appropriated or otherwise made available for this purpose. Such services shall be provided by a professional registered nurse licensed in the State of New Jersey who is an employee of the school district, or the school district may contract with an approved agency to provide the required nursing services. The services shall include:

- i. Assistance with medical examinations, including dental screening;
- ii. Conducting screening of hearing examinations;
- iii. The maintenance of student health records, with notification of local or county health officials of any student who has not been properly immunized; and
- iv. Conducting scoliosis examinations of pupils between the ages of 10 and 18; and

2. The extension of emergency care provided to public school pupils to those pupils who are enrolled full-time in the nonpublic school who are injured or become ill at school, or during participation on a school team or squad pursuant to N.J.A.C. 6:29-1.3(a)1.

(b) District boards of education having nonpublic schools within their district boundaries may adopt and implement policies and procedures for providing the pupils who are enrolled full-time in the nonpublic school with additional medical services.

1. Such additional medical services may only be provided when all services required in (a)1 and 2 above have been provided for or will be provided to pupils enrolled full-time in the nonpublic school as documented in the reporting procedures required in N.J.A.C. 6:29-8.6(a)2.

6:29-8.3 Conference with nonpublic school

(a) Each chief school administrator of a district in which a nonpublic school is located shall confer annually with the administrator of the nonpublic school for the following purposes:

1. To advise the nonpublic school of the limit of funds appropriated or otherwise made available for the provision of nursing services for the full-time pupils enrolled in the nonpublic schools; and
2. To discuss the extent of nursing services which shall be provided and additional medical services which may be provided as set forth in N.J.S.A. 18A:40-23 et seq. and within the limit of available funds.

6:29-8.4 Administrative guidelines

(a) The nursing services provided to nonpublic school pupils shall not include instructional services.

(b) District boards of education may provide the necessary equipment, materials and services for immunizing pupils who are enrolled full-time in the nonpublic school from diseases as required by the State Sanitary Code adopted pursuant to N.J.S.A. 26:1A-7 or for diseases against which immunization may be recommended by the State Department of Health.

(c) Equipment and supplies comparable to that in use in the district can be purchased and transportation costs charged to the funds allocated for each participating nonpublic school as long as they are directly related to the provision of the required nursing services and additional medical services which may be provided. Such equipment may be loaned without charge to the nonpublic school for the purpose of providing the services under these provisions. However, such equipment remains the property of the district board of education.

(d) A pupil who is enrolled in a nonpublic school and whose parent or guardian objects to the pupil receiving any services provided under the rules in this subchapter shall not be compelled to receive the services except for a physical or medical examination to determine whether the pupil is ill or infected with a communicable disease.

6:29-8.5 Fiscal responsibilities

(a) The combined total of funds expended by a district board of education and/or service provider for administrative costs shall be limited to six percent of the funds allocated for each participating nonpublic school.

(b) Each participating nonpublic school shall receive nursing services to the limit of funds available based upon its enrollment on the last school day prior to October 16 of the preceding school year.

6:29-8.6 Reporting procedures

(a) Each board of education or educational services commission providing nursing services to nonpublic schools shall submit the following information to the county superintendent of schools on or before September 1 and a copy shall be forwarded to the administrator(s) of the nonpublic school(s) within their district boundaries:

1. A written statement verifying that the required conference was held with the nonpublic school(s);

2. A copy of the contract document or minutes of the board of education meeting submitted for approval, which describe the methods by which the nursing services to the nonpublic school pupils will be provided for the ensuing school year;

3. A description of the kind and number of services which were provided during the previous school year; and

4. A financial statement on a form provided by the Department of Education detailing the expenditure of the allocated funds for the previous school year.

6:29-8.7 Authorizing statutes and regulations

Each nonpublic school which receives nursing services shall be provided with a copy of N.J.S.A. 18A:40-23 et seq. and this subchapter, by the board of education which is responsible for such services.

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Timeframe for Providing Information concerning Rights and Available Services to the AFDC Client; Clarification concerning Attorney Representation in Child Support Matters

Proposed Amendments: N.J.A.C. 10:81-11.4 and 11.9

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

Authority: N.J.S.A. 44:10-3, Federal Regulation under 45 CFR 303.2(a)(2) and Ethics Opinion 580 authored by the Advisory Committee on Professional Ethics.

Proposal Number: PRN 1992-199.

Submit comments by August 5, 1992 to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment at N.J.A.C. 10:81-11.4(d)1 specifies the maximum timeframe for county welfare agencies to provide Aid to Families with Dependent Children (AFDC) clients with information concerning available Title IV-D services and their rights and responsibilities.

The proposed amendment at N.J.A.C. 10:81-11.9(d) specifies that attorney representation in court is necessary in paternity establishment and child support enforcement matters by the attorney responsible for representing the CWA. The proposed amendment also provides that the attorneys responsible for representing the interest of the CWAs may cooperate with one another, if mutually agreed upon by the parties involved, by representing out of county IV-D/AFDC cases heard in their home county.

Social Impact

The proposed amendment at N.J.A.C. 10:81-11.4(d)1 will have a positive social impact as it will ensure that clients receive information concerning their rights and responsibilities and Title IV-D services available to them in a timely fashion.

The proposed amendment at N.J.A.C. 10:81-11.9(d) will have a positive social impact as the interest of the county welfare agency will be protected through the use of legal representation.

Economic Impact

The proposed amendment at N.J.A.C. 10:81-11.4(d)1 is expected to have a positive economic impact inasmuch as an informed client, who has a better understanding of the IV-D process, is more likely to assist the county welfare agency in obtaining a support order by providing accurate information.

The proposed amendment at N.J.A.C. 10:81-11.9(d) is expected to have a positive economic impact. Through the provision of attorney representation and attorney expertise in this field, the financial interest of the county welfare agency is protected and ensures that the court awards the maximum dollar amount under New Jersey Court Rule 5:6A, The Child Support Guidelines, the guidelines for the payment of child support. In cases where an arrearage is owed, attorney representation could facilitate a lump sum payment on outstanding arrearages.

Some counties have taken the position that adding an attorney to the child support section of their county budget may negatively impact on their county cost/benefit ratio. However, having an attorney represent the county welfare agency can increase collections, and attorney cost is an administrative expenditure which is reimbursed at the 66 percent.

Regulatory Flexibility Statement

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose no reporting, recordkeeping or other compliance requirements on small businesses, therefore a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families With Dependent Children Program by a governmental agency rather than a private business establishment.

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

10:81-11.4 Assignment of support rights

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

(d) IM worker's responsibility: The IM worker shall advise the AFDC client that upon signing an application (PA-1J) for AFDC or AFDC/Medicaid Only, he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC client shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CWA/IV-D Unit: The IM worker, at the time of application for AFDC-C or Medicaid Only, shall complete the appropriate parts of the IV-D referral document and route this form to the CWA/IV-D Unit within two working days of issuance of an assistance check, or determination of eligibility, but no later than 45 days of initial application. **Information describing available IV-D services and the individual's rights and responsibilities must be provided to all applicants within five working days of the IV-D referral.**

i.-v. (No change.)

10:81-11.9 Responsibilities of the CWA/CSP Unit

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

(d) Legal action taken by the CSP Unit: If the CSP Unit collects information sufficient to locate the absent parent, legal proceedings

shall be initiated for the purpose of establishing paternity and/or obtaining support and medical insurance within 90 working days of location. All court proceedings concerning paternity establishment and child support enforcement matters require county welfare agency representation by an attorney, holding a plenary license to practice law in this State, who is in good standing and maintains a bona fide office for the practice of law in this State. With regard to IV-D/AFDC cases heard out of the county in which assistance is provided, if mutually agreed upon by the parties involved, CWA attorneys may cooperate with one another by representing out of county IV-D/AFDC cases heard in their home county.

1.-10. (No change.)

(e)-(l) (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual

Child Support and Paternity Services

HLA Test Results and a Refusal to Cooperate

Determination; Late Payment Fees; Application for Child Support Services; Timeframes Concerning Paternity Establishment and Out-of-State Cases; Approval of Genetic Testing Laboratories; Medicaid Penalty for Non-cooperation in Child Support Matters; Review of Child Support Orders

Proposed Amendments: N.J.A.C. 10:81-11.5, 11.7, 11.9 and 11.20

Proposed New Rule: N.J.A.C. 10:81-11.21

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

Authority: N.J.S.A. 44:10-3; Family Support Act of 1988 (Public Law 100-485), Section 103(c)(B); 45 C.F.R. 302.75, 303.5(a)(1), 303.5(c), 303.7(b)(2).

Proposal Number: PRN 1992-205.

Submit comments by August 5, 1992, to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment at N.J.A.C. 10:81-11.5(h)2 provides clarification concerning the Medicaid penalty for a Medicaid Only recipient's non-cooperation in child support matters. The regulation provides that the Medicaid Only client who refuses to cooperate in establishing paternity and providing information to assist in the establishment of an order of medical support, without good cause, will become ineligible for Medicaid. The proposed amendment at N.J.A.C. 10:81-11.5(h)2iii identifies a Human Leukocyte Antigen (HLA) test as a factor in the determination of refusal to cooperate and provides that a finding of non-cooperation cannot be based on the test alone.

The proposed amendment at N.J.A.C. 10:81-11.7(a) provides for a technical correction concerning reference to the Office of Child Support and Paternity Programs.

The proposed amendment at N.J.A.C. 10:81-11.7(a)11 clarifies that it is New Jersey's policy that a late payment fee is not to be imposed on obligors for past due child support.

The proposed amendments at N.J.A.C. 10:81-11.9(d) and (d)2 provide the maximum timeframe, allowed by Federal law, for initiating action to establish paternity. N.J.A.C. 10:81-11.9(d) currently provides that legal proceedings must begin within 90 working days of locating the absent parent, while at N.J.A.C. 10:81-11.9(d)2, the county IV-D unit is to file a complaint within 20 working days of locating the absent parent. The proposed amendment will modify both of these sections to a "90 calendar day" timeframe. This will align State rules with Federal regulations.

The proposed amendment at N.J.A.C. 10:81-11.9(d)2i summarizes the procedures necessary to obtain State approval to use a specific Genetic Testing Laboratory. Federal regulations mandate that the State IV-D

Agency identify and use, through the competitive procurement process, a list of laboratories which perform legally and medically acceptable genetic tests at a reasonable cost. New Jersey has undergone this process and consequently developed a list of approved laboratories to which State contracts have been awarded. This list has been made available to the county IV-D Agencies. In order for the county IV-D Agency to obtain Federal reimbursement at 90 percent, the county IV-D Agency must choose one of the laboratories on the list. The county IV-D Agency must then request State approval to use the State's contract with that laboratory or request approval to independently negotiate a contract with that laboratory at a lower price than the State contract. Once State approval is granted, the county IV-D Agency will make all arrangements for the drawing of blood and will be billed directly.

The proposed amendment at N.J.A.C. 10:81-11.9(d)5 provides the maximum timeframe allowed by Federal law for contacting the responding state when it has been determined that an absent parent is out-of-State. The current rule provides for a timeframe of "20 days." The proposed amendment provides for "20 calendar days," thereby, providing clarification and aligning the State rule with the Federal regulation.

The proposed amendments at N.J.A.C. 10:81-11.9(1)1 and 11.20 provide for the correct form to be used to apply for child support services and state that the CWA is to mail such form in no more than five working days of a request for such services from the CWA.

The proposed new rule at N.J.A.C. 10:81-11.21 outlines procedures for the review and modification of AFDC cases. The Family Support Act (P.L. 100-485) mandates that states must have a plan for reviewing all child support orders to determine if a modification is necessary. Under this plan, all AFDC IV-D cases will be reviewed once every three years or at the request of either parent subject to the order for possible modification. The procedure for review and modification of the case will involve: review of an Automated Child Support Enforcement System (ACSES) report to identify those cases eligible for review; obtaining information on an obligor's address, income, employment and health insurance coverage; review the information for possible modification and complete the CWA Statistical Report to reflect the number of cases reviewed and the number of cases modified, until such time as the ACSES can provide this information; and maintaining documentation.

Social Impact

The proposed amendment at N.J.A.C. 10:81-11.5(h)2, concerning the Medicaid penalty, should have limited social impact as this amendment reflects current policy and is only for clarification purposes. If any, a positive impact is anticipated as the practice of this policy should result in assisting the county IV-D Agency to obtain information it may not have otherwise been able to elicit.

The proposed amendment at N.J.A.C. 10:81-11.5(h)2iii concerning HLA testing as a factor in a refusal to cooperate determination is expected to have minimal social impact. The proposed amendment provides clarification but does not change existing policy.

The proposed amendment at N.J.A.C. 10:81-11.7(a) concerning reference to the Office of Child Support and Paternity Programs will not have a social impact.

The proposed amendment at N.J.A.C. 10:81-11.7(a)11 specifying that no late payment fee is to be imposed on delinquent obligors is expected to have no social impact as this is a clarification of policy.

The proposed amendments at N.J.A.C. 10:81-11.9(d) and (d)2 concerning timeframes for paternity establishment will allow the county IV-D Agency enough time for processing and still guarantee that the case is handled in an expeditious manner.

The proposed amendment at N.J.A.C. 10:81-11.9(d)2i concerning State approval of Genetic Testing Laboratories will have a positive social impact by providing that the county IV-D Agencies are uniformly using laboratories that perform legally and medically acceptable Genetic Tests at reasonable rates.

The proposed amendment at N.J.A.C. 10:81-11.9(d)5 concerning the timeframe for contacting the responding state when the absent parent is out-of-State provides clarification and should not have any substantial social impact.

The proposed amendments at N.J.A.C. 10:81-11.9(1)1 and 11.20(a) concerning a new application form for child support services should have a positive impact. The new application form explains in detail how to complete the form and how the child support program works.

The proposed new rule at N.J.A.C. 10:81-11.21, which requires review of child support orders, reflects continued concern for children by providing that a minimum standard of living for the child will continue to increase proportionately to that of the non-custodial parent. The use

of the child support guidelines in the review will ensure equitable treatment of the obligor.

Economic Impact

The proposed amendment at N.J.A.C. 10:81-11.5(h)2 concerning the Medicaid penalty is expected to have minimal economic impact as this is only a clarification of existing policy. If any economic impact is experienced, it is anticipated to be positive. The practice of this policy will act as a catalyst in eliciting information in some cases. In such cases, this information could lead to the establishment of paternity and/or an order to include medical support thereby reducing the family's need for Medicaid.

The proposed amendment at N.J.A.C. 10:81-11.5(h)2iii concerning the relationship between HLA testing and a finding of non-cooperation is expected to have minimal economic impact. This amendment gives county staff a more precise standard to refer to in arriving at a decision.

The proposed amendment at N.J.A.C. 10:81-11.7(a) concerning reference to the Office of Child Support and Paternity Programs will not have an economic impact.

The proposed amendment at N.J.A.C. 10:81-11.7(a)11 concerning a late payment fee will have no economic impact as this is just a clarification of current policy.

The proposed amendments at N.J.A.C. 10:81-11.9(d) and (d)2 concerning timeframes for paternity establishment and/or obtaining support and medical insurance should have a positive impact as these amendments will ensure that cases are handled in an expeditious manner and will conform with established Federal regulations.

The proposed amendment at N.J.A.C. 10:81-11.9(d)2i concerning State approval for using a Genetic Testing Laboratory will have a positive economic impact on the county IV-D Agency. The counties will be afforded the price quoted in the State contract or any lower price that can be negotiated independently. The counties will then be Federally reimbursed at the rate of 90 percent for any blood testing fees paid.

The proposed amendment at N.J.A.C. 10:81-11.9(d)5 concerning the timeframe for contacting the responding state when an absent parent is out-of-State will have minimal impact as this amendment basically provides clarification.

The proposed amendment at N.J.A.C. 10:81-11.9(1)1 concerning a new application form for child support services should have a positive impact. A superiorly structured form should elicit better information which could provide an advantage when attempting to establish paternity or a support order.

The proposed new rule at N.J.A.C. 10:81-11.21 concerning the review of child support orders is expected to have a positive economic impact by preventing a decline in value of the support order, as is often the case due to time and inflation. In a pilot study, completed by the Office of Child Support and Paternity Programs in December 1987, a review of 2,331 cases was done. As a result of this review, orders were modified totaling an additional \$7,483,385, with an average order increasing from \$26.85 per week to \$61.74 per week, which is approximately a 130 percent increase. In some cases the increase of support orders will allow families to go off welfare.

Regulatory Flexibility Statement

The proposed amendments and new rule have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rule impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families With Dependent Children Program by a governmental agency rather than a private business establishment.

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

10:81-11.5 Cooperation in establishing paternity and obtaining support

(a)-(g) (No change.)

(h) Refusal to cooperate: If the CWA determines that no good cause exists for the client's refusal to cooperate, the client shall be notified of the determination and given an opportunity to cooperate, withdraw the application for assistance, or have the case closed. The client shall also be advised of his or her rights to a fair hearing to appeal this adverse decision in accordance with N.J.A.C. 10:81-7.1(c).

1. (No change.)

2. If the CWA/CSP Unit determines that the client has refused to cooperate and has not claimed good cause for that refusal, his or her needs will be deleted from the assistance grant[.] and he or she will become ineligible for Medicaid benefits. The Medicaid Only client who refuses to cooperate in establishing paternity and providing information to assist in the establishment of an order for medical support without good cause will become ineligible for Medicaid. The CWA/CSP Unit will refer those Medicaid Only cases where non-cooperation is determined to the unit which handles Medicaid eligibility on the county level.

i.-ii. (No change.)

iii. While an HLA test result may be a factor in determining whether the recipient has cooperated, a finding of non-cooperation cannot be based on the test alone. Tests must be considered along with any other evidence available, including the mother's testimony, since it is possible that the mother truly believes a certain man to be the father of the child, despite test results. The CWA/CSP Unit shall inquire into the basis of the mother's belief, including whether or not the mother had sexual relations with any other man or men around the probable time of conception. If it appears that, despite the test results, the mother has truthfully given all information she has or can reasonably obtain about the paternity of her child, she must be deemed to have cooperated. At that time an affidavit will be taken from the client stating that she has given all the information she has about the paternity of her child.

3. (No change.)

(i)-(k) (No change.)

10:81-11.7 Responsibilities of the State agency

(a) The State Office of Child Support and Paternity Programs, located in the Division of Economic Assistance, shall be the single organizational unit responsible for the supervision of the administration of the Child Support and Paternity Program. This unit shall be referred to as the Office of [CSP] Child Support and Paternity Programs (OCSPP). Responsibilities of the [Office of CSP Programs] OCSPP include, but are not limited to, the following:

1.-10. (No change.)

11. Setting the policy that a late payment fee will not be imposed on obligors who owe child support.

10:81-11.9 Responsibilities of the CWA/CSP Unit

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

(d) Legal action taken by the CSP Unit: If the CSP Unit collects information sufficient to locate the absent parent, legal proceedings shall be initiated for the purpose of establishing paternity and/or obtaining support and medical insurance within 90 [working] calendar days of location.

1. (No change.)

2. Filiation proceedings: With regard to AFDC and AFDC/Medicaid Only cases in which paternity has not been acknowledged, the CWA/CSP Unit shall file a complaint to establish paternity in a court of competent jurisdiction within [20 working] 90 calendar days of locating the alleged father.

i. Genetic test scheduling: If paternity is denied and the court orders genetic tests, the CWA/CSP Unit shall schedule the test at a legally and medically acceptable State approved facility within one year of successful service or the child reaching six months of age.

(1) The Office of Child Support and Paternity Programs shall develop a list of approved genetic testing laboratories through the competitive procurement process. The State shall award a contract to each laboratory on the list. In order for a county to receive Federal reimbursement for genetic testing fees it must contact and interview the laboratories on the list, choosing the lowest cost vendor that can provide accessible, timely service and fulfill the unique needs of that agency. Once a laboratory is chosen the county must request State approval to use the State contract with that laboratory or to independently negotiate a contract with that laboratory at a lower cost than the State contract. If the lowest cost vendor on the list was not the county's choice, reasons for not using that vendor must be given. The same would apply to the next lowest cost vendor and so on until the chosen vendor is reached. Once State approval is granted the county agency will be responsible for carrying out the terms of the contract.

HUMAN SERVICES

PROPOSALS

ii.-vi. (No change.)

3.-4. (No change.)

5. Treatment of cases in which the absent parent resides out-of-State: In cases where the absent parent resides out-of-State, proceedings to establish paternity and/or secure child support and medical insurance shall be in accordance with the Uniform Reciprocal Enforcement of Support Act (1968) (URESA). Within 20 calendar days of determining the absent parent is out-of-State, the CWA/CSP Unit, with the client's cooperation, will file a Uniform Support Petition and General Testimony for URESA with the responding state's central registry.

i. (No change.)

6.-10. (No change.)

(e)-(k) (No change.)

(1) Title IV-D services available to non-public assistance persons: Appropriate child support services are to be made available to non-public assistance persons upon application filed by such individual with the IV-D Agency. These services shall include locating obligors, establishing paternity and securing support and medical insurance.

1. [Form CSP 111, Application for Non-Public Assistance Child Support and Paternity Services:] State of New Jersey Title IV-D Program Application for Child Support Services: Non-public assistance individuals requesting services from the CWA shall apply for such services by signing [Form CSP-111] the State of New Jersey Title IV-D Program Application for Child Support Services. This form shall be executed in duplicate. (See N.J.A.C. 10:81-11.2(c) regarding application fee.) The CWA will provide an application[s] for services on the day [an individual requests] a request is made in person. The CWA will provide an application for services in no more than five working days of receipt of a written or telephone request. Information describing services, rights and responsibilities, fees, cost recovery and distribution policies must accompany all applications for services. An application must be accepted on the day it is received.

i.-ii. (No change.)

2.-5. (No change.)

10:81-11.20 Rules concerning application fee for non-AFDC applicants

(a) Non-AFDC individuals, who do not have an active support order and who do not know the location of the obligor, shall file an application with the CWA/CSP unit. (Individuals with an active support order or those without an active support order who know the whereabouts of the obligor shall file the application for IV-D services at the appropriate county probation department.) See N.J.A.C. 10:81-[11.9(j)] 11.9(l)1 regarding [Form CSP-111, Application for Non-Public Assistance Child Support and Paternity Services] the State of New Jersey Title IV-D Program Application for Child Support Services.

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

10:81-11.21 Reviewing cases for possible modification

(a) The CWA/CSP Unit shall review all public assistance cases with a court order at least once every three years or at the request of either parent subject to the order for possible modification. If a request for review is made before the three year timeframe, and the request is determined to be frivolous by the CWA/CSP Unit, the request may be denied.

1. Examples of a frivolous request are as follows:

i. An obligor's income has not increased or decreased by a minimum of \$15.00.

ii. An obligor is temporarily out of work or temporarily injured and unable to work.

2. The procedure for the review of cases shall be as follows:

i. An ACSES report has been developed to identify AFDC cases for review for possible modification. The report will list the cases by date of order beginning with the oldest cases.

ii. The CWA/CSP should review cases on the report to identify those cases that should be modified to bring the case into compliance with the Child Support Guidelines at New Jersey Court Rule 5:6A.

(1) A case can be eliminated from the review if it is found that:

(A) There is a good cause determination that the review of the case is not in the best interest of the child(ren); or

(B) The current order is less than three years old or the case has been reviewed in the last three years unless a review was requested by either parent subject to the order and it has not been determined to be a frivolous request by the CWA/CSP Unit. Examples of frivolous request are outlined in (a)1 above; or

(C) The obligor is incarcerated or institutionalized.

(b) Documentation shall be maintained indicating that a reviewer was completed. If the case was eliminated from the modification cycle the reason should be documented.

(c) The CWA/CSP Unit shall process cases for review in the following manner:

1. Information on obligors current income and employment should be obtained via online access to the Department of Labor's Wage Reporting File through the Honeywell terminals. Information obtained will be verified through a letter generated to the employer. Medical insurance information shall also be verified.

2. Verification of the obligor's address shall also be obtained.

3. In cases where there has been no change in the income, however, medical support is not currently ordered, a motion shall be filed by the CWA/CSP Unit to have the order modified to include medical support when health insurance is available to the obligor at a reasonable cost. If health insurance is not available to the obligor at a reasonable cost at the time of the modification, this order for support will go into effect when health insurance at a reasonable cost is actually available.

i. Health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism.

(d) Recommendations for modification shall be based on the New Jersey Child Support Guidelines at New Jersey Court Rule 5:6A.

1. If the recommended amount is a \$15.00 or more increase over the current order, a motion shall be filed to have the order modified.

2. If the recommended amount is a \$15.00 or more decrease, the obligor should be directed to file appropriate application with the court.

(e) The CWA Statistical Report must be completed each month to reflect the number of cases reviewed and the number of cases modified until such time as the Automated Child Support Enforcement System is able to provide the information.

(f) The Family Support Act of 1988 (Public Law 100-485), Section 103(c), mandates that between October 13, 1990 and October 13, 1993, the CWA/CSP unit must target for review and modification, if appropriate, the existing IV-D cases in which support is assigned to the State and which have not been reviewed or modified within 36 months. These cases must be addressed by reviewing one-third of the caseload per year over a three-year period.

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Orientation and Handbook

Proposed Redaction with Amendments: N.J.A.C. 10A:8

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

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

Proposal Number: PRN 1992-281.

Submit comments by August 5, 1992 to:

Elaine W. Ballai, Esq.

Regulatory Officer, Division of Policy and Planning

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:8, Inmate Orientation and Handbook, expires on November 16, 1992. The Department of Corrections has reviewed these rules and, with the exception of amendments in subchapters 2 and 3, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated and is, therefore, proposing them for readoption at this time.

Subchapter 1 provides the purpose and the scope of the chapter and the definition of words and terms used.

Subchapter 2 provides the guidelines for conducting orientation sessions for newly admitted inmates, on the rules, inmate rights and privileges, work opportunities, time and sentences, and services and programs of a correctional facility. The proposed amendments add minor changes in language for the purpose of clarification. At N.J.A.C. 10A:8-2.3, a new subsection (d) has been added which states that orientation may be presented in a foreign language at the discretion of the Superintendent. This change reflects ongoing practice.

Subchapter 3 provides the guidelines for developing, reviewing, revising, printing and issuing the Inmate Handbook. The proposed amendments add minor changes in language for the purpose of clarification. In order to incorporate a new regulation about printing the Inmate Handbook in a foreign language, N.J.A.C. 10A:8-3.3(b) has been recodified as (c). N.J.A.C. 10A:8-3.5(b)10 has been deleted since this information is contained in the Parole Book, distributed to all inmates by the New Jersey State Parole Board. The requirement to include procedures for name changes in the Inmate Handbook has been added at N.J.A.C. 10A:8-3.5(b)10. A new section N.J.A.C. 10A:8-3.6 has been added which requires that Inmate Handbooks be available in Spanish. This change reflects ongoing practice.

Social Impact

The rules within this chapter have been in effect for some time. The readoption with amendments of these rules will continue to provide the guidelines for informing new inmates to a correctional facility about rules, procedures, services and programs, thus helping to relieve the inmate's tensions experienced by being newly incarcerated and helping to maintain the orderly operation of the correctional facility.

Economic Impact

The proposed readoption and the amendments of N.J.A.C. 10A:8 will not have an economic impact because additional financial resources are not required to implement or maintain these rules. The financial resources to provide the orientation programs and Inmate Handbooks are obtained by the Department of Corrections through the established State budgetary process.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:8.

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

10A:8-2.3 Scheduling orientation

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

(d) Orientation may be presented in a foreign language at the discretion of the Superintendent.

10A:8-2.4 Content of orientation sessions

(a) (No change.)

(b) Topics of orientation sessions shall include, but shall not be limited to:

1.-2. (No change.)

3. [Institutional] **Correctional facility** services:

i.-viii. (No change.)

4.-12. (No change.)

10A:8-3.3 Inmate Handbook revision

(a) (No change.)

(b) When a correctional facility has a large number of inmates in the population who speak a foreign language, the Inmate Handbook revision shall also be printed in the foreign language.

[(b)](c) (No change in text.)

10A:8-3.5 Inmate Handbook content

(a) The Inmate Handbook shall contain an introduction which explains, in plain language, the philosophy of the **correctional** facility.

(b) The Inmate Handbook shall also include, but shall not be limited to, an explanation and/or description of:

1.-4. (No change.)

5. [Institutional] **Correctional facility** services:

i.-viii. (No change.)

6.-9. (No change.)

[10. Time and sentences:

i. Commutation and work time credits (earning, loss and restoration);

ii. Jail and street time calculation;

iii. Minimum and maximum sentences;

iv. Concurrent and consecutive sentences;

v. Indeterminate sentences;

vi. Aggregation of sentences;

vii. Multiple offender sentences;

viii. Life sentences;

ix. Mandatory minimum sentences;

x. Payments of fines; and

xi. Detainers.]

10. Procedures for name change;

11.-13. (No change.)

10A:8-3.6 Spanish Inmate Handbook

The Inmate Handbook shall be available in Spanish.

INSURANCE**(a)****DIVISION OF PROPERTY/LIABILITY****Private Passenger Automobile Insurance Underwriting Rules****Proposed Amendment: N.J.A.C. 11:3-35.5**

Authorized By: Samuel F. Fortunato, Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6e; 17:22-6.14(a); 17:29A-46;
17:33B-32.

Proposal Number: PRN 1992-268.

Submit comments by August 5, 1992 to:

Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Insurance (Department) proposes to amend N.J.A.C. 11:3-35.5 to provide that the automobile insurance eligibility points (eligibility points) of a principal driver may only be used to rate one automobile.

A few insurers have interpreted the provisions of the present rule so as to permit the eligibility points of a principal driver to result in increased rate charges on each of several automobiles operated by the driver. The result is that the principal driver is charged for eligibility points on more than one automobile where there are more vehicles than drivers in the household. For example, where there is one driver and two automobiles and the driver has an at-fault accident, each vehicle is charged separately a rate based upon five eligibility points. This interpretation is not consistent with the rule's intent.

The present rule was adopted in response to comments (see 23 N.J.R. 577, 578) which sought to permit eligibility points of household members

to be used in connection with rating policies at the non-standard rate level without regard to the individual household member's claimed use of the vehicle. The commenters stated that such a system would prevent potential problems of fraud and subsidies. When adopted, the intent of the rule was to provide that all eligibility points of a household should be used in rating the automobiles insured by members of that household. The rule was not intended to allow a principal driver to be charged more than once for eligibility points.

The proposed amendment to N.J.A.C. 11:3-35.5(d), if adopted, will clarify the rule's original intent by providing that eligibility points of a principal driver shall be used to rate only one automobile when there are more automobiles insured under a policy than there are drivers in the household.

Social Impact

The proposed amendment sets forth the standard to determine rates based upon eligibility points for an insured principal driver who insures two or more automobiles. The amendment will eliminate confusion, and prevent the inconsistent implementation, by personal private passenger automobile insurers, of underwriting rules for standard/non-standard rating plans. When adopted, the revised underwriting rules for standard/non-standard rating plans will carry out the rule's intent: eligibility points of a principal driver shall be used to rate only one automobile when there are more automobiles insured under a policy than there are drivers in the household, and that additional automobiles shall be rated based upon zero eligibility points.

Economic Impact

This proposed amendment will affect only a few of the personal private passenger automobile insurers that file underwriting rules applicable to each rate level of a standard/non-standard rating plan to comply with N.J.A.C. 11:3-35.5. The economic impact will result from the costs associated with developing, implementing and filing new underwriting rules applicable to each rate level of standard/non-standard rating plans by those insurers with current underwriting rules that are inconsistent with the amended rule. This is, however, a minimal cost which is necessary in order that the rules are applied uniformly to determine rates based upon eligibility points for principal drivers who insure two or more automobiles.

Regulatory Flexibility Statement

No regulatory flexibility analysis is necessary according to the provisions of N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is required for rules which impact resident small businesses independently owned and operated, which are not dominant in their field, and which employ fewer than 100 full-time employees. None of the identified insurers which have filed underwriting rules for standard/non-standard rating plans inconsistent with the original intent of this rule are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, only a very small number of identified insurers will be affected, none of which is a small business.

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

11:3-35.5 Underwriting rules for standard/non-standard rating plans

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

(d) Underwriting rules for standard/non-standard rating plans shall provide that an automobile insured at the non-standard rate level shall be rated based upon the eligibility points of the principal driver; eligibility points of other household members may additionally be used to rate the automobile only if not used to rate any other automobile in the household].

1. Eligibility points of other household members may additionally be used to rate the automobile only if not used to rate any other automobile in the household.

2. When there are more automobiles insured under a policy than there are drivers in the household, the eligibility points of each principal driver shall be used to rate only one automobile; additional automobiles shall be rated based upon zero eligibility points.

(a)

DIVISION OF ACTUARIAL SERVICES/PROPERTY AND CASUALTY

Standard/Non-Standard Rating Plans

Proposed Amendments: N.J.A.C. 11:3-19.3 and 34.3

Authorized By: Samuel F. Fortunato, Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:33B-13 and 14; 17:29A-45; 17:29A-35;
17:1-8.1; and 17:1C-6(e).

Proposal Number: PRN 1992-290.

Submit comments by August 5, 1992 to:

Verice M. Mason, Assistant Commissioner
Division of Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Section 26 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (N.J.S.A. 17:33B-14) ("FAIR Act") directs the Commissioner of Insurance ("Commissioner") to promulgate a schedule of automobile insurance eligibility points. The FAIR Act provides that the schedule of automobile insurance eligibility points shall assess a point valuation to driving experience related violations and shall include assessments for violations of lawful speed limits within such increments as determined by the Commissioner, other moving violations, and at-fault accidents. The FAIR Act further provides that an "at-fault accident" means an at-fault accident which results in payment by the insurer of at least a \$500.00 claim (N.J.S.A. 17:33B-14).

Prior to the FAIR Act, most insurers maintained "merit rating" surcharge plans pursuant to N.J.S.A. 17:29A-35(a) by which drivers were charged for at-fault accidents. For the purpose of implementing the merit rating plans, this statute required an insurer claim payment of at least \$300.00. Despite making other changes to N.J.S.A. 17:29A-35, the FAIR Act maintains the claim threshold for an at-fault accident at \$300.00 for merit rating accident surcharges.

The Department of Insurance ("Department") has provided in N.J.A.C. 11:3-19.3(b) that merit rating surcharge plans are to be subsumed under an insurer's standard/non-standard rating plan in order to avoid duplicate charges for the same incident. This interpretation of the FAIR Act could serve to increase the claim threshold from \$300.00 to \$500.00 for the purposes of determining when the insured may be charged additional premium for an at-fault accident.

Both the merit rating surcharge statute and the standard/non-standard rating plans rule provide that the extra premium for an at-fault accident may be charged for up to three years. The three-year time limit and the different claim threshold has led to some confusion about whether extra premium charges should apply if an insured had an accident prior to the effective date of the FAIR Act.

Different insurers have addressed the problem differently in their standard/non-standard rating plans, depending upon the insurer's previously approved merit rating surcharge plan, the date of the accident, the effective date of the FAIR Act (March 12, 1990), the effective date of an insurer's standard/non-standard rating plan and the date of the renewal of the automobile insurance policy.

In order to make certain that charges for at-fault accidents are handled consistently from one insurer to another, the Department proposes to amend its rules establishing auto insurance eligibility points and standard/non-standard rating plans. The Department proposes to amend the definition of "at-fault accidents" in N.J.A.C. 11:3-34.3 to incorporate the \$300.00 claim threshold from N.J.S.A. 17:29A-35 for accidents prior to the effective date of the FAIR Act. The Department also proposes to amend N.J.A.C. 11:3-19.3(b) to reference the definition of "at-fault accident" in N.J.A.C. 11:3-34.3 and provide that a standard/non-standard rating plan shall reflect the different claim threshold prior to and after the enactment of the FAIR Act.

Social Impact

These proposed amendments set forth the standards for incorporating merit rating surcharge plans into standard/non-standard rating plans

regarding at-fault accidents by personal private passenger automobile insurers in accordance with the provisions of N.J.S.A. 17:33B-13 and 14 and N.J.S.A. 17:29A-35(a). The proposed amendments will eliminate the confusion and inconsistent implementation by personal private passenger automobile insurers regarding the two claim threshold amounts. When adopted, the revised requirements for standard/non-standard rating plans will carry out the stated intent of the FAIR Act that automobile insurance rates and premiums be based primarily upon a insured's driving record.

Economic Impact

These proposed amendments will affect personal private passenger automobile insurers that file rating systems to comply with N.J.A.C. 11:3-19. The economic impact will result from the costs associated with developing and implementing changes to their standard/non-standard rating plans by those insurers with current standard/non-standard rating plans that are inconsistent with the proposed rules. This is, however, a necessary and minimal cost in order that certain rules are applied uniformly in determining the proper claim payment threshold for at-fault accidents under standard/non-standard rating plans.

Regulatory Flexibility Analysis

These amendments may apply to some personal private passenger automobile insurers which are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The costs discussed in the Economic Impact above will be incurred by such "small business" insurers whose current standard/non-standard rating plans are inconsistent with the amended rule. No different standard is provided for small businesses because of the minimal change involved and because to do so would be inconsistent with these proposed amendments' purpose of providing a single standard.

Full text of the proposed new rules follows (additions indicated in boldface **thus**).

11:3-19.3 Filing requirements for standard/non-standard rating plans

(a) (No change.)

(b) Merit rating surcharges, which are permitted to be included in the rating systems of N.J.S.A. 17:29A-35, shall be incorporated only into the non-standard rate level of the voluntary market.

1. The incorporation of the merit rating plan surcharge into the standard/non-standard rating plan shall reflect the difference in the insurer claim payment threshold of \$300.00 for at-fault accidents that occurred prior to March 12, 1990 and \$500.00 for at-fault accidents that occurred on or after March 12, 1990.

2. The incorporation of the merit rating plan surcharge into the standard/non-standard rating plan shall be consistent with the definition of at-fault accident set forth at N.J.A.C. 11:3-34.3.

(c) and (d) (No change.)

11:3-34.3 Definitions

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

"At-fault accident" is any accident involving a driver insured under the policy which resulted in a payment by the insurer of at least \$500.00 for all accidents that occurred on or after March 12, 1990, or of at least \$300.00 for all accidents that occurred prior to March 12, 1990, and for which the driver is at least proportionately responsible based on the number of vehicles involved. A driver is proportionately responsible if 50 percent responsible for an accident involving two drivers; if 33⅓ percent responsible for an accident involving three drivers; etc. An at-fault accident shall not include the following:

1.-6. (No change.)

LAW AND PUBLIC SAFETY

(a)

BOARD OF COSMETOLOGY AND HAIRSTYLING

Annex Classrooms; Fees

Proposed New Rule: N.J.A.C. 13:28-6.35

Proposed Amendment: N.J.A.C. 13:28-5.1

Authorized By: Board of Cosmetology and Hairstyling, Bridget Damiano, Chairperson.

Authority: N.J.S.A. 45:5B-6.

Proposal Number: PRN 1992-277.

Submit written comments by August 5, 1992 to:

Richard Griswold, Executive Director
Board of Cosmetology and Hairstyling
Post Office Box 45003
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Cosmetology and Hairstyling proposes to establish guidelines for the utilization of annex classrooms by any of the 32 currently-licensed schools of cosmetology and hairstyling in New Jersey. Such annex or "satellite" classrooms are presently permitted in 18 other states.

The need for additional space in which to teach the classroom portion of the training program has been expressed by several New Jersey schools and the Board believes that permitting the use of space outside the main facility would be in the public interest by allowing increased enrollment opportunities.

For a school to expand by establishing a new or branch facility, which must meet substantial square footage requirements, is both expensive and, in some cases, impossible. The Board considers the utilization of annex classrooms—if they conform to high standards—to be a satisfactory alternative.

The proposed new rule sets forth minimum floor space for annex classrooms, as well as a list of necessary equipment and facilities. The Board is further requiring that the space provided for any annex classroom not exceed 30 percent of the square footage of the main school; this will prevent an overflow situation when students have to return to the main school to complete the clinical portion of their training, as required under this rule. Also, no school may have more than one annex classroom, in which only specified training activities may take place. The annex classroom must be within one mile of the main school, and it must pass official inspection before being allowed to operate. The ratio of licensed teachers to students (one for every 25 students or less) is set forth, as are procedural requirements for application to operate an annex classroom. Finally, the Board's fee schedule, N.J.A.C. 13:28-5.1, is amended to include a \$150.00 fee for the initial establishment of an annex classroom and a \$200.00 fee for renewal of the biennial school license with an annex classroom.

Social Impact

Permission to operate annex classrooms will allow schools of cosmetology and hairstyling to accept larger numbers of students without the great expense of establishing an additional school. Thus the opportunity to train for the profession will be expanded for many people. Also, better grouping may become feasible. At present, students with from zero to 600 hours of training may be grouped together in a particular classroom; an annex classroom will permit more discrete groupings of students with like experience, thereby creating a better teaching and learning environment.

Economic Impact

The proposed new rule will probably result in additional income for those schools which choose to establish annex classrooms, since they will be able to accept greater numbers of students than at present, at relatively low cost for space. At the same time, training opportunities should provide eventual economic benefit to persons who succeed in entering the profession of cosmetology and hairstyling. Schools seeking to utilize an annex classroom will incur the administrative costs involved in preparing and filing the approval application and accompanying documents, the \$150.00 initial fee for the classroom (unless the applicant is also a first time applicant for licensure), a \$50.00 additional charge on

their biennial license fee, and, if the annex classroom is approved, the cost of maintaining the classroom in accordance with the new rule's requirements.

Regulatory Flexibility Analysis

The 32 schools of cosmetology and hairstyling currently licensed by the Board are all small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule and amendment impose recordkeeping and other compliance requirements on those schools which elect to utilize an annex classroom. Such schools must file an application for approval of the annex classroom and pay the appropriate fee. The new rule establishes annex classroom requirements for: minimum floor space; minimum equipment; maximum distance from the main facility; permitted training activities; maximum course time allowed; separate sign-in records for the annex classroom; student/teacher ratios; and the applicability of regulations governing the main facility to the annex classroom. Licensees utilizing an annex classroom will incur the costs of compliance with these requirements, which costs will vary based upon the size of the annex classroom, the licensee's enrollment, and the cost of the additional equipment and, if necessary, staff needed. Professional services necessary for compliance would likely include contractors to set up the annex classroom and insurance and surety professionals to obtain the coverage and bonding required. However, as mentioned in the Economic Impact above, use of an annex classroom may well increase a licensee's income. Since all current licensees are small businesses, no differentiation in requirements or exemptions based on business size is necessary.

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

13:28-5.1 Fee schedule

(a) The following fees will be charged by the Board:

1.-16. (No change.)

17. Annex classroom (initial): **\$150.00**

18. Biennial school license with annex classroom—renewal: **\$200.00**

13:28-6.35 Annex classrooms

(a) An application for approval of a school of cosmetology and hairstyling to conduct an annex classroom separate and apart from the licensed main facility for specific training activities shall be submitted on an application form prescribed and provided by the Board.

1. A licensed school may not have more than one annex classroom. It may be used only by the school under which it is licensed.

2. An inspection of the annex classroom shall be made by an inspector after the minimum equipment has been installed therein, and a report of such inspection shall be made to the Board before a school may be authorized to operate.

3. Schools making application to include an annex classroom in their initial school license application will not be charged a separate application fee. Schools making application for an annex classroom after their initial license is issued shall be required to pay a separate application fee.

(b) Requirements for an annex classroom are as follows:

1. The minimum floor space in any annex classroom shall be at least 500 square feet, excluding offices, reception, locker and lavatory space, for the first 25 students and an additional 20 square feet for each student over 25. The space provided for any annex classroom shall not be considered part of the minimum space required for a school license and shall not exceed 30 percent of the square footage of its main school.

2. Minimum equipment shall include: work stations for at least 25 students or for the actual number of students in attendance, whichever is greater; a shampoo bowl and chair; a dryer; a styling chair; a manicure station; a chalk board; one locker per student; and separate lavatory facilities for men and women with toilets and sinks having hot and cold running water.

3. The maximum distance permitted between the annex classroom and the main facility shall be one mile; and students must be informed prior to enrollment that a portion of their training may be given at the annex facility.

4. Specific training activities permitted at the annex classroom facilities shall be limited to lectures, demonstrations, examinations, work on mannequins, and use of films, tapes, records and written materials. No clinical work on patrons or models (except for lecture/demonstration purposes with proper equipment) shall be permitted, except that instructors or lecturers are permitted to work on models and students may perform work on other students.

5. Students may complete no more than the first 50 percent of the total number of clock hours required for their course of study at the annex classroom. Clock hours completed at the annex classroom shall be recorded on sign-in sheets which must be kept separate and distinct from the sign-in sheets for clock hours completed at the main facility.

6. The ratio of licensed teachers present and on the premises to students in attendance at an annex classroom shall be at least one licensed teacher for every 25 students or less, and one additional licensed teacher for every additional 25 students or less after the first 25.

7. All health, safety, sanitary and operating regulations applicable to licensed schools of cosmetology and hairstyling are applicable to annex classrooms unless otherwise specified.

(c) Upon receipt of an application for approval of a school of cosmetology and hairstyling to operate an annex classroom, the Board shall inform the applicant in writing that the application is either complete and accepted for filing or deficient with an explanation of the specific information or documentation required to complete the application. A complete application is one in which a completed application form, including all required information and documentation, has been filed by the applicant. Required information and documentation is as follows:

1. A floor plan;

2. A copy of the lease;

3. A listing of equipment;

4. Name(s) and license number(s) of the teacher(s) employed to teach at the annex;

5. Copies of the fire and building inspection reports; and

6. Proof of liability and bond coverage for the annex location and the students attending classes there.

(d) After reviewing a completed application and the report of inspection, the Board shall inform the applicant in writing of its decision regarding approval of an annex classroom.

(a)

STATE BOARD OF EXAMINERS OF MASTER PLUMBERS

State Board of Examiners of Master Plumbers Rules Proposed Readoption with Amendments: N.J.A.C. 13:32

Authorized By: Board of Examiners of Master Plumbers,

Christine DeGregorio, Executive Director.

Authority: N.J.S.A. 45:14C-7 and 45:1-3.2.

Proposal Number: PRN 1992-274.

Submit written comments by August 5, 1992 to:

Christine DeGregorio, Executive Director

Board of Examiners of Master Plumbers

Post Office Box 45008

Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:32 is scheduled to expire on October 23, 1992. This chapter implements the provisions of the State Plumbing License Law of 1968, P.L.1968, c.362 (N.J.S.A. 45:14C-1 et seq.).

The Board of Examiners of Master Plumbers has undertaken a review of these rules, as required by the Executive Order. Based upon its review, the Board has determined that, with the amendments more specifically described below, the rules are reasonable, necessary and effective for the purposes for which they were originally promulgated. The rules

continue to protect the public health and safety by implementing licensing and practice standards intended to ensure that properly qualified practitioners are performing and supervising plumbing work. Accordingly, the Board is proposing to readopt N.J.A.C. 13:32 with amendments to address concerns identified during the course of the review.

A brief summary of each of the sections of subchapter 1 follows. The summary includes any amendments made and the reasons therefor.

N.J.A.C. 13:32-1.1 describes the constitution of the Board and the conduct of Board meetings.

N.J.A.C. 13:32-1.2 and 1.3, which concern application to the Board and examinations, have been amended to reflect that the examination is now administered by a testing service rather than by the Board.

N.J.A.C. 13:32-1.4 describes the bonding requirement of N.J.S.A. 45:14C-25 and lists those persons who may maintain an action on the bond.

N.J.A.C. 13:32-1.5 sets forth the responsibilities of the licensee who serves as a bona fide representative for a business engaging in the practice of master plumbing. An amendment to this section reiterates the requirement set forth in N.J.A.C. 13:32-1.6 that notice to the Board of an address change must be given within 10 days.

N.J.A.C. 13:32-1.7(a) presently requires commercial vehicles to be visibly marked with the State Board license number. The Board is proposing to amend this subsection as follows:

(a) The term "visibly marked" has been clarified to mean lettering which is a minimum of one inch high.

(b) Amendments are proposed to require additional information on the vehicle: the plumber's name and, preceding the State Board license number, the words "Plumbing license number." The Board is of the opinion that this additional information is necessary to permit the public to more readily identify the licensee as well as the type of license held.

N.J.A.C. 13:32-1.7(b) requires use of the license number and business address on business correspondence and advertising. The Board is proposing to amend this subsection as follows:

(a) The word "advertising" has been deleted, as advertising requirements have been amended and placed in a proposed new subsection (c).

(b) For the reasons set forth above, amendments are proposed to require additional information on business correspondence: the licensee's name and, preceding the license number, the words "Plumbing license number."

A new N.J.A.C. 13:32-1.7(c) is proposed which requires all advertising to include the licensee's name and, preceding the State Board license number, the words "Plumbing license number." The Board has determined that use of a business address by an advertising plumber, presently required under existing subsection (b), is unnecessary. Because proposed new subsection (c) requires identification of the type of license held, an individual can readily obtain the licensee's address by means of a telephone call to the Board.

N.J.A.C. 13:32-1.8 contains requirements in connection with the pressure seal issued to licensees to be used as identification when obtaining permits. Penalties and sanctions imposed upon both licensees and non-licensees for unauthorized use of the pressure seal are included in this section. An amendment has been made to that portion of subsection (a) which requires the plumbing seal to be used exclusively by the State-licensed master plumber in the conduct of his practice. Additional language has been added to clarify that a plumber's practice includes any service as a bona fide representative. This clarifying amendment was previously proposed as part of a more extensive proposal setting forth, in a new subsection (d), examples of activities requiring the seal of a master plumber as well as examples of activities not requiring the impression of a seal (see 23 N.J.R. 1062(a)). Subsection (d) is still under Board consideration and will require reproposal. However, the clarifying amendment to subsection (a) is included as part of this proposal.

N.J.A.C. 13:32-1.9 contains requirements in connection with the identification card issued to every licensee and describes the penalties and sanctions for unauthorized use.

N.J.A.C. 13:32-1.10 requires the immediate return of the pressure seal upon license expiration, suspension or revocation.

N.J.A.C. 13:32-1.11 requires supervising licensees to supervise only their own employees.

N.J.A.C. 13:32-1.12 defines excessive prices and lists factors which may be considered when determining whether a price is excessive.

N.J.A.C. 13:32-2, entitled "Forms," has been deleted in its entirety since the only provision concerns a uniform penalty letter which no longer exists.

The Board is proposing a new subchapter 2 entitled "Fees." Since its inception in 1968, the Board has been charging the licensing fees prescribed pursuant to N.J.S.A. 45:14C-16. The existing fee structure is insufficient, however, to enable the Board to continue to be self-funding, as required by N.J.S.A. 45:1-3.2. Accordingly, the Board is proposing a new fee schedule in order to raise sums estimated to cover its operating costs. The proposed fee schedule includes a non-refundable application fee of \$100.00, an initial and renewal licensing fee of \$120.00, and other miscellaneous charges. Examination fees are not included in the fee schedule since they will be paid directly to the Board-approved testing service.

Social Impact

The rules in this chapter have served to protect the health and safety of the public by providing licensing and practice standards intended to ensure that all plumbing work performed complies with building codes and good plumbing practice. The rules also benefit licensees by clearly advising them of their responsibilities under the State Plumbing License Law. Proposed amendments to N.J.A.C. 13:32-1.2, 1.3, 1.5 and 1.8 further that intent by clarifying existing rules. Amendments to N.J.A.C. 13:32-1.7 concerning identification of licensees on commercial vehicles and business stationery should permit the public to more readily identify the licensee as well as the type of license held, and deletion of the requirement that advertising include the plumber's business address may be beneficial to licensees who wish to advertise in a wider geographical area. The new fee schedule set forth in subchapter 2 will prevent a fiscal loss to the Board and will enable the Board to continue to comply with N.J.S.A. 45:1-3.2, pursuant to which all licensing boards must be self-funding. The sums raised will provide the Board with the minimum financial resources necessary to discharge its statutory obligation to establish licensing standards for the protection of the public.

Economic Impact

The readoption of N.J.A.C. 13:32 will not impose any significant economic impact upon licensees, since the rules merely codify examination, bonding and other statutory requirements. Proposed amendments to N.J.A.C. 13:32-1.7 add the requirement that the licensee's name and additional wording identifying the type of license held be displayed on commercial vehicles and business correspondence and in advertisements. On commercial vehicles, the information must be in lettering a minimum of one inch high. Licensees whose vehicles or business stationery do not presently comply with these requirements will incur expenses in order to comply.

Although the proposed new fee schedule will have a direct economic impact upon licensees by requiring them to remit an increased sum in order to continue their licensure, the rationale for such impact is obvious in its direct relationship to covering actual administrative costs. The Board points out that, despite rises in costs and overall inflation, the current fees have been in effect without change since 1968. In light of these circumstances, the Board believes the biennial fee increase from \$100.00 to \$120.00 (\$10.00 per year), is reasonable. The proposed fee schedule also results in an increase for new applicants from a total of \$100.00 to \$220.00 (\$100.00 application fee and \$120.00 initial license fee) plus examination costs payable directly to the testing service. The economic impact upon the Board's operating budget is intended to be positive in that the proposed fee structure will be adequate to cover actual expenses. Failure to readopt this chapter would place the Board's operation in jeopardy. The proposed readoption will have no direct economic impact upon the public.

Regulatory Flexibility Analysis

The Board of Examiners of Master Plumbers licenses approximately 7,200 individuals, the majority of whom work for or own small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance requirements include maintaining a \$3,000 bond as required by N.J.S.A. 45:14C-25; advising and providing documentation to the Board regarding an entity for which a licensee is acting as a bona fide representative, including Board notification of a change in name or address, and providing appropriate supervision to employees of the entity; ensuring that commercial vehicles, business correspondence and advertising include certain identifying information; impressing the pressure seal upon applications for plumbing permits; presenting the identification card upon request; and paying licensing fees in a timely manner. No professional services other than those of a bonding agency are required in order to comply with these rules. Initial and annual costs

LAW AND PUBLIC SAFETY

PROPOSALS

of compliance will vary among licensees and include the licensing fees set forth in proposed new subchapter 2.

Because the rules proposed for readoption seek to promote and protect the public welfare, they must be uniformly applied; no differential treatment can be accorded to small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:32.

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

13:32-1.2 Application [for examination; notice]; **examination registration form**

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

[c) Applicants shall be notified, by mail, at least two weeks in advance of the time and place of examinations.]

(c) **Approved applicants shall receive from the Board, by mail, in advance of the time and place of examinations, an examination registration form.**

13:32-1.3 Examinations

(a) Examinations shall be conducted by [at least three] **the Board-approved testing service and overseen by members of the Board** so designated by the chairman but no license shall be granted except by the Board.

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

(d) In order to pass the examination an applicant must receive a **minimum** grade of 70.

(e) An applicant who has failed the examination may review his or her examination upon written request to the [Board made within 30 days after notification of his failure] **Board-approved testing service and payment to the testing service of its review fee.**

13:32-1.5 Bona fide representative, responsibilities and limitations

(a) A licensee seeking to act as a bona fide representative for any firm, partnership, corporation or other legal entity contemplated by N.J.S.A. 45:14C-2 shall comply with the following:

1. Register[ed] with the Board, providing the name of the entity, its business address and, if the entity is a corporation, the names of the officers of record[.]; and

2. (No change.)

(b) A bona fide representative registered with the Board pursuant to (a) above shall comply with the following:

1. Give notice to the Board in writing concerning any change in the name or address of the entity **within 10 days of the change.**

2.-5. (No change.)

(c) (No change.)

13:32-1.7 Identification of licensees

(a) All commercial vehicles used in the practice of state-licensed master plumbing shall be [visibly] marked, **in lettering a minimum of one inch high, with the following information:**

1. **Name of the licensed master plumber; and**

2. **The words "Plumbing license number" followed by the license number of the owner or qualified bona fide representative.**

(b) All business correspondence and stationery [and all advertising] shall display:

1. **The name of the licensed master plumber; and**

2. **The words "Plumbing license number" followed by the license number of the owner or qualified bona fide representative; and**

3. **The business address, including the street name and number of the owner or qualified bona fide representative.**

(c) **All advertising shall include:**

1. **The name of the licensed master plumber; and**

2. **The words "Plumbing license number" followed by the license number of the owner or qualified bona fide representative.**

Recodify existing (c) as (d) (No change in text.)

13:32-1.8 Requirement of pressure seal defined

(a) At the time of the issuance of the license or as soon thereafter as deemed appropriate, the Board of Examiners of Master Plumbers shall furnish a seal to every State-licensed master plumber. The cost of the seal shall be paid for by the State-licensed master plumber to whom it is issued. The seal shall be used exclusively by the State-

licensed master plumber in the conduct of his practice **including service as a bona fide representative consistent with N.J.A.C. 13:32-1.5.** A licensee who willfully or negligently allows an unlicensed and unauthorized person to use his seal shall be subject to such penalties and sanctions as shall be imposed by the Board pursuant to authority granted by N.J.S.A. 45:14C-1 and N.J.S.A. 45:1-14 et seq. The State-licensed Master plumber is required to impress the said seal upon all applications for plumbing permits by the appropriate duly licensed State inspection agency.

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

[SUBCHAPTER 2. FORMS

13:32-2.1 Uniform penalty letter

This form letter appears in N.J.A.C. 13:27-5.1 (Uniform penalty letter).]

SUBCHAPTER 2. FEES

13:32-2.1 Fees

(a) **Charges for licensure and other services are as follows:**

1. Application fee (non-refundable)	\$100.00
2. Initial license fee:	
i. If paid during the first year of a biennial renewal period	120.00;
ii. If paid during the second year of a biennial renewal period	60.00;
3. License renewal fee, biennial	120.00;
4. Late renewal fee	50.00;
5. Reinstatement fee	150.00;
6. Replacement seal press	40.00;
7. Duplicate license fee	25.00;
8. Replacement wall certificate	40.00;
9. Verification of licensure	25.00.

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF RESPIRATORY CARE

State Board of Respiratory Care Rules

Proposed New Rules: N.J.A.C. 13:44F

Authorized By: Emma Byrne, Director, Division of Consumer Affairs.

Authority: N.J.S.A. 45:14E-7(f).

Proposal Number: PRN 1992-292.

Submit written comments by August 5, 1992 to:

Marianne Kehoe, Executive Director

State Board of Respiratory Care

Post Office Box 45031

Newark, New Jersey 07101

The agency proposal follows:

Summary

The Respiratory Care Practitioner Licensing Act, P.L. 1991, c.31 (N.J.S.A. 45:14E-1 et seq.) (the "Act") became effective August 21, 1991. As stated in section 2 of the Act, the Legislature found that the public interest requires the regulation of the practice of respiratory care and the establishment of clear licensure standards. The Legislature further found that the health and welfare of the citizens of this State will be protected by identifying to the public those individuals who are qualified and legally authorized to practice respiratory care.

In order to carry out the provisions of the Act, the State Board of Respiratory Care, created pursuant to N.J.S.A. 45:14E-4, is proposing a new chapter entitled "State Board of Respiratory Care" to be codified at N.J.A.C. 13:44F. A fee schedule at N.J.A.C. 13:44F-1.8 was recently proposed and adopted (see 24 N.J.R. 52(a) and 2285(b)).

The proposed new rules provide that, in order to be eligible for permanent licensure, an applicant must have a high school diploma; must have successfully completed a training program accredited by the Joint Review Committee for Respiratory Care Education of the Council on Allied Health Education and Accreditation, or its successor; and must have passed the National Board for Respiratory Care Entry Level Ex-

amination. The Act permits, in addition to temporary licensure for medical emergencies or teaching assignments, two types of temporary licensure:

(a) Individuals who have completed an accredited training program but who have not yet taken the examination may apply for a temporary six-month license. These individuals, who must work under the direct supervision of a licensed respiratory care practitioner, are required to take the next scheduled examination, except in the case of undue hardship. This temporary license automatically expires upon the earlier of six months or notification that the individual has failed the examination. A one-time renewal is permitted for an additional six-month period or until the date of the next examination.

(b) Individuals who have not passed the examination as of August 20, 1991 but who were functioning as respiratory care practitioners as of that date may apply for a temporary license which, pursuant to the Act, will automatically expire on February 20, 1993. Individuals who pass the examination prior to that date will be eligible for a permanent license. Individuals who were practicing respiratory care for fewer than 24 months prior to August 20, 1991 are required by these rules to work under the direct supervision of a licensed respiratory care practitioner.

A brief summary of the content of each of the nine subchapters of this chapter follows.

The purpose and scope of the proposed new rules, as well as definitions of essential terms, are provided in subchapter 1. Subchapter 2 describes Board organization and administration.

The duties which a licensed respiratory care practitioner may perform under the direction or supervision of a physician are enumerated in subchapter 3, entitled "Authorized Practice." Also addressed in subchapter 3 is permissible practice by individuals enrolled in a Board-approved training program and delegation by a respiratory care practitioner to unlicensed aides and technicians.

Subchapter 4 sets forth eligibility requirements for licensure and identifies the Board-approved examination.

The two types of temporary licensure are detailed in subchapter 5, and requirements for licensure by endorsement are included in subchapter 6. Subchapter 7 describes the procedure for biennial license renewal and reinstatement. Patient record requirements are set forth in subchapter 8, and subchapter 9 enumerates acts amounting to unlicensed practice.

Social Impact

In proposing these rules, the State Board of Respiratory Care is fulfilling its statutorily mandated duty to establish clear licensure standards for respiratory care practitioners. Within recent years, this health care field has experienced tremendous technological and diagnostic advancement. Practitioners now employ a wide variety of sophisticated techniques and equipment in evaluating and assisting patients with cardio-respiratory problems, including a number of physically invasive procedures which, if not handled with the utmost care, can jeopardize health and life. In enacting the Respiratory Care Practitioner Licensing Act, P.L. 1991, c.31, the Legislature stated that although the majority of respiratory care practitioners are voluntarily credentialed by the National Board for Respiratory Care, uniform State standards were necessary to adequately protect the public health and safety in this health care field. The Board is confident that the proposed new rules will be beneficial to the citizens of the State of New Jersey. The rules identify those individuals who are qualified and legally authorized to practice respiratory care and, as a condition of continuing licensure, require practitioners to conform to high standards of care.

Licensees will benefit from the proposed new rules in that they will have a clear and comprehensive set of regulations setting forth practice requirements and responsibilities.

Economic Impact

With the exception of licensing fees, the proposed new rules are not expected to result in significantly increased costs to respiratory care practitioners inasmuch as the rules reflect current hospital and home care agency practice requirements. Specifically, the proposed qualifications for licensure (graduation from an accredited training program and successful completion of the National Board for Respiratory Care Entry Level Examination) are the current standards in the profession, as are the proposed patient record requirements. Licensing fees will obviously have a direct economic impact upon the estimated 2,400 individuals currently practicing respiratory care. However, as stated in the Notice of Proposal published in connection with the Board's proposed fee schedule, the Board is required by statute to be self-funding. Accordingly, its program costs must be met through licensing fees and penalties.

The Board does not anticipate increased costs for employers of respiratory care practitioners. Although the rules include a supervision requirement for recent training program graduates and for practitioners with fewer than 24 months of experience prior to August 20, 1991, supervision is customarily provided for inexperienced practitioners. However, to the extent that employers are not providing direct supervision for these individuals, they may incur additional expenses in ensuring that these individuals are adequately supervised in accordance with Board rules.

No economic impact upon the consumer is expected, with the possible exception of a nominal charge for copying of patient records.

Regulatory Flexibility Statement

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., respiratory care practitioners are deemed "small businesses" within the meaning of the statute, the following statements are applicable.

The Board anticipates that approximately 2,400 individuals will seek licensure as respiratory care practitioners. The reporting, recordkeeping and other compliance requirements contained in the proposed new rules, which are set forth in detail below, do not differ materially from current standards of professional practice and reflect the requirements of the Respiratory Care Practitioner Licensing Act, P.L. 1991, c.31.

Applicants for permanent or temporary licensure must submit appropriate credentials with the application—a high school transcript, proof of graduation from an accredited training program and, if applicable, proof of successful completion of the Board-approved examination or its equivalent. Compliance requirements for holders of a six-month temporary license include working under the direct supervision of a licensed respiratory care practitioner; advising the Board in writing of the name and permanent license number of the supervising licensee and of any subsequent change in supervising licensee; and taking the next scheduled examination. Individuals seeking licensure under the "grandfather provision" must submit proof to the Board that, as of August 20, 1991, they were practicing respiratory care. In order to obtain a permanent license, these individuals must have successfully completed the Board-approved exam prior to February 20, 1993. The direct supervision requirement applies to temporary license holders in this category who practiced respiratory care for fewer than 24 months prior to August 20, 1991. All licensees must complete and file an application for biennial license renewal in a timely manner.

Since licensees are required to work under the supervision and direction of a physician, respiratory care cannot be rendered until the licensee (1) obtains a written prescription; or (2) documents physician clearance for treatment, which may include the physician's countersignature on the practitioner's proposed treatment plan; or (3) receives a verbal prescription to be memorialized within two weeks. Prior to rendering care, the licensee must also ensure that the physician is constantly accessible, as defined in the regulations.

Supervising licensees are required to inform the patient when care is rendered by a trainee in a Board-approved training program.

Finally, licensees must comply with specific requirements concerning the content of patient records, which must be maintained for a period of seven years from the date of the most recent entry.

While the cost of compliance with the proposed new rules cannot be accurately estimated, the rules are not expected to have a substantial financial impact on licensees inasmuch as they reflect, for the most part, current professional practice requirements. Since the proposed rules are intended to safeguard the public health, safety and welfare, they must apply to all Board licensees, without differentiation as to the size of the practice.

Full text of the proposed new rules follows:

CHAPTER 44F

STATE BOARD OF RESPIRATORY CARE

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:44F-1.1 Purpose and scope

(a) This chapter, as effective _____, is promulgated by the Director of the Division of Consumer Affairs. The rules contained in this chapter implement the provisions of the Respiratory Care Practitioner Licensing Act, P.L. 1991, c.31, and regulate the practice of respiratory care within the State of New Jersey.

(b) This chapter shall apply to all individuals who render respiratory care, as hereinafter defined, under the direction or

supervision of a plenary licensed physician and to anyone within the jurisdiction of the Board of Respiratory Care.

13:44F-1.2 Definitions

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

"Board" means the State Board of Respiratory Care.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardio-respiratory system, as further defined in N.J.S.A. 45:14E-3(c).

SUBCHAPTER 2. AGENCY ORGANIZATION AND ADMINISTRATION

13:44F-2.1 Description of Board

The State Board of Respiratory Care, created in the Division of Consumer Affairs of the Department of Law and Public Safety pursuant to P.L. 1991, c.31, shall consist of 11 members appointed by the Governor. Six board members shall be licensed respiratory care practitioners who have been actively engaged in the practice of respiratory care in this State for at least five years immediately preceding their appointment; one board member shall be an administrator of a hospital licensed pursuant to P.L. 1971, c.136; one board member shall be a physician licensed to practice medicine and surgery pursuant to chapter 9 of Title 45 of the Revised Statutes; two board members shall be public members; and one board member shall be a State executive department member appointed pursuant to P.L. 1971, c.60.

13:44F-2.2 Office location

The offices of the Board are located at 124 Halsey Street, Newark, New Jersey 07102

13:44F-2.3 Meetings of the Board

The Board shall meet twice per year and may hold additional meetings as necessary to discharge its duties.

13:44F-2.4 Election of officers

The Board shall annually elect from among its members a chairman and a vice-chairman.

SUBCHAPTER 3. AUTHORIZED PRACTICE

13:44F-3.1 Scope of practice

(a) A respiratory care practitioner may perform the following duties under the direction or supervision of a physician:

1. Use of medical gases, air and oxygen-administering apparatus;
2. Use of environmental control systems;
3. Use of humidification and aerosols;
4. Administration of drugs and medications;
5. Use of apparatus for cardio-respiratory support and control;
6. Postural drainage;
7. Chest percussion;
8. Vibration;
9. Breathing exercises;
10. Respiratory rehabilitation;
11. Performance of cardio-pulmonary resuscitation;
12. Maintenance of natural and mechanical airways;
13. Insertion and maintenance of artificial airways;
14. Testing techniques to assist in diagnosis, monitoring, treatment and research;
15. Measurement of cardio-respiratory volumes, pressure and flow;
16. Drawing and analyzing of samples of arterial, capillary and venous blood; and
17. Establishment and maintenance of arterial lines, provided the licensee is appropriately trained in this procedure.

(b) For purposes of this subchapter, "under the direction of a physician" means that respiratory care shall not be rendered unless one of the following conditions is met:

1. The licensee has obtained a written order or prescription from a plenary licensed physician, to the extent that the treatment prescribed is within the scope of his or her practice, or from such other health care practitioner authorized by law to prescribe or order respiratory care;

2. The licensee has documented physician clearance for treatment of the patient, which may include the physician's countersigning of the respiratory care practitioner's proposed plan of treatment; or

3. The licensee has received a verbal prescription, in person or by telephone, which shall be memorialized by the prescriber in writing within two weeks.

(c) In no case will physician direction be construed to have been provided on the basis of a patient's representation that he or she has obtained a physician's clearance.

(d) For the purposes of this subchapter, "under the supervision of a physician" means that respiratory care shall not be rendered unless a physician is constantly accessible, either on-site or through electronic communication, and available to render physical assistance when required.

13:44F-3.2 Practice by individuals enrolled in a Board-approved training program

(a) A person enrolled in a Board-approved respiratory care training program may perform those duties essential for completion of the trainee's clinical service, without having to obtain a license, provided the duties are performed under the supervision and direction of a physician, as defined in N.J.A.C. 13:44F-3.1, or under the direct supervision of a licensed respiratory care practitioner, as defined in N.J.A.C. 13:44F-5.1.

(b) The trainee shall, when performing duties pursuant to (a) above, wear a badge which identifies the person as a trainee. Additionally, the supervising licensee shall inform the patient that the person rendering care is a trainee.

13:44F-3.3 Delegation by a respiratory care practitioner to unlicensed persons

(a) Activities which a licensed respiratory care practitioner may delegate to individuals employed as respiratory assistants, respiratory aides or equipment technicians are limited to the following routine tasks relating to the cleanliness and maintenance of equipment:

1. Disassembling equipment;
 2. Cleaning equipment;
 3. Preparing equipment for sterilization;
 4. Maintaining oxygen cylinder and other specialty gas cylinders;
- and
5. Making oxygen checks and charges.

(b) Individuals engaged in the activities set forth in (a) above may use titles such as "respiratory aide" and "equipment technician."

(c) A licensee shall not authorize or permit an unlicensed person to engage in direct patient care.

SUBCHAPTER 4. APPLICANT QUALIFICATIONS; BOARD-APPROVED EXAMINATION

13:44F-4.1 Eligibility for licensure

(a) Applications for licensure may be obtained from the office of the Board of Respiratory Care.

(b) An applicant shall submit, with the completed application form and the required fee, satisfactory proof that the applicant:

1. Has a high school diploma or its equivalent;
2. Has successfully completed a training program accredited by the Joint Review Committee for Respiratory Care Education (JRCRCE) of the Council on Allied Health Education and Accreditation, or its successor; and
3. Has passed the examination specified in N.J.A.C. 13:44F-4.2, unless the applicant is pursuing one of the alternative pathways to licensure set forth in N.J.A.C. 13:44F-5.

13:44F-4.2 Nature of examination; passing grade

(a) The examination shall be the National Board for Respiratory Care Entry Level Examination or the substantial equivalent thereof.

1. Applications for examination should be obtained from the National Board for Respiratory Care.

2. Examinations shall be held within the State at least twice per year at a time and place to be determined by the Board. The Board shall give adequate written notice of the examination to applicants for licensure and examination.

3. The passing score required in order to be licensed shall be the same as the passing score identified by the National Board for Respiratory Care or, if a substantially equivalent examination is used, the score identified by the body administering that examination.

(b) An applicant who submits satisfactory proof that he or she passed, prior to August 20, 1991, the National Board for Respiratory Care Entry Level Examination, or its equivalent, shall be deemed to satisfy the requirement of N.J.A.C. 13:44F-4.1(b)3. The burden of proof is on the applicant to show that an examination other than that administered by the National Board for Respiratory Care is equivalent to the National Board for Respiratory Care examination.

13:44F-4.3 Refusal to issue, suspension or revocation of license

The Board may refuse to issue or may suspend or revoke any license issued by the Board, after an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., for any of the reasons set forth in N.J.S.A. 45:1-21.

SUBCHAPTER 5. TEMPORARY LICENSURE

13:44F-5.1 Temporary six-month license

(a) Any person deemed eligible to sit for the licensure examination by virtue of completion of an accredited training program may apply for the issuance of a temporary six-month license.

(b) All temporary license holders under this section shall be required to work under the direct supervision of a licensed respiratory care practitioner. For purposes of this section, "direct supervision" means continuous on-site presence of a licensed respiratory care practitioner or physician who is constantly accessible through electronic communication and available to render physical assistance as required.

(c) The temporary license holder shall advise the Board, in writing, of the name and permanent license number of the licensee(s) under whose direct supervision the temporary licensee is or will be working. The temporary licensee shall keep the Board advised, in writing, of any subsequent change in supervising licensee(s).

(d) Except in the case of undue hardship, as determined by the Board, the holder of a temporary license shall be required to take the next scheduled examination. The temporary license shall automatically expire upon the earlier of six months or notification to the temporary licensee by the Board that he or she has failed the examination.

(e) The temporary licensee may file for and pay the fee for a one-time renewal of the temporary license for an additional six-month period or until the date of the next examination.

(f) Except in the case of undue hardship, as determined by the Board, if the temporary license holder fails to appear on the scheduled date of the second examination, the temporary license shall automatically expire.

(g) The temporary license shall automatically expire upon notice to the temporary license holder that he or she has failed the second examination, and the temporary licensee shall surrender the license to the Board.

13:44F-5.2 Temporary licensure of individuals practicing respiratory care as of August 20, 1991

(a) The Board shall issue a temporary license to perform respiratory care to an applicant who has not passed the National Board of Respiratory Care Entry Level Examination, or its equivalent, as of August 20, 1991 but who presents proof satisfactory to the Board that he or she is presently functioning as a respiratory care practitioner. For purposes of this subsection, "presently functioning" means that the individual was employed on August 20, 1991 as a respiratory care practitioner performing the services set forth in N.J.A.C. 13:44F-3.1, in fact delivered services prior to August 20, 1991, and continues to deliver services.

(b) All temporary licenses under this section shall expire on February 20, 1993, and shall not be renewable.

(c) In order to be eligible for a permanent license to practice respiratory care, a temporary license holder under this section shall be required to successfully complete the National Board of Respiratory Care Entry Level Examination or its substantial equivalent.

(d) A temporary license holder under this section who has been practicing as a respiratory care practitioner for fewer than 24 months prior to August 20, 1991, shall be subject to the direct supervision requirement set forth in N.J.A.C. 13:44F-5.1(b).

SUBCHAPTER 6. LICENSURE BY ENDORSEMENT

13:44F-6.1 Eligibility for licensure by endorsement

(a) An applicant possessing a valid license issued by another state or possession of the United States or the District of Columbia shall be issued a license to practice respiratory care in New Jersey provided that:

1. The requirements for licensure in that state or possession of the United States or the District of Columbia are substantially equivalent to the requirements of this chapter; and

2. The applicant has not previously failed the Board-approved examination.

(b) Nothing herein shall preclude the Board, in its discretion, from deeming an applicant who possesses a license issued by another jurisdiction but who has failed the examination to be eligible for licensure.

13:44F-6.2 Application requirements for licensure by endorsement

(a) An applicant seeking licensure by endorsement shall submit the following to the Board:

1. An application form together with the required fee;

2. Proof satisfactory to the Board that the applicant is currently licensed in another state or possession of the United States or the District of Columbia and that the license is in good standing; and

3. An affidavit that the applicant has not failed the Board-approved examination.

SUBCHAPTER 7. LICENSE RENEWALS

13:44F-7.1 Biennial license renewal

(a) Prior to the expiration of the current biennial license period, the licensee shall submit an application for license renewal together with the biennial license renewal fee.

(b) If the licensee fails to renew his or her license on or before the date specified in the license renewal notice, the license shall automatically expire.

13:44F-7.2 Reinstatement

(a) If a license expires due to nonpayment of the biennial renewal fee, it may be reinstated within two years upon application to the Board and payment of the current and any past due biennial renewal fee together with the pertinent late fee or reinstatement fee as set forth in N.J.A.C. 13:44F-8.

(b) The Board will not renew a license if the renewal application is submitted to the Board more than two years after the date of license expiration. In such event, the individual shall be required to apply for an initial license and to take the next scheduled examination.

SUBCHAPTER 8. GENERAL PROVISIONS

13:44F-8.1 (No change.)

13:44F-8.2 Patient records

(a) Respiratory care practitioners shall prepare contemporaneous, permanent treatment records which shall be maintained for a period of seven years from the date of the most recent entry. Such records shall include:

1. The dates and times of all treatments;

2. Findings of patient assessment;

3. A patient care plan which includes treatment goals;

4. The patient complaint;

5. Progress notes;

6. A written prescription for care or a physician signed care plan or a verbal prescription memorialized by the prescriber in writing

within two weeks. The licensee shall document verbal prescriptions in the patient record contemporaneously with administration of treatment;

7. Results of appropriate tests;

8. A discharge summary which includes the outcome of respiratory care treatment and the status of the patient at the time of discharge; and

9. The signature or initials of the licensee who rendered the care. If the licensee chooses to sign by initials, his or her complete signature must appear at least once in the records.

(b) Access to patient treatment records by patients or duly authorized representatives shall be in accordance with the following:

1. Reports of all care and/or tests performed by respiratory care practitioners shall be provided no later than 30 days from the receipt of a written request from the patient or authorized representative. To the extent that the record is illegible or prepared in a language other than English, the licensee shall provide a typed transcription and/or translation at no cost to the patient.

2. Except where the complete record is required by applicable law, the licensee may elect to provide a summary of the record, as long as that summary adequately reflects the patient's history and treatment, where the written request comes from an insurance carrier or its agent with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement.

3. A licensee shall provide copies of records in a timely manner to a patient or another designated health care provider where the patient's continued care is contingent upon their receipt. The licensee shall not refuse to provide a patient record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

4. The licensee may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription.

SUBCHAPTER 9. UNLICENSED PRACTICE

13:44F-9.1 Acts amounting to unlicensed practice

(a) The following acts or practices shall be deemed to be the unlicensed practice of respiratory care:

1. Offering of any respiratory care services by any person other than a licensed respiratory care practitioner, an M.D., or a D.O.;

2. The use of the words respiratory care, respiratory therapy, respiratory care practitioner, respiratory therapist, or such similar words or their related abbreviations in connection with the offering of measures or services which are utilized in the rendition of respiratory care by any person who does not hold a license as a respiratory care practitioner, an M.D. or a D.O.; or

3. Billing any patient or third party payor for "respiratory care" or "respiratory therapy," in connection with the use of respiratory care agents, measures or services, if the individual providing the services does not hold a license to practice respiratory care or is not a licensed physician.

13:44F-9.2 Aiding and abetting unlicensed practice

It shall be unlawful for a licensee to aid or assist any person engaging in any of the practices identified at N.J.A.C. 13:44F-9.1.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Programmed Trainer

Proposed New Rule: N.J.A.C. 13:71-10.5

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1992-291.

Submit written comments by August 5, 1992 to:

Frank Zanzuccki, Executive Director

New Jersey Racing Commission

200 Woolverton Street, CN 088

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule sets forth criteria that will be utilized by the New Jersey State steward to determine the identity of the person, or persons, that must be listed in the official racing program as the principal trainer of a standardbred training facility. This principal trainer is the individual from the training stable who is responsible for any rule violations that occur. Presently, there are no controls in the standardbred industry on the assignment of principal trainers by certain training stables. The Racing Commission recognizes that some training stables have justification for employing more than one trainer. Therefore, the Commission has developed criteria that the State steward can utilize in making a determination of the identity of the principal trainer or, if needed, to list someone other than or in addition to, the principal trainer in the official racing program.

Social Impact

The proposed new rule would create a positive social impact on the standardbred racing industry since the intent of the rule is to prevent individuals from listing trainers in the racing program as a way to insulate themselves from penalties received as a result of racing violations imposed by the State steward. By identifying the principal trainer of a stable, the burden of proof is imposed upon that principal trainer to prove mitigating circumstances in the event of a rule violation. In addition, this rule will uphold the integrity of the industry by eliminating the false perception to the public that the named trainer listed on the racing program is the principal trainer of the stable when, in fact, that person is actually an associate trainer.

Economic Impact

The proposed new rule will have no economic impact on the State, track associations, or standardbred horsemen's group. The rule will make the principal trainer and, if applicable, associate trainer equally liable for any rule violations imposed upon them which shall include suspension and monetary fines.

Regulatory Flexibility Statement

The proposed new rule does not impose reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rule sets forth criteria that will be utilized by the New Jersey State steward to determine the identity of the principal trainer of a standardbred training stable. Therefore, a regulatory flexibility analysis is not required.

Full text of proposed new rule follows:

13:71-10.5 Programmed Trainer

(a) The principal trainer of a training stable must be listed as the trainer in the official program and in good standing with the Racing Commission. In the event a training stable requests to list an individual in addition to or other than the principal trainer in the official program, this request must be approved by the State steward. If a person other than the principal trainer is listed in the official program, no change may be made to this status without prior approval of the State steward. The State steward will utilize the following criteria in determining the identity of the principal trainer or need to list someone other than or in addition to the principal trainer in the official program:

1. The identity of the person who is responsible for the business decisions of the training stable including, but not limited to, business arrangements with and any payments to or from owners, veterinarians, feed companies, hiring and firing of employees, obtaining workers' compensation insurance, payroll, horsemen's bookkeeper, etc.;
 2. The identity of the person responsible for communicating with the race secretaries office, stall manager, Racing Commission, owners regarding racing schedules, etc.;
 3. The identity of the person responsible for the conditioning of the horses on a daily basis;
 4. The identity of the person responsible for race day preparation including, but not limited to, accompanying horses to the paddock, selection of equipment, authority to warm up horses before the public, discussions of driving strategy, etc.;
 5. The total number of horses in the control of the training stable. Before any requests to list someone other than the principal trainer in the official program are considered, the training stable shall contain a minimum of 20 horses currently in a race mode at any one location;
 6. The number of active licensed trainers on the payroll of the training stable; and
 7. The number of different stabling locations.
- (b) Programmed trainers and principal trainers shall be held equally liable for all rule violations.

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Fire Protection Service

Proposed Amendments: N.J.A.C. 14:3-3.2 and 7.12

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, and Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:2-13.

BRC Docket Number: AX92030337.

Proposal Number: PRN 1992-273.

Submit comments by August 5, 1992 to:

Kent Papsun, Chief
Bureau of Customer Assistance
Board of Regulatory Commissioners
44 South Clinton Avenue
CN 350
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments would require all water utilities to follow specific notification procedures concerning the discontinuance of fire protection service resulting from the non-payment of validly rendered bills. Initially, water utilities would be required to request the name and address of the customer's insurance carrier at the time that said customer applies for fire protection service.

Pursuant to the proposed amendments, water utilities would give fire protection service customers 30 days prior notice of a pending discontinuance of service. The water utilities would also be required to give notice to the owner of the property, if different than the customer, the mayor, fire chief and housing and fire code officials of the municipality, the customer's insurance carrier and the Board of Regulatory Commissioners (Board).

Should fire protection service ultimately be discontinued, the utility would also be required to notify the above listed parties as well as the Customer Service Division, Insurance Service Office, Commercial Risk Services, located in Parsippany, New Jersey, in regard thereto.

Social Impact

The proposed amendments establish guidelines for the discontinuance of fire protection service as a result of non-payment of validly rendered bills. Since there is a potential for the loss of life and property when fire protection service is discontinued, the Board is of the opinion that

there is a need to balance the safety and welfare of the public with the obligation and right of a utility to collect unpaid bills.

The proposed amendments would extend the notification of discontinuance from seven days, as set out in N.J.A.C. 14:3-7.12(a), to 30 days and would further require that notification be forwarded to local officials, affected insurance carriers and the Board. These amendments, therefore, would provide fire protection service customers with additional time in which to contact the servicing water utility and the Board in order to make appropriate payment arrangements that would decrease the chances that this important service would be terminated. The amendments would also provide notice to local officials of a potential safety hazard within their municipality.

Economic Impact

The proposed amendments would have no direct economic impact on the Board, the public in general or water customers in particular. The water utilities would incur minor administrative costs as a result of the additional recordkeeping and mailing expenses that would result when notification of a pending discontinuance of fire protection service would be required. As these costs would be considered to be incurred in the normal course of business, all reasonable levels of expenses would be recognized by the Board in an appropriate rate proceeding and could be recouped by the water utilities through charges to customers.

Regulatory Flexibility Analysis

These proposed amendments will impact on water companies which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, because the health, safety and welfare of the public is served by attempting to have fire protection service provided in an uninterrupted manner, the Board believes that the limited recordkeeping and expenses involved, as described above, do not require any distinctions to be made between large and small businesses.

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

14:3-3.2 Applications

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

(c) **All applications to water utilities for fire protection service must request that the applicant supply the name and address of the insurance company that provides the applicant with fire protection insurance for the property listed on the application as well as the number of the policy itself.**

Recodify existing (c) and (d) as (d) and (e) (No change in text.)

14:3-7.12 Notice of discontinuance

(a) At least 10 days' time for payment shall be allowed after sending a bill. A public utility may discontinue service for nonpayment of bills provided it gives the customer, **except for a fire protection service customer as set out in (f) below**, at least seven days' written notice of its intention to discontinue. The notice of discontinuance shall not be served until the expiration of the said 10 day period. However, in case of fraud, illegal use, or when it is clearly indicated that the customer is preparing to leave, immediate payment of accounts may be required.

1.-3. (No change.)

(b)-(e) (No change.)

(f) **Each water utility shall, on a semiannual basis, solicit information from its fire protection service customers in order to determine the name of the insurance company currently providing insurance protection to the customer and the policy number under which said protection is being provided.**

1. At least 30 days prior to the discontinuance of fire protection service, the water utility providing that service shall give notice via certified mail to the following:

i. The fire protection service customer of record;

ii. The property owner, if different than the customer of record;

iii. The mayor of the municipality in which the service is provided;

iv. The fire chief of the municipality in which the service is provided;

v. The enforcing housing code official of the municipality in which the service is provided;

vi. The enforcing uniform fire code official of the municipality in which the service is provided;

TRANSPORTATION

vii. The welfare officer of the municipality in which the service is provided;

viii. The Director of County Welfare in the county in which the service is provided;

ix. The District Director of the Division of Youth and Family Services;

x. The District Office Manager of the Division of Youth and Family Services;

xi. The insurance company providing fire protection coverage; and

xii. The Board of Regulatory Commissioners.

2. In the event that fire protection service is ultimately discontinued, the servicing water utility shall immediately notify, via certified mail, the parties listed in (f)1 above and the:

Customer Service Division

Insurance Service Office

Commercial Risk Services

2 Sylvan Way

Parsippany, New Jersey 07054

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Stopping and Parking

Exception for Religious Services

Route U.S. 206 in Mercer County

Proposed Amendment: N.J.A.C. 16:28A-1.57

Authorized By: Richard C. Dube, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-198.

Proposal Number: PRN 1992-282.

Submit comments by August 5, 1992 to:

Charles L. Meyers

Administrative Practice Officer

Department of Transportation

Bureau of Policy and Legislative Analysis

1035 Parkway Avenue

CN 600

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will permit parking along Route U.S. 206 in Lawrence Township, Mercer County, during times of religious services held by various religious faiths at the Lawrence Road Presbyterian Church and the Presbyterian Church of Lawrenceville. On March 16, 1992, the Department proposed and on June 1, 1992, adopted, an amendment to N.J.A.C. 16:28A-1.57(a)7 prohibiting stopping or standing along both sides of Route U.S. 206 in Lawrence Township, Mercer County, except in areas covered by other approved parking restrictions (see 24 N.J.R. 929(a), 24 N.J.R. 2074(b)). The proposed amendment adds another exception, and deletes text at N.J.A.C. 16:28A-1.5(a)17, made unnecessary by the June 1, 1992 adoption.

The Presbyterian Church of Lawrenceville, through its attorney Sydney S. Souter, Esq., presented data to the Department wherein the Township of Lawrence has adopted ordinance No. 1061-87, authorizing parking during times of religious services within 500 feet of the church on both sides of the street. This exception is now being proposed. Additionally, the restriction established at N.J.A.C. 16:28A-1.57(a)18, effecting a stopping or standing restriction Monday through Saturday, is being deleted because religious services are held on every day of the week.

The Department, therefore, proposes to amend N.J.A.C. 16:28A-1.57, to authorize parking during times of religious services held by various religious faiths at the churches cited above.

Social Impact

The proposed amendment will authorize parking along Route U.S. 206 during religious services held on varying days and times by the

PROPOSALS

various religious faiths which meet at the Lawrence Road Presbyterian Church and the Presbyterian Church of Lawrenceville, Lawrence Township, Mercer County. The amendment thus memorializes the action taken by Lawrence Township and authorizes business as usual without any inconvenience to the affected religious congregations. Congregants would be pleased to know that the State is cooperative in relieving any potential problems.

Economic Impact

The Department will incur direct and indirect costs for the promulgation of the amendment. Those individuals who may have been subject to ticketing prior to the adoption of the exceptions will no longer be subject to ticketing or fines for parking in a no-parking zone during religious services.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.57 Route U.S. 206

(a) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no stopping or standing" zones. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.

1.-6. (No change.)

7. No stopping or standing in Lawrence Township, Mercer County:

i. Along both sides:

(1) For the entire length within the corporate limits, including all ramps and connections thereto [,] which are under the jurisdiction of the Commissioner of Transportation[;], except in areas covered by other approved parking restrictions **and during religious services at the following locations:**

(A) **Along the easterly side between a point 35 feet north of the northerly curb line of Fairfield Avenue to approximately 35 feet south of the southerly curb line of Gedney Road.**

(B) **Along the easterly side between a point 100 feet north of the northerly curb line of Gordon Avenue to a point 35 feet south of the southerly curb line of Cold Soil Road.**

(C) **Along the westerly side between a point 35 feet south of the southerly curb line of Manning Lane and a point 100 feet north of the northerly curb line of Gordon Avenue.**

8.-16. (No change.)

[17. No stopping or standing in Lawrence Township, Mercer County:

i. Along the northbound side:

(1) From the junction of Route US 1 Traffic Circle to the southerly curb line of Fairfield Avenue:

(2) From the northerly curb line of Gedney Road to a point 55 feet north of the prolongation of the northerly curb line of Gordon Avenue;

(3) From the prolongation of the southerly curb line of Cold Soil Road to the Lawrence Township—Princeton Township corporate line.

ii. Along the southbound side:

(1) From the Princeton Township—Lawrence Township corporate line to the northerly curb line of Manning Lane;

(2) From a point 140 feet north of the northerly curb line of Gordon Avenue to a point 135 feet south of the southerly curb line of Gordon Avenue;

(3) From the southerly curb line of Craven Lane to the junction of Route U.S. 1 traffic circle.

18. No stopping or standing—Monday-Saturday in Lawrence Township, Mercer County;

i. Along the northbound side:

(1) From a point 55 feet north of the prolongation of the northerly curb line of Gordon Avenue to the prolongation of the southerly curb line of Cold Soil Road.]

Recodify 19.-23. as 17.-21. (No change in text.)
(b)-(c) (No change.)

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

Zone of Rate Freedom

Proposed Amendment: N.J.A.C. 16:53D-1.1

Authorized By: Thomas M. Downs, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and 48:4-2.20 through 2.25.

Proposal Number: PRN 1992-300.

A public hearing concerning this proposal will be held on:
Tuesday, July 21, 1992, at 9:00 A.M.
Hearing Room
Office of Administrative Law
9 Quakerbridge Plaza
Quakerbridge Road
Mercerville, NJ 08625

Submit written comments by August 5, 1992 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, NJ 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendment implements certain provisions of N.J.S.A. 48:2 which directs the Commissioner of the Department of Transportation to establish a Zone of Rate Freedom (ZORF) for the regular route private autobus carriers operating within the State. The ZORF constitutes a limited percentage range to be set annually by the Commissioner in which regular route private autobus carriers may be permitted to adjust their rates, fares or charges without petitioning the Department for prior approval. Provided the autobus carrier remains within the designated percentage range, all that is required is notice to the Department and the riding public of the rate, fare or charge adjustment prior to the effective date. If, however, the regular route autobus carrier seeks a percentage adjustment greater than that provided for in the ZORF, such autobus carrier will be required to follow the standard petitioning procedures, as specified in N.J.S.A. 48:2-21 and N.J.A.C. 16:51-3.10 and 3.11.

After extensive review of the ZORF and its relationship to regular route private autobus carrier costs, revenues and fare structures, the Department proposes to amend the current ZORF. The percentage limitations contained in the 1993 proposal are scaled in consideration of the varying fares currently charged by intrastate regular route private autobus operations.

The percentages set forth in the 1993 proposal do not apply to casino or regular route in the nature of special, charter and special autobus service operating within the State. Pursuant to N.J.S.A. 48:4-2.25, the Commissioner is authorized to exempt casino or regular route in the nature of special, charter and special autobus operations from the purview of the rate regulation. In accordance with said authority, the Commissioner continues to so exempt casino or regular route in the nature of special, charter and special autobus operations within the State during the calendar year of 1993, subject to the existing conditions regarding notices to the public and filings with the Department.

Social Impact

The proposed 1993 ZORF Percentage amendment will enable private autobus carriers, in most cases, to modify regular route fares as may be required without incurring administrative hearing costs, while also limiting the chance for uncontested fare increases to adversely impact on the public. In the Department's opinion, the fare changes permitted by the proposed 1993 ZORF will not be burdensome to the public or regular route private autobus companies.

Economic Impact

The proposed 1993 Percentage amendment will afford privately owned autobus companies flexibility in regular route fare adjustment. Such carriers will not have to incur costly and time consuming petition procedures when their proposed fare adjustments are consistent with that allowed.

Regulatory Flexibility Statement

A number of the autobus carriers affected by the proposed amendment are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment does not place any new reporting or recordkeeping requirements on such autobus carriers. First time autobus carriers commencing operations will have to meet the reporting and recordkeeping requirements otherwise established by law for autobus carriers. The proposed amendment sets raised limits on rate modifications for which compliance with N.J.A.C. 16:53D-3.10 and 3.11 is not required.

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

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State which seeks to revise its rates, fares or charges in effect as of the time of the promulgation of this rule shall not be required to conform with N.J.A.C. 16:51-3.10 (Tariff filings or petitions which do not propose increases in charges to consumers) or N.J.A.C. 16:51-3.11 (Tariff filings or petitions which propose increases in charges to customers) provided the increase or decrease in the rate, fare or charge, or the aggregate of increases and decreases in any single rate, fare or charge is not more than the maximum percentage increase or decrease as promulgated below upgraded to the nearest \$.05.

1. The following chart sets forth the [1992] 1993 percentage maximum for increases to particular rates, fares or charges and the resultant amount as upgraded to the nearest \$.05:

Present Fare	% Of Increase	Increase Upgraded To Nearest \$.05
[\$.60 or less] \$1.10 or less	[8.17%] 4.5%	\$.05
[\$.65-\$1.20] \$1.15-\$2.20	[8.17%] 4.5%	\$.10
[\$1.25-\$1.80] \$2.25-\$3.30	[8.17%] 4.5%	\$.15
[\$1.85 upward] \$3.35 upward	[8.17%] 4.5%	\$.20+

2. The following chart sets forth the [1992] 1993 percentage maximum for decrease to particular rates, fares or charges and the resultant amount as upgraded to the nearest \$.05:

Present Fare	% Of Decrease	Decrease Upgraded To Nearest \$.05
\$.50 or less	10%	\$.05
\$.55-\$1.00	10%	\$.10
\$1.05 upward	10%	\$.15+

TREASURY-GENERAL

(b)

OFFICE OF THE STATE TREASURER

Lottery Prize Offset for Child Support and Public Assistance Payments

Proposed New Rules: N.J.A.C. 17:42

Authorized By: Samuel Crane, State Treasurer.

Authority: P.L.1991, c.383 (N.J.S.A. 5:9-13.1 et seq.).

Proposal Number: PRN 1992-276.

Submit comments by August 5, 1992 to:

Steven B. Frakt
Assistant State Treasurer
State House
CN 002
Trenton, N.J. 08625-0002

The agency proposal follows:

Summary

The proposed new rules implement the provisions of P.L.1991, c.384, which provides for an offset against State lottery prizes in excess of \$2,500 for overdue child support payments and overpayments in certain public assistance programs.

The proposed rules provide for a match of lists of winners of lottery prizes in excess of \$2,500 with lists of individuals who are in arrears in child support payments or who received an overpayment in the programs of Aid to Families with Dependent Children, Food Stamps or low-income home energy assistance. The match is to be based on lists maintained by the Division of State Lottery in the Department of the Treasury and the Division of the Economic Assistance (DEA) in the Department of Human Services. No lottery prize in excess of \$2,500 will be disbursed until a comparison has been made and a resolution of any debt is satisfied.

In the event of a match, DEA is required to notify the lottery winner that payment of the prize is being withheld and that the individual may request a hearing on the alleged debt. If the individual does not request a hearing, the debt will be paid prior to the disbursement of the remainder of the lottery prize. If the individual requests a hearing, the resolution of the hearing process will determine whether or not the lottery prize will be applied to the debt.

Social Impact

The proposed new rules will enhance the ability of the State to identify and recover debts owed for child support or for overpayments in public assistance programs. The recovery of child support arrears will be of significant social and economic benefit to the families who are legally entitled to and who are economically dependent on child support payments. In the case of the repayment to public assistance programs, the additional funds will enable the State to provide public assistance support to more clients.

Economic Impact

The proposed new rules will have a positive economic impact. They will benefit the economic condition of those families who receive payments for past due child support, and they will provide additional funds for State public assistance programs. In accordance with P.L.1991, c.384, the costs of implementing the Act and these rules will be borne by the Division of Economic Assistance of the Department of Human Services. Lottery winners whose prizes are subject to the offset will have their prizes reduced by the offset amount.

Regulatory Flexibility Statement

The proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed rules govern only the administrative operations of State agencies and impact only upon individuals who have won lottery prizes in excess of \$2,500. Therefore, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed new rules follows:

CHAPTER 42

**OFFSET OF STATE LOTTERY PRIZES
TO SATISFY OVERDUE CHILD SUPPORT PAYMENTS
AND OVERPAYMENTS IN CERTAIN PUBLIC ASSISTANCE
PROGRAMS**

SUBCHAPTER 1. GENERAL PROVISIONS**17:42-1.1 DEA's responsibility**

The Division of Economic Assistance in the Department of Human Services (DEA) shall maintain a list of individuals covered by P.L.1991, c.384 (N.J.S.A. 5:9-13.1 et seq.). The list shall include the individual's name and social security number, plus the amount of the alleged support arrears or public assistance overpayment. The list shall be updated at least monthly to show new individuals or obligations and to show payment or satisfaction of amounts outstanding.

17:42-1.2 Lottery's responsibility

The Division of State Lottery (Lottery) shall maintain a list of winners of prizes in amounts in excess of \$2,500. The list shall include the winners' names, addresses, social security numbers and amounts won. The list shall be updated weekly.

17:42-1.3 OTIS' responsibility

On a weekly basis, the Office of Telecommunications and Information Services (OTIS) shall perform a computer match of the data on the two lists to ascertain the existence of a social security number match and shall notify both DEA and Lottery of the existence of any such match or of the fact that no matches were found from the given comparison. If matches are found, OTIS shall transmit a list to each agency including the individual's name, address, social security number, lottery prize and outstanding arrearage or overpayment. No Lottery prize in excess of \$2,500 shall be disbursed by the Department of the Treasury (Treasury) until results of a match involving that prize payment have been determined. In case of annuity prizes where the first installment has not been paid, the match will be conducted on an expedited basis, directly between DEA and Lottery. If the first installment exceeds the lien, a net check can be given to the winner immediately, with the procedures elaborated under these rules to apply to the amount withheld from immediate distribution.

17:42-1.4 Prize disbursement restriction

Upon receipt of notice from OTIS that a social security number match has been made, neither Lottery nor Treasury shall disburse the lottery prize (except a first annuity installment as described in N.J.A.C. 17:42-1.3) until notified that the hearing procedures set forth in this subchapter have been completed or that no hearing has been timely requested. Lottery prizes of \$5,000 or more shall first be subjected to Federal income tax withholding before any other setoffs, deductions or set-asides under these rules.

17:42-1.5 Notice of prize withholding

Within 14 days of notification by OTIS that a social security number match has been found to exist, DEA shall cause written notice to be sent to the subject of the match by first class mail. Such notice shall inform the individual that the match has been found to exist, that payment of the lottery prize is being withheld, that he or she has the right to make a request, within 10 business days of the date of the notice, for a hearing on the alleged debt and the proposed setoff and that, if no such request is timely received, Treasury will transmit the withheld money, up to the amount owed, to DEA or to the Office of Child Support and Paternity Programs in the Department of Human Services (OCSPP) for transmission to the appropriate county probation department.

17:42-1.6 Treasury action following notice of prize withholding

(a) No later than 15 business days from the date of the notice to the alleged debtor, DEA shall notify Treasury and Lottery of any request by the alleged debtor for a hearing, of the failure of the debtor to make such request or of the satisfaction of the alleged debt. Such information shall allow Treasury to:

1. Maintain the account on a hold status if a hearing has been requested;
2. Transmit the alleged debt to DEA or OCSPP where the alleged debtor has not made a timely request for a hearing or where a hearing request is made but subsequently withdrawn; or
3. Release the prize check to the winner if the debt has been satisfied.

(b) Treasury shall extend the hold status of an affected check until a final decision by DEA, in order to accommodate the hearing process, where Treasury has been notified that a hearing has been requested pursuant to N.J.A.C. 17:42-1.7. Following the hearing, N.J.A.C. 17:42-1.8 shall apply. If the request for the hearing is withdrawn, the provisions of (a)2 and 3 above shall apply.

17:42-1.7 Right to hearing

(a) Any person whose lottery prize has been withheld pursuant to P.L.1991, c.384 (N.J.S.A. 5:9-13.1 et seq.) may request a hearing by serving a written request on DEA within 10 business days of the notice of match described in N.J.A.C. 17:42-1.5.

(b) When an alleged debtor makes a timely request for a hearing in a case where DEA is seeking to recoup arrears of child support payments, DEA shall notify the appropriate county probation department, which shall conduct an administrative review of the matter. The issues to be resolved shall include whether the claimed sum

asserted is due and owing. If the matter cannot be resolved, then the alleged debtor may appeal to the Superior Court of New Jersey, Chancery Division, Family Part.

(c) If there is a judgment against the alleged debtor in a case where DEA is seeking to recoup an overpayment of Aid to Family with Dependent Children benefits, food stamp benefits or low-income home energy assistance benefits, the alleged debtor must seek relief in the court where judgment was entered. If there is no judgment against the alleged debtor, he or she may request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., through the county welfare agency which issued the benefits.

17:42-1.8 Transmission of prize offset to DEA or OCSPP

(a) Upon either final determination of the debt due and owing and exhaustion of time in which an appeal may be filed, or upon the debtor's default for failure to make timely request for review of the asserted setoff, or upon payment (in whole or in part) of the outstanding debt, DEA shall forthwith notify Treasury and Lottery, following which the amounts withheld from distribution, up to the amount owed, shall be transmitted to DEA or OCSPP, as appropriate. In cases of multiple or conflicting claims, DEA will provide internal dispute resolution or apportionment according to its own procedures.

(b) Where judicial review is sought from the administrative review, DEA shall advise Treasury and Lottery of such appeal within three days of receiving notice of the filing of the request for review. Upon resolution of judicial review (including any appeal which may be taken) like notice shall be provided by DEA to Treasury and Lottery.

17:42-1.9 Notice and disbursement of prize after setoff

Upon the finalization of setoff through administrative or judicial action, DEA shall notify the debtor in writing of the action taken and of any outstanding balance remaining due after the setoff. If there is an outstanding prize balance remaining after the setoff, it shall be disbursed with the notice described in this section.

17:42-1.10 Confidentiality

Apart from notice to affected individuals and to county probation departments for purposes of administrative review, personally identifiable information compiled under this chapter regarding any person shall be confidential and shall not be disseminated or used for any purpose other than as set forth in N.J.S.A. 5:9-13.1 et seq. and this chapter.

(a)

DIVISION OF PENSIONS

State Health Benefits Program

Part-Time Deputy Attorneys General; Eligibility

Proposed Amendment: N.J.A.C. 17:9-4.2

Authorized By: State Health Benefits Commission,

Patricia A. Ghiacchio, Acting Secretary

Authority: N.J.S.A. 52:14-17.27

Proposal Number: PRN 1992-265.

Submit comments by August 5, 1992, to:

Peter J. Gorman, Esq.

Executive Assistant

Division of Pensions

CN 295

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of the proposed amendment is to permit deputy attorneys general who are working part time to continue to be covered by the State Health Benefits Program. In 1987, the Department of Law and Public Safety instituted a pilot program, primarily for those deputy attorneys general with child care responsibilities, to work less than the normal workweek usually required for the position, but at least 20 hours

per week. The primary purpose of the program was to enable the Department to retain dedicated and experienced lawyers who might otherwise have to terminate their service with the Department. The rules of the Commission at the time that the program was enacted did not authorize coverage in this type of situation. Health coverage was provided to participants in the program pursuant to the provisions of N.J.A.C. 17:9-4.2(a)7 but, as initially adopted, the rule contained a sunset provision, commencing April 1, 1988, and running through March 31, 1990. Thereafter, the rule was extended for an additional period through June 30, 1992, while the Department evaluated its experience with its part time program.

The Department has completed its review of the program and has established a permanent part-time work plan for deputy attorneys general. An essential element of the program is the provision of health care coverage to the deputies who participate in the program.

The proposed amendment provides that deputy attorneys general in the Office of the Attorney General and the Divisions of Criminal Justice, Gaming and Law in the Department of Law and Public Safety, who are participating in a program of part-time employment for deputy attorneys general and who are paid for a minimum of 20 hours per week, shall be considered as "full-time" employees for the purposes of coverage under the State Health Benefits Program. The adoption of this amendment will permit the continuation of health benefits coverage for those deputies in the part-time program. It contains a sunset provision which will permit the reevaluation of the program in another two years.

Social Impact

This proposed amendment will benefit the affected deputy attorneys general by permitting them to continue their health care coverage while they continue working for the Department. It will also provide the State with the ability to retain experienced members of its legal staff.

Economic Impact

No significant economic impact on the State Health Benefits Program is anticipated from the adoption of this proposal. Any increase in cost from extending coverage to employees who would not otherwise be eligible for the coverage will be more than offset by the avoidance of loss of experienced employees and the loss in productivity which accompanies such losses.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions only impact upon public employers and/or employees, this amendment will not have any effect upon small business or private industry in general.

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

17:9-4.2 State; full-time defined

(a) For the purposes of State coverage, "full-time" shall mean:

1.-6. (No change.)

7. Deputy attorneys general in the Office of the Attorney General and the Divisions of Criminal Justice, Gaming and Law in the Department of Law and Public Safety, who are [participating in a pilot program of part-time employment for deputy attorneys general conducted by the Department and are] paid for a minimum of 20 hours per week, notwithstanding the provisions of N.J.A.C. 17:9-4.4, until June 30, [1992] **1994**.

OTHER AGENCIES**(a)****HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION****Official Zoning Map****Proposed Amendment: N.J.A.C. 19:4-6.28**

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
 Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i), and N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1992-284.

A **public hearing** concerning this proposed amendment will be held on July 28, 1992 at or after 7:00 P.M. at:

Hackensack Meadowlands Development Commission
 One DeKorte Park Plaza
 Lyndhurst, New Jersey 07071

Submit written comments by August 5, 1992 to:

Thomas R. Marturano, Acting Chief Engineer
 Hackensack Meadowlands Development Commission
 One DeKorte Park Plaza
 Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The proposed amendment to the Hackensack Meadowlands Development Commission Official Zoning Map consists of a change in zoning designation of Block 286, Lots 5, 6A, 7, and 9, in Kearny, New Jersey,

from Highway Commercial to Heavy Industrial, as requested by Joseph Supor and Universal Flavors (see Notice of Receipt of Petition for Rulemaking, published on May 18, 1992 in the New Jersey Register at 24 N.J.R. 1920(c)).

Social Impact

The proposed zoning change will allow for heavy industrial development in an area which currently contains predominantly heavy industrial uses. Three of the four lots are vacant. Universal Flavors, located on Block 286, Lot 7, is an existing nonconforming use and therefore expansion is limited. The proposed rezoning will take a viable, functioning property, which is limited by its current zoning designation, and allow it to expand and grow.

Economic Impact

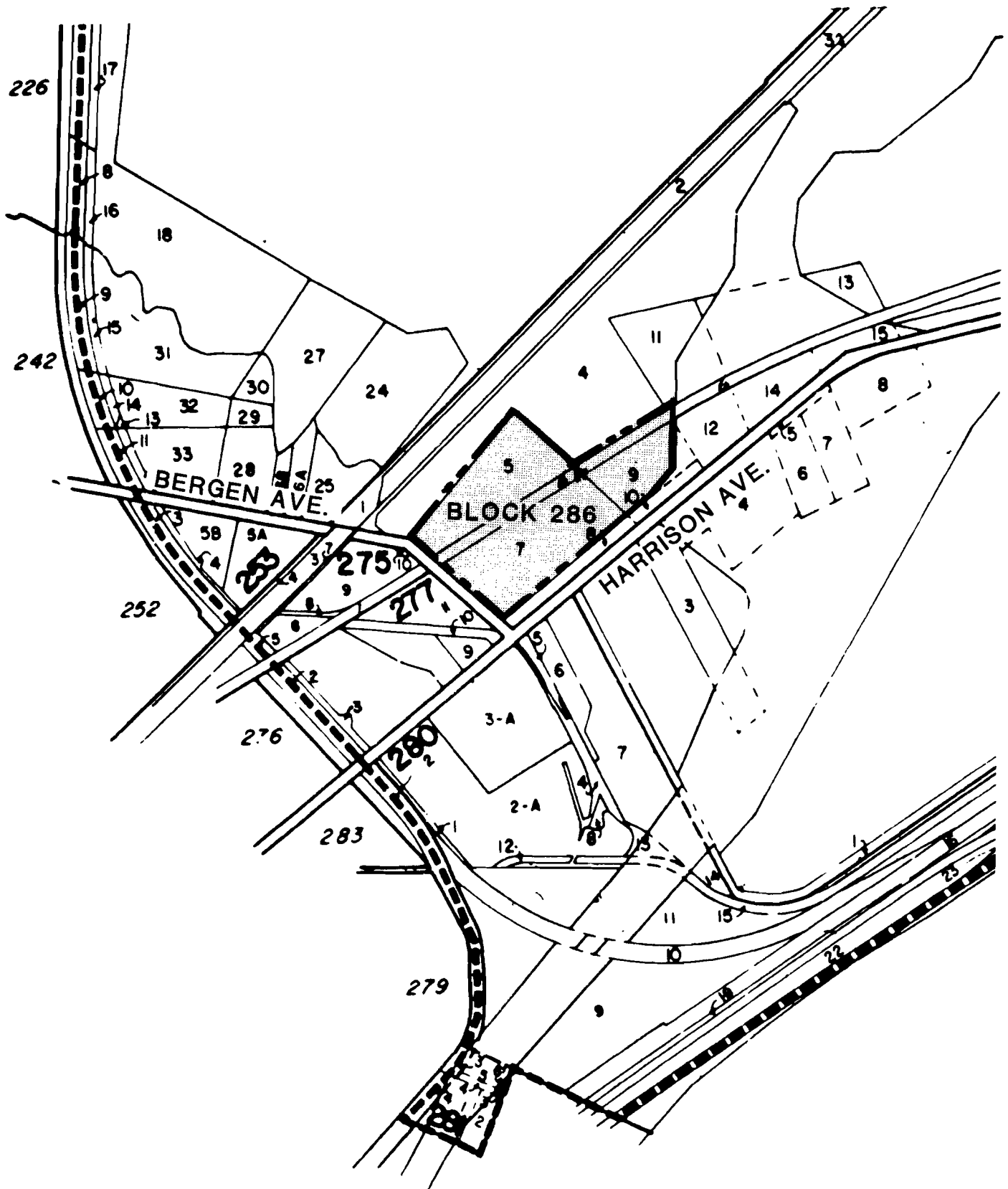
The proposed rezoning of the subject site will permit development of the property consistent and compatible with adjacent lands. Development of this site will not cause undue hardship to the Town of Kearny, New Jersey.

Regulatory Flexibility Statement

The effect of this proposed amendment would be to rezone certain properties in the Town of Kearny. The amendment will have no impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., other than the uses that would be permitted in the rezoned property. There being no regulation over small businesses in any other manner, no regulatory flexibility analysis is required.

19:4-6.28 Official Zoning Map

Change the zoning designation of Block 286, Lots 5, 6A, 7, and 9, in the Town of Kearny, from Highway Commercial to Heavy Industrial. An excerpt from the Official Zoning Map, highlighting the four lots affected, is reproduced below.



(a)

CASINO CONTROL COMMISSION**Organization and Operation of the Commission
Delegation of Authority****Proposed New Rule: N.J.A.C. 19:40-2.5**

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-54 and 69(a).

Proposal Number: PRN 1992-270.

Submit comments by August 5, 1992 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Act, N.J.S.A. 5:12-1 et seq., vests in the Casino Control Commission the authority and responsibility to implement a detailed and comprehensive scheme for the regulation of casino gaming in New Jersey. The ever-increasing scope and complexity of matters entrusted to regulatory bodies such as the Commission makes delegation of certain tasks a practical necessity. The proposed new rule explains the standards and procedures whereby the Commission may delegate certain functions to its staff.

Delegations of authority are implemented by formal Commission resolutions. Although staff determinations pursuant to delegated authority need not be ratified by the Commission, review by the full Commission will be provided upon the written request of the Division of Gaming Enforcement or other affected party within three days of the staff's action. In addition, any matter otherwise delegated to the staff may, in the Commission's discretion, alternatively be presented for consideration by the full Commission.

A list of functions currently performed by the staff through delegated authority will be included in the new rule at N.J.A.C. 19:40-2.5(h). This informational provision is not subject to notice and comment, and will be added upon adoption. Such compilation should provide a useful reference source for the regulated public, but should not be viewed as an exclusive listing of delegated functions. While the Commission will from time to time update this list, the effective delegation of authority by the Commission is, of course, not contingent upon the amendment of this provision.

Social Impact

The delegation of certain of the Commission's functions to its staff, as provided in the proposed new rule, enables the Commission to fulfill the mandates of the Casino Control Act with optimum efficiency, and thus benefits both the casino industry and the regulatory agencies.

Economic Impact

The standards and procedures set forth in the proposed new rule will promote greater efficiency in the Commission's daily operations, and expedite the review and approval of many types of applications, submissions and filings by allowing such functions to be performed at the staff level rather than by formal Commission action. The proposed new rule can thus be expected to provide an economic benefit to the casino industry and the agency itself.

Regulatory Flexibility Statement

The proposed new rule affects the exercise of Commission authority by the agency itself, and thus does not impact upon small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

Full text of the proposed new rule follows:

19:40-2.5 Delegation of Commission authority

(a) The Commission may, in its discretion and where permitted by law, delegate its authority to perform any of its functions under the Act or this title to a member or members of its staff. Except as provided in (d) below, such action shall for all purposes be deemed the final action of the Commission, without approval, ratification or other further action by the Commission.

(b) Any delegation of Commission authority shall be effected through the adoption of a formal resolution at a public meeting of the Commission. Such resolution shall specify the following, without limitation:

1. The specific authority delegated;
2. The member or members of the Commission's staff to whom such authority is delegated; and
3. Any limitations or conditions imposed on the authority delegated.

(c) All delegations of authority made pursuant to this section shall remain in effect indefinitely, unless otherwise specified in the implementing resolution. Any delegation of authority previously approved by the Commission may be revoked or modified by the Commission through the adoption of a subsequent formal resolution.

(d) Any determination by the Commission staff pursuant to delegated authority shall be presented for review by the full Commission, upon timely request by the Division or any party adversely affected by such determination. Such request shall be in writing, and must be received by the Commission within three days after the date of such determination. No determination by the Commission staff pursuant to delegated authority shall be deemed final until all parties have been afforded an opportunity for review in accordance with this subsection.

(e) Notwithstanding any other provision of this section, any matter which has otherwise been delegated to the Commission staff may alternatively be presented to and determined by the full Commission on its own motion or at the discretion of the Chair, or upon the request of the Commission staff.

(f) The use of the term "Commission," "Chair," "Chairman," "Commissioner," or "member" in this title shall not be interpreted to preclude any delegation of authority to the Commission staff in accordance with this section.

(g) Whenever any provision of these regulations requires that a party provide notice to or file any application, petition or other submission with the Commission or Chair, the Commission shall provide written notice to such party, designating any member or members of its staff authorized to accept such notice or filings on behalf of the Commission or Chair.

(b)

CASINO CONTROL COMMISSION**Internal Controls****Retention, Storage and Destruction of Books,
Records and Documents****Proposed Amendment: N.J.A.C. 19:45-1.8**

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-96(e).

Proposal Number: PRN 1992-269.

Submit written comments by August 5, 1992 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Until recently, the Casino Control Act required that all records pertaining to a casino licensee's operations and hotel be maintained "for a period of seven years or such other period of time as the Commission shall require." N.J.S.A. 5:12-96(e), (amended P.L.1991, c.182). All destruction of documents by casino licensees has required the filing of a petition, reviewed and approved by the Commission staff through delegated authority.

In 1991 the Legislature eliminated the presumptive seven-year retention schedule, leaving such determinations to the discretion of the Commission. In light of this statutory change, the Commission has reviewed the standards and procedures for records retention and destruction, set forth at N.J.A.C. 19:45-1.8.

The proposed amendment eliminates the current petition process for records destruction, instead specifying the records retention schedule for various types of documents. After the retention period has expired, licensees would be required to provide 15 days' prior written notice of any records destruction to the Commission and Division. Destruction could proceed unless the licensee is otherwise notified in writing by either agency. Certain specified documents, such as patron mailing lists and housekeeping reports, could be destroyed at any time without notice.

The proposed amendment also eliminates the petition process for off-site record generation or storage. Although initial site approval is still required, there is no differentiation between on- and off-site generation or storage. Licensees will, however, be held accountable for providing access to any document, at a minimum, within 24 hours. Microfilming is also eliminated as a prerequisite to off-site storage.

Finally, the proposed amendment permits the use of an independent records disposal company, except for credit-related documents.

Social Impact

The proposed amendment should benefit both the casino industry and the regulatory agencies by simplifying and expediting the standards and procedures for records retention and destruction. The rules nonetheless ensure that all records are maintained for a period of time adequate to meet any investigatory and regulatory concerns.

Economic Impact

By eliminating the need for formal review and approval of requests for records destruction, the proposed amendment should reduce the time and expense incurred by both the casino industry and the regulatory agencies.

Regulatory Flexibility Statement

The proposed amendment affects only casino licensees, none of which qualifies as a small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:45-1.8 Retention, storage and destruction of books, records and documents

(a) [Except as otherwise provided in this section, all] **All** original books, records and documents pertaining to the casino licensee's operations and approved hotel shall be:

1. (No change.)
2. Retained on the site of the approved hotel building or at **another secure location approved in accordance with (d) below** for **[a] the time period [of at least seven years] specified in (c) below;**
3. Held immediately available for inspection by agents of the Commission and Division during all hours of operation; **[and]**
4. Organized and indexed in such a manner so as to provide immediate accessibility to agents of the Commission and Division; **and**
5. Destroyed only after:
 - i. Expiration of the minimum retention period specified in (c) below; **and**
 - ii. Written notice to the Commission and Division in accordance with (f) below.

(b) For the purposes of this section, "books, records and documents" shall be defined as any book, record or document pertaining to, prepared in or generated by the operation of a casino or an approved hotel including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer generated data, internal audit records, correspondence and personnel records. **This definition shall apply without regard to the medium through which the record is generated or maintained, for example, paper, magnetic media or encoded disk.**

(c) All original books, records and documents shall be retained by a casino licensee in accordance with the following schedules. For purposes of this subsection, "original books, records or documents" shall not include copies of originals, except for copies which contain original comments or notations or parts of multi-part forms.

1. The following original books, records and documents shall be retained indefinitely unless destruction is requested by the casino licensee and approved by the Commission:

- i. Corporate records required by N.J.A.C. 19:45-1.4;
- ii. Records of corporate investigations and due diligence procedures;
- iii. Casino employee personnel files;
- iv. Records of hours worked by persons employed in gaming-related positions for more than three years, in an abstract or other readily accessible format; and
- v. A record of any original book, record or document destroyed, identifying the particular book, record or document, the period of retention and the date of destruction.

2. The following original books, records and documents shall be retained by a casino licensee for a minimum of five years:

- i. All gaming-related documents, including, without limitation, casino cage documents; patron gaming records; records concerning junkets; and records concerning gaming-related casino service industries;
- ii. Hotel-related documents which pertain to the purchasing department and accounts payable department; accounts receivable documents from store rentals and travel wholesalers; petty cash documentation and general ledgers and supporting journals; and
- iii. Any other original book, record or document not otherwise specified in this subsection.

3. The following original books, records and documents shall be retained by a casino licensee for a minimum of three years:

- i. Hotel income audit documents, including, without limitation, cashier reports, room tally reports, deposit envelopes, telephone call records and charges, register tapes, room service checks, laundry charges, over/short reports, drop envelopes, rate variations and missing check reports;
 - ii. Non-gaming hotel-related documents, including, without limitation, records concerning hotel guests; records concerning banquets; food and beverage documents; records of retail stores, accounts receivable and other records of transactions in which the casino licensee is a vendor; advertising records; and entertainment records;
 - iii. Files and workpapers used to prepare budgets;
 - iv. Payroll records, except as provided in (c)1 above;
 - v. Signature cards of terminated employees;
 - vi. Marketing department records;
 - vii. Returned check aging reports, except for year-end reports;
 - viii. Card and dice transaction and inventory reports;
 - ix. Surveillance department visitor logs;
 - x. Complimentary settled guest checks;
 - xi. Security incident reports;
 - xii. Insurance department records relating to guest claims and copies of arrest records;
 - xiii. Credit union records; and
 - xiv. Any gaming-related document for which the casino licensee can demonstrate that the information contained thereon is duplicative or less than that recorded on another document retained in accordance with (c)1 and 2 above.
4. The following original books, records and documents shall be retained by a casino licensee for a minimum of six months:
- i. Coupons entitling patrons to cash or slot tokens, including unused, voided and redeemed coupons;
 - ii. Documents relating to promotions, such as entry forms and game tickets;
 - iii. Load count arrival forms;
 - iv. Credit card settled guest checks pertaining to restaurant and bar charges;
 - v. Room charge settled guest checks pertaining to restaurant and bar charges;
 - vi. Credit card vouchers used to settle guest checks in restaurants and bars;
 - vii. Guest check control sheets used to control the issuance and return of guest checks to cashiers, bartenders and food servers;
 - viii. Credit applications with unused lines of credit;
 - ix. Hotel cashier envelopes;
 - x. Surveillance employee duty logs, VCR/tape logs, and equipment malfunction reports; and
 - xi. Zeroed-out countercheck envelopes.

5. The following original books, records and documents do not have to be retained by a casino licensee for any minimum period of time, and may be destroyed without notice otherwise required by (f) below:

- i. Parking ticket stubs;
- ii. Coat check tickets;
- iii. Housekeeping reports;
- iv. Maintenance department records;
- v. Patron mailing lists;
- vi. Blank entry forms;
- vii. Bellman and baggage forms;
- viii. Cash settled guest checks;
- ix. Food credit and complimentary beverage coupons;
- x. Drink chits;
- xi. Food and beverage order slips;
- xii. Bottle sales slips;
- xiii. Showroom starter slips;
- xiv. Cashier journal rolls;
- xv. Communication department records; and
- xvi. Unsolicited resumes or letters requesting employment.

[(c)](d) A casino licensee may petition the Commission at any time for approval [to generate or store original books, records and documents at] of a [secure] facility off the site of the approved hotel building to be used to generate or store original books, records and documents. Such petition shall include:

[1. A list and detailed description of all original books, records and documents which the casino licensee wishes to generate or store at the off-site facility;]

[2.]1. A detailed description of the proposed off-site facility, including security and fire safety systems; and[, or a recitation of the prior approval of the facility by the Commission;

3. A description of the internal control procedures necessary for the control or safe transport of the original books, records and documents to be generated or stored at the off-site facility;

4. A description of the system by which the original books, records and documents will be organized and indexed so as to provide ready access to agents of the Commission and Division; and]

Recodify [5.] as 2. (No change in text).

[(d) The Commission may prohibit the transfer of any original book, record or document from the approved hotel building or an approved off-site facility to any other approved location unless the particular book, record or document has first been copied and stored on microfilm, microfiche or other suitable media in accordance with the provisions of (e) below.]

(e) [All] A casino licensee may petition the Commission at any time for permission to copy and store original books, records and documents [may be copied and stored] on a microfilm, microfiche or other suitable media system approved by the Commission. A microfilm, microfiche or other media system shall be approved if it contains the following elements to the satisfaction of the Commission:

1.-4. (No change.)

[(f) No original book, record and document may be destroyed by a casino licensee without the prior approval of the Commission. The Commission may prohibit the destruction of any original book, record or document unless the particular book, record or document has first been copied and stored on microfilm, microfiche or other suitable media in accordance with the provisions of (e) above. No original book, record or document necessary or useful to the audit or certification of a casino licensee's gross revenue may be destroyed unless and until it has been copied and stored on microfilm, microfiche or other suitable media for a period of at least two years. Any petition for approval to destroy books, records or documents pursuant to this section shall include:

1. A list and detailed description of each original book, record or document which the casino licensee wishes to destroy;

2. A certification as to whether or not each of these books, records or documents has been copied and stored on microfilm, microfiche or other suitable media; and

3. A statement explaining why each of these books, records or documents need not be retained.]

(f) A casino licensee shall notify the Commission and the Division in writing at least 15 days prior to the scheduled destruction of any original book, record or document. Such notice shall list each type of book, record and document scheduled for destruction, including a description sufficient to identify the books, records and documents included; the retention period; and the date of destruction. Each casino licensee shall retain this record of destruction in accordance with (c)1 above.

(g) The Commission or the Division may prohibit the destruction of any original book, record or document by so notifying the casino licensee in writing within 15 days of the receipt of notice of destruction pursuant to (f) above. Such original book, record or document may thereafter be destroyed only upon notice from the Commission or Division, or by order of the Commission upon the petition of the casino licensee or by the Commission on its own initiative.

(h) The casino licensee may utilize the services of a disposal company for the destruction of any books, records or documents except those related to credit. Any cash complimentary coupons to be destroyed by a disposal company shall be cancelled with a void stamp, hole punch or similar device, or must contain a clearly marked expiration date which has expired.

Recodify existing [(g)] as (i) (No change in text.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Blackjack Table; Physical Characteristics

Proposed Amendment: N.J.A.C. 19:46-1.10

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 70(f).

Proposal Number: PRN 1992-286.

Submit comments by August 5, 1992 to:

Catherine A. Walker, Senior Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The Casino Control Commission is proposing an amendment to N.J.A.C. 19:46-1.10 in response to a petition filed by Adamar of New Jersey, Inc. (see 24 N.J.R. 2085(a)). The proposed amendment to N.J.A.C. 19:46-1.10 provides that casino licensees offering double exposure blackjack pursuant to N.J.A.C. 19:47-2.6(k) must use an alternative blackjack layout with inscriptions different from those set forth in N.J.A.C. 19:46-1.10(c), when offering double exposure blackjack to the public.

Social Impact

The proposed amendment will provide more accurate information to gaming patrons in those instances when double exposure blackjack is offered to the public.

Economic Impact

The proposed amendment to N.J.A.C. 19:46-1.10 is anticipated to have a minimal economic impact on those casino licensees which choose to offer double exposure blackjack and will be required to provide a blackjack layout that has some of the important rules of double exposure blackjack inscribed upon it. There will be no economic impact on casino patrons or the regulatory agencies.

Regulatory Flexibility Statement

The proposed amendments will affect New Jersey casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:46-1.10 Blackjack table; physical characteristics

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

(d) Notwithstanding the requirements of (c) above, if a casino licensee offers blackjack rule variations in accordance with the requirements of N.J.A.C. 19:47-2.6(k), the cloth covering the blackjack table shall be approved by the Commission and have imprinted on it, at a minimum, the following inscriptions:

1. Blackjack pays 1 to 1;
2. Dealer must draw to 16 and stand on all 17's; and
3. Dealer's hole card dealt face up.

Recodify existing (d)-(e) as (e)-(f) (No change in text.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment; Rules of the Games

Blackjack Table; Card Reader Device; Physical Characteristics; Inspections

Cards; Physical Characteristics

Approval of Gaming Equipment; Retention by

Commission and Division; Evidence of Tampering

Definitions; Procedure for Dealing Cards; Insurance

Wagers; Irregularities

Proposed Amendments: N.J.A.C. 19:46-1.10, 1.17 and 1.20, and 19:47-2.1, 2.6, 2.9 and 2.15

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69, 70(f), 99 and 100(e).

Proposal Number: PRN 1992-271.

Submit comments by August 5, 1992 to:

Barbara A. Mattie, Chief Analyst—Operations
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments permit casino licensees to utilize a card reader device that allows the dealer to read his or her hole card in order to determine if the dealer has a blackjack. If the dealer has an ace showing (first card), the device will be used to determine if the dealer's hole card (second card) is a king, queen, jack or ten. If the dealer has a 10 value card showing (first card), the device will be used to determine if the hole card (second card) is an ace. If the dealer has a blackjack, no additional cards will be dealt and each player's wager will be a push, if he or she has blackjack, or will lose and be collected by the dealer.

Social Impact

The proposed amendments are not anticipated to have a significant social impact. Blackjack patrons playing at a table where a card reader device is installed will most likely experience a faster paced game.

Economic Impact

If a casino licensee elects to utilize a card reader device, the casino will experience more hands per hour because the dealer will not have to deal out additional cards if he or she has achieved a blackjack. A manufacturer of this device and two casino licensees interested in testing it have indicated that they anticipate that the number of hands dealt may increase by 20 to 36 hands per hour. If this occurs, there is a possible increase in casino revenue. Casino licensees which choose to use this device will incur some cost to install the card reader device onto a blackjack table.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed amendments will only affect the operation of New Jersey casino licensees, none of which qualifies as a small business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:46-1.10 Blackjack table; **card reader device**; physical characteristics; **inspections**

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

(f) A blackjack table may have attached to it, as approved by the Commission, a card reader device which permits the dealer to read his or her hole card in order to determine if the dealer has a blackjack in accordance with N.J.A.C. 19:47-2.6. If a blackjack table has an approved card reader device attached to it, the floorperson assigned to the table shall inspect the card reader device at the beginning of each gaming day. The purpose of this inspection shall be to insure that there has been no tampering with the device and that it is in proper working order.

19:46-1.17 Cards; physical characteristics

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

(c) Each suit shall be composed of 13 cards—ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3, 2. The face of the ace, king, queen, jack and 10 value cards may contain an additional marking, as approved by the Commission, which will permit a dealer, prior to exposing his or her hole card at the game of blackjack, to determine the value of that hole card.

(d)-(h) (No change.)

19:46-1.20 Approval of gaming equipment; retention by Commission and Division; evidence of tampering

(a) The Commission shall have the discretion to review and approve all gaming equipment and other devices used in a casino as to quality, design, integrity, fairness, honesty and suitability including without limitation gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, locking devices, **card reader devices** and data processing equipment.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino including, without limitation, gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, **card reader devices**, data processing equipment, tokens and slot machines have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice and cards may be found at N.J.A.C. 19:46-1.16(g) and 19:46-1.18(n), respectively.

19:47-2.1 Definitions

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

...

"Card reader device" is defined in N.J.A.C. 19:46-1.10.

...

19:47-2.6 Procedure for dealing cards

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

(j) In lieu of the procedures set forth in (h) above, a casino licensee may permit a blackjack dealer to deal his or her hole card face downward after a second card and before additional cards are dealt to the players provided that said dealer not look at the face of his or her hole card until after all other cards requested by the players pursuant to these regulations are dealt to them[.]; **provided, however, if a casino licensee elects to utilize a card reader device and the dealer's first card is an ace, king, queen, jack or 10 of any suit, the dealer shall determine whether the hole card will give the dealer a blackjack prior to dealing any additional cards to the players at the table, in accordance with procedures approved by the**

ENVIRONMENTAL PROTECTION

Commission. The dealer shall insert the hole card into the card reader device by moving the card face down on the layout without exposing it to anyone, including the dealer, at the table. Notwithstanding any other provisions of this subchapter to the contrary, if the dealer has a blackjack, no additional cards shall be dealt and each player's wager shall be settled in accordance with N.J.A.C. 19:47-2.3 and 2.7.

(k)-(o) (No change.)

19:47-2.9 Insurance Wagers

(a) (No change.)

(b) An insurance bet may be made by placing on the insurance line of the layout an amount not more than half the amount staked on the player's initial wager, except that a player may bet an amount in excess of half the initial wager to the next unit that can be wagered in chips, when because of the limitations of the value of chip denominations, half the initial wager cannot be bet. All insurance wagers shall be placed immediately after the second card is dealt to each player and prior to any additional cards being dealt to any player at the table, if a card reader device is not in use and, if a card reader device is in use, prior to the dealer inserting his or her hole card into the card reader device.

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

19:47-2.15 Irregularities

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

(j) If the dealer accidentally inserts his or her hole card into a card reader device and the value of his or her first card is not an ace, king, queen, jack or 10, all hands shall be called dead, the cards collected and each player's wager returned.

(k) If a card reader device malfunctions the dealer may only continue dealing the game of blackjack at that table using the dealing procedures applicable when a card reader device is not in use.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION

New Jersey Pollutant Discharge Elimination System Statewide Stormwater Permitting Program

Proposed Amendments: N.J.A.C. 7:14A-1.2, 1.7, 1.8,
1.9, 2.1, 2.4, 2.5, 2.12, 2.13, 3.9, 3.11, 3.12, 3.13,
3.17, 7.8, 9.1, 10.3, 14.8, and Appendix H

Proposed New Rules: N.J.A.C. 7:14A-1.10 and
7:14A-3 Appendix A and Appendix B

Proposed Repeal and New Rule: N.J.A.C. 7:14A-3.8

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

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49
et seq., 58:10-23.11 et seq., 58:11-64 et seq., 13:1D-1 et seq.,
13:1E-1 et seq., 58:4A-5, 58:4A-4.1 et seq., 58:12A-1 et seq.,
4:24-39 et seq.

DEPE Docket Number: 27-92-06.

Proposal Number: PRN 1992-293.

Public hearings concerning this proposal will be held on:

Tuesday, July 28, 1992 at 1:00 P.M.

New Jersey Department of Environmental Protection
and Energy

401 East State Street

Public Hearing Room, First Floor

Trenton, New Jersey

Thursday, July 30, 1992 from 3:00 P.M. to 7:00 P.M.

Woodbridge Main Library

George Frederick Plaza

Route 35 North

Woodbridge, New Jersey

PROPOSALS

Submit written comments by August 5, 1992 to:

Samuel A. Wolfe, Esq.

Administrative Practice Officer

Department of Environmental Protection and Energy

Office of Legal Affairs

CN 402

Trenton, NJ 08625

The agency proposal follows:

Summary

These amendments to the New Jersey Pollutant Discharge Elimination System (NJPDDES) rules N.J.A.C. 7:14A, are proposed as part of the Department's Statewide Stormwater Permitting Program (Program) and have been prepared in response to requirements mandated under the Federal Clean Water Act (CWA), 33 U.S.C. §1251 et seq. This first phase of the Statewide Stormwater Permit Program includes a streamlined, logical general permit program that provides substantial environmental benefit with minimum regulatory burden. The general permit program represents a significant departure from traditional permitting programs in that it is designed to offer incentives and an innovative permit structure to encourage compliance, and by relying on stormwater pollution prevention plans rather than numerical effluent limitations.

The Department is developing this Program within the framework of Section 402(p) of the CWA, related provisions of the National Pollutant Discharge Elimination System (NPDES) rules, 40 CFR 122, 123 and 124, and Section 1068 of the Intermodal Surface Transportation Efficiency Act of 1991 (Transportation Act), P.L.102-240, 105 Stat. 1914. Congress added Section 402(p) to the CWA in 1987 to establish a comprehensive framework for addressing stormwater discharges. Section 1068 of the Transportation Act addressed permit application deadlines for stormwater discharges associated with industrial activity from facilities owned or operated by municipalities. Relevant amendments to the NPDES rules were promulgated in the Federal Register on November 16, 1990 (55 FR 47990), March 21, 1991 (56 FR 12098), November 5, 1991 (56 FR 56548), and April 2, 1992 (57 FR 11394).

The proposed amendments are premised on the philosophy of pollution prevention and as such represent a significant step forward in the regulatory process for the Department of Environmental Protection and Energy. In the last two decades, the Department has relied, almost exclusively, on water pollution treatment technologies and numerical effluent limitations for regulating discharges that could adversely impact New Jersey's waters. In recent years, there has been growing public recognition of the limitations of "end-of-the-pipe" treatment and other similar regulatory mechanisms that provide only an after-the-fact attempt at cleaning up contamination that has already occurred. Not only is this form of pollution control expensive and time-consuming for the Department to administer, it is often very costly to the regulated community, and does not always provide adequate improvement in water quality. In some cases, a more effective method of environmental protection may be to reduce the amount of pollutants created and to prevent pollution from occurring in the first place through the use of source controls. This approach is supported by the New Jersey Legislature, as evidenced by the passage of the New Jersey Pollution Prevention Act of 1991 (N.J.S.A. 13:1D-35 et seq.). This rulemaking represents the Department's first attempt to incorporate such a pollution prevention ethos into a water discharge permit.

On November 16, 1990, the U.S. Environmental Protection Agency (EPA) issued the first of these NPDES rule amendments which established permit application requirements for certain stormwater discharges, including stormwater discharges associated with industrial activity (55 FR 47990). These NPDES rules define the term "storm water discharges associated with industrial activity" and establish requirements and deadlines for submitting individual permit applications and group applications for such discharges. These NPDES rules also allow stormwater discharges associated with industrial activity to obtain authorization under a promulgated general permit. EPA's April 2, 1992 amendments established minimum notification requirements for stormwater general permits.

The Department estimates that approximately 10,000 facilities in New Jersey discharge stormwater associated with industrial activity. Presently, there are fewer than 1,500 facilities regulated under the NJPDDES program for all types of discharges to surface waters. The types of facilities that will require permits under this new program include many industrial facilities, and certain construction and mining facilities, that have point source discharges of stormwater to surface waters. The permitting of all these facilities will vastly expand the universe of NJPDDES surface water

permits. The large number of facilities addressed by the regulatory definition in the EPA rules of "storm water discharge associated with industrial activity" will place correspondingly large administrative burdens on the Department, which along with 28 other states, has been delegated the authority by EPA to administer the Federal NPDES program, and to issue individual and general permits, as part of the NJPDES program. Since the Department has accepted full responsibility for implementing the Federal NPDES program in New Jersey through the NJPDES program, the Department believes that it is appropriate to continue with such efforts by implementing the Federal stormwater permitting requirements under the NJPDES program.

For reasons discussed in detail further below, the Department believes that for many of these stormwater discharges, the traditional NPDES permitting approach is inappropriate. The Department, instead, is proposing an approach that emphasizes pollution prevention through the development and implementation of stormwater pollution prevention plans under NJPDES general permits. The Department believes that this approach will be environmentally effective and administratively efficient, while encouraging the fundamental policy of pollution prevention.

The Department's approach is consistent with the NPDES rules. As discussed in EPA's August 16, 1991 and April 2, 1992 notices (see 56 FR 40952-40953 and 57 FR 11397-11398), EPA has developed a long-term permit issuance strategy for such industrial stormwater discharges for those states where it has not delegated authority to issue permits. This strategy was prompted not only by the extremely large number of industrial stormwater discharges, but also by the challenges presented in identifying and assessing appropriate technologies for preventing and reducing pollutants in different classes of stormwater and the differences in the nature and extent of stormwater discharges. EPA intends to use the flexibility provided by the Clean Water Act and several relevant court decisions (as discussed below) in designing a workable and reasonable stormwater permitting program for the delegated states as well as EPA.

EPA noted that the Court of Appeals in *NRDC v. Train*, 396 F. Supp. 1393 (D.D.C. 1975) *aff'd*, *NRDC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977), recognized the heavy administrative burden that would be placed on EPA if it were to be required to issue traditional individual permits to cover tens of thousands of stormwater discharges needing permits. Accordingly, this court, and subsequent courts, have affirmed EPA's discretion to use certain administrative devices, such as area permits or general permits, to help manage its stormwater workload. The courts have also recognized EPA's need for flexibility in developing permit conditions, including requirements for best management practices rather than numerical effluent limitations. Further, as EPA itself has noted, states like New Jersey that administer Section 402 permit programs face the same problems as EPA in connection with stormwater discharges. These problems have been recognized not only by EPA and the Federal courts, but also by the Clean Water Enforcement Act (CWEA), P.L.1990, c.28, which amended the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. The CWEA exempted stormwater discharges from requirements for monthly reporting of monitoring results (see N.J.S.A. 58:10A-6(f)(5)) and for annual inspection by the Department (see N.J.S.A. 58:10A-6(f)(1)).

As part of this rule proposal, the Department is issuing two draft general permits for stormwater discharges associated with industrial activity: draft general permit no. NJ0088315 (the "industrial" general permit) is for a broad category of stormwater discharges associated with industrial activity; and draft general permit no. NJ0088323 (the "construction" general permit) is for stormwater discharges associated with industrial activity from certain construction and mining activities. These draft general permits employ a pollution prevention approach that would require regulated facilities to develop and implement stormwater pollution prevention plans and best management practices.

For the "industrial" general permit, the stormwater pollution prevention plan will require that appropriate best management practices be developed and implemented to prevent contact between industrial pollutants and other source materials and stormwater discharges through separate storm sewers to surface waters. This plan will be certified by a professional engineer, as well as the owner and operator. Use of these engineers as the principal reviewers of the stormwater pollution prevention plan is part of the Department's efforts to promote privatization of appropriate portions of the regulatory process. For the "construction" general permit, the stormwater pollution prevention plan will essentially incorporate the permittee's soil erosion and sediment control plan, prepared pursuant to the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.). Both draft permits require annual inspection and certification that the facility is in compliance with the stormwater

pollution prevention plan. These draft general permits satisfy EPA's requirements and are consistent with EPA's stormwater permitting strategy.

While the Department is optimistic that many industries will be eligible for the draft "industrial" general permit, those facilities that cannot meet the draft general permit conditions must apply for an individual NPDES permit, unless the stormwater discharge is already authorized under an existing discharge permit (including expired permits), or is identified in a group application for stormwater discharges submitted to EPA by September 30, 1991 (and has not been rejected by EPA as a member of the group). For example, if an industrial facility cannot implement best management practices to eliminate contact between stormwater and source materials, that facility should not request authorization under the "industrial" general permit.

While the NPDES rules (40 CFR 122.26(e)) require individual permit application submissions by October 1, 1992, the Department is proposing to establish a later deadline of April 1, 1993 for these individual permit applications, because as discussed further below, the Department does not believe that EPA's October 1, 1992 deadline allows sufficient time for both the regulated community and the Department to make prudent decisions regarding stormwater permitting. For the same reasons, the Department is proposing that requests for authorization (RFAs) under the draft general permits could be submitted up to 180 days after the effective date of these permits. Accordingly, the Department will not take enforcement action against those who submit either their RFAs or the individual permit application within the time period specified in these rules. The Department makes these proposals in the exercise of its discretion to choose the means for implementing legislative directives, which discretion is especially well-recognized in connection with its allocation of prosecutorial resources.

Due to the varied nature of stormwater discharges, and the vast number and variety of facilities with stormwater discharges requiring permits under the NPDES rules, the Department believes that it is not appropriate, at this time, to require a single set of numerical effluent limitations or a single design or operational standard for all facilities that discharge stormwater associated with industrial activity. Rather, the draft general permits establish a framework for the development and implementation of site-specific stormwater pollution prevention plans.

The Department believes that such non-numerical effluent limitations are more appropriate for the types of stormwater discharges eligible for authorization under the draft general permits. The Department believes that the draft general permit requirements for annual site inspection and reporting by the permittee, together with the Statewide Stormwater Monitoring Program discussed below, will be more effective than traditional compliance monitoring by the permittee to evaluate and ensure compliance with these non-numerical effluent limitations. Overly broad monitoring requirements could be counterproductive in attaining the goals of the Statewide Stormwater Permitting Program, since significant resources would have to be expended for collecting and analyzing discharge samples. These requirements would limit available resources at some facilities, such as certain small businesses, to implement pollution prevention measures that would result in the removal of pollutants from their stormwater discharges.

The Department believes that the reporting and permittee site inspection requirements of the draft general permits provide a more efficient and cost-effective approach than compliance sampling for ensuring the implementation of pollution prevention plans. These draft general permits will reduce the sampling burden on industrial facilities, while still providing significant environmental benefits.

The Department does recognize that sampling can be an effective tool in assessing overall effectiveness of stormwater pollution prevention measures and in identifying priority areas or classes of discharges where other types of pollution control measures may be appropriate in the future. By March, 1993, the Department will have evaluated the feasibility of establishing a Statewide Stormwater Monitoring Program that will, among other things, establish an ambient monitoring database and a random or target-area sampling program to evaluate the impact of the draft general permits in reducing pollutant loadings from stormwater discharges associated with industrial activity. The data generated from this effort would be used by the Department in developing subsequent phases of the Statewide Stormwater Permitting Program, similar to EPA's four-tier Stormwater Permitting Strategy.

The amendments that the Department is now proposing to N.J.A.C. 7:14A are only a first step in the Department's Statewide Stormwater Permitting Strategy. The Department will continue to evaluate

stormwater permitting issues, based upon the experience it will gain with the two general permits in this proposal, upon further steps taken by EPA to implement Section 402(p) of the Federal Act, and upon any other additional sources of new information regarding the impact of stormwater discharges, and these general permits, on water quality. If, as a result of this continued evaluation, the Department determines that other control measures are necessary to address certain stormwater discharges, the Department may propose to modify these two general permits, to issue further general permits, to establish industry-specific or watershed-specific permitting requirements, or to otherwise amend N.J.A.C. 7:14A. Moreover, the Department has already begun coordinating the Statewide Stormwater Permitting Strategy with the rest of its evolving Nonpoint Source Pollution Control and Stormwater Management Strategy. That strategy includes voluntary implementation of local stormwater management programs, and Statewide regulatory and educational programs to address stormwater discharges from municipal point sources and nonpoint sources, under the Sewage Infrastructure Improvement Act (N.J.S.A. 58:25-23 et seq.), the New Jersey Storm Water Management (P.L.1981, c.32, amending N.J.S.A. 40:55D-1 et seq.), Section 319 of the CWA, and other statutes.

It is important that the Department issue final general permits as soon as possible for stormwater discharges associated with industrial activity so that eligible stormwater discharges receive authorization prior to the October 1, 1992 permit application deadline in 40 CFR 122.26(e)(1). Without such general permits, thousands of facilities may incur substantial expenses related to the preparation of individual permit applications, even though the discharges from such facilities would be more appropriately authorized under general permits. (Because the Department is without the power to actually revoke a Federal deadline, its proposed adoption of an April 1, 1993 deadline for individual applications does not completely eliminate the importance of adopting the general permits prior to October 1, 1992.) The Department would also be required to add a large review staff to review such individual permit applications, without any environmental benefit beyond what is anticipated through the general permits.

Public Participation

The Department has been actively encouraging public participation in the development of the Statewide Stormwater Permitting Program. Department officials have made presentations about the Department's Statewide Stormwater Permitting Program at 27 public seminars and conferences. Early in 1992, the Department established the Industrial Stormwater Permitting Advisory Group (ISPAG), consisting of representatives from the Department, municipal officials, the regulated community, and environmental groups. A list of ISPAG members is provided below:

Industrial Stormwater Permitting Advisory Group (ISPAG) Membership List

Diane Dona, Merck/Business and Industry Association
Abigail Fair, Association of NJ Environmental Commissions
Ben Forest, Monmouth Friends of Clearwater
Bruce Jones, Exxon Corporation
Richard Maser, Maser Sosinski & Associates
Mary Ellen Noble, Delaware River Watershed Association
Harold G. Reed, League of Municipalities
Douglas Ruhlin, NJ Concrete and Aggregate Association/
Environmental Evaluation Group

Mark Strickland, PSE&G/NJ Industrial Advisory Group
Alan Veverka, National Association of Industrial and Office Parks

The Department distributed a preliminary draft (dated January 1992) of the proposed rule to ISPAG members for review and comment at the initial ISPAG meeting on February 14, 1992. The Department thereafter made several revisions to this draft in response to comments from ISPAG.

On March 9, 1992, the Department mailed approximately 900 copies of a revised preliminary draft of the proposed rule to interested government, industry, and environmental entities. This draft also included a preliminary draft of the "industrial" general permit (NJPDES General Permit No. NJ0088315). The mailing list was developed from telephone calls and other inquiries regarding the EPA stormwater permitting requirements and the Department's Statewide Stormwater Permitting Program. The Department requested the submission of comments by April 9, 1992. Comments were received from seven persons representing the regulated community. Most of the comments focused on the "industrial" general permit and not on other proposed rule changes. The Department

considered the comments and made several revisions to the draft permits. The most significant comments are reflected in this proposal, noted below in this summary, or both.

In the February 3, 1992 issue of the New Jersey Register (24 N.J.R. 344(b)), the Department proposed to amend several sections of N.J.A.C. 7:14A that would also be amended by today's proposal. The February 3 proposal essentially incorporated Clean Water Enforcement Act requirements into N.J.A.C. 7:14A and updated or clarified a variety of sections. This proposal does not affect the status of the February 3, 1992 proposal, for which the public comment period ended on April 3, 1992. To maintain the distinction between the two proposals, this proposal does not include the text of the amendments proposed on February 3, 1992. If the Department adopts amendments to N.J.A.C. 7:14A as a result of this proposal, those amendments may include appropriate codification changes to reflect amendments adopted as a result of the February 3, 1992 proposal.

The proposed amendments are more extensively outlined below:

Summary of Specific Rule Changes

Subchapter 1

N.J.A.C. 7:14A-1.2(d)13 is proposed for amendment to be consistent with 40 CFR 122.1(b)(2)(iv), the proposed amendment to the title of N.J.A.C. 7:14A-3.8, and requirements in 40 CFR 122.26(a) concerning discharges of stormwater through storm sewers.

N.J.A.C. 7:14A-1.7(d) is being expanded to cite the Federal Act and the State Act. N.J.A.C. 7:14A-1.7(e) is being deleted and replaced with a new "incorporation by reference" section at N.J.A.C. 7:14A-1.10 (see discussion of proposed N.J.A.C. 7:14A-1.10 below).

N.J.A.C. 7:14A-1.8 is proposed for amendment to specify the fees for the two general permits for industrial stormwater discharges that the Department is proposing to issue as appendices to N.J.A.C. 7:14A-3 (NJPDES General Permit No. NJ0088315 and NJPDES General Permit No. NJ0088323). The proposed amendment establishes an annual permit fee of \$500.00. The fee is based upon the Department's projections of the total cost of administering the general permit program (described in more detail below), and the number of facilities obtaining the general permits. As the Department administers the general permit program, it will obtain data showing the actual cost of the program; if the actual cost differs from the projected cost, the Department will propose amendments raising or lowering the fees as necessary to reflect the actual cost. The first such evaluation will be made one year after the program commences.

Within the Department, the "industrial" general permit (NJPDES General Permit No. NJ0088315) will be administered initially by three professionals and one clerical employee at a total personnel cost (salary plus fringe benefits and indirect costs) of about \$260,000 per year. (Indirect costs cover costs incurred by the Department, for a common or joint purpose benefiting more than one program objective and not readily assigned directly to a single program.) It is anticipated that this staff will be augmented by additional staff as the program is fully implemented. The ultimate anticipated staff for this program will be between 10 and 15 employees, for a total annual personnel cost of between \$600,000 and \$900,000.

In addition, there are personnel costs for administrative support and for monitoring the permit. The Department expects that there will be an additional 10 to 15 employees required to perform these functions raising the total annual personnel costs to between \$1.2 million to \$1.8 million. These employees would perform such functions as facility inspection, issuing enforcement notices, preparing Administrative Consent Orders, and financial and data management. Furthermore, there are costs associated with the purchase of support equipment (computers, file cabinets, bookshelves, microfilm readers, and other office equipment), office supplies, printing, administrative costs (telephone, postage, and computer software), travel, training, vehicles, and maintenance. The Department expects that these costs will be about \$300,000 to \$500,000 at the outset, but will decrease to annual expenditures of approximately \$200,000.

The Department believes that the anticipated revenue from the "industrial" general permit will be approximately equivalent to the costs incurred by the Department. The revenues from this general permit are anticipated to be approximately \$1.6 million to \$2.0 million the first year, based on an estimated request for authorization compliance rate of between 40 percent and 50 percent of the approximately 8,000 industries expected to be eligible for the general permit (while the universe of affected industrial facilities has been estimated at 10,000, the Department

expects that up to 2,000 facilities will not be eligible for the general permit). The fee for this request for authorization will be \$500.00 (the current minimum annual fee for a NJPDES permit). The Department has announced its intent to reevaluate the entire NJPDES fee system. As announced in its Notice of Adoption of 1991-92 NJPDES Annual Report and Fee Schedule, a task force will be convened by the Department in July 1992 to address this issue (see 24 N.J.R. 1909(d), 1910). Any impact on stormwater permitting fees that would result from revising the NJPDES fee system, including the minimum annual fee, will be fully considered as part of that overall review. The Department expects to receive between 3,000 and 4,000 requests for authorizations during the first year. The remaining 4,000 initial requests for authorization are expected to be received over a two year period, as education and compliance efforts reach the remainder of the regulated community.

At this time, the Department is also proposing to amend N.J.A.C. 7:14A-1.8 to establish that the fee for the "construction" general permit (NJPDES General Permit No. NJ0088323) will be \$200.00 to be assessed only when authorization is requested under that permit, and not annually. Without this amendment, persons authorized under this general permit would be required to pay the minimum annual NJPDES fee (currently \$500.00 each year), instead of the one-time \$200.00 fee.

This "construction" general permit relies extensively on the Soil Erosion and Sediment Control Act, which is already administered by the soil conservation districts, other local agencies, and the State Soil Conservation Committee.

The costs for administration of the "construction" general permit will be borne mainly by the 16 Soil Conservation Districts in the State and by the State Soil Conservation Committee. It is estimated that based on the draft permit conditions and an expected average of 1,000 projects per year, the Districts and the DOA will require approximately one staff-year at DOA and 3.5 collective staff-years at the Districts for a total personnel cost of approximately \$200,000 per year. It is expected that as new permit conditions are proposed and added in the future, the associated costs for reviews and inspections will also have to be accounted for, thereby resulting in future proposals for a higher fee.

The average annual revenues from NJPDES General Permit No. NJ0088323 are expected to be approximately \$200,000 per year (the same amount the Department expects will be spent administering these programs), based on an estimate of an average of 1,000 requests for authorization per year and a fee of \$200.00. The actual number of projects in each year depends primarily on the economy of the State and the demand for industrial, commercial, and residential construction. As stated above, it is expected that this fee will increase in the future, to reflect additional permit requirements and the resultant work associated with those requirements.

The Department expects that most of the fees from the "construction" general permit will be used to reimburse the soil conservation districts for their expenses in processing Requests for Authorizations under that permit, and that the remainder will support related supervision and coordination activities by the State Soil Conservation Committee in the Department of Agriculture (DOA). Because the fee for this permit is not an "annual" fee, the Department is proposing to amend N.J.A.C. 7:14A-1.8(a)2 to exempt public schools and religious or charitable institutions from "any" fee (not just an "annual" fee).

The Department is also proposing to amend N.J.A.C. 7:14A-1.8(a) to establish that annual fees are assessed for persons that submit a "request for authorization." N.J.A.C. 7:14A-1.8(a) currently requires the Department to collect an annual fee from all persons that submit a "NJPDES permit application." Although a "request for authorization" is not a "NJPDES permit application," the costs of processing, monitoring, and administering a DSW general permit include the costs of processing "requests for authorizations" under that permit, and it is reasonable for the Department to charge a fee from those who submit such requests. Consistent with this concept, N.J.A.C. 7:14A-1.8(a) is also being amended to establish that annual fees are assessed for persons that are issued an "authorization to discharge under a NJPDES general permit."

A definition at N.J.A.C. 7:14A-1.9 is being proposed for "combined sewer system." This definition provides that in order to be considered a "combined sewer system," a sewer system must be designed to carry both sanitary sewage and stormwater from streets.

The Department is proposing to add definitions at N.J.A.C. 7:14A-1.9 for "large municipal separate storm sewer system," "medium municipal separate storm sewer system," "municipal separate storm sewer," "stormwater discharge associated with industrial activity," and "uncontrolled sanitary landfill." These proposed definitions incorporate

by reference the EPA definitions at 40 CFR 122.26(b)(4), (b)(7), (b)(8), (b)(14), and (b)(15).

The Department is proposing a significant number of changes to the NJPDES rules to either make N.J.A.C. 7:14A consistent with EPA rules or to incorporate specific provisions of EPA rules, including 40 CFR 122.26, by reference. Two commenters suggested that the proposed amendments should not incorporate EPA rules by reference, but should instead fully set forth the provisions so as to avoid undue confusion and make the proposed amendments more readable and accessible to regulated businesses. The Department elected not to follow this suggestion since such incorporation helps to prevent the confusion that can result when the NJPDES rules fully set forth the text of EPA rules that EPA subsequently amends or supplements. Such incorporation eliminates discrepancies between the NJPDES rules and the revised EPA rules, which revised rules are often effective in New Jersey regardless of the status of New Jersey's rules. Accessibility should not be a problem because the EPA rules are no less accessible to regulated businesses than are the NJPDES rules. Persons wishing to obtain a copy of the EPA rules should contact Barry Chalofsky, Assistant Administrator of the Office of Regulatory Policy, at (609) 633-7026 or by writing to the Department of Environmental Protection and Energy, Office of Regulatory Policy, CN 029, Trenton, New Jersey, 08625. (A reasonable charge may be assessed to cover photocopying costs.)

The definition of "process waste water" at N.J.A.C. 7:14A-1.9 is being amended to state expressly the existing Department interpretation that this term includes "leachate" as defined at N.J.A.C. 7:14A-1.9, as well as any cooling water that does not satisfy the definition of "non contact cooling water" at N.J.A.C. 7:14A-1.9.

A definition at N.J.A.C. 7:14A-1.9 is being proposed for "request for authorization." Specifically, the Department is proposing to define this term as "the document submitted under N.J.A.C. 7:14A-3.9 to obtain authorization to discharge under a general permit." In 40 CFR 122.28(b)(2), EPA calls this document a "notice of intent." The Department believes, however, that the term "request for authorization" more completely and accurately describes this document. The Department does not consider a "request for authorization" to be an application for a NJPDES permit under N.J.A.C. 7:14A, and it therefore need not meet all the procedural and substantive requirements related to permit "applications." (The NJPDES rules already provide, at N.J.A.C. 7:14A-3.2(a)2iii and 7:14A-7.3(a)1, that "applications" are not required for DSW general permits.) Under proposed N.J.A.C. 7:14A-3.9, however, a general permit may require a request for authorization to include the same forms, information, signatures, and certifications that are required in a permit application. (See discussion of amendments to N.J.A.C. 7:14A-3.9 below regarding requests for authorization.)

The definitions of "run-off" and "run-on" at N.J.A.C. 7:14A-1.9 are being amended for editorial purposes, and to clarify that these definitions apply only within N.J.A.C. 7:14A-4.7, (Standards for hazardous waste land treatment units). Although the terms "run-off" and "run-on" (with the hyphen) are used in N.J.A.C. 7:14A-4.7 only, the term "runoff" (without the hyphen) is used elsewhere in the NJPDES rules with a sense different than that of "run-off." The definitions of "run-off" and "run-on" at N.J.A.C. 7:14A-1.9 are specialized definitions that are based on the definitions of the same terms in EPA hazardous waste management rules (40 CFR 260.10). These definitions are essential for N.J.A.C. 7:14A-4.7, but are not intended to apply elsewhere in the NJPDES rules.

A definition at N.J.A.C. 7:14A-1.9 is proposed for "separate storm sewer." This definition would replace the outdated definition of "separate storm sewer" in current N.J.A.C. 7:14A-3.8(b), which was based on the definition of "separate storm sewer" in former 40 CFR 122.57(b). The proposed definition of "separate storm sewer" is consistent with the way EPA uses the term "separate storm sewer" in 40 CFR 122.26 (see, for example, the EPA definition of "municipal separate storm sewer" at 40 CFR 122.28(b)(8)).

The definition of "storm water" at N.J.A.C. 7:14A-1.9 is being replaced with a definition of "stormwater" that is consistent with the EPA definition of "storm water" at 40 CFR 122.28(b)(13). (Unlike EPA, the Department is spelling "stormwater" as one word, which is consistent with section 402(p) of the CWA.)

In N.J.A.C. 7:14A-1.10, the proposed new rule incorporates, by reference, the requirements of the Federal Act, the State Act, and all Federal regulations cited in N.J.A.C. 7:14A, including all future amendments and supplements, insofar as those requirements are applicable to the NJPDES program. N.J.A.C. 7:14A-1.10 would replace current N.J.A.C. 7:14A-1.7(e). It brings N.J.A.C. 7:14A into full compliance with

the Office of Administrative Law's technical requirements regarding incorporation by reference (see N.J.A.C. 1:30-2.2.)

Subchapter 2

The Department is proposing to amend N.J.A.C. 7:14A-2.1(d) to make it clear that the Department can issue a DSW general permit without receiving a permit application. In order to issue timely general permits that may authorize large numbers of discharges, the Department must be able to issue such permits without waiting to receive "applications" (or any other document) from dischargers. (The NJPDES rules already provide, at N.J.A.C. 7:14A-3.2(a)2iii and 7:14A-7.3(a)1, that "applications" are not required for DSW general permits.) Under proposed N.J.A.C. 7:14A-3.9, the document that is submitted to obtain authorization to discharge under an already issued general permit is called a "request for authorization" rather than an "application."

The Department is proposing to amend N.J.A.C. 7:14A-2.1(g)1 to make it clear that a Discharge Allocation Certificate (DAC) is not required for discharges authorized by a DSW general permit or for discharges from separate storm sewers. N.J.A.C. 7:14A-2.1(k)1 is being amended to exempt discharges from separate storm sewers from the requirement to request endorsements from local agencies. These amendments are part of the Department's program to streamline the processes of permitting discharges from thousands of separate storm sewers and of permitting discharges under general permits. (The NJPDES rules already provide, at N.J.A.C. 7:14A-3.2(a)2iii, that Discharge Allocation Certificates are not required for DSW general permits.)

The Department is proposing to amend N.J.A.C. 7:14A-2.1(g)3, which currently provides the schedule for submission of a permit application for a discharge "which does not require a facility for the collection or treatment of waste (such as land application of sludge)." The amendment clarifies that this provision does not apply to surface water discharges, and requires permit applications at least 180 days (instead of the existing 90 days) in advance of the planned discharge. Proposals for land application of sludge raise complex issues that warrant the same 180 day period that is specified elsewhere in N.J.A.C. 7:14A-2.1(g).

N.J.A.C. 7:14A-2.4(a)2 is proposed for amendment to include certain certification requirements contained in 40 CFR 122.22(d), which requirements will ensure that information in permit applications, reports required by permits, and other information requested by the Department is properly gathered and evaluated by qualified personnel.

N.J.A.C. 7:14A-2.4(b) is being proposed for amendment to allow DSW general permits to specify signature and certification requirements for reports or other information required by those permits. These requirements may differ from those otherwise specified in N.J.A.C. 7:14A-2.4(b), but must be at least as stringent as those required by 40 CFR 122.22(b).

The proposed amendments to N.J.A.C. 7:14A-2.5(a)1 make it clear that a discharge of a particular pollutant under a stormwater general permit will not be a violation of the permit. Generally, the discharge of any pollutant not "specifically regulated" in the permit, or listed and quantified in the "NJPDES application," is a violation of the permit. However, the draft general permits do not "specifically regulate" any pollutant (because the general permits include no numeric effluent limitations for any pollutant), and the facility need not list or quantify any pollutant in the request for authorization; accordingly, without the proposed amendment, any discharge of a pollutant could become a violation of the general permit. (Stormwater practically always contains some "pollutants" as defined at N.J.A.C. 7:14A-1.9.) The draft general permits exempt discharges under the permits from these violation provisions. In the future, however, the Department may propose other stormwater general permits that include numerical effluent limitations or require pollutants to be listed and quantified in the request for authorization.

N.J.A.C. 7:14A-2.12(c)9 is being amended to provide that where the general permit does not require the request for authorization to include a listing of toxic pollutants, the use or manufacture of toxic pollutants is eliminated as grounds for modifying, suspending, or revoking the permit. If the request for authorization does not include a listing of toxic pollutants, then it makes little sense to make the mere use or manufacture of such pollutants grounds for modifying, suspending, or revoking the permit. This amendment does not affect general permits previously issued by the Department (which did not expressly refer to "request for authorization," and for which the Department required a listing of toxic pollutants), and does not affect other provisions of N.J.A.C. 7:14A-2.12(c), or the provisions in proposed N.J.A.C. 7:14A-2.13(c) and 3.9(b) under which authorization under a general permit may be terminated.

N.J.A.C. 7:14A-2.13(c) is being amended to clarify the circumstances and procedures under which the Department may terminate authorization under a general permit. In general, these terminations will follow the procedures for the termination of individual permits. However, if the Department simply directs the permittee to seek another permit, streamlined procedures will be followed. The streamlining is appropriate in light of relatively slight interest at stake and the Department's need to make these decisions in an efficient manner. The subject is discussed in more detail in connection with the amendments to N.J.A.C. 7:14A-3.9.

Subchapter 3

The Department is proposing to change the title of N.J.A.C. 7:14A-3.8 from "Separate storm sewers" to "Stormwater discharges" to be consistent with the title of 40 CFR 122.26. The Department is also proposing to delete all existing language in N.J.A.C. 7:14A-3.8. This existing language is based on former 40 CFR 122.57, which EPA promulgated on May 19, 1980 (45 FR 33446). This existing language will be replaced with language that incorporates 40 CFR 122.26 by reference subject to the qualifications and exceptions listed in proposed N.J.A.C. 7:14A-10.3(a)20 and (a)22. (As the discussion of the amendments to N.J.A.C. 7:14A-10.3(a)20 and (a)22 indicates, these qualifications and exceptions recognize that some of the terminology and requirements in 40 CFR 122.26 and 40 CFR 122.21(g) need to be interpreted or modified to be consistent with the needs of the NJPDES program or to prevent confusion.)

The Department is proposing numerous amendments to N.J.A.C. 7:14A-3.9, General Permits. As was discussed earlier in this Summary statement, general permits are an important component of the Department's Industrial Stormwater Permitting Strategy.

The Department is also proposing some amendments to N.J.A.C. 7:14A-3.9 to render it consistent with 40 CFR 122.28 (the applicable EPA rule governing general permits, which EPA has recently amended). The most significant of these proposed amendments is the addition of N.J.A.C. 7:14A-3.9(b)2 (current N.J.A.C. 7:14A-3.9(b)2 would be recodified, with proposed amendments, at N.J.A.C. 7:14A-3.9(b)3), which establishes policies concerning the "request for authorization."

Proposed N.J.A.C. 7:14A-3.9(b)2 provides that except in certain limited circumstances, a person seeking authorization under a general permit shall submit to the Department a written request for authorization. (However, a general permit may specify that this submission shall be accomplished by submitting the request to other agencies, such as soil conservation districts, which shall in turn submit the request to the Department.) The contents of the request for authorization shall be specified in the general permit, but must include the minimum information listed in proposed N.J.A.C. 7:14A-3.9(b)2. Unless the general permit specifies otherwise, the request for authorization shall include all of the forms, information, signatures, and certifications that N.J.A.C. 7:14A requires in an application for a DSW permit. Thus, the contents of the request for authorization can vary greatly from one general permit to another, which is appropriate given the variety of circumstances that different general permits may address. Every request for authorization, however, must certify that arrangements have been made for publication, in a newspaper within the area affected by the facility, of a notice that the request for authorization has been submitted.

Proposed N.J.A.C. 7:14A-3.9(b)2 also requires the general permit to specify deadlines for submitting requests for authorization, and to specify when the person is authorized to discharge under the permit. In addition, proposed N.J.A.C. 7:14A-3.9(b)2 requires the Department to publish in the DEPE Bulletin a quarterly report of each authorization issued under a general permit.

The Department is also proposing to amend N.J.A.C. 7:14A-3.9(b)3i, which identifies cases where the Department may require a permittee authorized by a general permit to obtain an individual DSW permit, to be consistent with 40 CFR 122.28(b)(3)i. However, proposed N.J.A.C. 7:14A-3.9(b)3i lists, as an additional case, the acquisition of new information indicating that the permittee is ineligible for the general permit under its own terms. Also, proposed N.J.A.C. 7:14A-3.9(b)3 would establish that the Department can require the permittee to obtain authorization under another DSW general permit instead of requiring the permittee to obtain an individual DSW permit. (The preliminary draft of N.J.A.C. 7:14A-3.9(b)3 used the term "alternative general permit" instead of "another general permit". One commenter asked the Department to define the term "alternative general permit," which the Department had borrowed from proposed EPA rules. The Department decided to use the simpler phrase, "another general permit".)

N.J.A.C. 7:14A-3.9(b)3ii is being amended to provide that when a permittee violates the Department's direction to submit an application for or request for authorization under another permit, its existing authorization will be terminated. It also contains certain necessary editorial changes. N.J.A.C. 7:14A-3.9(b)3iv is being amended to specify the time at which a permittee's authorization will automatically terminate.

N.J.A.C. 7:14A-3.9(b)3v is being amended to clarify the procedure to be followed and factors that may be considered when a permittee requests that a discharge be shifted from an individual permit to a general permit (or from one general permit to another). The permittee would go through the usual revocation/modification procedure regarding its individual permit and it would also go through the request for authorization procedure regarding the general permit under which it is seeking authorization. In determining whether to approve the request, the Department may consider a variety of factors, including the size and type of the permittee's discharge and the quality of the receiving waters. It need not give special weight to any single factor.

The proposed amendments add N.J.A.C. 7:14A-3.9(b)4 which provides that a termination of authorization under a general permit will follow the existing procedures for termination of an individual permit, except when the Department is merely directing the permittee to seek authorization under another permit rather than its current general permit. In the latter case, the termination procedures are far less elaborate (that is, a written appeal to the Commissioner). This is appropriate because of the relatively slight interest that the permittee has in being authorized under one type of permit rather than another, because of the procedural protections available to the permittee in the context of seeking authorization under the other permit, and the Department's need for flexibility in transferring a permittee's authorization from one type of permit to a more appropriate one.

N.J.A.C. 7:14A-3.9(b)5 is being added to establish the procedure to be followed when an interested person petitions the Department to require a permittee authorized by a general permit to obtain an individual permit or authorization under another general permit. Currently, N.J.A.C. 7:14A-3.9(b) allows such petitions (in accordance with 40 CFR 122.28(b)(3)), but does not specify how such petitions shall be submitted and processed. Proposed N.J.A.C. 7:14A-3.9(b)5 describes what should be in the petition, gives the potentially affected permittee an opportunity to respond to the petition, and allows either party to appeal an adverse decision to the Commissioner. A decision ultimately denying a petition is an appealable final agency action, but, if the petition is granted, the affected permittee must exhaust the administrative procedures available to it in connection with the permit under which it has been directed to seek coverage before it can seek judicial review. The foregoing provisions, in connection with the public notification provisions in N.J.A.C. 7:14A-3.9(b)2, provide the public with significant opportunities to participate in the Department's decision-making process without making the process unmanageable. The public's opportunities for participation are greater under the Department's proposal than under EPA's rules or draft general permit.

Proposed N.J.A.C. 7:14A-3.9(b)6 sets forth the criteria upon which requests for authorization will be granted or denied, and the procedures for seeking review of the denial of a request for authorization. Essentially, the person seeking authorization has the right to appeal only to the Commissioner. If its appeal to the Commissioner is unsuccessful, it can then apply for an individual permit or seek authorization under another general permit. The rationale for this procedure is the same as that described in connection with proposed N.J.A.C. 7:14-3.9(b)4 and (b)5 in the foregoing paragraphs.

N.J.A.C. 7:14A-3.9(c) is being added to N.J.A.C. 7:14A-3.9, and Appendix A and Appendix B are being added to N.J.A.C. 7:14A-3, in order to issue as rules the two general DSW permits for stormwater discharges associated with industrial activity. The present discussion summarizes the contents of the two permits and the rationale supporting their issuance. A more detailed discussion is set forth in the fact sheets for each of the permits, which fact sheets are available from Barry Chalofsky, Assistant Administrator of the Office of Regulatory Policy, Department of Environmental Protection and Energy, CN 029, Trenton, New Jersey 08625.

Under 40 CFR 122.28(a)(2)(i) and proposed N.J.A.C. 7:14A-3.9(a)2i, the stormwater discharges that will be eligible for authorization under the permits in Appendices A and B are "stormwater point sources" that may be regulated under general permits. Both permits contain conditions necessary to implement N.J.A.C. 7:14A. For both permits, the permit

area (the area within which the discharge must be eligible for authorization) is the entire State of New Jersey. NJPDES General Permit No. NJ0088315 (N.J.A.C. 7:14A-3, Appendix A) is a broad general permit intended to authorize and control many stormwater discharges across a broad range of industrial categories listed in the EPA definition of "storm water discharge associated with industrial activity" (40 CFR 122.26(b)(14)). Approximately 10,000 New Jersey facilities may fall in those categories, and a large percentage of these facilities may be eligible for this draft general permit.

This draft general permit excludes certain stormwater discharges, such as stormwater discharges subject to EPA effluent guideline limitations, stormwater discharges from sanitary or hazardous waste landfills (unless the landfills have been properly closed and are not disrupted), certain stormwater discharges from petroleum refining and related industries and from major petroleum storage facilities, and stormwater discharges from certain construction and mining activities that may be fully authorized under the "construction" general permit (NJPDES General Permit No. NJ0088323), discussed below. Also, if the facility has a stormwater discharge authorized under some other DSW permit, that facility is excluded unless that other DSW permit is revoked or modified pursuant to proposed N.J.A.C. 7:14A-3.9(b)3v. In order to obtain authorization under the "industrial" general permit (General Permit No. NJ0088315), a "request for authorization" must be submitted to the Department. The authorization issued by the Department is retroactive to the date the Department received the request.

The "industrial" general permit does not include numerical effluent limitations. Instead, the principal effluent limitation in this permit is a requirement for preparation and implementation of a stormwater pollution prevention plan signed by a New Jersey Licensed Professional Engineer. This plan must identify best management practices to ensure that there is no exposure of industrial materials, machinery, waste products, or other "source material" to stormwater that is discharged through separate storm sewers to surface waters, and that there are no discharges through separate storm sewers of any domestic wastewater, non-contact cooling water, or process wastewater (unless a NJPDES permit has been obtained or is being sought for the discharge).

The permittee must also comply with the Department's rules entitled "Discharges of Petroleum and Other Hazardous Substances," N.J.A.C. 7:1E (including reporting requirements). The Department does not intend for this permit to authorize the discharge of any hazardous substances. The foregoing imposes no requirements that have not already been imposed by N.J.A.C. 7:1E. The Department will continue its stated policy of utilizing a commonsense approach to enforcing the requirements of N.J.A.C. 7:1E. See 23 N.J.R. 2656(a), 2706-2707 (September 3, 1991) (responses to comments regarding proposed N.J.A.C. 7:1E).

The "industrial" general permit also does not require sampling of stormwater discharges as a permit condition. Instead, the permit requires an annual inspection, summarized in an annual report, to evaluate whether the facility is in compliance with the permit and the stormwater pollution prevention plan, and whether that plan complies with the permit. The permittee must submit certifications (including annual recertifications) to the Department as to the preparation and implementation of the stormwater pollution prevention plan and the results of the annual inspections. In accordance with proposed N.J.A.C. 7:14A-1.8(i) and current Department practice, the Department is proposing to charge the minimum annual fee of \$500.00 for General Permit No. NJ0088315. The \$500.00 fee must be submitted for all requests for authorization and subsequent annual certifications under the permit, and is necessary to support the costs of processing, monitoring, and administering that permit.

The "construction" general permit, NJ0088323 (N.J.A.C. 7:14A-3, Appendix B), is a narrower general permit intended to authorize and control stormwater discharges from certain construction and mining activities. Under 40 CFR 122.26(b)(14)(iii) and (14)(x), certain mining activities and construction activities disturbing five acres or more of land are defined as "industrial activity" requiring a stormwater discharge permit. The "construction" general permit recognizes that stormwater discharges from these activities are already regulated under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and integrates the requirements of the permit with the requirements of that Act. As with the "industrial" general permit, the "construction" general permit excludes certain stormwater discharges (for example, those subject to EPA effluent guideline limitations).

In order to obtain authorization for most projects under the "construction" general permit, a "request for authorization" must be submitted

to the soil conservation district (which will submit certified requests through the State Soil Conservation Committee to the Department). The New Jersey Department of Transportation (DOT), however, will submit requests for authorization directly to the Department. (This is because, under N.J.S.A. 4:24-43, soil erosion and sediment control plans for DOT projects are certified by DOT rather than by the soil conservation districts.) Again, the permit requires much less information in that request for authorization than is generally required in an application for a DSW permit (for example, no sampling data is required). For new stormwater discharges, the authorization is effective when the district or DOT certifies the request, which the district or DOT shall do if the request was properly submitted and if the district or DOT has certified the project's soil erosion and sediment control plan under N.J.S.A. 4:24-43, or if an "exempt municipality" has approved that plan under N.J.S.A. 4:24-48. For existing stormwater discharges already approved under the Soil Erosion and Sediment Control Act, the permit provides a temporary authorization that expires unless a complete request for authorization is submitted within 180 days.

The "construction" general permit also does not include numeric effluent limitations. Instead, the principal effluent limitation in this permit is a requirement for implementation of a stormwater pollution prevention plan, which consists of the project's soil erosion and sediment control plan under the Soil Erosion and Sediment Control Act (and, if any exists, the facility's discharge prevention, containment and countermeasure (DPCC) plan and discharge cleanup and removal (DCR) plan prepared under N.J.A.C. 7:1E). In accordance with that Act, N.J.A.C. 2:90-1 and N.J.A.C. 16:25A, the technical basis for certification or approval of such plans are the respective standards for soil erosion and sediment control promulgated by the State Soil Conservation Committee with the approval of the Secretary of Agriculture, the Commissioner of Environmental Protection and Energy, and/or the Department of Transportation (N.J.A.C. 2:90-1, N.J.A.C. 16:25A).

The permittee must also comply with the Department's rules entitled "Discharges of Petroleum and Other Hazardous Substances," N.J.A.C. 7:1E (including reporting requirements). The Department does not intend for this permit to authorize the discharge of any hazardous substances. The foregoing imposes no requirements that have not already been imposed by N.J.A.C. 7:1E. The Department will continue its stated policy of utilizing a commonsense approach to enforcing the requirements of N.J.A.C. 7:1E. See 23 N.J.R. 2656(a), 2706-2707 (September 3, 1991) (responses to comments regarding proposed N.J.A.C. 7:1E).

The "construction" general permit also does not require sampling of stormwater discharges as a permit condition. Instead, the permit requires an annual inspection, summarized in an annual report, to evaluate whether the facility is in compliance with the permit and stormwater pollution prevention plan. The permittee must report instances of non-compliance to the Department.

In accordance with proposed N.J.A.C. 7:14A-1.8(j), the Department is proposing to charge a fee of \$200.00 for General Permit No. NJ0088323, to be assessed not annually, but only when authorization is requested under that permit. The \$200.00 fee is necessary to support the costs of processing, monitoring, and administering that permit, and would be used to reimburse the soil conservation districts and the State Soil Conservation Committee. The lower fee for this draft general permit corresponds with the lower costs associated with this permit, which generally incorporates requirements already administered by the State Soil Conservation Committee and the soil conservation districts.

These two draft general permits should provide an opportunity for much of the regulated community to apply a common-sense, cost-effective approach to stormwater management. These draft general permits represent a concerted Department effort to develop and implement a streamlined, logical, innovative general permit program that provides substantial environmental benefit with a minimum regulatory burden. The draft general permits do not require sampling of stormwater to obtain authorization under the permit or as a permit condition. Nor do they include numeric effluent limitations for specific pollutants. Rather, these draft general permits provide incentives for pollution prevention and source reduction by requiring stormwater pollution prevention plans that implement best management practices such as good housekeeping and existing soil erosion and sediment control requirements, rather than by establishing new requirements for end-of-pipe treatment.

Proposed N.J.A.C. 7:14A-3.9(c) provides that the issuance, as appendices to N.J.A.C. 7:14A-3, of two Statewide general NJPDES permits for industrial stormwater discharges does not affect the status or requirements of the general DSW permits that have already been issued by

the Department. Any reissuance of those permits will be in conformance with applicable requirements of N.J.A.C. 7:14A. The Department is also proposing several amendments to N.J.A.C. 7:14A-3.9 merely to establish more uniform terminology.

N.J.A.C. 7:14A-3.11(a)lii is being amended to provide that where the DSW general permit does not require the request for authorization to include a listing of toxic pollutants, the permittee is exempt from the requirement to notify the Department about the use or manufacture of such pollutants. If the permittee is not required to list toxic pollutants in the original request for authorization, it would not make sense to require the permittee to notify the Department of the use or manufacture of any additional toxic pollutants.

The Department is proposing to add N.J.A.C. 7:14A-3.11(a)4 in order to incorporate certain reporting duties that 40 CFR 122.42(c) imposes on operators of "large" and "medium" municipal separate storm sewer systems, or of municipal separate storm sewer systems designated under 40 CFR 122.26(a)(1)(v). No New Jersey municipality is currently subject to these duties. Although Newark, Elizabeth, Jersey City, and Paterson meet one of the criteria in that they have populations greater than 100,000 according to the latest decennial census, the Department has approved petitions from all four of these municipalities to remove them from the "large" and "medium" categories, because less than 100,000 persons in each of these municipalities are served by separate storm sewers. Most of the population in these cities is served by combined sewers. Moreover, no municipal separate storm sewer system in New Jersey has been designated under 40 CFR 122.26(a)(1)(v).

N.J.A.C. 7:14A-3.12 is being amended to exempt persons who seek or obtain authorization under a stormwater general permit from the requirement to develop and submit an emergency plan, unless the general permit requires such an emergency plan, or unless an emergency plan is required for another DSW permit. This is a component of the Department's streamlining process. In addition, emergency plan should not always be required because for some general permits, such as the present proposed "industrial" stormwater permit (NJ0088315), other permit requirements, such as stormwater pollution prevention plans, will serve some of the same functions as an emergency plan.

N.J.A.C. 7:14A-3.13(a)9iii is being added to establish policies concerning reporting of monitoring results for stormwater discharges associated with industrial activity that are not subject to an EPA effluent guideline limitation. These policies incorporate, with certain modifications, provisions in 40 CFR 122.44(i)(4) and (5). Proposed N.J.A.C. 7:14A-3.13(a)9iii provides that requirements to report such results shall be established on a case-by-case basis depending upon the nature and effect of the discharge. At a minimum, the permit must require the permittee to conduct annual inspections to evaluate whether the facility is in compliance with its permit and stormwater pollution prevention plan, and to evaluate whether that plan is adequate under the terms of the permit. The permittee must prepare a report summarizing the result of the inspection and a certification as to the extent of compliance. Incidents of non-compliance not already reported to the Department under other provisions of N.J.A.C. 7:14A must be reported to the Department at least annually. Proposed N.J.A.C. 7:14A-3.13(a)9iii also provides that if there are incidents of non-compliance, the report must identify the steps being taken to remedy the non-compliance and to prevent such incidents from recurring.

Although neither proposed N.J.A.C. 7:14A-3.13(a)9iii nor the draft general permits require sampling of the stormwater discharge and submission of corresponding "discharge monitoring reports" as defined in N.J.A.C. 7:14A-1.9, the Department may later decide to issue permits that require such sampling; proposed N.J.A.C. 7:14A-3.13(a)9iii requires monthly submission of discharge monitoring reports to the Department in those instances where such monthly submission is required by N.J.A.C. 7:14A-2.5(a)12.

Proposed N.J.A.C. 7:14A-3.13(a)9iii requires the permittee to maintain the annual inspection report and certification for at least five years (the same period specified in N.J.A.C. 7:14A-2.5(a)12iii). These annual reports and certifications are of such importance that proposed N.J.A.C. 7:14A-3.13(a)9iii requires them to be signed by a person described in N.J.A.C. 7:14A-2.4(a)2i, not by a "duly authorized representative" of that person as otherwise allowed by N.J.A.C. 7:14A-2.4(b). Proposed N.J.A.C. 7:14A-3.13(a)9iii also provides that a permit may also require these reports and certifications to be signed by a New Jersey Licensed Professional Engineer.

The Department is proposing to add N.J.A.C. 7:14A-3.17(j) to clarify that the criteria and standards in 40 CFR 125 are minimum requirements

that may be superseded by more stringent provisions elsewhere in N.J.A.C. 7:14A.

As discussed in more detail in connection with the amendments to N.J.A.C. 7:14A-3.9, Appendix A and Appendix B are being added to N.J.A.C. 7:14A-3 in order to issue as rules the two general DSW permits for stormwater discharges associated with industrial activity.

Subchapter 7

The Department is proposing to amend N.J.A.C. 7:14A-7.8(a) to refer to 40 CFR 122.28 rather than to former 40 CFR 123.95.

Subchapter 9

The Department is proposing several technical changes for the purposes of linguistic consistency.

Subchapter 10

The Department is proposing to add a new first sentence in N.J.A.C. 7:14A-10.3(a) to clarify that N.J.A.C. 7:14A-10.3 is applicable only to persons who are required by N.J.A.C. 7:14A-3.2 to apply for a DSW permit. This amendment makes this subsection consistent with N.J.A.C. 7:14A-3.2(a)2iii, which already provides that certain discharges to surface water (including discharges authorized by a general permit) do not require an application for a DSW permit. The Department is also proposing to amend what is currently the first sentence in N.J.A.C. 7:14A-10.3(a) to clarify that persons exempted by N.J.A.C. 7:14A-2.1(g)1 from the requirement to apply for a Discharge Allocation Certificate are also exempt from that same requirement in N.J.A.C. 7:14A-10.3, and to limit that requirement to point source discharges (a limitation already expressed in N.J.A.C. 7:14A-3.1(a)).

The Department is proposing to delete what is currently the second sentence of N.J.A.C. 7:10A-10.3(a) to eliminate outdated deadlines for permit applications in that sentence. N.J.A.C. 7:10A-10.3(a)2 is being amended to incorporate certain requirements in 40 CFR 122.21(c)(1) concerning the timing of permit applications for new discharges of stormwater discharges associated with industrial activity.

N.J.A.C. 7:10A-10.3(a)5 is being amended to incorporate the provision in 40 CFR 122.21(g)(3) which allows the average stormwater flow to be estimated, provided that the basis for the rainfall event and the method of estimation are indicated. It, along with N.J.A.C. 7:14A-10.3(a)9, is also being amended for editorial purposes. N.J.A.C. 7:10A-10.3(a)6 is being amended to incorporate the exemption for stormwater, spillage, and leaks contained in 40 CFR 122.21(g)(4). N.J.A.C. 7:14A-10.3(a)9 is being amended to incorporate requirements in 40 CFR 122.21(g)(7) concerning grab samples, composite samples, and stormwater discharges. One commenter said the Department should identify the basis for the retention period of 24 hours in proposed N.J.A.C. 7:14A-10.3(a)9. The basis is 40 CFR 122.22(g)7, which specifies a retention period of 24 hours.

N.J.A.C. 7:14A-10.3(a)17 and (a)18 are being added to provide that permit applications for discharges composed entirely of stormwater associated with industrial activity are exempt from certain specified paragraphs of N.J.A.C. 7:14A-10.3(a) in order to be more consistent with the EPA rules. These exemptions are similar to those in 40 CFR 122.21(c)(1)(i)(F) and (1)(ii). N.J.A.C. 7:14A-10.3(a)19 is being added to provide that permit applications for discharges from "large" and "medium" municipal separate storm sewer systems, or from municipal separate storm sewer systems designated under 40 CFR 122.26(a)(1)(v), are also exempt from certain specified paragraphs of N.J.A.C. 7:14A-10.3(a). Instead, permit applications for such discharges must include the information required under 40 CFR 122.26(d), which establishes more appropriate requirements for such permit applications. No New Jersey municipality is currently required to submit such permit applications. The changes to N.J.A.C. 7:14A-10.3(a)17, (a)18, and (a)19 are necessary to allow the Department to streamline the administration of its individual permits for stormwater discharges.

N.J.A.C. 7:14A-10.3(a)20 is being added to require permit applications for discharges of stormwater to include the information required under applicable provisions of 40 CFR 122.26, 40 CFR 122.21(g), and other provisions of N.J.A.C. 7:14A, subject to eight qualifications and exceptions. These qualifications and exceptions recognize that some of the terminology and requirements in 40 CFR 122.26 and 40 CFR 122.21(g) need to be interpreted or modified to be consistent with the needs of NJPDES program or to prevent confusion. For example, 40 CFR 122.26 imposes duties on the "operators" of stormwater discharges, but not on their "owners." This is consistent with 40 CFR 122.21(b), which provides that when a facility or activity is owned by one person but operated by

another person, it is the operator's duty to obtain a permit. N.J.A.C. 7:14A-2.1(c), however, requires the owner as well as the operator to obtain a NJPDES permit. It is thus appropriate for proposed N.J.A.C. 7:14A-10.3(a)20ii to provide that the duties which 40 CFR 122.26 imposes on operators are also imposed on owners.

N.J.A.C. 7:14A-10.3(a)21 is being added to require permit applications for discharges of stormwater to be submitted by the deadlines specified in 40 CFR 122.26(e), with three specified exceptions. The first of these exceptions is in N.J.A.C. 7:14A-10.3(a)22, which the Department is proposing to add in order to establish a deadline of April 1, 1993 for submission of most individual NJPDES permit applications for industrial stormwater discharges. This is not consistent with 40 CFR 122.26(e)(1) and (e)(2)(iv), which essentially require industrial stormwater dischargers that are not authorized by a stormwater general permit (or approved as members of group applications) to submit individual permit applications by October 1, 1992.

The Department nevertheless is firmly convinced that it would be unreasonable to require industrial facilities to submit individual NJPDES permit applications within a matter of weeks after the NJPDES rules have been substantially amended in a manner affecting the facilities' ability and desire to submit applications (or requests for authorization) for each of the various types of permits covering stormwater discharges. Instead, the Department estimates that it will take several months for the regulated community to become familiar with and respond to the amended NJPDES rules (including General Permit No. NJ0088315 and No. NJ0088323, which for many facilities provide an alternative to an individual permit). Further, if the Department were to insist on strict compliance with the EPA deadline, the Department would be unable to administer the flood of individual permit applications (and requests for authorization under General Permit No. NJ0088315) that the Department would receive in September and October 1992.

In short, because the public's interest in a sound stormwater permitting program is best served by rules that allow sufficient time for both the regulated community and the Department to make prudent decisions regarding stormwater permitting, the Department has determined to allow additional time (generally, six months) for submission of individual NJPDES permit applications. Accordingly, the Department will not take enforcement action (for failure to comply with 40 CFR 122.26(c)) against those who submit their individual permit applications by April 1, 1993. By establishing this April 1, 1993 deadline, the Department, however, is not purporting to have the power to waive or revoke the EPA deadline. (Also, under proposed N.J.A.C. 7:14A-10.3(a)26, the Department may require some dischargers to apply for an individual permit prior to April 1, 1993.)

The second exception to N.J.A.C. 7:14A-10.3(a)21 is in N.J.A.C. 7:14A-10.3(a)23, which the Department is proposing to add in order to address industrial facilities that participated in "group applications" submitted to EPA under 40 CFR 122.26(c)(2). "Group applications" are NPDES permit applications that may be submitted to EPA in accordance with 40 CFR 122.26(a)(2) for groups of applicants that are part of the same subcategory (under 40 CFR 405 to 471) or are sufficiently similar as to be appropriate for authorization under a general permit. When a group application is submitted to EPA in accordance with the deadlines in 40 CFR 122.26(e)(2), then the facilities participating in the group have satisfied the permit application deadlines in 40 CFR 122.26(e) (except for facilities that EPA rejects as a member of the group). EPA may, in the future, develop draft permits using information contained in such group applications. However, since submitting a group application to EPA does not result in the issuance of an effective NJPDES permit, facilities included in a group application still need to obtain a NJPDES DSW permit from the Department for their stormwater discharges.

Therefore, proposed N.J.A.C. 7:14A-10.3(a)23 requires that if a facility has been approved by EPA as a member of a group application (or if EPA has not approved or rejected the facility by April 1, 1993), then the owner and operator must, by October 1, 1993, either apply to the Department for an individual DSW permit, or submit to the Department a request for authorization under a DSW general permit. (An exception is provided for certain municipal facilities exempted from permit application deadlines by Section 1068 of the Transportation Act and 40 CFR 122.26(e).) To administer proposed N.J.A.C. 7:14A-10.3(a)21, (a)22, and (a)23, the Department needs to know which New Jersey facilities participated in group applications, and which of those facilities have been approved or rejected by EPA as members of the group. To obtain this information, which EPA may not always provide to the Department in a timely fashion, the Department is proposing to add N.J.A.C. 7:14A-10.3(a)24 and (a)25.

The third exception to N.J.A.C. 7:14A-10.3(a)21 is in N.J.A.C. 7:14A-10.3(a)26, which the Department is proposing to add in order to address those industrial stormwater discharges for which the Department may need to require a permit application in advance of the deadlines established under N.J.A.C. 7:14A-10.3(a)21, (a)22, or (a)23. The Department does not expect to make extensive use of this provision (unless EPA substantially extends the deadlines in 40 CFR 122.26(e)), but the Department may become aware of industrial stormwater discharges of such known or suspected significance as to warrant an earlier permit application.

N.J.A.C. 7:14A-10.3(a)27 is being added to specify how individual permit applications for discharges of stormwater shall be submitted for a facility that already has an individual DSW permit that does not authorize all of those discharges.

The Department is proposing to add N.J.A.C. 7:14A-10.3(c)8 to exempt discharges from separate storm sewers from the permit application requirements in N.J.A.C. 7:14A-10.3(c), including requirements for submission to the Department of an engineer's report and Operations and Maintenance Manual. As indicated in its opening sentences, N.J.A.C. 7:14A-10.3(c) is applicable only to discharges that require a DAC, and under proposed N.J.A.C. 7:14A-2.1(g)1ii, discharges from separate storm sewers are exempt from the requirement for a DAC. This, again, is part of the Department's effort to streamline the NJPDES permit process.

Subchapter 14

N.J.A.C. 7:14A-14.8 is being amended to exempt certain DSW (discharge to surface water) permits and discharges from requirements in N.J.A.C. 7:14A-14.4 and 14.5 that establish minimum effluent limitations and sampling requirements for oil and grease. The exemptions apply to general DSW permits for stormwater point sources or separate storm sewers, and to DSW from separate storm sewers that are not industrial treatment works. The proposed amendments to N.J.A.C. 7:14A-14.8 would not exempt certain petroleum industry facilities and major petroleum storage facilities because the discharge of oil and grease is of particular concern at these facilities. These exemptions are necessary to allow the Department to implement its general approach of using stormwater pollution prevention plans rather than numerical effluent limitations in its permits for stormwater.

Appendix H

The Department is proposing to amend Appendix H to exempt discharges from separate storm sewers from the sampling schedule contained therein. This again is necessary to the Department's ability to rely on stormwater pollution prevention plans, best management practices, and self-inspections, rather than numerical effluent limitations and sampling. The proposed amendment to Appendix H would not prevent the Department, on a case-by-case basis, from issuing general or individual DSW permits for separate storm sewers that include sampling requirements. The proposed amendment to Appendix H would also correct two typographical errors.

Public Notice for Draft General Permit No. NJ0088315 and NJ0088323

The Department has determined that there may be a significant degree of public interest in these two draft NJPDES general permits (No. NJ0088315 and No. NJ0088323) described earlier in the Summary statement for this proposal. The Department will hold two public hearings on this rule proposal, including these two draft permits, which are part of this proposal. The date, time, and place of those two public hearings are stated at the beginning of the notice for this proposal. The Department is holding these two public hearings to afford the public an opportunity to present to the Department oral and written comments, arguments, data and views on this proposal, including these two draft general permits. These public hearings are legislative type hearings which do not include cross-examination.

The public hearings shall be held before a hearing officer designated by the Department. At the beginning of each public hearing, the Department shall present a summary of the factual information on which this proposal (including these two draft general permits) is based, and shall respond to questions posed by any interested person. At these public hearings, any person may submit oral or written comments, arguments, data, and views concerning this rule proposal (including these two draft permits). The hearing officer may set reasonable limits upon the time allowed for oral comments at the public hearing. The hearing officer shall make recommendations to the Department regarding this proposal (including these two draft general permits). These recommendations shall be made public, and the Department's response either accepting

or rejecting these recommendations shall be summarized and published in the New Jersey Register. A written transcript of the hearing shall be made available to the public.

These two draft NJPDES general permits are based on the administrative record which is on file at the offices of the Department of Environmental Protection and Energy, Office of Regulatory Policy, located at 401 East State Street, in the City of Trenton, Mercer County, New Jersey. The administrative record is available for inspection, by appointment, between 8:30 A.M. and 4:00 P.M., Monday through Friday. Appointments for inspection may be scheduled by calling (609) 633-7026.

Interested persons may submit written comments, arguments, data and views on this proposal, including these two draft general permits, to Samuel A. Wolfe, Esq., Administrative Practice Officer, Department of Environmental Protection and Energy, Office of Legal Affairs, CN 402, Trenton, NJ 08625. The public comment period for these draft general permits began on June 5, 1992. All such comments, arguments, data and views shall be submitted by August 5, 1992, which is when the public comment period ends. All persons, including persons who discharge or propose to discharge stormwater, who believe that any condition of these draft general permits is inappropriate or that the Department's tentative decision to issue these draft permits is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period.

The Department shall consider fully all written and oral submissions respecting this proposal, including these two draft general permits, made before the close of the public comment period. After the close of that period, the Department shall issue final decisions. The Department shall respond to all comments respecting this proposal and these draft permits when a final permit decision is issued. The Department shall notify each person who has submitted written comments or requested notice of the final permit decision.

Interested persons may obtain further information about this rule proposal and these draft permits, including copies of the draft general permits, fact sheets, and other information in the administrative record, from Barry Chalofsky, Assistant Administrator of the Office of Regulatory Policy, at (609) 633-7026. Written requests for such information may be sent to Barry Chalofsky, Department of Environmental Protection and Energy, Office of Regulatory Policy, CN 029, Trenton, NJ 08625.

Social Impact

The Department expects a generally positive social impact from the proposed amendments and new rule. By incorporating a pollution prevention philosophy and making extensive use of streamlined general permits, the amendments should result in more effective, less costly control of stormwater discharges than would occur if the Department tried to regulate such discharges by issuing thousands of individual DSW permits using traditional permitting approaches under the current NJPDES rules. The amendments also bring the NJPDES rules up to date by deleting outdated stormwater requirements and incorporating stormwater requirements already in effect under section 402(p) of the Federal Clean Water Act (CWA) and related EPA rules.

The water quality objectives of the CWA and the State Act cannot be achieved without control of stormwater discharges, which are a major source of water pollutants. The most significant impact of the amendments will be that residents of New Jersey will enjoy the benefits of cleaner surface water, as a result of reduced pollutant loadings in stormwater from industrial facilities, and that these benefits will be obtained at lower cost than would be the case without these amendments.

In addition, the amendments that concern the administration of general permits for discharges to surface waters will have the positive significant social impact of clarifying how authorization under such permits is obtained and terminated, and of affording the public greater opportunity to participate in that process. These are important improvements, as the Department expects to make increasing use of general permits in the NJPDES program to control stormwater discharges and other discharges.

The segment of the public most directly affected financially by the amendments will be those responsible for a "storm water discharge associated with industrial activity" as defined in 40 CFR 122.26(b)(14). This includes most industrial facilities in the State. The nature and scope of the regulated universe and the financial impacts on that universe are discussed in more detail in the Economic Impact and Regulatory Flexibility Analyses below. As indicated there, the impact of the amendments will vary with the category of industrial facility and the situation of each discharger.

After dischargers of pollutants to surface waters, the next most affected segment of the public will be those who use surface waters for water supply, recreation, fishing and shellfishing, and other purposes. The amendments will benefit those persons by improving water quality in New Jersey.

Economic Impact

The Department expects a generally positive economic impact from the proposed amendments and new rule. The amendments include numerous provisions that are intended, in part, to establish a regulatory program for control of stormwater that is substantially less costly than the regulatory program that would exist without the amendments. Set forth below is a discussion of economic impacts expected to be felt by the specific classes of persons that will feel the greatest financial impact from the amendments.

As stated in the Social Impact above, the segment of the public most directly affected financially by the amendments will be those responsible for a "storm water discharge associated with industrial activity" as defined in 40 CFR 122.26(b)(14). The Department estimates that approximately 10,000 facilities in New Jersey have such a discharge. For purposes of this discussion, these facilities are divided into three categories: industrial facilities that obtain authorization under General Permit No. NJ0088315 (the "industrial" general permit), construction and mining activities that obtain authorization under General Permit No. NJ0088323 (the "construction" general permit), and industrial facilities that seek an individual DSW permit for their stormwater discharge.

Negative economic consequences will result if the NJPDES rules are not amended. The most significant of these consequences are the costs that thousands of industrial facilities would incur to obtain and comply with individual rather than general DSW permits for their stormwater discharges. Also, the cost to the Department of issuing and administering thousands of such individual DSW permits would be substantially greater than the cost of administering general DSW permits, and this greater cost would be borne by NJPDES permittees (who bear the cost of the NJPDES program).

General Permit No. NJ0088315: The "Industrial General Permit"

The amendments should have a significant positive economic impact on owners and operators of industrial facilities that obtain authorization under the "industrial" general permit. Unless the Department issues a general permit that authorizes stormwater discharges from such facilities, owners and operators of such activities will be required by section 402(p) of the Federal Clean Water Act, current EPA rules, and the current NJPDES rules to undertake the longer and more expensive task of applying for an individual DSW permit (and, in some cases, a DAC) for these discharges.

The first advantage of the "industrial" general permit is that the costs associated with the request for authorization would be substantially less than the costs associated with an application for an individual DSW permit. Specifically, because of the limited requirements, the Department will be able to issue authorizations under this general permit much sooner than the Department could issue individual draft and final DSW permits under the current NJPDES rules, thereby saving costs resulting from permit processing delays. Also, the amount of information required in the request for authorization under this general permit is minimal in comparison with the amount of information that 40 CFR 122.26(c)(1)(i) and the current NJPDES rules require in an application for an individual DSW permit for an industrial stormwater discharge. For example, the request for authorization requires no pre-application sampling. Thus, the cost of actually preparing the request will be substantially less than that of preparing an individual permit application. The cost of preparing the request for authorization should generally be between \$20.00 and \$100.00 (at 55 FR 48061, EPA estimated the average cost of its analogous "notice of intent to be covered by general permit" to be \$17.00). In addition, the amendments require a brief public notice of the request for authorization to be published in a newspaper, which should cost, on average, under \$25.00.

Moreover, instead of requirements to sample and analyze the stormwater discharge, the "industrial" general permit requires an annual inspection of the facility, as permitted under 40 CFR 122.44(i). Based on EPA estimates (57 FR 11411) of the nationwide reduction in monitoring costs due to the amendments to 40 CFR 122.44(i), the Department estimates that annual inspections are, on average, about 40 per cent less expensive than annual sampling and analysis of stormwater discharges.

The "industrial" general permit does not include numeric effluent limitations. Instead, the principal effluent limitation in this permit is a

requirement for preparation and implementation of a stormwater pollution prevention plan signed by a New Jersey Licensed Professional Engineer. It is worth noting that in order to avoid the imposition of liability under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., a prudent industrial facility will already have taken a variety of actions that will also become part of its stormwater pollution prevention plan. The cost of developing and implementing these stormwater pollution prevention plans is variable and will depend on a number of factors, including: the size of facility; the existing industrial materials and machinery at the facility, if any, that are exposed to stormwater that is discharged through separate storm sewers to surface waters; the nature of the plant operations and plant designs and the housekeeping measures employed; and the amount of information the facility already has about its stormwater conveyance system. The Department believes that at one end of the spectrum, some industrial facilities will require no physical modifications (or very minor physical modifications) to comply with the permit. Some of those same facilities will have a well-understood stormwater conveyance system that requires no extensive investigation for unpermitted discharges of domestic wastewater, non-contact cooling water, or process waste water. For these facilities, the stormwater pollution prevention plan will be a short, simple document.

The Department also believes that at the other end of the spectrum, some industrial facilities will require major physical modifications, requiring substantial financial expenditures, to comply with the "industrial" general permit. At some facilities, measures that would contribute towards complying with this general permit would be taken anyway in order to comply with requirements under the Spill Compensation and Control Act.

In Table 5 of the fact sheet for its own draft general permits, EPA provided a "Summary of Estimated Costs for Compliance With Storm Water Pollution Prevention Plans With Baseline Requirements" (56 FR 40988-40989). Because the "industrial" general permit differs in some respects from the EPA draft general permits, Table 5 is not directly applicable to the "industrial" general permit. The draft permits do share some common features, however, and Table 5 may provide a rough indication of the costs of preparing and implementing a stormwater pollution prevention plan under the "industrial" general permit. Expressed as total annualized costs (capital costs plus operation and maintenance costs, based upon a five year permit and 10 percent discount rate), these cost estimates ranged from about \$3,000 for "low costs" facilities (expected by EPA to be applicable to the majority of smaller facilities) to about \$133,000 for "high costs" facilities.

EPA's annualized "low costs" estimate of about \$3,000 may be appropriate for many New Jersey facilities that require few physical modifications to comply with the "industrial" general permit, although this estimate may have to be increased to account for the requirement of a certification by a New Jersey Licensed Professional Engineer. At some industrial facilities where very large physical modifications would be needed to comply with this general permit, EPA's annualized "high costs" estimate of about \$133,000 may be too low. However, those facilities that find this general permit unsuitable to their situation can apply for an individual DSW permit.

The annual fee of \$500.00 charged for the "industrial" general permit is the same as the minimum annual fee charged for most NJPDES permits under the current NJPDES rules, and is necessary to support the costs of processing, monitoring, and administering NJPDES permits. (For further information, see the Summary statement for N.J.A.C. 7:14A-1.8, Fees.) For most facilities, the payment of this fee should not have a significant impact.

General Permit No. NJ0088323: The "Construction" General Permit

The amendments should also have a significant positive economic impact on owners and operators of construction and mining activities that obtain authorization under the "construction" general permit. Unless the Department issues a general permit that authorizes stormwater discharges from construction and mining activities, owners and operators of such activities will be required by section 402(p) of the Federal Clean Water Act, current EPA rules, and the current NJPDES rules to apply for an individual DSW permit for these discharges. (Under the current NJPDES rules, moreover, most of these owners and operators would be required to apply for and obtain a DAC before they could apply for the DSW permit.)

The Department expects that an average of 1,000 new projects per year could be authorized under the "construction" general permit. If these projects were required instead to obtain individual DSW permits,

the Department estimates that it could take years between the submission of the initial application and the issuance of the final DSW permit. In the meantime, much new construction activity in New Jersey could not begin, and construction activity already underway could be in jeopardy for discharging stormwater without a DSW permit. This could impose significant costs on the construction industry. Under the current NJPDES rules, moreover, these individual permit and DAC applications would be lengthy, complex documents. The individual DSW permits would include, at a minimum, specific requirements for oil and grease under current N.J.A.C. 7:14A-14, and requirements for analysis of stormwater samples under current Appendix H.

In contrast, under the "construction" general permit authorization to discharge will occur as soon as the soil conservation district (or, for DOT projects, the DOT) certifies the request for authorization. Such certification will be a routine procedure that, for the great majority of projects, will occur at the same time that the district (or DOT) certifies the project's soil erosion and sediment control plan under the Soil Erosion and Sediment Control Act. For the great majority of projects, therefore, the "construction" general permit will cause no additional delays.

Also, the "construction" general permit requires only minimal information in the request for authorization (much less information than the current NJPDES rules require in an application for a DSW permit). The average cost of preparing the request for authorization should not exceed \$20.00 (55 FR 48061). In addition, however, the amendments require a brief public notice of the request for authorization to be published in a newspaper, which should cost, on average, under \$25.00. The cost of the request for authorization would be substantially less than the cost of preparing an application for an individual DSW permit under the current NJPDES rules.

The principal effluent limitation in the "construction" general permit is compliance with requirements established under the Soil Erosion and Sediment Control Act. Thus, this general permit will impose no requirements for soil erosion and sediment control that would not already apply to the project under that Act. Instead of requirements to sample and analyze the stormwater discharge, the general permit requires an annual inspection of the facility, which is basically the minimum level of monitoring permissible under 40 CFR 122.44(i)(4). As with the "industrial" general permit, the Department estimates that annual inspections are, on average, about 40 percent less expensive than annual sampling and analysis of stormwater discharges.

The \$200.00 fee charged for the "construction" general permit will be lower than any fee currently charged for any NJPDES permit. This fee will be assessed only when authorization is requested under that permit, and not annually. This fee is the minimum fee needed to manage the program, and is far less than other expenses that land developers normally incur to obtain governmental approval for construction activity. (For further information, see the Summary statement for N.J.A.C. 7:14A-1.8, Fees.)

The amendments should not have a negative economic impact on the soil conservation districts, as the Department expects that the expenses those districts will incur under general permit no. 88323 will be reimbursed from NJPDES fee revenues.

Individual Permits

The amendments should generally have a positive economic impact on owners and operators of industrial facilities that apply for an individual DSW permit for their stormwater discharge. Proposed N.J.A.C. 7:14A-10.3(a)17 and (a)18 would exempt such applicants from numerous permit application requirements in current N.J.A.C. 7:14A-10.3(a), thereby reducing the cost of preparing the permit application. Other proposed amendments to N.J.A.C. 7:14A-10.3(a) that incorporate certain permit application requirements in 40 CFR 122.21 and 122.26 do not impose new costs on permit applicants, as these EPA requirements must be followed in New Jersey even without these proposed amendments.

Entities that submitted group applications to EPA will incur some minimal financial costs in providing to the Department the basic information required by proposed N.J.A.C. 7:14A-10.3(a)24 and (a)25. Also, under proposed N.J.A.C. 7:14A-10.3(a)23, facilities approved by EPA as members of group applications will incur the cost of applying for an individual DSW permit or requesting authorization under a general DSW permit. However, the October 1, 1993 deadline should provide these approved facilities with ample opportunity to obtain authorization under the "industrial" general permit, where appropriate, and avoid the costs of preparing an individual permit application.

Under proposed N.J.A.C. 7:14A-3.13(a)9iii, monitoring requirements for most stormwater discharges associated with industrial activity will be

established on a case-by-case basis in individual DSW permits as well as general DSW permits (subject, in the case of oil and grease, to the provisions of N.J.A.C. 7:14A-14), and can require periodic inspections in lieu of analysis of stormwater samples. As noted in the discussion above of the "construction" general permit, the use of inspections in lieu of sampling can result in economic savings to permittees. However, the Department expects that some DSW permits will require stormwater sampling.

A segment of the public that in the future may be directly affected financially by the amendments are owners and operators of "municipal separate storm sewers" as defined in 40 CFR 122.26(b)(8). The amendments should have a significant positive economic impact on owners and operators of such storm sewers, if and when such owners and operators are required to apply for DSW permits for discharges from such storm sewers. (No New Jersey municipality is currently required to submit such permit applications, as was discussed in the summary statement for N.J.A.C. 7:14A-3.11.) Proposed N.J.A.C. 7:14A-10.3(a)19 would exempt owners and operators of "large" and "medium" municipal separate storm sewer systems, or of municipal separate storm sewer systems designated under 40 CFR 122.26(a)(1)(v), from numerous permit application requirements in current N.J.A.C. 7:14A-10.3(a). This exemption would thereby reduce the cost of preparing the permit application. Although these permit applications would be required to include the information required under 40 CFR 122.26(d), this requirement does not impose new costs on permit applicants, as these EPA requirements must be followed in New Jersey even without the proposed amendment.

As was discussed in the Summary above, the Department is proposing a number of amendments to exempt general permits and discharges from storm sewers from requirements that apply to other NJPDES permits. All of these will reduce costs to industries and others who discharge stormwater to surface waters, and to the Department.

Environmental Impact

Although some may have doubts about the degree to which these amendments will serve to protect and maintain this State's water resources, in that they allow the use of general permits without numerical effluent limitations and traditional end-of-the-pipe sampling, the Department expects a generally positive environmental impact from the proposed amendments and new rule. At present, only a small fraction of the thousands of industrial stormwater discharges in New Jersey are regulated under a NJPDES permit. By incorporating a pollution prevention philosophy and making extensive use of streamlined general permits, the amendments should result in more effective control of stormwater discharges than would occur if the Department tried to regulate such discharges by issuing thousands of individual DSW permits using traditional permitting approaches under the current NJPDES rules. The Department projects that it would take many years to issue such individual permits. In contrast, under the "industrial" general permit and the "construction" general permit, many of these discharges can be regulated under the NJPDES program within a much shorter period of time, with corresponding benefits to New Jersey's surface waters.

The Department believes that as a result of the "industrial" general permit, pollutant loadings in stormwater from thousands of industrial facilities will be substantially reduced in a few years. The "construction" general permit relies mainly on the Soil Erosion and Sediment Control Act, which should remain a primary vehicle for controlling stormwater discharges from construction and mining activities. By making compliance with that Act a condition of that permit, the "construction" general permit will provide additional incentives for compliance with that Act.

The amendments include several provisions designed to reduce the burdens associated with permitting discharges from thousands of separate storm sewers. The Department believes that these provisions will generally have no significant negative environmental impact. Some of these provisions, for example, exempt such discharges from the requirement to apply for a Discharge Allocation Certificate (DAC) and submit related engineering documents typically associated with wastewater treatment facilities. The Department does not feel that it can develop at this time, for thousands of separate storm sewers, the numeric water quality based effluent limitations that are central to the DAC process. Thus, the Department could not make effective use at this time of the DAC applications.

Moreover, the Department is generally encouraging the control of stormwater discharges through application of pollution prevention approaches using source controls, rather than through application of wastewater treatment technologies. Engineering documents required by the

current NJPDES rules are not suitable for most discharges from separate storm sewers, and the Department could not effectively review thousands of such documents. For these reasons, exemptions from requirements for the DAC and related engineering documents should not, in practice, result in a significant negative environmental impact.

Another of the amendments provides that where the DSW general permit does not require the request for authorization to include a listing of toxic pollutants, the permittee is exempt from the NJPDES requirement to notify the Department about the use or manufacture of such pollutants. The Department already obtains comprehensive information about the use and manufacture of toxic pollutants under other statutes, and the environment would not be damaged if the Department does not receive, on a piecemeal basis, similar information from thousands of industrial facilities through the NJPDES program.

Another provision would exempt many separate storm sewers from requirements in N.J.A.C. 7:14A-14 that establish minimum effluent limitations and sampling requirements for oil and grease. This exemption could have a negative environmental impact due to a possible increase in the amount of oil and grease discharged to surface waters from some separate storm sewers. The extent of the increase, if any, would depend on the extent to which affected permittees would have complied with the effluent limitations in N.J.A.C. 7:14A-14.4, and the extent to which compliance of affected permittees with DSW permits exempted from those effluent limitations would minimize the discharge of oil and grease from separate storm sewers. For example, the requirements in the "industrial" general permit to implement a stormwater pollution prevention plan and comply with N.J.A.C. 7:1E should minimize such discharges to a substantial degree. The Department believes that much of the oil and grease discharged from industrial storm sewers results from contact of stormwater with industrial "source materials," and from unpermitted discharges of process waste water into storm sewers. The "industrial" general permit is designed to eliminate these sources of oil and grease.

The Department believes that the negative environmental impact, if any, is outweighed by the substantial costs that would be entailed in requiring discharges from thousands of separate storm sewers to comply with N.J.A.C. 7:14A-14. There are so many different kinds of stormwater discharges, coming from such a variety of industrial, commercial, residential, and other sources, that the Department believes that it is not appropriate, at this time, to apply the effluent limitations for oil and grease in N.J.A.C. 7:14A-14.4 to all stormwater discharges that require a DSW permit. Effluent limitations that are appropriate for stormwater from a petroleum refinery or oil bulk terminal may not be appropriate for such other sources as municipal separate storm sewers.

In regard to the broader issue of numeric effluent limitations for stormwater discharges (not just for oil and grease), the Department believes that instead of requiring compliance with numeric effluent limitations that are back-calculated from the assumed implementation of best management practices, it is often more appropriate for the DSW permit to require compliance with specific best management practices. Reasons include the frequent difficulty of translating best management practices into appropriate numerical effluent limitations (due, in part, to variability in weather and site conditions), the expense of sampling and analyzing numerous stormwater discharges to assess compliance with numeric effluent limitations, and the difficulty of determining the specific measures needed at a particular site to comply with numeric effluent limitations that were not tailored to that site. The Department believes that DSW permits that require implementation of best management practices can often control stormwater discharges to substantially the same degree (especially when discharges are considered collectively), and in a more reasonable and less costly manner, than DSW permits that require compliance with numeric effluent limitations based in some fashion on assumed best management practices.

Still other provisions would exempt discharges from separate storm sewers from the sampling schedule in Appendix H, and allow DSW permits for many industrial stormwater discharges to substitute inspection requirements for sampling requirements. A principal function of such sampling is to assess compliance with numeric effluent limitations. Without numeric effluent limitations, such sampling loses much of its value for environmental protection purposes.

Regulatory Flexibility Analysis

As stated in the Economic Impact above, the segment of the public most directly affected financially by the proposed rule amendments will be those responsible for a "storm water discharge associated with industrial activity" as defined in 40 CFR 122.26(b)(14). The Department estimates that approximately 10,000 facilities in New Jersey have such

a discharge, and that thousands of these facilities are "small businesses" as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments and new rule do not increase recordkeeping or other requirements imposed on small businesses. Instead, it essentially attempts to lessen the burden of the Federal requirements that certain stormwater discharges associated with industrial activity be covered by a permit. Thus, the analysis required by the Regulatory Flexibility Act could end here. However, even assuming that these rules could be construed as imposing requirements on small businesses, the Department, as discussed below, has taken the steps appropriate to minimize the effect of the rules on small businesses to the extent permitted by Federal and State law and the Department's obligation to protect the public health, safety, and welfare.

Throughout the development of the proposed amendments, the Department has been cognizant of the adverse economic impacts that stormwater permitting requirements could have on thousands of small businesses. As discussed in the Economic Impact and Summary above, the amendments include numerous provisions that are intended, in part, to reduce the cost of the regulatory program that would exist without the amendments. These provisions, which include, but are not limited to, the issuance of the "industrial" general permit (NJ0088315) and the "construction" general permit (NJ0088323), are designed to minimize adverse economic impacts on small businesses. Because the Department also wanted to minimize economic impacts on other businesses and public agencies, these provisions are not limited to the small business community. However, small businesses will be among the prime beneficiaries.

For reasons explained in the Economic Impact above, the amendments should have a significant positive economic impact on small businesses that obtain authorization under the "industrial" general permit. Although such businesses are required to submit a request for authorization under that permit, the amount of information required is minimal in comparison with the amount of information required in an application for an individual DSW permit for an industrial stormwater discharge. This general permit requires such businesses to perform annual inspections, to maintain reports of such inspections, to provide annual certifications of such inspections to the Department, and to report incidents of non-compliance to the Department. However, these reporting and recordkeeping requirements replace the more expensive requirements for sampling and analysis of stormwater discharges and submission of discharge monitoring reports to the Department that otherwise would be required.

In regard to compliance requirements, the "industrial" general permit does not include numeric effluent limitations. Instead, the principal effluent limitation is a requirement for preparation and implementation of a stormwater pollution prevention plan. As discussed in the Economic Impact above, the cost of developing and implementing these stormwater pollution prevention plans is variable and will depend on site-specific factors. The annual fee of \$500.00 charged for this general permit is the minimum annual fee charged for most NJPDES permits under the current NJPDES rules. Small businesses will require the services of a New Jersey Licensed Professional Engineer to sign the stormwater pollution prevention plan and the annual certification of compliance with the permit.

For reasons explained in the Economic Impact above, the amendments should also have a significant positive economic impact on small businesses that obtain authorization under the "construction" general permit. Although such businesses are required to submit a request for authorization under that permit, the amount of information required is minimal, and the associated costs will have no significant impact on small businesses. This general permit also requires such businesses to perform annual inspections of the facility, to maintain reports and certifications of such inspections, and to report incidents of noncompliance with the permit to the Department. These reporting and recordkeeping requirements are basically the minimum level of monitoring permissible under 40 CFR 122.44(i)(4) and other EPA rules applicable to DSW permits. This general permit includes these requirements instead of more expensive requirements for sampling and analysis of stormwater discharges and submission of discharge monitoring reports to the Department that otherwise would be required. Even without this general permit, construction and mining activities should be periodically inspected to ensure that the facility's soil erosion and sediment control plan under the Soil Erosion and Sediment Control Act is being properly implemented.

In regard to compliance requirements, the principal effluent limitation in the "construction" general permit is compliance with requirements established under the Soil Erosion and Sediment Control Act. Thus, this general permit will impose no standards for soil erosion and sediment control that would not already apply to the project under that Act. This general permit includes no numeric effluent limitations. The \$200.00 fee charged for this general permit will be lower than any fee currently charged for any NJPDES permit. This fee will be assessed only when authorization is requested under this permit, and not annually. This general permit should not require any professional services beyond those, if any, which small businesses otherwise need to comply with the Soil Erosion and Sediment Control Act.

The amendments should also generally have a positive economic impact on small businesses that apply for an individual DSW permit for their stormwater discharge. Proposed N.J.A.C. 7:14A-10.3(a)17 and (a)18 would exempt such small businesses from numerous permit application requirements in current N.J.A.C. 7:14A-10.3(a). Other proposed amendments to N.J.A.C. 7:14A-10.3(a) that incorporate permit application requirements in 40 CFR 122 do not impose new reporting, recordkeeping, or other compliance requirements on small businesses, as these EPA requirements must be followed even without these proposed amendments. Under proposed N.J.A.C. 7:14A-10.3(a)23, small businesses approved by EPA as members of group applications will incur the cost of applying for an individual DSW permit or requesting authorization under a general DSW permit. However, the October 1, 1993 deadline should provide these small businesses with ample opportunity to obtain authorization under the "industrial" general permit, where appropriate, and avoid the costs of preparing an individual permit application.

Under proposed N.J.A.C. 7:14A-3.13(a)9iii, monitoring requirements for most stormwater discharges associated with small business industrial activity will be established on a case-by-case basis (subject to N.J.A.C. 7:14A-14), and can require periodic inspections in lieu of more expensive analysis of stormwater samples. (However, the Department expects that some DSW permits will require stormwater sampling.) As was discussed in the Summary above, the Department is also proposing a number of other amendments to exempt general permits and discharges from storm sewers from requirements that apply to other NJPDES permits. All of these will reduce costs to small businesses that discharge stormwater to surface waters.

As was noted near the beginning of this analysis, these amendments include numerous provisions designed to minimize the adverse economic impacts of stormwater permitting requirements on all businesses. In developing these amendments, the Department also considered additional ways to minimize any adverse economic impacts on small businesses. However, the Department has determined that any attempt to exempt small businesses from the requirements contained in the amendments, or to establish different compliance or reporting requirements or timetables, would endanger the public health, safety, and general welfare, and, in some cases, violate the Federal Clean Water Act and the State Act. In particular, small businesses that have a "storm water discharge associated with industrial activity" subject to 40 CFR 122.26 cannot be exempted from the requirement to obtain a NJPDES permit for that discharge, in accordance with applicable EPA rules, without violating the Federal Act and the State Act and endangering the public health, safety, and general welfare.

The Department considered proposing to exempt small businesses from the requirement in the "industrial" general permit that they have their stormwater pollution prevention plans and annual inspection certifications signed by a New Jersey Licensed Professional Engineer. However, the Department determined that without such signatures, the Department would not have adequate assurance that such plans and certifications would be properly reviewed by persons professionally qualified to evaluate stormwater drainage systems. Because it is infeasible for the Department to review thousands of these plans prior to granting authorization to discharge, and to conduct frequent inspections of thousands of industrial facilities, the Department is relying heavily on the quality of these plans and annual self-inspections to protect the public health, safety, and general welfare from the dangers associated with industrial stormwater discharges. Plans and inspections that are not properly reviewed by qualified persons could be worthless for this purpose.

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

7:14A-1.2 Scope

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

(d) It is the intent of the Department to regulate, at a minimum, the following by means of the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program.

1.-12. (No change.)

13. Discharges [from separate storm sewers as defined] of stormwater to surface waters, including discharges through storm sewers, as set forth in N.J.A.C. 7:14A-3.8.

14. (No change.)

(e) (No change.)

7:14A-1.7 Application

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

(d) The issuance and compliance of all DSW, UIC, IWMF permits shall, at a minimum, satisfy the requirements of 40 CFR Parts 122, 123 and 124, the Federal Act, and the State Act, notwithstanding (c) above.

[(e) Any provision of this chapter or the application thereof to any person shall be reviewed automatically, as necessary to reflect more stringent requirements adopted by the EPA.]

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) [The] Except as provided in (i) and (j) below, the general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1. The Department shall collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a NJPDES permit or authorization to discharge under a NJPDES general permit, or submit a NJPDES permit application or request for authorization.

2. The Department shall not assess [an annual] any fee to public schools or religious or charitable institutions.

3. All NJPDES permittees/applicants that are issued a draft or final NJPDES permit, or that are issued an authorization to discharge under a final NJPDES general permit, shall submit payment within 30 days of assessment of the fee by the Department

i. Upon receipt of a completed application or request for authorization, the Department shall assess the minimum fee as set forth in (h) below.

ii. Upon issuance of the final permit or of an authorization to discharge under a final NJPDES general permit, the annual fee shall be calculated and pro-rated for the period of the fee year remaining. The minimum fee already paid shall then be subtracted from the pro-rated assessment. In no case, however, will such payment of a pro-rated fee result in a fee that is less than the minimum fee for the category of discharge. The permittee may request a fee recalculation as provided at (a)6 below, once the first required monitoring report has been completed.

4. (No change.)

5. If the permittee/applicant fails to submit payment to the Department within 30 days of assessment of the fee, the Department may, in its discretion, take one or more of the following actions:

i. Return the NJPDES permit application or request for authorization to the applicant;

ii. Deny issuance of a final permit or authorization under a final general permit;

iii. Terminate a final permit (including termination of a permittee's authorization to discharge under a general permit); and/or

iv. (No change.)

6.-10. (No change.)

(b) (No change.)

(c) [The] Except as provided in (i) and (j) below, the annual fee for discharges to surface water is calculated by using the following Environmental Impact in the annual fee formula:

1.-2. (No change.)

(d)-(g) (No change.)

(h) Minimum fees are as follows:

1. The minimum fee for Discharge to Surface Water permits shall be \$500.00, except that:

i. [the] The minimum fee for hazardous waste facilities regulated by N.J.A.C. 7:26 and for the Industrial Waste Management Facilities regulated by N.J.A.C. 7:14A-4 shall be \$10,000.

ii. The fee for NJPDES Permit No. NJ0088323 (N.J.A.C. 7:14A-3, Appendix B) is specified in (j) below.

2.-8. (No change.)

(i) For NJPDES Permit No. NJ0088315 (N.J.A.C. 7:14A-3, Appendix A, incorporated herein by reference), the annual fee collected under (a) above should be the minimum fee of \$500.00 set forth in (h)1 above. A request for authorization under that permit shall not be complete unless this fee is included in that request, or unless this permit has been reissued and this fee has already been paid for the billing year in which the RFA is submitted.

(j) For NJPDES Permit No. NJ 0088323 (N.J.A.C. 7:14A-3, Appendix B, incorporated herein by reference), there is no annual or minimum fee. Instead, a fee of \$200.00 shall be paid by check or money order, payable to "Treasurer, State of New Jersey," and submitted to the soil conservation district along with each request for authorization submitted under that permit. The soil conservation district shall forward all such checks and money orders to the State Soil Conservation Committee in the Department of Agriculture, which shall cause such checks and money orders to be deposited to the credit of the State. The soil conservation committee shall not certify any request for authorization that is not accompanied by this fee.

TABLE I (No change.)

TABLE II (No change.)

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...
"Combined sewer system" means a sewer system that is designed to carry sanitary sewage at all times and that also is designed to collect and transport stormwater from streets and other sources, thus serving a combined purpose.

...
"Large municipal separate storm sewer system" means a "large municipal separate storm sewer system" as defined at 40 CFR 122.26(b)(4).

...
"Medium municipal separate storm sewer system" means a "medium municipal separate storm sewer system" as defined at 40 CFR 122.26(b)(7).

...
Municipal separate storm sewer means a "municipal separate storm sewer" as defined at 40 CFR 122.26(b)(8).

...
"Process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. **Process waste water includes, but is not limited to, "leachate" and cooling water other than "non contact cooling water."**

...
"Request for authorization" is the document submitted under N.J.A.C. 7:14A-3.9 to obtain authorization to discharge under a general permit.

...
"Run-off" means, for purposes of N.J.A.C. 7:14A-4.7 only, any [rainwater] stormwater, leachate, or other liquid that drains overland from any part of a facility.

"Run-on" means, for purposes of N.J.A.C. 7:14A-4.7 only, any [rainwater] stormwater, leachate, or other liquid that drains overland onto any part of a facility.

...
"Separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, gutters, ditches, man-made channels, or storm drains):

1. Designed or used for collecting or conveying storm water;
2. Which is not part of a "combined sewer system"; and
3. Which is not part of a "Publicly Owned Treatment Works" ("POTW").

...
"Storm Sewer" means a sewer intended to carry only storm water.]

"Storm Water" **"Stormwater"** means [waters which result primarily from surface runoff and includes street wash water and drainage] stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater discharge associated with industrial activity" means a "storm water discharge associated with industrial activity" as defined at 40 CFR 122.26(b)(14).

...
"Uncontrolled sanitary landfill" means an "uncontrolled sanitary landfill" as defined at 40 CFR 122.26(b)(15).

...

7:14A-1.10 Incorporation by reference

The requirements applicable to the NJPDES program of the Federal Act, the State Act, and all Federal regulations cited in this chapter, including, but not limited to, 40 CFR Parts 122, 123, and 124, and including all future amendments and supplements, are incorporated into this chapter by reference unless the context clearly indicates otherwise. A copy of the Federal Act, the State Act, or any Federal regulation cited in this chapter may be obtained at the State Library. Wherever the requirements of this chapter are more stringent than the requirements of the Federal Act or a federal regulation, the requirements of this chapter shall apply.

7:14A-2.1 Application for NJPDES permit

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

(d) The Department shall not issue a permit before receiving a complete application, with the exception of an emergency permit issued pursuant to N.J.A.C. 7:14A-2.2 or a general permit issued pursuant to N.J.A.C. 7:14A-3.9, or when the Department issues an interim NJPDES permit based on information the Department possesses, which may include applications previously filed with State, Federal or local agencies. An application for a permit is complete when the Department receives all of the information required on the application form and any information substantially related to the permit and determines the application has been satisfactorily completed. The completeness of each application for any type of discharge permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. An applicant is required to submit the applicable information in N.J.A.C. 7:14A-1.7(b), 2.1, 3.2, 4.4, 5.8, and subchapters 6 and 10. The Department shall not make a final determination on any application until such time as the applicant has supplied any missing information and corrected any deficiencies.

(e)-(f) (No change.)

(g) The schedule for submission of applications is as follows:

1. Any person planning to undertake any activity which shall result in a discharge to surface water (DSW) shall apply for a discharge allocation certificate (DAC) in accordance with N.J.A.C. 7:14A-3.3 unless [prior to March 6, 1981 a facilities plan which includes such facility has been approved pursuant to Section 201 of the Federal Act] the discharge is listed in (g)1i, ii, or iii below. This provision does not exempt [a facility] any person from obtaining a NJPDES permit in accordance with this chapter.

i. Discharges authorized by a general permit;

ii. Discharges from separate storm sewers; however, a DAC is required for discharges into storm sewers of domestic wastewater, non contact cooling water, or process waste water other than stormwater;

iii. Discharges included in facilities plans approved prior to March 6, 1981 pursuant to Section 201 of the Federal Act.

2. (No change.)

3. Any person planning to undertake any activity which shall result in a discharge covered by this chapter (except for a discharge to surface water (DSW)) which does not require a facility for the collection or treatment of waste (such as land application of sludge) shall apply for a NJPDES permit at least [90] 180 days prior to planned discharge.

4.-6. (No change.)

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

(k) Applicants for NJPDES permits shall provide endorsements and comments as follows:

1. Prior to the submission of an application for a permit to discharge to surface or groundwater, DAC, or to gain approval for a treatment works or sewer connection, the applicant shall submit (return receipt requested) a copy of the application and the applicable information required pursuant to this chapter to the affected sewage authority(ies) and to the municipality in which the discharge(s) will be located, with a request that they endorse the application.

i.-ii. (No change.)

iii. **This subsection does not apply to NJPDES permits that are solely for discharges from separate storm sewers; however, this subsection does apply to NJPDES permits for discharges into storm sewers of domestic wastewater, non contact cooling water, or process waste water other than stormwater.**

2.-5. (No change.)

(l)-(o) (No change.)

7:14A-2.4 Signatories

(a) All permit applicants shall submit to the Department the following two-part certification:

1. (No change.)

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that [based] **this application and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. 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, inaccurate or incomplete information, including the possibility of fine and/or imprisonment.**"

i. (No change.)

(b) **[All] Except as provided in N.J.A.C. 7:14A-3.13(a)9iii(3) or in a general DSW permit, all reports required by permits, other information requested by the Department and all permit applications submitted for Class II wells under N.J.A.C. 7:14A-5.8 shall be signed by a person described in (a)2i above, who shall make the certifications set forth in (a)2 above, or by a duly associated representative of that person. A general DSW permit shall not specify signature requirements less stringent than those applicable under 40 CFR 122.22(b). A person is a duly authorized representative only if:**

1.-5. (No change.)

(c) (No change.)

7:14A-2.5 Conditions applicable to all permits

(a) Permittees shall comply with the following:

1. The permittee shall comply with all the conditions of its permit. No pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit. The discharge of any pollutant not specifically regulated in the NJPDES permit or listed and quantified in the NJPDES application shall constitute a violation of the permit, unless the permittee can prove by clear and convincing evidence that the discharge of the unauthorized pollutant did not result from any of the permittee's industrial activities which contribute to the generation of its wastewaters, **or unless the NJPDES permit is a general NJPDES permit for stormwater point sources or separate storm sewers that expressly exempts permittees from this provision, in which case the exemption shall apply only to the discharge authorized by the permit.** Any permit noncompliance constitutes a violation of the State Act or other authority of this chapter and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Department shall not issue a NJPDES permit when the conditions of the permit do not provide for compliance with the applicable requirements of the state and Federal Acts or regulations.

2.-15. (No change.)

7:14A-2.12 Modification, suspension or revocation of permits

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

(c) The Department may only modify, suspend or revoke a permit for discharges to surface water (DSW):

1.-8. (No change.)

9. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application under N.J.A.C. 7:14A-10.3(a)11 **or in the request for authorization under N.J.A.C. 7:14A-3.9(b)2 (unless the general permit expressly refers to a "request for authorization" and does not require the request for authorization to include a listing of toxic pollutants);**

10.-13. (No change.)

(d) (No change.)

7:14A-2.13 Termination of permits

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

(c) **The Department may terminate a permittee's authorization to discharge under a general permit for causes specified in (a) above. Such termination of authorization is a type of permit termination under this section. With the consent of the permittee, however, the Department may terminate authorization under a general permit without following the procedures set forth in N.J.A.C. 7:14A-7 and 8, if the authorized discharge has been eliminated. A requirement that a permittee apply for an individual permit or seek authorization under another general permit in accordance with N.J.A.C. 7:14A-3.9 is not a termination within the meaning of this section N.J.A.C. 7:14A-2.13, even if the permittee's authorization is eventually terminated in favor of an individual permit or another general permit, or is automatically terminated as a result of the permittee's failure to submit in a timely manner an application from or request for authorization form.**

7:14A-3.8 [Separate storm sewers] Stormwater discharges

[(a) Permit requirement: Separate storm sewers, as defined in this section, are point sources subject to the DSW permit program. Separate storm sewers may be permitted either individually or under a general permit (see N.J.A.C. 7:14A-3.9). A DSW permit for discharges into waters of the State from a separate storm sewer covers all conveyances which are a part of that separate storm sewer system, even though there may be several owners or operators of these conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.

(b) For purposes of this section, definitions are as follows:

1. "Separate storm sewer" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which is either:

i. Located in an urbanized area as designated by the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974); or

ii. Not located in an urbanized area but designated under (c) below.

2. Except as provided in (b)3 below, a conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which is not located in an urbanized area and has not been designated by the Department under (c) below is not considered a point source and is not subject to the provisions of this section.

3. Conveyances which discharge process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the State or into separate storm sewers are point sources that must obtain DSW permits but are not separate storm sewers.

4. Whether a system of conveyances is or is not a separate storm sewer for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of the Federal Act; See 40 CFR Section 35.925-21.

(c) Case-by-case designation of separate storm sewers: The Department may designate a storm sewer not located in an urbanized area as a separate storm water. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category or when:

1. A Water Quality Management plan under Section 208 of the Federal Act and Section 5 of the "New Jersey Water Quality Planning Act", N.J.S.A. 58:11A-1 et seq., which contains requirements applicable to such point sources is approved; or

2. The Department determines that a storm sewer is a significant contributor of pollution to the waters of the State. In making this determination the Department shall consider the following factors:

- i. The location of the discharge with respect to waters of the State;
- ii. The size of the discharge;
- iii. The quantity and nature of the pollutants reaching waters of the State; and
- iv. Other relevant factors.]

Except as provided in N.J.A.C. 7:14A-10.3(a)20 and (a)22, 40 CFR 122.26, entitled "Storm water discharges," is incorporated into this chapter by reference as part of the DSW permit program (see N.J.A.C. 7:14A-1.10). Persons who discharge or propose to discharge stormwater shall comply with applicable requirements of this chapter, and shall comply with applicable provisions of 40 CFR 122.26 except as provided in N.J.A.C. 7:14A-10.3(a)20 and (a)22.

7:14A-3.9 General permits

(a) Coverage: The Department may issue a general permit in accordance with the following:

1. Area: The general permit shall be written to [cover] authorize a category of discharges described in the permit under (a)2 below, except those [covered] otherwise eligible for authorization under the permit but authorized by individual permits or other general permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

i.-vii. (No change.)

2. Sources: The general permit shall be written to regulate, within the area described in (a)1 above, either:

- i. [Separate storm sewers] Stormwater point sources; or
- ii. A category of point sources other than [separate storm sewers] stormwater point sources if the sources all:

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

(b) Administration:

1. In general: General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of subchapters 2, 7 and 8 of this chapter. Special procedures for issuance are found at 40 CFR Section [123.76] 123.44.

2. Authorization to discharge:

i. Except as provided in (b)2vi and 2vii below, persons seeking authorization under a general permit shall submit to the Department a written request for authorization. A person who fails to submit a request for authorization in accordance with the terms of the permit is not authorized to discharge under the terms of the general permit unless the general permit, in accordance with (b)2v below, contains a provision that a request for authorization is not required, or the Department notifies a person that it is authorized by a general permit in accordance with (b)2vii below.

ii. The contents of the request for authorization shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including, at a minimum, the legal name and address of the owner and operator, the facility name and address, type of facility or discharges, the receiving surface water(s), and the certification required under (b)2iii below. Unless the general permit specifies otherwise, the request for authorization shall include all of the forms, information, signatures, and certifications that this chapter requires to be included in an application for a DSW permit. The request for authorization shall also include any other certification specified in the general permit. The general permit shall not specify signature requirements less stringent than those applicable to permit applications under 40 CFR 122.22(a).

iii. In addition to other information required under (b)2ii above, the request for authorization shall include a certification that arrangements have been made for publication, in a daily or weekly newspaper within the area affected by the facility, of a notice which states that a request for authorization under a general permit to discharge pollutants to surface water has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice shall also identify the general permit under which authorization is sought, the legal name and address of the owner and operator, the facility name and address, type of facility or discharges, and the receiving surface water(s). Each general permit shall set forth the form of notice appropriate to that general permit.

iv. General permits shall specify the deadlines for submitting requests for authorization and the date(s) when a person is authorized to discharge under the permit.

v. General permits shall specify whether a person that has submitted a complete and timely request for authorization in accordance with the general permit, and that is eligible for authorization under the permit, is authorized to discharge in accordance with the permit either upon receipt of the request for authorization by the Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon the person's receipt of notification of authorization by the Department. Authorization may be terminated, revoked, or denied in accordance with (b)4 through (b)6 below. The Department shall publish in the DEPE Bulletin a quarterly report of each authorization issued under a general permit.

vi. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and stormwater discharges associated with industrial activity, may, at the discretion of the Department, be authorized under a general permit without submission of a request for authorization where the Department finds that a request for authorization requirement would be inappropriate. In making such a finding, the Department shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges authorized by the permit; and the estimated number of discharges to be authorized by the permit. The Department shall provide in the public notice of the general permit the reasons for not requiring a request for authorization.

vii. The Department may notify a person that it is authorized by a general permit, even if the person has not submitted a request for authorization. A person so notified may nonetheless request an individual permit under (b)3iii below.

[2.3. Requiring an individual permit or another general permit:

i. The Department may require any [person] permittee authorized by a general permit to apply for and obtain an individual DSW permit or seek and obtain authorization under another general permit. Any interested person may, in accordance with the procedures set forth at (b)5 below, petition the Department to take action under this subparagraph. Cases where an individual DSW permit or another general permit may be required include the following:

(1) [The] There is evidence that the discharge(s) [is] may be a significant contributor of [pollution as determined by the factors set forth in N.J.A.C. 7:14A-3.8(c)2] pollutants. In making this determination, the Department may consider the location of the discharge with respect to the waters of the State, the size of the discharge, the quantity and nature of pollutants reaching the waters of the State, the quality of the receiving waters, and other relevant factors;

(2) The [discharger] permittee is not in compliance with the conditions of the general DSW permit;

(3) (No change.)

(4) Effluent limitation guidelines are promulgated for point source [covered] authorized by the general DSW permit;

(5) A Water Quality Management Plan containing requirements applicable to such point sources is approved; [or]

(6) [The requirements of (a) above are not met.] Circumstances have changed since the time of authorization or the request to be authorized so that the permittee is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; or

(7) The Department acquires new information indicating that the person otherwise is not eligible for the general permit according to its own terms.

ii. The Department may require any [owner or operator] permittee authorized by a general permit to apply for an individual DSW permit or seek authorization under another general permit as provided in [(b)2i] (b)3i above, only if [the owner or operator] that permittee has been notified of this requirement in writing [that a permit application is required].

(1) This notice shall include a brief statement of the reasons for this decision, an application form or, if applicable, a request for authorization form, a statement setting a time for the [owner or operator] permittee to file the application or, if applicable, the request for authorization, and a statement that on the effective date of the individual DSW permit or on the date of the permittee's authorization under another general permit, [the general permit as it applies to the individual permittee] the individual permittee's authorization under the general permit shall automatically terminate. The Department may grant additional time upon request of the [applicant] permittee. If a permittee fails to submit in a timely manner an application form or request for authorization form required by the Department under this subparagraph, then that permittee's authorization under the general permit is automatically terminated at the end of the day specified for submitting the application form or request for authorization form.

iii. Any [owner or operator] permittee authorized by a general permit may request to be excluded from [the coverage of] authorization under the general permit by applying for an individual DSW permit. The [owner or operator] permittee shall submit an application under N.J.A.C. 7:14A-3.2, with reasons supporting the request, to the Department no later than 90 days after the publication by the Department of the general permit in the [DEP] DEPE Bulletin. The request shall be processed under subchapters 2, 7 and 8 of this chapter. The request shall be granted by the issuing of any individual permit if the reasons cited by the [owner or operator] permittee are adequate to support the request.

iv. When [an individual DSW permit is issued to an owner or operator otherwise subject to] a permittee authorized by a general DSW permit is issued an individual DSW permit for the authorized discharge, or obtains authorization for that discharge under another general permit, [the applicability of the general permit to the individual DSW permittee] the permittee's authorization under the general permit is automatically terminated on the effective date of the individual permit or on the date of the permittee's authorization under another general permit, whichever the case may be. When an individual DSW permit is denied to a permittee authorized by a general permit, or the permittee is denied authorization under another general permit, the permittee's authorization under the general permit is automatically terminated on the date of such denial, unless otherwise specified by the Department.

v. [A source] If a permittee's discharge is excluded from a general permit solely because [it] that discharge already [has] is authorized by an individual permit or authorization under another general permit, the permittee may request that the individual permit or authorization be revoked or modified, as appropriate, and that [it] the discharge be [covered] authorized by [the] a general permit. The permittee shall submit a request for revocation or modification under N.J.A.C. 7:14A-7.5 and any request for authorization required under N.J.A.C. 7:14A-3.9, with reasons supporting the request, to the Department. In reviewing such requests, the Department may consider the location of the discharge with respect to the waters of the State; the size of the discharge; the quantity and nature of pollutants reaching the waters of the State; the quality of the receiving waters; antibacksliding requirements in N.J.A.C. 7:14A-3.13(a)12, 40 CFR 122.44(l), and section 402(o) of the Federal Act (33 U.S.C. §1342(o)); and any other factors the Department

considers relevant to determining whether the discharge is best regulated under one permit or the other. [Upon revocation of] If the Department revokes or modifies the individual permit or authorization, and if authorization under a general permit is issued, the permittee shall be authorized under the general permit [shall apply to the source].

4. The Department may terminate a permittee's authorization under a general permit for causes specified in N.J.A.C. 7:14A-2.13(a). Such termination of authorization is a type of permit termination under N.J.A.C. 7:14A-2.13. A requirement pursuant to (b)3 above that a permittee apply for an individual permit or seek authorization under another general permit is not a termination within the meaning of N.J.A.C. 7:14A-2.13, even if the permittee's authorization is eventually terminated in favor of an individual permit or another general permit, or is automatically terminated under (b)3ii(1) above as a result of the permittee's failure to submit in a timely manner an application from or request for authorization form. If the Department directs the permittee to apply for an individual permit or seek authorization under another general permit, the only procedure available to the permittee is to ask the Department to reconsider its decision by sending a letter to the Commissioner within 30 days of the issuance of the initial decision. The letter shall be sent to the Department's Office of Legal Affairs, and both the envelope and the letter shall clearly indicate that it is a "REQUEST FOR RECONSIDERATION OF GENERAL PERMIT DETERMINATION." The Commissioner may act on the request within 60 days; if the Commissioner fails to take any action the request shall be deemed denied. In no event shall an order from the Department directing a permittee to apply for an individual permit or seek authorization under another general permit (or a denial of a request to reconsider that order) be deemed final agency action.

5. Procedures regarding petitions brought under (b)3i above:

i. The petition shall state clearly and concisely:

(1) The name, address, and telephone number of the petitioner;

(2) The petitioner's interest in the petition (including any organizational affiliations and any economic interest);

(3) The name and address of the permittee whose authorization could be affected by the petition;

(4) The number of the permit under which that permittee is authorized; and

(5) The reasons why the petition should be granted (including any citations to any relevant legal authority).

ii. The petitioner shall serve the petition on both the Department and the permittees whose authorization could be affected by the petition.

iii. The permittees whose authorization could be affected shall have 30 days from the date the petition was served to respond to the petition. Any response shall be served on both the Department and the petitioner. The Department thereafter may in its discretion seek further information relevant to the petition.

iv. The Department shall determine whether to grant the petition based upon materials submitted in accordance with this paragraph and based upon the criteria set forth in (b)3i above. The Department shall notify both the petitioner and the permittees whose authorization is affected by the petition of the Department's determination.

v. Either party may ask the Department to reconsider its decision regarding a petition by sending a letter to the Commissioner within 30 days of the issuance of the initial decision. The letter shall be sent to the Department's Office of Legal Affairs, and both the envelope and the letter shall clearly indicate that it is a "REQUEST FOR RECONSIDERATION OF PETITION DETERMINATION." The Commissioner may act on the request within 60 days; if the Commissioner fails to take any action the request shall be deemed denied. Only if the ultimate outcome of the agency proceedings is that the petition is denied by the Commissioner shall there be final agency action.

6. The Department shall deny a request for authorization if it determines that the subject discharge is not eligible for the general permit for which the person has requested authorization, and the Department may deny a request for authorization if it determines

that the discharge is not appropriately regulated under the relevant general permit because of its location with respect to the waters of the State, the size of the discharge, the quantity and nature of pollutants reaching the waters of the State, the quality of the receiving waters, or other relevant factors. If the Department denies a request for authorization, it shall notify the person of that denial in writing. The only procedure for challenging the denial that is available to a person whose request for authorization has been denied is to ask the Department to reconsider its decision by sending a letter to the Commissioner within 30 days of the issuance of the initial denial. The letter shall be sent to the Department's Office of Legal Affairs, and both the envelope and the letter shall clearly indicate that it is a "REQUEST FOR RECONSIDERATION OF GENERAL PERMIT DETERMINATION." The Commissioner may act on the request within 60 days; if the Commissioner fails to take any action, the request shall be deemed denied. In no event shall a denial of a request for authorization, or a request to reconsider that denial, be deemed final agency action.

(c) Appendix A to this subchapter and Appendix B to this subchapter contain two final general permits that the Department has issued for stormwater discharges associated with industrial activity. The inclusion of these two general permits within this subchapter does not affect the status or requirements of other general permits that the Department issued prior to the effective date of this subsection.

7:14A-3.11 Additional conditions applicable to specified categories of DSW permits

(a) The following conditions, in addition to those set forth in N.J.A.C. 7:14A-2.5, 3.10 and 3.12, apply to all DSW permits within the categories specified below:

1. Existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities: In addition to the reporting requirements under N.J.A.C. 7:14A-2.5(a)12 and N.J.A.C. 7:14A-3.10, all existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities must notify the Department as soon as they know or have reason to believe:

i. (No change.)

ii. That they (except for research facilities) have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under N.J.A.C. 7:14A-3.2 and 10.3(a)11 or in the request for authorization under N.J.A.C. 7:14A-3.9(b)2 (unless the general permit expressly refers to a "request for authorization" and does not require the request for authorization to include a listing of toxic pollutants).

2.-3. (No change.)

4. Municipal separate storm sewer systems: The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department or the Regional Administrator under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include the information required under 40 CFR 122.42(c).

7:14A-3.12 Emergency plans

(a) [All] Except as provided in (i) below, all applicants and holders of a DSW permit shall submit an emergency plan report prepared pursuant to (b) below or file for an exemption as provided in (c) below.

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

(i) Persons who request or obtain authorization under a general DSW permit for stormwater point sources or separate storm sewers are exempt from developing an emergency plan under this section, unless such persons are applicants for or holders of another DSW permit for which an emergency plan is required under this section. However, a general DSW permit may stipulate its own requirements for development of emergency plans.

7:14A-3.13 Establishing DSW permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-2.6(a), each DSW permit shall include conditions meeting the following requirements when applicable.

1.-8. (No change.)

9. Monitoring requirements: In addition to N.J.A.C. 7:14A-2.9 the following monitoring requirements:

i.-ii. (No change.)

iii. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are not subject to an effluent limitation guideline shall be established on a case-by-case basis depending upon the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(1) The permittee to conduct an annual inspection of the facility to identify areas contributing to a stormwater discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(2) The permittee to prepare a report summarizing the result of the inspection. This report shall be accompanied by an annual certification that the facility is in compliance with its stormwater pollution prevention plan and the permit, except that if there are any incidents of non-compliance, those incidents shall be identified in the certification. If there are incidents of non-compliance, the report shall identify the steps being taken to remedy the non-compliance and to prevent such incidents from recurring. The permittee shall maintain this report and certification for a period of at least five years from the date of the report. This period may be extended by written request from the Department at any time;

(3) Such report and certification to be signed by a person described in N.J.A.C. 7:14A-2.4(a)2i, and, if the permit so requires, by a New Jersey Licensed Professional Engineer; and

(4) Monthly submission of discharge monitoring reports to the Department, if required under N.J.A.C. 7:14A-2.5(a)12.

iv. Permits that, pursuant to (a)9iii above, do not require the submittal of monitoring reports at least annually shall require that the permittee report to the Department all instances of non-compliance not reported under N.J.A.C. 7:14A-2.5(a)12 and (a)14 and N.J.A.C. 7:14A-3.10 at least annually.

10.-17. (No change.)

7:14A-3.17 Criteria and standards for the New Jersey Pollutant Discharge Elimination System

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

(j) Wherever the provisions of other sections of N.J.A.C. 7:14A are more stringent than the criteria and standards in this section, the more stringent provisions of those other sections of N.J.A.C. 7:14A shall apply.

APPENDIX A

PERMIT NUMBER NJ0088315

NJPDES/DSW GENERAL INDUSTRIAL STORMWATER PERMIT (ROUND 2)

PERMIT NUMBER NJ0088315

NJPDES/DSW GENERAL INDUSTRIAL STORMWATER PERMIT (ROUND 2)

Permittee

GENERAL PERMIT—CATEGORY 5G2
PER INDIVIDUAL
NOTICE OF AUTHORIZATION

Property Owner

GENERAL PERMIT—CATEGORY 5G2
PER INDIVIDUAL
NOTICE OF AUTHORIZATION

Co-PermitteeLocation of Activity

GENERAL PERMIT—CATEGORY 5G2
PER INDIVIDUAL
NOTICE OF AUTHORIZATION

Current Authorization

Covered By This Approval
And Previous Authorization

5G2: GEN INDUST STRMWTR ROUND 2

Issuance
Date

00/00/0000

Effective
Date

00/00/0000

Expiration
Date

00/00/0000

By Authority of:

DEPE AUTHORIZATION**PART I. AUTHORIZATION UNDER THIS PERMIT****A. Permit Area**

This permit applies to all areas of the State of New Jersey.

B. Eligibility

1. This permit may authorize all new and existing stormwater discharges associated with industrial activity that are subject to the Federal stormwater permitting requirements at 40 CFR 122.26, except for the following:

a. Stormwater discharges from facilities with discharges subject to any of the following effluent guideline limitations for stormwater: cement manufacturing, materials storage piles (40 CFR 411, Subpart C); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric, coal pile runoff (40 CFR 423); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and paving and roofing materials (40 CFR 443).

b. Stormwater discharges from facilities with stormwater discharges authorized under another NJPDES Discharge to Surface Water (DSW) permit (including an expired permit).

c. Stormwater discharges that may be fully covered under NJPDES Permit No. NJ0088323 (a separate general permit for stormwater discharges from certain construction and mining activities).

d. Stormwater discharges from facilities with "sanitary landfills" or "hazardous waste landfills", as defined in N.J.A.C. 7:26-1.4, unless those landfills have been closed in compliance with N.J.A.C. 7:26-2A.9 or 7:26-9.8 (the Solid Waste rules), the appropriate certifications have been submitted in accordance with N.J.A.C. 7:26, and the landfills are not disrupted. Such closed landfills are eligible for authorization under this permit.

e. Stormwater discharges from the following facilities where the stormwater has come into contact with petroleum-based oil and grease in raw materials, intermediate products, finished products, byproducts, or waste products located on the facility site:

i. Facilities classified as Standard Industrial Classification (SIC) Code 29 (Petroleum Refining and Related Industries); and

ii. Facilities that are defined as "major facilities", at N.J.S.A. 58:10-23.11b.1 and N.J.A.C. 7:1E-1.6 and that also have a total combined storage capacity of 200,000 gallons or more for petroleum or petroleum products.

2. Other discharges are not authorized by this permit, even if such discharges are combined with stormwater discharges that are authorized by this permit.

C. Requiring an Individual Permit or Another General Permit;

1. The Department may require any permittee authorized under this permit to apply for and obtain an individual DSW permit, or seek and obtain authorization under another general permit. Conversely, any permittee authorized under this permit may request to be excluded from

authorization under this permit by applying for an individual DSW permit. Termination of existing permits under such circumstances is governed by N.J.A.C. 7:14A-3.9.

2. If, after receiving authorization under this permit, a facility is required by the Department to obtain another NJPDES DSW permit that would also cover the authorized stormwater discharge, then authorization under this permit shall remain in effect only until either:

a. The date such other permit becomes effective; or

b. The date the application for such other permit (or request for authorization under another general permit) is denied.

If such a facility fails to submit an application or request for authorization by the date specified by the Department, then the general permit authorization remains in effect only until the application deadline specified by the Department.

D. Authorization

1. In order to obtain authorization under this permit, a complete Request for Authorization (RFA) and the \$500.00 fee required under N.J.A.C. 7:14A-1.8(i) shall be submitted in accordance with the requirements of part II of this permit. Upon review of the RFA, the Department may, in accordance with N.J.A.C. 7:14A-3.9, either:

a. Issue notification of authorization under this permit, in which case, authorization is deemed effective as of the date the complete RFA is received by the Department;

b. Deny authorization under this permit and require submittal of an application for an individual DSW permit; or

c. Deny authorization under this permit and require submittal of an RFA for another general permit.

2. The Department shall issue or deny authorization within a period of 90 days after submission of a complete RFA. In the event that the Department fails to issue or deny authorization within such period, the authorization shall be deemed to have been issued.

3. For a stormwater discharge authorized by this permit, the permittee is exempt from the provision in N.J.A.C. 7:14A-2.5(a)1 which declares that the discharge of any pollutant not specifically regulated in the NJPDES permit or listed in the NJPDES application shall constitute a violation of the permit.

PART II. REQUEST FOR AUTHORIZATION REQUIREMENTS**A. Deadlines for Requesting Authorization**

1. A Request for Authorization (RFA) for an existing stormwater discharge associated with industrial activity must be submitted within 180 days after the effective date of this permit.

2. An RFA for a new stormwater discharge associated with industrial activity must be submitted at least 30 days prior to the date upon which there may be such a discharge.

3. The Department may, in its discretion, accept an RFA submitted after the foregoing deadlines; however, the discharger may still be held liable for any violations that occurred prior to the submission of the RFA.

B. Persons Requesting Authorization

The RFA must be jointly submitted by all persons who currently own or operate any part of the facility requiring a NJPDES permit for the stormwater discharge associated with industrial activity at that facility. For example, if the facility is owned by one person but operated by another, both the owner and the operator must jointly submit a single RFA for the facility.

C. Contents of the Request for Authorization

A completed RFA shall include all of the following information regarding the regulated facility, using the Department's RFA form:

1. The name, mailing address, location, and EPA identification number (if assigned) of the facility.
 2. The 4-digit Standard Industrial Classification (SIC) code and corresponding short title assigned to the facility by the New Jersey Department of Labor. If the facility is exempt from Department of Labor SIC code assignment procedures, the RFA shall provide the 4-digit SIC code and short titles that best represents the principal products or activities provided by the facility.
 3. The legal name, address, and business telephone number of all current owners and operators, and, if applicable, their agents and engineers. The RFA shall also identify whether each person named is an owner or operator, and whether the owner is a Federal, State, or other public agency, or is a private entity.
 4. The Federal tax identification number of the owner.
 5. The name of the receiving surface water(s). If the discharge is through a separate storm sewer operated by a public agency, the RFA shall also provide the name of that public agency.
 6. An 8.5" x 11" copy of a portion of the U.S. Geological Survey Topographic Map, 7.5 minute quadrangle series, showing the boundaries of the facility and the name of the quadrangle(s).
 7. A brief description of the facility and its current and proposed uses.
 8. Proposed date upon which there may be a new stormwater discharge associated with industrial activity, where applicable.
 9. A list of any individual NJPDES permits for discharges to surface water issued for the facility.
 10. The RFA certification contained in Appendix A.
 11. Other certifications submitted in accordance with Part III.B.2 and the following:
 - a. For existing stormwater discharges, the certifications contained in Appendices C and D may also be submitted concurrently with the RFA, where appropriate.
 - b. For new stormwater discharges, the RFA must also include the certifications contained in Appendices C and D, if the RFA is submitted more than 24 months after the effective date of this permit. (If the RFA is submitted within 24 months after this permit's effective date, these certifications may be included in the RFA).
 12. Additional information may be required by the Department to be included as part of the RFA if the Department determines that such additional information (including other data, reports, specifications, plans, permits, or other information) is reasonably necessary to determine whether to authorize the discharge under this permit.
- The RFA shall be submitted along with payment of \$500.00, in accordance with N.J.A.C. 7:14A-1.8(i), unless this amount has already been submitted within the same billing year for an annual recertification under part III.D.

D. Where to Submit

A completed and signed RFA shall be submitted to the Department at the address specified on the Department's RFA form.

E. Additional Notification

1. Facilities that discharge stormwater associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must also submit a copy of the RFA to the owner and operator of that system.
2. The permittee is responsible for publishing a notice in a daily or weekly newspaper within the area affected by the permitted facility stating that a request for authorization under general permit no. NJ0088315 to discharge stormwater to surface water has been submitted in accordance with N.J.A.C. 7:14A-3.9(b)2. This notice shall also identify the legal name and address of the owner and operator, the facility name and address, type of facility and discharges, and the receiving surface water(s). A certification stating that arrangements for such notification

have been made is contained in Appendix A and shall be signed and submitted as part of the RFA.

F. Reauthorization

As stated on the cover page, this permit expires in five years. If the Department reissues this permit, and if a stormwater discharge authorized by this permit will continue after the expiration of this permit, the permittee is required to submit an RFA within 180 days after the effective date of the reissued permit in order to be reauthorized.

PART III. EFFLUENT LIMITATIONS**A. Hazardous Substances**

The permittee shall comply with the applicable provisions of N.J.A.C. 7:1E (Department rules entitled "Discharges of Petroleum and other Hazardous Substances") relevant to the stormwater discharges authorized by this permit. No discharge of hazardous substances (as defined in N.J.A.C. 7:1E-1.6) shall be deemed to be "pursuant to and in compliance with [this] permit" within the meaning of the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11c.

B. Preparation and Implementation of the Stormwater Pollution Prevention Plan**1. General Requirements**

a. A stormwater pollution prevention plan (SPPP) shall be prepared and implemented, in accordance with the deadlines specified in 2. below, for each of the permittee's facilities that generates stormwater discharges authorized by this permit. The SPPP shall be prepared and implemented in accordance with good engineering practices and shall include, at a minimum, all of the information and items identified in Appendix B. The SPPP shall be signed and sealed (embossed) by a New Jersey Licensed Professional Engineer, and shall be signed by the permittee and retained at the facility.

b. The SPPP shall demonstrate that once it has been implemented, there will be no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters. (The term "source materials" is defined in Appendix B.)

2. Deadlines and Certifications**a. Existing discharges:**

i. Within six months after the effective date of the general permit authorization, the permittee shall prepare an SPPP for the authorized facility; and shall submit to the Department the "Stormwater Pollution Prevention Plan Preparation Certifications" contained in Appendix C (except if this certification was already included in the RFA submitted to the Department under Part II).

ii. Except as provided in iii. below, within 18 months after the effective date of the general permit authorization, the permittee shall implement the SPPP prepared for the facility; and shall submit to the Department the "Stormwater Pollution Prevention Implementation and Inspection Certification" contained in Appendix D (except if this certification was already included in the RFA submitted to the Department under Part II).

iii. The Department may grant a six-month extension to the deadline in ii. above, if the permittee submits a written request for such extension, at least 30 days prior to the deadline, establishing to the Department's satisfaction that the Federal, State and local permits and approvals necessary for the construction of best management practices identified in the SPPP could not with due diligence be obtained within the time period set forth in ii. above.

b. New discharges for which RFA's are submitted within 24 months of the effective date of this permit:

i. Within six months after the effective date of the general permit authorization for the new discharge, but no later than 24 months after the effective date of this permit, the permittee shall prepare an SPPP for the authorized facility; and shall submit to the Department the "Stormwater Pollution Prevention Plan Preparation Certifications" contained in Appendix C (except if this certification was already included in the RFA submitted to the Department under Part II).

ii. Within 24 months after the effective date of this permit, the permittee shall implement the SPPP prepared for the facility; and shall submit to the Department the "Stormwater Pollution Prevention Implementation and Inspection Certification" contained in Appendix D (except if this certification was included in the RFA submitted to the Department under Part II).

c. New discharges for which RFAs are submitted after 24 months from the effective date of this permit:

The SPPP shall be prepared and implemented prior to submission of the RFA under Part II; and the RFA shall contain the "Stormwater Pollution Prevention Plan Preparation Certifications" contained in Appendix C, and the "Stormwater Pollution Prevention Implementation and Inspection Certification" contained in Appendix D.

3. Additional Requirements

a. Agency Review

i. The permittee shall make the SPPP available upon request to an authorized representative of the Department and to the owner and operator of any municipal separate storm sewer system through which the stormwater discharge associated with industrial activity is discharged.

ii. Upon review by an authorized representative, the Department may notify the permittee at any time that the SPPP does not meet one or more of the minimum requirements of this part. Within 30 days after receiving such notification (unless otherwise specified by the Department), the SPPP shall be amended to adequately address all deficiencies and written certification of such amendments shall be submitted to the Department.

b. Public Review

All SPPPs prepared under this permit are considered reports that shall be available to the public for inspection and duplication under N.J.S.A. 58:10A-9.c. The permittee shall make SPPPs available to members of the public upon request. However, the permittee may claim any portion of a SPPP as confidential in accordance with N.J.A.C. 7:14A-11. The Department's decision on such claims shall be made in accordance with N.J.A.C. 7:14A-11.

c. Amendments to the Stormwater Pollution Prevention Plan

SPPPs may be amended so long as they continue to meet the requirements of part III.B of this permit. Any amended SPPPs shall be signed, certified, implemented, retained, and otherwise treated in the same manner as the original SPPP.

C. Annual Inspections

Once the SPPP has been implemented in accordance with III.B.1 and 2 above, the permittee and a licensed professional engineer shall conduct an annual inspection of the facility to identify areas contributing to the stormwater discharge authorized by this permit and to evaluate whether the SPPP complies with part III.B. and is being properly implemented, or whether additional measures are needed to meet the conditions of this permit. A report summarizing each inspection shall be included in the SPPP as required under Appendix B, Part H.

D. Annual Reports and Recertification

1. A licensed professional engineer shall prepare an annual report summarizing each inspection performed under III.C. above. This report shall be accompanied by annual certifications that the facility is in compliance with its SPPP and this permit, except that if there are any incidents of noncompliance, those incidents shall be identified in the certification (see Appendix D to this permit for the form of these certifications). If there are incidents of noncompliance, the report shall identify the steps being taken to remedy the noncompliance and to prevent such incidents from recurring. The report and certification shall be signed by the permittee and the engineer in accordance with Appendix D to this permit, and shall be maintained for a period of five years. This period may be extended by written request from the Department at any time. The certification should be submitted concurrently with the annual recertifications required under D.2. below.

2. After the certifications contained in Appendix D have been received by the Department, the permittee must annually resubmit these certifications (with new signatures each year). These annual recertifications shall be submitted in the same calendar month as the initial submission of these certifications. These recertifications shall be submitted to the Department at the address specified on the certification form provided by the Department, and shall be submitted with the \$500.00 fee required under N.J.A.C. 7:14A-1.8(i).

E. All instances of noncompliance not reported under N.J.A.C. 7:14A-2.5(a)12 and (a)14 and N.J.A.C. 7:14A-3.10 shall be reported to the Department annually.

F. Other Conditions

If, during or after the preparation of the SPPP, it is discovered that the facility generates and discharges, through storm sewers to surface waters, any unpermitted domestic wastewater, non-contact cooling water,

or process waste water (including leachate and cooling water) other than stormwater, the permittee shall discontinue such discharges or apply for the appropriate NJPDES DSW permit in accordance with the NJPDES rules at N.J.A.C. 7:14A.

G. Other Permits or Regulatory Requirements

Compliance with the conditions of this permit does not exempt the permittee from any other applicable permit or other regulatory requirements including, but not limited to, all other Department rules and the Pineland rules (N.J.A.C. 7:50).

PART IV. CONDITIONS APPLICABLE TO GENERAL PERMITS AUTHORIZING STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

A. Duty to Comply

1. The permittee shall comply with all conditions of this New Jersey Pollutant Discharge Elimination System (NJPDES) permit. Any permit noncompliance constitutes a violation of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq., hereinafter referred to as the State Act) or other authority of the NJPDES regulations (N.J.A.C. 7:14A) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application (N.J.A.C. 7:14A-2.5(a)1).

2. The permittee shall comply with applicable effluent standards or prohibitions established under section 307(a) of the "Federal Water Pollution Control Act" (33 U.S.C. §1251 et seq.); State Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (N.J.A.C. 7:14A-2.5(a)3).

3. The permittee is required to comply with all other applicable Federal, State, and local laws, rules, regulations, or ordinances. The issuance of this permit shall not be considered a waiver of any requirements other than the requirement that any discharge of stormwater associated with industrial activity be authorized by a permit.

B. Permit Expiration

1. This permit and the authorization to discharge shall expire at 11:59 P.M. on the expiration date of the permit. The permittee may discharge after the above date of expiration of the permit only in conformance with N.J.A.C. 7:14A-2.1 ("Application for a NJPDES Permit") and 2.3 ("Continuation of Expired Permits").

2. The conditions of an expired permit are continued in force pursuant to N.J.A.C. 7:14A-2.3, and remain fully effective and enforceable.

3. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Department may, in accordance with N.J.A.C. 7:14A: 1) initiate enforcement action based upon the permit which has been continued, 2) issue a notice of intent to deny the new permit, 3) issue a new permit, or 4) take other actions authorized by the NJPDES regulations or the State Act.

C. Duty to Halt or Reduce Activity

It shall not be a defense in an enforcement action to assert that the only possible alternative to maintain compliance with the conditions of this permit would have been to cease or reduce the permitted discharge activity (see N.J.A.C. 7:14A-2.5(a)5i).

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit, including, but not limited to, halting or reducing the permitted activity and temporary repairs (N.J.A.C. 7:14A-2.5(a)6).

E. Proper Operation and Maintenance

The permittee referenced herein shall be responsible for supervising and managing the operation and maintenance of any facilities or systems which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements identified in the stormwater pollution prevention plan. Proper operation and maintenance also requires the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.

F. Permit Actions

This permit may be modified, suspended, revoked and reissued, or terminated in accordance with the provisions set forth in N.J.A.C. 7:14A-2.

G. Property Rights, Liability, and Other Laws

1. This permit does not convey any property rights of any sort or any exclusive privileges (N.J.A.C. 7:14A-2.5(a)9).
2. Nothing in this permit shall be construed to exempt the permittee from complying with the rules, regulations, policies, and/or laws lodged in any agency or subdivision in this State having legal jurisdiction.

H. Duty to Provide Information

1. The permittee shall furnish to the Wastewater Facilities Regulation Program Administrator, NJDEPE (hereinafter referred to as the Administrator), within a reasonable time, any information which the Administrator may request to determine whether cause exists for modifying, suspending, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Administrator, upon request, copies of records required to be kept by this permit (N.J.A.C. 7:14A-2.5(a)10).

2. When the permittee becomes aware that he has failed to submit any relevant facts in a request for authorization, or has submitted incorrect information in a request for authorization or in any report to the Administrator, the permittee shall promptly submit such facts or the correct information.

I. Inspection and Entry

1. The permittee shall allow the Regional Administrator of the United States Environmental Protection Agency (USEPA), the Department, or any authorized representative(s), upon the presentation of credentials and other documents as may be required by law, to inspect the permittee's premises in accordance with N.J.A.C. 7:14A-2.5(a)11 et seq.

2. Any refusal by the permittee, facility land owner(s), facility lessee(s), their agents, or any other person(s) with legal authority, to allow entry to the authorized representatives of the NJDEPE and/or USEPA shall constitute grounds for suspension, revocation and/or termination of this permit, or other permit or enforcement action.

3. By acceptance of this permit, the permittee consents to any inspections by authorized representatives of the NJDEPE and/or USEPA to determine the extent of compliance with any and all conditions of this permit and agrees not to, in any manner, seek to charge said representatives with a civil or criminal act of trespass when they enter the premises occupied by the permittee for said inspection purposes.

J. Signatory Requirements

1. All permit applications, reports, certifications, or other information required by the Department, shall be signed in accordance with the requirements set forth at N.J.A.C. 7:14A-2.4 ("Signatories") and N.J.A.C. 7:14A-3.9 ("General Permits").

2. False Statements. Any person who purposely, knowingly, recklessly, or negligently makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the State Act shall upon conviction, be subject to a civil penalty, or by imprisonment, or by both (N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14-8 et seq.).

K. Reporting Changes and Violations

1. Planned Changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could change the nature or increase the quantity of the pollutants discharged (N.J.A.C. 7:14A-2.5(a)14i).

2. Anticipated Noncompliance. The permittee shall give reasonable advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with the permit requirements (N.J.A.C. 7:14A-2.5(a)14ii).

L. Reporting Noncompliance

The permittee shall report to the Department any noncompliance including, but not limited to, violations of effluent limitations that cause, or have the potential to cause, injury to persons or to the environment or poses a threat to human health or the environment. Reporting shall be as stipulated in N.J.A.C. 7:14A-2.5(a)14vi and N.J.A.C. 7:14A-3.10(a).

M. Bypass

1. A bypass is the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

2. Bypasses shall be subject to the requirements and conditions set forth in N.J.A.C. 7:14A-3.10(e), (f), and (g).

N. Upset

1. An upset is an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. Upset also means noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.

2. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

3. Upsets shall be subject to the requirements and conditions set forth in N.J.A.C. 7:14A-3.10(h).

O. Emergency Plan

Liability. The submission of an emergency plan or an exemption from the development of an emergency plan does not exempt the permittee from liability for violations arising from an emergency situation as per N.J.A.C. 7:14A-3.12(g) and (h).

P. Discharge Permitted

The permittee shall discharge to surface waters of the State only as authorized herein and consistent with the terms and conditions of this permit.

Q. Reopener Clause for Toxic Effluent Limitations

Notwithstanding any other condition of this permit, if any applicable toxic effluent standard, limitation, or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of the Federal Clean Water Act or Sections 4 or 6 of the State Act for a toxic pollutant and that effluent standard, limitation, or prohibition is more stringent than any limitation on the pollutant in the permit (or controls a pollutant not limited in the permit), this permit shall be promptly modified or revoked and reissued to conform to that effluent standard, limitation, or prohibition (N.J.A.C. 7:14A-3.13 et seq.).

R. Availability of Information

Public access and confidentiality requirements regarding NJPDES permits, effluent data, and information required by NJPDES application forms shall be as set forth in N.J.A.C. 7:14A-11 et seq.

S. Effective Date of Permit

1. This permit shall become effective in its entirety on the date indicated (Effective Date) on the first page of this permit unless a request for an adjudicatory hearing is granted and a stay is granted pursuant to the provisions of N.J.A.C. 7:14A-8 et seq. ("Public Comment and Notice Procedures").

2. For purposes of judicial review, final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under N.J.A.C. 7:14A-3 and 7:14A-8. Any party which neglects or fails to seek such review thereby waives its opportunity to exhaust available agency remedies.

T. Transfer of Permit Authorizations

1. An authorization issued pursuant to this permit may not be transferred to any person except in compliance with 2 and 3 below and after notice to the Department. The Department may require modification, or revocation and reissuance of the authorization to change the name of the entity authorized and incorporate such other requirements as may be necessary under the Act.

2. Transfer by Modification. Except as provided in paragraph (3) of this section, an authorization issued under this permit may be transferred by the entity authorized to a new owner or operator only if the authorization has been modified or revoked and reissued (N.J.A.C. 7:14A-2.12) or a minor modification is made (pursuant to N.J.A.C. 7:14A-2.14(a)4) to identify the new entity authorized and incorporate such other requirements as may be necessary under the State and Federal Acts.

3. Automatic Transfers. As an alternative to the authorization transfers under paragraph (2) of this section, any NJPDES permit, except a UIC permit for a well injecting hazardous waste, may be automatically transferred to a new permittee provided that the conditions set forth in N.J.A.C. 7:14A-2.11 et seq. are met.

U. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby (N.J.A.C. 7:14A-1.5).

V. Stay of Conditions, N.J.A.C. 7:14A-8.10

A request for an adjudicatory hearing, or any other review or hearing, shall not automatically result in a stay of the conditions of this permit.

W. Annual Permit Fee, N.J.A.C. 7:14A-1.8

The permittee shall pay the annual NJPDES permit fee which has been assessed by the Department.

X. Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers and Research Facilities

All existing manufacturing, commercial, mining, silvicultural dischargers and research facilities shall comply with the notification requirements specified in N.J.A.C. 7:14A-3.11(a)1i.

Y. Definitions

The definitions set forth at N.J.A.C. 7:14A-1.9 are incorporated into this permit.

APPENDIX A: RFA Certification

Every Request for Authorization (RFA) shall include the following RFA certification. All signatures on this RFA certification shall be notarized Notary Public.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Request for Authorization and all attached documents, and that this Request for Authorization and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete, and that as far as I know, none of the stormwater discharges for which this Request for Authorization is submitted are excluded from authorization by part I.B. of NJPDES Permit No. NJ0088315.

"I also certify that I have made arrangements for publication, in a daily or weekly newspaper within the area affected by the facility identified in this RFA, of a notice which states that a request for authorization under general permit no. NJ0088315 to discharge stormwater to surface water(s) has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice identifies the general permit number, the legal name and address of the owner and operator, the facility name and address, type of facility or discharges, and the receiving surface water(s).

"I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or returned to be maintained under that Act, including fines and/or imprisonment."

The RFA certification 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.

A separate RFA certification shall be signed and submitted for each person submitting the RFA.

APPENDIX B: Contents of the Stormwater Pollution Prevention Plan**A. Inventory Requirements**

The SPMP shall contain an inventory that includes the following:

1. A list of general categories of all "source materials" used, stored, or otherwise located at the facility. As used in this permit, the term "source materials" means any materials or machinery, located at the facility and directly or indirectly related to process or other industrial activities, which could be a source of pollutants in a stormwater discharge associated with industrial activity that is subject to 40 CFR 122.26. Source materials include, but are not limited to: raw materials; intermediate products; final products; waste materials; by-products;

industrial machinery and fuels; and lubricants, solvents, and detergents that are related to the process or other industrial activities. Materials or machinery that are not exposed to stormwater or that are not located at the facility are not "source materials".

2. A list of any domestic wastewater, non-contact cooling water, or process waste water (including leachate and contact cooling water) other than stormwater, that is generated at the facility and discharged through separate storm sewers to surface waters.

3. For discharges identified in A.2. above, a list of any final or draft NJPDES permits, pending NJPDES permit applications, or pending request for authorization under another general NJPDES permit (including the NJPDES permit number where available).

B. Mapping Requirements

The SPMP shall include a map of the entire facility that depicts the approximate location of all the items listed below. All of the information specified below should be shown on one map unless, for the sake of clarity, additional maps are needed.

1. Existing buildings and other permanent structures;
2. All paved areas, including roads;
3. Generalized stormwater flow and drainage patterns;
4. Location of each of the facility's stormwater discharges associated with industrial activity that is subject to 40 CFR 122.26, including longitude and latitude to the nearest 15 seconds.
5. All surface drainage, inlet and discharge structures, including swales and ditches, but excluding rooftop drainage.
6. Location of each point or sewer segment, if any, where domestic wastewater, non-contact cooling water, or process waste water (other than stormwater) generated by the facility enters storm sewers that discharge to surface waters.
7. All locations where source materials are reasonably likely to be present. In doing so, the map shall at a minimum depict the location(s) of any of the following activities that occur at the facility and address all materials and machinery listed under the definition of "source materials" in A.1. above.
 - a. Outdoor handling, treatment, storage, or disposal activities;
 - b. Loading and unloading areas;
 - c. Outdoor manufacturing, processing, or cleaning activities; and other activities that disturb the land surface, except for construction or mining authorized under NJPDES Permit No. NJ0088323;
 - d. Significant dust or particulate generating processes, except those where dust or particulates are transmitted entirely off-site through the air or are regulated under an effective permit to construct, install or alter control apparatus or equipment pursuant to N.J.A.C. 7:27-8.1;
 - e. Hazardous waste storage or disposal facilities;
 - f. On-site waste management, storage and disposal practices, including wastes not associated with or derived from on-site industrial activities;
 - g. Access routes. As used in this permit, the term "Access routes" means any immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility.

C. Narrative Description of Existing Conditions

The SPMP shall include a narrative description concerning the management of all source materials at the facility which are handled, treated, stored, disposed, or which otherwise exist in a manner allowing contact with stormwater. The narrative description shall address the following:

1. Location and method of materials transport, loading and unloading;
2. Existing management practices employed to minimize contact of source materials with stormwater;
3. Existing structural and non-structural measures employed to reduce pollutants in stormwater;
4. Existing practices employed to divert stormwater to specific areas on or off-site, including diversion to containment areas, holding tanks, treatment facilities, or sanitary sewers; and
5. A description of any treatment the stormwater already receives;
6. Any discharges of domestic wastewater, non-contact cooling water, or process waste water (other than stormwater) that the SPMP lists in accordance with B.6. above (unless such discharges have been authorized by other NJPDES permits or identified in applications or request for authorization submitted for other NJPDES permits). The narrative description shall also discuss any existing practices to prevent such discharges.

D. Description of Required Best Management Practices

The SPPP shall identify and discuss the best management practices (BMPs) that will be implemented at the facility to:

1. Ensure that the facility does not discharge, through separate storm sewers to surface waters, any stormwater that is exposed to source materials located at the facility; and
2. Ensure that the facility does not generate and discharge, through storm sewers to surface waters, any domestic wastewater, non-contact cooling water, or process waste water (other than stormwater), unless that discharge is authorized by another NJPDES permit or identified in an application or request for authorization submitted for another NJPDES permit.

E. Implementation Schedule

The SPPP shall include a schedule for full implementation of the BMPs identified in accordance with D, above. This schedule must provide for full implementation by the applicable deadlines specified in Part III of this permit.

F. Maintenance Schedule

The SPPP shall include a schedule for providing regular and appropriate maintenance and repairs of all structural BMPs identified in accordance with D, above.

G. Inspection Schedule

The SPPP shall include a schedule for regular inspection by facility personnel of designated areas, operations, and equipment. An annual inspection of the entire facility shall also be conducted in accordance with part III.C. to identify areas contributing to the stormwater discharge authorized by this permit and to evaluate whether the SPPP complies with part III.B. and is being properly implemented, or whether additional measures are needed in order to meet the conditions of this permit.

H. Internal Reporting

The SPPP shall include a report summarizing, in accordance with III.D., each annual inspection performed under G. above. The report shall indicate whether the facility was found to be in compliance with the SPPP and the conditions of this permit. In the case of non-compliance, the report shall identify measures taken to remedy any non-compliance discovered during the inspection. All instances of non-compliance with the permit or the SPPP not reported under N.J.A.C. 7:14A-2.5(a)12 and (a)14 and N.J.A.C. 7:14A-3.10 shall be reported to the Department annually.

The SPPP shall record any incidents such as leaks or accidental discharges, and any failures or breakdowns of structural BMPs. The SPPP shall also ensure that, in such instances, corrective measures are implemented and inspected, and verify that full remediation is achieved.

I. Special Requirements

The following are special requirements for certain types of facilities with stormwater discharges associated with industrial activity. For such facilities, the SPPP must satisfy these special requirements as well as all the requirements provided above.

1. Facilities Discharging Through Municipal Separate Storm Sewer Systems

For any discharges of stormwater associated with industrial activity through a municipal separate storm sewer system that has a final NJPDES discharge permit, the SPPP shall also require compliance with all applicable requirements of the municipal stormwater management program developed under that permit.

2. Facilities Subject to SARA Title III, Section 313 Requirements

The SPPP shall include, or cite the location of, any spill reports prepared under section 313 in Title III of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq.

3. Facilities With SPCC Plans, DPCC Plans, and DCR Plans

The SPPP shall include, or cite the location(s) of, any Spill Prevention Control and Countermeasure Plan (SPCC Plan) prepared under 40 CFR 112 and section 311 of the Clean Water Act, 33 U.S.C. §1321; and any discharge prevention; containment and countermeasure plan (DPCC plan) and discharge cleanup and removal plan (DCR plan) prepared under N.J.A.C. 7:1E.

4. Facilities Undergoing Construction

Whenever construction activities are undertaken at the facility, the SPPP shall be amended, if necessary, so that the SPPP continues to be accurate and to meet the requirements of part III.B of this permit.

Additionally, for construction activities disturbing less than five acres of total land area which are not part of a larger common plan of development or sale, the SPPP shall include proof that any certification or municipal approval required under the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) has been obtained.

For construction activities disturbing five acres or more of total land area, authorization must be obtained under NJPDES Permit No. NJ0088323, or under an individual NJPDES permit, for stormwater from such construction activities that would be discharged to surface waters.

APPENDIX C: Stormwater Pollution Prevention Plan Preparation Certifications

The following certifications shall be signed and submitted to the Department using the appropriate Department forms.

Engineer's Certification:

"I certify, under penalty of law, that the information I am providing in this certification 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 further certify that I have signed and sealed a stormwater pollution prevention plan (SPPP) for this facility, the implementation of which will, in my professional opinion as a licensed professional engineer, ensure that there will be no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters, and that this plan has been signed in accordance with part III.B of that permit. I am aware that pursuant to the Water Pollution Control Act (see N.J.S.A. 58:10A-1 et seq.), there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed and sealed (embossed) by a New Jersey Licensed Professional Engineer.

Owner/Operator's Certification:

"I certify under penalty of law that I have personally examined and am familiar with the information in these Phase I Stormwater Pollution Prevention Plan Certifications and all attached documents, and in the stormwater pollution prevention plan referred to in these certifications. I certify that I have signed this stormwater pollution prevention plan.

"I further certify that this Phase I Stormwater Pollution Prevention Plan Certification, all attached documents, and stormwater pollution prevention plan were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information on these Phase I Stormwater Pollution Prevention Plan Certifications, all attached documents, and stormwater pollution prevention plan is true, accurate and complete.

"I certify that the stormwater pollution prevention plan referred to in these Stormwater Pollution Prevention Plan Preparation Certifications has been signed and is being retained at the facility in accordance with part III.B of NJPDES Permit No. NJ0088315, and that this stormwater pollution prevention plan will be fully implemented at the facility in accordance with the terms and conditions of that permit. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification 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.

This signature shall be notarized by an authorized Notary Public. Whenever there are two or more permittees for the facility, all of those permittees shall jointly submit these Stormwater Pollution Prevention Plan Preparation Certifications. (However, if the permittees have had their SPPP reviewed by a single Professional Engineer, they need to submit only a single Engineer's Certification.)

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with these certifications (with updated names, addresses and telephone numbers attached), unless the certifications are submitted concurrently with the RFA.

APPENDIX D: Stormwater Pollution Prevention Plan Implementation and Inspection Certifications

The following certifications shall be signed and submitted to the Department using the appropriate Department forms.

Engineer's Certification:

"I certify, under penalty of law, that the information I am providing in this certification (including any report attached to it) 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 certify that I have inspected the facility to identify areas contributing to the stormwater discharge authorized under NJPDES Permit No. NJ0088315 and have evaluated whether the stormwater pollution prevention plan (SPPP) prepared under that permit complies with part III.B. of that permit and is being properly implemented.

"I certify that, in my professional opinion as a licensed professional engineer, if the SPPP is implemented as specified in that document, during and after storm events, there will be no discharge, through separate storm sewers to surface waters, of stormwater that is exposed to source materials (including raw materials; intermediate products; final products; waste materials; by-products; industrial machinery and fuels; and lubricants, solvents and detergents that are related to industrial activities) located at the facility.

"I certify that, in my professional opinion, if the SPPP is implemented as specified in that document, this facility will not generate and discharge, through storm sewers to surface waters, any domestic wastewater, non-contact cooling water, or process waste water (including leachate and contact cooling water) other than stormwater, unless that discharge is authorized by another NJPDES permit or identified in an application (or request for authorization) submitted for another NJPDES permit."

"I also certify that I have no reason to believe that this facility is in violation of any conditions of NJPDES Permit No. NJ0088315, including requirements in part III of that permit for preparation and implementation of a stormwater pollution prevention plan, except for any incidents of noncompliance (which are noted in my attached report). For any incidents of noncompliance identified by my annual inspection (or made known to me during the course of the past year), I have attached a report identifying these incidents, and recommending steps taken or being taken to remedy the noncompliance and to prevent such incidents from recurring. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed and sealed (embossed) by a New Jersey Licensed Professional Engineer. The engineer shall also identify the number of the NJPDES permit of any discharges through storm sewers to surface waters of domestic wastewater, non-contact cooling water, or process waste water other than stormwater generated by the facility. If no NJPDES permit number has been assigned yet, the engineer shall provide a copy of the cover page of the application or request for authorization in an attachment to this certification.

Owner/Operator's Certification:

"I certify under penalty of law that I have personally examined and am familiar with the information in these Stormwater Pollution Prevention Implementation and Inspection Certifications and all attached documents, and in the stormwater pollution prevention plan referred to in these certifications.

"I certify that these Stormwater Pollution Prevention Implementation and Inspection Certifications and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information in these Stormwater Pollution Prevention Implementation and Inspection Certifications and all attached documents is true, accurate and complete.

"I certify that the stormwater pollution prevention plan referred to in these Stormwater Pollution Prevention Implementation and Inspection Certifications has been and will continue to be fully implemented at this facility in accordance with the terms and conditions of part III of NJPDES Permit No. NJ0088315. I specifically certify that there is no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters (except for any incidents of non-compliance identified in my engineer's report). If my engineer has prepared a report identifying any incidents of noncompliance, I certify that any remedial or preventative steps identified therein were or will be taken in compliance with the schedule set forth in the attachment to this certification. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification 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.

This signature shall be notarized by an authorized Notary Public.

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with these certifications (with updated names, addresses and telephone numbers attached), unless the certifications are submitted concurrently with the RFA.

APPENDIX B

PERMIT NUMBER NJ0088323

NJPDDES/DSW GENERAL PERMIT CONSTRUCTION ACTIVITY STORMWATER

PERMIT NUMBER NJ0088323

NJPDDES/DSW GENERAL PERMIT CONSTRUCTION ACTIVITY STORMWATER

Permittee

GENERAL PERMIT—CATEGORY 5G3
PER INDIVIDUAL
NOTICE OF AUTHORIZATION

Co-Permittee

Property Owner
GENERAL PERMIT—CATEGORY 5G3
PER INDIVIDUAL
NOTICE OF AUTHORIZATION

Location of Activity
GENERAL PERMIT—CATEGORY 5G3
PER INDIVIDUAL
NOTICE OF AUTHORIZATION

Current Authorization
Covered By This Approval
And Previous Authorization

Issuance
Date

Effective
Date

Expiration
Date

5G3: GEN PERMIT CONSTRUCT ACTIVITY

00/00/0000

00/00/0000

00/00/0000

By Authority of:

DEPE AUTHORIZATION**PART I. AUTHORIZATION UNDER THIS PERMIT****A. Permit Area**

This permit applies to all areas of the State of New Jersey.

B. Eligibility

1. Except as provided in B.2 below, this permit may authorize all new and existing stormwater discharges associated with industrial activity that are subject to Federal stormwater permitting requirements at 40 CFR 122.26 and that are from the following facilities:

a. Construction activities including clearing, grading and excavation activities, except for construction activities disturbing less than five acres of total land area which are not part of a larger common plan of development or sale.

b. Active or inactive operations for mining or quarrying of stone, gravel, sand, soil, shale, or clay; including crushing, grinding, pulverizing and washing activities at such mines or quarries, but excluding:

i. Facilities where mined or quarried material is treated with detergents, oils, acids, or other chemicals.

ii. Facilities that include active or inactive mining or quarrying for metallic minerals (ores).

2. The following stormwater discharges are not authorized by this permit:

a. Stormwater discharges subject to any of the following effluent guideline limitations for stormwater: cement manufacturing, materials storage piles (40 CFR 411, Subpart C); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric, coal pile runoff (40 CFR 423); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and paving and roofing materials (40 CFR 443).

b. Stormwater discharges from facilities with "sanitary landfills" or "hazardous waste landfills" as defined in N.J.A.C. 7:26-1.4, unless:

i. The landfill is under construction and has not received any solid waste (including hazardous waste) as defined at N.J.A.C. 7:1E-1.6; or

ii. The landfill has been closed in compliance with N.J.A.C. 7:26-2A.9 or 7:26-9.8 (the Solid Waste rules), the appropriate certifications have been submitted in accordance with N.J.A.C. 7:26, and the landfill is not disrupted.

If the landfill meets i. or ii. above, the discharge is eligible for authorization under this permit.

c. Stormwater discharges from the following facilities where the stormwater comes into contact with petroleum-based oil and grease in raw materials, intermediate products, finished products, byproducts, or waste products located on the facility site:

i. Facilities classified as Standard Industrial Classification (SIC) Code 29 (Petroleum Refining and Related Industries); and

ii. Facilities that are defined as "major facilities", at N.J.S.A. 58:10-23.11b.1 and N.J.A.C. 7:1E-1.6 and that also have a total combined storage capacity of 200,000 gallons or more for petroleum or petroleum products.

d. Stormwater discharges from construction, mining or quarrying activities that are not regulated under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., or that are not within the definition of "project" at N.J.S.A. 4:24-41.g.

e. A stormwater discharge from a mining or quarrying operation authorized by an effective individual DSW permit for that discharge.

f. Stormwater discharges that occur after the construction activities under 1.a above have been completed, unless such discharges are from mining or quarrying operations eligible for authorization under 1.b above. (If the facility being constructed is in one or more of the categories identified in 40 CFR 122.26(b)(14)(i) through (ix) or (xi), and is not such a mining or quarrying operation, then authorization for that stormwater discharge must be obtained under another NJPDES permit such as NJPDES Permit No. NJ0088315, where applicable), even if authorization for the stormwater discharge from the construction activity has been obtained under this permit.)

3. Other discharges are not authorized by this permit, even if such discharges are combined with stormwater discharges, that are authorized by this permit.

C. Requiring an Individual Permit or Other General Permit

1. The Department may require any permittee authorized under this permit to apply for and obtain an individual DSW permit, or seek and obtain authorization under another general permit. Conversely, any permittee authorized under this permit may request to be excluded from authorization under this permit by applying to the Department for an individual DSW permit. Termination of existing permits under such circumstances is governed by N.J.A.C. 7:14A-3.9.

2. If, after receiving authorization under this permit, a facility is required by the Department to obtain another NJPDES DSW permit that would also cover the authorized stormwater discharge, then authorization under this permit shall remain in effect only until either:

a. The date such other permit becomes effective; or

b. The date the application for such other permit (or request for authorization under another general permit) is denied.

If such a facility fails to submit an application or request for authorization by the date specified by the Department, then the general permit authorization remains in effect only until the application deadline specified by the Department.

D. Authorization

In order to obtain authorization under this permit, a complete Request for Authorization (RFA) and the \$200 fee required under N.J.A.C. 7:14A-1.8(j) shall be submitted in accordance with the requirements of part II of this permit.

1. For stormwater discharges that existed prior to the effective date of this permit, authorization becomes effective when the facility's soil erosion and sediment control plan is certified by the soil conservation district, the New Jersey Department of Transportation (DOT) or the State Soil Conservation Committee (pursuant to N.J.S.A. 4:24-43, and where applicable, N.J.S.A. 4:24-6.1); or when the facility has been approved under a municipal ordinance pursuant to N.J.S.A. 4:28-48. If certification or municipal approval was issued before the effective date of this permit, authorization under this permit shall be effective on the effective date of this permit.

2. For new stormwater discharges, authorization becomes effective when the soil conservation district or DOT certifies the RFA.

3. For new stormwater discharges commencing in the Pinelands Area (as defined by N.J.S.A. 13:18A-11) after the effective date of this permit, authorization under this permit becomes effective only if, pursuant to N.J.S.A. 13:18A-15, the Pinelands Commission has determined that:

a. The Pinelands Commission will not review the certification of the facility's soil erosion and sediment control plan issued by the soil conservation district or the State Soil Conservation Committee, or the approval of the facility's soil erosion and sediment control requirements issued by the municipality (whichever is applicable);

b. The Pinelands Commission has reviewed and approved the certification of the facility's soil erosion and sediment control plan issued by the soil conservation district or the State Soil Conservation Committee, or the approval of the facility's soil erosion and sediment control requirements issued by the municipality (whichever is applicable); or

c. The Pinelands Commission has, pursuant to N.J.A.C. 7:50-4.51 et seq., reviewed and approved the development application of the DOT.

4. Authorizations under this general permit cease to be effective:

a. If a complete RFA and \$200 fee are not submitted in accordance with Part II of this permit (in which case the discharge shall be deemed never to have been authorized);

b. When the certification or municipal approval of the facility's soil erosion and sediment control plan expires; or

c. When the State Soil Conservation Committee rejects (pursuant to N.J.S.A. 4:24-6.1 and N.J.A.C. 2:90-1.6) a decision by the soil conservation district to certify the facility's soil erosion and sediment control plan.

5. For a stormwater discharge authorized under this permit, the permittee is exempt from the provision in N.J.A.C. 7:14A-2.5(a)1 which declares that the discharge of any pollutant not specifically regulated in the NJPDES permit or listed in the NJPDES application shall constitute a violation of the permit.

PART II. REQUEST FOR AUTHORIZATION REQUIREMENTS

A. Deadlines for Requesting Authorization

1. A Request for Authorization (RFA) for an existing stormwater discharge must be submitted within 180 days after the effective date of this permit.

2. An RFA for a new stormwater discharge must be submitted at least 30 days prior to the commencement of the land disturbance that may result in that discharge.

3. The soil conservation district or DOT may, at its discretion, accept an RFA submitted after the foregoing deadlines; however, the discharger may still be held liable for any violations that occurred prior to the submission of the RFA.

B. Persons Requesting Authorization

The RFA must be jointly submitted by all persons who currently own or operate any part of the facility requiring a NJPDES permit for the stormwater discharge at the facility. For example, if the facility is owned by one person but operated by another, both the owner and the operator must jointly submit a single RFA for the facility.

C. Contents of the Request for Authorization

A completed RFA shall include all of the following information regarding the regulated facility, using the Department's RFA form. A fee of \$200, paid by check or money order payable to "Treasurer, State of New Jersey", shall be submitted along with the completed RFA.

1. The legal name and address of all current owners and operators.

2. The facility name and address.

3. A brief description of the facility and its current and proposed uses.

4. The name of the receiving surface water(s).

5. The RFA certification contained in Appendix A.

6. For stormwater discharges occurring in the Pinelands Area (as defined in N.J.S.A. 13:18A-11) prior to the effective date of this permit, a Pinelands Commission "no call up" letter or public development approval.

D. Where to Submit

1. For projects that the New Jersey Department of Transportation (DOT) is constructing or proposes to construct, a completed, signed, and certified RFA (see ILE.1 below) and the \$200 fee shall be submitted by DOT to the Department at the address specified on the Department's RFA form.

2. For all other projects, a completed and signed RFA and \$200 fee shall be submitted to the soil conservation district.

E. Certifying the Request for Authorization

1. For projects that the DOT is constructing or proposes to construct, the DOT shall certify the RFA if the requirements in ILC above have been satisfied, and if the DOT has certified the facility's plan for soil erosion and sediment control under N.J.S.A. 4:24-43.

2. For other projects, the soil conservation district shall certify the RFA if the requirements in ILC above have been satisfied, and if:

a. The soil conservation district has certified the facility's plan for soil erosion and sediment control under N.J.S.A. 4:24-43; or

b. The State Soil Conservation Committee has certified the facility's plan for soil erosion and sediment control under N.J.S.A. 4:24-6.1 and N.J.S.A. 4:24-43; or

c. The facility has been approved under a municipal ordinance for soil erosion and sediment control pursuant to N.J.S.A. 4:24-48.

3. The district shall grant or deny certification of the RFA within a period of 30 days after submission of a complete RFA unless, by mutual agreement in writing between the district and the persons requesting authorization, the period of 30 days shall be extended for an additional period of 30 days. Failure of the district to grant or deny certification within such time period shall constitute certification of the RFA.

4. RFAs certified by the soil conservation districts shall be submitted by those districts to the State Soil Conservation Committee, which shall submit them to the Department at the address specified on the Department's RFA form.

F. Additional Notification

1. Facilities that discharge stormwater associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must also submit a copy of the RFA to the owner and operator of that system.

2. The permittee is responsible for publishing a notice in a daily or weekly newspaper within the area affected by the permitted facility stating that a request for authorization under general permit no. NJ0088323 to discharge stormwater to surface water has been submitted in accordance with N.J.A.C. 7:14A-3.9(b)2. This notice shall also identify the legal name and address of the owner and operator, the facility name and address, type of facility and discharges, and the receiving surface water(s). A certification stating that arrangements for such notification have been made is contained in Appendix A and shall be signed and submitted as part of the RFA.

G. Reauthorization

As stated on the cover page, this permit expires in five years. If the Department reissues this permit, and if a stormwater discharge authorized by this permit will continue after the expiration of this permit, the permittee is required to submit a RFA within 180 days after the effective date of the reissued permit in order to be reauthorized.

PART III. EFFLUENT LIMITATIONS

A. Hazardous Substances

The permittee shall comply with the applicable provisions of N.J.A.C. 7:1E (Department rules entitled "Discharges of Petroleum and Other Hazardous Substances") relevant to the stormwater discharges authorized by this permit. No discharge of hazardous substances (as defined in N.J.A.C. 7:1E-1.6) shall be deemed to be "pursuant to and in compliance with [this] permit" within the meaning of the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11c.

B. Stormwater Pollution Prevention Plan

1. Land disturbances that may result in a stormwater discharge authorized by this permit shall be executed only in accordance with a soil erosion and sediment control plan certified pursuant to N.J.S.A.

4:24-43, or requirements for soil erosion and sediment control established in or pursuant to a municipal ordinance in accordance with N.J.S.A. 4:24-48, whichever is applicable.

2. Land disturbances that may result in a stormwater discharge authorized by this permit shall not commence until authorization is effective under I.D. above.

3. For purposes of this permit, the soil erosion and sediment control plan or requirements implemented under B.2. above, and a Department-approved discharge prevention, containment and countermeasure (DPCC) plan and discharge cleanup and removal (DCR) plan, if any, prepared under N.J.A.C. 7:14E and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., constitute the facility's stormwater pollution prevention plan (except for any provisions that are not relevant to the stormwater discharge authorized by this permit).

C. Public Review

All SPPPs prepared under this permit are considered reports that shall be available to the public for inspection and duplication under N.J.S.A. 58:10A-9c. However, the permittee may claim any portion of a SPPP as confidential in accordance with N.J.A.C. 7:14A-11. The Department's decision on such claims shall be made in accordance with N.J.A.C. 7:14A-11.

PART IV. INSPECTION AND REPORTING REQUIREMENTS

A. Annual Inspections

The permittee shall conduct an annual inspection of the facility to identify areas contributing to the stormwater discharge authorized by this permit and evaluate whether the stormwater pollution prevention plan (SPPP) identified under III.B above is being properly implemented, or whether additional measures are needed to implement the SPPP.

B. Annual Reports and Certifications

The permittee shall prepare an annual report summarizing each inspection performed under IV.A above. This report shall be accompanied by an annual certification that the facility is in compliance with its SPPP and this permit, except that if there are any incidents of noncompliance, those incidents shall be identified in the certification. If there are incidents of noncompliance, the report shall identify the steps being taken to remedy the noncompliance and to prevent such incidents from recurring. The report and certification shall be signed by the permittee in accordance with N.J.A.C. 7:14A-2.4(a)2i, and shall be maintained for a period of five years. This period may be extended by written request from the Department at any time.

C. Reports of Noncompliance

All instances of noncompliance not reported under N.J.A.C. 7:14A-2.5(a)12 and (a)14 and N.J.A.C. 7:14A-3.10 shall be reported to the Department annually.

D. Other Permits and Regulatory Requirements

Compliance with the conditions of this permit does not exempt the permittee from any other applicable permit or other regulatory requirements including, but not limited to, all other Department rules and the Pinelands rules (N.J.A.C. 7:50).

PART V. CONDITIONS APPLICABLE TO GENERAL PERMITS AUTHORIZING STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

A. Duty to Comply

1. The permittee shall comply with all conditions of this New Jersey Pollutant Discharge Elimination System (NJPDES) permit. Any permit noncompliance constitutes a violation of the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq., hereinafter referred to as the State Act) or other authority of the NJPDES regulations (N.J.A.C. 7:14A) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application (N.J.A.C. 7:14A-2.5(a)1).

2. The permittee shall comply with applicable effluent standards or prohibitions established under section 307(a) of the "Federal Water Pollution Control Act" (33 U.S.C. §1251 et seq.); hereinafter referred to as the Federal Act) and Section 4 of the State Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (N.J.A.C. 7:14A-2.5(a)3).

3. The permittee is required to comply with all other applicable federal, state, and local laws, rules, regulations, or ordinances. The issuance of this permit shall not be considered a waiver of any requirements other than the requirement that any discharge of stormwater associated with industrial activity be authorized by a permit.

B. Permit Expiration

1. This permit and the authorization to discharge shall expire at 11:59 P.M. on the expiration date of the permit. The permittee may discharge after the above date of expiration of the permit only in conformance with N.J.A.C. 7:14A-2.1 ("Application for a NJPDES Permit") and 2.3 ("Continuation of Expired Permits").

2. The conditions of an expired permit are continued in force pursuant to N.J.A.C. 7:14A-2.3, and remain fully effective and enforceable.

3. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Department may, in accordance with N.J.A.C. 7:14A: (1) initiate enforcement action based upon the permit which has been continued, (2) issue a notice of intent to deny the new permit, (3) issue a new permit, or (4) take other actions authorized by the NJPDES regulations or the State Act.

C. Duty to Halt or Reduce Activity

It shall not be a defense in an enforcement action to assert that the only possible alternative to maintain compliance with the conditions of this permit would have been to cease or reduce the permitted discharge activity (see N.J.A.C. 7:14A-2.5(a)5i).

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit, including, but not limited to, halting or reducing the permitted activity and temporary repairs. (N.J.A.C. 7:14A-2.5(a)6).

E. Proper Operation and Maintenance

The permittee referenced herein shall be responsible for supervising and managing the operation and maintenance of any facilities or systems which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements identified in the stormwater pollution prevention plan. Proper operation and maintenance also requires the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.

F. Permit Actions

This permit may be modified, suspended, revoked and reissued, or terminated in accordance with the provisions set forth in N.J.A.C. 7:14A-2.

G. Property Rights, Liability, and Other Laws

1. This permit does not convey any property rights of any sort or any exclusive privileges (N.J.A.C. 7:14A-2.5(a)9).

2. Nothing in this permit shall be construed to exempt the permittee from complying with the rules, regulations, policies, and/or laws lodged in any agency or subdivision in this State having legal jurisdiction.

H. Duty to Provide Information

1. The permittee shall furnish to the Wastewater Facilities Regulation Program Administrator, NJDEPE (hereinafter referred to as the Administrator), within a reasonable time, any information which the Administrator may request to determine whether cause exists for modifying, suspending, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Administrator, upon request, copies of records required to be kept by this permit (N.J.A.C. 7:14A-2.5(a)10).

2. When the permittee becomes aware that he has failed to submit any relevant facts in a request for authorization, or has submitted incorrect information in a request for authorization or in any report to the Administrator, the permittee shall promptly submit such facts or the correct information.

I. Inspection and Entry

1. The permittee shall allow the Regional Administrator of the United States Environmental Protection Agency (USEPA), the Department, or any authorized representative(s), upon the presentation of credentials and other documents as may be required by law, to inspect the permittee's premises in accordance with N.J.A.C. 7:14A-2.5(a)11 et seq.

2. Any refusal by the permittee, facility land owner(s), facility lessee(s), their agents, or any other person(s) with legal authority, to allow entry to the authorized representatives of the NJDEPE and/or USEPA shall constitute grounds for suspension, revocation and/or termination of this permit, or other permit or enforcement action.

3. By acceptance of this permit, the permittee consents to any inspections by authorized representatives of the NJDEPE and/or USEPA to determine the extent of compliance with any and all conditions of this permit and agrees not to, in any manner, seek to charge said representatives with a civil or criminal act of trespass when they enter the premises occupied by the permittee for said inspection purposes.

J. *Signatory Requirements*

1. All permit applications, reports, certifications, or other information required by the Department shall be signed in accordance with the requirements set forth at N.J.A.C. 7:14A-2.4 ("Signatories") and N.J.A.C. 7:14A-3.9 ("General Permits").

2. False Statements. Any person who purposely, knowingly, recklessly, or negligently makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the State Act shall upon conviction, be subject to a civil penalty, or by imprisonment, or by both (N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14-8 et seq.).

K. *Reporting Changes and Violations*

1. Planned Changes. The permittees shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could change the nature or increase the quantity of the pollutants discharged (N.J.A.C. 7:14A-2.5(a)14i).

2. Anticipated Noncompliance. The permittee shall give reasonable advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with the permit requirements (N.J.A.C. 7:14A-2.5(a)14ii).

L. *Reporting Noncompliance*

The permittee shall report to the Department any noncompliance including, but not limited to, violations of effluent limitations that cause, or have the potential to cause, injury to persons or to the environment or poses a threat to human health or the environment. Reporting shall be as stipulated in N.J.A.C. 7:14A-2.5(a)14vi and N.J.A.C. 7:14A-3.10(a).

M. *Bypass*

1. A bypass is the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

2. Bypasses shall be subject to the requirements and conditions set forth in N.J.A.C. 7:14A-3.10(e), (f), and (g).

N. *Upset*

1. An upset is an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. Upset also means noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.

2. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

3. Upsets shall be subject to the requirements and conditions set forth in N.J.A.C. 7:14A-3.10(h).

O. *Emergency Plan*

Liability. The submission of an emergency plan or an exemption from the development of an emergency plan does not exempt the permittee from liability for violations arising from an emergency situation as per N.J.A.C. 7:14A-3.12(g) and (h).

P. *Discharge Permitted*

The permittee shall discharge to surface waters of the State only as authorized herein and consistent with the terms and conditions of this permit.

Q. *Reopener Clause for Toxic Effluent Limitations*

Notwithstanding any other condition of this permit, if any applicable toxic effluent standard, limitation, or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Federal Clean Water Act or Sections 4 or 6 of the State Act for a toxic pollutant and that effluent standard, limitation, or prohibition is more stringent than any limitation on the pollutant in the permit (or controls a pollutant not limited in the permit), this permit shall be promptly modified or revoked and reissued to conform to that effluent standard, limitation, or prohibition (N.J.A.C. 7:14A-3.13 et seq.).

R. *Availability of Information*

Public access and confidentiality requirements regarding NJPDES permits, effluent data, and information required by NJPDES application forms shall be as set forth in N.J.A.C. 7:14A-11 et seq.

S. *Effective Date of Permit*

1. This permit shall become effective in its entirety on the date indicated (Effective Date) on the first page of this permit unless a request for an adjudicatory hearing is granted and a stay is granted pursuant to the provisions of N.J.A.C. 7:14A-8 et seq. ("Public Comment and Notice Procedures").

2. For purposes of judicial review, final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under N.J.A.C. 7:14A-3 and 7:14A-8. Any party which neglects or fails to seek such review thereby waives its opportunity to exhaust available agency remedies.

T. *Transfer of Permit Authorizations*

1. An authorization issued pursuant to this permit may not be transferred to any person except in compliance with 2 and 3 below and after notice to the Department. The Department may require modification, or revocation and reissuance of the authorization to change the name of the entity authorized and incorporate such other requirements as may be necessary under the Act.

2. Transfer by Modification. Except as provided in paragraph (3) of this section, an authorization issued under this permit may be transferred by the entity authorized to a new owner or operator only if the authorization has been modified or revoked and reissued (N.J.A.C. 7:14A-2.12) or a minor modification is made (pursuant to N.J.A.C. 7:14A-2.14(a)4) to identify the new entity authorized and incorporate such other requirements as may be necessary under the State and Federal Acts.

3. Automatic Transfers. As an alternative to the authorization transfers under paragraph (2) of this section, any NJPDES permit, except a UIC permit for a well injecting hazardous waste, may be automatically transferred to a new permittee provided that the conditions set forth in N.J.A.C. 7:14A-2.11 et seq. are met.

U. *Severability*

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby (N.J.A.C. 7:14A-1.5).

V. *Stay of Conditions, N.J.A.C. 7:14A-8.10*

A request for an adjudicatory hearing, or any other review or hearing, shall not automatically result in a stay of the conditions of this permit.

W. *Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers and Research Facilities*

All existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities shall comply with the notification requirements specified in N.J.A.C. 7:14A-3.11(a)1i.

X. *Definitions*

The definitions set forth at N.J.A.C. 7:14A-1.9 are incorporated into this permit.

APPENDIX A: *RFA Certification*

Every Request for Authorization (RFA) shall include the following RFA certification. All signatures on this RFA certification shall be notarized by an authorized Notary Public.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Request for Authorization and all attached documents, and that this Request for Authorization and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete, and that as far as I know, none of the stormwater discharges for which this Request for Authorization is submitted are excluded from authorization by part I.B of NJPDES Permit No. NJ0088323.

"I also certify that I have made arrangements for publication, in a daily or weekly newspaper within the area affected by the facility identified in this RFA, of a notice which states that a request for authorization under general permit no. NJ0088323 to discharge stormwater to surface water(s) has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice identifies the general permit number, the legal name and address of the owner and operator, the facility name and address, type of facility or discharges, and the receiving surface water(s).

"I am aware that pursuant to the Water Pollution Control Act (see N.J.S.A. 58:10A-10f(2) and (3)), there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or returned to be maintained under that Act, including fines and/or imprisonment."

The RFA certification 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.

A separate RFA certification shall be signed and submitted for each person submitting the RFA.

7:14A-7.8 Fact sheet

(a) A fact sheet shall be prepared for every draft permit or draft DAC for a major facility or activity, for every general permit (40 CFR Section [123.95] 122.28 and N.J.A.C. 7:14A-3.9), for every draft DAC or draft permit that incorporates a variance or requires an explanation under N.J.A.C. 7:14A-9.6, and for every draft DAC or draft permit which the Department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit or draft DAC. The Department shall send this fact sheet to the applicant and, on request, to any other person.

(b) (No change.)

7:14A-9.1 Permits required on a case-by-case basis

(a) Various sections of these regulations allow the Department to determine, on a case-by-case basis, that certain concentrated animal feeding operations (N.J.A.C. 7:14A-3.4), concentrated aquatic animal production facilities (N.J.A.C. 7:14A-3.5), [separate storm sewers] stormwater discharges (N.J.A.C. 7:14A-3.8) and certain other facilities [covered] authorized by general permits (N.J.A.C. 7:14A-3.9) that do not generally require individual DSW permits may be required to obtain an individual DSW permit because of their contribution to water pollution.

(b) (No change.)

7:14A-10.3 Discharges to surface waters (DSW)

(a) This section is applicable only to persons who are required by N.J.A.C. 7:14A-3.2 to apply for an individual DSW permit. [Any] Except as exempted pursuant to N.J.A.C. 7:14A-2.1(g)1, any person planning to discharge pollutants from a point source to surface waters of the State must apply for a Discharge Allocation Certificate (DAC) prior to applying for a NJPDES permit. [Any person who is currently discharging pollutants to the surface waters of the State, and who does not have a NJPDES or NPDES permit, shall apply for a NJPDES permit within 30 days of the effective date of this chapter.] Any person with a valid NPDES or NJPDES permit shall apply for a NJPDES permit in accordance with the schedules in N.J.A.C. 7:14A-2 and 10. Pre-application conferences with the Department are strongly recommended. The following information, in

addition to the requirements of N.J.A.C. 7:14A-2, shall be required for a DAC or NJPDES permit:

1. (No change.)

2. Expiration date of existing permit or proposed start up date for new source. Applications must be received at least 180 days prior to expiration of existing permits or 180 days before proposed start up for new sources. Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application at least 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Construction activity facilities described under 40 CFR 122.26(b)(14)(x) shall submit applications at least 90 days before the date on which construction is to commence. See also 40 CFR 122.21(k), 122.26(c)(1)(i)(G) and 122.26(c)(1)(ii).

3.-4. (No change.)

5. Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and [storm water runoff] stormwater, the average flow which each process contributes, and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms (for example, "dye-making reactor", "distillation tower"). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average stormwater flow may be estimated. The method of estimation and the basis for the total estimated rainfall must be described. If discharge is due to [rain runoff] stormwater, for each outfall the application must state the number of acres of land drained, [give runoff coefficient] the runoff coefficient(s) applicable, and [calculate] also a calculated flow based on a 10 year storm frequency.

6. Intermittent flows. If any of the discharges described in (a)5 above are intermittent or seasonal, a description of the frequency, approximate time of day where practicable, duration and flow rate of each discharge occurrence (except for stormwater, spillage or leaks).

7.-8. (No change.)

9. Effluent characteristics. When "quantitative data" for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant must comply with N.J.A.C. 7:14A-[2.5(a)10iii]2.5(a)12ii. The requirements in (a)9iv and v below that an applicant must provide quantitative data for certain pollutants known or believed to be present [does] do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, [and] fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used [unless otherwise specified by the Department.] However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than stormwater discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged. Additional requirements for stormwater discharges are contained in the introductory text of 40 CFR 122.21(g)(7). An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated [storm water] stormwater runoff from the facility.) Each applicant shall report as follows:

i.-vi. (No change.)

10.-16. (No change.)

17. Applicants for a discharge which is composed entirely of stormwater associated with industrial activity are exempt from the requirements of (a)4, 5, 6, 7, 9i, 9iii, 9vi, and 15 above.

18. Applicants for an existing or new stormwater discharge that is associated with construction activity solely under 40 CFR 122.26(b)(14)(x) are exempt from the requirements of (a)3 through 15 above, and 40 CFR 122.26(c)(1)(i). Such applicants shall not submit Form 2F, but shall provide the information required under 40 CFR 122.26(c)(1)(ii) and such information as the Department may require under 40 CFR 122.26(c)(1)(v).

19. Applicants for a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Department or the Regional Administrator pursuant to 40 CFR 122.26(a)(1)(v) are exempt from the requirements of (a)3 through 16 above. Such applicants shall provide the information required under 40 CFR 122.26(d).

20. Permit applications for discharges of stormwater shall include the information required under applicable provisions of 40 CFR 122.26, 40 CFR 122.21(g), and other applicable provisions of this chapter, with the following qualifications and exceptions:

i. References to a "NPDES permit" or "permit" in 40 CFR 122.26 shall be understood to mean a DSW permit under this chapter.

ii. The duties that 40 CFR 122.26 imposes on the operator of a stormwater discharge are also imposed on persons who own any part of the facility.

iii. The reference to the "Director" in 40 CFR 122.26(e)(2)(ii) shall be understood to mean the Director of the EPA Office of Water Enforcement and Permits. For group applications submitted to EPA pursuant to 40 CFR 122.26(c)(2), the references to the "Director" in 40 CFR 122.21(g)(7) shall be understood to mean the Director of the EPA Office of Water Enforcement and Permits.

iv. The definition of "Outfall" in 40 CFR 122.26(b)(9) is applicable only to 40 CFR 122.26(d).

v. Notwithstanding 40 CFR 122.26(c)1, an applicant for a stormwater discharge associated with industrial activity shall not submit EPA's Form 1. Until December 31, 1992, Form 2C rather than Form 2F may be submitted by applicants for renewal of a DSW permit or for a new or modified DSW permit, if the permit or application addresses all such stormwater discharges.

vi. The information which 40 CFR 122.26(c)(1)(i)(B) and (D) requires about events in the three years prior to the submittal of the application shall also be provided about events in previous years, if the applicant is aware of such events.

vii. 40 CFR 122.26(c)(1)(i)(E)(5) shall be replaced by the following: "Measurements or estimates of the maximum flow rate and of the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation."

viii. New applications required by 40 CFR 122.26(e)(6) shall be submitted in accordance with the requirements of N.J.A.C. 7:14A-3.8 and 10.3(a)20.

21. Except as provided in (a)22, (a)23, or (a)26 below, permit applications for discharges of stormwater shall be submitted by the deadlines specified in 40 CFR 122.26(e).

22. The references in 40 CFR 122.26(e)(1)(i) and (e)(2)(iv)(B) to "October 1, 1992" shall be replaced by "April 1, 1993." 40 CFR 122.26(e)(2)(iv)(A) shall be replaced by the following: "Except as provided in paragraph (e)(2)(iv)(B) of this section, facilities that are rejected as members of the group shall submit an individual application (or obtain authorization under an applicable general permit) no later than April 1, 1993."

23. If a facility is approved by the EPA as a member of a group application pursuant to 40 CFR 122.26(e)(2), or if a facility which is a participant of a group application has not been approved or rejected by the EPA pursuant to 40 CFR 122.26(e)(2) by April 1, 1993, the owner and operator shall, by October 1, 1993, either apply for an individual DSW permit, or submit a written request for authorization under an applicable general DSW permit issued under N.J.A.C. 7:14A-3.9. This paragraph shall not apply to a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill.

24. Any entity whose group application to EPA pursuant to 40 CFR 122.26(c)(2) lists New Jersey facilities shall, within 30 days of the effective date of N.J.A.C. 7:14A-10.3(a)24, provide the following information to the Department:

i. An identification, by name and location, of all New Jersey facilities participating in the group application, including all facilities that the group or trade association approves as an addition to a group application pursuant to 40 CFR 122.26(e)(2)(v); and
ii. A narrative description summarizing the industrial activities of participants of the group application.

iii. Any entity whose group application to EPA includes New Jersey facilities shall provide to the Department, within 30 days of the Department's request, a copy of the entire group application or any portion thereof specified by the Department.

25. Any entity whose group application to EPA pursuant to 40 CFR 122.26(c)(2) lists New Jersey facilities shall, within 30 days of the EPA decision to approve or deny the members of the group application (see 40 CFR 122.26(e)(2)(ii)) or 30 days of the effective date of N.J.A.C. 7:14A-10.3(a)25, whichever is later, provide the following information to the Department:

i. An identification, by name and location, of all New Jersey facilities participating in the group application;

ii. A copy of the EPA decision to approve or deny the participating New Jersey facilities as members of the group application; and

iii. A narrative description summarizing the industrial activities of participants of the group application.

iv. The entity shall also provide to the Department the information in (a)25i and ii above for any New Jersey facility that the group or trade association approves as an addition to a group application pursuant to 40 CFR 122.26(e)(2)(v). The entity shall provide this information within 30 days of the EPA approval or denial of the addition or 30 days of the effective date of N.J.A.C. 7:14A-10.3(a)25, whichever is later.

26. For any stormwater discharge associated with industrial activity, the Department may require the discharger to apply for an individual DSW permit prior to the deadlines or date identified in (a)21, (a)22, or (a)23 above, only if the discharger has been notified in writing that an earlier application is required. This notice shall include a brief statement of the reasons for this decision, an application form, and a statement setting a time for the discharger to file the application.

27. When an individual application for discharges of stormwater is submitted pursuant to 40 CFR 122.26(c)(1) and this chapter for a facility that already has an individual DSW permit that does not authorize all of those discharges, then that application shall be submitted in the following manner:

i. If that DSW permit has expired, or is due to expire within 180 days of the submission of that application, then that application shall be submitted as part of the application for renewal of that DSW permit (such submission may supplement a renewal application previously submitted to the Department).

ii. If that DSW permit has not expired and is not due to expire within 180 days of the submission of that application, then that application shall be submitted either as part of the application for renewal of that DSW permit, or in a request under N.J.A.C. 7:14A-7.5 to modify that DSW permit to authorize all of those dischargers of stormwater.

(b) (No change.)

(c) NJPDES Permit: Upon receipt of a Discharge Allocation Certificate, the applicant may design and construct a treatment works to meet the limits stated unless the Department determines that a treatment works approval is also required in accordance with N.J.A.C. 7:14A-12. At least 60 days prior to planned discharge, the applicant shall apply for a NJPDES permit to discharge in accordance with N.J.A.C. 7:14A-2.1 and 7.2. The following items and the information required for a DAC must be submitted for the NJPDES permit:

1.-7. (No change.)

8. This subsection does not apply to discharges from separate storm sewers; however, this subsection does apply to discharges into storm sewers of domestic wastewater, non contact cooling water, or

process waste water other than stormwater. This paragraph does not exempt any person from any requirement to obtain a treatment works approval under N.J.A.C. 7:14A-12.

(d) (No change.)

7:14A-14.8 Exemptions

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

(c) Except as provided in (d) below, the DSW permits and discharges listed in (c)1 and 2 below are excluded from the requirements of N.J.A.C. 7:14A-14.4(a), 14.4(c), 14.5(a), and 14.5(c). For such permits and discharges, the DSW permit shall stipulate the effluent limitations and monitoring frequency, if any, for oil and grease.

1. General DSW permits for stormwater point sources or separate storm sewers; and

2. DSW from separate storm sewers that are not industrial treatment works.

(d) Despite (c) above, owners and operators of facilities listed in (d)1 or 2 below must comply with the requirements of N.J.A.C. 7:14A-14.4(a), 14.4(c), 14.5(a), 14.5(c), and 14.5(e) regarding any stormwater that has come into contact with petroleum-based oil or grease in raw material, intermediate products, finished products, byproducts, or waste products located on the site of such facilities.

1. Facilities classified as Standard Industrial Classification (SIC) Code 29 (Petroleum Refining and Related Industries); and

2. Facilities that are defined as "major facilities" at N.J.S.A. 58:10-23.11b.1 and N.J.A.C. 7:1E-1.6 and that also have a total combined storage capacity of 200,000 gallons or more for petroleum or petroleum products.

Appendix H Schedule of Monitoring

Wastewater Treatment Plant (or discharge) Size	Raw + Final, COD, BOD, and Suspended Solids	pH, Residual Chlorine, Settable Solids, Temperature	Fecal Coliform Grab
<.05 MGD	1/Month, Grab	Daily, Grab	1/Month
.05-.1 MGD	2/Month, 4 hr.	Daily, Grab	1/Month
.1-.5 MGD	2/Month, 6 hr.	Daily, Grab	2/Month
.5-1 MGD	3/Month, 6 hr.	Daily, Grab	2/Month
1-5 MGD	1/Week, 24 hr.	2/Day, Grab	4/Month
5-10 MGD	2/Week, 24 hr.	3/Day, Grab	8/Month
10-15 MGD	3/Week, 24 hr.	3/Day, Grab	8/Month
>15 MGD	Daily, 24 hr.	6/Day, Grab	Daily

Notes: COD Testing may be deleted for POTW.

COD, BOD, TSS, pH, and/or settleable solids monitoring may be relaxed (or deleted) for [non-contract] non-contact cooling water discharges if the applicant's activities will not affect these constituents.

Residual chlorine monitoring will not be required at facilities which do not add chlorine to their discharge.

Fecal Coliform monitoring may be relaxed (or deleted) for facilities which do not receive domestic wastewater and which do not receive wastewaters containing pathogenic and/or coliform organisms.

Appendix H does not apply to discharges from separate storm sewers. For such discharges, the schedule of monitoring, if any, shall be stipulated in the NJPDES permit. However, Appendix H does apply to discharges into storm sewers of domestic wastewater, non contact cooling water, or process wastewater other than stormwater.

(a)

ENVIRONMENTAL REGULATION—SOLID WASTE MANAGEMENT

Used Motor Oil Recycling

Proposed New Rules: N.J.A.C. 7:26A-6

Proposed Amendment: N.J.A.C. 7:26-8.20

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

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6, 13:1E-99.35 and 13:1E-99.36.

DEPE Docket Number: 24-92-06.

Proposal Number: PRN 1992-283.

A public hearing concerning this proposal will be held on Wednesday, July 29, 1992 at 9:00 A.M. at:

401 East State Street
Public Hearing Room, First Floor
Trenton, New Jersey

Submit written comments, identified by the Docket Number given above, by September 4, 1992 to:

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

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection and Energy (Department) is proposing the "Used Motor Oil Recycling" rules as new subchapter N.J.A.C. 7:26A-6 to govern the collection and recycling of used motor oil. These rules implement the used motor oil recycling provisions of N.J.S.A. 13:1E-99.35 and 99.36. These rules will require each container of motor oil to be clearly labeled as containing a recyclable material, motor oil retailers to display signs to inform the public of the importance of recycling used motor oil, and used oil collection centers, as defined below, to display signs identifying themselves as a collection point for used motor oil recycling. The purpose of the rules is to conserve non-renewable petroleum resources, to preserve and enhance the quality of the environment, and to protect human health and the environment.

N.J.A.C. 7:26A-6.3 provides for consumers to recycle used motor oil by delivering it to a used oil collection center. N.J.S.A. 13:1E-99.36(a) defines "used oil collection center" to mean "any reinspection station permitted by the Division of Motor Vehicles in the Department of Law and Public Safety, or any retail service station which has a used oil collection tank on the premises, or any site which accepts used oil for recycling." The definition of "used oil collection center" in the proposed new rules is substantially the same as the statutory definition, with some minor changes. First, the definition in the proposed new rules includes "private inspection centers" rather than "reinspection stations," because the statute providing for the licensing of such facilities now uses that term. N.J.S.A. 39:8-11. Second, the definition in the proposed new rules includes retail service stations only if they have an active used oil collection tank on the premises. The Department believes that the Legislature did not intend to require service stations with clean, closed tanks on the premises to reopen those tanks to accept used motor oil.

The statute requires every used oil collection center to identify itself as a collection site for the disposal of used oil. Consumers may also relinquish possession of used motor oil to a county or municipality sponsored household hazardous waste collection event, a hazardous waste transporter, or a facility authorized by the state in which it is located to accept used motor oil. In order to maintain the recyclability of used motor oil, consumers may not contaminate used motor oil with any foreign substances. The Department also encourages consumers to utilize reusable containers with a resealable cap or lid.

Manufacturers and marketers of motor oil will be required to label motor oil containers with specified language to inform the public that used motor oil is a recyclable material and that used motor oil should be returned to a collection center. The Department proposes to delay

the labeling requirement for 180 days from the effective date of the rule in order to allow the depletion of label stocks and the transition to the new label.

Motor oil retailers who sell to consumers more than 500 gallons of lubricating or other engine oil annually will be required to post and maintain a durable and legible metal sign, not less than 11 inches high by 15 inches wide, informing the public of the importance of the proper collection and recycling of used motor oil, and how and where used motor oil may be properly recycled.

Used oil collection centers will be required to accept an amount up to 10 quarts of used motor oil per day from any person, although this will not prohibit a used oil collection center from accepting more than 10 quarts if it so chooses. The 10 quart limit is sufficient to accommodate the used oil generated when a typical two car family changes the oil and drains the filters from both cars. It will also discourage "do-it-yourselfers" from accumulating and storing used oil for extended periods of time, and will encourage them to recycle their used oil immediately after it is generated. After accepting used motor oil for recycling, the owner or operator of a used oil collection center may return the empty used oil container to the consumer. A used oil collection center will be required to post and maintain a durable and legible metal sign, not less than 11 inches high by 15 inches wide, informing the public that it is a used oil collection center for the collection and recycling of used motor oil. Used oil collection centers will also be required to report semi-annually to the municipal recycling coordinator the total quantity of used motor oil collected during the calendar year.

Once the used oil is accepted by a collection center, the collection center must manage the used oil as a hazardous waste in accordance with N.J.A.C. 7:26. For purposes of hazardous waste regulation, the used oil collection center becomes a "generator" of hazardous waste and must comply with the generator requirements at N.J.A.C. 7:26-7. The hazardous waste rules designate this material as "waste oil" with the hazardous waste code "X721." A used oil collection center may accumulate up to 1,001 gallons of waste oil before it is subject to the "90 day rule," that is, once the 1,001 gallon limit is reached, the collection center must properly dispose of the waste within 90 days, pursuant to N.J.A.C. 7:26-9.3. If a collection center fails to dispose of the used oil within 90 days, a permit will be required to accumulate the used oil on site. The used oil collection center will be required to use a New Jersey-licensed hazardous waste transporter to transport the waste oil to a New Jersey hazardous waste facility, licensed to accept waste oil, or a facility authorized to accept waste oil by the state in which the facility is located. Used oil collection centers will be required to manifest the waste oil, unless one of the exemptions in N.J.A.C. 7:26-7.7 is applicable.

If municipalities elect to establish used oil collection centers, N.J.A.C. 7:26A-6.9 will require the municipal recycling coordinator to submit annually to the county recycling coordinator a list of municipally sponsored collection centers. Likewise, county recycling coordinators will be required to submit annually to the Department a list of all municipally and county sponsored used oil collection centers.

The Department is also proposing to amend the hazardous waste management rules at N.J.A.C. 7:26-8.20(a) to include used oil from "used oil collection centers" in the hazardous waste listing of waste oil X721.

The Department may assess civil administrative penalties in accordance with N.J.A.C. 7:26-5 for violations of these rules. The Department, county health departments, and local boards of health also have the authority to seek other remedies in accordance with N.J.S.A. 13:1E-9, including civil penalties. Furthermore, a member of the public who supplies information to an enforcing authority which results in the imposition and collection of a civil penalty shall be entitled to a reward of \$250.00 or 10 percent of the penalty collected, whichever is greater, in accordance with N.J.S.A. 13:1E-9.2.

The Department is also aware that the present system of vehicle inspections by Division of Motor Vehicles (DMV) facilities is currently undergoing review. This may affect the proposed definition of used oil collection centers since it includes DMV-licensed private inspection centers. The Department will address any changes to the vehicle inspection system and its impact on the definition of used oil collection centers when this rule is adopted or when the inspection center issue is resolved.

It is likely that municipalities which sponsor or operate a used oil collection center will not charge residents for used oil collection services. However, other used oil collection centers, such as retail service stations and private inspection centers, may elect to charge consumers for this service to recover the collection center's costs for the proper handling of consumers' used motor oil. The statute does not authorize the Depart-

ment to limit the amount used oil collection centers may charge, although the rules require those collection centers charging for the service to post the fee as part of the sign.

Social Impact

The used motor oil rules will have a minimal social impact on individuals who change their oil, by requiring them to take their used motor oil to a used oil collection center. The proposed new rules will also have a nominal social impact on motor oil retailers, licensed private inspection centers and retail service stations with an active used oil collection tank on the premises, by requiring them to post signs regarding the proper collection and recycling of used motor oil. Operators of used oil collection centers may also be affected due to the time required for them to accept used motor oil from consumers, empty the used motor oil into the collection tank, and do any necessary housekeeping associated with the used motor oil collection.

These rules will benefit New Jersey's residents by reducing the amount of used motor oil that enters the environment due to improper disposal, thus reducing the risk of exposure to toxic substances. In particular, those residents who utilize the state's waterways for recreational purposes, including swimming, boating and fishing, will benefit from cleaner, safer waters. The increased recycling of used motor oil will have a positive social impact by helping to protect the environment while conserving a valuable petroleum resource.

Economic Impact

Manufacturers and marketers of motor oil sold at retail will most likely incur initial costs associated with the labeling of the motor oil containers. These costs will primarily be up-front costs for printing of labels with the required statement. The rules provide for a 180-day grace period for manufacturers and marketers to comply with this requirement, which should allow for utilization of existing stocks of labels, thus minimizing the overall cost impact.

Motor oil retailers, licensed private inspection centers, and retail service stations with an active used oil collection tank on the premises will initially incur the additional costs of acquiring and posting the required signs. The expected cost of the sign is \$25.00 to \$50.00. The price paid by or charged by hazardous waste transporters for used motor oil is market-driven and linked to the price of virgin crude oil and seasonal changes in the demand and supply of oil products. Since these costs or benefits may in turn be passed on to consumers who return used motor oil to used oil collection centers, any increase in the collection of used motor oil by used oil collection centers under this program should result in no net difference in economic impact for the owners of used oil collection centers. Used oil collection centers must also provide a semi-annual report of used motor oil activity to the municipal recycling coordinator. The information necessary to complete the semi-annual report should be readily available from receipts held by the collection center for used oil removal, as currently required by N.J.A.C. 7:26-7.7. Therefore, the Department believes the cost of preparing the semi-annual report will be minimal.

Consumers can expect to be charged a nominal fee by the collection center in order for the collection center to recover its costs for rendering this service. The fee charged, if any, will vary between collection centers.

It is anticipated that energy savings will result from the proposed new rules, since reprocessing of used motor oil into fuel oil or re-refined lubricating oil requires less energy than refining virgin crude oil to obtain comparable products.

Environmental Impact

New Jersey's residents who change their own oil (do-it-yourselfers) generate over 11 million gallons of used motor oil per year. A large percentage of this used oil is disposed of improperly, and eventually enters the State's lakes, streams and coastal waterways. Used motor oil contains toxic substances, such as lead and certain additives, that are harmful to fish and wildlife, and can make water unsafe to drink. These rules will help ensure that the State's residents have access to sufficient used oil collection capacity as well as decrease the amount of used motor oil that is improperly disposed of on land and in the water.

The used motor oil recycling rules will have a positive environmental impact by helping to prevent used motor oil from being mixed with refuse and taken to landfills, where it may leach into surrounding areas causing groundwater pollution, or dumped into sewers, causing potential surface water pollution problems. The rules will also protect the environment by requiring the recycling of used motor oil into fuel oil or lubricants, which will help to conserve petroleum resources.

Regulatory Flexibility Analysis

The proposed new rules will apply to motor oil marketers, motor oil retailers and used oil collection centers as defined by these rules. It is estimated that 6,500 "small businesses," as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., will be affected by these rules. In order to comply with these rules, motor oil retailers will be required to post a sign informing the public of the importance of used motor oil recycling; initial capital costs to motor oil retailers for obtaining and posting a sign should be \$25.00 to \$50.00.

Each used oil collection center will be required to post a sign informing the public that it is a used oil collection site, manage used motor oil offered by consumers, and report semi-annually quantities collected to the municipal recycling coordinator. It is expected that initial capital costs to used oil collection centers for obtaining and posting a sign should be \$25.00 to \$50.00. Ongoing collection center costs will be associated with the actual time required to accept and empty consumer used motor oil into the collection tank. Used oil collection centers must also provide a semi-annual report of used motor oil activity to the municipal recycling

coordinator. This information should be readily available from receipts held by the collection center for used oil removal, as currently required by N.J.A.C. 7:26-7.7. Therefore, the Department believes the cost of preparing the semi-annual report will be kept to a minimum. Since used oil collection centers may charge for this service, most used oil collection centers will be able to recoup their costs through nominal fees for this service.

The Department designed these rules in order to have the least economic impact possible on small businesses while providing the necessary framework for the recycling of consumers' used motor oil. The Department has determined that to minimize the impact of the rule would endanger the environment, public health and public safety, and therefore, no exemption from coverage is provided.

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

7:26-8.20 State hazardous waste from non-specific sources

(a) State hazardous wastes from non-specific sources are as follows:

	NJ Hazardous Waste Number	Hazardous Waste	Hazardous Code
Generic	1. X721	Waste automotive crankcase and lubricating oils from automotive service and gasoline stations, truck terminals, [and] garages, and used oil collection centers as defined at N.J.A.C. 7:26A-6.2.	(T)

2.-7. (No change.)

(b) (No change.)

SUBCHAPTER 6. USED MOTOR OIL**7:26A-6.1 Scope and purpose**

This subchapter is intended to implement the used motor oil recycling provisions of N.J.S.A. 13:1E-99.35 and 99.36. These rules will enable residents of New Jersey to recycle used motor oil generated in a typical residential setting. Motor oil retailers will be required to inform the public at the point of purchase of the importance of recycling used motor oil, and collection centers will be required to identify themselves as a collection point for used motor oil recycling.

7:26A-6.2 Definitions

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

"Consumer" means any New Jersey resident who uses or purchases lubricating or other automotive oil for personal use, or who generates used motor oil through personal use of lubricating or other automotive oil.

"Designated county or municipal recycling coordinator" means any individual who has been designated in accordance with N.J.S.A. 13:1E-99.13 or N.J.S.A. 13:1E-99.16, respectively, to implement the "New Jersey Statewide Mandatory Source Separation and Recycling Act," N.J.S.A. 13:1E-99.11 et seq.

"Motor oil retailer" means any person who annually sells to consumers more than 500 gallons of lubricating or other automotive oil in containers for use off the premises where sold.

"Retail service station" means any person whose on-going automotive maintenance and/or repair business entails the removal and/or replacement of automotive lubricating oils.

"Used motor oil" means a petroleum based or synthetic oil whose use includes, but is not limited to, lubrication of internal combustion engines, which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

"Used oil collection center" means any private inspection center licensed by the Division of Motor Vehicles in the Department of Law and Public Safety, retail service station which has an active used oil collection tank on the premises, or any site which accepts used motor oil for recycling.

"Used oil collection tank" means any stationary device which is constructed of non-porous materials which provide structural support, whether above or below ground, in which used oil is stored.

7:26A-6.3 Restrictions

(a) No person shall relinquish possession of used motor oil except to:

1. A used oil collection center during hours of operation;
2. A county or municipally sponsored household hazardous waste collection event;
3. A hazardous waste transporter; or
4. A facility authorized by the state in which it is located to accept used motor oil.

(b) No person shall discharge water, antifreeze, industrial waste or any other contaminant into a used oil collection tank, or mix water, antifreeze, industrial waste or any other contaminant with used motor oil in any container which is then discharged into a used oil collection tank.

7:26A-6.4 Labeling of motor oil containers

(a) Effective (the date 180 days after effective date to be inserted), no person shall sell or offer for sale, at retail or at wholesale for direct retail sale in this State, any motor oil in containers unless the following statement is prominently displayed on the label:

**USED MOTOR OIL IS RECYCLABLE
DON'T POLLUTE—CONSERVE RESOURCES;
RETURN USED OIL TO A COLLECTION CENTER.**

7:26A-6.5 Posting requirements

(a) Motor oil retailers shall conspicuously post and maintain a durable and legible metal sign, not less than 11 inches high by 15 inches wide, containing the following statement in characters no less than one inch in height:

**DON'T POLLUTE—CONSERVE RESOURCES;
RETURN USED MOTOR OIL TO A COLLECTION
CENTER FOR RECYCLING**

1. The sign shall be displayed in the following manner:
 - i. Suspended from the ceiling, or affixed to a wall, shelf, or free-standing display, at a height no greater than eight feet above the ground at its highest point and no less than four feet above the ground at its lowest point; and

ii. Adjacent to the motor oil display area or sales counter.

(b) The owner or operator of a used oil collection center shall, within 90 days of becoming subject to this subchapter, post and maintain a durable and legible metal sign, not less than 11 inches high by 15 inches wide, containing the following statement in characters no less than one inch in height:

USED OIL COLLECTION CENTER
RECYCLE YOUR USED MOTOR OIL HERE
TEN (10) QUART LIMIT PER PERSON
FEE: (If the used oil collection center charges
a fee for this service, the fee shall be
displayed as part of the sign.)

1. The sign shall be posted on an outside wall of the collection center, or other appropriate location, facing a public thoroughfare, to provide the public with an unobstructed view of the sign. This sign shall be displayed at a height no greater than eight feet above ground at its highest point and no less than four feet above the ground at its lowest point.

7:26A-6.6 Collection requirements and quantity limitations

The owner or operator of any used oil collection center shall accept up to and including 10 quarts of used motor oil per day from the consumer. The owner or operator of the used oil collection center may, at his or her discretion, accept more than this amount. Once emptied, the container used to transport used motor oil may be returned to the consumer at the discretion of the owner or operator or upon consumer demand.

7:26A-6.7 Management and transfer of used oil by used oil collection center

(a) The owner or operator of a used oil collection center shall manage and transfer used motor oil in compliance with the rules for hazardous waste management at N.J.A.C. 7:26. Once the used oil collection center accepts the used oil, it is designated as "waste oil" with hazardous waste number X721. The used oil collection center is considered a "generator" of hazardous waste under N.J.A.C. 7:26-7. Hazardous waste management requirements include, but are not limited to, transferring collected waste oil only to a New Jersey licensed hazardous waste transporter for transport to a New Jersey hazardous waste facility licensed to accept waste oil, or for transport to a facility authorized to accept waste oil by the state in which the facility is located.

(b) An owner or operator of a used oil collection center may qualify for an exemption from the requirement to initiate a hazardous waste manifest for the waste oil if he meets the requirements of N.J.A.C. 7:26-7.7.

7:26A-6.8 Reporting requirements

(a) The owner or operator of a used oil collection center shall semi-annually submit a report, by August 1 for the period of January 1 to June 30 and by February 1 for the period of July 1 to December 31, on forms designed by the Department, detailing used motor oil collection activity during the reporting period to the municipal recycling coordinator for the municipality in which the collection center is located.

(b) Each report shall include the following information:

1. The reporting period covered by the report;
2. Name, mailing address, and location (if different from the mailing address) of the used oil collection center;
3. Total quantity, in gallons, of used motor oil collected, including used motor oil collected as part of the collection center's business operations; and
4. For each New Jersey-licensed hazardous waste transporter utilized by the collection center, name, mailing address and quantity, in gallons, of used oil removed.

(c) Used oil collection centers will be required to manifest the waste oil, unless one of the exemptions in N.J.A.C. 7:26-7.7 is applicable.

7:26A-6.9 Notification requirements

(a) Each designated municipal recycling coordinator shall annually report the location, hours of operation and other pertinent information for any municipally sponsored used oil collection center

located within that municipality. This information shall be submitted annually, on forms provided by the Department, by June 1 to the designated county recycling coordinator for the county in which the municipality is located.

(b) Each designated county recycling coordinator shall annually submit, on forms provided by the Department, by July 1 to the Department a list of municipally and county sponsored used oil collection centers located in that county.

7:26A-6.10 Penalties

The Department shall enforce the provisions of this subchapter in accordance with N.J.S.A. 13:1E-9, including the issuance of civil administrative penalties as provided at N.J.A.C. 7:26-5.5.

(a)

OFFICE OF ENERGY

Control and Prohibition of Air Pollution by Vehicular Fuels

Proposed Amendments: N.J.A.C. 7:27-25.2, 25.3, 25.4, 25.7, 25.8; and N.J.A.C. 7:27A-3.10

Proposed New Rules: N.J.A.C. 7:27-25.3, 25.9, 25.10, 25.11 and 25.12

Proposed Repeal: N.J.A.C. 7:27-25.1

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

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

DEP Docket Number: 23-92-06.

Proposal Number: PRN 1992-280.

A public hearing concerning this proposal will be held on:

Wednesday, August 5, 1992 at 10 A.M.

First Floor Hearing Room

Department of Environmental Protection and Energy

State of New Jersey

401 East State Street

Trenton, New Jersey

Submit written comments by August 12, 1992 to:

Samuel A. Wolfe, Administrative Practice Officer

Office of Legal Affairs

New Jersey Department of Environmental Protection
and Energy

CN 402

Trenton, New Jersey 08625-0402

Copies of this notice and of the proposed new rules and amendments are being deposited and will be available for inspection during normal office hours until August 12, 1992, at:

Atlantic County Health Department

201 South Shore Road

Northfield, New Jersey 08225

Middlesex County Air Pollution Control Program

County Anne Building

841 Georges Road

North Brunswick, New Jersey 08902

Warren County Health Department

319 West Washington Avenue

Washington, New Jersey 07882

New Jersey Department of Environmental Protection
and Energy

Office of Energy

401 East State Street, Seventh Floor

Trenton, New Jersey 08625

New Jersey Department of Environmental Protection
and Energy

Bureau of Enforcement Operations

Northern Regional Office

1259 Route 46, Bldg. #2

Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection
and Energy

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

New Jersey Department of Environmental Protection
and Energy

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

New Jersey Department of Environmental Protection
and Energy

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

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

The agency proposal is set forth below. It contains six major components: a "Summary" section which describes the purpose and scope of the proposed amendments and new rules, a "Social Impact" section which describes the anticipated societal effects of the amendments and rules, an "Economic Impact" section which sets forth the anticipated costs and benefits of the amendments and rules, an "Environmental Impact" section which sets forth the anticipated emission reductions to be obtained, a "Regulatory Flexibility Analysis" section which examines the effect of the amendments and rules on small businesses, and a full statement of the text of the proposed new rules and amendments. The footnotes referenced throughout (as, for example, "(1)") may be found after the "Regulatory Flexibility Analysis" section.

Summary

The New Jersey Department of Environmental Protection and Energy (the Department) is proposing to adopt new rules and amendments at N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels (subchapter 25) which would establish an oxygenated fuels program in New Jersey. The Department is also proposing related amendments at N.J.A.C. 7:27A-3, Civil Administrative Penalties and Requests for Adjudicatory Hearings.

As mandated by the Federal Clean Air Act (CAA)(1), the United States Environmental Protection Agency (EPA) has established a National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO) at a level protective of public health.(2) Any state which contains designated areas in which the air quality does not meet the NAAQS for CO must, pursuant to the 1990 amendments to the CAA(3), develop and implement an oxygenated fuels program, in order to reduce emissions of CO from motor vehicles. The CAA requires that the oxygenated fuels program be in effect by November 1, 1992, unless, as discussed below, EPA allows otherwise. These proposed new rules and amendments establish this program for New Jersey and set 2.7 percent as the oxygen content of motor vehicle fuel. This standard would apply only during control periods (discussed in more detail below) set by EPA to include that period of year when areas of the State are prone to exceed the National Ambient Air Quality Standard (NAAQS) for CO. The proposed new rules make provision for two variances from the 2.7 percent minimum oxygen content standard. The first would allow gasoline retailers and wholesale-purchaser consumers to comply with the standard through contemporaneous averaging. The second would allow refiners, distributors, importers, and blenders, on a temporary basis, to sell or provide nonconforming fuel when they experience, due to circumstances beyond their control, a shortage of supply of conforming gasoline.

CO is produced as a result of the incomplete combustion of fossil fuels. The primary source of CO emissions in New Jersey is vehicle exhaust. In 1990 drivers in New Jersey drove approximately 60 billion miles.(4) The Department's 1990 preliminary emissions inventory indicates that, on the average, over 3,640 tons per day of CO emissions are generated by vehicle use on the State's roadway network. Although mobile sources account for only about 63 percent of CO emissions nationwide(5), the Department estimates that motor vehicles contribute over 80 percent of all CO emitted in New Jersey. This is a result of the higher than average use of automobiles in New Jersey. (The remaining portion of New Jersey's total CO emissions are generated by off-

highway sources such as construction equipment (11 percent) and from stationary sources (six percent)). For this reason, attainment and maintenance of the CO NAAQS cannot be realized in New Jersey without substantial reductions in motor vehicle emissions.

This proposal represents one component of a broader initiative being undertaken by the Department to carry out the requirements of the amendments to the Federal Clean Air Act (CAA) enacted on November 15, 1990. In developing the 1990 Amendments to the CAA, Congress recognized the significance of motor vehicles as a source of CO emissions. The amendments require New Jersey to implement a number of mandated measures which will reduce CO emissions from vehicles. In addition to the oxygenated fuels program, these include vehicle standards that will ensure reduced CO emissions from new motor vehicles, enhancement of current vehicle inspection and maintenance programs which will require all vehicles in the State periodically to pass more stringent emissions tests, and transportation control measures (such as high occupancy vehicle lanes, bicycle lanes, programs for improved public transit, and employer-based transportation management plans and incentives) that will encourage the development of mobility patterns that will result in lower emissions. The CAA amendments also require states such as New Jersey with CO nonattainment areas to attain the NAAQS for CO by November 15, 1995. The Department anticipates that collectively these mandated measures will reduce the emissions of CO sufficiently to enable the State to attain the NAAQS for CO.

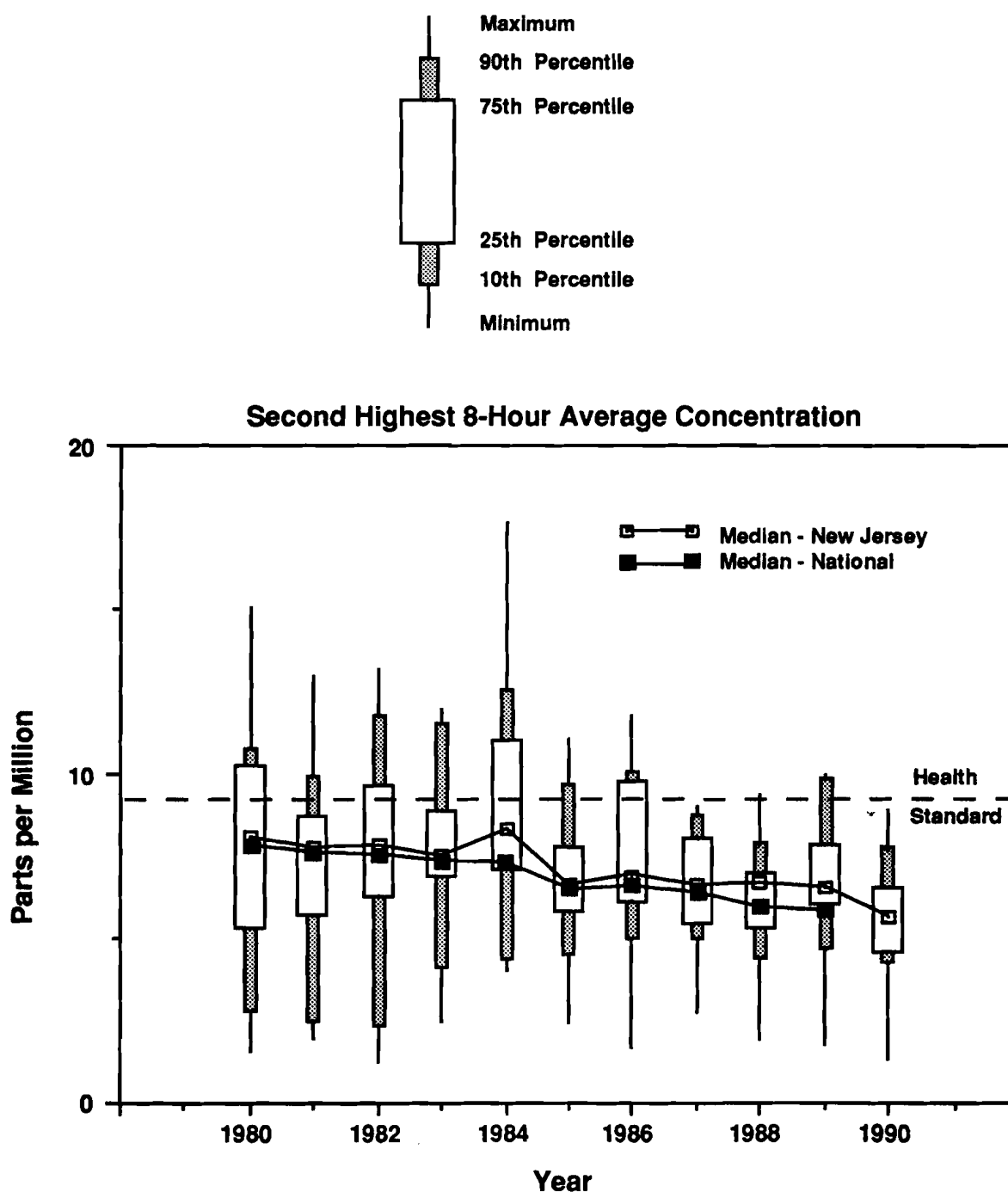
Carbon monoxide (CO) is a colorless, odorless, and tasteless gas that is naturally present in air at levels of approximately one part per million (1 ppm). CO enters the bloodstream and interferes with the oxygen carrying capacity of the blood. It reduces the delivery of oxygen to the body's organs and tissues.(5) At a level of 10 ppm, it causes reduced awareness, while at a level of 100 ppm it causes dizziness, headache, and fatigue.(6) CO may cause adverse health effects for persons exposed to elevated concentrations for a period of time, including cardiovascular effects, neurobehavioral effects, fibrinolysis effects, and perinatal effects.(7,8) For a person engaged in heavy work, these effects may begin to occur within less than an hour; for a person at rest the effects may be observed after two or three hours.(9) Exposure to high levels of CO has also been related to increased incidence of arteriosclerotic heart disease. A group at particular risk are angina patients or others with obstructed coronary arteries, but not yet manifesting overt symptomatology of coronary artery disease. Even relatively low-level CO exposures can exacerbate the cardiovascular symptoms of such persons.(8) The NAAQS for ambient CO that EPA has established to protect human health specify upper limits for both eight-hour and one-hour averages that are not to be exceeded more than once per year. The eight-hour level is nine parts per million and the one-hour level is 35 parts per million.

The Department maintains an ambient air quality monitoring network. Monitors located at 16 sites throughout the State measure ambient concentrations of CO. Most of these sites are located in urban or suburban areas. Figure 1 below, taken from New Jersey's 1990 Air Quality Report(10), summarizes the trend in median CO concentrations in New Jersey recorded by this monitoring network from 1980 through 1990. Preliminary data from 1991 indicates that two exceedances of the eight-hour average standard occurred in Elizabeth, one exceedance of the eight-hour average standard occurred in East Orange, and one exceedance of the eight-hour average standard occurred in North Bergen.

The CAA requires, for each NAAQS established by EPA, that all areas within a state be evaluated to determine whether the standard has been attained in that area.(11) Areas in which the air quality does not meet the standard are designated nonattainment areas; areas in which air quality conforms with the standard are designated attainment areas; and areas for which there is not enough information to make a determination are designated as unclassifiable. In a November 6, 1991, Federal Register(12), the EPA issued a final rule which set forth its designation of CO nonattainment areas for New Jersey. This notice also classified nonattainment areas in terms of the degree of severity of the nonattainment. This classification was made using the design values listed in Table 1 below. The design values used to classify the areas were based on ambient CO concentrations, expressed in parts per million, measured during 1988 and 1989 at air quality monitoring stations within the nonattainment area. See Table 2 below for the detailed designations and classifications for New Jersey.

FIGURE 1

TREND IN MEDIAN CARBON MONOXIDE CONCENTRATIONS IN NEW JERSEY 1980 - 1990



PROPOSALS

Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION

Table 1
Table of Design Values
Used in Classification of
CO Nonattainment Areas

Area classification	Design value (ppm)
Moderate $\leq$ 12.7 (Low moderate)	9.1-12.7
Moderate $>$ 12.7 (High moderate)	12.8-16.4
Serious	16.5 and above

In essence, EPA found two classifiable CO nonattainment regions in the State. One classifiable nonattainment region is in northern New Jersey and is comprised of Bergen County, Essex County, Hudson County, Union County, and the cities of Clifton, Patterson, and Passaic in Passaic County. EPA grouped this northern New Jersey region together with contiguous jurisdictions in New York, including New York City, Nassau County, and Westchester County into a single CO multistate nonattainment area. EPA's rationale for merging the northern New Jersey region with the New York jurisdictions into one nonattainment area is as follows: "The New Jersey counties in the area rank among the State leaders in such categories as vehicle miles traveled and population density per square mile. These New Jersey counties are not distinguishable from the New York counties surrounding Manhattan." (12) Based on the higher ambient CO concentrations measured in Manhattan, EPA classified this entire nonattainment area as high moderate. The second classifiable CO nonattainment region in New Jersey is located in southern New Jersey and is comprised of Camden County. Based on the level of the ambient concentrations exceeding the NAAQS for CO measured within the county, EPA classified Camden County as low moderate.

Table 2
Designation and Classification
of New Jersey CO Nonattainment Areas (12)

Designated Area	Designation	Classification
Atlantic City Area Atlantic County (part) The City of Atlantic City	Nonattainment	Not Classified
Burlington Area Burlington County (part) City of Burlington	Nonattainment	Not Classified
Freehold Area Monmouth County (part) Borough of Freehold	Nonattainment	Not Classified
Morristown Area Morris County (part) City of Morristown	Nonattainment	Not Classified
New York-Northern New Jersey- Long Island Area Bergen County Essex County Hudson County Passaic County (part) City of Clifton City of Paterson City of Passaic Union County	Nonattainment Nonattainment Nonattainment Nonattainment Nonattainment Nonattainment Nonattainment Nonattainment	Moderate $>$ 12.7ppm Moderate $>$ 12.7ppm Moderate $>$ 12.7ppm Moderate $>$ 12.7ppm Moderate $>$ 12.7ppm Moderate $>$ 12.7ppm Moderate $>$ 12.7ppm Moderate $>$ 12.7ppm
Penns Grove Area Salem County (part) Borough of Penns Grove, Those portions within 100 yards of the intersections of U.S. Route 130 and County Roads 675 & 607.	Nonattainment	Not Classified
Perth Amboy Area Middlesex County (part) City of Perth Amboy	Nonattainment	Not Classified
Philadelphia-Camden County Area Camden County	Nonattainment	Moderate $\leq$ 12.7ppm

Somerville Area Somerset County (part) Borough of Somerville	Nonattainment	Not Classified
Toms River Area Ocean County (part) City of Toms River	Nonattainment	Not Classified
Trenton Area Mercer County (part) City of Trenton	Nonattainment	Not Classified
AQCR 043 NJ/NY/CT Interstate (Remainder of) Middlesex County (part) Area outside of Perth Amboy Monmouth County (part) Area outside of Freehold Morris County (part) Area outside of Morristown Passaic County (part) Area outside Clifton, Patterson, and Passaic Somerset County (part) Area outside of Somerville	Unclassifiable/ Attainment	
AQCR 045 Metro. Philadelphia Interstate (Remainder of) Burlington County (part) Area outside Burlington Gloucester County Mercer County (part) Area outside Trenton Salem County (part) Area outside Penns Grove	Unclassifiable/ Attainment	
Area AQCR 150 New Jersey Interstate Atlantic County (part) Area outside Atlantic City Cape May County Cumberland County Ocean County (part) Area outside Toms River	Unclassifiable/ Attainment	
AQCR 151 NE PA-Upper Delaware Valley Hunterdon County Sussex County Warren County	Unclassifiable/ Attainment	

The Clean Air Act mandates not only that all CO nonattainment areas be brought into attainment by December 31, 1995, but also that attainment must be maintained thereafter. New Jersey's CO SIP revision, currently under development, will describe the State's plan to attain and maintain the NAAQS in CO nonattainment areas throughout the State. This plan is due to the EPA on November 15, 1992. Before submitting the CO SIP revision to EPA, the Department will provide the opportunity for the public to comment on the State's plan.

As described in more detail below, EPA has determined that different areas of the State are prone to high ambient concentrations of CO during different portions of the year. That portion of the year is designated as the oxygen program control period. The oxygen content standards set forth in the proposed new rules and amendments will be in effect in each area of the State during its oxygen program control period, as required by Section 211(m)(2) of the CAA. An OPRG control period must be at least four months long, unless EPA allows a shorter control period. A mandated component of this program is the requirement that motor vehicle fuel sold during the oxygen program control period contain not less than 2.7 percent oxygen by weight and not more than 3.5 percent oxygen by weight.

The CAA requires that the oxygenated fuel program be in effect by November 1, 1992. However, the CAA also provides that EPA may waive the program requirements in whole or in part for a State which demonstrates that the program would prevent or interfere with the attain-

ment of an NAAQS established by EPA to protect public health for any air pollutant other than CO. As the Department does not anticipate that the oxygenated fuels program proposed herein will prevent or interfere with the attainment of any NAAQS, New Jersey has not sought such a waiver. (See the discussion below of the Department's determination not to allow a waiver from the previously promulgated Reid vapor pressure (RVP) standard for any oxygenated gasoline; see also the Environmental Impact below.) The CAA also provides that EPA may extend the deadline for one year, and again for an additional year, if there is an inadequate supply of oxygenated fuel meeting the minimum requirements.

Absent a waiver or extension, failure to meet the statutory deadline could result in the imposition by EPA of mandatory sanctions on the State.⁽¹³⁾ Most probably such sanctions would entail the loss of certain Federal highway funds for New Jersey. As an example, in fiscal year 1992, up to \$415 million of Federal highway funds could have been withheld were such sanctions in effect. In addition, persons who live and work in the State will continue to be exposed to unhealthy levels of CO until the program is in effect.

Section 211(m)(2) of the CAA requires that the oxygen content standards for gasoline apply to all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. This mandate in effect requires that two oxygen program control areas be proposed for New Jersey, a Northern area and a Southern area. The counties which are part of the New York-Northern New Jersey-Long Island CMSA (Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex and Union) are in the Northern oxygen program control area; Warren County, because of its proximity to the CMSA, is included in the Northern oxygen program control area. The counties which are part of the Philadelphia-Wilmington-Trenton CMSA (Burlington, Camden, Cumberland, Gloucester, Mercer and Salem) are in the Southern oxygen program control area; Atlantic and Cape May Counties because of their proximity to the CMSA are included in the Southern oxygen program control area.

EPA has indicated to the Department that, since the New York City metropolitan area is prone to elevated CO concentrations throughout the greater part of the year, it intends to establish a seven month control period (October through April) in the New York-Northern New Jersey-Long Island CMSA. However, since exceedances of the CO standard have been recorded only in winter months in the Philadelphia-Wilmington-Trenton CMSA, EPA has proposed a four month control period (November through February) for this area.⁽¹⁴⁾

In New Jersey, approximately 6,855 facilities would be subject to the oxygenated fuels program. Of these 6,855 facilities, approximately 105 are refineries, importers, blenders, distributors, and wholesale purchaser-consumers (majors) and 6,750 are retail gasoline stations (minors). Of the 105 majors, 73 are located in the northern oxygen program control area. Of the 6,750 minors, 5,100 are located in the northern oxygen program control area and 1,650 are located in the southern oxygen program control area.

The Department is concerned about the impact of having two oxygen program control areas in the State. It recognizes that, during October, March and April of each year, a retailer located on the northern side of the line dividing the Northern and Southern control areas may pay more for its fuel stock than another retailer located across the street, but on the southern side of the line. This could put the northern retailer at a competitive disadvantage. As discussed in the Economic Impact statement below, industry estimates indicate that the cost of producing oxygenated fuel may be between \$0.03 to \$0.05 per gallon more than the cost of producing conventional fuel. However, the actual cost to consumers will depend as well on market conditions and the pricing policies of individual companies.

The Department considered seeking EPA approval for a single uniform seven-month control period throughout the State in order to eliminate the competitive disadvantage of the retailer on the northern side of the dividing line. However, extending the control period in the Southern oxygen program control area for the three months could likely subject gasoline consumers in the southern part of the State to higher gasoline prices for those three months. The aggregate increased gasoline costs for these three months, extrapolating from industry estimates, could total from \$8 to \$13 million. Furthermore, as the southern parts of the State are significantly less prone to having high CO concentrations, there is no justification in terms of air quality protection for extending their

control period. Therefore, the Department is proposing a seven-month control period for the northern OPRG control area and a four-month control period for the southern OPRG control area, in conformance with EPA's intention to establish seven-month and four-month control periods for the New York-Northern New Jersey-Long Island CMSA and the Philadelphia-Wilmington-Trenton CMSA, respectively. The Department invites comment on the appropriateness and impact of such bifurcation upon New Jersey residents and businesses.

An oxygenate is any substance which, when added to gasoline, increases the amount of oxygen in that gasoline blend. The only oxygen-containing substances which may be lawfully used in gasoline introduced into commerce are those fuel additives which EPA accepts as "substantially similar" to additives used in certification fuel, in accordance with Section 211(f)(1) of the CAA, or permitted under a waiver granted by the EPA under the authority of Section 211(f)(4) of the CAA.⁽¹⁵⁾ (The certification fuel is the fuel used by EPA, pursuant to the requirements of Section 206, in testing a class of vehicles to determine whether its emissions conform with the motor vehicle standards set forth in Section 202 of the CAA.) The Department anticipates that the majority of the oxygenate marketed for the blending to produce oxygenated fuels in New Jersey will be one of two types: ethanol (derived from agricultural products) or methyl tertiary butyl ether (MTBE), manufactured by petrochemical processes. Ethanol blenders and suppliers claim that the only way ethanol can be competitive as an oxygenate is if it qualifies for a Federal excise tax credit and there is a year-round demand for ethanol. To qualify for the Federal excise tax credit of \$0.054 per gallon, gasoline must contain 10 percent ethanol by volume, which equates to 3.5 percent oxygen by weight. Therefore, although an ethanol blend gasoline could be manufactured that would meet the 2.7 percent oxygen content standard with less than 3.5 percent oxygen by weight, the current Federal excise tax structure may make it uneconomical to do so. These proposed new rules and amendments allow gasoline which is 3.5 percent oxygen by weight to be sold year-round in New Jersey, although such blends must conform with the 9.0 RVP standard in the summertime.

Compared to ethanol, MTBE is currently a more expensive additive⁽¹⁶⁾; however the actual impact on the prices consumers will pay is dependent on suppliers' pricing policies and market conditions. Moreover the use of MTBE is not expected to have any deleterious environmental effects at the levels mandated by the Clean Air Act. Use of ethanol, however, may have a deleterious effect on emissions with regard to two criteria pollutants: oxides of nitrogen (NO_x) and ozone (O₃). Blending ethanol into gasoline not only may increase the NO_x emissions from vehicles fueled by the blend but also tends to increase the volatility of the gasoline, causing the organic constituents of gasoline to evaporate more readily. The Auto/Oil Industrial Research Program, a cooperative research program initiated by three domestic auto companies and 14 petroleum companies, tested vehicles using fuels oxygenated with ethanol, and reported a NO_x increase of six percent.⁽¹⁷⁾ The addition of 10 percent (by volume) ethanol to a base gasoline stock having a Reid vapor pressure (RVP) of 9.0 pounds per square inch (psi) increases the blend's RVP by 0.76 psi, according to EPA.⁽¹⁸⁾ The Auto/Oil Industrial Research Program also studied the increases in evaporative emissions that result from motor vehicles using ethanol blends. They measured the increases both in terms of increases in the evaporative emissions that occur as a result of the daily range in temperature (diurnal breathing losses) and in terms of increases in the evaporative emissions that occur after the termination of engine operation (hot soak losses). They found that diurnal breathing losses increased 30 percent and hot soak losses increased 50 percent on the same vehicle fleet.⁽¹⁹⁾ On warm summer days, the organic constituents of gasoline vapors would react in the atmosphere to create ozone. The EPA has designated the entire State of New Jersey as nonattainment in respect to the NAAQS for ozone. The amendments to the CAA mandate New Jersey to implement a number of measures over the next several years to make progress toward reducing ambient ozone concentrations and to attain the NAAQS for ozone throughout the State by November 15, 2007. Given the effect of ethanol on the volatility of gasoline into which it is blended, use of ethanol blends during the summer ozone season could affect adversely the State's efforts to attain the NAAQS for ozone.

The Renewable Fuel Association has indicated that at present a negligible amount of the gasoline sold in New Jersey is an ethanol blend. Because the Department recognizes the value of ethanol as an economical oxygenate that is effective in reducing CO emissions from vehicles, the proposed amendments and new rules do not preclude the use of ethanol. However, in view of the other deleterious environmental

effects use of ethanol may have, the Department has avoided including in these new rules and amendments provisions that would encourage or expand use of ethanol, particularly during the summer ozone season (May 1 to September 15).

Representatives of agricultural interests and the renewable fuel industry have sought to have the Department propose a waiver from the RVP standard for ethanol blends. Such a waiver would be expected to encourage expanded use of ethanol blends in the summer. These proposed new rules and amendments do not include such a waiver. Specifically, in 1988 the New Jersey Farm Bureau had asked the Department to provide in its rules a one pound per square inch (psi) exemption from the RVP standard, effective during the summer ozone season, for ethanol blends.(19) As adopted on January 27, 1989, N.J.A.C. 7:27-25 (subchapter 25) required all gasoline sold in New Jersey during the summer season to have a RVP of 9.0 psi.(19) This standard was established, pursuant to the 1987 revisions to New Jersey's ozone SIP, to decrease the evaporative properties of gasoline, as a measure undertaken to make progress toward achievement of the NAAQS for ozone. On June 16, 1989, EPA approved subchapter 25 as adopted as part of New Jersey's State Implementation Plan (SIP) for ozone.(20)

During the public comment period for the 1989 subchapter 25 rulemaking, commenters on behalf of the ethanol fuel industry stated that a 9.0 psi RVP standard would have a major negative impact on the ethanol fuel industry as it would in effect preclude the sale of ethanol gasoline blends in New Jersey.(19) As part of their comment, they suggested that New Jersey consider allowing ethanol blend fuel a one pound psi tolerance above the standard established for other gasoline, making the RVP standard for ethanol blend fuels effectively 10.0 psi.

After considering this comment, the Department made a determination not to provide a tolerance from the RVP standard for ethanol blend fuels. Vehicles fueled with ethanol blended gasolines with an RVP of 10.0 psi would have significantly higher evaporative emissions than vehicles fueled with gasoline meeting the RVP specification of 9.0 psi. Such evaporative emissions would contribute to increased ambient ozone formation and would adversely affect New Jersey's ability to make progress toward attainment of the NAAQS for ozone.

On June 11, 1990, EPA promulgated Federal RVP rules.(21) The Federal RVP rules provide a 1.0 psi exemption from the RVP standard for ethanol blend fuels. Pursuant to Section 211(c)(4)(A) of the CAA, inconsistent state rules are to be preempted; however Section 211(c)(4)(c) of the CAA authorizes EPA to approve a state program which is different from the Federal RVP program, if that program is necessary for the state to achieve an applicable NAAQS. On December 7, 1990, the Renewable Fuels Association petitioned EPA to reconsider its approval of that part of New Jersey's SIP pertaining to the RVP standard.

On February 3, 1992, the EPA published a notice that it intended to grant the Renewable Fuel Association's petition and to partially disapprove New Jersey's SIP for ozone, to the extent that it does not provide for a 1.0 pound per square inch RVP tolerance for ethanol blends.(22) At New Jersey's request, EPA held a public hearing in New York on EPA's proposed action on May 5, 1992. At the hearing New Jersey testified that allowing a 1.0 pound per square inch RVP tolerance for ethanol blends could result in an increase in VOC emissions of approximately 10 tons per day. Such increased emission of ozone precursors would further exacerbate New Jersey's already severe ozone problem. Consequently, no tolerance for ethanol blends is being proposed in these new rules and amendments. As of June 5, 1992, EPA had not taken final action on the petition.

The oxygenated fuels program set forth in these proposed new rules and amendments may need to be in effect only for a limited number of years. The 1990 CAA amendments also establish the requirement that, beginning January 1, 1995, reformulated gasoline shall be used in gasoline-fueled vehicles in regions of the country, such as New Jersey, where the NAAQS for ozone has not been attained. Section 211(k)(1) of the CAA mandates that reformulated gasoline be produced in accordance with specifications to be promulgated by EPA. These specifications will require that the minimum oxygen content of reformulated gasoline will be 2.0 percent by weight.(23) The Department anticipates that use of reformulated gasoline should be sufficient to ensure maintenance of the NAAQS for CO throughout the State. After the requirement to use reformulated gasoline becomes effective, the Department will reevaluate whether the oxygenated fuels program set forth herein needs to be continued.

In developing the proposed new rules and amendments, the Department considered draft guidance from EPA regarding oxygenated fuels(24,26); however, EPA has not yet finalized its guidance. EPA utilized a Regulatory Negotiation (Reg Neg) Advisory Committee to aid in developing this draft guidance for the oxygenated fuels program. The Reg Neg Advisory Committee was formed in March 1991 and was comprised of representatives from a broad spectrum of all the various parties. The Advisory Committee held extensive meetings to discuss the issues associated with the winter oxygenated gasoline program. EPA issued its Proposed Guidelines for Oxygenated Gasoline Program under Section 211(m) of the CAA amendments in the July 9, 1991 Federal Register.(24) On August 16, 1991, the members of the Reg Neg Advisory Committee signed an "Agreement in Principle" that represented a consensus on the underlying principles of the proposed guidance for states' oxygenated fuels programs.(25) Revised proposed guidance, which takes into account this "Agreement in Principle," is currently under review within EPA.(26) In addition to taking into consideration EPA's proposed guidance in the development of this proposal, the Department has also consulted members of the EPA staff as it prepared this rulemaking proposal.

The Department involved business and industry, environmental groups, and interested parties in the development of this proposal. The Department held a public workshop on November 7, 1991 at the War Memorial Building in Trenton, New Jersey, to provide interested parties the opportunity to present comment on a conceptual version of the proposed oxygenated fuels program. Following the workshop, the Department held a workgroup session on December 16, 1991 to discuss further the concerns of the regulated community. The Department has considered the recommendations made at the workshop(27) and the workgroup meeting in developing this proposal.

The Department is also working in cooperation with the other states in the region to arrive at oxygen content standards and requirements that are, for the most part, consistent with those in the other states in the New York and Philadelphia CMSAs. Pennsylvania proposed its oxygenated fuels rule on December 7, 1991(28), and is currently engaged in reviewing the comment it received on their proposed rule. New York expects to propose its oxygenated fuels program about the same time as these proposed new rules and amendments are published. The Department views regional interstate cooperation as significant in respect not only to achieving emission reductions, but also to minimizing any potential resultant economic inequities among states. The Department has met on several occasions with the representatives of EPA regional offices and with the other states in the two CMSAs, namely Connecticut, New York, Pennsylvania, Delaware, and Maryland. The Department has considered these discussions in the development of this proposal.

However, in contrast to these proposed new rules and amendments which allow a maximum oxygen content of 3.5 percent, New York State is considering proposing in its rule a maximum allowable oxygen content of 2.9 percent for the New York City metropolitan area. As ethanol blends that conformed with a 2.9 percent oxygen content standard would not qualify for a Federal excise tax credit, such a standard would discourage use of ethanol blends. The potential for increased NO₂ emissions due to increased use of ethanol blends is a concern for New York, as the ambient air concentrations of NO₂ in New York City are just below the primary NAAQS level established to protect public health. Increased use of ethanol blends could cause metropolitan New York City to become a nonattainment area of NO₂. New Jersey also considered imposing a maximum allowable oxygen content standard of 2.9 percent, to promote regional consistency. However, NO₂ levels in New Jersey are significantly below the NAAQS.(10) Furthermore, the Department does not anticipate that a 3.5 percent oxygen content standard in New Jersey would adversely impact air quality in the New York City area. Any increases in NO₂ emissions from New Jersey-fueled vehicles being driven in New York would be offset in the aggregate by the decline in NO₂ emissions characteristic of newer vehicles which are built to more stringent emission specifications. Likewise, no increase in the background NO₂ emissions in New York City is anticipated from the transport of emissions from motor vehicles driven in New Jersey. Consequently, New Jersey concluded that it did not at this time have the environmental basis to justify adopting a 2.9 percent oxygen cap to discourage use of ethanol blends in the wintertime. However, during the summertime New Jersey will continue to maintain the 9.0 RVP standard without a 1.0 pounds per square inch tolerance. If the State should not be successful in retaining this standard, New Jersey will reconsider the decision not to propose a 2.9 percent oxygen cap.

The specific provisions of the proposed amendments and new rules are discussed in more detail below:

Definitions: N.J.A.C. 7:27-25.1 sets forth new and revised definitions of terms used in the subchapter. Some key terms that are defined are as follows:

The terms "control area," "Southern oxygen program control area," and "Northern oxygen program control area" concern the geographic areas in which the oxygen content standards apply. As discussed above, the Northern control area includes Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren counties. The Southern control area includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer and Salem counties. The "control period" is the period during which the oxygen standards must be met in each control area. The control periods are set forth in N.J.A.C. 7:27-25.3(c)1, and discussed in more detail below.

"Oxygen content" is defined to mean the percentage of oxygen by weight which a gasoline contains. Accordingly, unless the usage of the term in any provision of the subchapter specifies a percentage of oxygen by volume, the term always means "by weight."

"Oxygenate" means any substance which, when blended into gasoline, increases the oxygen content of the gasoline blend, and which is allowed to be used as a gasoline additive under Federal law. Types of oxygenate include, without limitation, methyl tertiary butyl ether (MTBE) and ethanol.

The definition of "person" is amended to clarify that the term is used in the broadest possible sense, to include any individual (that is, a natural person) or entity.

Scope and Applicability: The proposed amendments recodify the "scope" provision of the existing rule at N.J.A.C. 7:27-25.2, and add a provision specifying that subchapter 25 applies to any refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer of gasoline (all of these terms are defined in the existing subchapter 25) for use as a motor vehicle fuel in the State.

General Provisions: The proposed amendments expand the scope of N.J.A.C. 7:27-25.3. This section currently provides standards for gasoline volatility only. The proposed amendments add oxygen content standards for gasoline sold in New Jersey, as required by the CAA. Specifically, the oxygen content of all gasoline provided, stored, offered for sale, sold, transported, imported or exchanged in trade for use in New Jersey must be at least 2.7 percent and not greater than 3.5 percent during the applicable control period. For the Northern control area, the control period begins October 1 and ends the following April 30. For the Southern control area, the control period begins November 1 and ends on the last day of the following February.

These standards become operative 60 days after the adoption of the proposed new rules and amendments, unless the EPA Administrator grants a waiver delaying the November 1, 1992 effective date of the CAA provision requiring the oxygenated fuels program. Section 219(m)(3)(C) of the CAA authorizes the EPA Administrator to delay the effective date for one year (a period which the Administrator can then extend for an additional year), if the Administrator determines that there is, or is likely to be, an inadequate supply of or distribution capacity for complying fuel. Consequently, N.J.A.C. 7:27-25.3(d) also establishes that, should the EPA make a finding of inadequate domestic supply or distribution capacity for any given control area, then these standards would not become operative until the delayed effective date in that control area.

Section 211 of the CAA authorizes the EPA to designate the fuels and fuel additives which fuel producers may lawfully "sell, offer for sale, or introduce into commerce." To ensure consistency of the proposed new rules and amendments with this provision of the Federal law, the proposed subsection N.J.A.C. 7:27-25.3(e) prohibits the commercial exchange of oxygenates and oxygenate blends which have not been so approved by EPA.

Recordkeeping and Compliance Determinations: The provisions for recordkeeping and testing at N.J.A.C. 7:27-25.4 are amended to reflect the addition of the oxygen content requirements to subchapter 25, and to make other minor corrections. The proposed amendments clarify N.J.A.C. 7:27-25.4(a), (b) and (d), and add references to subsections (a) and (b) reflecting the oxygen content requirements.

The proposed amendment to N.J.A.C. 7:27-25.4(c) lists the acceptable methods for taking samples of gasoline to be tested to determine their oxygen content. The amendment incorporates by reference the methods listed in the Federal regulations, and states that any other method approved in advance by the Department and by EPA is also acceptable.

N.J.A.C. 7:27-25.4(e) establishes the procedure for determining the oxygen content of gasoline, including the test methods to be used.

The results given by the ASTM test method specified in the proposed new subsection provide the concentration of each oxygenate in the gasoline tested, in percent by volume. As the standards set forth in these new rules and amendments are in terms of oxygen content by weight of the gasoline, this subsection also sets forth a methodology for conversion of the oxygenate concentration measurements to the oxygen content by weight of the gasoline. The methodology for this conversion has been developed by EPA.(24) As the methodology for conversion is valid only for volumes determined at 60 degrees Fahrenheit, the subsection requires that all volume measurements be adjusted to their equivalent at 60 degrees Fahrenheit, so that the adjusted volumes can be used in the conversion calculation.

The conversion is performed through the following steps:

1. If the oxygenate contains any denaturants or other non-oxygen containing components, the concentration of the oxygenate as determined through the test method is adjusted to reflect only the concentration of the oxygenate's oxygen-containing components in the gasoline. For example, denaturants usually make up five percent by volume of the oxygenate ethanol. Therefore an ethanol concentration of 10 percent by volume would be adjusted to reflect that the concentration of oxygen-containing components in the gasoline would comprise only 9.5 percent of the total volume;

2. Densities (or specific gravities) are then determined as follows: for each oxygenate the density is given in Table 1 at N.J.A.C. 7:27-25.4; the density of the base gasoline into which the oxygenate(s) are blended is assumed to be 0.7420 (this is the average specific gravity, as determined by EPA, of gasoline samples from the 1990 Motor Vehicle Manufacturers Association fuels database(29)); and the density of the resulting gasoline blend, obtained when the oxygenate(s) are blended into the base gasoline, is calculated to be a weighted average of the densities of the oxygenate(s) and the base gasoline, which weighting is in proportion to the volumetric fraction of that component in the gasoline blend;

3. To obtain the mass concentration of the oxygen-containing components of each oxygenate in the gasoline, the adjusted concentration of each oxygenate in the gasoline, as determined in paragraph 1 above, is multiplied by the following ratio: the specific gravity (or density) for the oxygenate given in Table 1 in N.J.A.C. 7:27-25.4 to the specific gravity (or density) of the gasoline blend determined in paragraph 2 above.

4. To obtain the contribution of the oxygenate to the oxygen content of the gasoline, in percent by weight, the mass concentration of the oxygenate in the gasoline determined in paragraph 3 above is multiplied by the oxygen molecular weight contribution of the oxygenate, also obtained from Table 1 in N.J.A.C. 7:27-25.4; and

5. Then the total oxygen content, in percent by weight, of the gasoline is obtained by summing the oxygen content contribution of each oxygenate in the gasoline.

Table 3 below gives an example of this conversion calculation.

Table 3
An Example of a Calculation of
The Conversion of Oxygen Content By Volume
To Oxygen Content By Weight

Assume the following:

- a. A shipment of gasoline is sampled and tested and found to contain the oxygenate MTBE;
- b. The test results indicate that the concentration of the MTBE in the gasoline is 15.00 percent by volume; and
- c. The oxygenate contains no denaturants or other non-oxygen-containing components.

And given the following:

- a. The specific gravity (density) of MTBE is 0.7460 (see Table 1 in N.J.A.C. 7:27-25.4);
- b. The oxygen molecular weight contribution of MTBE is 0.1815 (see Table 1 in N.J.A.C. 7:27-25.4); and
- c. The specific gravity of the base gasoline is 0.7420.

The density (specific gravity) of the gasoline is calculated as follows:

$$(0.15)(0.7460) + (0.85)(0.7420) = 0.7426$$

Then the measured concentration of the MTBE in the gasoline may be converted to percent oxygen content by weight as follows:

$$(15\%) \times (0.7460) \times (0.1815) = 2.735\% \text{ oxygen} \\ (0.7426)$$

Therefore the oxygen content by weight of the gasoline is determined to be 2.7 percent.

Recognizing that some degree of variation in the test results is inherent in the test method, these new rules accept a 10 percent deviation from the limit as also complying. For example, a final value for the oxygen content of a gasoline sample as low as 2.43 percent by weight would be accepted as meeting the minimum oxygen content requirement of 2.7 percent by weight. This proposed 10 percent testing tolerance is based on an evaluation by the Department as to the level of test method accuracy which can be reliably obtained.(30)

The proposed amendments to N.J.A.C. 7:27-25.4(g) clarify what records are required to be kept, who is required to keep them, and when the three-year period for recordkeeping begins. The proposed amendments also make it clear that records are to be made available to the Department's authorized representatives.

Labeling: The proposed new rule at N.J.A.C. 7:27-25.8 requires retailers and wholesale purchaser-consumers to label fuel pumps or other gasoline dispensing devices at gas stations. The labels must specify the oxygenates blended into the fuel, and the minimum oxygen content of fuel being dispensed. The section also sets forth specific language that must be displayed on fuel pumps to inform the public that the oxygen content of the fuel will reduce CO emissions. It includes alternative language for facilities to which a variance for shortage of supply has been issued, as the gasoline sold or used at such facilities would not meet the oxygen standards of this rule.

The labeling requirements of this section are intended to create an awareness among the motoring public of the "clean air" characteristics of the fuel. Such labeling allows consumers to make an informed purchase of gasoline, should they have preferences as to the type of oxygenate they wish to use.

Variance for Contemporaneous Averaging: The proposed new rules at N.J.A.C. 7:27-25.9 allow a retailer or wholesale purchaser-consumer to obtain a variance which authorizes compliance with the oxygen content requirements through contemporaneous averaging. A person to whom the Department issues such a variance may sell, provide or use non-conforming gasoline if the average oxygen content of the gasoline provided, sold, or used at the person's facility in a given month is at least 2.7 percent. For some persons it may be more cost-effective to comply with the oxygen content requirements through such averaging instead of providing or using only conforming gasoline. EPA has strongly recommended that market-based provisions be incorporated in states' oxygenated fuels programs(24,26), because such provisions would allow flexibility in the use of the supply of oxygenates, encouraging more efficient and cost-effective use of oxygenates.

In accordance with the contemporaneous averaging provisions, the variance establishes both minimum oxygen content limits for each grade of gasoline and, in addition, the requirement to maintain a "contemporaneous average" (that is, the average for any given calendar month) of the oxygen content of all grades of gasoline sold at a retail gasoline dispensing facility or used by a wholesale purchaser-consumer of at least 2.7 percent. Such a contemporaneous average would be determined through the following steps:

1. For each grade of gasoline sold, provided, or used, multiply the minimum oxygen content allowed under the approved variance for that grade of gasoline by the actual volume of that grade sold, provided, or used in a given month;
2. Sum the products obtained in paragraph 1 above; and
3. Divide this sum by the actual total volume of gasoline sold at the retail gasoline dispensing facility or used by the wholesale purchaser-consumer during the month; the result obtained is the contemporaneous average.

Table 4 below gives an example of a calculation of a contemporaneous average for a retail gasoline dispensing facility.

TABLE 4

An Example of a Calculation of
The Contemporaneous Average of the Oxygen Content of Gasoline
Sold at a Retail Gasoline Dispensing Facility

Assume the following:

- a. The retail gasoline dispensing facility sells two grades of gasoline (regular and super);
- b. In a given month the facility sells 30,000 gallons of regular and 40,000 gallons of super;

c. The variance requires a minimum oxygen content of 2.3 percent by weight for regular, and 3.1 percent by weight for super, and the gasoline sold in the given month complies with these requirements.

The contemporaneous average of the oxygen content of the gasoline sold in that month is calculated as follows:

$$\frac{(30,000 \text{ gallons}) (2.3\%) + (40,000 \text{ gallons}) (3.1\%)}{30,000 \text{ gallons} + 40,000 \text{ gallons}} = 2.76\% \text{ oxygen}$$

Since the contemporaneous average calculated above (2.76 percent oxygen) equals or exceeds 2.7 percent and equals or is less than 3.5 percent, this retail gasoline dispensing facility would be in conformance with the standards set forth at N.J.A.C. 7:27-25.9.

N.J.A.C. 7:27-25.9 also establishes the procedure for applying for a variance. The applicant submits an application to the Department, containing information identifying the facility and its suppliers, listing the minimum oxygen content of each grade of gasoline to be sold or used, listing the types of oxygenates to be used, and demonstrating how the sales or uses of each grade of gasoline will result in meeting the average oxygen content requirements.

The section also sets forth the reasons for which the Department will deny an application for a variance. The Department would deny an application if it determines that the variance would result in ambient concentrations of an air contaminant which are, or tend to be, injurious to human health or welfare, animal or plant life or property or which may unreasonably interfere with the enjoyment of property. The Department would deny an application if the applicant fails to demonstrate, to the satisfaction of the Department, its capability and intent to maintain compliance with the oxygen content requirements of the variance. The Department may also deny an application if the applicant fails to provide all information requested within 30 days or within a longer period if the period is approved by the Department.

A retailer or wholesale purchaser-consumer to whom the Department issues a variance pursuant to N.J.A.C. 7:27-25.9 has a number of continuing responsibilities, in addition to ensuring that the gasoline sold or used complies with the oxygen content requirements of the variance. These continuing responsibilities enable the Department to monitor compliance with the variance and N.J.A.C. 7:27-25.9. The holder of the variance must record the volume of each grade of gasoline sold or used each day during the applicable oxygen program control period, the volume of each grade of gasoline provided by a supplier, and the oxygen content of and the type(s) of oxygenate used in each grade of gasoline provided. The holder of the variance also must determine the contemporaneous average of the oxygen content of the gasoline sold or used at the facility for each month in the applicable oxygen program control period, and report the contemporaneous average to the Department. These daily records and monthly calculations and reports must be maintained at the facility for no less than three years from the date they were made. Further, upon request of the Department, the holder of the variance shall make the variance readily available for inspection on the operating premises, and shall make the daily records and monthly calculations and reports available for review at the facility or shall submit copies of them to the Department. If, in order to assure compliance with the requirements of this subchapter, the Department has included additional conditions of approval that are specific to an individual facility in its approval of a variance for that facility, these other continuing responsibilities must also be adhered to.

The Department may under specific conditions revoke its approval of a variance. A variance may be revoked if a retailer, wholesale purchaser-consumer or any supplier has failed to conform with any applicable oxygen content requirements included in the variance, any condition of approval of the variance, or any requirement set forth in N.J.A.C. 7:27-25.9. A variance may be revoked if the person to whom the Department has issued the variance refuses lawful entry by the Department or its authorized representative to the facility, fails to pay any penalty assessed pursuant to a final order, or fails to pay outstanding service fees. Any person who is aggrieved by such a revocation may seek an adjudicatory hearing pursuant to the procedures set forth at N.J.A.C. 7:27-8.12.

Variance for Shortage of Supply: The proposed new rules at N.J.A.C. 7:27-25.10 allow a refiner, importer, blender, or distributor to obtain a temporary variance which would authorize that person to sell gasoline that does not comply with the oxygen content standards, in a case of a shortage of supply of complying fuel. The shortage must be due to extreme and unusual circumstances, such as a natural disaster or an act

of God, where the failure to have complying fuel is due to causes beyond the control of the applicant.

The purpose of this variance is to allow facilities to maintain their long-term market share position and to fulfill their contractual obligations, even when they can not provide conforming fuel; however, the proposed new rule provides for the assessment of penalties as part of the grant of the variance, in order to avoid creating any economic incentive for a person to seek a variance instead of complying.

The application for the variance must document the inadequate supply, explain the cause of the shortage, and explain how the applicant could not have avoided the cause by the exercise of prudence, diligence and due care. The applicant also must state how he or she will expeditiously obtain an adequate supply of conforming fuel, in light of the requirement that the variance can be for no longer than 45 days. To enable the Department to evaluate the full effect of the variance and to provide the Department's enforcement staff the information they need to determine whether any nonconforming fuel identified is due to a variance approved by the Department pursuant to this section, the applicant must list the name and address of each facility to which the applicant provides gasoline. The applicant must also indicate what the minimum oxygen content will be of any gasoline to be provided.

The proposed new rule provides for the Department to deny the variance application if the increased emissions resulting from the approval may injure human health or welfare, animal or plant life, or property, or if the increased emissions may unreasonably interfere with the enjoyment of life or property (other than the applicant's property). The Department may also deny the variance if the applicant fails to demonstrate that there is an inadequate supply of conforming gasoline, if the applicant could have avoided the cause of the shortage by exercising prudence, diligent or due care, or if the applicant has failed to take all reasonable steps to minimize the extent and duration of the shortage or obtain an adequate supply of conforming gasoline. In addition, the applicant's failure to timely provide all requested information is grounds for denial of the variance.

A person to whom the Department issues a variance pursuant to N.J.A.C. 7:27-25.10 is subject to continuing requirements, including recordkeeping and reporting responsibilities. These requirements enable the Department to monitor compliance with the variance and with N.J.A.C. 7:27-25. The holder of the variance must record the volume of nonconforming gasoline sold each day, maintain these records at the facility for at least three years after they are made, and, upon the request of the Department, make these daily records available for review by the Department or its authorized representatives at the facility or submit copies of the records to the Department. Also, upon the request of the Department, a person to whom the Department issues a variance shall make the variance readily available for inspection on the operating premises. After the conclusion of the period the variance is in effect, such person shall report to the Department the total volume of nonconforming gasoline sold while the variance was in effect.

The Department may under specific conditions revoke its approval of a variance. A variance may be revoked if the person to whom it is issued fails to conform with any condition set forth in the variance or with any requirement set forth in N.J.A.C. 7:27-18. A variance may also be revoked if the person to whom the Department has issued the variance refuses lawful entry by the Department or its authorized representatives to the facility, fails to pay any penalty assessed pursuant to a final order, or fails to pay outstanding service fees. Any person who is aggrieved by such a revocation has the opportunity to seek an adjudicatory hearing pursuant to the procedures set forth at N.J.A.C. 7:27-8.12.

Responsibility: The proposed new rule at N.J.A.C. 7:27-25.12 cross-references the applicable penalty provisions at N.J.A.C. 7:27A-3, and states that all owners and operators of any facility subject to these rules are jointly and severally responsible for conformance with its requirements.

Service Fees: The variance provisions set forth at N.J.A.C. 7:27-25.9 and 10 include service fees that apply to applicants seeking the Department's approval of a variance and to persons to whom variances from the oxygen content standards have been issued. These service fees are intended to recover, in part, the cost to the Department of reviewing and acting on the variance applications received and of monitoring facilities' compliance with the variances issued.

The administration of the variance applications will impose a significant workload on the Department. Processing, reviewing, reaching a determination on, and issuing or denying variances, and responding for

requests for adjudicatory hearings, represent an administrative burden which the Department estimates, on the average, will cost the Department in excess of \$1,000 per variance, in terms of salaries, overhead, equipment and supplies. However, N.J.S.A. 26:2C-9(g) prohibits the Department from charging an air pollution control service fee in excess of \$500.00. Therefore the application fee is proposed to be \$500.00.

After inspecting a facility to confirm that it is in compliance with its variance, the Department will issue an invoice to the facility for the compliance inspection service fee. The compliance inspection fee is proposed to be \$200.00, which is the amount established in the Supplementary Fee Schedule at N.J.A.C. 7:27-8.11 for the periodic compliance inspections. The Department will charge the compliance inspection service fee only once during the term of the variance. The periodic compliance inspections carried out by the Department pursuant to N.J.A.C. 7:27-8.11 are equivalent, in terms of the workload required, to the compliance inspections to be performed pursuant to this subchapter. The "Basis and Background Document"(31) estimated that the average cost to the Department, in Fiscal Year 1991 dollars, of carrying out a periodic compliance inspection totalled \$240.00.

Penalties: Revisions to N.J.A.C. 7:27A-3.10 set forth administrative penalties to which persons who fail to comply with the provisions of these new rules and amendments would be subject.

The proposed penalty amounts are, with the two exceptions discussed below, based on the amounts of similar previously promulgated penalties. For each penalty the precedent referred to in developing these proposed penalty amounts is set forth in Table 5 below.

Table 5
Precedents for Proposed Penalties

Citation for Which Penalty is Proposed	Citation of Provision For Which a Similar Penalty Has Been Promulgated
N.J.A.C. 7:27-25.3(b)	N.J.A.C. 7:27-25.3(a)
N.J.A.C. 7:27-25.3(c)	N.J.A.C. 7:27-25.3(a)
N.J.A.C. 7:27-25.4(a)2	N.J.A.C. 7:27-25.4(a)
N.J.A.C. 7:27-25.4(a)3	N.J.A.C. 7:27-25.4(b)
N.J.A.C. 7:27-25.7(g)	N.J.A.C. 7:27-8.3(d)
N.J.A.C. 7:27-25.7(h)1-2	N.J.A.C. 7:27-25.4(b)
N.J.A.C. 7:27-25.7(h)3	N.J.A.C. 7:27-8.3(d)
N.J.A.C. 7:27-25.7(h)4	N.J.A.C. 7:27-16.4(m)
N.J.A.C. 7:27-25.8	N.J.A.C. 7:27-8.3(d)
N.J.A.C. 7:27-25.9(l)	N.J.A.C. 7:27-25.4(b)
N.J.A.C. 7:27-25.9(m)2	N.J.A.C. 7:27-8.3(d)
N.J.A.C. 7:27-25.9(o)	N.J.A.C. 7:27-25.3(a)
N.J.A.C. 7:27-25.9(p)1-3	N.J.A.C. 7:27-25.4(b)
N.J.A.C. 7:27-25.9(p)4	N.J.A.C. 7:27-25.4(b)
N.J.A.C. 7:27-25.9(p)5	N.J.A.C. 7:27-8.3(d)
N.J.A.C. 7:27-25.9(p)6	N.J.A.C. 7:27-16.4(m)
N.J.A.C. 7:27-25.9(p)7	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-25.9(q)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-25.10(i)	N.J.A.C. 7:27-25.4(b)
N.J.A.C. 7:27-25.10(k)2	N.J.A.C. 7:27-8.3(d)
N.J.A.C. 7:27-25.10(l)1	N.J.A.C. 7:27-25.4(b)
N.J.A.C. 7:27-25.10(l)2	N.J.A.C. 7:27-16.6(i)2
N.J.A.C. 7:27-25.10(l)3	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-25.10(l)4	N.J.A.C. 7:27-8.3(d)1
N.J.A.C. 7:27-25.10(l)5	N.J.A.C. 7:27-25.4(b)

The two exceptions are the penalties proposed for violations of N.J.A.C. 7:27-25.9(q) (contemporaneous average oxygen content less than 2.7 percent) and N.J.A.C. 7:27-25.10(l)3 (provision of nonconforming gasoline). These penalties include variable amounts intended to recover the economic benefit which a facility would have gained as a result of noncompliance. This economic benefit is proportional to the amount of nonconforming gasoline a facility provided (for violations of N.J.A.C. 7:27-25.10(l)3), or to the amount of high oxygen content fuel a facility would have had to provide to meet the contemporaneous average requirements (for violations of N.J.A.C. 7:27-25.9(q)). In calculating the economic benefit, the Department has used industry estimates that the increased cost of oxygenated fuel averages \$0.03 to \$0.05 per gallon.

Under N.J.A.C. 7:27-25.9(q), a facility which obtains a variance allowing contemporaneous averaging will be subject to penalties, if the average oxygen content of the gasoline provided, sold, or used in a given month

is less than 2.7 percent. Had the facility provided, sold, or used some additional amount of that gasoline grade having the highest minimum oxygen content authorized by the variance for the facility, the average oxygen content for the month would have been 2.7 percent; the penalty is based upon that additional amount. The additional amount is referred to in the example below as "V_H."

The following example illustrates the calculation of V_H. The example assumes that in a given month, a facility sold the following quantities of grades of gasoline and that the minimum oxygen content allowed for each grade is as follows:

Quantity (gallons)	Minimum Oxygen Content
40,000	2.4%
30,000	2.5%
40,000	3.1%

As discussed in the summary of N.J.A.C. 7:27-25.10 above, the average oxygen content is determined as follows:

1. For each grade of gasoline, multiply the minimum oxygen content by the actual monthly volume:

$$(40,000 \times 2.4) = 96,000$$

$$(30,000 \times 2.5) = 75,000$$

$$(40,000 \times 3.1) = 124,000$$

2. Sum the products obtained in 1 above:

$$96,000 + 75,000 + 124,000 = 295,000$$

3. Divide this sum by the total monthly volume (in this case, 40,000 plus 30,000 plus 40,000, or 110,000):

$$295,000/110,000 = 2.68$$

The average oxygen content is 2.68 percent. If the facility had sold an additional 5,000 gallons of the grade of gasoline with an oxygen content of 3.1 percent, it would have increased the average oxygen content of all gasoline sold to the required 2.7 percent, as follows:

$$1. (40,000 \times 2.4) = 96,000$$

$$(30,000 \times 2.5) = 75,000$$

$$(45,000 \times 3.1) = 139,500$$

(this reflects the additional 5,000 gallons sold)

$$2. 96,000 + 75,000 + 139,500 = 310,500$$

3. The additional 5,000 gallons sold increases the total quantity sold to 115,000 (40,000 + 30,000 + 45,000).

$$310,500/115,000 = 2.7$$

Therefore, the facility would have needed to sell an additional 5,000 gallons of the grade of gasoline with an oxygen content of 3.1 percent in order to comply with the 2.7 percent average requirement. The penalty amount is based on 5,000 gallons.

The penalty for a first offense under N.J.A.C. 7:27A-3.10 is \$800.00 plus \$0.05 per gallon. Therefore, the penalty in this case would be \$800.00 plus \$250.00, or \$1,050.

A facility providing nonconforming gasoline pursuant to a variance issued under N.J.A.C. 7:27-25.10 is required to pay a penalty based upon the amount of nonconforming gasoline provided. A facility to which such a variance is issued is subject to this penalty, for which the citation is N.J.A.C. 7:27-25.10(1)3. The variable amount of the penalty is determined by multiplying \$0.05 by the total number of gallons of nonconforming gasoline sold or provided during the period the variance is in effect.

Persons subject to this subchapter who fail to conform with its requirements may be subject to criminal penalties, including those set forth at N.J.S.A. 26:2C-28.3 in addition to civil penalties in accordance with N.J.A.C. 7:27A-3.

Social Impact

These proposed new rules and amendments will have a positive social impact. They are designed to help New Jersey achieve and maintain the NAAQS for CO by reducing the emissions of CO from motor vehicles. Motor vehicle exhaust is the major source of CO emissions in New Jersey. When enacted, these new rules and amendments will reduce or prevent the exposure of millions of persons who reside or work in New Jersey to unhealthy ambient concentrations of CO.

As discussed above, exposure to concentrations of CO in excess of the NAAQS may adversely affect human health. The proposed new rules

and amendments would contribute significantly to reducing such exposure. This social benefit would accrue especially to persons living or working in or near or traveling through congested and heavy traffic areas.

Another social benefit is that oxygenated gasoline will favorably impact motor vehicle driveability. The oxygenated fuels program will be in effect during the winter months when cold engines are prone to start-up problems. The extra oxygen in the fuel will enhance fuel combustion in cold weather and will tend to mitigate the cold weather start-up problems.

Allowing the use of ethanol as an oxygenate will provide the agricultural industry, in particular the corn growers, a market to sell their product. Ethanol is an alcohol derived from agricultural products and is produced in the United States. An expanded market for ethanol would help ensure the maintenance of strong demand for American agricultural products.

These rules also provide the general public with information so that they can make informed choices when purchasing motor vehicle fuel. The labeling provisions of these new rules and amendments require retailers to label their fuel pumps. The labels will inform gasoline consumers generally of the "clean air" characteristics of the fuel and provide specification as to both the type(s) of oxygenates blended into the fuel and quantity (in percent by volume) of each oxygenate present. Consumers who have preferences, based on the characteristics of the various oxygenates, will be able to select their fuels accordingly.

Economic Impact

Petroleum refiners have indicated to the Department that producing gasoline that meets the oxygen standards of these proposed rules and amendments will be more costly than producing currently available gasoline. The adoption of these proposed new rules and amendments would impose these increased costs on the formulation of gasoline.

These increased costs would derive primarily from the addition of oxygenate(s) as a final blending component in gasoline production; this includes the cost of the oxygenate(s), the storing of the oxygenate(s) prior to their being blended into gasoline, and the costs of blending oxygenate(s) into the gasoline. Also some increased costs would derive from changes in the gasoline distribution system.

Based on programs already in existence throughout the country, the Department believes that the oxygenates that will primarily be used to produce oxygenated fuels for use in New Jersey are MTE and ethanol. MTBE is manufactured by petrochemical processes and some quantities are imported from foreign countries. Ethanol is a less expensive oxygenate derived from agricultural products (mainly from corn) and is produced within the United States. As ethanol is a less expensive oxygenate, oxygenated fuel produced with ethanol may be able to be provided to consumers at lower costs than other oxygenated fuels. If this is the case, the use of ethanol as an oxygenate could minimize the costs of the oxygenated fuels program to the consumer.

Colorado data indicates that ethanol blend gasoline may be generally less expensive to produce than "regular" non-oxygenated fuel, whereas MTBE blend fuels are consistently more expensive.⁽¹⁶⁾ The effect of these proposed new rules and amendments on the cost of producing complying gasoline will therefore depend on the type of oxygenate(s) being used. The fact that the Department has developed these new rules and amendments so as to allow use of ethanol blends in the oxygenated fuels marketplace should help to minimize any price increase of gasoline during the oxygen program control periods.

EPA has modeled the cost effectiveness of the oxygenated fuels program as a CO emission reduction strategy.⁽²⁶⁾ It has used the characteristics of the Philadelphia CMSA, including its stationary source emissions and its annual vehicle-miles-travelled (VMT) patterns, as the basis for its "representative" mid-Atlantic scenario. This model projects that reductions of CO emissions from the oxygenated fuels program will cost \$222.00 per ton of CO reduced in 1992, and that this cost will increase to \$336.00 per ton by the year 2000. (See Table 6 below.) Other calculations of the costs of reducing CO emissions through implementation of an oxygenated fuels program have ranged from \$0.00 to \$1,760 per ton.⁽³²⁾

TABLE 6
Cost-Effectiveness of the Oxygenate Program
For a Mid-Atlantic City Over a Four Month Control Period(26)

Calendar Year	Gasoline (millions of gallons used)	Program Cost Per Gallon	Total Cost (Million \$)	Program Benefit (tons of CO reduced)	Program Cost/Ton
1992	714.9	\$0.0205	\$14.7	66,061	\$222
1993	729.5	\$0.0205	\$15.0	63,162	\$237
1994	745.9	\$0.0205	\$15.3	61,101	\$250
1995	764.2	\$0.0205	\$15.7	58,874	\$266
1996	783.0	\$0.0205	\$16.1	56,890	\$282
1997	803.3	\$0.0205	\$16.5	55,402	\$297
1998	825.4	\$0.0205	\$16.9	54,278	\$312
1999	848.7	\$0.0205	\$17.4	52,779	\$330
2000	873.3	\$0.0205	\$17.9	53,220	\$336

The major cost of an oxygenated fuels program is the increased cost of gasoline. The estimates of the amount of this increase range from zero (\$0.00) to \$0.08 per gallon.(32) The data contained in the report from a June, 1990 contract study conducted for the state of Colorado, indicate that, for an oxygenated fuels program requiring 2.0 percent oxygen in the premium grade unleaded fuel and 2.6 percent oxygen in all other fuels, a lower case estimate for a statewide gasoline cost increase is \$0.017 per gallon, a middle case estimate is \$0.027 per gallon, and an upper case estimate is \$0.58 per gallon.(16)

Industry representatives have indicated to the Department that they estimate that in New Jersey the increase will be approximately three to five cents per gallon of gasoline during the control period. This estimate translates into increased gasoline costs of \$6 to \$10 million more per month (or \$43 to \$72 million more for the seven month control period) in northern New Jersey. In southern New Jersey the increased gasoline costs will be \$2 to \$4 million more per month (or \$9 to \$16 million dollars more for the four month control period). This added expense will need either to be absorbed by the refiners, importers, blenders or distributors or be passed on to consumers through an increase in retail price, or a combination of both. An examination of the implementation of the oxygenated fuels program in Colorado showed that industry absorbed significant amounts of the increased fuel costs there.(16)

An additional aspect of the costs to the gasoline consumer due to the oxygenated fuels program derives from the effect of oxygenated fuel on fuel economy. On the one hand, oxygenated fuels contain less energy value per unit mass. In general, according to the theoretical models, each one percent in oxygen content results in a one percent loss in energy.(32) On the other hand, use of oxygenated fuels lowers the air to fuel ratio of a vehicle, increasing the vehicle's engine efficiency and in some cases improving fuel economy.(16) Testing on older vehicles without oxygen sensors has generally shown a slight increase in fuel economy. Newer vehicles with oxygen sensors and closed loop carburetion technology have generally shown a slight decrease in fuel economy for MTBE and ethanol blends. Based on Colorado's fuel economy testing, the Department anticipates, on the average overall, some loss of fuel economy due to the use of oxygenated fuels.(16)

Refiners, importers, blenders and distributors will be affected by the costs of testing gasoline, prior to its shipment out of the facility, to determine its oxygen content by weight. EPA estimates the cost of such laboratory analysis of gasoline is between \$75.00 and \$150.00 per sample.(26) Refiners, importers, blenders and distributors will also be subject to certain added administrative costs, including the costs of making and maintaining the required records and preparing and submitting any required reports.

For retailers and wholesale purchaser-consumers, there will also be some added expense in complying with the amendments and rules. The recordkeeping requirements of these proposed new rules and amendments would require retailers to keep a file of documents (such as invoices or bills of lading) showing the oxygen content by weight of the gasoline received and the type and volume of each oxygenate in the gasoline and records showing the volume of each grade of gasoline sold. As gasoline retail facilities and wholesale purchaser-consumers already maintain, for other purposes, such records of invoices and gasoline sales, there should be little added cost due to these recordkeeping requirements. Additionally, the complaints monitoring provisions of these rules require retailers and wholesale purchaser-consumers to allow the Depart-

ment to obtain gasoline samples from their retail outlets and wholesale purchaser-consumer facilities. Also, the labeling requirements of these proposed new rules would require retailers and wholesale purchaser-consumers to incur the costs entailed in labeling their fuel pumps.

These proposed new rules and amendments contain variances which may have a positive economic impact on the affected facilities. The contemporaneous averaging variance allows an applicant to meet the 2.7 percent oxygen content standard through the use of averaging. This may be economically advantageous since it allows blends of gasoline to be used or sold which have an oxygen content less than 2.7 percent (that is, blends with an oxygen content from 2.0 to 2.7 percent), as long as the 2.7 percent standard is met on the average at each retail facility and at each facility of a wholesale purchaser-consumer. This flexibility in how the oxygen content standard may be met may allow refineries, importers, and blenders to produce fuel at lower costs by using less quantities of oxygenates in those grades of fuel approved to have a less than 2.7 percent oxygen content.

The variance for shortage of supply would allow provision, sale, or use of nonconforming fuel, if conforming fuel is not available due to extraordinary circumstances (such as an "Act of God"). Such a variance would be only for a limited period (45 days). The automatic penalties associated with the variance have been established to impose a penalty in addition to capturing any cost-savings associated with the non-conforming fuel, in order to ensure that no economic advantage could be derived. However, such a variance would allow an applicant to maintain contractual or other obligations and to preserve market share by continuing to supply gasoline.

The proposed new rules and amendments will impose additional administrative burdens and costs on the Department. The primary responsibility for the Department will be monitoring facilities' compliance with the standards and requirements of the rules. Additionally the Department will need to review applications for variances and monitor reports from facilities to which variances have been issued. To carry out these administrative responsibilities, the Department estimates the need for three additional positions.

Additionally, as part of its monitoring of facilities' compliance, the Department will take samples and analyze the gasoline during the control period. The Department estimates that about 1,300 samples will be taken annually. EPA estimates the cost of such laboratory analysis to be \$75.00 to \$150.00 per sample. EPA suggests that states may reduce this cost by establishing an in-house laboratory.(26) The Department intends to consider this option. EPA estimates that the start-up for establishing such a laboratory is approximately \$125,000, which is primarily made up of the cost of a gas chromatograph.

Also, as a gasoline consumer, the Department may experience increased fuel purchase costs for gasoline during the control periods.

Environmental Impact

The implementation of the proposed new rules and amendments will result in a positive environmental impact by reducing the concentration of CO in the ambient air. The use of oxygenated gasoline will improve combustion efficiency and substantially reduce CO emissions from motor vehicles, enabling New Jersey to progress toward attainment of the national ambient air quality standard (NAAQS) for CO. New Jersey anticipates that, through the implementation of this measure and other mobile source control strategies mandated by the CAA, the State should come into attainment of the NAAQS standard by January 1, 1995, and should be able to maintain this attainment thereafter.

CO is generally a localized wintertime pollutant. Elevated levels of CO are associated both with congested traffic and with colder temperatures, when cars tend to burn fuel less efficiently. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. The extra oxygen enhances fuel combustion and also facilitates combustion in a cold engine particularly during vehicle start-up in the winter.

Significant air quality benefits were realized by an oxygenated fuels program in Denver, Colorado. In a 1991 report, it was calculated that the three month program (requiring 2.0 percent oxygen in premium grade unleaded fuel and 2.6 percent oxygen in all other gasoline) reduced tailpipe emissions of CO from motor vehicles by 19 percent. As a result, an estimated 290 tons of CO per day was not released into the Denver metropolitan atmosphere.(16) An oxygenated fuel program should be

similarly effective in reducing high ambient concentrations of CO in New Jersey.

The Department estimates that over 80 percent of the emissions of CO in New Jersey derive from vehicles. EPA has studied the impact on CO emissions of using oxygenated fuels(26) and found that such emissions were significantly reduced. Table 7 below, for example, gives the CO reductions EPA obtained for three different types of light-duty vehicles (no catalyst; oxidation catalyst; and three-way catalyst/closed loop). Table 7 sets forth both the results that were measured for blended fuel into which 3.5 percent oxygen, by weight, was added to a base fuel and the results that were calculated, through interpolation, for 2.7 percent oxygen fuel. This data suggests also that New Jersey should achieve between 15 and 20 percent reduction in its CO emissions through implementation of the oxygenated fuels program.

Table 7

Vehicle Group	Technology-Specific Effects on CO Emissions of an Oxygenated Fuel with Volatility Matched to Base Fuel(26)	
	Measured Effect of 3.5% Oxygen on CO Emission	Interpolated Effect of 2.7% Oxygen Blend on CO Emissions
No Catalyst	-22.9%	-17.7%
Oxidation Catalyst	-33.0%	-25.5%
3-Way Catalyst/Closed Loop	-20.2%	-15.6%

However, if ethanol is used as the oxygenate, the use of oxygenated fuels in vehicles year-round may not only have the environmentally beneficial effect of reducing winter CO emissions but may also have the environmentally deleterious side effect of increasing emissions of the ozone precursors VOC and NO_x during the summer. This could impede the State's progress toward attainment of the NAAQS for ozone. In contrast, the blending of MTBE or other oxygenates manufactured by petrochemical processes (such as tertiary amyl methyl ether (TAME) or ethyl tertiary butyl ether (ETBE)) into fuels has not been shown to have a significant effect on the emission of ozone precursors.

A number of sources have documented the increased emission of NO_x resulting from the use of ethanol blends. EPA has reported that there is a 3.8 percent NO_x increase with using 10 percent ethanol blends in gasoline.(33) A report issued by the Auto/Oil Quality Improvement Research Program, a cooperative research program initiated by three domestic automobile manufacturers and 14 petroleum companies, indicates that blending ethanol into a base fuel increases the NO_x emissions from vehicles using the fuels by approximately six percent.(17) Additionally, New York State has conducted their own modelling studies using auto industry models that show a significant increase in NO_x emissions of up to 3.5 percent with using ethanol blends. As ambient NO₂ concentrations in New Jersey lie well within the NAAQS limits for NO₂, the Department does not anticipate that any increased NO_x emissions that may result from the use of ethanol blends in New Jersey would affect significantly the State's continued attainment of the NAAQS for NO₂.

As gasoline consists primarily of predominantly organic compounds, evaporation of gasoline results in increased concentrations of volatile organic compounds (VOC) in the ambient air. The greater the volatility of gasoline, the more readily it evaporates. The volatility of gasoline is measured in terms of its Reid vapor pressure (RVP). The Auto/Oil Quality Improvement Research Program report(17) indicates that ethanol, when blended into gasoline increases the volatility of the resulting fuel blend. When 10 percent ethanol by volume is blended into base gasoline having a nine pound per square inch Reid vapor pressure (nine psi RVP), the Reid vapor pressure of the blend product is at least 0.8 psi higher than the base gasoline. When 10 percent ethanol by volume is blended into base gasoline having an eight pound per square inch Reid vapor pressure (eight psi RVP), the Reid vapor pressure of the blend is at least 1.2 psi higher than the base gasoline. This increased volatility results in higher evaporative emissions from vehicles. The report documents these increased evaporative emissions both in terms of increases in the evaporative emissions that occur as a result of the daily range in temperature (diurnal breathing losses) and in terms of increases in the evaporative emissions that occur after the termination of engine operation (hot soak losses). They found that diurnal breathing losses increased 30 percent and hot soak losses increased 50 percent on the vehicle fleet tested.

Use of ethanol blends in the summertime during New Jersey's ozone season, May 1 through September 15, could therefore increase emissions

of VOC and NO_x and could contribute to the formation of ambient ozone. These emissions would adversely impact the State's efforts to make progress toward attainment of the NAAQS for ozone. Ozone is formed on warm summer days from the reaction of volatile organic compounds (VOCs) with oxides of nitrogen (NO_x) in the ambient air in reactions activated by ultraviolet radiation in sunlight. To minimize these potential consequences of using ethanol as an oxygenate, these new rules and amendments do not provide any relaxation of the RVP standard for ethanol blends during the summer ozone season.

Regulatory Flexibility Analysis

The proposed amendments and new rules would apply to all facilities that refine, import, blend or distribute gasoline in New Jersey and to wholesale purchaser-consumers and gasoline retailers. The small businesses affected by these new rules and amendments are primarily the independent gasoline distributors and retailers and persons who hold franchises to operate retail gasoline facilities. The Department estimates that all of the 6,750 gasoline retailers in the State and 15 of the 105 refineries, importers, blenders, distributors and wholesale purchaser-consumers in the state affected by these proposed new rules and amendments are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

For these small businesses, the additional expense of complying with these proposed new rules and amendments are expected to be small. The provisions of this subchapter require small businesses to maintain records, to label their fuel pumps, and to allow the Department to take gasoline samples from their retail outlet. The documents that would be required by these proposed new rules and amendments to be maintained as records, however, are expected to be documents already being maintained in the facilities' recordkeeping systems.

In developing these proposed new rules and amendments, the Department has balanced the need to protect the environment against the economic impact and has determined that the effect of the rules on small businesses is reasonable. Therefore, no exemption of small businesses from coverage is provided.

Footnotes

(1) 42 USC 7409.

(2) 40 CFR 50.

(3) 42 USC 7545.

(4) New Jersey Department of Environmental Protection and Energy, "Data Processing for Allocation of Daily Vehicle Miles Travel (DVMT) by Municipality by Functional Class of Roadway for Use in Establishing the 1990 Highway Mobile Source Base Year 1990 Emission Inventory (Draft)," Office of Energy, May, 1992.

(5) United States Environmental Protection Agency, "National Air Quality and Emission Trends Report, 1990," November, 1991, 3-18, (EPA-450/4-91-023).

(6) Stansfield, Linda, ed., Air Pollution in New Jersey: Problems, Programs, Progress, American Lung Association of New Jersey, Union, New Jersey, 1989, p. 10.

(7) United States Environmental Protection Agency, Air Quality Criteria for Carbon Monoxide, Research Triangle Park, October, 1979, (EPA-600/8-79-022).

(8) United States Environmental Protection Agency, Revised Evaluation of Health Effects Associated with Carbon Monoxide Exposure: An Addendum to the 1979 Air Quality Criteria Document for Carbon Monoxide, Research Triangle Park, August, 1983, (EPA-600/8-83-033A).

(9) Wark, K. and Warner, C.F., Air Pollution: Its Origin and Control, Thomas Y. Crowell Company, Inc., New York, 1976.

(10) New Jersey Department of Environmental Protection, "1990 Air Quality Report," Trenton, July, 1991.

(11) Clean Air Act, Section 107(d).

(12) 40 CFR 81, "Air Quality Designations and Classifications; Final Rule," Federal Register, Vol. 56, No. 215, Wednesday, November 6, 1991, pp. 56800-56801.

(13) 42 USC 7509.

(14) EPA published its proposed determination as to the length of the control period for each oxygen program control area in the Federal Register on July 9, 1991 (56 FR 31151); final guidance on control period lengths is currently under review and is expected to be published shortly.

(15) United States Environmental Protection Agency, "Supplemental Notice of Proposed Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended," (draft), undated.

(16) Colorado Department of Health, "Air Pollution Control Division Report to the Colorado Air Quality Control Commission," Oxygenated Fuels Program, April 15, 1991.

(17) Technical Bulletin No. 6, "Emission Results of Oxygenated Gasolines and Changes in RVP," Auto/Oil Air Quality Improvement Program Research Program, September, 1991.

(18) United States Environmental Protection Agency, "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternate Fuels and Fuel Blends," January, 1988.

(19) New Jersey Register, Tuesday, February 21, 1989 (21 NJR 483).

(20) 54 FR 25572 (June 16, 1989).

(21) 54 FR 11868 (March 22, 1989) and 55 FR 23665 (June 11, 1990).

(22) 57 FR 3978 (February 3, 1992).

(23) United States Environmental Protection Agency, "Reformulated Gasoline Supplemental Notice of Proposed Rulemaking," March 31, 1992.

(24) 56 FR 131, Federal Register, Vol. 56, No. 131, pp. 31154-31165.

(25) Advisory Committee on Reformulated Gasoline, Antidumping and Oxygenated Gasoline, United States Environmental Protection Agency, "Agreement in Principle," August 16, 1991.

(26) United States Environmental Protection Agency, "Implementation Guidelines," Draft, November 19, 1991.

(27) New Jersey Department of Environmental Protection and Energy, "Summary of Recommendations and Comments made at the November 7, 1991, Public Workshop on Mobile Source Rules Under Development Pursuant to the 1990 Clean Air Act Amendments."

(28) Pennsylvania Bulletin, Volume 21, No. 49, December 7, 1991, pp. 5662-5670.

(29) Federal Register, Volume 57, No. 24, "Proposed Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended," Wednesday, February 5, 1992, p. 4431.

(30) Memo from John Jenks, Manager, Bureau of Organic Analytical Services to Anthony McMahon, Director, Division of Facility Wide Enforcement on "Basis & Background Documentation for Tolerance Limits for Oxygen Content in Gasoline," April 8, 1992.

(31) New Jersey Department of Environmental Protection, "Basis and Background Document for Proposed Amendments to N.J.A.C. 7:27-8; Permits, Certificates, Hearings, and Confidentiality," February, 1990.

(32) Peterson, James E. and Stedman, Donald H., "Find and Fix the Polluters," Chemtech, American Chemical Society, January, 1992.

(33) United States Environmental Protection Agency, "Guidance on Estimating Motor Vehicle Emission Reductions From the Use of Alternative Fuels and Fuel Blends," January 29, 1988.

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

[7:27-25.1 Scope

This subchapter prescribes the rules of the Department for the control and prohibition of air pollution by vehicular fuels. The following governs the volatility standards for fuels used as motor vehicle fuels, and provided for use as motor vehicle fuels, in the

State and the methods to be followed by refiners, importers, blenders, distributors, wholesale purchaser-consumers and retailers to assure these standards are met.]

7:27-[25.2]25.1 Definitions

[The following words] Words and terms, when used in this subchapter, [shall] have [the following] meanings as defined at N.J.A.C. 7:27-1.4 or as follows, unless the context clearly indicates otherwise:

...
 "Carbon monoxide (CO)" means a gas having a molecular composition of one carbon atom and one oxygen atom.

"Control area" means a geographic area within which gasoline to be used, sold, or dispensed as vehicular fuel in New Jersey is subject to the applicable standards set forth at N.J.A.C. 7:27-25.3 during the specified control period.

"Control period" means the applicable period each year during which gasoline within a control area is subject to the oxygen content or RVP standards set forth at N.J.A.C. 7:27-25.3.

...
 "Distribution capacity" means capacity for transportation, storage and blending.

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or [importer] importer's facility and any retail outlet or wholesale [purchaser-consumer] purchaser-consumer's facility.

...
 "Gasoline" means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, sold for use or used in a motor vehicle or motor vehicle engine, and commonly or commercially known or sold as gasoline.

...
 "Nitrogen dioxide (NO₂)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and two oxygen atoms.

"Nitrogen oxide (NO)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and one oxygen atom.

"Nonconforming gasoline" means any gasoline [whose vapor pressure] the RVP or oxygen content of which does not during the applicable control period conform with the [gasoline volatility] standards set forth in N.J.A.C. 7:27-25.3.

"Northern oxygen program control area" or "northern OPRG control area" means the control area which includes the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren.

"Oxides of nitrogen (NO_x)" means any of the oxides of nitrogen including, but not limited to, nitrogen oxide and nitrogen dioxide.

"Oxygen content" means, in respect to the composition of gasoline, the percentage of oxygen by weight (unless specified as being by volume) contained in the gasoline. The percentage of oxygen by weight of the gasoline shall be based upon its percentage oxygenate by volume excluding denaturants and other non-oxygen-containing components. All volume measurements are adjusted to 60 degrees Fahrenheit.

"Oxygen program (OPRG) control period" means a control period in New Jersey during which oxygen content standards set forth at N.J.A.C. 7:27-25.3 are applicable to gasoline.

"Oxygenate" means any substance which, when blended into gasoline, increases the amount of oxygen in that gasoline blend and which is allowed to be used as a gasoline additive pursuant to 42 USC 7545.

"Oxygenate blend" means a gasoline produced by blending one or more oxygenates into a base gasoline.

"Person" means any individual or entity and includes, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of the State or any agencies or instrumentalities thereof.

... "Refining process" means the combination of physical and chemical operations including, but not limited to, distillation, cracking, and reformulation, performed on crude oil in order to produce petroleum products, including gasoline.

... "RVP control area" means the entire geographic area within the State of New Jersey.

"RVP control period" means the period from May 1 through and including September 15 of each year during which the RVP standard set forth at N.J.A.C. 7:27-25.3 is applicable to gasoline to be used in New Jersey as vehicular fuel.

"Southern oxygen program control area" or "southern OPRG control area" means the control area which includes the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer and Salem.

7:27-25.2 Scope and applicability

(a) This subchapter prescribes the rules of the Department for the control and prohibition of air pollution by vehicular fuels. This subchapter governs the standards for fuels used as motor vehicle fuels and provided for use as motor vehicle fuels in the State and the methods to be followed by refiners, importers, blenders, distributors, wholesaler purchaser-consumers and retailers to assure these standards are met.

(b) Any refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer of gasoline for use as motor vehicle fuel in the State is subject to the provisions of this subchapter.

7:27-25.3 [Gasoline volatility standards] General provisions

(a) Except as provided for use in (b) below, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade for use in New Jersey during the RVP control period [May 1 through September 15 of] each year, starting in 1989, gasoline having a [Reid vapor pressure] RVP greater than 9.0 pounds per square inch.

(b) (No change.)

(c) Except as provided for at N.J.A.C. 7:27-25.9 and 25.10, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import, or exchange in trade gasoline for use in New Jersey, unless:

1. The oxygen content of the gasoline equals or exceeds 2.7 percent:

i. For the Northern OPRG control area, from October 1 through and including the following April 30;

ii. For the Southern OPRG control area, from November 1 through and including the last day of the following February; and

2. The oxygen content of the gasoline equals or is less than 3.5 percent.

(d) The standards set forth in (c) above shall become operative on (date which is 60 days after the adoption of these proposed amendments and new rules) or on such delayed effective date as EPA establishes, pursuant to 42 USC 7545 (m)(3)(C), due to a determination that there is or is likely to be, for any control area, an inadequate domestic supply of or distribution capacity for:

1. Oxygenated gasoline that meets the standard set forth in (c) above; or

2. The oxygenates needed to blend into gasoline to make fuel that conforms with (c) above.

(e) At no time shall a refiner, importer, blender, distributor, wholesale purchaser-consumer or retailer provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey gasoline unless, pursuant to 42 USC 7545, the EPA has:

1. Determined to its satisfaction that the gasoline and any oxygenate or a combination of oxygenates blended into the gasoline are substantially similar to any gasoline and any concentration of an oxygenate or a combination of oxygenates utilized, pursuant to 42 USC 7525, in the certification of any model year 1975, or subsequent model year, vehicle or engine; or

2. Waived the requirement for the gasoline and any oxygenate or a combination of oxygenates blended into the gasoline to be

substantially similar to any fuel or fuel additive utilized, pursuant to 42 USC 7525, in the certification of any model year 1975, or subsequent model year, vehicle or engine.

7:27-25.4 Recordkeeping and [testing] compliance determinations

(a) Each refiner, importer, blender or distributor shall:

1. [Between April 15 and September 15 of each year, test and prepare test reports documenting the RVP of] During any applicable control period established pursuant to N.J.A.C. 7:27-25.3, test all gasoline prior to its release from [the] a refinery, import facility, blending facility or distribution facility for use in a control area within the State[. A copy of the test report or documentation, certifying that the gasoline invoiced has an RVP of 9.0 pounds per square inch or less and is in compliance with all applicable State and Federal regulations, shall be provided to the distributor, retailer or wholesale purchaser-consumer to whom the gasoline is delivered.] to determine its RVP or oxygen content, as applicable, and for each test prepare a test report which documents the RVP or oxygen content, as applicable, of the gasoline;

2. Certify to the distributor, retailer or wholesale purchaser-consumer to whom gasoline is delivered that the gasoline has been tested in accordance with this section; that, during the RVP control period, the gasoline has an RVP of 9.0 pounds per square inch or less; that, during any applicable oxygen content control period, the gasoline conforms with the oxygen content requirements of this subchapter; and that the gasoline is in compliance with all applicable State and Federal regulations, by providing:

i. A copy of the test report prepared pursuant to (a)1 above with the certification contained therein; or

ii. The certification in writing on the invoice, bill of lading, or other transfer documents; and

[2.]3. Maintain records [regarding the] on all gasoline leaving the refinery, import facility, blending facility, or distribution facility, [including Reid vapor pressure] which document the RVP and the oxygen content of the gasoline, the type and volume of each oxygenate added, shipment quantity, shipment date, and other such information as the Department may prescribe. Documentation may include, but is not limited to, bills of lading, invoice delivery tickets, and loading tickets.

(b) Each retailer or wholesale purchaser-consumer shall maintain records [regarding] on each delivery of gasoline, including [Reid vapor pressure] RVP, oxygen content, type and volume of each oxygenated added, delivery quantity, date of delivery, and other such information as the Department may require. Documentation may include, but is not limited to, bills of lading and other transfer documents, invoice delivery tickets and loading tickets, and invoices and test reports certified pursuant to (a)2 above.

(c) Any sampling of gasoline required pursuant to the provisions of this subchapter shall be conducted in accordance with [one of] the following methods:

1. For determining the RVP of gasoline:

i. For manual sampling: ASTM D[-]4057; or

[2.]ii. For continuous sampling and nozzle sampling: California Administrative Code Title 14, R.2261(R)(3) and (k)(4)(1987)[.]; and

2. For determining the oxygen content of gasoline;

i. The methods set forth at 40 CFR 80, Appendix D; or

ii. Any other method approved in writing in advance by the Department and EPA.

(d) All testing for RVP required pursuant to the provisions of this subchapter shall be conducted using one of the following methods:

1.-3. (No change.)

(e) Any determination of the oxygen content of any sample of gasoline required pursuant to the provisions of this subchapter shall be conducted as follows:

1. The sample of gasoline shall be tested to determine the concentration, in percent by volume, of each oxygenate in the gasoline. All volume measurements used in the testing shall be adjusted to 60 degrees Fahrenheit. Only the oxygen-containing components of the oxygenate shall be taken into consideration in determining the concentration; any denaturant or other non-oxygen-containing components shall be excluded from the determination of the concentra-

tion. The testing of the sample of gasoline shall be conducted using one of the following test methods:

i. ASTM D4815; or
ii. Any other equivalent test method approved in advance in writing by the Department and EPA;

2. The densities (or specific gravities) of each oxygenate and of the oxygenate blend shall be established as follows:

i. The density of each oxygenate is given in Table 1 at N.J.A.C. 7:27-25.4; and

ii. The density of the oxygenate blend shall be calculated as follows:

(1) The density of the base gasoline into which the oxygenate(s) are blended is assumed to be 0.7420; and

(2) The density of the oxygenate blend obtained when the oxygenate(s) are blended into the base gasoline shall be calculated by determining the weighted average of the densities of the oxygenate(s) and the base gasoline. In determining this weighted average, the density of each component shall be weighted in proportion to the volumetric fraction of that component in the oxygenate blend;

(3) The mass concentration of the oxygen-containing components of each oxygenate in the gasoline shall be obtained by multiplying the concentration of each oxygenate in the gasoline, determined in (e)1 above, by the following ratio: the specific gravity (or density) given for the oxygenate in Table 1 below to the specific gravity (or density) of the oxygenate blend, determined in (e)2ii above;

4. The contribution of the oxygenate to the oxygen content of the gasoline, in percent by weight, shall be determined by multiplying the mass concentration of the oxygenate in the gasoline determined in (e)3 above by the oxygen molecular weight fraction of the oxygenate, obtained from Table 1 below; and

5. The total oxygen content in percent by weight of the gasoline shall be obtained by summing the oxygen content contribution of each oxygenate in the gasoline.

(f) In order to provide allowance for test method variation, the Department shall consider any gasoline which is tested using ASTM D4815, pursuant to (e)1i above, to comply with the standards of N.J.A.C. 7:27-25.3 if its oxygen content, calculated pursuant to (e) above, is within 10 percent of the standard.

TABLE 1
Specific Gravity and Oxygen Molecular Weight Fraction
of Common Oxygenates

Oxygenate	Oxygen Molecular Weight Fraction	Specific Gravity at 60 degrees F
methyl alcohol	0.4993	0.7963
ethyl alcohol	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7899
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114
tertiary butyl alcohol	0.2158	0.7922
methyl tertiary butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
Ethyl Tertiary Butyl Ether (ETBE)	0.1566	0.7452

[(e)](g) All records and documentation required to be made or maintained in accordance with this section, including any calculations performed, shall be maintained by each refiner, importer, blender, distributor, retailer, and wholesale purchaser-consumer, as applicable, for not less than three years from the date the record is made, and shall, upon request of the Department or its authorized representatives, be available for review.

7:27-25.8 Labeling

(a) During any oxygen content control period in which the gasoline provided, offered for sale, sold, or otherwise exchanged in

trade at a facility owned or operated by any retailer or wholesale purchaser-consumer is subject to the oxygen content standards set forth at N.J.A.C. 7:27-25.3, the retailer or wholesale purchaser-consumer shall label as specified in (b) through (f) below each fuel pump or other gasoline dispensing device.

(b) The label shall:

1. Specify the minimum oxygen content, in percent by weight, of the gasoline dispensed by that fuel pump or other gasoline dispensing device;

2. Identify any oxygenate present in the gasoline, if an oxygenate or any combination of oxygenates comprises at least one percent by volume of the gasoline; and

3. Specify the maximum percent by volume, to the nearest whole percent, of each oxygenate present in the gasoline.

(c) If identification of oxygenate(s) is required pursuant to (b)2 above, each oxygenate present in the gasoline shall be identified as "with" or "containing" (or similar wording) the specific type of oxygenate(s) in the gasoline. For example, the label may read "contains ethanol" or "with MTBE."

(d) The label shall also, except as provided in (e) below, state the following:

The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

(e) If the fuel pump or other gasoline dispensing device is dispensing nonconforming fuel in accordance with a variance issued by the Department pursuant to N.J.A.C. 7:25-25.10, the label shall state the following:

The fuel dispensed from this pump meets the requirements of the Clean Air Act as part of a program to reduce carbon monoxide pollution from motor vehicles.

(f) Any label required pursuant to this section shall be:

1. Posted on the vertical surface of the gasoline dispensing device on each side of the device from which gasoline can be dispensed, on the upper one-third of the surface, in a position clear, conspicuous, and easily readable from the position of the driver in the vehicle to which gasoline is being dispensed; and

2. Clearly legible and in block letters that are:

i. No less than 36-point bold type; and

ii. In a color that contrasts with the background on which they are placed.

7:27-25.9 Variance for contemporaneous averaging

(a) The Department may issue a variance from the oxygen content standards set forth at N.J.A.C. 7:27-25.3 which allows a retailer or a wholesale purchaser-consumer to comply through contemporaneous averaging. Such a variance would allow a retailer to provide, offer for sale, sell, or otherwise exchange in trade or a wholesale purchaser-consumer to use one or more grades of gasoline whose oxygen content is less than 2.7 percent, provided that the oxygen content of each grade of gasoline is no less than the minimum content level approved in the variance for that grade of gasoline and the contemporaneous average of the oxygen content of all the gasoline provided, sold, or used at the facility for which the variance is issued, as determined on a monthly basis pursuant to (d) below, equals or exceeds 2.7 percent. Such a variance would also allow a refiner, importer, blender, or distributor to provide to the facility gasoline whose oxygen content is less than 2.7 percent.

(b) Any variance issued by the Department pursuant to this section, and any application therefore, shall pertain to a single retail gasoline dispensing facility or to a single facility operated by a wholesale purchaser-consumer.

(c) No retailer or wholesale purchaser-consumer shall provide, offer for sale, sell or otherwise exchange in trade, or use gasoline which has a minimum oxygen content less than 2.0 percent or a maximum oxygen content greater than 3.5 percent.

(d) The contemporaneous average of the oxygen content of the gasoline is an average of the oxygen content approved in the variance for each grade of gasoline, weighted by the volume of the gasoline in a given month provided, sold or otherwise exchanged in trade at a retail gasoline dispensing facility or used by any wholesale purchaser-consumer. For the purpose of determining compliance

with the contemporaneous average requirement set forth in (a) above, a contemporaneous average shall be determined as follows:

1. For each grade of gasoline, the minimum oxygen content allowed in the approved variance for that grade of gasoline shall be multiplied by the actual monthly volume of that grade of gasoline provided, sold or otherwise exchanged in trade, or used during the month;

2. The products obtained in (d)1 above shall be summed; and

3. This sum shall be divided by the total actual volume of all grades of gasoline provided, sold or otherwise exchanged in trade, or used during the month. The result obtained is the contemporaneous average for that month.

(e) Any retailer or wholesale purchaser-consumer seeking the Department's approval of a variance pursuant to this section shall apply on forms obtained from the Department. Any person may request an application form from:

Assistant Director of Air and
Environmental Quality Enforcement
Division of Facility Wide Enforcement
Department of Environmental Protection and Energy
CN 027

Trenton, New Jersey 08625-0027

(f) An application for a variance pursuant to this section shall include the following information:

1. The name and address of the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility to which the variance will apply and each refiner, importer, blender, or distributor who will supply nonconforming gasoline to the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility; also the name and phone number of a contact person for the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility to which the variance will apply and for each refiner, importer, blender, or distributor named;

2. For each of the 12 calendar months preceding the variance application, the volume of each grade of gasoline and the total volume of gasoline provided, offered for sale, sold or otherwise exchanged in trade at the retail gasoline dispensing facility or used by the wholesale purchaser-consumer;

3. For the retail gasoline dispensing facility or wholesale purchaser-consumer, the proposed minimum oxygen content of each grade of gasoline to be sold. These proposed minimums shall be established so as to assure that the contemporaneous average of the oxygen content of all grades of gasoline at the facility will be not less than 2.7 percent oxygen on a monthly basis during the period the variance is in effect;

4. The type(s) of oxygenates to be used in each grade of gasoline;

5. A description of the proposed system for distributing gasoline to the retail gasoline dispensing facility or wholesale purchaser-consumer's facility to which the variance applies;

6. A demonstration, satisfactory to the Department, that the contemporaneous average of the oxygen content of the gasoline at the facility to which the variance applies will equal or exceed 2.7 percent throughout the applicable oxygen program control period. For the purpose of demonstrating in the application that the proposed minimum oxygen content limits for each grade of gasoline are adequate to ensure that the contemporaneous average of the gasoline sold or used at the facility will not be less than 2.7 percent, the contemporaneous average shall be calculated in accordance with (d) above, except that the volume for each grade of gasoline used in accordance with (d)1 above shall be based on the preceding year's actual monthly gasoline volumes provided pursuant to (f)3 above; and

7. Such other information as the Department determines is necessary to ensure compliance with this subchapter and to evaluate the potential effect of approval of the variance on public health, welfare and the environment.

(g) Any application for a variance submitted to the Department pursuant to this subchapter shall include a service fee in accordance with N.J.A.C. 7:27-25.12(c) and shall be certified in accordance with N.J.A.C. 7:27-8.24.

(h) No retailer, refiner, importer, blender, distributor, or wholesale purchaser-consumer included in an application for a variance

submitted to the Department pursuant to this section may supply, provide, offer for sale, sell or otherwise exchange in trade or use any nonconforming gasoline before the Department approves the variance in writing.

(i) The Department shall deny an application for a variance if:

1. The Department determines that approval of the variance may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the applicant has exclusive use or occupancy; or

2. The applicant fails to demonstrate, to the satisfaction of the Department, the capability and intent to ensure that throughout the applicable oxygen program control period at the retail gasoline dispensing facility or wholesale purchaser-consumer's facility:

i. The contemporaneous average of the oxygen content of the gasoline will equal or exceed 2.7 percent; and

ii. The oxygen content of any grade of gasoline does not exceed 3.5 percent and is not less than 2.0 percent.

(j) The Department may deny an application for a variance if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(k) A variance issued by the Department pursuant to this section shall be valid for the period stated in the written approval of the variance. The period shall be no longer than one year from the date of approval.

(l) Any retailer or wholesale purchaser-consumer to whom the Department issues a variance pursuant to this section shall provide a copy of the variance to each refiner, importer, blender, and distributor named as a supplier of nonconforming gasoline in the variance.

(m) Any person holding a variance issued by the Department pursuant to this section shall:

1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;

2. Make said variance readily available for inspection on the operating premises to the Department or its authorized representatives;

3. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction; and

4. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.12(d), within 60 days after receipt of a fee invoice.

(n) The person to whom the Department has issued a variance pursuant to this section shall ensure that:

1. Sufficient volume of each grade of gasoline is sold such that the contemporaneous average of the oxygen content of all grades of gasoline at that facility, determined in accordance with (d) above, equals or exceeds 2.7 percent in every calendar month during which the variance is in effect; and

2. The oxygen content of each grade of gasoline provided, offered for sale, sold or otherwise exchanged in trade or used at that facility at all times equals or exceeds the minimum oxygen content approved for that grade of gasoline in the variance but does not exceed 3.5 percent.

(o) No refiner, importer, blender, or distributor named in a variance pursuant to (f)1 above may provide, sell, transport, or supply gasoline to the facility to which the variance applies unless the oxygen content of the gasoline provided, sold or transported meets or exceeds the minimum oxygen content approved in the variance for that grade of gasoline at that facility.

(p) Any person to whom the Department has issued a variance pursuant to this section shall:

1. Record each day during the applicable oxygen content control period:

i. The volume in gallons of each grade of gasoline provided, sold or otherwise exchanged in trade at the retail gasoline dispensing facility or used by the wholesale purchaser-consumer's facility to which the variance applies; and

ii. The volume in gallons and the oxygen content in percent by weight of, and the type(s) of oxygenate in, each shipment of each grade of gasoline received from any refiner, importer, blender, or distributor at the facility;

2. Calculate for each month, in accordance with (d) above, the contemporaneous average of the oxygen content of the gasoline for the retail gasoline dispensing facility or wholesale purchaser-consumer to which the variance applies;

3. For each month in the applicable oxygen program control period, within 30 days after the end of the month, submit to the Department a report of the contemporaneous average determined in accordance with (p)2 above for the retail gasoline dispensing facility or wholesale purchaser-consumer facility. The report shall be submitted in a format acceptable to the Department and shall be certified in accordance with N.J.A.C. 7:27-8.24; and

4. Maintain for a period no less than three years from the date that they were made the following;

i. Records required to be kept pursuant to (p)1 above;

ii. Calculations required to be made pursuant to (p)2 above; and

iii. Reports required to be prepared pursuant to (p)3 above;

5. Make the records, calculations, and reports required to be maintained pursuant to (p)4 above available, upon request, for review by the Department or its authorized representatives;

6. Upon the request of the Department, submit to the Department all or any part of the information contained in the records, calculations, and reports required to be maintained pursuant to (p)4 above; and

7. Carry out any additional requirements specified by the Department in its conditions of approval of the variance in order to assure compliance by the facility with the requirements of this subchapter.

(g) If a report to be submitted to the Department pursuant to (p)3 above indicates that the contemporaneous average at any retail gasoline dispensing facility or wholesale purchaser-consumer's facility does not equal or exceed 2.7 percent oxygen by weight, the person to whom the variance is issued shall remit to the Department with the report penalties pursuant to N.J.A.C. 7:27A-3.10(e)25. Any penalty due shall be submitted to the Department with the report. The Department will not consider any submission of a report for which a penalty is required acceptable unless the penalty is remitted with the report.

(r) The Department may revoke any approval of any variance granted pursuant to this section if the Department determines that:

1. A refiner, importer, blender, or distributor included in a variance has provided, sold, or transported nonconforming gasoline to the facility to which the variance applies that fails to meet the minimum oxygen content approved in the variance for that grade of gasoline at that facility;

2. The retailer has provided, offered for sale, sold or otherwise exchanged in trade or the wholesale purchaser-consumer has used at the facility to which the variance applies nonconforming gasoline which does not meet the minimum oxygen content approved in the variance for that grade of gasoline at that facility;

3. The person to whom the Department has issued the variance has failed to ensure that the contemporaneous average of the gasoline sold at the facility to which the variance applies equals or exceeds 2.7 percent;

4. The person to whom the Department has issued the variance has failed to comply with any requirement of this subchapter or any condition set forth in the variance approved by the Department; or

5. The person to whom the Department has issued the variance has failed to:

i. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;

ii. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction; or

iii. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.12(d), within 60 days after receipt of a fee invoice.

(s) If the Department seeks to revoke a variance during the term of that variance, the Department shall provide the opportunity to request a hearing pursuant to the procedures set forth at N.J.A.C.

7:27-8.12. Such request shall be filed with the Department at the following address:

Office of Legal Affairs

ATTENTION: Adjudicatory Hearing Requests

Department of Environmental Protection and Energy

401 E. State Street

CN 402

Trenton, New Jersey 08625-0402

7:27-25.10 Variance for shortage of supply

(a) The Department may issue to a refiner, importer, blender, or distributor who has or may have an insufficient supply of conforming gasoline, a temporary variance from the oxygen content standards set forth at N.J.A.C. 7:27-25.3 which would allow the refiner, importer, blender, or distributor to provide, offer for sale, sell, transfer, import, or exchange in trade gasoline that does not conform with the oxygen content requirements of this subchapter.

(b) Application for a temporary variance pursuant to this section shall be made on forms obtained from the Department. Any person may request an application form from:

Assistant Director of Air and

Environmental Quality Enforcement

Division of Facility Wide Enforcement

Department of Environmental Protection and Energy

CN 027

Trenton, New Jersey 08625-0027

(c) A refiner, importer, blender, or distributor seeking a variance pursuant to this section shall submit a written application to the Department, containing the following information:

1. Documentation that there is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, a natural disaster or "Act of God";

2. A statement of the cause(s) of the shortage of conforming gasoline and an explanation of how the cause(s) are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care;

3. A statement of how an adequate supply of conforming fuel will be expeditiously obtained;

4. A comprehensive listing of all facilities to which the applicant would, pursuant to the variance, provide or sell the nonconforming gasoline. This listing shall include the name and address of each facility and the name and phone number of a contact person at each facility;

5. Specification of the minimum oxygen content of the nonconforming gasoline which will be provided or sold, during the period in which the variance is in effect; and

6. Such other information as the Department determines is necessary to ensure compliance with this subchapter and to evaluate the potential effect of approval of the variance on public health, welfare and the environment.

(d) Any application for a variance submitted to the Department pursuant to this subchapter shall include a service fee in accordance with N.J.A.C. 7:27-25.12(c) and shall be certified in accordance with N.J.A.C. 7:27-8.24.

(e) No applicant for a variance pursuant to this section may provide, offer for sale, sell or otherwise exchange in trade any nonconforming gasoline before the Department approves the variance in writing.

(f) The Department shall deny any application for a variance if:

1. The Department determines that approval of the variance may result in the presence in the outdoor atmosphere of any air contaminant in such quantity and duration which is or tends to be injurious to human health or welfare, animal or plant life or property, or may unreasonably interfere with the enjoyment of life or property. This does not include an air contaminant which occurs only in areas over which the applicant has exclusive use or occupancy; or

2. The applicant fails to demonstrate to the satisfaction of the Department, that:

i. There is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, natural disaster or "Act of God";

ii. The cause(s) of the shortage of conforming gasoline are beyond the control of the applicant and could not have been avoided by the applicant by the exercise of prudence, diligence and due care;

iii. The applicant has taken all reasonable steps to minimize the extent and duration of the inadequate supply of conforming gasoline; or

iv. The applicant has taken all reasonable steps to obtain an adequate supply of gasoline.

(g) The Department may deny an application for a variance if the applicant fails to provide all information requested by the Department within 30 days after the request is received by the applicant, or within a longer period if such a response period is approved in writing by the Department.

(h) Any variance issued by the Department under this section shall be valid for a period stated in the variance. The period shall be no longer than 45 days.

(i) Any refiner, importer, blender, and distributor to whom the Department issues a variance pursuant to this section shall provide a copy of the variance to each distributor, retailer or wholesale purchaser-consumer named in the variance in accordance with (c)4 above.

(j) No retailer who provides or sells nonconforming gasoline and no wholesale purchaser-consumer who uses nonconforming gasoline shall be deemed by the Department to have violated the provisions of this subchapter if:

1. The retailer or wholesale purchaser-consumer is named, in accordance with (c)4 above, in a variance issued by the Department pursuant to this section; and

2. The retailer or wholesale purchaser-consumer demonstrates, to the satisfaction of the Department, that the nonconforming gasoline was provided to the retail gasoline dispensing facility or the wholesale purchaser-consumer's facility pursuant to that variance.

(k) Any person holding a variance issued by the Department pursuant to this section shall:

1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;

2. Make said variance readily available for inspection on the operating premises to the Department or its authorized representatives;

3. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction; and

4. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.12(d), within 60 days after receipt of a fee invoice.

(l) Any person to whom the Department has issued a variance pursuant to this section shall:

1. Maintain records, on a daily basis, showing the actual oxygen content and the volume in gallons of each shipment of nonconforming gasoline provided or sold or otherwise exchanged in trade during the period that the variance was in effect. Such records shall be maintained on the operating premises for no less than three years from the date the record was made;

2. Submit to the Department, within 60 days of the Department's issuance of the variance, a report indicating the total number of gallons of nonconforming gasoline provided, sold or otherwise exchanged in trade, or used during the period the variance was valid and the actual oxygen content of that gasoline. The report shall be submitted in a format acceptable to the Department and shall be certified in accordance with N.J.A.C. 7:27-8.24;

3. Remit to the Department with the report specified in (1)2 above penalties pursuant to N.J.A.C. 7:27A-3.10(e)25. Any penalties due shall be submitted to the Department with the report. The Department will not consider any submission of a report for which penalties are required acceptable, unless the penalties are remitted with the report;

4. Make the records required to be kept pursuant to (1)1 above available, upon request, for review by the Department or its authorized representatives; and

5. Upon the request of the Department, submit to the Department all or any part of the information contained in the records required to be kept pursuant to (1)1 above.

(m) The Department may revoke any approval of any variance granted pursuant to this section if the Department determines that the person to whom the Department has issued the variance has failed to:

1. Allow lawful entry by the Department or its authorized representatives to the facility for which the variance is issued;

2. Pay any penalty assessed pursuant to a final order issued by the Department or any court of competent jurisdiction;

3. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-25.12(d), within 60 days after receipt of a fee invoice; or

4. Comply with any requirement of this subchapter or any condition set forth in the variance approved by the Department.

(n) If the Department seeks to revoke a variance during the term of that variance, the Department shall provide the opportunity to request a hearing pursuant to the procedures set forth at N.J.A.C. 7:27-8.12. Such request shall be filed with the Department at the following address:

Office of Legal Affairs

ATTENTION: Adjudicatory Hearing Requests

Department of Environmental Protection and Energy

401 E. State Street

CN 402

Trenton, New Jersey 08625-0402

7:27-25.11 Owner and operator responsibility

The owner and operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the owner and operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and criminal penalties pursuant to N.J.S.A. 26:2C-19(f)1 and 2. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil and criminal penalties.

7:27-[25.8]25.12 Service fees

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

(c) Any person who applies for a variance pursuant to N.J.A.C. 7:27-25.9 or 25.10 shall submit with the application a non-refundable service fee of \$500.00. No application shall be deemed complete without the required fee.

(d) Any person to whom the Department has issued a variance pursuant to N.J.A.C. 7:27-25.9 or 25.10 shall remit to the Department within 60 days after receipt of an invoice, a compliance inspection fee of \$200.00. Such person is subject to a compliance inspection fee only if the Department conducts at the facility one or more compliance inspections pursuant to the variance during any year, or part thereof, that the variance is in effect. The Department shall not charge such person a compliance inspection fee more frequently than once per year.

7:27A-3.10 Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act

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

(e) The Department shall determine the amount of civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-24. (No change.)

25. The violations of N.J.A.C. 7:27-25, [Volatility] Control and Prohibition of Air Pollution by Vehicular Fuels, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

ENVIRONMENTAL PROTECTION

PROPOSALS

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-25.3(a)	Less than 15,000 gallon tank capacity.	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity.	\$ 4,000	\$ 8,000	\$20,000	\$50,000
	From 50,000 up to to 500,000 gallon tank capacity.	\$ 8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity.	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-25.3(b)	Less than 15,000 gallon tank capacity.	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity.	\$ 4,000	\$ 8,000	\$20,000	\$50,000
	From 50,000 up to to 500,000 gallon tank capacity.	\$ 8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity.	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-25.3(c)	Less than 15,000 gallon tank capacity.	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity.	\$ 4,000	\$ 8,000	\$20,000	\$50,000
	From 50,000 up to to 500,000 gallon tank capacity.	\$ 8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity.	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-25.4(a)1	Test/Document	\$ 1,000	\$ 2,000	\$ 5,000	\$15,000
N.J.A.C. 7:27-25.4(a)2	Certify/Document	\$ 1,000	\$ 2,000	\$ 5,000	\$15,000
N.J.A.C. 7:27-25.4(a)3	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.4(a)(b)	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.7(g)	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.7(h)1-2	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.7(h)3	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.7(h)4	Submittal	\$ 300	\$ 600	\$ 1,500	\$ 4,500
N.J.A.C. 7:27-25.8	Labeling (per pump)	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.9(1)	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.9(m)2	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.9(o)	Less than 15,000 gallon tank capacity.	\$ 2,000	\$ 4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity.	\$ 4,000	\$ 8,000	\$20,000	\$50,000
	From 50,000 up to to 500,000 gallon tank capacity.	\$ 8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity.	\$10,000	\$20,000	\$50,000	\$50,000

PROPOSALS		Interested Persons see Inside Front Cover		ENVIRONMENTAL PROTECTION	
N.J.A.C. 7:27-25.9(p)1-3	Records Calculation/ Report	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.9(p)4	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.9(p)5	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.9(p)6	Submittal	\$ 300	\$ 600	\$ 1,500	\$ 4,500
N.J.A.C. 7:27-25.9(p)7	Conditions of approval	\$ 800	\$ 1,600	\$ 4,000	\$12,000
N.J.A.C. 7:27-25.9(q)	Non-conforming gasoline & economic benefit	\$ 800 + \$.05 per gallon ¹	\$ 1,600 + \$.05 per gallon ¹	\$ 4,000 + \$.05 per gallon ¹	\$12,000 + \$.05 per gallon ¹
N.J.A.C. 7:27-25.10(i)	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.10(k)2	Readily Available	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.10(l)1	Records	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.10(l)2	Reports	\$ 500	\$ 1,000	\$ 2,500	\$ 7,500
N.J.A.C. 7:27-25.10(l)3	Non-conforming gasoline & economic benefit	\$.05 per gallon ²			
N.J.A.C. 7:27-25.10(l)4	All	\$ 100	\$ 200	\$ 500	\$ 1,500
N.J.A.C. 7:27-25.10(l)5	Submittal	\$ 300	\$ 600	\$ 1,500	\$ 4,500

¹To determine the penalty due, multiply the per-gallon penalty amount by the number of additional gallons of the grade of gasoline with the highest oxygen content that were needed to be used, sold or otherwise exchanged in trade to have achieved a contemporaneous average of 2.7 percent oxygen.

²To determine the penalty due, multiply the per-gallon penalty amount by gasoline sold.

(a)

GREEN ACRES PROGRAM

Nonprofit Acquisition Program

Proposed New Rules: N.J.A.C. 7:36-9

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

Authority: P.L. 1989, c.183 (Open Space Preservation Bond Act of 1989).

DEPE Docket Number: 25-92-06.

Proposal Number: PRN 1992-285.

Submit written comments by August 20, 1992 to:

Samuel A. Wolfe, Esq.

Department of Environmental Protection
and Energy

Office of Legal Affairs

401 East State Street

CN 402

Trenton, NJ 08625-0402

The agency proposal follows:

Summary

These proposed new rules set forth the criteria under which and procedures by which 50 percent matching grants will be awarded by the Green Acres Program in the Department of Environmental Protection and Energy ("Department") to tax exempt nonprofit organizations ("nonprofit") whose purposes include the acquisition and preservation of land or natural areas, qualifying as a charitable conservancy for the purposes of P.L. 1979, c.378 (N.J.S.A. 13:8B-1 et seq.).

The Open Space Preservation Bond Act of 1989, P.L. 1989, c.183 ("Act"), authorizes the Department to award a total of \$10 million in matching grants to nonprofits for the acquisition of land for recreation and conservation purposes. Land acquired under this program must be made and kept available for public use and maintained by the nonprofit in perpetuity.

The nonprofit must execute, denote to the State, and record a conservation restriction or historic preservation restriction, as the case may be, on the land acquired utilizing the grant, immediately upon obtaining title to such land. This restriction will ensure that the environmental,

recreational, and historic resource value of the land acquired under this program will be protected in perpetuity. The restriction shall include: (1) the conditions governing the use, future development, and maintenance of the project site, governing the public access to the project site, and governing the conveyance of any interest in the project site; (2) the State's right to enforce the conditions of the restriction; and (3) the remedies available to the State in the event the nonprofit does not comply with the conditions of the restriction.

The Department will award grants to applicants which propose the acquisition of lands which best achieve the recreation and conservation purposes of the Act. Under this program, eligible acquisitions include lands which are suitable for outdoor recreation; lands containing wildlife habitat; lands with historic or environmental resource value; and waterfront sites. The property to be acquired may include buildings which will be used to support recreation and conservation purposes, or removed to provide open space. Ineligible acquisitions include current or former landfills, sites proven or suspected to be contaminated by hazardous substances or hazardous waste, sites predominantly covered by buildings, and State-owned tidelands.

The proposed rules also set forth the procedures by which nonprofits may apply to the Department to obtain such grants. Applications require documentation supporting such things as the applicant's qualification as a nonprofit, a description of the project site, and a discussion of the proposed use of the project site. The nonprofit must indicate the proposed source of its matching share of the cost of the project. Applications will be accepted annually, provided that funds are available.

The Department is limited to funding 50 percent of the cost of acquisition which means the fair market value or negotiated purchase price, including the value of any lands acquired by donation as part of the project, whichever is less. The fair market value is certified by Green Acres, based on one appraisal for projects with an estimated land value of \$250,000 or less, or on two independent appraisals for projects with an estimated land value of more than \$250,000. For the purposes of determining how many appraisals are necessary, such estimates will be based on any reasonable method determined by Green Acres to be reliable, such as discussions with real estate or appraisal professionals. Reasonable survey and appraisal costs incurred in connection with such acquisition are also included if funds are available under the grant approved for a particular project. The appraisal(s) and survey are contracted by the nonprofit.

These rules establish a maximum award of \$500,000, unless the Commissioner of the Department determines that exceptional circumstances warrant a larger award.

The rules explain the procedure by which Green Acres will make grant payments to the nonprofit. Grant payments will be in the form of a reimbursement after the nonprofit takes title to the land, or an advanced payment in time for closing. All payment requests must include the following documentation for each parcel in the project site for which payment is being requested: a recorded deed; purchase agreement; survey; legal (metes and bounds) description; title insurance policy; cancelled checks for survey, appraisal, and land cost; and certain forms provided by Green Acres. Once the land is acquired under this program, the nonprofit may transfer its interest in the land only to the State, a county or municipal government unit, or another nonprofit organization qualified to receive grants under this program. The nonprofit must obtain the written approval of the Commissioner of the Department prior to offering, for sale or conveyance, any of its interest in this land.

Social Impact

The proposed new rules will have a positive social impact, by providing a means to encourage nonprofits to acquire land to be preserved as conservation and recreation areas for the public's enjoyment in perpetuity. Land acquired under this program will be open to the public unless the Commissioner of the Department determines that public use of the land would be detrimental to the land or its natural resources. Nonetheless, even in cases where the land will not be open to the public, the preservation of such land will result in a positive social impact.

Economic Impact

The proposed new rules will facilitate the award of State funds to nonprofits, on a 50 percent matching basis, to acquire and preserve land for recreation or conservation purposes. The nonprofit may use as its match financial resources it already has, funds raised for the specific land acquisition, or the value of lands donated to the nonprofit as part of the approved project.

The nonprofit will benefit economically in that it will acquire the total project site while receiving a grant from the State for a portion of the project cost, not to exceed 50 percent of the cost of acquisition or \$500,000, whichever is less.

Upon accepting a grant, the nonprofit must agree to maintain, protect, and make and keep open to the public, the lands acquired utilizing the grant, in perpetuity. All related maintenance and protection costs are the responsibility of the nonprofit. Reasonable survey and appraisal costs incurred as part of such acquisition are eligible for 50 percent reimbursement by the State. Legal fees, the cost of obtaining title insurance, and any other administrative costs incurred by the nonprofit as part of such acquisition are the responsibility of the nonprofit.

The rules require the nonprofit to contract appraisal, survey, and legal services, and to obtain title insurance on the lands acquired utilizing a grant pursuant to these rules. Accordingly, the rules will create business for, and thus provide economic benefit to, certain survey, appraisal, title insurance, and legal professionals.

Environmental Impact

The proposed rules will provide a positive environmental impact in that they assist nonprofits in acquiring and preserving land for recreation or conservation purposes. Nonprofits must donate to the State a conservation restriction or historic preservation restriction, as the case may be, on the lands acquired utilizing grants pursuant to these proposed rules. Therefore, the natural and/or historic resources on these lands will be protected in perpetuity.

Regulatory Flexibility Analysis

Nonprofits, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., must have as one of their primary purposes the acquisition of land. Therefore, the costs involved in acquiring land under this program are often part of the nonprofit's normal operating costs. The nonprofit benefits, however, in that the cost of acquisition, which includes land, survey, and appraisal costs, is eligible for 50 percent reimbursement by the State under this program.

Nonprofits must follow the application procedures and comply with the conditions imposed by the Department. The administrative costs of applying for, and complying with, the conditions of the grant are minor and are minimized by the following: Green Acres staff is available for technical assistance in the application process; the documentation required by the State generally is produced during the nonprofits' normal

acquisition activities, so the nonprofits can rely on existing staff and available resources; and all requirements are clearly explained prior to the commencement of the project, thereby reducing any unnecessary work.

The nonprofit will need to retain the services of certain businesses such as appraisal, survey, title insurance, and legal firms. All professional services will be contracted by the nonprofits but, if funds are available, reasonable appraisals and survey costs are eligible for 50 percent reimbursement under this program. The nonprofit must keep and provide billing records to comply with Green Acres requirements for reimbursement of eligible costs.

There will be some costs associated with complying with grant requirements and conditions. However, no fixed or firm estimate of those costs is possible because each project will be unique and the resources available to the nonprofit to comply, without expending funds, will vary. Among the factors which will affect the total cost of compliance are the following: availability of volunteer labor, donations by interested parties, location of the project site, environmental sensitivity of the project site, and the cost of acquisition.

Since the purpose of the program is to assist nonprofits in the acquisition and preservation of land or natural areas, which acquisition and preservation are for the public benefit, and the requirements imposed are the minimum necessary for efficient management of the program, no lesser requirements or exemptions for small business nonprofits can be provided.

Full text of the proposal follows:

SUBCHAPTER 9. BASIS FOR ASSISTANCE TO, AND ELIGIBILITY REQUIREMENTS FOR, TAX EXEMPT NONPROFIT ORGANIZATIONS FOR THE ACQUISITION OF LAND FOR RECREATION AND CONSERVATION PURPOSES

7:36-9.1 Definitions

The terms used in this subchapter shall have the following meanings:

"The Act" means the Open Space Bond Act of 1989, P.L. 1989, c.183.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection and Energy.

"Conservation restriction" means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural, scenic, open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs, or other vegetation;
4. Excavation, dredging or removal of loam, peat, gravel, soil, rock, or other mineral substance;
5. Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, or fish and wildlife habitat preservation; and
7. Other acts or uses detrimental to the retention of land or water areas.

"Cost of acquisition" means the fair market value or negotiated purchase price, including the value of any lands to be acquired by donation specifically to be incorporated as part of the project site, whichever is less, of all lands to be acquired by the nonprofit with the assistance of a grant pursuant to this subchapter. If funds are available, any reasonable survey and appraisal costs incurred in connection with such acquisition are also included.

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

"Diversion" means the use of land acquired using Green Acres funds in a manner prohibited by any applicable conservation restriction or historic preservation restriction or by this subchapter.

"Estimated land value" means the value of the project site based on any reasonable method determined by Green Acres to be reliable, such as discussions with real estate or appraisal professionals.

"Fair market value" means the land value certified by Green Acres, based on one appraisal for properties with an estimated land value of \$250,000 or less, or on two independent appraisals for properties with an estimated land value of more than \$250,000.

"Green Acres" means the New Jersey Green Acres Program, created pursuant to N.J.S.A. 13:8A-1 et seq., or its successor.

"Historic preservation restriction" means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to preserving a structure or site which is historically significant for its architecture, archaeology or associations, to forbid or limit any or all:

1. Alteration in exterior or interior features of such structure;
2. Changes in appearance or condition of such site;
3. Uses of such structure or site which are not historically appropriate; and
4. Other acts or uses detrimental to the appropriate preservation of such structure or site.

"Land" or "lands" means real property, including improvements thereof or thereon, rights-of-way, water, riparian, and other rights, easements, privileges, and all other rights or interests of any kind or description in, relating to, or connected with real property.

"Local government unit" means a municipality, county or other political subdivision of the State of New Jersey authorized to administer, protect, develop, and maintain lands for recreation and conservation purposes, or any agency thereof, the primary purpose of which is to administer, protect, develop, and maintain lands for recreation and conservation purposes.

"Nonprofit" means a corporation or trust whose purposes include the acquisition and preservation of land or water areas or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received tax exemption under section 501(c) of the 1954 Internal Revenue Code.

"Project" means the acquisition of the project site and all activities in furtherance of that acquisition from time of the Department's approval of the nonprofit's application until the closing of title and conveyance to the State, by the nonprofit, of a conservation restriction or historic preservation restriction, as the case may be.

"Project site" means all that land which constitutes a contiguous or unified recreation or conservation open space area and which the nonprofit will acquire as described in the approved grant application, regardless of how acquired.

"Recreation and conservation purposes" means the use of lands for parks, natural areas, ecological and biological study, historic areas, forests, camping, fishing, water reserves, wildlife preserves, hunting, boating, winter sports and similar uses for either public outdoor recreation or conservation of natural resources, or both.

"State House Commission" means that entity created by N.J.S.A. 52:20-1 et seq.

"Tidelands" or "riparian lands" means lands now or formerly flowed by the mean high tide. These lands are owned by the State of New Jersey unless the State has conveyed its ownership through a riparian grant.

7:36-9.2 Eligible applicants

(a) To qualify to receive a grant, the board of directors or governing body of the applying nonprofit shall:

1. Demonstrate to the Commissioner that it qualifies as a nonprofit;
2. Demonstrate that it has the resources to match the grant requested;
3. Agree to make and keep the lands accessible to the public, unless the Commissioner determines that public accessibility would

be detrimental to the lands or any natural resources associated therewith;

4. Agree not to sell, lease, exchange, or donate the lands unless:

- i. The transferee is the State, a local government unit, or another nonprofit;
- ii. The lands will continue to be held for recreation and conservation purposes; and
- iii. The Commissioner approves the transfer in writing prior to the nonprofit's offering, for sale or conveyance, of any of its interest in the project site; and

5. Agree to execute and donate to the State at no charge a conservation restriction or historic preservation restriction, as the case may be, and to record such restriction immediately upon, and simultaneously with, the recordation of the deed for the project site.

7:36-9.3 Grants to nonprofits

(a) The State shall make a grant to a nonprofit for acquisition of lands for recreation and conservation purposes in the amount of 50 percent of the cost of acquisition or \$500,000, whichever is less, depending on the availability of funds. In exceptional circumstances as described in (d) below, the Department will consider a grant in excess of \$500,000 for a project.

(b) In the case where the value of lands acquired by donation exceeds 50 percent of the cost of acquisition, Green Acres participation will be reduced by the amount exceeding 50 percent of the cost of acquisition.

(c) The Commissioner shall establish initial acquisition funding limits at the time funding is offered. Such limits shall be based on the estimated land value, as well as estimated survey and appraisal costs. The Department's participation may be limited to the initial grant offering.

(d) Provided that funds are available, the Commissioner may modify the funding limit set forth above based on considerations including, but not limited to:

1. Competition for funds/number and quality of applications; and
2. Recreational, historic, or ecological uniqueness of the project site.

(d) In no case will the value of lands already owned by the nonprofit be accepted as all or part of the nonprofit's matching share of the cost of acquisition.

(e) In no case will funds used for acquisition of land pursuant to the Green Acres acts, N.J.S.A. 13:8A-1 through 13:8A-55, or such other sums as may be appropriated from time to time for like purposes, be accepted as all or part of the nonprofit's matching share of the cost of acquisition.

7:36-9.4 Application procedures

(a) If funds are available, the Department will accept applications annually, within 90 days after the date of publication of a notice of the availability of grant funds in the New Jersey Register.

(b) The nonprofit shall submit a written application package for each project site and shall meet with Green Acres concerning the specifics of the particular grant application.

(c) The nonprofit shall submit an application on a form provided by the Department which shall include, but not be limited to, documentation supporting the applicant's qualification as a nonprofit, a description of the project site, a discussion of the proposed use of the project site, and a narrative explaining how the project site satisfies the general program criteria set forth in N.J.A.C. 7:36-9.5(b) below.

(d) After approval of the application, the State and the nonprofit shall enter into an agreement which shall include the following:

1. The grant amount;
2. The time period for acquisition;
3. The acreage, location, tax map block and lot listing, and metes and bounds description of the project site;
4. The administrative requirements for record keeping and project management; and
5. The specific conservation restriction and/or historic preservation restriction, as the case may be.

(e) The conservation or historic preservation restriction, as the case may be, shall include:

ENVIRONMENTAL PROTECTION

1. The conditions governing the use, future development, and maintenance of the project site, governing the public access to the project site, and governing the conveyance of any interest in the project site;

2. The State's right to enforce the conditions of the restriction; and

3. The remedies available to the State in the event nonprofit does not comply with the conditions of the restriction.

(f) The Department shall send a notice of receipt of applications to appropriate State, county, and municipal officials. This notice shall include the location, tax map block and lot listing, and proposed use of the project site, and the grant amount requested. The notice will be sent within 60 days after the application deadline and will invite written comments on the proposed project. Green Acres will review all comments received and will consider them in determining whether to make, and the amount of, a grant.

(g) The Department will notify each nonprofit of the funding decision made on that nonprofit's grant application.

7:36-9.5 General program criteria

(a) When a nonprofit submits more than one eligible funding request, the Department reserves the right to limit funding to fewer than all applications submitted by the nonprofit or less than the total amount for which the nonprofit applies, or both.

(b) Decisions on whether or not an application is approved will be based on the following factors: open space needs; degree of environmental, historic, and/or cultural resource protection; amount of public participation, support, and planning; the quality of the project site; and other factors indicating the extent to which the project serves the purposes of the Act.

7:36-9.6 Eligible acquisitions

(a) An acquisition may include the purchase of title, development rights, life estate, remainder interest, easement, or other interest in real property suitable for recreation and conservation purposes.

(b) An area of historic significance (a site which meets the criteria for inclusion in the New Jersey or National Register of Historic Places) may be acquired.

(c) A site with existing buildings or structures which will be utilized or renovated for the support of recreation or conservation purposes is eligible.

(d) A site with existing buildings or structures which will be demolished to provide an open space area is eligible.

(e) A waterfront acquisition shall include, if at all possible, all private tidelands interests and continue to where the public interest begins.

7:36-9.7 Ineligible acquisitions

(a) Any site which will remain predominantly (more than 50 percent) covered by buildings or structures is ineligible.

(b) Any current or former landfill site, a site which is known or suspected to be contaminated with hazardous substances or hazardous waste, and any property which is adjacent to, or which may be adversely affected by, any such site is ineligible.

(c) Any site that has unmarketable or uninsurable title or that is, or is intended to be, used as a public road right-of-way is ineligible.

(d) The acquisition of State-owned tidelands or riparian lands is ineligible for reimbursement. However, in those cases where the State previously conveyed its ownership of certain tidelands, the acquisition of such privately held tidelands is eligible.

7:36-9.8 Appraisal process

(a) The nonprofit shall follow the following appraisal procedures:

1. The nonprofit shall meet with Green Acres who will instruct the nonprofit on the selection and hiring of the appraiser(s) and will discuss the appraisal assignment;

2. Green Acres will provide a list of pre-qualified appraisers from which the nonprofit may hire. This list is determined by Green Acres, based on a review and acceptance of each appraiser's work experience, professional qualifications, and sample work product. A nonprofit may hire an appraiser not included on the above referenced list only with the prior approval of Green Acres, which will be based on the review and acceptance of the items listed above;

PROPOSALS

3. The nonprofit shall submit for Green Acres' approval, draft appraisal contract(s) prior to contract execution;

4. The nonprofit shall contract the appraisal services;

5. The nonprofit shall schedule a meeting with Green Acres staff and the appraiser(s) to discuss the appraisal assignment and to visit the project site, prior to the commencement of the appraisal(s); and

6. The nonprofit shall submit to Green Acres three copies of each completed appraisal report.

7:36-9.9 Value determination

(a) Green Acres shall certify the fair market value of the project site based upon a review of the appraisal report(s), an inspection of the project site, an examination of the comparable sales used by the appraiser(s), and a review of all available applicable data that is pertinent to the fair market value estimated by the appraiser(s).

(b) Green Acres will send to the nonprofit a copy of the fair market value certification and appraisal(s) for review. If the nonprofit has any information which could subsequently affect the value finding, it should immediately bring it to Green Acres' attention.

(c) In the case where the survey of the project site, submitted as part of the payment materials described at N.J.A.C. 7:36-9.12(a)2, shows a different acreage total than the acreage total shown in the fair market value certification, Green Acres will advise the appraiser(s), request an adjusted value, if needed, and revise the fair market value to reflect the actual acreage of the project site.

(d) Within 60 days after the nonprofit receives the fair market value certification, the nonprofit shall submit to Green Acres the following documents to indicate acceptance of Green Acres' certification of the fair market value of the project site:

1. A certified copy of an adopted resolution of the nonprofit, on a form provided by Green Acres, containing the following:

- i. A statement that the nonprofit has reviewed and accepts the fair market value of the project site, as certified by Green Acres;

- ii. A statement that the nonprofit has the ability and intention to finance its share of the cost of the project;

- iii. The name of an officer of the nonprofit, and a statement that the officer is authorized to communicate with Green Acres on behalf of the respondent, and to provide additional information to Green Acres and furnish additional documents regarding the project;

- iv. An estimate of the annual operating expenses of the project; and

- v. A waiver of the nonprofit's right to hold the State or its agencies, instrumentalities, employees and representatives liable for damages arising directly or indirectly from the project; and

2. A completed Nonprofit Acquisition Master Sheet information form, on a form provided by Green Acres and containing the following information:

- i. Information identifying the project and its sponsor; and

- ii. For each parcel of land included in the project site, an identification of the parcel, its owner, the amount of acreage it contains, and the fair market value of the land and any improvements thereon.

(e) Green Acres receipt of the items listed at (d) above constitutes the nonprofit's acceptance of the fair market value.

7:36-9.10 Supplemental funding

(a) In the event that the certified fair market value exceeds the approved grant amount, Green Acres may increase the grant to equal the fair market value, provided that:

1. Funds are available;

2. The fair market value does not exceed the funding limit established at N.J.A.C. 7:36-9.3(a); and

3. The nonprofit has entered into a project agreement within 150 days of its acceptance of the fair market value.

(b) The Department reserves the right to refuse all supplemental funding requests.

7:36-9.11 Acquisition procedures

(a) The nonprofit may initiate negotiations with the property owner only after Green Acres acknowledges the receipt of the items listed at N.J.A.C. 7:36-9.9(d). Negotiations are the responsibility of the nonprofit. The nonprofit should make every reasonable effort to acquire the project site expeditiously.

(b) The nonprofit has the sole responsibility for closings and all real estate acquisition procedures related to the project site.

7:36-9.12 Grant payments

(a) Green Acres grant payments will be made when the nonprofit has taken title to the project site or at the time of closing. Advance payment requests must be initiated at least 60 days before the established date of closing to permit a review by Green Acres. To initiate this review, and for all payment requests, the following must be submitted for each parcel of land to be acquired as part of the project site for which payment is being requested:

1. A cancelled check or, in the case of advance payment requests, a copy of the purchase contract indicating date, time, and place of the scheduled closing;

2. Two copies of a survey which must contain acreage, ownership, current tax map (block and lot) references, all easements of record, encroachments, and pertinent natural features. Area of Green Acres participation must be clearly stated and labeled. The survey must correspond to the legal description described at (a)3 below;

3. Two copies of a legal (metes and bounds) description either developed from a survey or extracted from existing deeds and plotted, confirmed, signed, and sealed by a New Jersey licensed land surveyor. This legal description will become part of the agreement between the State and the nonprofit, and part of the conservation restriction or historic preservation restriction, as the case may be, which the nonprofit gives to the State;

4. Title insurance policy or title binder as proof that title to the property is insurable until a copy of the actual policy is available for examination after title is in the name of the nonprofit. Schedule B, Section II (Exceptions) must note that the parcel will become subject to Green Acres rules and regulations, whether proposed or promulgated, and a conservation restriction or historic preservation restriction, as the case may be;

5. A certified copy of the recorded deed after closing as proof of the purchase. For advance payment requests, a copy of the most recent deed to the project site should be submitted;

6. Copies of cancelled checks, vouchers, or invoices for survey and appraisal costs;

7. A completed project payment form/requisition, on a form provided by Green Acres and containing the following information:

i. The name, address, title and telephone number of the chief executive officer of the nonprofit, and of the person designated in the resolution submitted under N.J.A.C. 7:36-9.9(d)1 as the nonprofit's authorized correspondent;

ii. Information identifying the project;

iii. A description of prior payments made for the project;

iv. A survey and a metes and bounds description of each parcel;

v. If the nonprofit is making the payment request after acquiring the project site, a copy of the title insurance policy for each parcel, or the policy number if the title insurance policy has previously been submitted;

vi. If the nonprofit is making the payment request before acquiring the project site, a copy of the title insurance binder for each parcel, or the binder number if the binder has previously been submitted;

vii. A certification, signed by the chief executive officer of the nonprofit, confirming the accuracy of the information contained on the form, and stating that no bonus has been given or received in connection with any bill for which the nonprofit seeks reimbursement; and

viii. Any other information reasonably required to verify that the nonprofit has incurred the costs for which reimbursement is sought;

8. A completed Parcel Acquisition Payment Information Sheet, on a form provided by Green Acres and signed by the person authorized pursuant to N.J.A.C. 7:36-9.9(d)1, containing the following information:

i. Information identifying the nonprofit and the project site;

ii. An itemized statement of the direct cost of acquiring the project site, and of the survey costs and appraisal costs incurred in connection with the acquisition;

iii. A justification of any difference between the direct cost of acquiring the project site and the fair market value of the project site as certified by Green Acres; and

iv. A justification of any difference between the project site as described in the grant application, and the project site as acquired; and

9. If the project site includes buildings or other improvements which are not to be demolished, a completed Post-Acquisition Insurance Certification on a form provided by Green Acres and signed by the person authorized pursuant to N.J.A.C. 7:36-9.9(d)1. In the certification, the nonprofit shall state the following:

i. That a standard casualty insurance policy covering the improvements is in effect, in an amount equal the full replacement cost of the improvements;

ii. That the policy or a certificate thereof is attached to the certification;

iii. The dates on which coverage begins and ends under the policy;

iv. That the policy names the Department as loss payee; and

v. That the policy provides that the insurer will not terminate or fail to renew the policy without at least 30 days prior written notice to the Department.

(b) After Green Acres reviews and approves the payment materials listed at (a) above, Green Acres will prepare and forward to the nonprofit a payment invoice reflecting the approved grant amount of 50 percent of the cost of acquisition, whichever is less. The nonprofit must verify, sign, and return the invoice to Green Acres for approval and processing.

(c) Grant payments will be mailed directly to the nonprofit. Green Acres grant checks cannot be signed over to the property owner, but must be deposited into the nonprofit's account.

7:36-9.13 Signs

The nonprofit shall erect, maintain, and replace on the project site, one or more permanent signs provided, or approved, by the Department.

7:36-9.14 General provisions

The nonprofit shall comply with all laws, rules, regulations, policies, and procedures applicable to the project site or its acquisitions.

7:36-9.15 Retention and use

(a) Any change in approved use, public access, maintenance, or any development contrary to the approved use of the lands acquired utilizing the grant requires the prior written approval of Green Acres.

(b) Lands which the nonprofit acquires pursuant to this subchapter shall not be disposed of, except pursuant to N.J.A.C. 7:36-9.2(d), or diverted to a use for other than recreation and conservation purposes without the prior approval of the Commissioner and the State House Commission and following a public hearing at least one month prior to any such approvals. A diversion includes, but is not limited to, a permanent easement, right-of-way, lease, or sale of such land granted or made for other than recreation or conservation purposes.

(c) Fifty percent of all proceeds received by the nonprofit as a result of the conveyance of any rights in the project site in conformance with N.J.A.C. 7:36-9.2(d) shall be paid to the Department for deposit in the bond fund used to assist the project. This reimbursement requirement will be included in the conservation restriction or historic preservation restriction, as the case may be.

7:36-9.16 Temporary use

Lands, buildings, or structures that have been acquired under this program for recreation and conservation purposes may be used or leased for non-recreation uses on a temporary basis only with the prior written approval of Green Acres.

7:36-9.17 Remedies

(a) If the nonprofit refuses or fails to comply with this subchapter, the grant agreement with the Department, the conservation restriction or historic preservation restriction, as the case may be, or any other applicable law, the Department may, after notices and reasonable opportunity to cure, institute a suit to enjoin such viola-

tion by temporary and/or permanent injunction and may take any other legal action as may be necessary to insure compliance.

(b) The nonprofit will pay whatever costs the Department incurs in enforcing the nonprofit's obligations pursuant to this subchapter, the grant agreement with the Department, the conservation restriction or historic preservation restriction, as the case may be, or any other applicable law. Such costs shall include, but not be limited to, personnel costs, attorneys' fees, and court costs.

7:36-9.18 Savings provision

If any provision in this subchapter shall be held ineffective or invalid by any court of competent jurisdiction, that provision shall be severed and all remaining provisions shall continue in full force and effect.

(a)

WATER SUPPLY ELEMENT

Notice of Request for Informal Input

Well Head Protection Area Delineation Regulations Interested Party Review

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

Authority: N.J.S.A. 58:12A-1 et seq. and N.J.S.A. 58:10A-1 et seq.

Take notice that the New Jersey Department of Environmental Protection and Energy is contemplating the adoption of rules for the delineation of well head protection areas within the State. These rules will outline the administrative and technical procedures and requirements for targeting areas for special protection of ground water contributing to public community and noncommunity water supply wells. These targeted areas will constitute well head protection areas as outlined in the Well Head Protection Program Plan as adopted by the State in December, 1991. It is the purpose of these rules to define a Department approved method for the delineation and certification of these areas.

The Department is seeking public comment on drafts of the rules prior to formal proposal and adoption. The full text and Basis and Background document for these draft proposals is available for public review and comment by writing to:

Bureau of Water Supply Planning and Policy
Water Supply Element
Department of Environmental Protection and Energy
CN 029
Trenton, New Jersey 08625

Submit written comments by August 21, 1992 to:

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

HEALTH

(b)

HEALTH FACILITIES EVALUATION AND LICENSING DRUG CONTROL

Registration of Wholesale Distributors of Prescription and Non-Prescription Drugs, and Manufacturers and Wholesalers of Devices

Proposed Repeal: N.J.A.C. 8:21-3.13

Proposed New Rules: N.J.A.C. 8:21-3A

Authorized By: Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health.

Authority: N.J.S.A. 24:2-1; 21 U.S.C. 351, 353, 371 and 374; and
21 C.F.R. 205.

Proposal Number: PRN 1992-296.

Submit comments by August 5, 1992 to:

Lucius A. Bowser, R.P., M.P.H., Chief
Drug Control Program
CN 367
Trenton, N.J. 08625
609-588-7816

Summary

The Department of Health proposes to repeal N.J.A.C. 8:21-3.13 and to add new rules at N.J.A.C. 8:21-3A to regulate the wholesale distribution of human prescription drugs and of non-prescription drugs, and the manufacturers and wholesalers of devices. The Department has based this proposal upon the Federal Food, Drug and Cosmetic Act, as amended by the Prescription Drug Marketing Act of 1987 (21 U.S.C. 351, 353, 371 and 374), 21 C.F.R. 205 (see 55 FR 38023, September 14, 1990) and its statutory responsibility to safeguard the health of the citizens of New Jersey. The repealed rule is no longer necessary, as the requirements are now contained in the proposed new rules.

The purpose of the new rules is to provide minimum standards, terms and conditions for the registration of persons who engage in wholesale distribution of drugs or devices or the manufacturing of non-prescription drugs or devices. These minimum standards will aid in the control and monitoring of sales of drugs and devices from the manufacturer to the ultimate consumer. The rules require records to be maintained which will enable the Department to track any drug or device through the distribution system, and to determine the conditions under which such drugs or devices were shipped and stored.

N.J.A.C. 8:21-3A contains rules delineating the purpose and scope of the subchapter; definition of terms used; requirements for application for registration; denial, suspension or revocation of registration; penalty and appeal provisions; personnel, security and storage standards; procedures for the examination of materials and the disposition of returned, damaged or outdated prescriptions; recordkeeping; policies and procedures required; and inspection and auditing requirements imposed upon a distributor. The subchapter also contains a provision for reciprocity of registration.

In developing these new rules, the Department has consulted with representatives of the regulated public within the State of New Jersey and with the National Association of Wholesale Druggists.

Social Impact

The proposed repeal will remove more general requirements. The proposed new rules will affect wholesale distributors of prescription drugs, the manufacturers and wholesalers of non-prescription drugs, and the manufacturers or distributors of devices within the State of New Jersey, those persons employed in the distribution stream, the prescriber, and the ultimate consumer of the drug or device. The rules are expected, through the process of registration and inspection, to control the distribution of both prescription and non-prescription drugs so that the purity, quality, safety and potency of such drugs can be assured, as well as assuring the quality of devices manufactured or distributed within New Jersey. Such assurances are expected to provide a benefit to the consumers and to those issuing prescriptions for such drugs.

Economic Impact

The enforcement of the proposed standards is expected to have a beneficial effect on the number of product liability suits in that such

suits are expected to decrease as a result of the maintenance of the distribution requirements and the screening provided by the registration requirements. Specific savings cannot be estimated, since there are multiple unknown factors involved.

Similarly, the costs of medical and other services to those adversely affected by the effects of wholesale distribution on prescription or non-prescription drugs, or on the manufacture or distribution of devices cannot be accurately determined, due to the multiple factors involved; however, such costs are expected to decrease with the maintenance of the standards proposed in this subchapter.

The costs to some distributors who may not have maintained the level contained in the new storage and security standards (which may include expenses for temperature control and lighting) might increase; however, this possible increase is considered less significant than the impact on public health and safety. As a practical matter, the Department's contact with the industry reveals that almost all of those regulated already comply. Pharmacies may experience a diminution of losses based on the storage and handling standards imposed on the distributors, since fewer damaged, outdated, deteriorated or adulterated prescription drugs are expected to reach the retailer.

Regulatory Flexibility Analysis

The proposed new rules affect the wholesale distributors of drugs and the manufacturers and distributors of devices in the State of New Jersey, all of whom may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The distributors and manufacturers are required to be registered and to maintain specified standards in order to operate in the State of New Jersey. While the employment of professionals or specialists is not required by the rules, a wholesale distributor of drugs and devices, or a manufacturer of devices, may elect to employ such personnel to advise in the implementation of standards, such as heating, ventilation and air conditioning, warehousing, building design and security. Personnel employed are expected to have appropriate education and experience to assume responsibility for jobs which would affect compliance with these rules, although no specification has been provided in the rules. Costs which may be incurred are discussed in the Economic Impact above.

Since public health and safety are affected by drug and device manufacturing and/or distribution processes, the Department has determined that no exceptions based upon business size will be made in these rules.

Full text of the repealed rule may be found in the New Jersey Administrative Code at N.J.A.C. 8:21-3.13.

Full text of the proposed new rules follows:

SUBCHAPTER 3A. REGISTRATION OF WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS, MANUFACTURERS AND WHOLESALE DISTRIBUTORS OF NON-PRESCRIPTION DRUGS, AND MANUFACTURERS AND/OR WHOLESALE DISTRIBUTORS OF DEVICES

8:21-3A.1 Scope

This subchapter sets forth standards for the registration and operation of any person, partnership, corporation or business firm engaging in the wholesale distribution of human prescription drugs, manufacture and wholesale distribution of non-prescription drugs, and of the manufacturing or wholesale distribution of devices in New Jersey.

8:21-3A.2 Purpose

The purpose of this subchapter is to implement the requirements of the Federal Prescription Drug Marketing Act of 1987, 21 U.S.C. 351, 353, 371 and 374, and 21 C.F.R. 205, and for the benefit of the health and safety of the ultimate consumers of prescription drugs, non-prescription drugs and of devices.

8:21-3A.3 Definitions

The words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise: "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

"Blood component" means that part of blood separated by physical or mechanical means.

"Department" means the New Jersey Department of Health.

"Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

"Manufacturer" means anyone who is engaged in the manufacturing of drugs or devices, as defined in N.J.S.A. 24:6B-12, or engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.

"Non-prescription" or "Non-legend" or "O.T.C." drugs mean drugs directly available to the consumer over the counter, without a physician's prescription.

"Prescription drug" means any human drug required by Federal law or regulation to be dispensed only by a prescription, including dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug and Cosmetic Act.

"Wholesale distribution" means the distribution of drugs or devices to persons other than a consumer or patient, but does not include:

1. Intracompany sales;
2. The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization, of a drug or device for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;
3. The sale, purchase, or trade of a drug or device or an offer to sell, purchase, or trade a drug or device by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
4. The sale, purchase, or trade of a drug or device or an offer to sell, purchase, or trade a drug or device among hospitals or other health care entities that are under common control; for purposes of this definition "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;
5. The sale, purchase or trade of a drug or device or an offer to sell, purchase, or trade a drug or device for emergency medical reasons; for purposes of this definition, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;
6. The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;
7. The distribution of drug or device samples by manufacturers' representatives or distributors' representatives; or
8. The sale, purchase, or trade of blood and blood components intended for transfusion.

"Wholesale distributor" means anyone engaged in wholesale distribution of prescription or non-prescription drugs or devices, including, but not limited to, manufacturers; repackagers; own-label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; and independent wholesale drug traders, but does not include a retail pharmacy whose sales of prescription drugs to other than the ultimate user, including physicians for office use, nursing homes, institutions, etc. does not exceed five percent of the total gross annual sales of prescription drugs of the pharmacy.

8:21-3A.4 Application requirements; reciprocity

(a) The Department may permit an out-of-State wholesale distributor to satisfy the registration requirements of N.J.A.C. 8:21-3.14 on the basis of reciprocity provided that:

1. Such out-of-State wholesale distributor possesses a valid license or registration granted by another state pursuant to legal standards comparable to those which must be met by a registrant of this State as prerequisites for satisfying the registration requirements under the laws of this State; and
2. Such other state extends reciprocal treatment under its own laws to wholesale distributors of this State.

(b) Every manufacturer, wholesale distributor and wholesaler of a drug or device shall apply to the Department in accordance with the provisions of N.J.S.A. 24:6B-2 using forms supplied by the Department. In addition, every applicant shall complete the appropriate sections of the application, which shall include:

1. Name, full business address and telephone number of the applicant;

i. All trade or business names used by the registrant;
ii. Addresses, telephone numbers and name of the contact person for all facilities used by the registrant for the storage, handling and distribution of prescription drugs, drugs or devices;

2. The type of ownership or operation (that is, partnership, corporation, or sole proprietorship);

3. The name(s) of the owner and/or operator of the applicant, including:

i. If a person, the name of the person;
ii. If a partnership, the name of each partner, and the name of the partnership;

iii. If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the State of incorporation, and

iv. If a sole proprietorship, the full name of the proprietor and the name of the business entity;

4. The address of each location in New Jersey at which the business is to be conducted. If an applicant's business is not to be conducted within the State, the application shall give the name and address of an agent resident of this State on whom process against the applicant may be served;

5. If the business is to be conducted at more than one location in this State, the name and address of the individual in charge of each such location;

6. A description of the business engaged in and the drug products manufactured for sale or wholesale;

7. The name and address of the individual or individuals on whom orders of the Commissioner may be served; and

8. A statement as to whether the registrant engages in the manufacturing, compounding, processing, wholesaling, jobbing, distribution of any controlled dangerous substances as defined pursuant to N.J.S.A. 24:21-2.

8:21-3A.5 Evaluation criteria

(a) In considering any application for registration, the Department shall consider, at a minimum, the following factors in reviewing the qualifications of those persons applying for registration as a drug or device manufacturer, distributor or a wholesale distributor:

1. Any convictions of the applicant under any Federal, state, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of a controlled substance;

2. Any felony conviction under Federal laws, or the equivalent (under whatever statutory term) conviction under state or local laws;

3. The applicant's past experience in the manufacturing or distribution of prescription drugs or controlled substances;

4. The furnishing of false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;

5. Suspension or revocation by Federal, state or local government of any registration currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

6. Compliance with license and/or registration requirements under any previously granted license or registration, if any;

7. Compliance with requirements to maintain and/or make available to the Department or Federal or local law enforcement officials those records required by this subchapter; and

8. Any other factors or qualifications the Department considers relevant to and consistent with the public health and safety.

(b) Wholesale drug distributors shall operate in compliance with applicable Federal, State and local laws and regulations and where the wholesale drug distributor also deals in controlled dangerous substances, it shall also register with the Department and Drug Enforcement Administration (DEA) and also comply with all applicable State rules and DEA regulations.

(c) A retail pharmacy wishing to conduct a wholesale business shall operate the wholesale business under a separate name and at a separate location, other than that of the pharmacy name and address and the wholesale business will be subject to all of the requirements of a wholesale distributor.

8:21-3A.6 Denial of application

The Department shall have the right to deny an application for registration if it determines the granting of such registration would not be in the public interest. Public interest considerations shall be based upon factors and qualifications that are directly related to the protection of the public health and safety.

8:21-3A.7 Personnel requirements

Personnel employed by a wholesale distributor shall have appropriate education and/or experience to assume responsibility for positions that would affect compliance with registration requirements.

8:21-3A.8 Facility

(a) All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

1. Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

2. Provide storage areas which include adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

3. Provide a quarantine area for storage of outdated, damaged, deteriorated, misbranded or adulterated prescription drugs, or drugs that are in immediate or sealed secondary containers that have been opened;

4. Be maintained in a clean and orderly condition; and

5. Be free from infestation by insects, rodents, birds, or vermin of any kind.

8:21-3A.9 Security

(a) All facilities used for wholesale distribution shall be secure from unauthorized entry and shall provide the following additional security measures:

1. Access from outside the premises shall be kept at a minimum and shall be well controlled;

2. The outside perimeter of the premises shall be well-lighted; and

3. Entry into areas where prescription drugs are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion, and shall provide, when appropriate, protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

8:21-3A.10 Storage

(a) All prescription drugs shall be stored at appropriate temperature and conditions in accordance with the requirements set forth in the labeling of such drugs or with the requirements of the current edition of an official compendium, such as the United States Pharmacopoeia/National Formulary (USP/NF).

(b) If no storage requirements are established for a prescription drug, the drug may be held at controlled room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(c) Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices and/or logs shall be utilized to document proper storage of prescription drugs.

8:21-3A.11 Examination of materials

(a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution, and such examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents;

(b) Each outgoing shipment of prescription drugs shall be carefully examined for the identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

8:21-3A.12 Returned, damaged and outdated prescription drugs

(a) Prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs until they are destroyed or returned to their supplier.

(b) Prescription drugs whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such, and shall be quarantined and physically separated from other prescription drugs until they are either destroyed or returned to the supplier.

(c) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed or returned to the supplier, unless examination, testing or other investigation proves the drug meets appropriate standards of safety, identity, strength, quality and purity. The wholesale distributor of prescription drugs shall consider, among other things, the conditions under which the drugs were held, stored, or shipped before or during their return and the condition of the drug and its container, carton, or labeling as a result of storage and shipping when considering that there is any doubt of the drug's safety, identity, strength, quality or purity.

8:21-3A.13 Recordkeeping

(a) Wholesale distributors of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. Such records shall include the following information:

1. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;
2. The identity and quantity of the drugs received and distributed or disposed of and;
3. The dates of receipt and distribution or other disposition of the drugs.

8:21-3A.14 Recordkeeping requirements for other than a wholesale distributor

(a) Drug or device manufacturing businesses, except those falling within the definition of a wholesale distribution business, shall maintain records identifying the source of each ingredient or part used in the manufacture or processing of a drug or device. Records identifying the source of each ingredient shall include the name of the ingredient or part, vendor's name and address, the name of the ingredient or part and the vendor's batch number, lot number, control number or other identifying symbol, if any, used by the vendor to identify the ingredient or part as well as the grade (such as USP/NF, reagent, technical or crude), if a drug, and the quantity of said ingredient or part.

(b) Drug or device manufacturing businesses shall maintain a system of recordkeeping that will permit the identification for purposes of recall of any lot or batch of a drug or device from the market when such is found to be unsafe for use. As part of this system, the manufacturer shall ensure that the container of any drug or device at any stage in the process of manufacture and distribution bears an identifying name and number, commonly called a "lot" or "control" number, to make it possible to determine the complete manufacturing history of the package of the drug or device. This section shall not require a manufacturer of a drug or device to keep a record of the control number of any shipment of drugs or devices if the manufacturers' overall records are such as to enable the manufacturer to recall an unsafe drug or device.

(c) Drug or device businesses, except wholesale distributors of prescription drugs, shall maintain records identifying each drug or device received as well as each drug shipped which shall include the name, street address, city and state of the shipper or recipient; the date of receipt or shipment; the drug or device name and quantity shipped or received. Such records in the form of invoices or customer's invoices shall suffice for compliance with this rule.

8:21-3A.15 Availability of records and inventories

(a) Records and inventories, including those related to any prescription drug salvage or reprocessing procedure, shall be made available for inspection and photocopying by Federal, State or local law enforcement agencies and shall be maintained for a period of two years following the disposition of the drugs.

(b) The records that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period, and records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized official of a Federal, state or local enforcement agency.

8:21-3A.16 Policies and procedures

(a) Wholesale distributors shall establish, maintain, and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventory. Wholesale drug distributors shall include in their policy and procedures the following:

1. A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this requirement if the deviation is temporary and appropriate;
2. A procedure to be followed for, and which shall be adequate for, handling recalls and withdrawals due to:
 - i. Any action initiated by the request of the Food and Drug Administration or other Federal, state, local law enforcement or other government agency, including the State registering agency;
 - ii. Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or
 - iii. Any action undertaken to promote public health, and safety by replacing existing merchandise with an approved product or new package design.
3. A procedure to ensure that a wholesale distributor prepares for, protects against, and handles any crisis that affects security or the operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of a local, State or national emergency; and
4. A procedure to ensure that outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed. Such procedure shall provide for written documentation of the disposition of the outdated prescription drugs and shall be maintained for two years after disposition of the outdated drugs.

8:21-3A.17 List of responsible persons

Wholesale drug distributors shall establish and maintain a list of officers, directors, managers, and other persons in charge of wholesale distribution, storage, and handling of prescription drugs that shall include a description of their duties and a summary of their qualifications.

8:21-3A.18 Inspection and auditing

Wholesale drug distributors shall permit the Department and authorized Federal, State and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

8:21-3A.19 Salvage; reprocessing

Wholesale drug distributors shall be subject to the provisions of any applicable Federal, State or local laws, rules or regulations that relate to prescription drug product salvaging or reprocessing.

8:21-3A.20 Suspension; revocation

The Department shall suspend or revoke any registration granted under this subchapter upon conviction of the registrant of a violation of Federal, State or local drug laws, rules or regulations and may suspend or revoke any registration granted hereunder if the registrant willfully and seriously violated the requirements of this chapter.

8:21-3A.21 Penalties

The Department may provide for fines, imprisonment, or civil penalties as set forth in N.J.S.A. 24:6B-11 or 24:17.1.

8:21-3A.22 Appeals

Prior to the suspension or revocation of a registration issued in accordance with this subchapter, the registrant shall have a right to prior notice and 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.

(a)**DIVISION OF HEALTH FACILITIES EVALUATION****Examination Fee for Licensing Nursing Home Administrators****Proposed Amendment: N.J.A.C. 8:34-1.7**

Authorized By: Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Nursing Home Administrator's Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5, and
P.L.1991 c.78.

Proposal Number: PRN 1992-297.

Submit comments by August 5, 1992 to:

Wanda J. Marra, Acting Executive Director
Nursing Home Administrator's Licensing Board
Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health, with the approval of the Nursing Home Administrator's Licensing Board, is proposing to amend N.J.A.C. 8:34-1.7 to specify the examination fee for the nursing home administrator's licensing examination.

P.L.1968, c.356 mandates that the State Department of Health, with the advice and approval of the Nursing Home Administrator's Board, shall adopt, amend, promulgate and enforce such rules, regulations and minimum standards for the training, experience and education of individuals acting as administrators of convalescent homes and private nursing homes. In order to be licensed as a Nursing Home Administrator in New Jersey, a candidate must take the National Association of Boards of Examiners (NAB) examination. The Department administers the examination, which is purchased from NAB and the Professional Education Service (PES).

On April 1, 1991, the enabling legislation for the Nursing Home Administrator's Licensing Board (N.J.S.A. 30:11-20) was amended permitting the Commissioner to adopt rules and regulations to provide for such periodic increases in the license fee and the examination fee as the Commissioner deems necessary (see P.L.1991, c.78).

Recently, the NAB Board of Governors voted to increase the examination fee to \$125.00, effective July 1, 1992. New Jersey is scheduled to administer the examination October, 1992 and henceforth will be on a biannual schedule of April and October. The Nursing Home Administrator's Licensing Board, at their November 29, 1991 board meeting, discussed the matter and approved a motion to increase the fee for the examination in accordance with the fee established by the NAB. Consequently, it is necessary to adopt an amendment which would allow the Department to charge the applicants for examination a testing fee equal to that charged by the NAB.

Social Impact

The proposed amendment is necessary to enable the Department to discharge its statutory obligations, which include the licensing of qualified and competent individuals able to serve as administrators in New Jersey's long term care facilities. The nursing home administrator directs and coordinates all activities of a long term care facility to effectuate the delivery of a high level of quality health care and social services to its resident population. The Department, in conjunction with the Board, administers a licensing examination to eligible candidates to measure

minimal competency levels for individuals who will serve in the position of administrator. By so doing, the Department helps to protect the health, safety and social needs of New Jersey's health care consumers.

Economic Impact

The proposed fee increase will have an economic impact upon all individuals applying for licensure. However, the increase reflects only the fee being charged by the testing service nationally. This fee would have to be paid by the applicant in whichever jurisdiction the applicant elected to take the examination. To be unable to offer the licensing examination in New Jersey to eligible candidates would only foster a greater economic hardship. Applicants would be forced to sit for the examination in neighboring states after paying an application fee to the new state for participation in their program, in addition to an examination fee at the appropriate time. Subsequently, the applicant would have to apply for licensure by equivalency in New Jersey, again at an additional expense.

Regulatory Flexibility Statement

Since the proposed amendment allows for a change of fee based on testing costs and affects only individuals applying for licensure, there is no imposition of reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Consequently, a regulatory flexibility analysis is not required.

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

8:34-1.7 Licensing requirements[; conditions precedent]

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

(f) Prior to taking the licensure examination, each applicant shall be required to submit an examination fee in the amount specified by the professional examination service utilized by the Department for the administration of the examination and approved by the Department and the Nursing Home Administrator's Board. The Department shall provide timely notice of the examination fee in the Public Notices section of the New Jersey Register.

(b)**DRUG UTILIZATION REVIEW COUNCIL****List of Interchangeable Drug Products****Proposed Amendments: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council,
Robert Kowalski, Chairman.

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

Proposal Number: PRN 1992-298.

A **public hearing** concerning these proposed amendments will be held on Monday, August 3, 1992, at 2:00 P.M. at the following address:

Department of Health
Room 804, Eighth Floor
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by August 5, 1992 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council, Room 501
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360
609-292-4029

The agency proposal follows:

Summary

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

For example, the proposed clemastine fumarate syrup 0.67mg per 5 ml could be used as a less expensive substitute for Tavist Syrup, a branded prescription medicine. Similarly, the proposed Diltiazem tablets could be substituted for the more costly branded product, Cardizem.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well

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as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was \$7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., specifically, over 1,500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

Acetazolamide tabs 250 mg	ALRA
Atenolol tabs 100 mg	Novopharm
Atenolol tabs 25 mg	Geneva
Atenolol tabs 25 mg	Lederle
Atenolol tabs 50 mg	Novopharm
Atenolol/chlorthalidone tabs 50/25, 100/25 mg	IPR
Clemastine fumarate syrup 0.67mg/5ml	Copley
Clemastine fumarate tabs 1.34 mg	Geneva
Clemastine fumarate tabs 2.68 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.1/15 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.2/15 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.3/15 mg	Geneva
Clorazepate Dipotassium tabs 3.75 mg, 7.5 mg, 15 mg	ALRA
Darvon Compound-65 caps substitute	ALRA
Diltiazem HCl tabs 120 mg	Mutual
Diltiazem HCl tabs 30 mg	Mutual
Diltiazem HCl tabs 60 mg	Mutual
Diltiazem HCl tabs 90 mg	Mutual
Fenoprofen caps 300 mg	W-C
Fenoprofen tabs 600 mg	W-C
Golytely liquid substitute	Copley
Hysocamine sulfate tabs 0.125 mg	Ferndale
Ibuprofen tabs 400 mg, 600 mg, 800 mg	ALRA
Imipramine tabs 10 mg, 25 mg, 50 mg	ALRA
Iodinated glycerol elixir 60mg/5ml	Naska

Ketoprofen caps 25 mg	Biocraft
Ketoprofen caps 50 mg	Biocraft
Ketoprofen caps 75 mg	Biocraft
Lactulose syrup 10g/15ml	ALRA
Loperamide HCl caps 2 mg	Geneva
Loxapine caps 5 mg	Geneva
Loxapine caps 10 mg	Geneva
Loxapine caps 25 mg	Geneva
Loxapine caps 50 mg	Geneva
Meprobamate tabs 200 mg, 400 mg	ALRA
Metoclopramide tabs 5 mg	Biocraft
Naproxen sodium tabs 275 mg	Mutual
Naproxen sodium tabs 550 mg	Mutual
Naproxen tabs 250 mg	Mutual
Naproxen tabs 375 mg	Mutual
Nucofed expectorant substitute	LuChem
Nucofed ped. expectorant substitute	LuChem
Pediazole suspension substitute	ALRA
Piroxicam caps 10 mg, 20 mg	Searle
Potassium bicarbonate effervescent tabs 25 mEq	ALRA
Potassium chloride ER tabs 10 mEq	ALRA
Potassium chloride ER tabs 8 mEq	Upsher-Smith
Potassium chloride powder 20 mEq	ALRA
Propoxyphene HCl caps 65 mg	ALRA
Rondec syrup substitute	LuChem
Sucralate tabs 1 gm	Biocraft
Sulfisoxazole tabs 500 mg	ALRA
Tolbutamide tabs 500 mg	ALRA
Tolmetin sodium caps 400 mg	Geneva
Tolmetin sodium caps 400 mg	Lemmon
Tolmetin sodium tabs 200 mg	Geneva
Triamterene/HCTZ tabs 37.5/25 mg	Geneva
Tussi-Organidin DM liquid substitute	Naska
Tussi-Organidin liquid substitute	Naska
Verapamil tabs 40 mg	Geneva

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Cigarette Tax

Tax Stamps

Proposed Repeals: N.J.A.C. 18:5-3.7 and 3.8

Proposed Amendments: N.J.A.C. 18:5-2.3, 3.3, 3.9, 3.10, 3.11, 3.12, 3.13, 3.20, 3.21, 3.22, 3.23, 3.24, 3.25, 4.3, 4.4, 4.5, 4.6, 4.7 and 5.8

Proposed Repeals and New Rules: N.J.A.C. 18:5-3.2, 3.4, 3.5 and 3.6

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:40A-20, and N.J.S.A. 54:40B-1 et seq., specifically N.J.S.A. 54:40B-12.

Proposal Number: PRN 1992-272.

Submit comments by August 5, 1992 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

In accordance with N.J.A.C. 18:5-3.11(c), on Monday, November 18, 1991, the Director revoked authorization to use stamp metering machines as evidence of proof of payment of cigarette tax, effective July 1, 1992 (see 23 N.J.R. 3536(b)). This action was taken as a result of the unavailability of the equipment to accomplish such metering. The notice published on November 18, 1991 declared that "Authorized proof of payment shall henceforth be through the affixation of heat applied decals, either by hand or by machine," and information on such machines was

made available to the public from that date on. The machines which use heat to apply stamps can be rented for approximately \$300.00 per month. The stamps applied by such machines are available in rolls of 30,000 stamps, which are to be purchased in units of one or more rolls at a time, at a cost of \$12,000 for denominations of \$0.40 and in rolls of 7,200 for denominations of \$0.50. Heat decalomania tax stamps applied by hand in denominations of \$0.20, \$0.40 and \$0.50 will be sold in blocks of individual sheets of 100 stamps, and only in multiples of 1,000 stamps. Distributors will now be required to pick up their stamps at the Division's Mill Hill Processing Center, or through the mail, and will no longer be able to pick up such stamps at designated banks.

The proposed amendment to N.J.A.C. 18:5-2.3 reflects the increase in cigarette tax established by P.L. 1990, c.39 from \$0.095 per 10 cigarettes plus a surtax equal to the sales and use tax in effect, applied to the average wholesale price of cigarettes, to a tax of \$0.02 for each cigarette.

The amendments at N.J.A.C. 18:5-3.3 do not change the method of purchase for decalomania tax stamps, but do delete the meter impression stamp purchase requirements, since the meter impression stamps will no longer be used.

A discount has been allowed at N.J.A.C. 18:5-3.4 for those who purchase larger amounts of hand-applied stamps. This discount may also be of some benefit to the small business owner, who may not be renting the machine for \$300.00 per month, but who may find it desirable to buy larger quantities of hand-applied stamps.

The provisions of N.J.A.C. 18:5-3.8, 3.9 and 3.10 which apply to credit purchases have been removed, since the Division no longer finds it feasible to allow this type of purchase.

At N.J.A.C. 18:5-3.11, amendments have been made which require the seller to notify the Division immediately upon the sale of any stamping machine delivered to, or purchased for use in, the State of New Jersey. This amendment will assist the Division in the supervision of the use of the tax stamps.

Additional amendments have been made throughout in order to accommodate the changes cited above.

Social Impact

The proposed repeals, amendments, and new rules reflect a change in the stamping requirement. The use of the heat-applied stamp enhances enforcement of the Cigarette Tax Act, inasmuch as the new stamps are more legible. Thus, cigarette retailers and consumers will be able to identify with greater assurance New Jersey "tax paid" cigarettes.

The proposed amendment to N.J.A.C. 18:5-2.3 merely amends the rule to incorporate the tax rate change enacted as P.L. 1990, c.39. This amendment will have no impact on sales of cigarettes.

Economic Impact

The new requirement relating to the uniform use of a stamping machine and the use of only certain heat applied stamps should have no significant economic impact on any cigarette distributor. Those who wish to do so may rent a stamping machine for \$300.00 per month; those who do not wish to do this may arrange to have the stamps applied by hand. A distributor will no longer be required to pay for the shipping charges for the stamps. The Division of Taxation will pay for delivery charges. Distributors in the past also incurred transportation costs whenever they sent agents to pick up the stamps at stamp sales locations. They will no longer have these costs under the proposed amendments, since they may now apply for, and receive, stamps by mail.

The new cigarette tax rates imposed under P.L. 1990, c.39 increased cigarette tax revenues for the State of New Jersey. Based on 1990 cigarette consumption, it is estimated that the State has realized an \$80 million increase in tax revenue from cigarette smokers. Though this proposal will amend the rule to reflect the current cigarette tax rate, the economic impact is a result of the law, rather than the rules.

Regulatory Flexibility Analysis

The proposed amendments and new rules impose recording, recordkeeping and other compliance requirements, such as the limitation on sources for purchases, on cigarette distributors, many of whom are small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The payment of taxes through the use of stamps, the rate to be paid, and the distribution to licensed distributors are required by statute. The Director is permitted to define the design of the stamps and to provide for the sale of such stamps. The new requirements, made necessary by the unavailability of the previously-used stamping machines, will be of benefit to the consumer and to the State, since the heat-applied stamps are more legible and easier to read. The

provision for hand-applied stamps, sold in smaller quantities than the machine-applied stamps, may be helpful to small businesses which do not require, and who may be financially disadvantaged by, a purchase of \$12,000 worth of stamps. No other differentiation can be made in the rules, since to do so would not be in compliance with the Division's statutory responsibility to collect cigarette taxes through the use of stamps.

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

18:5-2.3 Computation of tax

[(a)] The provisions of the Act impose a tax computed at the rate of [\$0.09-1/2] **\$0.02** for each [10 cigarettes or fraction thereof] cigarette.

[(b)] A standard package of 20 cigarettes, therefore, is taxed at the rate of \$0.19.

(c) Other than standard packages of cigarettes are taxed as follows:

1. A package of 10 or less cigarettes is taxed at \$0.09-1/2;
2. A package of 11 or more, but less than 21 cigarettes is taxed at \$0.19;
3. A package of 21 or more, but less than 31 cigarettes is taxed at \$0.28-1/2;
4. A package of 31 or more, but less than 41 cigarettes is taxed at \$0.38;
5. A package of 41 or more, but less than 51 cigarettes is taxed at \$0.47-1/2;
6. A package of 51 or more cigarettes is taxed at \$0.47-1/2, plus \$0.09-1/2 for each 10 cigarettes or fraction thereof over 50 cigarettes.]

18:5-3.2 Types of stamps available; denominations

[(a)] Water applied decalomania tax stamps are available in denominations of \$0.09-1/2, \$0.19, and \$0.47-1/2, and are sold only in blocks of individual sheets of 100 stamps and multiples of 100 stamps.

(b) Meter impression tax stamps are available in the denomination of \$.19 only, and are sold in any combination of units. A unit is defined as 10 individual tax stamp impressions.

(c) The discount provided in N.J.A.C. 18:5-3.4 is allowed only on the purchase of multiples of 100 units.]

(a) Heat decalomania tax stamps applied by machine in denominations of \$0.40 are sold only in multiples of 30,000 stamps.

(b) Heat decalomania tax stamps applied by machine in denominations of \$0.50 are sold only in multiples of 7,200 stamps.

(c) Heat decalomania tax stamps applied by hand in denominations of \$0.20, \$0.40, and \$0.50 are sold in blocks of individual sheets of 100 stamps and only multiples of 1,000 stamps.

18:5-3.3 Purchase of stamps; location

[(a)] Decalomania tax stamps are available and may be purchased only at the Division of Taxation, Trenton, New Jersey.

[(b)] Meter impression tax stamps are available and may be purchased either at the Division of Taxation, Trenton, New Jersey, or at the following designated agent banks:

1. New Jersey:
 - i. Atlantic City—First National Bank of South Jersey;
 - ii. Bridgeton—Citizens United National Bank;
 - iii. Jersey City—Trust Company of New Jersey;
 - iv. Newark—Fidelity Union Trust Company Equitable Branch;
 - v. Newark—Fidelity Union Trust Company American Branch;
 - vi. Paterson—First National Bank of New Jersey;
 - vii. Paulsboro—National Bank and Trust Company of Gloucester County;
 - viii. Phillipsburg—American National Bank and Trust Company;
 - ix. Red Bank—Colonial First National Bank;
 - x. South River—Central Jersey Bank and Trust Company;
 - xi. Toms River—First National Bank of Toms River;
 - xii. Wildwood—Union Trust Company of Wildwood, Inc.
2. Pennsylvania:
 - i. Shiremanstown—Commonwealth National Bank;
 - ii. Chester—Southeast National Bank;
 - iii. Matamoras—Security Bank and Trust Company.

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3. New York:
 - i. Port Chester—Barclays Bank of New York.
4. Massachusetts:
 - i. Quincy—Hancock Bank and Trust Company.
5. Rhode Island:
 - i. Providence—Rhode Island Hospital Trust National Bank.
6. Virginia:
 - i. Fredericksburg—Bank of Virginia.

(c) No licensed distributor may purchase meter impressions at any agent bank location other than the one designated by the Director. This does not preclude any licensed distributor from using the Division of Taxation in Trenton, New Jersey, or the following branch offices of the Division of Taxation, at any time for the purchase of meter impressions.

Branch Offices of the New Jersey Division of Taxation

Addresses	Counties Covered
Cherry Hill Branch Office 11 Ormond Avenue Cherry Hill, N.J. 08002	Burlington Camden
Newark Branch Office 1100 Raymond Boulevard, Room 103 Newark, N.J. 07102	Essex Hudson
Paramus Branch Office 193 Route 17S, Box 724 Paramus, N.J. 07652	Bergen Passaic
Sea Girt Branch Office 2100 Highway 35, Suite C Sea Girt, N.J. 08750	Middlesex Monmouth Ocean
Somerville Branch Office 205 W. Main Street P.O. Box 315 Somerville, N.J. 08876	Hunterdon Mercer Morris Somerset Sussex Union Warren
Vineland Branch Office 80 South Main Road Suite 112 Vineland, N.J. 08360	Atlantic Cape May Cumberland Salem Gloucester]

18:5-3.4 Purchase of stamps; discount allowed

[A discount of 1.46 percent is allowed on all sales of cigarette revenue tax stamps to licensed distributors, when the number purchased, either decalcomania or meter impressions, or a combination thereof, equals or exceeds 1,000 stamps, provided the distributor is in compliance with all of the provisions of the Act and these regulations.]

(a) The following discounts shall be allowed on all sales of cigarette revenue tax stamps to licensed distributors provided the distributor is in compliance with all of the provisions of the Act and these rules:

1. A discount of .01215 percent is allowed on all sales of hand applied cigarette revenue tax stamps in denominations of \$0.20 when the number purchased is in excess of 1,000 stamps.

2. A discount of .01125 percent is allowed on all sales of hand applied cigarette revenue tax stamps in denominations of \$0.40 when the number purchased is in excess of 1,000 stamps, or in multiples of 30,000 stamps for machine applied stamps.

3. A discount of .009 percent is allowed on all sales of hand applied cigarette revenue tax stamps in denominations of \$0.50 when the number purchased is in excess of 1,000 stamps, or in multiples of 7,200 stamps for machine applied stamps.

18:5-3.5 Purchase of stamps; noncredit basis

[(a) Licensed distributors may make noncredit (cash) purchases of cigarette decalcomania tax stamps at the Division of Taxation in Trenton, New Jersey, by presenting in person, or by forwarding a properly completed Distributors Stamp Order Form together with

payment in the form of legal tender, a money order, or a certified or cashier's check.

(b) The rules concerning meter impression tax stamps are:

1. Licensed distributors may make noncredit (cash) purchases of meter impression tax stamps at the Division of Taxation in Trenton, New Jersey, by presenting, in person or by duly authorized representative, or by forwarding by mail or express, the metering machine together with a properly completed Distributors Stamp Order Form, and payment in the form of legal tender, a money order, or a certified or cashier's check;

2. Licensed distributors may make noncredit (cash) purchases of meter impression tax stamps at an agent bank designated in section 3.3(b) (Purchase of stamps; locations) of this chapter by presenting, in person, or by duly authorized representative, the metering machine, together with a properly completed Distributors Stamp Order Form, and payment in the form of legal tender, a money order, or a certified or cashier's check.]

Licensed distributors may make noncredit purchases of heat applied tax stamps by telephoning their order to the Division of Taxation, Revenue Accounting, 609-984-2029 or 984-3723 and mailing a money order or check to the Division of Taxation, Revenue Accounting, CN 250, Trenton, New Jersey 08646. Once ordered, the stamps will be mailed to the purchaser.

18:5-3.6 Purchase of stamps on a credit basis

[(a) Licensed distributors, both resident and nonresident, upon the discretionary approval of the Director, may make purchases of cigarette revenue tax stamps on a credit basis, provided that Cigarette Tax Form CD-4, Distributors Tax Stamp Credit Bond, or an Irrevocable Letter of Credit issued by a State or federally chartered bank, that is satisfactory to the Director, has been filed with the Director in an amount not less than the gross sales price of such stamps which the distributor intends to purchase.

1. The Stamp Credit Bond or Irrevocable Letter of Credit must remain in effect for a period of 90 days after the expiration of the license period.]

All purchases of heat applied tax stamps shall be made through telephone order to the Division of Taxation, Revenue Accounting, Trenton, New Jersey, 609-984-2029 or 984-3723. Once ordered these stamps will either be mailed out or picked up at the Division of Taxation, Trenton, New Jersey.

18:5-3.7 [Decalcomania tax stamps purchased on credit] (Reserved)

[Licensed distributors, so authorized, acting in compliance with N.J.A.C. 18:5-3.6, may make credit purchases of cigarette decalcomania tax stamps at the Division of Taxation, Trenton, New Jersey, by presenting, in person, or by forwarding, a properly completed Distributors Stamp Order Form.]

18:5-3.8 [Meter impression tax stamps purchased on credit] (Reserved)

[(a) Licensed distributors, acting in compliance with N.J.A.C. 18:5-3.6, may make credit purchases of meter impression tax stamps at the Division of Taxation, Trenton, New Jersey, by presenting, in person or by duly authorized representative, or by forwarding by mail or express, the metering machine, together with a properly completed Distributors Stamp Order Form.

(b) Licensed distributors so authorized, acting in compliance with N.J.A.C. 18:5-3.6, may make credit purchases of meter impression tax stamps at an agent bank designated in N.J.A.C. 18:5-3.3(b), by forwarding the completed Distributors Stamp Order Form to the Division of Taxation, Trenton, New Jersey, where it is ascertained whether the credit position of the distributor is secure, and not exceeded by the order.

(c) Two copies of Cigarette Tax Form CMA, Authorization to Set Meter, are then returned to the distributor, who in turn presents them, with the metering machine, to the designated agent bank.]

18:5-3.9 Purchase of stamps; credit basis payments

[(a)] Payment for all revenue tax stamps purchased on a credit basis must be received by the Director at the Division of Taxation in Trenton, New Jersey, within 30 days (including Saturdays, Sundays, and holidays) of the date of purchase.

[(b) The Director may, at his discretion, accept non-certified checks in payment of outstanding credit account receivables.

(c) The dishonor of any check, except a dishonor due to the negligence of a bank, shall cause a suspension or revocation of the noncertified check privilege of the defaulting distributor.

(d) In the event of a dishonored check, the Director may seize all unaffixed decalomania tax stamps, meter or meters and the stamped and unstamped cigarette inventory of the defaulting distributor and the Director shall retain them until payment is made.

(e) The Director may periodically review the effectiveness of the noncertified check privilege and may, in his discretion, discontinue the use of the noncertified check privilege accorded any or all distributors as herein provided.

(f) Resident distributors, by issuing noncertified checks to the Director, shall be deemed to have accepted all of the conditions of all the subsections of this Section.]

18:5-3.10 Decalomania revenue tax stamps

(a) [Affix to cigarette packages.

1.] Decalomania revenue tax stamps of the proper denomination [are to] **shall** be affixed to each individual package of cigarettes in such manner as to adhere securely in accordance with the instructions of the manufacturer.

[2.](b) If packages of cigarettes are wrapped in or covered by some substance to which the stamps do not readily adhere, such wrapper or covering must be roughened or treated so that the stamps will adhere securely thereto.

[(b) Cancelling stamp.

1. Decalomania revenue tax stamps, either before or after they are affixed to packages of cigarettes, are to be cancelled with the licensed distributor's license number;

2. Waterproof ink is to be used to impress the cancellation number in a clear and legible manner.]

Recodify (c)-(e) as (b)-(d) (No change in text.)

18:15-3.11 [Metering] Stamping machines; authorization to use

(a) The Director may, at his or her discretion, approve the use of [metering] **stamping** machines to affix, print or impress revenue tax stamps upon individual packages of cigarettes.

(b) Authorization for the use of [metering] **stamping** machines may be granted only to duly licensed distributors.

(c) The Director reserves the right to rescind all authorization to use [metering] **stamping** machines upon 30 days notice, should such action appear to be in the best interest of the State of New Jersey.

(d) **The Director shall be informed immediately by the seller of all sales of stamping machines delivered to New Jersey or for use in applying New Jersey tax decalomania, including the name and address of the buyer.**

18:15-3.12 [Metering] Stamping machines; conditions of use

(a) Application by licensed distributors for authorization to use a [metering] **stamping** machine is to be made to the Director, who shall apply the following terms and conditions to such authorization:

1. Only [metering] **stamping** machines of a type approved by the Director are to be used to affix [meter impressions] **stamps**;

2. Only [metering] **stamping** machines registered with the Director are to be used to affix [meter impressions] **stamps**;

3. [Metering] **Stamping** machines registered with the Director are to be used to affix [meter impressions] **stamps** only on packages of cigarettes owned by the distributor affixing same;

[4. Only ink approved by the Director is to be used to affix meter impressions;]

[5.]4. Each [metering] **stamping** machine **and stamps** [is] **are** to be kept in a safe place when not in use, and [is] **are** to be safeguarded when being transported;

[6.]5. [Metering] **stamping** machine is to be transferred or otherwise disposed of without prior written permission of the Director;

[7. Any metering machine having a broken seal or which malfunctions or is damaged in any way is not to be used by the licensed distributor, but is to be immediately reported to the Director and to the manufacturer of the machine;

8. No repairs are to be made to a metering machine except by a duly authorized representative of the manufacturer of the machine and upon prior approval of the Director;

9. In case of theft, loss, or mysterious disappearance of a metering machine or tampering therewith, the incident is to be immediately reported to the Director, to proper police authorities and to the manufacturer of the machine;]

[10.]6. All [metering] **stamping** machines must be regularly serviced and cleaned in accordance with the instructions issued by the manufacturer of the equipment[;].

[11. Meter impressions are to be clearly and legibly imprinted to the bottom end of each standard package of 20 cigarettes. Meter impressions are not to be imprinted on any package, carton or box of cigarettes containing more or less than 20 cigarettes.]

18:15-3.13 [Metering] Stamping machine inspection

(a) All [metering] **stamping** machines [, tax stamping equipment, and meter impressions issued therefrom] **and related equipment** are [to be inspected and examined] **subject to inspection and examination** regularly by the Director.

(b) If [he] the Director finds that any machine or equipment is not being used either in accordance with the instructions of the manufacturer, or these [regulations, or that the meter impressions are not clear and legible] **rules**, the Director may suspend or revoke a licensed distributor's privilege to use a [metering] **stamping** machine [to affix meter impressions to packages of cigarettes].

18:15-3.20 Suspension or revocation of [metering] stamping machine privilege

The Director may, at his or her discretion, suspend or revoke the [metering] **stamping** machine privilege of any licensed distributor who fails to use a [metering] machine in accordance with either the instructions of the manufacturer or with these [regulations, or who issues meter impressions which are not clear and legible] **rules**.

18:15-3.21 Notice of suspension or revocation of discount, credit, or [metering] stamping machine privilege

The Director, before suspending or revoking the discount, credit, or [metering] **stamping** machine privilege of any licensed distributor, shall give 10 days notice to the licensee personally, or by mail addressed to his last known address, which notice shall recite in detail the reasons and basis for the suspension or revocation, and shall specify the date, time and place for the hearing.

18:15-3.22 Hearing of suspension or revocation of discount, credit, or [metering] stamping machine privilege

The Director shall afford any person who has received a notice of a hearing to suspend or revoke the discount, credit, or [metering] **stamping** machine privilege, the right to be heard in person or by attorney, to offer evidence pertinent to the subject of the hearing, and to invoke the powers of the Director with respect to the compulsory attendance of witnesses and the production of books, accounts, papers, records and documents by subpoena.

18:15-3.23 Basis of order suspending or revoking the discount, credit, or [metering] stamping machine privilege

After a hearing, the Director, in issuing any Order which suspends or revokes the discount, credit, or [metering] **stamping** machine privilege of any licensed distributor shall include in the Order the findings of fact upon which such Order is based.

18:15-3.24 Service of order suspending or revoking the discount, credit, or [metering] stamping machine privilege

The Director shall serve any Order suspending or revoking the discount, credit, or [metering] **stamping** machine privilege of any licensed distributor by personal delivery of a certified copy, or by mailing a copy thereof to him at his last known address.

18:15-3.25 Appeal of order suspending or revoking the discount, credit, or [metering] stamping machine privilege

Any licensed distributor may within 45 days from the date of any Order of the Director suspending or revoking the discount, credit, or [metering] **stamping** machine privilege of such distributor appeal to the Appellate Division of the Superior Court of New Jersey by filing a notice of appeal.

18:15-4.3 Redemption of unused or mutilated tax stamps

(a) A refund equal to the face value, less the discount allowed, is made to licensed distributors on returned, unused or mutilated but identifiable cigarette decalcomania tax stamps [or meter impressions,] when accompanied by a properly executed claim for refund (Form A-3730).

(b) (No change.)

18:15-4.4 Redemption of tax stamps affixed to spoiled packages of cigarettes

(a) A refund equal to the face value, less the discount allowed, on identifiable cigarette decalcomania tax stamps [or meter impressions] affixed to spoiled packages of cigarette may be obtained by licensed distributors when an agent of the Director has witnessed the destruction of the spoiled packages of cigarettes and the stamps thereon, and a properly executed claim for refund (Form A-3730) is filed.

(b) (No change.)

18:15-4.5 Redemption of tax stamps affixed to packages of cigarettes returned to manufacturers

(a) A refund equal to the face value, less the discount allowed, on identifiable cigarette decalcomania tax stamps [or meter impressions] affixed to packages of cigarettes returned to manufacturers may be obtained by licensed distributors when a properly executed claim for refund (Form A-3730) is filed.

(b) (No change.)

18:15-4.6 Redemption of tax stamps affixed to packages of cigarettes sold to the United States Government or its agencies

(a) A refund equal to the face value, less the discount allowed, on cigarette decalcomania revenue tax stamps [or meter impressions] affixed to packages of cigarettes sold to the United States Government or its agencies may be obtained by licensed distributors when a properly executed claim for refund is made on Form A-3730. The claim must be accompanied by:

1.-2. (No change.)

18:15-4.7 Redemption of tax stamps affixed to packages of cigarettes exported

(a) A refund equal to the face value, less the discount allowed, on cigarette decalcomania revenue tax stamps [or meter impressions] affixed to packages of cigarettes exported to points outside of New Jersey may be obtained by licensed distributors when a properly executed claim for refund is made on Form A-3730. The claim must be accompanied by:

1.-2. (No change.)

18:15-5.8 Nonresident distributors' report

(a) Every licensed nonresident distributor is required to file a monthly report on form CNR-1 (Nonresident Distributors Cigarette Tax Return). The following schedules must accompany the return, when applicable:

1.-2. (No change.)

3. Schedule D (Form [CRN] CNR-5) Purchases of Revenue Stamps [and Meter Units] during the report month.

(a)

DIVISION OF TAXATION**Gross Income Tax****Interest on Overpayments****Proposed New Rule: N.J.A.C. 18:35-1.27**

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54A:9-17(a) and 54A:9-7(f).

Proposal Number: PRN 1992-278.

Submit comments by August 5, 1992 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed new rule will provide for the payment of interest at the rate of six percent per annum upon any overpayments of New Jersey gross income tax. No interest shall be allowed or paid on any overpayment of less than \$1.00, nor upon any overpayment refunded within six months after the last date prescribed or permitted by extension of time for filing an original return, or within six months after the return is filed, whichever is later.

The new rule sets forth the requirement that a refund claim (amended return) is only valid and considered filed if it contains sufficient information to permit the mathematical verification of tax liability or overpayment shown on the return. All required schedules and attachments must also be submitted in order for the return to be deemed filed.

No interest shall be paid on the refund of tax erroneously paid by the taxpayer by reason of any assessment of tax by this Division under the Gross Income Tax Act.

Social Impact

The proposed new rule is necessary to provide taxpayers with information on the conditions under which interest on overpayments is paid under N.J.S.A. 54A:9-7(f). The new rule will eliminate any confusion which might exist as to when interest is payable and at what rate.

Economic Impact

Since the main purpose of this new rule is to merely clarify existing law and administrative practice, the effect on the revenue derived from the Gross Income Tax Act will be negligible.

Regulatory Flexibility Statement

The proposed new rule does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule affects only individual taxpayers. Accordingly, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

18:35-1.27 Interest on overpayments

(a) The Division will pay interest at the rate of six percent per annum on an overpayment of gross income tax which has not been refunded six months and one day after the later of:

1. The last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file; or

2. The date the return, whether original or amended, requesting the refund is actually filed.

(b) When interest is to be paid pursuant to (a) above, it will be calculated beginning from one day after the later of the last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file, or the date the return, whether original or amended, requesting the refund is actually filed. Interest will continue to accrue to a date (to be determined by the Director) preceding the date of the refund check by not more than 30 days.

TREASURY-TAXATION

(c) An overpayment of gross income tax is deemed to occur on the last date for filing a gross income tax return, as prescribed by statute or permitted by an approved application for extension of time to file, or on the date the return, whether original or amended, requesting the refund is actually filed.

1. Monies paid erroneously resulting from an assessment made under the Act are not considered an overpayment of gross income tax. Nothing in this section shall be construed to permit the payment of interest on such monies if and when returned to the taxpayer.

(d) No interest will be paid on any overpayment of gross income tax refunded within six months of the dates indicated in (a)1 and (a)2 above.

PROPOSALS

(e) For the purposes of this section, a gross income tax return is not considered to be filed unless and until it contains sufficient required information to permit the mathematical verification of tax liability and the resulting overpayment shown on the return. All required schedules and attachments must be submitted in order for the return to be deemed filed.

(f) This section shall take effect immediately and apply to all tax years beginning after December 31, 1990, as well as any other return filed (within the applicable statute of limitations) after April 15, 1992 which results in an overpayment.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Bees

Volunteer Inspector Program, Noncommercial Apiaries and Bees

Adopted New Rules: N.J.A.C. 2:24-4

Proposed: April 6, 1992 at 24 N.J.R. 1141(a).

Adopted: June 9, 1992 by the State Board of Agriculture and

Arthur R. Brown, Jr., Secretary

Filed: June 11, 1992 as R.1992 d.278, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:6-1 et seq.

Effective Date: July 6, 1992.

Expiration Date: April 2, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: The only comment received was from the petitioner, Mr. Thomas P. Thatcher. His comments expressed appreciation to the Department and to the State Board of Agriculture for the timely and professional manner in which they responded to the petition and in their promulgation of the proposed rules. Mr. Thatcher did make a suggested change to the proposed rules at N.J.A.C. 2:24-4.4(a). That section requires volunteers to have at least five years of experience in keeping bees. Mr. Thatcher suggested that other beekeeping experience and education acceptable to the Secretary be added as an alternative.

RESPONSE: The Secretary and the State Board of Agriculture, at their meeting on May 26, 1992, voted to approve the change in N.J.A.C. 2:24-4.4 as recommended by Mr. Thomas P. Thatcher.

Summary of Changes Upon Adoption:

A substantive change not requiring additional public comment was made to N.J.A.C. 2:24-4.4(a), as described above.

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

SUBCHAPTER 4. VOLUNTEER INSPECTOR PROGRAM, NONCOMMERCIAL APIARIES AND BEES

2:24-4.1 Definitions

As used in this subchapter, the following words and terms shall have the following meaning:

"Activity log" means the permanent record of VIP inspection activities and Advisory Reports maintained by each VIP designee on a form provided by the Department. VIP designees shall forward a copy of their Activity Log to the Department if requested to do so by the Department.

"Advisory report" means a non-binding written report made by a VIP designee to an apiary owner or operator following an inspection of a hive(s) or apiary. The report shall be made in the form, or facsimile thereof, as supplied by the Department.

"Department" means the New Jersey Department of Agriculture.

"Noncommercial" means a beekeeper enterprise of 50 or less colonies which does not engage in the sale of bee colonies, package bees, queens, or the rental of bees for pollination services. Beekeepers with 50 or less colonies who sell honey, but do not engage in the above activities, shall be considered noncommercial.

"Secretary" means the Secretary of Agriculture or his or her authorized designee.

"Significant event" means any noteworthy occurrence or discovery which shall be reported to the Department of Agriculture because of its regulatory significance or potential to adversely affect the New Jersey beekeeping industry.

"VIP" means Volunteer Inspector Program.

"VIP designee" means a person who meets the Department's qualification criteria and has received Department training in the fundamentals of bee and apiary inspection; has been designated by the Department as a Volunteer Inspector pursuant to this subchapter; and, who does not receive compensation or reimbursement for expenses by the Department.

2:24-4.2 General organization and purpose of the Voluntary Inspector program

(a) The Volunteer Inspector Program (VIP) is a cooperative and volunteer program involving the Department of Agriculture, interested beekeepers, educators, and interested beekeeping organizations. The purpose of this program is to train volunteers in the fundamentals of apiary and bee inspection so that they may assist the State Bee Inspection Service with the inspection and monitoring of noncommercial intrastate bees and apiaries.

(b) The organization and roles of the VIP components are generally as follows:

1. The Department of Agriculture shall oversee the program and will provide training to prospective VIP designees, forms and educational materials;

2. The VIP designees are volunteers trained by the Department and designated as VIP bee and apiary inspectors;

3. The beekeepers and apiary operators may request a VIP inspection of his or her bees or apiary. The request may be made by contacting the Department for a list of local VIP designees. The person requesting the inspection shall be present at the time of the inspection.

2:24-4.3 Provisions and standards for VIP designee activities

(a) VIP designees may inspect and make advisory reports only for noncommercial intrastate bees and apiaries. Commercial and interstate bee inspections shall be performed only by State employed Bee Inspectors.

(b) VIP designees do not have law enforcement powers pursuant to N.J.S.A. 4:6-1 et seq., or "right of entry" powers pursuant to N.J.S.A. 4:6-18.

(c) VIP inspection shall be performed only at the request of the owner or operator of an apiary.

(d) The owner or operator of the apiary must be present at the time of a VIP inspection.

(e) In addition to making advisory reports to beekeepers, VIP designees shall report any significant event directly to the Department.

(f) VIP designees may not:

1. Accept money or compensation from a beekeeper for an inspection or advisory report;

2. Make an advisory report on bees owned by the VIP designee; and

3. Represent themselves as a State official, spokesperson for the State or Department or as a person with regulatory authority.

(g) VIP designees shall:

1. Maintain an up-to-date activity log of all VIP inspections and retain a record for not less than three years from the date of the last entry;

2. Comply with VIP directives as may be issued by the Secretary; and

3. Conduct themselves in a professional manner.

2:24-4.4 Qualifications and training

(a) Volunteers shall have at least five years experience in keeping bees*, or have other beekeeping experience and education acceptable to the Secretary,* and shall be currently active beekeepers.

(b) Standards and requirements for initial and recurrent VIP training shall be established by the Department. Training sessions for VIP designees and designee candidates shall be offered by the Department.

(c) Classroom training sessions may be supplemented by additional practical field training. At the sole discretion of the Department.

COMMUNITY AFFAIRS

ment, VIP designees or designee candidates may accompany, for practical field training purposes, a State Bee Inspector during actual apiary inspections.

2:24-4.5 Expiration of designation

VIP designations made by the Department shall be valid for no more than two years. VIP designees shall take refresher and update training on no less than a biennial (every two years) basis.

2:24-4.6 Suspension orders by the Secretary or Director

(a) The Secretary or the Director of the Division of Plant Industry may temporarily or permanently order the suspension of the VIP designation of any person.

(b) Notification of suspension of any VIP designee shall be done in writing and may be delivered in person or by mail. The notice shall state the Secretary's or Director's reason(s) for the order and the effective date of the suspension.

2:24-4.7 Liability

(a) The VIP is a wholly voluntary program. All persons participating in this program, including all designees, and persons requesting VIP inspections do so of their own choosing and liability.

(b) Any persons, including beekeepers and VIP inspectors participating in the VIP shall agree to hold Department of Agriculture harmless from any and all claims of loss or damages resulting from participating in the program.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Fire Code Administration; Uniform Construction Code

Conflict of Interest

Adopted Amendments: N.J.A.C. 5:18A-2.9 and 4.6; 5:23-4.5, 4.11 and 4.14

Proposed: March 2, 1992 at 24 N.J.R. 678(a).

Adopted: May 11, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: May 20, 1992 as R.1992, d.243, **without change**.

Authority: N.J.S.A. 52:27D-124 and 198.

Effective Date: July 6, 1992.

Expiration Date: January 4, 1995, N.J.A.C. 5:18A. March 1, 1993, N.J.A.C. 5:23.

Summary of Public Comments and Agency Responses:

Comments were received from Senator Leanna Brown, Assemblymen Rodney Frelinghuysen and John Kelly, Jeffrey A. Betz, Dennis W. Smith, Kenneth H. Ginsberg, Esq. and Edward J. Buzak, Esq.

COMMENT: Precluding licensed officials from serving as paid witnesses on behalf of persons contesting orders issued by enforcing agencies is overbroad and unfairly places the alleged violator at a distinct disadvantage.

RESPONSE: A similar prohibition has existed for many years for tax assessors, with no apparent disadvantage resulting to property owners who need the services of an expert witness. There exists a sufficient pool of potential expert witnesses who either hold code enforcement licenses or have other relevant professional credentials and who are not currently serving in an official capacity so that members of the public are not prejudiced by this prohibition.

COMMENT: The prohibition against serving as a paid expert witness violates the constitutional rights of the official. Moreover, nobody else is equally qualified to testify about misapplication of the code. The proposed rule will encourage a "conspiracy of silence" among officials similar to that which, according to lawyers, prevents physicians from testifying against other physicians.

RESPONSE: The Department does not agree that only persons currently serving as officials are competent to serve as expert witnesses. No limitation is being placed upon the free exercise of speech by an official—only upon its paid exercise.

ADOPTIONS

COMMENT: The premise of "this ill-conceived proposal" is that the official is always right and it is "incomprehensible" why the Department would propose rules to protect an official who misinterprets or misrepresents the code.

RESPONSE: The Department does not believe that officials are always right. It does believe, however, that there is a presumption of validity to governmental actions and that the presence of a second official on the other side tends to improperly undercut that presumption. As has been stated, there is no shortage of persons with code-related expertise who are not subject to this prohibition, so there is no reason to believe that code officials will be free to misinterpret or misrepresent the code with impunity.

COMMENT: The proposal incorrectly implies that any person who obtains a license and becomes employed by an enforcing agency is an "expert."

RESPONSE: The proposal does not establish criteria for determining who may be deemed to be an "expert" in a court of law. All it says is that persons currently serving as officials may not also serve as paid witnesses on behalf of persons contesting the orders of an enforcing agency.

COMMENT: The "adjacent municipality" prohibition should not be applied to fire officials.

RESPONSE: Both the Code Advisory Board and the Fire Safety Commission felt strongly that the same prohibitions should apply to all officials and inspectors. This necessarily meant extending the neighboring municipality prohibition that now applies to construction code officials and inspectors to those enforcing the fire code. The adjacent municipality requirement provides a rough but effective way of distancing service in an official capacity from ownership of, or employment in, a private firm offering code-related services to the public. For 15 years, it has been the norm for construction code enforcement personnel.

COMMENT: A person serving as a fire official or inspector should not be precluded from holding employment in which he provides fire-related services to an industrial employer in an adjacent municipality.

RESPONSE: It is the understanding of the Department that what is being prohibited is ownership of, or employment in, a firm offering code-related goods or services to the public. Holding a job related to fire safety in an industrial plant does not fall within the prohibition.

COMMENT: A fire official should not be prevented from providing guidance on fire safety matters to public and nonprofit agencies as a free service.

RESPONSE: Providing guidance on fire safety matters at no charge does not constitute engaging in, or being employed by, a business offering fire safety services to the public.

COMMENT: If a fire or construction code official cannot be an expert witness, who will be?

RESPONSE: As has been stated, there are enough people around who have expertise, and who are not currently serving as officials, that members of the public will not lack for qualified experts upon whom they might call.

COMMENT: Since expertise is kept through using one's knowledge, the proposal limits the level of expertise available to citizens.

RESPONSE: People need not be serving as public officials in order to use their knowledge and thereby maintain their expertise.

COMMENT: The proposal is unfair to officials serving in municipalities that border many other municipalities.

RESPONSE: It is quite true that some municipalities border more municipalities than do others. In "hole and doughnut" situations, the officials in the "hole" municipality have only the "doughnut" as an adjacent municipality, while the latter may adjoin many others. However, any alternative way of defining a prohibited area outside of the municipality itself would also have its shortcomings. The application of a mileage requirement, for example, might raise other fairness considerations, such as whether radial or road distance is more meaningful, or whether measurement should be from the municipal border or some other point. The adjacent municipality requirement has the benefit of being readily determinable and, therefore, readily enforceable.

COMMENT: The persons who have caused conflict problems are well-known throughout the enforcement community and they should not be considered to represent the norm.

RESPONSE: It is not the position of the Department that persons engaged in the acts that this rule is intended to prohibit represent the majority of code enforcement personnel. It should be noted that the proposal has been approved by the Fire Safety Commission, the majority of the members of which are fire service representatives.

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COMMENT: Abuse can happen anywhere, and it is "absurd" to assume that it might only happen among adjoining communities.

RESPONSE: The adjoining municipality rule was originally a compromise between a Statewide conflict of interest prohibition that applied to electrical inspectors prior to the effective date of the State Uniform Construction Code Act and the absence of any prohibition at all for other inspectors. It has proven to be a reasonably effective way of making conflict between public and private roles in which an official may deal with the public less likely, without prohibiting private business activities entirely.

COMMENT: The proposal "labels all officials as abusing their professional credentials when appearing before a board of appeals."

RESPONSE: The Department is not labeling anybody as an abuser of professional credentials. It is saying that it is detrimental to code enforcement for officials to act in such a way as to undermine the presumption of validity of the orders of another enforcing agency.

Full text of the adoption follows.

5:18A-2.9 Conflict of interest

(a) No person employed by an enforcing agency as a fire official or fire inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she, or a member of his or her immediate family, has an economic interest.

Recodify existing (b) as 1. (No change in text.)

(b) No person employed by an enforcing agency as a fire official or fire inspector shall engage in, or otherwise be connected directly or indirectly for purposes of economic gain with, any business or employment furnishing labor, materials, products or services related in any way to fire safety within any municipality in which he or she is employed by an enforcing agency or in any municipality adjacent to any municipality in which he or she is thus employed.

(c) Persons subject to this section shall annually report any income or benefits received from any property or business subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to the Code, to the municipal governing body. This report shall include a list of all sources of income, but need not list the amount.

(d) No person employed by a municipal enforcing agency as a fire official or fire inspector shall be employed to appear before any construction board of appeals, or be involved in any court proceeding within the State, as a paid expert witness, or in any other compensated capacity, in any proceeding involving the enforcement of the Uniform Fire Code except on behalf of another enforcing agency, or as a court-appointed witness.

1. This prohibition shall not apply to any litigation not involving enforcement of the Code, or to appearance as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.

(e) This section shall not apply to:

1. The ownership of stock or other investment instrument of any corporation listed on any national stock exchange;
2. Any business or employment outside the State;
3. Dual employment by two or more enforcing agencies;
4. Any business or employment that is not subject to the Code;

or

5. Service as an instructor in a code enforcement training program.

Recodify existing (e) as (f) (No change in text.)

5:18A-4.6 Revocation of certifications and alternative sanctions

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

(d) Any sanctions imposed by the Construction Code Enforcement Element, pursuant to N.J.S.A. 52:27D-119 et seq., shall constitute grounds for imposition of sanctions under this section.

(e) (No change.)

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

(a)-(h) (No change.)

(j) Conflict of interest:

1. No person employed by an enforcing agency as a construction or subcode official or as an inspector shall carry out any inspection or enforcement procedure with respect to any property or business

in which he or she, or a member of his or her immediate family, has an economic interest.

i. Where an inspection or enforcement procedure is necessary or required in any such property or business, the official or inspector shall arrange for the inspection or enforcement to be carried out either by another local enforcing agency or by the Department.

Recodify existing 1. as 2. (No change in text.)

3. Persons subject to this subsection shall annually report any income or benefits received from any business or property subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to the Uniform Construction Code regulations, to the municipal governing body. This report shall include a list of all sources of income, but need not list the amount.

4. No person employed by a municipal enforcing agency as a construction official, subcode official or inspector shall be employed to appear before any construction board of appeals, or be involved in any court proceeding within the State, as a paid expert witness, or in any other compensated capacity in any proceeding involving the enforcement of the Uniform Construction Code except on behalf of another enforcing agency, or as a court-appointed witness.

i. This prohibition shall not apply to any litigation not involving enforcement of the Code, or to an appearance as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.

5. This section shall not apply to:

i-iv. (No change.)

v. Service as an instructor in a code enforcement training program.

6. Nothing herein shall prohibit a municipality from establishing by ordinance more restrictive provisions covering conflict of interest.

Recodify existing 4. as 7. (No change in text.)

5:23-4.11 State enforcing agencies—administration and enforcement

(a) Department of Community Affairs: The Construction Code Element shall administer and enforce the regulations, insofar as is practicable, in the same manner as a municipal enforcing agency.

1. (No change.)

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

5:23-4.14 Private enforcing agencies—administration and enforcement

Recodify 1. as (a) (No change in text.)

(b) The on-site inspection agency shall provide the department with the following:

Recodify i.-iii. as 1.-3. (No change in text.)

Recodify 3.-4. as (c)-(d) (No change in text.)

(e) Each on-site inspection agency shall have the following responsibilities:

Recodify i.-xv. as 1.-15. (No change in text.)

(f) No person employed by an on-site inspection agency as an employee, officer, director, partner or manager shall engage in, or otherwise be connected directly or indirectly, for purposes of economic gain with, any business or employment furnishing labor, materials, products or services for the construction, alteration or demolition of buildings within the State. Nor shall any such officer, director, partner, manager or employee engage in any other work that conflicts with his or her official duties, including, without limitation, employment or appear before any construction board of appeals, or to be involved in any court proceeding within the State, or as a paid expert witness against any construction official, subcode official, inspector or enforcing agency, or in any other compensated capacity except on behalf of an enforcing agency, or as a court-appointed witness.

1. This prohibition shall not apply to any litigation not involving enforcement of the Code, or as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.

2. This subsection shall not apply to:

Recodify (1)-(3) as i.-iii. (No change in text.)

3. An on-site inspection agency may employ municipal subcode officials and inspectors on a part-time basis. This employment, however, shall be subject to the following conditions:

Recodify (1)-(5) as i.-v. (No change in text.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Subcodes; Enforcing Agencies, Duties, Powers, Procedures; Licensing

Adopted Amendments: N.J.A.C. 5:23-5

Adopted Recodification with Amendments: N.J.A.C. 5:23-3.10 as 5:23-4.3A

Proposed: April 20, 1992 at 24 N.J.R. 1446(a).

Adopted: May 29, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: June 5, 1992 as R.1992, d.272, **without change**.

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

Effective Date: July 6, 1992.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

5:23-4.3A Enforcing agency classification

(a) Local enforcing agencies shall be classified as RCS (specialty in residential and small commercial structures), ICS (specialty in industrial and commercial structures) or HHS (specialty in high-rise/hazardous structures). The classification of the enforcing agency shall be determined by the highest class of structures for which the construction official and each subcode official in a municipality is licensed to do plan review.

Redesignate (a)-(e) as (b)-(f) (No change in text.)

5:23-5.1 Title; scope; intent

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

(c) This subchapter shall control all matters relating to qualifications for and licensing of all code enforcement officials engaged in or to be engaged in the administration and enforcement of the New Jersey Uniform Construction Code, including types of licensed code enforcement officials; procedures for application, issuance, denial and revocation of licenses; the approval of testing and/or educational programs offered to meet the requirements for licensing of code enforcement officials or construction board of appeals members; application fees for a license; and enforcement of penalties for violations of this subchapter.

(d) The Uniform Construction Code has been adopted to ensure public safety, health, and welfare insofar as they are affected by building construction. In order for the code to be enforced adequately and effectively, code officials will need to have sufficient knowledge and competence to administer and interpret the code's standards. This can best be achieved through the creation of an education and training program and the development of licensing requirements.

1. It is the purpose of this subchapter to establish standards and procedures for the licensing of Uniform Construction Code enforcement officials, and to require all persons performing duties with respect to the inspection of building construction for any political subdivision within this State, or in a private capacity, to be licensed as provided in this subchapter.

5:23-5.2 Unit established; hearings

(a) Rules concerning licensure of code enforcement officials are:

1. Established: There is hereby established in the Bureau of Technical Services, Division of Housing and Development, a Licensing Unit. The Unit shall consist of such employees of the Department of Community Affairs as may be required for the efficient implementation of this subchapter.

2. Powers and duties: The unit shall have the following responsibilities in addition to all others provided in this subchapter.

i. To issue such licenses as may be called for herein when warranted;

ii.-iii. (No change.)

(b) (No change.)

5:23-5.3 Types of licenses

(a) Rules concerning code enforcement licensure categories are:

1. Technical licenses: Subject to the requirements of this subchapter, persons may apply for and shall be licensed in the following specialties:

i. Building inspector: Building inspectors are authorized to carry out field inspection and plan review work pursuant to the regulations subject to the limitations specified herein.

(1) (No change.)

(2) Building inspector with a specialty in industrial and commercial structures (I.C.S.): Building inspectors I.C.S. are authorized to review plans for structures in classes II and III, and to carry out field inspection activities for structures in classes I, II and III.

(3) (No change.)

ii. (No change.)

iii. Fire protection inspector: Fire protection inspectors are authorized to carry out field inspection and plan review work pursuant to the regulations subject to the limitations specified herein.

(1)-(3) (No change.)

iv. Plumbing inspector: Plumbing inspectors are authorized to carry out field inspection and plan review work pursuant to the regulations subject to the limitations specified herein.

(1) Plumbing inspector with a specialty in high-rise and hazardous structures (H.H.S.): Plumbing inspectors H.H.S. are authorized to review plans and carry out field inspection for structures in classes I, II and III.

(2) (No change.)

v. Inplant inspector: Inplant inspectors are authorized to carry out field inspections and plan review work of premanufactured components pursuant to this subchapter.

vi. Elevator inspector with a specialty in high-rise and hazardous structures (H.H.S.): Elevator inspectors H.H.S. are authorized to review plans and carry out the elevator device inspections, or to witness tests required by this chapter in all structures.

2. Administrative licenses: In addition to the basic required technical licenses specified in N.J.A.C. 5:25-5.3(b)1, a person may apply for the administrative licenses specified herein.

i.-vi. (No change.)

5:23-5.4 Licenses required

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

(d) Enforcing agencies may establish code enforcement trainee positions subject to the following rules.

1. Persons applying for a trainee position with an enforcing agency must be officially registered with the Department of Community Affairs on the form provided by the Licensing Unit of the Bureau of Technical Services prior to being hired as a trainee.

i. Trainees shall renew their registration yearly and shall notify the Department of Community Affairs, Bureau of Technical Services, Licensing Unit, of any change in employment status or address within one month of the change. A non-refundable processing fee of \$20.00 is required for the initial Trainee Registration Request and for each subsequent renewal request.

2. Persons meeting the following experience requirements shall be eligible to register as trainees:

i. Fire protection inspector trainee—a minimum of one year of experience in the fire service (other than as an apprentice or person in training) with fire prevention, fire protection or firefighting responsibilities, or with one year experience in building construction as a journeyman, contractor, or design draftsman relative to the fire protection subcode.

ii. Building inspector trainee—a minimum of one year of experience in building construction as a journeyman, inspector, contractor or design draftsman relative to the building subcode.

iii. Plumbing inspector trainee—a minimum of one year of experience as a journeyman plumber, contractor, or design draftsman relative to the plumbing subcode.

iv. Electrical inspector trainee—a minimum of one year of experience as a journeyman electrician, contractor or design draftsman relative to the electrical subcode.

v. Persons who have graduated from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, or who possess an associate's degree in code enforcement, or have a current New Jersey registration/license as an architect or engineer shall be exempt from the experience requirement for trainee employment.

3. Trainees shall be evaluated by their supervisors on a quarterly basis. This evaluation shall include a brief description of the trainee's code enforcement activities and an assessment of the trainee's performance in these activities. Trainees who receive satisfactory evaluation ratings by their supervisors and who occupy enforcing agency trainee positions while registered with the Department may use the trainee experience toward satisfying the experience requirement for licensure in accordance with this subchapter. The effective date of the trainee experience begins at the time the person is hired as a registered trainee by an authorized agency.

4. (No change in text.)

5. The supervisor of the trainee shall possess a valid code enforcement license in the same subcode as the registered trainee working under his or her direct supervision.

i.-ii. (No change.)

6. To remain employed by an enforcing agency, a trainee must enroll in, and successfully complete, the appropriate approved course within two years of the effective date of his or her employment. Trainees who fail to successfully complete the appropriate course within two years of the effective date of their employment shall not be permitted to renew their registration until successful completion is achieved.

7. (No change in text.)

(e) Rules concerning effect are:

1. It shall be a violation of these regulations for any construction or subcode official or technical inspector to represent himself or herself to be qualified for a position that the person does not currently hold, or to use a title or otherwise represent himself to be qualified for a position that the person does not currently hold, or to use a title or otherwise represent himself as licensed or authorized to act under the code if that person does not possess the required license. In addition to any other remedy available under law, such shall be deemed a violation of this section subject to penalty of not more than \$500.00 for each offense.

2.-4. (No change.)

5:23-5.5 General license requirements

(a) A candidate for a license of any type issued pursuant to this subchapter shall submit an application to the Licensing Unit, Bureau of Technical Services, accompanied by the required non-refundable application fee established in N.J.A.C. 5:23-5.22. The application shall include such information and documentation as the Commissioner may require pursuant to this subchapter.

(b) After receipt of the required nonrefundable fee, the Department shall determine, by examination of the application and review of supporting documents, including substantial evidence of acceptable experience, successful test results, training and/or education submitted, whether an applicant is qualified for a license of the type and specialty for which the application has been made. If the application is satisfactory, the Commissioner shall issue a license to the applicant. This license will show that the person has met the established requirements and is eligible to be employed in this State in accordance with the provisions of this chapter.

1. (No change.)

2. Upon receipt of an incomplete application, the non-refundable application fee shall be collected and a letter of acknowledgment forwarded to the applicant setting forth the manner in which the application is incomplete.

3. The applicant shall submit a complete application within 18 months of receipt of the letter of acknowledgment. If a complete application is not submitted within the 18-month period, the application shall be deemed abandoned, no further action shall be taken on it by the Department and a new application and non-refundable fee shall be required if the applicant desires to re-apply.

4. Only test results for test modules passed within three years prior to, or at the time of, application shall be accepted toward fulfilling the requirements for the license sought. However, results of passed tests taken prior to July 1, 1991 of test module 6B-Elevator General shall be accepted toward fulfilling the requirements for elevator inspector H.H.S. licensure, if application is received by the Department within three years of issuance of the test results or by June 30, 1992, whichever is later.

5. No credit shall be given by the Department for any experience not involving the construction or alteration of buildings, or its equivalent, as determined by the Department.

6. No credit shall be given by the Department for any journeyman experience unless documentation of the completion of a formal or informal apprenticeship program, or its equivalent, as determined by the Department, is provided. In general, the Department makes reference to the U.S. Department of Labor's National Apprenticeship Program for assigning the length of time required to complete an apprenticeship program in a given trade.

7. Credit for part-time work experience shall be given by the Department on a proportional basis. The Department has established a 35-hour work-week as the standard full time equivalent. No additional credit will be given for hours in excess of 35 per week, regardless of any amount of overtime which an applicant claims to have worked.

(c) (No change.)

(d) Special provisions:

Recodify existing 5. as 1. (No change in text.)

5:23-5.6 Construction official requirements

(a) A candidate for a license as a construction official shall meet the following qualifications:

1. Possession of the qualifications established herein for at least one of the five subcode official licenses; provided, however, that any person qualified as a fire protection subcode official must also have experience for the applicable period of time specified by N.J.S.A. 52:27D-126b; and

2. Successful completion of an approved construction official educational program as required by N.J.A.C. 5:23-5.20 prior to or at the time of application.

3. A provisional license shall be issued to any person provided that such person is licensed or is simultaneously licensed as a subcode official. Such person shall have successfully completed the educational program required herein within 24 months of issuance of the provisional license.

5:23-5.7 Subcode official requirements

(a) A candidate for a license as a building, electrical, fire protection, plumbing or elevator subcode official shall meet the following qualifications:

1. (No change.)

2. Successful completion of an approved subcode official educational program as established in N.J.A.C. 5:23-5.20 prior to, or at the time of, application; and

3. Completion of such additional experience in the subcode of qualification as may be required, beyond that needed for licensure as a technical inspector, to provide at least the following total experience:

i. (No change.)

ii. Five years of experience in construction, design or supervision in building construction work, provided that such persons possess, prior to this experience, at least a bachelor's degree from an accredited institution of higher education in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction; or

iii. (No change.)

4. (No change.)

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5. A provisional license shall be issued to any person who possesses the required experience listed above provided that such person is licensed or is simultaneously licensed as a technical inspector in the same subcode area. Such person shall have successfully completed the educational program required herein within 24 months of issuance of the provisional license.

6.-7. (No change.)

5:23-5.8 Building inspector H.H.S. requirements

(a) A candidate for a license as a building inspector H.H.S. shall meet one of the following educational and/or experience requirements;

1. Seven years of experience consisting of one of the following, or a combination thereof:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, and two years of subsequent experience in construction, design, inspection or supervision in a field of construction currently regulated by the building subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and three years of subsequent experience in the construction, design, inspection or supervision of construction work regulated by the building subcode; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a building inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for building inspector H.H.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, or who possess a current New Jersey registration/license as an architect or engineer shall be exempted from the educational program requirements for building inspector H.H.S.

2.-3. (No change.)

5:23-5.9 Building inspector I.C.S. requirements

(a) A candidate for a license as a building inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of one of the following, or a combination thereof:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, and one year of subsequent experience in construction, design, inspection or supervision in a field of construction currently regulated by the building subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and two years of subsequent experience in the construction, design, inspection or supervision of construction work regulated by the building subcode; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a building inspector I.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for building inspector I.C.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, or who possess a current New Jersey registration/license as an architect or engineer, shall

be exempted from the educational program requirements for building inspector I.C.S.

2.-3. (No change.)

5:23-5.10 Building inspector R.C.S. requirements

(a) A candidate for a license as a building inspector R.C.S. shall meet one of the following educational and/or experience requirements:

1. Three years of experience consisting of one of the following, or a combination thereof:

ii.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and one year of subsequent experience in the construction, design, inspection or supervision of construction work regulated by the building subcode; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a building inspector R.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for building inspector R.C.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for building inspector R.C.S.; and

2. (No change.)

5:23-5.11 Electrical inspector H.H.S. requirements

(a) A candidate for a license as an electrical inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. Seven years of experience consisting of one of the following, or a combination thereof:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, and two years of subsequent experience in construction, design, inspection or supervision in a field of construction currently regulated by the electrical subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education and three years of subsequent experience in the construction, design, inspection or supervision of construction work regulated by the electrical subcode; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as an electrical inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for electrical inspector H.H.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or in engineering technology, or in any other major area of study significantly related to building construction, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for electrical inspector H.H.S.; and

2.-3. (No change.)

5:23-5.12 Electrical inspector I.C.S. requirements

(a) A candidate for a license as an electrical inspector I.C.S. shall meet one of the following educational and/or experience requirements.

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1. Five years of experience consisting of one of the following, or a combination thereof:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, and one year of subsequent experience in construction, design, inspection or supervision in a field of construction currently regulated by the electrical subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and two years of subsequent experience in the construction, design, inspection or supervision of construction work regulated by the electrical subcode; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a electrical inspector I.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for electrical inspector I.C.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for electrical inspector I.C.S.; and

2. (No change.)

5:23-5.13 Fire protection inspector H.H.S. requirements

(a) A candidate for a license as a fire protection inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. Seven years of experience consisting of one of the following, or a combination thereof:

i. Experience in the fire service (other than as an apprentice or as a person in training), with fire prevention, fire protection or firefighting responsibilities; or

ii.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in fire science or fire science technology, or in architecture or engineering, or in architectural or engineering technology or in any other major area of study significantly related to building construction or fire science, and two years of subsequent experience in responsibilities regulated by the fire protection subcode and/or experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

3. Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science, or fire science technology, and three years of subsequent experience in responsibilities regulated by the fire protection subcode and/or experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a fire protection inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for fire protection inspector H.H.S.; provided, however, that persons having an associate's degree in code enforcement, fire science, or fire science technology, or a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in any other major area of study significantly related to building construction or fire science, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for fire protection inspector H.H.S.

2.-3. (No change.)

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5:23-5.14 Fire protection inspector I.C.S. requirements

(a) A candidate for a license as a fire protection inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting one of the following, or a combination thereof:

i. Experience in the fire service (other than as an apprentice or as a person in training) with fire prevention, fire protection, or firefighting responsibilities; or

ii.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in fire science or fire science technology, or in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction or fire science, and one year of subsequent experience in responsibilities regulated by the fire protection subcode and/or experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

3. Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science, or fire science technology, and two years of subsequent experience in responsibilities regulated by the fire protection subcode and/or experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a fire protection inspector I.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for fire protection inspector I.C.S.; provided, however, that persons having an associate's degree in code enforcement, fire science or fire science technology, or a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in any other major area of study significantly related to building construction or fire science, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for fire protection inspector I.C.S.

2. (No change.)

5:23-5.15 Fire protection inspector R.C.S. requirements

Issuance of the fire protection inspector R.C.S. license shall be discontinued after July 31, 1991. All licenses issued on or before that date shall cease to be valid after July 31, 1993.

5:23-5.16 Plumbing inspector H.H.S. requirements

(a) A candidate for a license as a plumbing inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. Seven years of experience consisting of one of the following, or a combination thereof:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, and two years of subsequent experience in construction, design, inspection or supervision in a field of construction currently regulated by the plumbing subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and three years of subsequent experience in the construction, design, inspection or supervision of construction work regulated by the plumbing subcode; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a plumbing inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for plumbing inspector H.H.S.; provided, however, that persons having

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a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for plumbing inspector H.H.S.

2.-3. (No change.)

5:23-5.17 Plumbing inspector I.C.S. requirements

(a) A candidate for a license as a plumbing inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of one of the following, or a combination thereof:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, and one year of subsequent experience in construction, design, inspection or supervision in a field of construction currently regulated by the plumbing subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and two years of subsequent experience in the construction, design, inspection or supervision of construction work regulated by the plumbing subcode; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a plumbing inspector I.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for plumbing inspector I.C.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for plumbing inspector I.C.S.

2. (No change.)

5:23-5.18 Inplant inspector requirements

(a) A candidate for a license as an inplant inspector shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of one of the following, or a combination thereof:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in fire science or fire science technology, or in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction or fire science, and three years of subsequent experience in any one or more of the fields regulated by the above enumerated subcodes; or

3. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as an inplant inspector shall have successfully completed examinations as required by N.J.A.C. 5:23-5.23.

5:23-5.19 Elevator inspector H.H.S. requirements

(a) A candidate for a license as an elevator inspector of high-rise and hazardous structures (H.H.S.) shall meet the following educational and/or experience requirements:

1. Seven years of experience consisting of one of the following, or combination thereof:

i.-iii. (No change.)

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, and two years of subsequent experience in construction, design, inspection or

supervision in a field of construction regulated by the elevator subcode; or

3. (No change.)

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for licensure as an elevator inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for elevator inspector H.H.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for elevator inspector H.H.S. Additionally, any individual who has successfully completed an educational program determined by the Department as equivalent to that established in N.J.A.C. 5:23-5.20 shall also be exempted from the educational program requirements for elevator inspector H.H.S., provided application for licensure is received by the Department on or before June 30, 1992.

2. (No change.)

5:23-5.21 Renewal of license

(a) The Department may issue the appropriate license following submission of an application, payment of the required non-refundable fee, and verification by the Licensing Unit of the Bureau of Technical Services that the applicant meets the requirements for renewal of the license established herein.

(b) Every two years, any license already issued shall be renewed upon submission of an application, payment of the required non-refundable fee, and verification by the Licensing Unit of the Bureau of Technical Services that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Department shall renew the license previously issued, for a term of two years. The renewal process shall begin 90 days prior to the expiration dates, which shall be July 31 or January 31.

(c) The Department shall issue, upon application, a duplicate license of the appropriate type and specialty, upon a finding that the license has been issued, and that the applicant is entitled to such license to replace one that has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commissioner shall be required.

(d) Continuing education requirements are as follows:

1. The following continuing education requirements are based upon the type(s) of license(s) held, and not upon employment positions held. Continuing Education Units (CEU's) will be approved by the Bureau of Technical Services. One CEU equals 10 contact hours. CEU's will be awarded for technical and administrative licenses.

i.-iii. (No change.)

2. If an individual adds an inspector license in a new subcode area to an existing license, the continuing education requirements for the new subcode area are calculated in proportion to the time remaining on the existing license.

i. If there is less than two years, but more than one year, remaining on the existing license, then the technical CEU requirements are 0.5 CEU's for the new subcode area.

ii. (No change.)

3. If an individual adds administrative licenses to an existing license, the continuing education requirements are as follows:

i. For those adding both a subcode official and construction official license:

(1) If there is less than two years, but more than one year, remaining on the existing license, then the administrative CEU requirement is 0.5 CEU's for renewal of the new licenses.

(2) (No change.)

ii. (No change.)

(e) (No change.)

(f) After revocation of a license upon any of the grounds set forth in these rules, the Licensing Unit may not renew or reinstate such

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license; however, a person may file a new application for a license with the Department.

(g) The Department shall not issue a new license to an applicant whose license was previously revoked unless and until the following conditions are met:

1. (No change.)

2. If the applicant was convicted of a crime related in any way to code enforcement, the Department shall have determined in light of the factors set forth in N.J.A.C. 2A:168A-2, that the applicant has been fully rehabilitated and that licensing the applicant would not be detrimental to the public welfare;

3.-4. (No change.)

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a non-refundable fee as specified herein.

1. A non-refundable application fee of \$40.00 shall be charged in each of the following instances:

i. Application for anyone given technical license specialty, or for the Inplant Inspector license.

ii.-iii. (No change.)

2. A non-refundable application fee of \$20.00 shall be charged for each administrative license applied for separately from a technical license.

3.-4. (No change.)

5. Persons who have become ineligible to retain their administrative license by reason of failure to remove the provisional status of such license within the prescribed two-year period must submit a non-refundable application fee of \$20.00 in order to reapply for said administrative license without recourse to any further provisional status privilege.

6. Registration and examination fees for the certification of construction code officials: The fee schedule shall be as submitted by the administrative agency of the examination program to the Department.

5:23-5.23 Examination requirements

(a) Examinations shall be held, at least twice annually, to establish eligibility for the following license specialties; building inspector R.C.S., building inspector I.C.S., building inspector H.H.S., electrical inspector I.C.S., electrical inspector H.H.S., fire protection inspector I.C.S., fire protection H.H.S., fire protection inspector I.C.S., fire protection inspector H.H.S., plumbing inspector I.C.S., plumbing inspector H.H.S., elevator inspector H.H.S. and inplant inspector.

Recodify existing (b)-(c) as 1.-2. (No change in text.)

(b) Requirements for specific licenses are as follows:

1. Examination requirement for the building inspector R.C.S.:

i. Successful completion of examination module 1A—Building One and Two Family Dwelling.

2. Examination requirements for building inspector I.C.S.:

i. Successful completion of examination modules 1B—Building General and 4A—Mechanical One and Two Family Dwelling.

3. Examination requirements for building inspector H.H.S.:

i. Successful completion of examination module 1C—Building Plan Review.

4. (No change.)

5. Examination requirements for electrical inspector H.H.S.:

i. Successful completion of examination module 2C—Electrical Plan Review.

6. (No change.)

7. Examination requirements for fire protection inspector H.H.S.:

i. Successful completion of examination module 3C—Fire Protection Plan Review.

8. (No change.)

9. Examination requirements for plumbing inspector H.H.S.:

i. Successful completion of examination module 5C—Plumbing Plan Review.

10.-11. (No change.)

(c) Rules concerning notice of examination are:

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1. Notice of examinations shall be given by announcements available from the Licensing Unit and at such other places as the Department may determine to be appropriate.

Recodify (f)-(h) as (d)-(f) (No change in text.)

5:23-5.25 Revocation of licenses and alternative sanctions

(a) The Department may revoke a license, suspend a license for not more than 60 days and/or assess a civil penalty of not more than \$500.00, if the Department determines that the person involved:

1. (No change.)

2. Has obtained a license by fraud or misrepresentation;

3. Has aided or abetted in practice as a licensed code enforcement official any person not authorized to practice as a licensed code enforcement official under the provisions of these regulations;

4. Has fraudulently or deceitfully practiced as a licensed code enforcement official;

5.-11. (No change.)

(b) (No change.)

(c) Conviction of a crime, or conviction of an offense in connection with one's performance as a licensed code enforcement official, shall constitute grounds for revocation or suspension of a license.

(d) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Protected Tenancy; Planned Real Estate

Development Full Disclosure

Conversions in Qualified Counties; Engineering Surveys

Adopted New Rules: N.J.A.C. 5:24-3

Adopted Amendments: N.J.A.C. 5:26-9.1 and 9.2

Proposed: April 20, 1992 at 24 N.J.R. 1453(a).

Adopted: June 8, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: June 15, 1992 as R.1992, d.287, **without change**.

Authority: N.J.S.A. 45:22A-35; P.L. 1991, c.509, section 25.

Effective Date: July 6, 1992.

Expiration Date: July 10, 1995, N.J.A.C. 5:24

February 7, 1996, N.J.A.C. 5:26

Summary of Public Comments and Agency Responses:

Comments were received from Jean Paashaus and from Raymond I. Korona, Esq.

COMMENT: Ms. Paashaus recommends that a separate form be used for protective tenancy that does not apply to seniors and disabled persons. People who are neither seniors nor disabled should not be required to fill out a form that refers to "Senior Citizen and Disabled Protected Tenancy" in its title.

RESPONSE: N.J.A.C. 5:24-3.3(a)1 provides that "forms used in municipalities in a qualified county shall be entitled 'Application for Protected Tenancy.'" The Department believes that it is more convenient for applicants, and also consistent with the statute, to combine the applications for the two types of protected tenancies in a single form, instead of requiring seniors and disabled people to complete two forms that require much of the same information. Residents of counties other than Hudson will not be affected by the introduction of the new form.

COMMENT: Mr. Korona expresses support for the proposal and appreciation for the work done on it by the Department. He is concerned, however, that some owners will ignore their obligations under the Act. He therefore recommends the addition of language to N.J.A.C. 5:24-3.3(f)2 that would make compliance with that provision a prerequisite to the institution of any eviction action under paragraph (k) of N.J.S.A. 2A:18-61.1.

RESPONSE: The Department does not have legal authority to augment the statutory requirements for an eviction action. The Department intends, however, to take such enforcement measures as may be within its power to require developers to comply with their obligations under the act, in accordance with N.J.A.C. 5:26-9.2. These measures include the issuance of cease and desist orders to violators, thereby barring any

sales of units until there is full compliance, and the assessment of civil penalties.

Full text of the adoption follows.

SUBCHAPTER 3. PROTECTED TENANCY IN QUALIFIED COUNTIES

5:24-3.1 Introduction

(a) This subchapter is adopted pursuant to the Tenant Protection Act of 1992, P.L. 1991, c.509 (N.J.S.A. 2A:18-61.40 et seq.), hereinafter referred to as "the Act."

(b) All terms defined in the Act shall have the same definitions as in the Act when used in this subchapter.

5:24-3.2 Applicability

(a) This subchapter is applicable to persons domiciled in a "qualified county," which means any county with a population in excess of 500,000 and a population density in excess of 8,500 per square mile, according to the most recent Federal decennial census, or any other county for which the Commissioner of Community Affairs finds that there has occurred a significant decline in the availability of rental dwelling units due to conversions and that, during the immediate preceding 10 year period, the aggregate number of rental units subject to registration of conversion exceeded 10,000 during any three consecutive years and exceeded 5,000 during at least one of those years.

(b) The following counties are qualified counties:

1. Hudson.

5:24-3.3 Application forms and procedure

(a) Application for protected tenancy under this subchapter shall be made on the form prescribed in N.J.A.C. 5:24-2.2 for applications for Senior Citizens and Disabled Protected Tenancy. A single form shall be sufficient for both applications.

1. Forms used in municipalities in a qualified county shall be entitled "Application for Protected Tenancy" and shall include a question as to whether the applicant is seeking to qualify for Senior Citizens and Disabled Protected Tenancy.

(b) The application procedure for protected tenancy under this subchapter shall be as set forth in N.J.A.C. 5:24-2.3, except that a person who is applying for protected tenancy only under this subchapter shall not be required to furnish proof of age.

1. If the applicant furnishes proof of being either at least 75 years of age or disabled, in the manner set forth in N.J.A.C. 5:24-2.3(b)1, proof of income shall not be required.

(c) Application forms used in qualified counties shall indicate that applications for protection under the Act must be filed on or before:

1. The date of registration of conversion by the Department, or
2. June 1, 1993, whichever is later.

(d) Notice of the date by which applications for protected tenancy under the Act must be filed shall be in addition to notice of the time requirements for filing applications for Senior Citizens and Disabled Protected Tenancy set forth in N.J.A.C. 5:24-2.3(a).

5:24-3.4 Administration

(a) Unless the municipality provides otherwise by ordinance, the agency or officer administering the "Senior Citizens and Disabled Protected Tenancy Act," P.L. 1981, c.226, and the implementing rules set forth in subchapter 2, of this chapter, shall administer this subchapter.

(b) Principal residence shall be determined in accordance with N.J.A.C. 5:24-2.4.

(c) Eligibility shall be determined in accordance with N.J.A.C. 5:24-2.5, except that all references to conditional eligibility shall be inapplicable.

(d) Subsequent ineligibility shall be determined in accordance with N.J.A.C. 5:24-2.6.

(e) Administrative hearings shall be provided and conducted in accordance with N.J.A.C. 5:24-2.7.

(f) Procedural requirements for owners shall be as set forth in N.J.A.C. 5:24-2.9.

1. No separate filing or issuance of notices under both N.J.A.C. 5:24-2.9 and under this section shall be required if the forms and

information provided to tenants make appropriate references both to Senior Citizens and Disabled Protected Tenancy and to protected tenancy under this subchapter and the Act.

2. An owner of a building in a qualified county who has previously complied with N.J.A.C. 5:24-2.9 shall comply with the procedural requirements of N.J.A.C. 5:24-2.9(a)-(c) again, in order to provide appropriate notice to persons who have not received Senior Citizens and Disabled Protected Tenancy.

(g) The administrative agency shall comply with subsections (a)-(c) of N.J.A.C. 5:24-2.10 and shall, additionally, inform each tenant who is denied protected tenancy under the Act and this subchapter of his right to remain in his dwelling unit until the owner shall have complied with the requirements of P.L. 1975, c.311 and of N.J.A.C. 5:24-1.6. The notice to the tenant shall include an explanation of the meaning of "comparable housing," as defined in P.L. 1975, c.311 and in N.J.A.C. 5:24-1.2(b)6.

1. Separate certifications or lists for purposes of the Act and for purposes of the Senior Citizens and Disabled Protected Tenancy Act shall not be required, except that, in a municipality in a qualified county, the list of determinations shall indicate the statute under which an applicant has qualified for protected tenancy.

(h) The fee schedule established in accordance with N.J.A.C. 5:24-2.11 shall apply to submissions of tenant lists and to hearings under the Act and this subchapter.

(i) In the event that any person in a qualified county who has applied for, or has previously been determined to be eligible for, protected tenancy as a senior citizen or disabled person, is found to be ineligible or no longer eligible for such protected tenancy, the person's application, as modified by the facts set forth in any determination, shall be treated as an application for protected tenancy under the Act and this subchapter.

5:26-9.1 Requirements

(a) In addition to the requirements set forth in N.J.A.C. 5:26-4.2 (Contents of public offering statement), the developer shall, in the case of conversion from a residential rental or hotel use to a condominium, cooperative, time-sharing venture, or other planned real estate development, include in the public offering statement the following information:

- 1.-2. (No change.)

3. An engineering survey, in the form set forth in the appendix, prepared by a licensed professional engineer, which shall include mechanical, structural, electrical and engineering reports to disclose the condition of the building, as well as an energy audit, in a form approved by the Agency, setting forth the energy efficiency of the building.

i. The engineer who prepares the survey shall certify to the Agency whether, in his judgment, the building is in compliance with the code standards adopted under the Hotel and Multiple Dwelling Law and set forth at N.J.A.C. 5:10 and with the code standards adopted under the Uniform Fire Safety Act and set forth at N.J.A.C. 5:18, and shall list all outstanding violations then existing in accordance with his observation and judgment.

ii. As provided by P.L. 1991, c.509, the engineer shall be immune from tort liability with regard to such certification and list in the same manner and to the same extent as if he were a public employee protected by the New Jersey Tort Claims Act.

iii. As further provided in P.L. 1991, c.509, in the event of any discrepancy between the engineering survey submitted by the developer and an engineering survey submitted by any tenant(s), the Agency may have another engineering survey done for it at the developer's sole cost and expense.

4. A statement of the effect on prospective owners of the New Jersey Statute Governing Removal of Tenants (N.J.S.A. 2A:18-61.1 et seq.), the Senior Citizens and Disabled Protected Tenancy Act (N.J.S.A. 2A:18-61.22 et seq.) and, if the building is located in Hudson County, the Tenant Protection Act of 1992 (N.J.S.A. 2A:18-61.40 et seq.), and the rules promulgated thereunder at N.J.A.C. 5:24.

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5:26-9.2 Compliance with statutes and rules governing tenant removal and protected tenancy

(a) The developer shall conform to the requirements of the New Jersey Statute Governing Removal of Tenants, P.L. 1974, c.49 and P.L. 1977, c.419 (N.J.S.A. 2A:18-61.1 et seq.) and the rules promulgated thereunder at N.J.A.C. 5:24-1.1 et seq.

(b) The developer shall conform to the requirements set forth in the Senior Citizens and Disabled Protected Tenancy Act, P.L. 1981, c.226 (N.J.S.A. 2A:18-61.22 et seq.) and the rules promulgated thereunder at N.J.A.C. 5:24-2.1 et seq.

(c) If the building is located in Hudson County, the developer shall conform to the requirements of the Tenant Protection Act of 1992, P.L. 1991, c.509 (N.J.S.A. 2A:18-61.40 et seq.) and the rules promulgated thereunder at N.J.A.C. 5:24-3.

(a)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Ombudsman Practice and Procedure: Advance Directives for Health Care Act

Adopted Amendments: N.J.A.C. 5:100-2.3, 2.4 and 2.5

Proposed: April 20, 1992 at 24 N.J.R. 1455(a).

Adopted: June 12, 1992 by Thomas P. Brown, Acting Ombudsman for the Institutionalized Elderly.

Filed: June 12, 1992 as R.1992 d.284, **without change**.

Authority: N.J.S.A. 52:27G-1 et seq., specifically 52:27G-5 and 5.1.

Effective Date: July 6, 1992.

Expiration Date: June 18, 1995.

Summary of Public Comments and Agency Responses:

The Office of the Ombudsman for the Institutionalized Elderly (Office) received comments on its amendments from the Commission on Legal and Ethical Problems in the Delivery of Health Care, the New Jersey Association of Health Care Facilities, the New Jersey Association of Non-Profit Homes for the Aging, the Francis E. Parker Memorial Home, and Jean Paashauss.

COMMENT: The Commission on Legal and Ethical Problems in the Delivery of the Health Care supported the adoption of the amendments on the basis that these amended policies implemented the terms, intent and spirit of the New Jersey Advance Directives for Health Care Act (the Act).

RESPONSE: The Office concurs with the Commission's comments.

COMMENT: The New Jersey Association of Health Care Facilities, the New Jersey Association of Non-Profit Homes for the Aging and the Francis E. Parker Memorial Home suggested that the Office reject the "Gleason Standard" required by the Superior Court of New Jersey, Appellate Division, in *Gleason v. Abrams* in favor of the procedure for determining lack of capacity set forth in sections 8b and 8c of the Act.

RESPONSE: The Office respectfully disagrees. Sections 8b and 8c of the Act specifically pertain to individuals with Advance Directives and are used to determine lack of capacity for those particular individuals before a decision is made to implement their Advance Directives. However, the Office's procedures are used to determine whether an individual with no Advance Directive has the capacity to make health care decisions.

COMMENT: The Francis E. Parker Memorial Home suggested changing N.J.A.C. 5:100-2.3(d)3 to read: "The 'incompetent' resident."

RESPONSE: The Office respectfully disagrees. This section is meant to include all residents, regardless of mental status.

COMMENT: Jean Paashauss suggested that the Office reword N.J.A.C. 5:100-2.4(d)1 and 2 to require the Office to inquire as to whether there exists an Advance Directive.

RESPONSE: The Office respectfully disagrees. Under current Federal and State regulations, facilities are required to inquire as to whether a resident has a fully executed or valid Advance Directive. If one exists, the facility is not required to contact the Office in the event a decision to withhold or withdraw treatment in accordance with that Advance Directive arises. The proposed amendments reflect these changes.

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Full text of the adoption follows.

5:100-2.3 Duty to report

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

(d) The reporting procedures set forth in this section shall not apply when:

1. The resident is under age 60; or

2. The resident, being fully informed and having the capacity to make a health care decision, chooses to withhold or withdraw life-sustaining treatment. Two non-attending physicians shall make the determination of whether the resident is fully informed and has the capacity to make a health care decision. The physicians' determinations shall be based on the physicians' reasonable medical judgments and shall be documented on the resident's chart; or

3. The resident has a fully executed and valid Advance Directive ("Living Will") or Proxy Directive ("Durable Power of Attorney for Health Care"); or

Recodify existing 3. and 4. as 4. and 5. (No change in text.)

5:100-2.4 Procedure for residents incapable of making health care decisions, who are in a persistent vegetative state

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

(d) The Office shall then inquire into the resident's intent, if any, pertaining to the surrogate decisionmaker's proposal to withhold or to withdraw the life-sustaining treatment. In making its intent inquiry, the Office shall:

1. Inquire into whether there exists any declaration or designation including an oral declaration or designation;

Recodify existing 3. and 4. as 2. and 3. (No change in text.)

(e)-(i) (No change.)

5:100-2.5 Procedure for residents incapable of making health care decisions, who are not in a persistent vegetative state

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

(d) The Office shall then inquire into the resident's intent, if any, pertaining to the surrogate decisionmaker's proposal to withhold or to withdraw the life-sustaining treatment. In making its intent inquiry, the Office shall:

1. Inquire into whether there exists any declaration or designation including an oral declaration or designation;

Recodify existing 3. and 4. as 2. and 3. (No change in text.)

(e)-(i) (No change.)

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(b)

STATE BOARD OF EDUCATION

Organization of the Department of Education

Adopted Amendments: N.J.A.C. 6:5-2.4 and 2.5

Adopted Repeal and New Rule: N.J.A.C. 6:5

Appendix

Adopted: June 3, 1992 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 52:14B-3(1)

Filed: June 11, 1992 as R.1992 d.279.

Effective Date: June 11, 1992.

Expiration Date: October 22, 1995.

These amendments, repeal and new rule are organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and are effective upon filing.

Full text of the adoption follows.

6:5-2.4 Reporting responsibilities

(a) The following senior managers, with corresponding divisions, report directly to the Commissioner:

1. (No change.)

2. The Assistant Commissioner for the Division of County and Regional Services. The following organizational units and their chief

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officers report directly to the Assistant Commissioner for the Division of County and Regional Services:

i. The county superintendent of schools in each of the 21 counties[;].

ii. The directors of the three Regional Curriculum Services Units; and

iii. The Director of the Academy for the Advancement of Teaching and Management[;]

3. The Assistant Commissioner for the Division of [General Academic Education] **Educational Programs and Student Services.**

4. (No change.)

5. The Assistant Commissioner for the Division of [Vocational Education] **Adult and Occupational Education.**

6.-7. (No change.)

(b) The following senior managers, with corresponding divisions, report directly to the Deputy Commissioner:

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1. The Assistant Deputy Commissioner for the Division of Executive Services;

Recodify 1. and 2. as 2. and 3. (No change in text.)

[3. The Director for the Division of Adult Education.]

4. (No change.)

[5. The Director for the Division of Executive Services.]

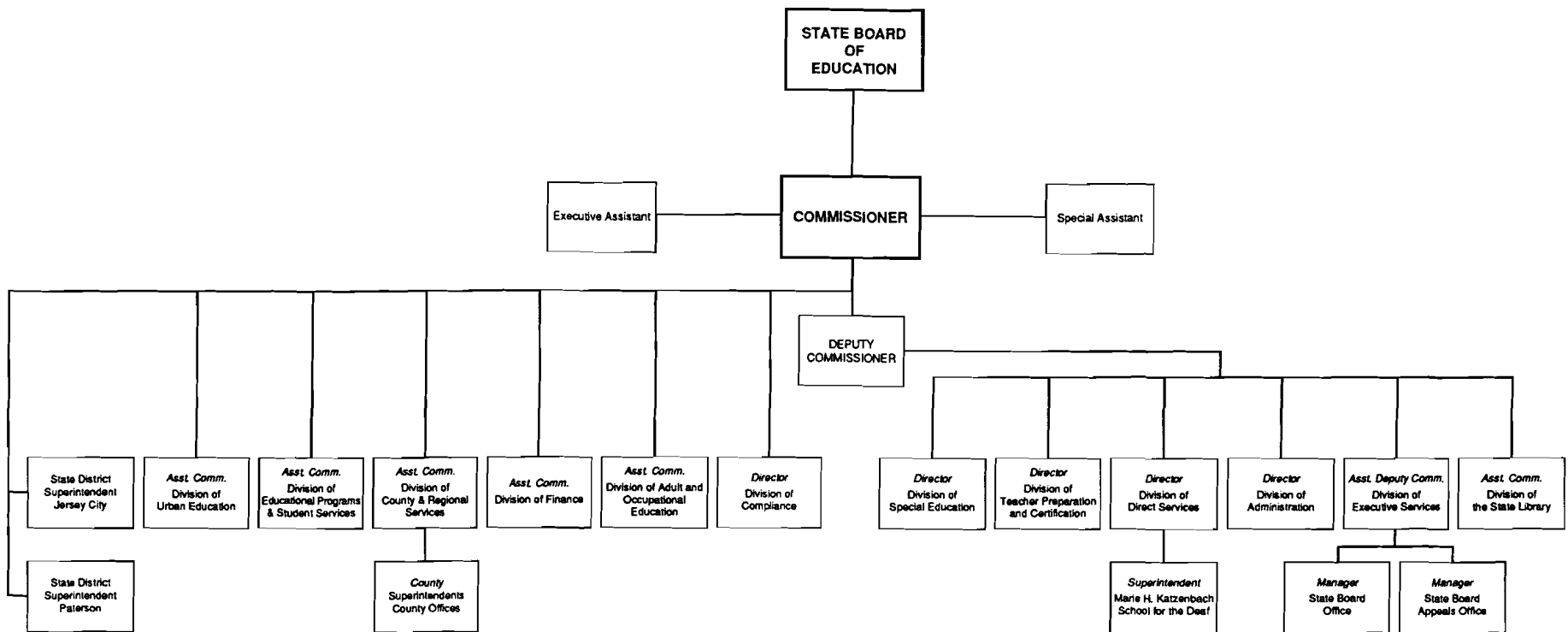
Recodify 6. and 7. as 5. and 6. (No change in text.)

6:5-2.5 Public information requests

Members of the public may obtain general information from the Department of Education by writing to or telephoning the Public Information Office, Department of Education, [225 West State Street] CN 500, Trenton, NJ 08625, (609) 292-4041.

AGENCY NOTE: The current Appendix to N.J.A.C. 6:5, the organizational chart, is to be deleted and replaced with the following new organizational chart:

State of New Jersey
Department of Education
May 1992



(a)

STATE BOARD OF EDUCATION**Special Education****Adoption with Amendments: N.J.A.C. 6:28**

Proposed: April 6, 1992 at 24 N.J.R. 1150(a).

Adopted: June 3, 1992 by State Board of Education, John Ellis,
Secretary, State Board of Education and Commissioner,
Department of Education.Filed: June 11, 1992 as R.1992, d.280, **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3(c)).Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq.,
18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et
seq., 18A:39-1, U.S.P.L. 93-112, Sec. 504, 94-142 and 99-457.

Effective Date: July 6, 1992.

Expiration Date: April 10, 1994.

Summary of Public Comments and Agency Responses:

The Department has received written commentary regarding the amendments to N.J.A.C. 6:28 from 40 interested persons and organizations. In addition, there were 34 speakers at the State Board of Education public hearing on April 15, 1992 who commented on the amendments. A list of commenters follows:

Speakers on April 15, 1992

Dr. Regina Barna

Director of Special Services

Rutherford Public Schools

Rutherford, NJ

Ms. Diane Bonelli, Parent

Washington Township, NJ

Mr. Craig Brewer, Student

North Hunterdon High School

Annandale, NJ

Mr. Chris Cosgrove, Teacher

Spruce Run School

Clinton Township School District

Clinton, NJ

Ms. Catherine Fasano, Teacher

Spruce Run School

Clinton Township School District

Clinton, NJ

Ms. Susan Farnham, Teacher

Spruce Run School

Clinton Township School District

Clinton, NJ

Ms. Sarah Fliegel, Parent

Westfield, NJ

Ms. Lucinda Gabri

Parent Training/Transition Coordinator

Statewide Parent Advocacy Network

Westfield, NJ

Ms. Eileen Hammer, Parent

Scotch Plains/Fanwood, NJ

Mr. Sol Heckelman, Chair

New Jersey Urban Special Education Administrators

Mr. David Hegner, Teacher

Newton High School

Newton, NJ

Ms. Francine Korman

Associate Director

Instruction and Training

New Jersey Education Association

Trenton, NJ

Ms. Maxine Krasner, Chairperson

New Jersey Education Association Exceptional Child Committee

Trenton, NJ

Ms. Lisa Lehne-Gilmore, Board Member

New Jersey Chapter of the

Association for Persons with Severe Disabilities

Ms. Amy Lerner, Parent

East Windsor Township, NJ

Ms. Joanne McKeown

(Address Unknown)

Ms. Susan Miksza, Principal

Frank K. Hehnly School

Clark, NJ

H. Kit Ellenbogen, Esq.

Education Law Center, Inc.

Newark, NJ

Ms. Joan M. Nicoll

Assistant Administrator

Cumberland County Day Training Center

Vineland, NJ

Leonore Pellegrino-Sino

Barnegat, NJ

Ms. Carol Pierce, Teacher

Oakland, NJ

Ms. Elizabeth Piller, Teacher

Spruce Run School

Clinton Township Public Schools

Clinton, NJ

Ms. Orah Raia, Parent

Fragile X Association of New Jersey

Ms. Diana L. Ramsey, Parent, Teacher

Morristown, NJ

Ms. Arlene N. Rogers, Teacher

Yardville Elementary School

Trenton, NJ

Ms. Lynne Russo, Teacher

Spruce Run School

Clinton Township School District

Clinton, NJ

Mr. John Salerno

Office of Legislative and Advocacy Services

The Association for Retarded Citizens

North Brunswick, NJ

Ms. Ane Marie Schmidt, Parent

(Address Unknown)

Ms. Edith Seel, Teacher

Spruce Run School

Clinton Township School District

Clinton, NJ

Ms. Angel E. Shectman

Art for Special Education Committee

Art Educators of New Jersey

Ms. Sharon Soloman

Reading Specialist

Berkeley Heights Education Association

Berkeley Heights, NJ

Mr. Philip Stern

Assistant Counsel

New Jersey Association of School Administrators

Trenton, NJ

Mr. Gerard Thiers

Executive Director

Association of Schools and Agencies for the Handicapped

Robbinsville, NJ

Ms. Robin Zimenoff

Assistant Director of Advocacy

Services of United Cerebral Palsy Associations of New Jersey

Trenton, NJ

Written comments received from the following:

Dr. Michael Beachem

President of Middlesex County

Learning Disabilities Association

Old Bridge, NJ

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Ms. Betty Brady, Chairperson
Commissioner's Advisory Council for the Handicapped
Trenton, NJ

Ms. Jolene Buctalo, Parent
Union Beach, NJ

Mr. & Mrs. Vincent P. Buzzone
Parents
Edison Township, NJ

Ms. Camille Cabezas
Supervisor, Child Study Teams

Mr. William A. Mancuso
Superintendent of Schools
North Arlington Public Schools
North Arlington, NJ

Mr. & Mrs. J. Clavadetscher
Parents
Chester, NJ

Ms. Michelle Cornell
Linden Park, NJ

Dr. Patricia Emmerman
Assistant Superintendent
Freehold Regional High School District
Englishtown, NJ

Ms. Janet R. Felis, Parent
Fair Haven, NJ

Ms. Judy Felix, Parent
Matawan, NJ

Ms. Geraldine Fernandez
Parent
Berkeley Heights, NJ

Ms. Anne Fil, Parent
Lindenwold, NJ

Mr. & Mrs. Ira Geldziler
Parents
Freehold Township, NJ

Mr. Allan Goldberg
Past President
Learning Disabilities Association of NJ
Oceanport, NJ

Ms. Edna Gordon, Parent
Old Bridge, NJ

Renee Groff, President
Learning Disabilities Association
Margate, NJ

David B. Harris
Deputy Public Advocate
Department of Public Advocate
Division of Advocacy for the Developmentally Disabled
Trenton, NJ

Ms. Mary Leigh Hegner, Parent
Lincroft, NJ

Mr. & Mrs. S. Hirschorn
Parents
Roselle, NJ

Ms. Virginia Jennings, Parent
Old Bridge, NJ

Ms. Genwald Johnson, Grandmother
Monroeville, NJ

Ms. Karen P. Kelly, Teacher
Pennsville Public School District
Pennsville, NJ 08070

Mr. & Mrs. E. Kress, Parents
Freehold, NJ

Dr. David H. Mason
Vice President,
Scientific Affairs
Lederle Laboratories
Pearl River, NY

Mrs. Diane L. Merda, Parent
Freehold, NJ

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Mrs. Joan Migton, Parent
Clark, NJ

Marilyn J. Morheuser, Esq.
Education Law Center, Inc.
Newark, NJ

Ms. Jeanne Millay, Co-President
Combined Paramus P.T.A.'s
Paramus, NJ

Ms. Elizabeth Ostuni, President
New Jersey Speech-Language-Hearing Association
Bridgewater, NJ

Ms. Jean Paashauss
Summit, NJ

Mr. & Mrs. William A. Reilly
Parents
Whitehouse Station, NJ

Ms. Susan Richmond
Assistant Director
New Jersey Developmental Disabilities Council
Trenton, NJ
(Two letters)

Mrs. Cynthia Rosinski
Parent
New Egypt, NJ 08533

Mr. John C. Sincaglia
Berkeley Heights, NJ

Ms. Patricia Sokolow
Executive Director
Learning Disabilities Association Monmouth/Ocean Counties
Oceanport, NJ

Dr. Rochelle Sundack, Parent
East Brunswick, NJ

Ms. Denise Walker, President
New Jersey Day Training Coalition
Rumson, NJ

Dr. & Mrs. Barry Weichman
Parents
Skillman, NJ

Mr. & Mrs. Thomas Wolf, Parents
Raritan, NJ

Dr. Roger Zeeman, Director of Personnel and Pupil Services
Montgomery Township Schools
Skillman, NJ

During the development of these amendments, the Department recommended language to amend N.J.A.C. 6:28-1.1(h) to clarify that the first placement of choice for a pupil without educational disability is an age appropriate regular class in the pupil's neighborhood school with necessary supports. This is known as inclusive education. The State Board voted not to publish and formally propose those amendments in the New Jersey Register and deferred the matter for further study. Despite the fact that this amendment was not included in this adoption, these comments were received:

Twenty-six commenters supported the amendments and urged the State Board of Education to reconsider publishing the amendments in the New Jersey Register. Nine commenters opposed the amendments. Twenty-five commenters wrote the same letter which urged State Board of Education to continue to provide special education based on an array of options and to reject the amendments which would make inclusive education the first placement of choice.

COMMENT: One commenter suggested requiring that the third participant in each eligibility and IEP meeting for pupils classified as eligible for speech-language services be an individual knowledgeable about the speech/language performance of the pupil, rather than a supervisor of special education.

RESPONSE: The Department responds that the amendments to N.J.A.C. 6:28-3.5(b) and 3.6(d) are designed to allow districts flexibility in determining the third participant based on the needs of the individual pupil. The third participant could be school personnel with knowledge of the pupil's speech-language performance.

COMMENT: One commenter expressed personal concerns over her son's special education program.

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RESPONSE: The Department is unable to respond due to lack of specific reference to these amendments.

COMMENT: One commenter stated that the resource room setting for learning disabled students works. Putting these students into regular class settings will be a disservice to them.

RESPONSE: The Department responds that learning disabled students can continue to be served in separate resource rooms, as appropriate. The amendments allow districts and parents flexibility in determining if it is appropriate to provide instruction in the regular class or outside of it in a resource room.

COMMENT: One commenter favored in-class support instruction based on her experience in a *Plan to Revise* pilot district where there were positive results for students achieved when this program was carefully implemented. Some procedures which make this successful should be mandated by the State Board. These include:

- (1) Establishing common consultation time;
- (2) Training in collaborative teaching;
- (3) Ensuring that general education classes do not increase as more special education students are included;
- (4) Limiting the number of students receiving support in one class; and
- (5) Ensuring that support by special education teachers is provided every day.

RESPONSE: The Department agrees that the procedures suggested will help to insure the success of in-class support instruction, but does not agree that these procedures should be mandated by regulation. These procedures are local district determinations to be made when implementing this type of instruction. The Department will provide training in collaborative teaching. There are already limits on group size for in-class resource center instruction in the proposed regulations.

COMMENT: One organization commented that the introduction of resource center programs will cause confusion and potential misuse. The term implies a place rather than a program and is four separate programs. Under the present funding structure these programs cannot be implemented together with existing placements. Group sizes permitted under these proposals, without regard to class size, invite failure for both classified and regular students.

RESPONSE: As piloted in the *Plan to Revise*, districts found no confusion in using or deciding among the various options permitted. Under the amendments, "resource centers" will be funded as "resource rooms." These programs operated successfully for both classified and nonclassified pupils in regular classes with no maximum class size limits. In these amendments, limits are set on the number of pupils with disabilities who can receive resource center instruction in each of the program options.

COMMENT: The same organization stated that the change which implements the basic plan no more than 30 calendar days after the IEP meeting could extend implementation another 30 days beyond the current 90 day time frame.

RESPONSE: The Department disagrees because N.J.A.C. 6:28-2.1(c) continues the requirement to implement the pupil's IEP 90 days from the date of parental consent.

COMMENT: One commenter stated that in order for resource center programs to be successful, intensive and extensive planning is necessary, scheduling and staffing implications need to be reviewed, and funding formulas to maintain the integrity of financial support are needed.

RESPONSE: The Department agrees and will provide extensive training and assistance through both the Learning Resource Centers (LRCs) and the Comprehensive System of Personnel Development (CSPD). Local districts have already begun their own systems of professional development to prepare for the new resource center options. Resource centers will be funded as resource rooms and the State aid factor will be subject to the statutory biannual review and adjustment process.

COMMENT: The same commenter recommended training by the State to implement the amendments regarding functional assessment.

RESPONSE: The Department agrees. Training has been conducted through the LRC's in the 1991-92 school year and will continue next year.

COMMENT: The same commenter expressed concern that urban district children will be further discriminated against when measured against one's own community norms when using the same discrepancy for all children.

RESPONSE: The Department responds that a severe discrepancy between intellectual capacity and achievement is required by Federal mandate for the classification perceptually impaired. Training in the

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determination of severe discrepancy will demonstrate the use of non-discriminatory methods of assessment. The amendments also require the use of functional assessment to ensure that standardized instruments are not the only means of evaluating pupil performance.

COMMENT: The same commenter stated that districts have no authority to mandate post school services for pupils. The State should develop clear guidelines for interagency responsibilities.

RESPONSE: The Department agrees. The amendment for transition services does not require districts to mandate services beyond graduation. The Department has prepared guidelines for transition which will be disseminated in Fall, 1992.

COMMENT: One organization asked the State Board to reject the regulations, and asked the Department to revise the proposal with stronger supports for regular education, publish a proposed funding formula and announce a training program.

RESPONSE: The Department disagrees. The regulations are necessary in order to improve the delivery of special education to pupils with educational disabilities. These regulations have been carefully tested in 13 pilot school districts.

It is not necessary to revise the funding formula at this time. A training program was initiated in the 1991-92 school year through the Learning Resource Centers and Comprehensive System for Personnel Development and will continue in the next school year.

COMMENT: One commenter was concerned that in-class support and other changes have the potential of turning the clock back 20 years and will overburden the regular classroom teacher with large numbers of handicapped pupils with no supports.

RESPONSE: In-class support is one option in the resource center programs. Pull-out programs can still be provided. Both were used in the pilot project successfully. Through the in-class option extensive support is provided to the pupil and regular class teacher because two teachers are present in the class.

COMMENT: One commenter asked the State Board to delay implementation of the "in class/support" programs because it will be difficult to set up and maintain quality art programs under these conditions. There are many problems which need to be addressed and include:

- (1) Making curriculum modifications;
- (2) Little time to monitor progress because there will be an increased class size with multi-disabilities;
- (3) Imperiled safety; and
- (4) More working and clean up time as special students often work at a slower pace.

RESPONSE: The Department disagrees. Many of the concerns presented are issues which can appropriately be addressed by all teachers with adequate planning and preparation. "In-class support" will not increase the numbers of pupils taking art classes or reduce safety. This option will provide the teacher with the assistance of the resource center teacher in making curricular and instructional adaptations. Through the in-class model more, not less, support and assistance are provided for pupils and teachers.

COMMENT: One commenter expressed concern that small districts will have difficulty implementing the resource center programs due to the need for additional staff and certification required. Also, restriction of instruction to one subject per period introduces serious scheduling difficulty for smaller districts.

RESPONSE: In response to comments received, the rules were changed at proposal level and proposed to allow two subjects to be taught in the resource center for pull-out replacement instruction. The pilot project districts indicated that no additional staff was required in either large or small districts.

COMMENT: One commenter takes strong exception to the economic impact statement which states that "no appreciable increased staff needs are anticipated" in resource center programs. Who will staff the resource center when the teacher is in the classroom working with the regular teachers? Another staff member will be needed. Who will pay for these additional staff members?

RESPONSE: The resource center teacher will have a multi-period day under the regulations just as now. Appropriate scheduling of pupils and staff will enable the resource center teacher to serve as many or more pupils within the teacher's day. The resource room need not be in use every period, so no one need staff it all day. It is not necessarily true that additional staff will be required. If additional staff is required, State aid is available for resource center programs on a full excess cost basis.

COMMENT: The same commenter urged the State Board to consider legislation with a specific fiscal note requiring State appropriations rather than these amendments.

RESPONSE: The Department disagrees. There is no need to change legislation. The amendments are permitted by current statute and funded by statute under the resource room categorical aid factor.

COMMENT: One commenter preferred the term "special needs" or some similar term rather than "educational disability."

RESPONSE: The term "educationally disabled" was chosen to be consistent with the Federal terminology in the Individuals with Disabilities Education Act.

COMMENT: The same commenter expressed concern that the speech-language changes will have an economic and program impact. Districts will need to employ additional staff to provide coverage.

RESPONSE: Federal mandates require that pupils eligible for speech-language services be afforded the same rights and protection as are pupils in all other special education programs.

COMMENT: The same commenter suggested that N.J.A.C. 6:28-4.3(d)12 be revised to state that a pupil may receive resource center programs "up to half the daily periods" rather than "one half of the instructional day."

RESPONSE: The Department disagrees. The term "instructional day" was chosen because it fits both elementary and secondary settings. Schools which do not operate by periods can use time rather than equate instruction time to periods.

COMMENT: The same commenter asked if resource rooms will continue to exist under resource center programs.

RESPONSE: No. In accordance with N.J.A.C. 6:28-4.3(d) resource rooms may only operate for the 1992-93 school year.

COMMENT: The same commenter suggested that the four year age span in N.J.A.C. 6:28-4.3(d)9 be expanded.

RESPONSE: The Department disagrees. An age span beyond four years would be inappropriate both instructionally and for socialization of pupils.

COMMENT: One agency questioned the assessment of the economic impact of the amendments. It urged "no state pay—no state mandate."

RESPONSE: Resource center programs will be funded as full excess cost programs under the current resource room categorical factor. Currently more than \$3,000 per pupil is provided in State aid through the factor.

COMMENT: The same commenter recommended deleting the requirements for teacher aids and the addition of a third person to speech meetings. Districts must be given the latitude to determine the need for teacher aides based upon their own unique requirements.

RESPONSE: Teacher aides are not required. They may be provided if a district determines that it is appropriate. Federal regulations required that at least three persons attend IEP meetings, for all classified pupils.

COMMENT: The same commenter questioned if a "back door" approach to inclusive education is being applied by changing "regular education environment" with "regular class" and "classes" to "class" in N.J.A.C. 6:28-2.10(a)2. Delete the two references to "class" in order to avoid all ambiguity with respect to inclusive education.

RESPONSE: The language changes are due to a directive from the U.S. Office of Education, Office of Special Education Programs to comply with the exact Federal language.

COMMENT: The same commenter stated that the timelines for resource center programs are unworkable. References to dates should be deleted in the amendments. By promulgating amendments concerning resource center programs the State is requiring that program take precedence over the child. By prescribing the number of pupils, content area, etc., a pupil's IEP will have to take these program requirements into account.

RESPONSE: These amendments give districts a full year to begin to plan and prepare for the implementation of resource center programs. This option allows for more flexibility in IEP preparation and more individualization.

COMMENT: The same commenter suggested that imposition of class size requirements within the regular class would have the effect of impermissibly discriminating against pupils with educational disabilities. Schools will be forced to homogenize regular classrooms.

RESPONSE: The Department disagrees. These amendments did not set maximum class sizes. Limits are proposed for resource center instructional group sizes to assure that the instructional situation is not unwidely or unreasonable. Homogenous or heterogenous grouping remains a local decision and not impacted by limits of the placement of classified pupils in a regular class.

COMMENT: The same commenter urged the State Board not to adopt the amendments to N.J.A.C. 6:28-4.3(d)13 because the cost factor for resource center programs can be adjusted by the State Board without

legislative approval and it could be reduced. This could have the potential for economic calamity.

RESPONSE: The Department disagrees. The cost factor for all special education programs is set and determined by statute, not regulation. State aid is provided for the entire statewide average cost per pupil for resource rooms. This same aid factor will be applied to resource centers.

COMMENT: One commenter supports the adoption of "part-time" resource center programs in N.J.A.C. 6:28-4.3(d) and urges Statewide implementation. Some reasons for this support include:

- (1) Exposure to regular education exceeds 50 percent of the day;
- (2) In-class support reduces wasted time as well as other negative impacts of "pull-out" programs;
- (3) In-class support provides an opportunity for classified students to stay on grade level for supported subjects; and
- (4) "Sink or swim" previous mainstreaming techniques will be obsolete as transition to independent functioning in a regular class now occurs.

RESPONSE: The Department agrees.

COMMENT: One commenter was concerned that the shift of resource room to resource center programs will move the regular classroom more directly into the sphere of special education. For example, if a special education pupil participates in a field trip and causes a crisis, will the regular education teacher be faced with an emergency? To avoid regular education being absorbed into special education, retain the resource rooms and delete resource centers from the amendments.

RESPONSE: The Department disagrees. Each pupil's individualized education program addresses the roles and responsibilities of both regular and special education staff. This makes it clear which teacher is responsible for the pupil's program.

COMMENT: One commenter recommended that speech-language specialist/speech correctionist also be given consultation time.

RESPONSE: The Department agrees that the speech-language specialist/speech correctionist should have time to prepare for the various services they provide. The nature and amount of the time, however, should be a local decision.

COMMENT: The same commenter asked if speech-language specialist/speech correctionist is to refer pupils to the child study team if related services other than speech-language services are needed.

RESPONSE: Yes, as stipulated in the amendment to N.J.A.C. 6:28-3.6(f).

COMMENT: One commenter opposed the amendment which constricts eligibility criteria for pupils with perceptual impairment. It excludes those who do not exhibit a "severe discrepancy." This term is inconsistent with the Federal Individuals with Disabilities Education Act, (I.D.E.A.).

RESPONSE: The term "severe discrepancy" is drawn directly from the Federal requirements, 34 CFR 300.541 and 300.543.

COMMENT: The same commenter suggested that N.J.A.C. 6:28-3.7(a)3 should require that reevaluations be conducted according to N.J.A.C. 6:28-3.4(e)1 through 5.

RESPONSE: The Department disagrees. It is not necessary to refer to N.J.A.C. 6:28-3.4(e)1 through 5 since the evaluation procedures are contained in N.J.A.C. 6:28-3.4(d) 1 through 6.

COMMENT: The same commenter suggested that districts should continue to be required to include a report of the projected staff as part of their annual plan.

RESPONSE: The amendment allows the Department to comply with any reporting requirement which may be changed under I.D.E.A. in the future.

Districts will continue to be required to report projected staff.

COMMENT: The same commenter stated that the amendment to N.J.A.C. 6:28-2.7(j) which extends this requirement to all administrative and judicial proceedings is inconsistent with the authority of Federal and State courts to order interim relief.

RESPONSE: The Department has been directed by the U.S. Department of Education, Office of Special Education to amend its regulations in accordance with this Federal requirement. (34 CFR 300.513(a))

COMMENT: One commenter recommended that there be a balance between functional and standardized assessment.

RESPONSE: The Department agrees. N.J.A.C. 6:28-3.4(d) provides for this balance between functional and standardized assessment.

COMMENT: The same commenter recommends reducing the number of pupils with educational disabilities in a resource center in a regular class with support to six at the elementary level and eight at the secondary level. Also, if the resource center teacher is not present

for in-class support every day the number of pupils should be reduced to four.

RESPONSE: The Department disagrees. It is not necessary to reduce the group sizes because two teachers are always present in the regular class and a large amount of support is therefore available. The group sizes of eight and ten are based on the experience and clear consensus of the 13 pilot *Plan to Revise* districts.

COMMENT: The same commenter recommended that an extensive training component and publication of the transition document accompany the adoption of the amendments.

RESPONSE: The Department agrees. A transition publication will be disseminated to districts in the fall and training will be provided through the LRC and CSPD projects.

Summary of Agency-Initiated Changes upon Adoption:

At N.J.A.C. 6:28-2.7, the Department is changing the word "process" to lower case in the section heading. At N.J.A.C. 6:28-2.9(c), the Department corrected a cite to a rule as opposed to a statute. At N.J.A.C. 6:28-3.7 the Department is correcting an error by deleting the term "certification". At N.J.A.C. 6:28-4.4(a)2, the Department is making a correction by inserting the erroneously deleted word "pupil."

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

6:28-1.1 General requirements

(a) The rules in this chapter, adopted by the State Board of Education, supersede all existing rules pertaining to pupils with educational disabilities.

(b) The purpose of this chapter is to:

1. Ensure that all pupils with educational disabilities, as defined herein, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

2. (No change.)

3. Ensure that the rights of pupils with educational disabilities and their parents are protected;

4. Assist public and private agencies providing educational services to pupils with educational disabilities; and

5. (No change.)

(c) The rules in this chapter shall apply to all public and private agencies providing publicly funded educational programs and services to pupils with educational disabilities.

1.-2. (No change.)

3. Each district board of education shall provide information regarding services available through other State, county and local agencies to parents of disabled children below the age of three.

(d) Each district board of education is responsible for providing a system of free, appropriate special education and/or related services to its elementary and secondary school pupils which shall:

1.-2. (No change.)

3. Be located in State approved facilities that are accessible to the disabled; and

4. (No change.)

(e) Each district board of education is responsible for providing a system of free, appropriate special education and related services to its preschool handicapped pupils which shall:

1.-2. (No change.)

3. Be located in State approved facilities that are accessible to the disabled or in early intervention programs approved according to N.J.A.C. 6:28-10.1; and

4. (No change.)

(f) (No change.)

(g) When a district board of education provides its educational programs through another New Jersey public school district, responsibility for the requirements of this chapter shall be according to the following:

1. (No change.)

2. When individual pupils are placed in a school operated by another district board of education, a contractual agreement shall be made between district boards of education which specifies responsibility for providing instruction, related services and child study team services to pupils with educational disabilities.

(h) Each district board of education shall ensure that special classes, separate schooling or other removal of pupils with educational disabilities from the regular educational environment occurs only when the nature or severity of the educational disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(i) With the exception of pupils placed in nonpublic schools according to N.J.A.C. 6:28-6.5, all pupils with educational disabilities shall be placed in facilities or programs which have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.

(j) Each district board of education shall ensure that placement of pupils with educational disabilities is based on their individualized education programs.

(k)-(l) (No change.)

(m) All public and private agencies which provide educational programs and services to pupils with educational disabilities shall maintain documentation demonstrating compliance with this chapter.

(n) (No change.)

6:28-1.2 Plans for special education

(a) Each district board of education, jointure commission, county special services school district, educational services commission, approved private school and State-operated program for the educationally disabled shall develop a written plan for special education. The plan shall conform with the State plan for the educationally disabled. Plans for special education shall be submitted for approval to the Department of Education through its county offices as set forth in this section.

(b) The development of the plan for special education shall provide reasonable opportunities for the participation of professional staff, parents, community members, disabled individuals and groups representing the disabled population. Parts one and three of the written plan shall be presented at a public meeting prior to approval by the district board of education or governing board. Copies of the plan shall be made available upon request.

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

(e) Part two of the plan shall be submitted annually and shall include:

1. A report of the numbers of pupils with educational disabilities according to their classification, age, racial-ethnic background, sex, placement and related services;

2. A report of the staff employed to identify, evaluate, determine eligibility, develop individualized education programs, provide related services and/or instruction to pupils with educational disabilities and the full-time equivalence of their assignments;

3. Any additional reports as required by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

4. (No change.)

(f) (No change.)

(g) Upon request, additional reports shall be submitted to the Department of Education including, but not limited to, high school graduation requirements and the numbers of pupils with educational disabilities existing education, referred, classified, evaluated and receiving home instruction.

6:28-1.3 Definitions

Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Individuals with Disabilities Education Act.

... "Approved private school for the handicapped" means an incorporated entity approved by the Department of Education according to N.J.A.C. 6:28-7.2 or 7.3 to provide special education and related services to pupils with educational disabilities placed by the district board of education responsible for providing their education.

... "Pupil age" means the school age of a pupil as defined by the following:

1. (No change.)

2. "Age five" means the attainment of age five by the month and day established as the kindergarten entrance cut off date by the

district board of education. Pupils with educational disabilities attaining age five during the school year shall continue to be provided preschool services for the balance of that school year.

3. "Age 21" means the attainment of the twenty-first birthday by June 30 of that school year. Pupils with educational disabilities attaining age 21 during the school year shall continue to be provided services for the balance of that school year.

"Pupil with an educational disability" means a pupil who has been determined to be eligible for special education and/or related services according to N.J.A.C. 6:28-3.5.

"Recreation" for pupils with educational disabilities means instruction to enable the pupil to participate in appropriate leisure time activities, including involvement in recreation programs offered by the district board of education and the facilitation of a pupil's involvement in appropriate community recreation programs.

...
 "Related services" for pupils with educational disabilities means counseling for pupils, counseling and/or training for parents relative to the education of a pupil, speech-language services, recreation, occupational therapy, physical therapy, transportation, as well as any other appropriate developmental, corrective and supportive services required for a pupil to benefit from education as required by the pupil's individualized education program.

"Special education" means specially designed instruction to meet the educational needs of pupils with educational disabilities including, but not limited to, subject matter instruction, physical education and vocational training.

6:28-1.4 District board of education policies and procedures

(a) Each district board of education shall develop and adopt written policies and procedures for the following:

1. Exemption of pupils with educational disabilities from the high school graduation requirements according to N.J.A.C. 6:8-7.1(b), 6:28-3.6 and 4.8;

2. Prevention of needless public labeling of pupils with educational disabilities;

3. (No change.)

4. Identification, location and evaluation of potentially educationally disabled pupils;

5. Provision of full educational opportunity to pupils with educational disabilities;

6. Participation of and consultation with the parent(s) of pupils with educational disabilities toward the goal of providing full educational opportunity to all pupils with educational disabilities ages birth through 21;

7. Provision of special services to enable pupils with educational disabilities to participate in regular educational programs to the maximum extent appropriate;

8.-9. (No change.)

10. Placement of pupils with educational disabilities in the least restrictive environment according to N.J.A.C. 6:28-1.1(h), 2.1(a), 2.10, 3.6(e)5, and 4.1(i); and

11. (No change.)

6:28-2.1 General requirements

(a) Each district board of education shall provide a free, appropriate public education program and related services for pupils with educational disabilities in the least restrictive environments according to N.J.A.C. 6:28-1.1(b)1.

(b) When a pupil with an educational disability between the ages of 16 and 21 voluntarily, and before receiving a high school diploma, leaves a public school program, he or she may reenroll at any time up to and including the school year of the pupil's twenty-first birthday.

(c) After parental consent for initial evaluation has been received, the district board of education shall ensure that within 90 calendar days evaluation and determination of eligibility for special education and/or related services, and, if eligible, development and implementation of the basic plan section of the individualized education program for the pupil shall be completed.

1. (No change.)

2. The basic plan shall be implemented as soon as possible but no more than 30 calendar days after the individualized education program meeting.

(d)-(g) (No change.)

6:28-2.5 Protection in evaluation procedures

(a) Each district board of education shall ensure that evaluation procedures, including, but not limited to, observations, tests and interviews used to determine eligibility and placement of educationally disabled pupils shall:

1.-10. (No change.)

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

6:28-2.6 Mediation

(a) For pupils age three through 21, when disputes arise under this chapter, mediation shall be available through the district board of education, the Department of Education through its county office and/or the Department of Education through the Division of Special Education. For children below the age of three, mediation shall be available through the Department of Education through the Division of Special Education. Mediation shall be provided in accordance with the following:

1.-2. (No change.)

3. Either party may be accompanied and advised at mediation by legal counsel or other person(s) with special knowledge or training with respect to the needs of pupils with educational disabilities; and

4. (No change.)

(b) (No change.)

6:28-2.7 Due *[Process]* *process* hearings

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

(j) Pending the outcome of a due process hearing, or any administrative or judicial proceeding, no change shall be made to the pupil's classification, program or placement unless both parties agree or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (h) above.

6:28-2.8 Disciplinary action

(a) Pupils with educational disabilities are subject to the same district board of education disciplinary policies and procedures as nondisabled pupils, unless the pupil's individualized education program includes exemptions to those policies or procedures. The individualized education program shall be implemented, with the following exception:

1. (No change.)

(b) (No change.)

(c) When a pupil with an educational disability is suspended, the principal shall forward, at the time of suspension, written notification and description of the reasons for such action to the parent(s) with a copy to the case manager. Such notification shall occur prior to the suspension if this action would result in the pupil being suspended for more than 10 days in the school year. The case manager shall review the status of the pupil in order to:

1.-3. (No change.)

(d) On completion of the reevaluation, the child study team shall determine if the pupil's behavior was primarily caused by his or her educational disability and, if so, whether the pupil's current educational placement is appropriate.

1. If the pupil's behavior is determined to be primarily caused by the pupil's educational disability, the district may not discipline the pupil.

2. If it is determined that the pupil's behavior is not related to his or her educational disability, the district board of education may discipline the pupil. However, at no time shall the district board of education cease educational services to that pupil.

(e)-(f) (No change.)

(g) Before a noneducationally disabled pupil can be considered for expulsion by a district board of education, the district board of education shall obtain consent from the parent or adult pupil for evaluation and the child study team shall conduct an initial evaluation according to N.J.A.C. 6:28-3.4 to determine eligibility.

6:28-2.9 Pupil records

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

(c) Any consent required for pupils with educational disabilities under *[N.J.S.A.] *N.J.A.C.* 6:3-2 shall be obtained according to N.J.A.C. 6:28-1.3 "Consent" and 2.3(c).

6:28-2.10 Least restrictive environment

(a) Each public agency shall ensure that:

1. To the maximum extent appropriate, a pupil with an educational disability shall be educated with children who are not educationally disabled;

2. Special classes, separate schooling or other removal of a pupil with an educational disability from the pupil's regular class occurs only when the nature or severity of the educational disability is such that education in the pupil's regular class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;

3.-4. (No change.)

5. When the individualized education program does not describe specific restrictions, the pupil shall be educated in the regular school program provided in the school he or she would attend if not educationally disabled.

6. To the maximum extent appropriate each pupil with an educational disability shall participate in regular classes, health and physical education, industrial arts, fine arts, music, home economics, vocational and other regular education programs, intramural and interscholastic sports, nonacademic and extra-curricular activities.

6:28-3.1 Child study teams

(a) A child study team is an interdisciplinary group of appropriately certified persons who:

1.-2. (No change.)

3. May deliver appropriate related services to pupils with educational disabilities;

4. May provide preventive and support services to nondisabled pupils; and

5. (No change.)

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

(d) At least one member of the child study team shall be knowledgeable about placement options for pupils with educational disabilities according to N.J.A.C. 6:28-4.

6:28-3.2 Identification

(a) Each district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district who may be educationally disabled and who are not receiving special education and/or related services as required by this chapter. Children below age three who may be disabled shall be identified, located and evaluated through programs operated by or through contracts with the Department of Education.

(b)-(e) (No change.)

6:28-3.3 Referral

(a) (No change.)

(b) Pupils identified in conformance with written procedures adopted by the district board of education as being potentially educationally disabled and considered to require services beyond those available within the regular public school program shall be referred to the child study team. Referral to the child study team shall take place after written notice has been provided.

1. (No change.)

(c) (No change.)

(d) Audiometric screening shall be conducted for every pupil referred to the child study team according to N.J.A.C. 6:29-5.

(e)-(f) (No change.)

(g) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally disabled pupil for whom a district board of education is responsible, that district board of education shall accept the pupil's identification by the Division of Youth and Family Services and shall request parental consent for initial evaluation according to this subchapter.

6:28-3.4 Evaluation

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

(d) An initial evaluation shall consist of an assessment by a school psychologist, a learning disabilities teacher-consultant, a school social

worker and a physician employed by the school. The child study team evaluation shall include an appraisal of the pupil's current functioning and an analysis of instructional implication(s) appropriate to the child study team member reporting. Each initial evaluation of the pupil by the child study team shall:

1. Consider the requirements for eligibility for special education and/or related services;

2. Be used to determine instructional needs of the pupil;

3. Consider any relevant medical condition in evaluating the pupil's instructional needs;

4. Include pertinent information from the pupil's parent(s), the pupil's teacher(s) and other relevant persons;

5. Include, where appropriate, or required, the use of a standardized test(s) which shall be:

i. Individually administered;

ii. Valid and reliable;

iii. Normed on a representative population; and

iv. Scored as either standard scores with a standard deviation or norm referenced scores with a cutoff score; and

6. Include functional assessment as follows:

i. A minimum of one structured observation by each child study team member in other than a testing session;

ii. An interview with the pupil's parent(s);

iii. An interview with the teacher(s) referring the pupil;

iv. A review of the pupil's developmental/educational history including records and interviews;

v. A review of prereferral interventions documented by the classroom teacher(s) and others who work with the pupil; and

vi. One or more informal measure(s) which may include, but not be limited to:

(1) Surveys and inventories;

(2) Analysis of work samples;

(3) Trial teaching;

(4) Self report;

(5) Criterion referenced tests;

(6) Curriculum based assessment; and

(7) Informal rating scales.

(e) Each initial evaluation shall include the following assessments:

1. (No change.)

2. A psychological assessment shall be the responsibility of a school psychologist employed by the district board of education and shall include an appraisal of the current cognitive, social, adaptive and emotional status of the pupil.

3. An educational assessment shall be the responsibility of a learning disabilities teacher-consultant employed by the district board of education and shall include an evaluation and analysis of the pupil's academic performance and learning characteristics.

4. A social assessment shall be the responsibility of a school social worker employed by the district board of education and shall include an evaluation of the pupil's adaptive social functioning and emotional development and of the family, social and cultural factors which influence the pupil's learning and behavior in the educational setting. The social assessment shall include communication with the pupil and his or her parent(s).

5. (No change.)

(f) The child study team members shall prepare written reports of the results of each of their assessments. The reports must include a statement regarding relevant behavior noted during the observation of the pupil and the relationship of that behavior to the pupil's academic functioning.

(g) Evaluation by additional specialists may be required as listed in N.J.A.C. 6:28-3.5(d).

Recodify existing (g) through (i) as (h) through (j). (No change in text.)

6:28-3.5 Determination of eligibility

(a) (No change.)

(b) When a speech-language evaluation is completed, a meeting shall be held to determine eligibility for speech-language services. Participants in the meeting shall be the speech correctionist or speech-language specialist, the parent(s) and at least one of the following:

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1. A teacher having knowledge of the pupil's educational performance;

2. Another speech correctionist or speech-language specialist; or

3. Other school personnel qualified to provide or supervise special education.

(c) Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the referring staff member shall be given a written summary, signed by the child study team, of all decisions and any recommended course(s) of action.

1. When the pupil has been classified as perceptually impaired according to (d)8ii below the summary shall include a statement of whether the pupil has a specific learning disability and the basis for making that determination. The summary shall include a statement that the perceptual impairment is not the result of environmental, cultural or economic disadvantage.

(d) Classification of pupils determined to be eligible for special education and/or related services shall be determined collaboratively by the child study team, a teacher having knowledge of the pupil's educational performance, parent(s) and, if they choose to participate, the school principal and referring staff members. Classification according to the following definitions shall be based on all evaluations conducted:

1.-3. (No change.)

4. "Communication handicapped" means impaired native speech or language which is outside the range of acceptable variation, adversely affects a pupil's educational performance and is not due primarily to hearing impairment as defined under "auditorily handicapped." It is characterized by (d)4 i or ii below. An evaluation by a certified speech correctionist or speech-language specialist is required.

i. (No change.)

ii. "Eligible speech-language services" means a mild to moderate disorder in language, articulation, voice or fluency which requires instruction by a speech correctionist or speech-language specialist. The evaluation shall be conducted according to N.J.A.C. 6:28-3.4(h).

5. "Emotionally disturbed" means the exhibiting of seriously disordered behavior over an extended period of time which adversely affects educational performance and shall be characterized by (d)5 i or ii below. An evaluation by a psychiatrist experienced in working with children is required.

i.-ii. (No change.)

6. (No change.)

7. "Multiply handicapped" means the presence of two or more educationally disabling conditions which interact in such a manner that programs designed for the separate disabling conditions will not meet the pupil's educational needs. All evident educational disabilities shall be documented. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions which forms the basis for the classification of a pupil as "multiply handicapped." Evaluation by all specialists required in this subsection for the separate disabling conditions being considered for the determination of "multiply handicapped" are required.

8. "Neurologically or perceptually impaired" means impairment in the ability to process information due to physiological, organizational or integrational dysfunction which is not the result of any other educationally disabling condition or environmental, cultural or economic disadvantage and is characterized by (d)8 i or ii below.

i. "Neurologically impaired" means a specific impairment or dysfunction of the nervous system or traumatic brain injury which adversely affects the education of a pupil. An evaluation by a physician trained in neurodevelopmental assessment is required.

ii. "Perceptually impaired" means a specific learning disability manifested by a severe discrepancy between the pupil's current achievement and intellectual ability in one or more of the following areas:

- (1) Basic reading skills;
- (2) Reading comprehension;
- (3) Oral expression;
- (4) Listening comprehension;
- (5) Mathematic computation;

(6) Mathematic reasoning; and

(7) Written expression.

9. "Preschool handicapped" means those children age three through five who have an identified disabling condition and/or a measurable developmental impairment who require and would benefit from special education and related services.

10. (No change.)

11. "Socially maladjusted" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the pupil or other pupils and is not due to emotional disturbance as defined in (d)5 above. If determined necessary by the child study team, an evaluation by a psychiatrist experienced in working with children is to be obtained.

12. "Visually handicapped" means an inability to see within normal limits as characterized by (d)12 i or ii below. An evaluation by a specialist qualified to determine visual disability is required. Visually handicapped pupils eligible for special education and/or related services shall be reported to the Commission for the Blind and Visually Impaired.

i.-ii. (No change.)

6:28-3.6 Individualized education program

(a) The individualized education program for each educationally disabled pupil shall consist of a basic plan and an instructional guide.

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

(d) When a pupil has been classified as eligible for speech-language services or the school physician has determined a pupil with an educational disability needs home instruction, the individualized education program meeting shall be as follows:

1. For pupils classified eligible for speech-language services, the meeting shall include the same participants as required by N.J.A.C. 6:28-3.5(b). When appropriate, the pupil shall attend the meeting.

2. (No change.)

3. When a pupil with an educational disability has been determined by the school physician to need home instruction, a meeting shall be conducted to review and revise the individualized education program according to (j) below.

(e) With the exception of an individualized education program for a pupil classified eligible for speech-language services, the basic plan shall include, but not be limited to:

1.-4. (No change.)

5. A description of the pupil's educational program which includes:

i.-ii. (No change.)

iii. A description of the extent to which the pupil will participate in regular educational programs. The participation of a pupil with an educational disability in regular school programs or activities shall be based on the nature and extent of the pupil's educational needs. Appropriate curricular or instructional modifications to the regular education program shall be stipulated. Precautionary arrangements shall be made to protect the safety and well-being of the pupil;

iv.-v. (No change.)

vi. A statement of the alternate requirement for each exemption from State and local high school graduation requirements. The individualized education program shall identify which alternative requirements must be achieved by the pupil with an educational disability to qualify for the State endorsed diploma issued by the school district;

vii. For pupils with educational disabilities age 14 and over, post-secondary outcomes in one or more of the following areas, as appropriate: educational programs, vocational programs, work settings, or independent living. Annual goals and objectives shall be related to the post-secondary outcomes;

viii.-xiii. (No change.)

(f) The basic plan for the pupil classified as eligible for speech-language services shall include (e)1, 2, 3, 4, and 5i, ii, iii, ix, x and xii above. When appropriate, (e)5vii and xi above shall be included in the basic plan. The statement of the current educational status in (e)2 above shall be a description of the pupil's status in speech-language performance. If related services other than speech-language services are required, the speech-language specialist shall refer the pupil with an educational disability to the child study team.

(g) Following the development of the basic plan and prior to the 20th calendar day after implementation of the plan, the case manager shall coordinate the development and completion of the instructional guide.

(h) The instructional guide shall be developed jointly by the teacher(s) responsible for implementing the pupil's instructional program and the case manager. The parent(s) of the pupil with an educational disability may participate in the development of the instructional guide, along with other appropriate certified school staff members.

(i) (No change.)

(j) Annually, or more often if necessary, the case manager, parent(s), teacher(s), the pupil, if appropriate, and other individuals at the discretion of the parent(s) or district board of education shall meet to review and revise the instructional guide and the basic plan of the individualized education program and determine placement as specified in this subchapter.

1. The annual review shall be completed by June 30 of an educationally disabled pupil's last year in a preschool program.

2. The annual review shall be completed by June 30 of an educationally disabled pupil's last year in an elementary school program and shall include input from the staff of the secondary school.

(k)-(l) (No change.)

(m) During a 21-year-old educationally disabled pupil's last year in an educational program, a meeting shall be held including the parent(s), the case manager, the pupil, if appropriate, and other individuals as appropriate to develop nonbinding written recommendations concerning services and resources available after the responsibility of the district board of education has ended.

(n) School personnel, adult pupils and the parent(s) of a pupil with an educational disability shall be allowed to use an audio-tape recorder during the individualized education program meetings.

6:28-3.7 Reevaluation

(a) A reevaluation and, if the pupil will remain classified, an individualized education program shall be completed within three years of the date of the previous *[certification]* *classification*. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1. The child study team shall determine which child study team members and/or specialists will conduct the evaluations based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program. The reevaluation shall include assessment by at least two members of the child study team.

i. For pupils who are auditorily handicapped, in addition to the two required evaluations provided by the child study team, an audiological evaluation and a speech and language assessment according to N.J.A.C. 6:28-3.5(d)1 shall be required.

ii. For pupils who are autistic, in addition to the two required evaluations provided by the child study team, a speech and language assessment and neurodevelopmental assessment according to N.J.A.C. 6:28-3.5(d)2 shall be required.

2. (No change.)

3. Reevaluation shall be conducted according to N.J.A.C. 6:28-3.4(c), (g) and (h). Individual child study team assessment shall be conducted according to N.J.A.C. 6:28-3.4(d)1 through 6.

4.-5. (No change.)

6:28-3.8 Related services

(a) Related services shall be provided to a pupil with an educational disability according to his or her individualized education program and may include one or more of the following:

1. Counseling services shall be provided in the following manner:

i. Counseling services for a pupil with an educational disability shall be provided within the public schools during the school day by certified school psychologists, social workers or guidance counselors; and

ii. (No change.)

2.-6. (No change.)

(b) (No change.)

6:28-4.1 General requirements

(a) Each district board of education shall provide educational programs and related services for pupils with educational disabilities required by the individualized education programs of those pupils for whom the district board of education is responsible.

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

(d) Appropriate written curricula shall be developed and appropriate materials shall be provided for pupils with educational disabilities.

(e) The length of the school day and the academic year of programs for pupils with educational disabilities shall be at least as long as that established for all pupils.

1.-2. (No change.)

(f) (No change.)

(g) Physical education services, specially designed if necessary, shall be made available to every pupil with an educational disability age five through 21, including those pupils in separate facilities.

(h) When a pupil with an educational disability transfers from one New Jersey school district to another, or when a pupil classified as educationally disabled by a State or local school district outside of New Jersey transfers into a New Jersey school district, and immediate review of the classification and individualized education program cannot be conducted, the pupil shall be immediately placed in a program consistent with the goals and objectives of the current individualized education program for a period not to exceed 30 calendar days.

(i) When the individualized education program of a pupil with an educational disability does not describe any restrictions, the pupil shall be included in the regular school program provided by the district board of education.

1. When instruction in health, physical education, industrial arts, fine arts, music, home economics, and other regular education programs, intramural and interscholastic sports, nonacademic and extracurricular activities is provided to groups consisting solely of pupils with educational disabilities, the size of the groups and the age range shall conform to the requirements for special class programs described in this subchapter.

(j) (No change.)

(k) Each district board of education shall ensure that all pupils with educational disabilities have available to them the variety of educational programs and services available to nondisabled pupils.

6:28-4.2 Program options

(a) Educational program options include the following:

1. Instruction in a regular class with all necessary and appropriate supports including, but not limited to, the following:

i. Curricular or instructional modifications;

ii. (No change.)

iii. Speech-language services;

iv. Resource room (expires June 30, 1993);

v. Resource center programs;

vi. Assistive technology including environmental adaptations;

vii. Specialized instructional strategies;

viii. Teacher aides; and

ix. Related services.

2.-7. (No change.)

8. Individual instruction at home or in other appropriate facilities, with the prior written approval of the Department of Education through its county office, only when it is not appropriate to provide a special education program for a pupil with an educational disability according to N.J.A.C. 6:28-4.5; and

9. An accredited nonpublic school which is not specifically approved for the education of pupils with educational disabilities according to N.J.A.C. 6:28-6.5.

(b) (No change.)

6:28-4.3 Program criteria: supplementary instruction, speech-language services, resource rooms and resource center programs

(a) Supplementary instruction and speech-language services provided to a pupil with an educational disability shall be in addition

to the regular instructional program and shall meet the following criteria:

1.-5. (No change.)

(b) District boards of education may operate on a district wide basis either but not both, resource rooms and resource center programs until June 30, 1993. From that date forward, all district boards of education shall be required to comply with (d) below.

(c) Resource room programs shall be instructional centers offering individual and small group instruction in place of regular classroom instruction, based on curriculum adopted by the board of education. Resource rooms shall meet the following criteria:

1. A pupil with an educational disability in a resource room shall be enrolled on a regular public school class register with his or her chronological peers. Instructional responsibility for such a pupil shall be shared between the resource room teacher and the regular class teacher(s) as described in the individualized education program.

2. (No change.)

3. Types of resource room programs shall be designated as follows:

i.-ii. (No change.)

iii. Open program for nondisabled and educationally disabled pupils.

4.-5. (No change.)

6. This subsection shall expire on June 30, 1993.

(d) A district board of education may commence the operation of a resource center program at any time during the 1992-93 school year provided the district discontinues resource rooms. Resource center programs shall offer individual and small group instruction and shall meet the following criteria:

1. A pupil with an educational disability in a resource center program shall be enrolled on a regular class register with his or her chronological peers. Instructional responsibility for such a pupil shall be shared between the resource center program teacher and the regular class teacher(s) as described in the individualized education program.

2. The resource center teacher shall hold certification as teacher of the handicapped. If the resource center program solely serves pupils who are classified as visually handicapped, the teacher must be certified as a teacher of blind or partially sighted. If the resource center program solely serves pupils who are classified as auditorily handicapped, the teacher must be certified as a teacher of deaf and/or hard of hearing.

3. Resource center programs shall provide two types of instruction or service:

i. Instruction which replaces that provided in the regular class;
ii. Instruction which supports or supplements instruction initially provided by the regular class teacher; and

iii. Support and replacement instruction shall not be provided to pupils by the same teacher during the same instructional period.

4. Resource center program instruction may be provided in the pupil's regular class or in an approved separate resource room according to N.J.A.C. 6:22-5.4 and 5.5 as appropriate and indicated in the pupil's individualized education program.

5. Group sizes for pupils who receive support instruction in resource center programs shall not exceed the following:

i. In an approved separate resource room—five pupils;
ii. In the regular class, when the resource center teacher is present each instructional period that the subject is being taught;

(1) Preschool or elementary—eight pupils;

(2) Secondary—10 pupils;

iii. In the regular class, when the resource center teacher is present for some, but not all of the instructional periods that the subject is being taught—five pupils.

6. Support instruction provided in the pupil's regular class shall be at the same time and in the same activities as the rest of the class.

7. Group size for classified pupils who receive replacement instruction in class shall not exceed three pupils.

8. Group size for classified pupils who receive replacement instruction in an approved separate resource center shall be as follows:

i. For a single content area:

(1) Preschool or elementary—six pupils; and

(2) Secondary—eight pupils.

ii. For two content areas—three pupils.

9. The age span in an approved separate resource center program shall not exceed four years.

10. Replacement instruction in the regular class shall be for pupils normally enrolled in the class being served. Only a single content area shall be taught to the group. A pupil receiving in-class instruction shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the pupil's individualized education program.

11. A resource center program teacher shall be provided time for consultation with appropriate regular education teaching staff.

12. A pupil may be provided resource center instruction according to the following limits:

i. Replacement or support instruction in a separate approved resource room shall be for not more than one half of the pupil's instructional day; and

ii. Replacement or support instruction in the regular class may be for up to the pupil's entire school day.

13. For State aid funding purposes, district boards of education shall count pupils with educational disabilities in resource center programs as resource room pupils according to N.J.S.A. 18A:7D-16.

6:28-4.4 Program criteria: special class programs, secondary, vocational and vocational rehabilitation

(a) Special class programs shall meet the following criteria:

1. A pupil with an educational disability in a special class program shall be enrolled on a special class register;

2. Pupils shall be the primary instructional responsibility of a full-time special education teacher assigned to that class. Such teachers shall work with other teachers to whom the *pupil* with an educational disability may be assigned for portions of his or her educational program;

3. Depending on the educational disability(ies) of the pupils assigned to the special class program, the special class teacher shall hold certification as teacher of the handicapped, teacher of blind or partially sighted, and/or teacher of deaf or hard of hearing;

4.-7. (No change.)

(b) Secondary special class programs shall meet the following criteria:

1. (No change.)

2. A pupil with an educational disability enrolled on the register of a secondary special class program shall receive a minimum of three instructional periods with the certified teacher(s) of the handicapped who maintains primary instructional responsibility for the pupil;

3. In secondary special class programs where the organizational structure is departmentalized for general education pupils:

i. (No change.)

ii. For instructional purposes:

(1) (No change.)

(2) In all class groups comprised of pupils with mixed handicaps, the group shall be limited to eight pupils with educational disabilities;

4. In addition to the requirement of (b)2 above, instruction may be provided in the following settings, as appropriate:

i. A class consisting solely of pupils with educational disabilities instructed by a regular education teacher where an adapted general education curriculum is used.

(1) (No change.)

(2) In class groups comprised of pupils with mixed handicaps, the group shall be limited to eight pupils with educational disabilities.

ii. (No change.)

(1) The number of pupils with educational disabilities enrolled on a special class register who can attend any given instructional period in such classes shall be limited to four if program modification is required; and

5. (No change.)

(c) Vocational education programs shall meet the following criteria:

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1. (No change.)

2. In vocational shop, and related academic programs class sizes shall be as follows:

i. For a class consisting of pupils with educational disabilities, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted. Approval shall be considered according to procedures specified by the Department of Education. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following pupil needs and instructional considerations;

(1) Nature and degree of educationally disabling condition:

(2)-(8) (No change.)

(d) (No change.)

6:28-4.5 Program criteria: home instruction

(a) For pupils determined by the school physician to need confinement at their residence for at least a two week period of time, home instruction shall meet the following criteria:

1.-4. (No change.)

5. The pupil shall receive a program that meets the requirements of the district board of education for promotion and graduation. Pupils with educational disabilities may be exempted in their individualized education program according to N.J.A.C. 6:28-3.6(e)5iv;

6.-7. (No change.)

(b) A pupil classified as educationally disabled shall have his or her individualized education program implemented through one to one instruction at home or in another appropriate setting when it can be documented that no other program option is appropriate at that time.

1.-4. (No change.)

(c) Instruction provided for pupils confined to a hospital, convalescent home or other medical institution for at least a two week period of time and determined by the school physician to need home instruction or classified by the child study team as educationally disabled, shall meet the following criteria:

1. Instruction shall be provided by a district board of education, educational services commission, State-operated facility, jointure commission or approved clinic or agency at the pupil's place of confinement;

2.-3. (No change.)

6:28-4.7 Transition

(a) (No change.)

(b) For pupils with educational disabilities age 14 and over, planning for transition to adulthood shall include the following:

1. The individualized education program shall be written in accordance with N.J.A.C. 6:28-3.6(e)5vii.

i. If an agency other than the district board of education fails to provide the transition services included in the pupil's individualized education program, the district board of education shall reconvene a meeting of the individualized education program participants. Alternative strategies to meet the pupil's transition objectives shall be identified.

2.-5. (No change.)

6:28-4.8 Diplomas and graduation

(a) A pupil with educational disability who entered a high school program in September 1981 or thereafter shall meet the high school graduation requirements according to N.J.A.C. 6:8-7, unless exempted in his or her individualized education program with the written approval of the chief school administrator. The individualized education program must specifically address these graduation requirements. The individualized education program shall specify which requirements would qualify the pupil with an educational disability for a State endorsed diploma issued by the school district responsible for his or her education.

(b) A pupil with an educational disability shall be exempted from the High School Proficiency Test and demonstration of mastery of the curriculum proficiencies if it can be demonstrated that his or her individualized education program has not included the range of proficiencies measured by the High School Proficiency Test and

curriculum proficiencies or if the pupil would be adversely affected by taking the High School Proficiency Test.

(c) (No change.)

(d) If a district board of education grants an elementary school diploma, a pupil with an educational disability who fulfills the requirements of his or her individualized education program shall qualify for a diploma.

(e) Pupils with educational disabilities meeting the standards for graduation according to this section, shall have the opportunity to participate in graduation exercises and related activities on a non-discriminatory basis.

6:28-5.1 General requirements

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

(c) Services which may be contracted shall be restricted to the following:

1. For public school pupils:

i. Independent child study team evaluation and/or child study team diagnostic services to supplement existing local district services;

ii. The related services of occupational therapy and physical therapy; and

iii. Home instruction.

2.-3. (No change.)

(d) (No change.)

6:28-6.2 Provision of programs and services provided under

N.J.S.A. 18A:46-1 et seq. and 18A:46-19.1 et seq.

(a) Identification, referral, evaluation, determination of eligibility, development of individualized education programs and provision of speech and language services, home instruction and supplementary instruction shall be provided according to this chapter.

(b)-(j) (No change.)

6:28-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of educationally disabled pupils

(a) According to N.J.S.A. 18A:46-14 pupils with educational disabilities may be placed in accredited nonpublic schools which are not specifically approved for the education of educationally disabled pupils with the consent of the Commissioner or by an order of a court of competent jurisdiction.

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

6:28-7.1 General requirements

(a) Educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, private schools for the handicapped and public college operated programs for the handicapped shall obtain prior written approval from the Department of Education to provide programs for pupils with educational disabilities through contracts with district boards of education.

1.-3. (No change.)

(b) (No change.)

(c) Programs for pupils with educational disabilities provided under this subchapter shall be operated according to this chapter.

1. (No change.)

(d)-(f) (No change.)

6:28-7.2 Approval procedures to establish or change a program

(a) Prior to the establishment or change of a program for pupils with educational disabilities an application shall be submitted to the Department of Education.

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

(e) The application for approval to establish or change a program for pupils with educational disabilities shall include, but not be limited to:

1. A survey of need indicating the number, age range and classifications of pupils with educational disabilities to be served. This survey shall include, but not be limited to:

i.-ii. (No change.)

2. (No change.)

3. The projected program for each group of pupils with educational disabilities with the same educationally disabling condition including:

i.-iii. (No change.)

iv. The nature and scope of the program and services to be offered and the number and type of pupils with educational disabilities to be served; and

v. (No change.)

4.-5. (No change.)

6. Additionally each private school shall submit:

i. An affidavit that its programs and services for pupils with educational disabilities are nonsectarian; and

ii. (No change.)

6:28-7.3 Annual approval procedures

(a) Annually each approved private school shall submit information including, but not limited to:

1.-5. (No change.)

6. An affidavit that its programs and services for the educationally disabled are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6:28, The Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) and the Rehabilitation Act (U.S.P.L. 93-112 Section 504).

6:28-7.4 Responsibilities of district boards of education

(a) The educational program of an educationally disabled pupil provided through contractual agreements as described in N.J.A.C. 6:28-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be responsible for the services required in N.J.A.C. 6:28-3.

1. (No change.)

(b) The placement of a pupil with an educational disability in a program as described in N.J.A.C. 6:28-7.1(a) shall be made only with the prior written approval of the Department of Education through its county office. Providers of programs under this subchapter shall maintain documentation of this approval.

1. A district board of education shall seek approval to place a pupil with an educational disability in such a program only when it can assure that the individualized education program can be implemented in that setting.

2. (No change.)

3. If a pupil with an educational disability has available a free, appropriate education offered by a district board of education and the parent(s) chooses to place the pupil in a private school, neither the State nor the district board of education shall be responsible for the cost of the private school placement.

4. When a district board of education is able to demonstrate to the Department of Education through its county office that the individualized education program of a pupil with an educational disability cannot be provided by a public program or private day school program, the pupil may be placed in an approved residential private school which shall be at no cost to the parent(s). The district board of education shall be responsible for special education costs, room and board.

5. Placement of a pupil with an educational disability in an approved residential private school by a public agency, other than the district board of education, shall be subject to the rules governing such agencies and to this chapter. The district board of education shall pay the nonresidential special education costs.

i.-ii. (No change.)

(c) If the approval of a private school for the handicapped is removed, a district board of education having a pupil with an educational disability placed therein, shall immediately begin seeking an alternative, appropriate placement for that pupil.

6:28-7.6 Termination or withdrawal from an educational program

(a) Prior to the termination or withdrawal of any pupil with an educational disability from an approved program described in N.J.A.C. 6:28-7.1(a), there shall be an individualized education program review conference according to N.J.A.C. 6:28-3.6(j) which shall include participation of appropriate personnel from the receiving school. Fifteen calendar days prior to termination or withdrawal written notice shall be given by the parent(s), the district board of education or the school providing the program to the other parties.

(b) A pupil with an educational disability shall receive a diploma if the requirements of N.J.A.C. 6:28-4.8 are met.

6:28-7.7 Fiscal management

(a) (No change.)

(b) The district board of education shall establish a written contract for each educationally disabled pupil it places in a program approved under this subchapter. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for the pupil with an educational disability.

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

6:28-7.8 Records

(a) All providers under this subchapter shall conform to the requirements of N.J.A.C. 6:3-2 pertaining to pupil records. In addition:

1. (No change.)

2. Requests for access to pupil records by authorized organizations, agencies or persons as stated in N.J.A.C. 6:3-2 shall be directed to the chief school administrator or his or her designee of the local school district having responsibility for the pupil with an educational disability.

3. (No change.)

(b) (No change.)

6:28-8.1 General requirements

(a) The requirements of this chapter shall apply to all educational programs provided under N.J.S.A. 18A:7B for educationally disabled pupils by the Departments of Corrections and Human Services. These requirements do not apply to Graduate Equivalent Degree (GED), adult continuing education or college degree programs.

(b) All pupils with educational disabilities shall receive an educational program and/or related services based on an individualized education program. A pupil who has an individualized habilitation plan or an individual treatment plan, as defined by the Department of Human Services, shall have the individualized education program incorporated into the plan.

(c) (No change.)

(d) All nondisabled pupils in State facilities shall receive an educational program according to N.J.A.C. 6:8. (Thorough and Efficient System of Free Public Schools).

(e)-(f) (No change.)

(g) Attendance is compulsory for all pupils except for a pupil age 16 or above who explicitly waives this right. Such a waiver may be revoked at any time by the pupil. For a pupil below the age of 18, a waiver is not effective unless accompanied by parental consent. Educationally disabled pupils may reenroll according to N.J.A.C. 6:28-2.1(b).

(h)-(i) (No change.)

(j) When a pupil enters a State facility:

1. If a pupil is educationally disabled and an immediate review of the classification and individualized education program cannot be conducted, the pupil shall be placed in a program consistent with the goals and objectives of the current individualized education program for a period not to exceed 30 calendar days; or

2. If the pupil is not currently classified as educationally disabled, or if the State facility does not have current school records, the State facility shall review the pupil's educational status within 30 calendar days to determine if the pupil is potentially educationally disabled and if referral to the child study team is required.

(k)-(o) (No change.)

6:28-8.3 Procedural safeguards

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

(c) Mediation efforts by the Department of Education as described in N.J.A.C. 6:28-2.6 may be requested for educationally disabled pupils.

(d) The educational rights of nondisabled pupils to procedural safeguards are the same as nondisabled pupils in local district schools in New Jersey.

(e) Discipline of educationally disabled pupils shall be according to N.J.A.C. 6:28-2.8.

(f) (No change.)

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6:28-8.4 Provision of programs

- (a) (No change.)
- (b) A residential State facility may recommend placement of a pupil with an educational disability in a local school district if the pupil is capable of participating in an educational program offered by a district board of education. Documentation of attempts to place the pupil in the least restrictive environment according to N.J.A.C. 6:28-2.10 shall be stated in the pupil's individualized educational program. Tuition shall be paid by the State facility to the district board of education where the pupil is placed.
- (c)-(g) (No change.)
- (h) An educational plan shall be developed by the approved facility for each school age pupil leaving a Department of Corrections or Department of Human Services education program which shall include:
 - 1. (No change.)
 - 2. An individualized education program for pupils with educational disabilities; or for nondisabled pupils, a description of the pupil's general education program; and
 - 3. (No change.)
- (i)-(j) (No change.)

6:28-9.2 Complaint investigation

- (a) The Director of the Division of Special Education or his or her designee(s) shall be responsible for reviewing, investigating and taking action on any signed written complaint of substance regarding the provision of special education and/or related services covered under this chapter.
 - 1. The Division of Special Education shall complete an investigation within 60 calendar days after a written complaint is received for children below the age of three.
 - 2. The Division of Special Education in conjunction with the county office of education, shall complete an investigation within 60 calendar days after a written complaint is received for pupils age of three and above.
- (b)-(d) (No change.)

6:28-10.1 General requirements for early intervention programs serving children between birth and age three

- (a) This subchapter applies to all agencies that receive public funds through contracts from the Department of Education for the provision of early intervention programs to children with disabilities between birth and age three and their families. Early intervention programs are designed to address or enhance the child's development through an individualized family service plan according to P.L. 99-457.
- (b) Early intervention programs shall be administered by the Department of Education as the lead agency in collaboration with the Departments of Health and Human Services.
- (c) (No change.)
- (d) The Department of Education, in consultation with the Departments of Health and Human Services shall monitor and review the programs annually.
- (e) The Department of Education shall conduct complaint investigations according to N.J.A.C. 6:28-9.2.
 - Recodify existing (e) through (k) as (f) through (l). (No change in text.)
- (m) Mediation and/or a due process hearing may be requested in regard to the provision of programs and services for children below the age of three according to N.J.A.C. 6:28-2.6 and 2.7.

6:28-11.1 General provisions

- (a) The New Jersey Department of Education has developed the Plan to Revise Special Education in New Jersey (Plan). The Plan is a major initiative of the Department and includes a set of recommendations designed to improve the organization and delivery of special education programs and services to educationally disabled pupils. The Plan is also designed to build the capacity in regular education to serve nondisabled pupils with mild learning problems in regular education.
- (b) (No change.)
- (c) This subchapter shall replace N.J.A.C. 6:28-3.1, 3.2, 3.4 and 3.5 and N.J.A.C. 6:28-4.1(a) through (d) and 4.3 through 4.6 and

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shall apply only to those districts selected by the Department of Education to pilot the Plan. All other provisions of N.J.A.C. 6:28 shall apply to such districts except as specifically noted in this subchapter.

- (d) Prior to September 1, 1988, the child study teams of pilot districts shall determine an appropriate eligibility status for all pupils classified according to N.J.A.C. 6:28-3.5(d).

1.-2. (No change.)

(e) (No change.)

6:28-11.2 School resource committee

- (a) All pilot district boards of education shall establish at least one school resource committee in each of its regular schools. The school resource committee is a standing committee whose purpose is to assist teachers with strategies for educating nondisabled pupils with learning and/or behavior problems in regular education. Pilot district boards of education shall develop procedures for requesting the services of the school resource committee, implementing committee recommendations and communicating with parents.

1.-3. (No change.)

(b)-(e) (No change.)

6:28-11.3 Child study teams

- (a) A child study team is an interdisciplinary group of appropriately certified persons who shall:
 - 1. Evaluate pupil instructional needs after parental consent has been received and participate in the determination of eligibility for special education and/or related services for pupils referred as potentially educationally disabled;
 - 2. (No change.)
 - 3. Deliver appropriate related services to educationally disabled pupils;
 - 4. Provide preventive and support services for nondisabled pupils; and
 - 5. (No change.)
- (b) A child study team shall consist of a learning disabilities teacher-consultant, a school psychologist, and a school social worker. A speech correctionist or speech-language specialist shall be a child study team member for pupils in preschool through grade three. All members of the child study team shall be employees of the pilot district board of education, have an identifiable apportioned time commitment to the local school district and be available during the hours when pupils are in attendance.
- (c) (No change.)
- (d) At least one member of the child study team shall be knowledgeable about placement options for pupils with educational disabilities according to N.J.A.C. 6:28-4.

6:28-11.4 Identification

- (a) Each pilot district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district, may be educationally disabled and are not receiving special education and/or related services as required by this chapter. Children below the age of three shall be identified, located and evaluated through programs operated by or through contract with the Department of Education.
 - 1. (No change.)
 - 2. The identification procedures shall provide for participation of the school resource committee, instructional, administrative and other professional staff of the local school district, parents and agencies concerned with the welfare of pupils.
- (b) When a pupil with an educational disability transfers into a pilot district, placement shall be according to N.J.A.C. 6:28-4.1(h).
- (c)-(d) (No change.)

6:28-11.5 Referral

- Each pilot district shall follow referral requirements according to N.J.A.C. 6:28-3.3.

6:28-11.7 Determination of eligibility

- (a) (No change.)
- (b) When a pupil with an educational disability transfers into a pilot school district, review of the pupil's classification and ap-

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propriateness of the eligibility status and individualized education program shall be conducted within 30 calendar days.

(c) Pupils determined by the school physician to have temporary health problems which prohibit regular attendance in school need not be classified as educationally disabled but shall be entitled to receive at least five hours per week of individual instruction at home for a period of time determined by the school physician. After 60 days, the pupil shall be referred to the child study team to determine if the pupil is eligible for special education and/or related services.

(d) Pupils determined eligible for special education or related services shall be classified according to the following definitions:

1. (No change.)

2. Eligible for part-time special education: The pupil shall have met the criteria for one or more of the domains and either impact area listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that the pupil can participate in regular education with the use of resource center programming.

3. Eligible for full-time special education: The pupil shall have met the criteria for one or more of the domains and either impact area listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that the pupil requires special education in a full-time special class.

(e)-(f) (No change.)

6:28-11.8 Eligibility criteria

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

(f) Pupils who do not meet the standard eligibility criteria but do meet functional criteria may be considered as eligible for special education if the child study team determines that the pupil is educationally disabled and requires special education and/or related services. The child study team must show evidence why the standard criteria are inappropriate for the pupil and how the other evaluation data support a decision to classify the pupil.

(g) When the parent of a pupil eligible for special education and/or related services requests a classification designation as stated in N.J.A.C. 6:28-3.5(d), the child study team shall select an appropriate classification type based upon the evaluation completed according to N.J.A.C. 6:28-11.6 and 11.7 and any specialist required by N.J.A.C. 6:28-3.5(d).

6:28-11.9 Individualized education program

(a) The individualized education program for each pupil with an educational disability shall consist of a basic plan and an instructional guide, pursuant to N.J.A.C. 6:28-3.6 and this subsection.

1. (No change.)

2. The basic plan of the individualized education program shall conform with N.J.A.C. 6:28-3.6(a), (b), (c), (e) and (f) and shall also include the following:

i.-iii. (No change.)

3. The instructional guide shall describe both the learning characteristics of the pupil and the related instructional characteristics of the pupil's learning environment. The instructional guide shall include those requirements stated in N.J.A.C. 6:28-3.6(g), (h) and (i) and the following:

i.-iv. (No change.)

(b) Pupils determined to require placement in a county day training facility shall be classified as eligible for day training according to N.J.A.C. 6:28-3.5(d)6iii based upon the child study team evaluation completed under N.J.A.C. 6:28-11.6(g).

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

6:28-11.10 Provision of programs

(a) Each pilot district board of education shall provide educational programs and related services for educationally disabled pupils in accordance with their individualized education programs.

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

(d) Appropriate facilities shall be provided for pupils with educational disabilities according to N.J.A.C. 6:22.

(e) Each full-time class type shall be described in individual class profiles that are reviewed and approved by the county office and the Division of Special Education acting jointly. Appropriate written curricula shall be developed and appropriate materials shall be

provided for pupils with educational disabilities served in full-time class types.

(f) (No change.)

6:28-11.11 Program options

(a) Educational program options shall include those listed in N.J.A.C. 6:28-4.2(a).

(b) Program criteria shall be met in accordance with N.J.A.C. 6:28-4.3.

1. In addition, the group size in out-of-class replacement resource center instruction may be increased by one-third with the addition of a classroom aide by obtaining the written approval of the Department of Education through its county office.

(c) Full-time special class programs shall meet the following criteria:

1. (No change in text.)

2. An educationally disabled pupil eligible for full-time special education shall be enrolled on a special class register.

Recodify iii.-iv. as 3.-4. (No change in text.)

5. Teachers in full-time class types shall work cooperatively with other teachers to whom the pupil with an educational disability may be assigned for portions of his or her educational program.

Recodify vi.-vii. as 6.-7. (No change in text.)

6:28-11.12 Full-time class types

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

(e) Moderate behavior handicap class types shall meet the following requirements:

1. (No change.)

2. The program shall emphasize:

i.-ii. (No change.)

iii. Decreasing behaviors which present a danger to the pupil or others;

iv.-vi. (No change.)

3.-7. (No change.)

(f)-(l) (No change.)

(m) Pupils enrolled in full-time class types may be instructed in regular classes in accordance with their individualized education program. The number of pupils with educational disabilities enrolled in a full-time class register who can attend any given instructional period in such classes shall be limited to four if program modification is required.

(n) and (o) (No change.)

6:28-11.13 Program approval

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

(c) A pupil classified as educationally disabled by a child study team may have the individualized education program implemented through individual instruction at home when it can be demonstrated that no other program option is appropriate at that time. This provision shall not apply to pupils suffering from temporary medical problems such as, but not limited to, pregnancy or fractures. Pupils suffering temporary medical problems shall be provided instruction individually through regular education and need not be eligible for special education.

1.-2. (No change.)

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

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL PROTECTION AND ENERGY OFFICE OF LEGAL AFFAIRS

Notice of Administrative Correction

Water Pollution Control Act Rules

Procedures for Assessment, Payment and Settlement of Civil Administrative Penalties, and Affirmative Defenses

N.J.A.C. 7:14-8.3

Take notice that the Department of Environmental Protection and Energy has discovered an incorrect cross-reference in the current text of N.J.A.C. 7:14-8.3(i)2iii. N.J.A.C. 7:14A-8.4(a)7 referred to in that subparagraph does not exist; the correct reference is to N.J.A.C. 7:14-8.4(a)7. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

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

(a)-(h) (No change.)

(i) Except as provided in (i)1 below, a violator may be entitled to an affirmative defense to liability for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error, only if, in the determination of the Department, the violator has satisfied the provisions of this section.

1. (No change.)

2. A violator shall be entitled to an affirmative defense only if, in the determination of the Department, the violator satisfies the following:

i.-ii. (No change.)

iii. The violator complied with N.J.A.C. [7:14A-8.4(a)7]

7:14-8.4(a)7; and

iv. (No change.)

3.-4. (No change.)

HEALTH

(b)

EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

Sanitation in Retail Food Establishments and Food and Beverage Vending Machines

Eggs

Community Residences for the Developmentally Disabled

Adopted Amendments: N.J.A.C. 8:24-1.3, 2.5, 3.3 and 13.2.

Proposed: March 16, 1992 at 24 N.J.R. 915(a).

Adopted: June 8, 1992, by the Public Health Council,

Louise C. Chut, Ph.D., M.P.H., Chairwoman.

Filed: June 11, 1992 as R.1992 d.281, with substantive changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:1A-7.

Effective Date: July 6, 1992.

Expiration Date: May 2, 1993.

Summary of Public Comments and Agency Responses:

The proposed amendments were published in the New Jersey Register on March 16, 1992. At that time, copies of the proposed amendments were also distributed to more than 150 entities, including representatives of state agencies, local health departments, the food service industry, the egg industry, the bed and breakfast industry, academic institutions, public health organizations and members of the general public that voiced an interest in this subject. During the comment period, eight comments were received from representatives of the retail food industry, egg industry, New Jersey Department of Human Services, New Jersey Department of Community Affairs, and local health departments which are charged with the primary enforcement responsibility for the rules.

The following individuals provided comments to the proposed amendments:

Jean Paashaus, Summit, NJ

Sharyn Beckel, Cumberland County Health Department

William M. Connolly, Department of Community Affairs, Division of
Codes and Standards

Victor Thomas, Department of Human Services, Division of
Developmental Disabilities

J.C. McLaurin, Northeast United Egg Producers

Lawrence Fidel, New Jersey Restaurant Association

Fred Schneeweiss, United Restaurant and Lodging Association

Margaret Zealand, New Jersey Public Health Association

A public hearing in this matter was held on April 13, 1992 and four oral comments were received at that time. One of the oral comments received at the public hearing was subsequently submitted to the Department as a written comment. A written transcript of the public hearing was also provided. The hearing officer, Dr. Louise Chut, recommended that all comments be evaluated by the Department's Food and Milk Program and stated that each comment would receive due consideration. The oral comments have been responded to, along with the written comments, in this document.

A summary of the oral and written comments and the Department's responses follows:

COMMENT: Mr. William M. Connolly, Director, New Jersey Department of Community Affairs, Division of Codes and Standards requested that rooming and boarding houses that are subject to the inspection by the Department of Community Affairs under the Rooming and Boarding House Act of 1979 be excluded from regulation under this rule for the same reasons that the Department of Health (hereafter, the Department) proposed for excluding Community Residences for the Developmentally Disabled and Mentally Ill. He indicated that rooming and boarding houses are considered to be a permanent domicile for persons who lives in them and the operators are also expected to provide a "home-like atmosphere" for their residents. The commenter suggested that the Department of Community Affairs' inspection of these facilities includes enforcement of standards concerning food preparation, so the concern of avoiding unnecessary duplication expressed in response to the request from the Department of Human Services should also apply to rooming and boarding houses. Moreover, he stated that rooming and boarding homes, like the facilities regulated by Human Services, do not serve food to the public.

RESPONSE: The amendments proposed by the Department of Community Affairs recommending exempting facilities regulated under the provisions of the Rooming and Boarding House Act of 1979 from the provisions of these rules, was not considered under this rule revision. Therefore, while this recommendation may have merit, it must be thoroughly evaluated by the Department. This recommendation would also be considered a substantive change, requiring additional rule making and public comment. The Department will take this request under advisement and will study the proposal before deciding whether such additional rule making would be appropriate.

COMMENT: Ms. Sharyn Beckel, a sanitarian for the Cumberland County Health Department, stated that group homes or group residential homes under the New Jersey Department of Human Service, Divisions of Developmentally Disabled and Mentally Ill should not be excluded from the requirements of the rules. The commenter stated that staff changes in these homes are conducted three times per day (on a per shift basis) and that the turnover rate for residents in these facilities can be rapid and occur in short time periods. Residents and staff do not live together continuously for 24 hours per day as in a family foster care situation. Residents try group home life and some go back to the institutions if it doesn't work out and may return again. The staff all have families and homes they go to and return to the group home also

to work. The commenter believes that these outside potentials for infection exposure contribute to a large pool of potentially food transmittable organisms in the group home setting which require much better sanitation vigilance than the common family home eating situation. In addition, Ms. Jean Paashauss of Summit, New Jersey, provided written comment stating that Community Residences for the Developmentally Disabled and Mentally Ill should not be considered private residences and therefore not be exempt from the provisions of these rules. She further stated that a number of "community residences" included in the definition under N.J.A.C. 8:24-1.3 are heavily staffed with specialists and are State licensed and funded. Some of the facilities for the developmentally disabled and mentally ill have as many staff members as residents, felt by the commenter to hardly be a private residence and not "normal home environments" as stated in the Department's Summary statement. The commenter recommended that a separate paragraph be added to the definition for "community residence" to cover "Community Residences for the Developmentally Disabled and Mentally Ill" and that no reference be made to these facilities as a "private residence."

RESPONSE: The Department agrees that the subject community residences are State licensed and funded. New Jersey law (N.J.S.A. 30:11B-1 et seq.) requires such residences to be licensed and requires that rules be promulgated by the Department of Human Services, the agency that has primary jurisdiction for the regulation of community residences for the developmentally disabled and mentally ill. The rules adopted by the Department of Human Services governing these residences require that all policies associated with the operation of these licenses be designed in accordance with the principles of normalization, age appropriateness and which are least restrictive of personal liberty (N.J.A.C. 10:44A-2.7). Normalization is defined under N.J.A.C. 10:44A-1.3 as making commonly accepted patterns and conditions of everyday life available to people with developmental disabilities. Further, the Department of Human Services has advised the Department that community residences are purchased as a single family dwelling unit with a home kitchen and the meals are prepared as a family unit, based upon the residents' abilities. While the Department agrees with the commenters that additional supervision is required and residence staff may not reside at the home on a continuous basis, the Department believes this practice in itself does not necessarily put the residents at increased risk of acquiring foodborne illness. Furthermore, the rules promulgated by the Department of Human Services appropriately address the safe and sanitary operation of these types of community residences.

The Department has considered the comment regarding the specific language of these rules as to whether community residences for the developmentally disabled and mentally ill are defined as private residences. The Department agrees with the commenter that, as written, these rules may be misleading and therefore will amend the definition of "community residences" and the appropriate section, N.J.A.C. 8:24-13.2. It must be stressed that this change is for clarification purposes and in no way is aimed at altering the Department's intent to exempt community residences for the developmentally disabled and mentally ill from the provisions of these rules. The Department is deleting the word "private" and substituting for it the phrase "residences similar in purpose."

COMMENT: Mr. Victor Thomas, New Jersey Department of Human Services, Division of Developmental Disabilities, stated that the Division of Developmental Disabilities supports the proposed change, which would exempt community residences for the developmentally disabled and mentally ill from the rules. The commenter presented background information in support of the amendment. He suggested that the number of community residences has grown appreciably since 1978 and that there are more than 273 programs which would be affected by the change. Of these facilities, 80 percent serve six or fewer persons. In addition, he stated that to treat these programs as other than a normal home environment is contrary to the entire national trend, and is not in the interest of disabled people. Further, the commenter stated that, unlike a retail food establishment, the people in these programs participate to the degree possible in the preparation and selection of food. This is all done in a very structured way, evaluating the person's abilities to perform certain tasks, designing a program which is documented through what is called an individual habilitation plan, which defines those training goals for the individuals. Each program is distinct onto itself, reflecting on the persons' abilities.

RESPONSE: The Department concurs.

COMMENT: Mr. J.C. McLaurin, representing the Northeast United Egg Producers, an agricultural association representing egg producers

in the northeast, submitted written comments supporting the amendments of the rules which recognize consumer preference in the preparation and serving of undercooked eggs (N.J.A.C. 8:24-3.3(d)4). The commenter stated that he believes that this recommendation is based on the relatively small percentage of eggs which are contaminated with *Salmonella enteritidis* and because the number of organisms in a contaminated egg is so small that if the egg is properly refrigerated and not pooled with other eggs it presents very little risk of causing salmonellosis.

RESPONSE: While the Department appreciates Mr. McLaurin's support of the amended rules, it should be noted that the Department's reasons for this amendment are different than the reasons stated by the commenter. The Department recognizes that only a small percentage of eggs may be contaminated with *Salmonella enteritidis* (SE). However, the Department believes that there is evidence that an egg contaminated with SE may contain sufficient organisms to cause illness. This is why the Department believes that foods prepared with unpasteurized eggs should be fully cooked to destroy the bacteria. However, the Department also recognizes that most egg-associated SE outbreaks have been found to occur when eggs are pooled and are subsequently mishandled at the retail food service level and that individual service egg dishes do not pose the same level of risk of causing illness as those foods which contain pooled eggs or egg dishes which are prepared in advance of service. These practices significantly increase the opportunity for the pathogens to multiply in the food and are the reasons for the Department establishing rules to limit the pooling of eggs and requiring that pooled eggs must be fully cooked.

COMMENT: Mr. Lawrence Fidel, representing the New Jersey Restaurant Association, provided both written and oral comments supporting the proposed amendments permitted the serving of individually prepared undercooked eggs (N.J.A.C. 8:24-3.3(d)4), noting the importance of allowing individual consumer choice. The commenter also inquired as to whether the new rules would prohibit the cracking and pooling of shell eggs in an amount that the operator knows will be used and then cooked within a two hour time period? To be more precise, in the case of lightly-cooked eggs, what amount does the Department consider to be "pooled" and how long of a period of time would "immediate" be considered? Also, in the case of raw eggs, if a table of four customers orders a caesar salad which is prepared immediately by the food service operator, would he or she be allowed to prepare one batch of the dressing? Again, what is considered "pooling" in this sense?

RESPONSE: Although N.J.A.C. 8:24-2.5(c), which addresses the requirements for the pooling of shell eggs, is not being amended and therefore is not open for comment, the Department believes that Mr. Fidel's questions warrant clarification to answer potential enforcement problems. The section states that "Shell eggs shall only be cracked and pooled when used for immediate cooking." The Department believes that the term "pooled" as used in this context applies to eggs which have been precracked for use in menu items in which the batched eggs will be subsequently prepared for service to more than one person, such as in the preparation of french toast batter, buffet style scrambled eggs, or eggs pooled for multiple servings of scrambled eggs. Any food containing such "pooled" eggs would be required to be cooked to heat all parts to a minimum temperature of 140 degrees Fahrenheit and could not be served lightly cooked, as provided under N.J.A.C. 8:24-3.3(d)4. This section states that "Eggs prepared for individual service at the time of customer order and provided immediately for consumption may be served raw or cooked to a product temperature of less than 140 degree Fahrenheit." The Department recognizes that several eggs must be combined to prepare an individual dish such as individually prepared scrambled eggs or a three egg omelet. In these cases, the Department would not consider the combining of these eggs in a separate vessel for the preparation of an individual service dish as "pooling." Therefore, such eggs prepared for individual service could be served raw or lightly cooked as provided under N.J.A.C. 8:24-3.3(d)4.

The Department believes that the term "immediate" as applied in N.J.A.C. 8:24-2.5(c) to be the immediate serving period, such as the breakfast serving period. The Department recognizes that a restaurant operator may need to pre-crack and pool eggs shortly before service in order to meet the demands during the immediate serving period. As such, the Department would not take exception to a foodservice operator cracking and pooling eggs known to be utilized and then cooked within a two hour period as posed by the commenter. However, every effort should be made by the operator to limit the quantity of eggs that are

pre-cracked during the serving period, such as cracking the eggs in small batches and using multiple vessels to hold the eggs so that they can be readily and rapidly used. Of course, these eggs would be required to be maintained under refrigeration temperatures of 45 degrees Fahrenheit or below until cooked.

The Department believes that the term "individual service" as it applies to N.J.A.C. 8:24-3.3(d)4 means a single person. As stated above, any food which contains unpasteurized eggs which have been batched and prepared for more than one person would be considered to be "pooled" and would be required to be fully cooked prior to serving. Therefore, in reply to the commenter's inquiry, it is the Department's opinion that a caesar salad with a dressing prepared with raw eggs would not be permitted to be prepared for a table of four, since this is not considered individual service. The Department's opinion is based on the concern that in a group setting there is no way to confirm whether each individual is completely aware that the food served contains undercooked eggs and the corresponding risk associated with consuming raw or lightly cooked eggs. The intent of this section is to provide the individual consumer with the opportunity to consume eggs or foods containing eggs which are undercooked, if they so desire. In addition, the Department believes that expanding the number of persons which may be served under the provisions of "individual service" would serve to create confusion and inconsistency regarding the enforcement of this section. For instance, if raw eggs are permitted to be served in this manner for a table of four, what about a table for eight or one for 12? The Department also believes that there are available pasteurized egg products which can be readily substituted for raw eggs in caesar salad dressing if multiple servings are required. However, the Department recognizes that additional questions may arise regarding the Department's position in this matter. The Department welcomes, and will carefully evaluate, any additional comments or suggestions in this matter. If information is presented which compels the Department to modify its position in this matter, this can be accomplished through the issuance of a formal interpretation as allowed for under N.J.A.C. 8:24-9.12.

COMMENT: Mr. Fred Schneeweiss, representing the United Restaurant and Lodging Association, presented oral comments in support of the proposed amendments to N.J.A.C. 8:24-3.3(d) to allow the sale of raw or undercooked eggs to the public, if they so desire. Mr. Schneeweiss stated that the current rules created a severe hardship for diners, restaurants, small luncheonettes and hotels. He also stated that the rules will encourage the use of pasteurized eggs instead of the traditional industry practice of using unpasteurized pre-cracked and pooled eggs in buffet style food service operations. The commenter suggested that there was a similar question regarding the sale of rare roast beef, and that an accommodation was made to permit the sale of beef steak that is cooked to the degree that the customer desires it.

RESPONSE: The Department concurs.

COMMENT: Ms. Margaret Zealand, a member of the New Jersey Public Health Association, provided oral comment at the public hearing and stated that she thought that the New Jersey Public Health Association supports the bill. She made reference to an outbreak of Salmonella which was traced to eggs when the State Diet Manual was published 25 years ago. She stated that, at that time, a reference was made in the manual which recommended that eggs should be clean, not cracked, and well cooked. Ms. Zealand further stated that the manual was used for years without complaint.

RESPONSE: The Department appreciates Ms. Zealand's support of the amended rules. At the time referred to by Ms. Zealand (25 years ago), outbreaks of egg-associated salmonellosis were traced to uncooked foods which contained eggs which were cracked and were not cleaned. At that time, shell eggs were classified as a potentially hazardous food. However, in the early 1970's, the U.S. Food and Drug Administration exempted whole, uncracked shell eggs as a potentially hazardous food because of the U.S. Department of Agriculture's egg washing and grading program. The recent outbreaks of *Salmonella enteritidis* have been associated with the consumption of undercooked foods containing eggs, even though the eggs have been washed and sanitized in a U.S.D.A. inspected plant. The Department recognizes that only a small percentage of eggs may be contaminated with *Salmonella enteritidis* (SE). In addition, most egg-associated SE outbreaks have been found to occur when pooled eggs are mishandled at the retail food service level. The Department believes that individual service egg dishes do not pose the same level of risk of causing illness as those foods which contain pooled eggs or egg dishes which are prepared in advance of service. These practices significantly increase the opportunity for the pathogens to multiply in

the food and are the reasons for the Department establishing rules to limit the pooling of eggs and requiring that pooled eggs be fully cooked.

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

8:24-1.3 Definitions

For the purpose of this chapter, the following words, phrases, names and terms shall have the following meanings, unless the context clearly indicates otherwise:

... "Community residence" means any community residential facility regulated by N.J.S.A. 55:13B-1 et seq., Rooming and Boarding House Act of 1979; provided that, shelter and food for 16 or fewer residents exclusive of the owner and his or her family and the operator and employees are provided in a family style setting; and, provided further, that food prepared or served is not offered to the public. Community Residences include, but are not limited to, licensed or regulated group homes, halfway houses, rooming houses, boarding houses, and similar residences. Licensed or regulated foster homes, skill development homes, family care homes, respite care homes, facilities licensed under N.J.S.A. 30:11B-1 et seq., Community Residences for the Developmentally Disabled and Mentally Ill (N.J.A.C. 10:44A; 10:39) and ***[similar private]* residences *similar in purpose*** are not considered community residences under this definition.

8:24-2.5 Eggs

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

(d) Raw eggs shall not be used as an ingredient or as a major component in the preparation of uncooked or undercooked (not prepared in accordance with the cooking temperature requirement as set forth in N.J.A.C. 8:24-3.3(d)) ready-to-eat foods, except as provided for in N.J.A.C. 8:24-3.3(d)4.

8:24-3.3 Food preparation

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

(d) Potentially hazardous foods requiring cooking or smoking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit except that:

1.-2. (No change.)

3. Rare whole roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, or, if cooked in a microwave oven, to at least 145 degrees Fahrenheit. Rare beef steak shall be cooked to a temperature of 130 degrees Fahrenheit unless otherwise ordered by the immediate consumer; and

4. Eggs prepared for individual service at the time of customer order and provided immediately for consumption may be served raw or cooked to a product temperature of less than 140 degrees Fahrenheit.

(e)-(g) (No change.)

8:24-13.2 General provisions

When, in the opinion of the Department or health authority, no imminent hazard to the public health will result, community residences and bed and breakfast establishments which do not fully meet the requirements of N.J.A.C. 8:24-2 through N.J.A.C. 8:24-7 may be permitted to operate when food preparation and service are restricted and alternatives to full compliance are provided for by the additional or modified requirements, as set forth in this subchapter. Bed and breakfast establishments serving only commercially prepared non-potentially hazardous foods are excluded from the requirements of N.J.A.C. 8:24. In addition, other private residences regulated under N.J.S.A. 55:13B-1 et seq., Rooming and Boarding House Act of 1979, such as licensed or regulated foster homes, skill development homes, family care homes, respite care homes, and facilities licensed under N.J.S.A. 30:11B-1 et seq., Community Residences for the Developmentally Disabled and Mentally Ill, and ***[similar private]* residences *similar in purpose***, are also excluded from the requirements of N.J.A.C. 8:24. However, residential health care facilities shall fully meet the requirements of N.J.A.C. 8:24.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Controlled Dangerous Substances Addition of Methcathinone

Addition to: N.J.A.C. 8:65-10.1(b)7

Authorized By: Frances J. Dunston, M.D., M.P.H., State Commissioner of Health.

Authority: N.J.S.A. 24:21-3.

Effective Date: May 1, 1992.

Take notice that effective May 1, 1992, Methcathinone (C.D.S. Code 1237) (some other names: 2-Methylamino-1-phenylpropan-1-one; Ephedrone; Monomethylpropion; UR 1431), its salts, optical isomers, and salts of optical isomers were placed into Schedule I of the Federal Controlled Substances Act. This action was taken pursuant to the substance causing abuse and a product having no exemption or approvals by the U.S. Food and Drug Administration. The action is taken by the Commission pursuant to N.J.S.A. 24:21-3, which provides that once a product has been scheduled under Federal law and notice is given to the Commissioner of Health, the Commissioner shall similarly schedule the substance after 30 days following the publication in the Federal Register of a final Order scheduling the substances.

A final Order scheduling Methcathinone was published in the Federal Register May 1, 1992 (see 57 F.R. 18824 & 18825). The Federal action was taken to comply with the Comprehensive Crime Control Act of 1984. The scheduling of Methcathinone will result in the registration of certain manufacturers, wholesalers, researchers and some analytical laboratories not heretofore subject to registration.

N.J.A.C. 8:65-10.1(b)7 is amended to read (additions in boldface thus):

8:65-10.1 Controlled dangerous substances; Schedule I

(a) (No change.)

(b) The following is the Schedule I listing of the controlled dangerous substances by generic, established, or chemical name and the controlled dangerous substances number.

1.-6. (No change.)

7. Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

i.-xiii. (No change.)

xiv. **Methcathinone (2-Methylamino-1-Phenylpropan-1-one; Ephedrone; Monomethylpropion; UR 1431), its salts, optical isomers and salts of its isomers. 1237.**

HIGHER EDUCATION

(b)

STUDENT ASSISTANCE BOARD

Notice of Administrative Correction

Student Assistance Programs Foreign Nationals; Payments

N.J.A.C. 9:7-2.3 and 2.11

Take notice that the Department of Higher Education has discovered errors in the current text of N.J.A.C. 9:7-2.3 and 2.11. In N.J.A.C. 9:7-2.3, subsection (b) was inadvertently omitted from the Code following its amendment effective March 21, 1988 (see 18 N.J.R. 19(a) and 1382(b)). Amendments to N.J.A.C. 9:7-2.11(b), adopted effective November 2, 1987 (see 19 N.J.R. 1153(a) and 2054(a)), are not reflected in the current Code text. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

9:7-2.3 Foreign nationals

(a) (No change.)

(b) **Foreign nationals with Student Visa Status, F1 or F2 Exchange Visitor Visa and J1 or J2 even when stamped "employment**

authorized" or holders of form I-94 with one of the endorsements: "adjustment applicant", "245", "245 applicant", "applicant for permanent residence", "voluntary departure", and "deferred action", are considered to be in the United States for temporary reasons and are therefore not eligible for student assistance.

9:7-2.11 Payments

(a) (No change.)

(b) Payments will be made by the Department of Treasury to eligible students in equal installments over the regular academic year, the number of installments corresponding to the number of school terms. Deadline dates shall be established annually to comply with the State's fiscal year and to allow for academic term expenditure control. [After the academic term ends at the institution, retroactive payment of student assistance awards shall not be made for that term.] The Student Assistance Board may elect to provide directly to institutions on behalf of student[s] recipients. [In such instances, payment to public institutions will be in the form of a debit/credit, while payments due in-State independent institutions and all out-of-State institutions will be by check.] Listings of eligible students to be credited will accompany the payments to institutions.

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(c)

THE COMMISSIONER

Administration, Organization and Management

Readoption with Amendments: N.J.A.C. 10A:1

Proposed: April 20, 1992, at 24 N.J.R. 1465(a).

Adopted: May 28, 1992 by William H. Fauver, Commissioner, Department of Corrections.

Filed: June 1, 1992 as R.1992 d.269, **without change.**

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 52:14B-3 and 4.

Effective Date: June 1, 1992, Readoption

July 6, 1992, Amendments.

Expiration Date: June 1, 1997.

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. 10A:1.

Full text of the adopted amendments follows.

10A:1-1.2 Procedure to petition for a rule

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

(c) The petition shall be sent to the Commissioner, Department of Corrections, and to the Regulatory Officer, Division of Policy and Planning, at CN 863, Trenton, New Jersey 08625.

(d) When the Commissioner and/or the Regulatory Officer, Division of Policy and Planning accept the petition which satisfies the requirements of (a) and (b) above, the Department of Corrections shall forthwith file the document for publication as a notice of petition for a rule in the New Jersey Register pursuant to N.J.A.C. 1:30-3.6(a).

(e) (No change.)

10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through N.J.A.C. 10A:30, shall have the following meanings.

... "Youth Complex" means State correctional facilities designated to house young adult offenders pursuant to N.J.S.A. 30:4-146.

10A:1-2.4 Rule making and exemption authority

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

(c) The Commissioner may exempt a correctional facility or other operational unit from adherence to a rule or certain requirements of a rule in instances when strict compliance with a rule or all of its requirements would result in undue hardship and/or security risk

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to the overall management of a correctional facility or other operational unit.

10A:1-2.7 Procedure for requesting rule exemptions

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

(d) The Superintendent or the head of a noninstitutional operational unit shall review and determine, based on the criteria at N.J.A.C. 10A:1-2.4(c), whether to submit requests for rule exemptions to the appropriate Assistant Commissioner and the Commissioner for consideration.

(e) If the Superintendent or the administrative head of a noninstitutional operational unit approves a request for a rule exemption, he or she shall complete, in duplicate, Sections 1 through 6 of Form 911-II REQUEST FOR RULE EXEMPTION, sign and date Section 7 and submit Form 911-II to the Regulatory Officer, Division of Policy and Planning.

(f) The Regulatory Officer shall review Form 911-II REQUEST FOR RULE EXEMPTIONS and submit Form 911-II to the appropriate Assistant Commissioner along with recommendations for approval or disapproval, based on the criteria at N.J.A.C. 10A:1-2.4(c).

(g) The Assistant Commissioner shall review Form 911-II REQUEST FOR RULE EXEMPTION and determine whether to approve or disapprove the request, based on the criteria at N.J.A.C. 10A:1-2.4(c). If the Assistant Commissioner approves the request, he or she shall sign and date Section 7 of Form 911-II and shall submit it to the Commissioner for review. If the Assistant Commissioner disapproves the request, he or she shall sign and date Section 8 of Form 911-II and return it to the correctional facility Superintendent or the administrative head of a noninstitutional operational unit.

(h) The Commissioner shall review Form 911-II REQUEST FOR RULE EXEMPTION, submitted by an Assistant Commissioner, and determine whether to authorize a rule exemption, based on the criteria at N.J.A.C. 10A:1-2.4(c). The Commissioner shall approve or disapprove a rule exemption by signing and dating the appropriate section on Form 911-II and returning it to the Assistant Commissioner.

(i) (No change.)

10A:1-11.3 Non-permissible personal property

(a) (No change.)

(b) The correctional facility shall inventory and package the non-permissible personal property and the inmate shall indicate, in writing, which of the following means of disposal should be used with respect to the non-permissible personal property. The non-permissible personal property shall either be:

1. Mailed to the inmate's home at the inmate's expense;
2. Given to a designated visitor for removal;
3. Donated by the inmate to a charitable organization at the inmate's expense; or
4. Destroyed at the inmate's request.

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

(f) Copies of written notices to the inmate about his or her non-permissible personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.10).

10A:1-11.6 Inventory of inmate personal property

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

(d) In the event the inmate refuses to sign the inventory form, the inventory officer shall note the inmate's refusal on the form.

(e) The signed inventory form shall be maintained on file (see N.J.A.C. 10A:1-11.10) and a copy shall be given to the inmate.

10A:1-11.7 Correctional facility's responsibility for personal property when inmate is transferred

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

(f) In every case that personal property is mailed to the inmate's home, a receipt shall be obtained from the post office or railway express representative and filed in the inmate's classification folder (see N.J.A.C. 10A:1-11.10).

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10A:1-11.8 Responsibility for personal property when inmate is released

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

(d) Copies of written notices to the inmate about his or her personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.10).

10A:1-11.9 Responsibility for personal property when inmate escapes

(a) When an inmate escapes, the inmate's personal property shall be held at the correctional facility for 30 days.

(b) If the escaped inmate does not return within 30 days to the correctional facility or any other correctional facility within the jurisdiction of the New Jersey Department of Corrections, the inmate's property shall be deemed abandoned property.

(c) The correctional facility may dispose of abandoned personal property by:

1. Donating the personal property to any recognized public charitable organization;

2. Retaining the personal property for use by the general inmate population, such as a typewriter for use in the Inmate Law Library; or

3. Destroying the personal property.

(d) A written notice of final disposition of the escaped inmate's abandoned personal property shall become a permanent part of the inmate's classification folder (N.J.A.C. 10A:1-11.10).

Recodify existing N.J.A.C. 10A:1-11.9 and 11.10 as 10A:1-11.10 and 11.11 (No change in text.)

(a)

THE COMMISSIONER

Medical and Health Services Lethal Injection

Adopted New Rules: N.J.A.C. 10A:16 and 10A:23-1 Adopted Recodification: N.J.A.C. 10A:16-10 to 10A:23-2

Proposed: May 4, 1992 at 24 N.J.R. 1677(a).

Adopted: June 11, 1992 by William H. Fauver, Commissioner, Department of Corrections.

Filed: June 12, 1992 as R.1992 d.283, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1B-6, 30:1B-10, and 2C:11-3.

Effective Date: July 6, 1992.

Expiration Date: July 6, 1997.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment from Joseph F. Suozzo, Deputy Public Advocate, New Jersey Department of the Public Advocate. The comment and the Department of Corrections' response is as follows:

COMMENT: The Public Advocate recommended that the rule incorporate a procedure which would enable all inmates to formulate advanced directives pursuant to N.J.S.A. 26:2H-53, commonly known as the "Living Will Law."

RESPONSE: The Department of Corrections is presently studying the advanced directives law and its implications for the inmate population. In the interim, an inmate who desires to have a "living will" may do so. The form, when properly executed, will be placed in the inmate's medical folder.

COMMENT: Additional comments were received from the Public Advocate concerning guardianship provisions in N.J.A.C. 10A:16-5.6 as previously expressed in an earlier draft but not published.

RESPONSE: This entire section was deleted in the proposal published on May 4, 1992 at 24 N.J.R. 1677(a). The Department of Corrections, as indicated in the proposal, shall follow the guidelines and procedures set forth by New Jersey Court Rule 4:86-12, Special Medical Guardianship. A decision to apply for guardianship will be made on a case-by-case basis, with advice from the Attorney General's office.

Summary of Agency-Initiated Changes:

In order to clarify N.J.A.C. 10A:16-2.18(a), the Department of Corrections has made the following technical change. The word "computerized" has been deleted and the words "on a computer system" have been added.

Full text of the expired rules adopted as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 10A:16.

Full text of the rules recodified as N.J.A.C. 10A:23-2 may be found at N.J.A.C. 10A:16-10.1 through 10.7, pending recodification in the Code.

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]***):

10A:16-1.1 Purpose

- (a) The purpose of this chapter is to establish guidelines for:
- 1.-7. (No change.)
 8. Applying for medical clemency;
 9. Governing the identification, placement and monitoring of inmates who are deemed to be at risk for suicide;
 10. Assigning inmates to the Special Medical Unit; and
 11. Providing mental health services.

10A:16-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings.

"Special Medical Unit Classification Committee (S.M.U.C.C.);" means a group of Office of Institutional Support Services and Special Medical Unit staff persons who provide classification and program monitoring services for inmates assigned to the Special Medical Unit.

...
 "Special Medical Unit" means any unit within the New Jersey Department of Corrections designated for the assignment of inmates with chronic illnesses.

...

10A:16-1.4 Forms

(a) The following forms related to Medical and Health Services are printed by the Bureau of State Use Industries (DEPTCOR) and each correctional facility shall purchase a supply of these forms by contacting the Bureau:

- 1.-2. (No change.)
 3. DMH-8 Oral Diagnosis Card.
- (b) The following forms related to Medical and Health Services shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:
- 1.-4. (No change.)
 5. 301-VII Suicide Watch Notice;
 6. 301-VIII Daily Psychological Suicide Monitoring Report;
 7. 301-IX Change in Type of Observation;
 8. 301-X Daily Correction Officer Suicide Watch Report;
 9. 301-XI Release from Suicide Watch;
 10. 301-XII Inmate Request for Copies of Medical Records;
 11. 306-I Consent of Medical, Dental and Surgical Treatment;
 12. 520-I Inmate-Therapist Confidentiality and
 13. 980-I Research Project Request.

(c) The following form related to medical clemency is printed by the New Jersey State Parole Board and is available by contacting the State Parole Board;

1. Petition For Executive Clemency.

10A:16-2.1 Medical services provided

- (a) Medical services will be provided for the following:
1. Emergency and life threatening/limb threatening conditions;
 2. Accidental or traumatic injuries occurring while incarcerated;
 3. Acute illnesses;
 4. Chronic conditions which are considered life threatening or if untreated would likely lead to a significant loss of function; and
 5. Any other medical condition which the treating physician believes will cause deterioration of the patient's health or uncontrolled suffering.

(b) Primary care shall be provided by correctional facility physicians, nurses, technicians, and other support staff. Specialty care may be arranged and provided according to community medical standards and N.J.A.C. 10A:16-2.6.

(c) There shall be no cosmetic or elective surgery provided.

10A:16-2.2 Director of Medical Services

(a) The Director of Medical Services of the Department of Corrections serving under the Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor, shall be responsible for formulating directives and policies for the operation of the medical programs within the Department.

(b) (No change.)

10A:16-2.3 Administration of medical services and program

(a) Each correctional facility shall designate a staff member who will be administratively and/or clinically responsible for the management and direction of the correctional facility's medical services and/or program. The Office of Institutional Support Services (O.I.S.S.), Health Services Unit, shall be notified as to who is administratively and who is clinically responsible for the correctional facility's medical services and/or program.

(b) The Chief Physician shall be responsible for insuring that medical conditions as described in N.J.A.C. 10A:16-2.1 are treated.

(c) A consultant(s) may be employed to conduct peer review as deemed necessary by the O.I.S.S. Health Services Unit.

10A:16-2.4 Licensure

(a) All consulting physicians and medical service providers shall maintain valid and current licenses or certifications, as appropriate, to practice within their respective disciplines in the State of New Jersey.

(b) The Personnel Officer of a correctional facility shall be responsible for forwarding the licenses and certifications of each medical service provider to the Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor immediately after the initial decision to hire a medical staff person.

(c) The following physician's licenses and certificates must be forwarded to the O.I.S.S. Health Services Supervisor:

1. The physician's New Jersey license to practice medicine;
2. The physician's Drug Enforcement Administration Federal Narcotics License; and
3. The physician's State of New Jersey Consumer Health Service Certificate of Registration for Controlled Dangerous Substances (C.D.S.).

(d) Copies of the licenses and certifications required by this section shall be maintained with the medical service provider's personnel file at the correctional facility.

(e) The Personnel Officer and/or designated administrator of the medical services and/or program shall report all disciplinary action, license suspension, and/or disbarments to the O.I.S.S. Health Services Unit Supervisor and other State regulatory bodies, as required by law.

(f) All persons taking x-rays shall be licensed by the State of New Jersey in accordance with N.J.S.A. 45:25-1 et seq.

(g) The final approval to hire physicians and nurses may be granted only with credential review approval by the Health Services Unit.

(h) It shall be the responsibility of the medical service provider to provide proof of license(s) and certification(s) renewal to the Personnel Officer. The designated administrator of the medical services and/or program shall conduct an annual review of license and certification currency.

10A:16-2.5 Medical students, interns, and residents

(a) Any program to utilize students, interns, or residents in health care delivery to inmates within the Department's correctional facilities shall obtain the prior written approval of the Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor.

(b) The Chief physician of the correctional facility shall be responsible for the overall supervision of any medical student, intern, or resident.

CORRECTIONS

(c) All medical students, interns, or residents shall be directly supervised by a licensed or certified medical professional.

(d) The correctional facility shall formulate written policy and procedures which limit student, intern, or resident services to a level commensurate with the program training goals.

10A:16-2.6 Use of community facilities and consultants

(a) The Office of Institutional Support Services (O.I.S.S.) Health Services Unit may contract with community medical facilities to provide inpatient and outpatient hospital care when deemed necessary.

(b)-(e) (No change.)

10A:16-2.7 Restricted use of inmates as employees in medical services

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

10A:16-2.9 Correctional facility infirmary care

(a) (No change.)

(b) Written policies and procedures for infirmary care shall be developed which include, but are not limited to, requirements that:

1. A description of infirmary care services be prepared;
- 2-6. (No change.)

10A:16-2.11 Medical examinations

(a) At a Department of Corrections' reception facility, an initial history and physical examination shall be made on each new admission within 24 hours which shall include, but is not limited to:

1. A medical history;
2. A physical examination;
3. A pregnancy test for female inmates; and
4. Any test determined necessary by the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services.

(b) In the event a Department of Corrections' reception facility is bypassed, the receiving correctional facility shall perform the initial history and physical examination outlined in (a) above.

(c) An initial history and physical examination will not routinely be done on inmates who are transferred from other correctional facilities within the Department of Corrections.

(d) Routine complete physical examinations for inmates without known serious medical problems shall be offered to all inmates, if reasonably feasible, in accordance with the following schedule:

1. Inmates 50 years of age or over, once every two years; and
2. Inmates under 50 years of age, once every four years.

(e) Each inmate shall be offered a physical examination and clinical evaluation not more than two calendar weeks prior to scheduled release from the correctional facility. A summary report of findings shall be prepared, signed and dated by the physician. This summary shall include any significant medical problems encountered during the inmate's incarceration, and it shall be made part of the inmate's medical record.

(f) Unless there are emergent circumstances or an unusual security problem is present, no correction officer of the opposite sex shall be present during a physician's medical examination of an inmate. A female attendant shall always be present during the medical examination of a female patient by a male physician.

10A:16-2.12 Food handlers and special activity medical examinations

(a) If deemed appropriate, medical examinations may be given to inmates prior to participation in certain sports such as boxing matches.

(b) All food handlers shall be given a medical examination prior to their beginning food service job duties, and subsequently, as deemed necessary.

10A:16-2.13 Medical facilities and equipment

(a) (No change.)

(b) Hypodermic needles and syringes shall be of the single service variety and their control shall be in strict compliance with N.J.S.A. 24:21-5.

(c) All "sharps" such as hypodermic needles, syringes, and scalples shall be destroyed in the manner described in N.J.S.A.

ADOPTIONS

2A:170-17 or disposed of in accordance with medical waste rules of N.J.A.C. 10A:16-7:26-3A.

Recodify existing (c) as (d) (No change. in text.)

10A:16-2.14 First aid kits

(a) First aid kit(s) and equipment shall be available in designated areas of the correctional facility based on need. The Chief Physician of the correctional facility or the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services, in the case of community based facilities, shall approve the contents of the first aid kits.

(b) The correctional facility staff member administratively responsible for the management of the medical services and/or program shall be responsible for overseeing the monthly inspection and restocking of the first aid kits and for developing written procedures pertaining to such.

10A:16-2.15 Reportable diseases

(a) (No change.)

(b) Information on reportable diseases shall also be available by contacting the Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor.

(c) (No change.)

(d) Copies of all reports submitted to the New Jersey Department of Health shall be sent to the O.I.S.S. Health Services Unit.

10A:16-2.16 Prosthetic devices

(a) Medical services include the provision of prosthetic devices which must be approved by the physician. Examples of prosthetic devices are as follows:

- 1.-4. (No change.)

10A:16-2.17 Satellite units, community based facilities and home confinement

Written policy and procedure shall specify the provision of medical services (nonemergency and emergency illness or injury) for inmates housed at correctional facility satellite units, community based facilities, and home confinement.

10A:16-2.18 Medical records

(a) A complete medical record shall be maintained for each inmate to accurately document all health care services provided throughout the inmate's period of incarceration. This record shall contain the following items:

1. Initial intake medical history;
2. Initial intake physical examination;
- 3.-11. (No change.)

(b) (No change.)

(c) Each patient encounter shall be recorded in the appropriate section of the medical record. Each entry in the medical record shall be written in ink or typed, signed, and clearly dated by the appropriate health care staff. All non-physician medical staff entries shall be co-signed by the physician or health care provider. In addition to a physician or health care provider's signature, a name stamp must be used.

(d)-(g) (No change.)

(h) Confidentiality of inmate records shall be maintained and records released in accordance with N.J.A.C. 10A:22-2.

(i) *[Computerized medical]* ***Medical*** records shall be utilized and maintained ***on a computer system*** according to data processing procedures established by the Bureau of Management Information Systems, Division of Policy and Planning.

10A:16-2.20 Medical research or experimentation prohibited

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

(c) Any person or agency who wishes to conduct nonmedical, nonpharmaceutical and noncosmetic research projects shall complete and submit Form 980-I RESEARCH PROJECT REQUEST to the Superintendent or Unit Administrator.

(d) The Commissioner shall retain the final review authority on all research projects.

10A:16-2.21 Reporting responsibilities of all medical services

(a) Monthly and annual reports shall be prepared and submitted to the correctional facility Superintendent and to the Office of

ADOPTIONS

Institutional Support Services (O.I.S.S.) Director of Medical Services.

(b) The monthly and annual reports shall include, but not be limited to, the following:

1. Major developments and highlights;
2. Number of inmates admitted to infirmary or hospital;
3. Number of inmates transferred to St. Francis Unit;
4. Number of inmates transferred to outside hospitals;
5. Types of medical and dental services provided;
6. Special or unusual activities such as x-rays, mass inoculations;
7. Future plans for services;
8. Problem areas;
9. Number of inmates who received controlled medication;
10. Number of inmates taken off controlled medication;
11. Meetings, conferences, workshops, and the like attended by staff;
12. Official visits by government representatives and other community groups;
13. Statistical comparisons with the previous monthly or annual report; and
14. Any information as directed by the correctional facility Superintendent and/or Office of Institutional Support Services (O.I.S.S.) Health Services Unit.

10A:16-3.4 Restricted use of inmates as employees in dental clinics

(a) (No change.)

(b) An approval for rule exemption (N.J.A.C. 10A:1-2.7) shall be obtained before any correctional facility may use an inmate to perform or assist in direct or indirect dental care. The specific duties the inmate is to perform or assist with must be delineated.

10A:16-3.19 Dental research

(a) (No change.)

(b) Dental research projects shall be conducted in accordance with N.J.A.C. 10A:16-2.20.

10A:16-4.1 Office of Institutional Support Services (O.I.S.S.)
Director of Psychological Services

(a) (No change.)

(b) The O.I.S.S. Director of Psychology Services shall be a New Jersey licensed psychologist and shall be responsible for:

- 1.-9. (No change.)
- (c) (No change.)

10A:16-4.4 Inmate/therapist confidentiality

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

(c) When a clinical practitioner receives information concerning the exception categories listed in (c) (b) above, he or she shall immediately confer with the correctional facility Director of Psychology to determine whether disclosure is necessary. Relevant considerations, in addition to the information given to the clinical practitioner may include, but are not limited to whether:

- 1.-5. (No change.)

(d) In any case in which the clinical practitioner and the correctional facility Director of Psychology agree and conclude that the information does not fall within any of the exception categories described in (b) above, no disclosure need be made.

(e) If the clinical practitioner and the correctional facility Director of Psychology believe that the subject matter falls within one of the exception categories, they shall immediately make this information known to the correctional facility Superintendent, and they shall provide the Superintendent with the facts and background information that are necessary to give the Superintendent a clear understanding of the case.

(f) In any case in which the clinical practitioner and the correctional facility Director of Psychology disagree as to whether disclosure should be made, the staff person who believes that the matter should be disclosed shall notify the Superintendent immediately.

(g)-(i) (No change.)

(j) Questions concerning the interpretation of the policy on inmate/therapist confidentiality shall be addressed to the Regulatory Officer, Division of Policy and Planning.

CORRECTIONS

10A:16-4.5 Psychology department manual

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

(d) The psychology manual shall include, but not be limited to:

- 1.-4. (No change.)
5. Method of reporting results of psychological services;
6. Method of establishing accountability for obtained results; and
7. Procedures as required by N.J.A.C. 10A:16-12, Suicide.

10A:16-4.7 Psychological research

Psychological research projects shall be conducted in accordance with N.J.A.C. 10A:16-2.20.

10A:16-4.8 Reporting responsibilities

(a) Monthly and annual reports shall be prepared and submitted to the correctional facility Superintendent and to the Office of Institutional Support Services (O.I.S.S.) Director of Psychology.

(b) The monthly and annual reports shall include, but not be limited, to the following:

1. Major developments and highlights;
2. Types of psychological services provided;
3. The testing program;
4. Problem areas;
5. Future plans for services;
6. Meetings, conferences, workshops, and the like attended by staff;
7. Official visits by government representatives and other community groups;
8. Statistical comparisons with the previous monthly or annual reports; and
9. Any information as directed by the correctional facility Superintendent and/or Office of Institutional Support Services (O.I.S.S.) Health Services Unit.

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

10A:16-5.1 Express written consent required

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

(e) If there is doubt as to the inmate's mental capacity to make an informed decision, he or she shall be examined by the psychiatrist of the correctional facility and the Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor shall be notified.

10A:16-5.6 Special medical guardianship of adult inmates

The Department of Corrections shall follow the guidelines and procedures set forth by New Jersey Court Rule 4:86-12, Special Medical Guardianship.

10A:16-5.7 Written procedures

(a) (No change.)

(b) These procedures shall be submitted for review to the Regulatory Officer, Division of Policy and Planning, on or before February 15 of each year.

10A:16-7.2 Claiming bodies of deceased inmates

(a) Persons claiming the body of a deceased inmate must contact the hospital where the inmate expired or appropriate medical examiners office where the body was taken in order to obtain the release of the body.

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

10A:16-8.2 Petition for medical clemency

(a) (No change.)

(b) The inmate who wishes to apply for Medical Clemency shall obtain and complete Form PETITION FOR EXECUTIVE CLEMENCY. The completed Form shall be forwarded to the Superintendent for submission to the New Jersey State Parole Board.

(c) The Superintendent or his or her designee may complete Form PETITION FOR EXECUTIVE CLEMENCY on behalf of an inmate who is eligible for consideration.

10A:16-8.3 Role of the Superintendent

(a) Upon receipt of a completed Form PETITION FOR EXECUTIVE CLEMENCY, the Superintendent shall obtain from the Classification Office up-to-date classification material which shall include, but is not limited to:

INSURANCE

- 1.-4. (No change.)
- (b) (No change.)
- (c) The Superintendent shall send the following to the Deputy Commissioner, Department of Corrections:
 - 1.-2. (No change.)
 3. Completed Form PETITION FOR EXECUTIVE CLEMENCY; and
 4. (No change.)

10A:16-8.5 Role of the Deputy Commissioner

- (a) The Deputy Commissioner, upon receipt of the material outlined in N.J.A.C. 10A:16-8.3(c), shall notify the Office of Institutional Support Services (O.I.S.S.) Health Service Supervisor and request that the O.I.S.S. Director of Medical Services review the inmate's medical status and submit a report of his or her findings.
- (b) The Department of Corrections may recommend to the New Jersey State Parole Board special conditions that the inmate should be required to meet to insure that the inmate is getting necessary medical care if granted Medical Clemency.

SUBCHAPTER 10. (RESERVED)

Agency Note: N.J.A.C. 10A:16-10, Lethal Injection is recodified as N.J.A.C. 10A:23-2, Lethal Injection

10A:16-12.4 Temporary placement on suicide watch

- (a)-(b) (No change.)
- (c) The shift commander, the Superintendent or his or her designee, the Director of Psychology, or the Director of Custody Operations may order that the inmate be placed on close observation or constant observation depending on the inmate's observable condition and upon the advice of a psychiatrist, physician, or psychologist.
- (d)-(e) (No change.)

10A:16-12.8 Personal property

- (a) The shift commander, after consultation with the Director of Psychology or a designated professional person, shall determine the items of personal property which an inmate on suicide watch is permitted to possess in the inmate's cell. This decision shall depend on the inmate's:
 - 1.-3. (No change.)

10A:16-12.10 Release from suicide watch

- (a) The Medical Director, psychiatrist, or Director of Psychology may order the inmate released from suicide watch by filling out FORM 301-XI RELEASE FROM SUICIDE WATCH.
- (b)-(e) (No change.)

CHAPTER 23 LETHAL INJECTION

SUBCHAPTER 1. INTRODUCTION

10A:23-1.1 Purpose

The purpose of this chapter is to establish guidelines for executing persons sentenced to death pursuant to N.J.S.A. 2C:11-3.

10A:23-1.2 Scope

This chapter shall be applicable to the New Jersey Department of Corrections.

10A:23-1.3 Definitions

The following term, when used in this chapter, shall have the following meaning.

"Capital Sentence Unit (C.S.U.);" means the close custody unit to which persons sentenced to death pursuant to N.J.S.A. 2C:11-3, are assigned until such time that the execution is carried out, or the sentence is commuted or changed to a lesser penalty.

SUBCHAPTER 2. LETHAL INJECTION

Recodify 10A:16-10.1 through 10.7 as 10A:23-2.1 through 2.7. (No change in text.)

ADOPTIONS

10A:23-2.8 Operational staff in attendance at an execution

- (a) Two physicians shall be in attendance for an execution.
 1. (No change.)
 2. The second physician shall be selected from a list of volunteers from correctional facilities other than the New Jersey State Prison.
 - i. The second physician shall be notified in writing, at least five days prior to the scheduled execution, by the Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor through the correctional facility Superintendent.
 - ii. In the event no facility physician volunteers, or is available to attend the execution, the O.I.S.S. Health Services Supervisor shall contract with physicians in the community to perform this service.
 - (b) One Registered Nurse (team Nurse) from the same correctional facility as the selected physician, if feasible, shall be assigned by the O.I.S.S. Health Services Supervisor.
 - (c) One Certified Intravenous Therapist shall be hired on a consultant basis by the O.I.S.S. Health Services Supervisor. The Therapist shall provide proper identification documents to the New Jersey State Prison Superintendent at least 48 hours prior to the scheduled execution.
 - (d) (No change.)

10A:23-2.9 Medical supplies and equipment

- (a) The Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor and Medical Director of the Department of Corrections shall prepare a list of medical supplies and equipment to be utilized at each execution. These items shall be purchased at least five working days prior to the scheduled execution and shall be set up under the supervision of the Medical Director.
- (b) (No change.)

10A:23-2.10 Preparation of the condemned inmate

Medical and custody preparation of the condemned for execution shall be initiated and completed in accordance with written operational procedures developed by the Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor and the New Jersey State Prison Superintendent or his or her designee.

10A:23-2.11 Staff training

- (a) During the 48 hour period preceding an execution, the Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor shall arrange for training all medical personnel in execution procedures.
- (b) (No change.)

10A:23-2.12 Execution suite

- (a)-(b) (No change.)
 - (c) The executioner's room shall contain equipment, supplies and medications as are specified in N.J.A.C. 10A:23-2.9.
- Recodify 10A:16-10.13 through 10.21 to 10A:23-2.13 through 2.21. (No change in text.)

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Determination of Insurers in a Hazardous Financial Condition

Adopted New Rules: N.J.A.C. 11:2-27

Proposed: November 4, 1991 at 23 N.J.R. 3197(a).

Adopted: June 11, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: June 11, 1992 as R.1992 d.282, **without change.**

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:23-1 et seq.; 17B:21-1 et seq.; 17:30C-1 et seq. and 17B:32-1 et seq.

Effective Date: July 6, 1992.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received six written comments from insurers, an insurance trade association and a reciprocal insurance exchange, as follows:

1. Reciprocal Management Corporation—Attorney-In-Fact for New Jersey Citizens United Reciprocal Exchange;
2. Allstate Insurance Company;
3. Selective Insurance Company of America;
4. American Council of Life Insurance;
5. MCA Insurance Companies; and
6. State Farm Insurance Companies

COMMENT: Several commenters stated that the rules are *ultra vires* in that they exceed the statutory authority granted pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq.

One commenter specifically stated that the enabling statutes contain the definition of "impairment or insolvency." The commenter stated that while the proposal Summary states that the definition of "hazardous financial condition" as used in the proposed rules and the definition of "unsound financial condition" as used in the enabling statute are substantially similar, such definition is not contained in the enabling statute. The commenter stated that the definition of "hazardous financial condition" is substantially different from the clear definition of "impairment or insolvency" set forth in N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq.

Several commenters further stated that N.J.S.A. 17:30C-6 and 17B:32-6 specify the grounds upon which the Commissioner may apply for an order to rehabilitate or liquidate an insurer. The commenters stated that this list may not be expanded by rule nor may definitions provided in other provisions of enabling legislation be broadened to confer additional powers on the Commissioner.

RESPONSE: The Department does not believe that these proposed rules are *ultra vires*. As the commenters note, N.J.S.A. 17:30C-6 and 17B:32-6 specify the circumstances under which the Commissioner may apply for an order to rehabilitate or liquidate an insurer. One of these grounds is that the insurer is "impaired or insolvent." There are numerous additional grounds upon which the Commissioner may seek to rehabilitate or liquidate an insurer under N.J.S.A. 17:30C-6 and 17B:32-6. One such ground is that the insurer "is found, after examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its stockholders, or to its creditors, or to the public," N.J.S.A. 17:30C-6f and 17B:32-6f. The statute thus specifically authorizes the Commissioner to apply for an order of rehabilitation or liquidation on the ground that the insurer's condition will be hazardous to its policyholders, the public, its creditors, etc. These rules do not expand the grounds upon which the Commissioner may seek to rehabilitate or liquidate an insurer, but specify factors that the Commissioner will consider in determining whether an insurer is in a "hazardous financial condition" for purposes of seeking a rehabilitation or liquidation order pursuant to N.J.S.A. 17:30C-6f and 17B:32-6f.

Further, one of the commenters mistakenly asserts that the Department stated in the proposal Summary that the definition of "hazardous financial condition" as used in the proposed rules, and the definition of "unsound financial condition" as used in the enabling statute, are substantially similar. The reference to "unsound financial condition" refers to such a determination for withdrawing surplus lines eligibility pursuant to N.J.S.A. 17:22-6.46. Specifically, the proposal Summary stated:

In addition, N.J.S.A. 17:22-6.46 provides that if the Commissioner believes that any eligible surplus lines insurer is, among other things, in an unsound financial condition, he or she shall withdraw the eligibility of the insurer to insure surplus lines risks of this State. Since the determination of "hazardous financial condition" and "unsound financial condition" are substantially similar, these rules also apply to determinations of unsound financial condition for the purpose of withdrawing surplus lines eligibility pursuant to N.J.S.A. 17:22-6.46.

The reference to "unsound financial condition" is thus related to withdrawal of surplus lines eligibility, and not to an order of rehabilitation or liquidation pursuant to N.J.S.A. 17:30C-6f and 17B:32-6f.

COMMENT: Several commenters stated that many of the standards contained in the rules are vague and do not give insurers fair warning of possible administrative or judicial action.

One commenter specifically stated that terms such as "adverse findings" (N.J.A.C. 11:2-27.4(a)1 and 2), "when viewed in light of current economic conditions" (N.J.A.C. 11:2-27.4(a)4), "in the opinion of the Commissioner" (N.J.A.C. 11:2-27.4(a)7, 8, 14 and 15), "as deemed

necessary by the Commissioner" (N.J.A.C. 11:2-27.4(a)11), and other vague standards, are not standards for rehabilitation or liquidation within N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq.

Another commenter specifically stated that there are provisions of the rules which are unclear as follows:

1. N.J.A.C. 11:2-27.4(a)1—"adverse findings reported in financial condition and market conduct examination reports ..." The commenter inquired as to the kinds of findings that are potentially threatening in the Department's view. The commenter believes that such findings should be material and materiality should be defined.

2. N.J.A.C. 11:2-27.4(a)2—"adverse findings from NAIC IRIS reports." The Commenter believes that guidelines should be provided regarding which ratios are most important and how many adverse ratios will be cause for concern.

3. N.J.A.C. 11:2-17.4(a)13—"a finding that the management of an insurer has filed any false and misleading statement, has released any false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of a material amount in the books of the insurer." The commenter believes that errors in accounting records should be subject to an articulated standard of materiality.

RESPONSE: As noted in a response to a previous comment, the rules interpret a statute where no defined standard currently exists by specifying factors the Commissioner will consider in determining whether an insurer is in a hazardous financial condition for purposes of instituting delinquency proceedings pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq. The factors are not intended to be standards in and of themselves. These factors are based on a model rule adopted by the National Association of Insurance Commissioners, and rules adopted by the Texas Department of Insurance. The Department believes that the rules are sufficiently clear and provide insurers with adequate notice of the factors to be considered. The financial condition of an insurer is dynamic and affected by many factors (for example, current economic conditions and investment climate). The determination of hazardous financial condition is similarly dynamic. Therefore, whether the existence of a particular factor results in a determination of hazardous financial condition may vary depending on the existence of other factors. It would therefore be inappropriate, if not impossible, to so narrowly define every factor so that it is applicable to all insurers in every circumstance. To further define these factors as the commenters suggested could actually be disadvantageous to insurers in that an insurer may not satisfy a narrowly drafted factor, apparently indicating a hazardous financial condition, when, in fact, no such condition exists. The Department therefore believes that the factors set forth in these rules are not impermissibly vague, and provide adequate notice of the general factors the Commissioner will consider in determining whether a hazardous financial condition exists.

Finally, the Department notes that while the commenters stated that some of the factors are vague and require further specificity, they did not suggest any alternative language to address their concerns.

COMMENT: One commenter noted that N.J.A.C. 11:2-27.4(a)8 provides the factor "a finding that contingent liabilities, pledges or guarantees, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer." The commenter stated that contingent liabilities should not be a cause of concern unless they exceed a stated percentage of surplus.

RESPONSE: As noted in the response to the previous comment, determinations of hazardous financial condition are made on a case by case basis. Whether finding a factor results in a determination of hazardous financial condition will also vary depending upon other facts in the particular case. Therefore, the Department does not believe it appropriate or possible to specify a specific combination of contingent liabilities and ratios to surplus that affect the solvency of all insurers in all instances.

COMMENT: One commenter noted that N.J.A.C. 11:2-27.4(a)11 and 23 provide as factors a finding that the management of an insurer fails to possess or demonstrate competence and expertise deemed necessary by the Commissioner, or that the owners or managers of an insurer have engaged in unlawful transactions. The commenter stated that the removal of an officer or director through petition to the Superior Court is subject to prior notice and a hearing. These procedural safeguards should be incorporated into the rule as well as the standards of removal.

RESPONSE: These proposed rules do not address the removal of an officer or director, nor do they alter the procedures for the institution of delinquency proceedings. The institution and conduct of such proceed-

ings shall be made pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq.

COMMENT: One commenter stated that actions of an insurer as described in N.J.A.C. 11:2-27.4(a)21 (failure to maintain books and records sufficient to permit examiners to determine the insurer's financial condition), 11:2-27.4(a)22 (moving location of books and records without notifying the Department of the location), and 11:2-27.4(a)25 (pattern of not settling valid claims within a reasonable time) should not prompt the Commissioner to apply for a rehabilitation or liquidation order. The commenter believes that other statutory powers conferred on the Commissioner may enable him to solve these "problems."

RESPONSE: These rules provide factors that the Commissioner may consider in determining whether an insurer is in a hazardous financial condition for the purpose of instituting delinquency proceedings against the insurer. These rules are not intended to "solve the problem" of an insurer failing to maintain its books and records sufficient to permit examiners to determine the insurer's financial condition, or to correct unfair claims settlement practices. A reason an insurer fails to maintain records sufficient to permit examiners to determine its financial condition may be because the insurer's financial condition is such that it may not wish the examiners to review its financial condition. Similarly, an insurer may have a pattern of not settling valid claims because it is unable to pay its claims. The statutes which authorize the Commissioner to impose penalties for failure to maintain books and records or for unfair claims settlement practices are enforcement measures designed to ensure that an insurer complies with statutory and regulatory requirements. These rules are not designed to enforce specific statutory requirements, but to provide factors the Commissioner may consider in determining whether an insurer is in a hazardous financial condition. As previously noted, an insurer which fails to maintain books and records or has a pattern of failing to pay claims may be in a hazardous financial condition. In fact, N.J.S.A. 17:30C-6b and 17B:32-6b specifically provide as one of the grounds upon which the Commissioner may apply for an order of rehabilitation or liquidation, that "the insurer has failed to submit its books, records, accounts or affairs to the reasonable examination of the Commissioner." The Department thus believes that the factors set forth in N.J.A.C. 11:2-27.4(a)21, 22 and 25 are appropriate and provide a reasonable basis upon which the Commissioner may find that an insurer is in a hazardous financial condition for the purpose of instituting delinquency proceedings.

COMMENT: One commenter requested that a public hearing be held to allow full participation in the drafting of these rules, in light of the impact upon an insurer and its policyholders when an application is made for the commencement of delinquency proceedings.

RESPONSE: The Department disagrees. Interested members of the public are entitled to express their reviews on proposed rules either orally or in writing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 17:1-8.3. The Department obtains public input from comments submitted.

COMMENT: One commenter stated that the focus of the Commissioner should be to fulfill his statutory and constitutional duty to ensure that insurers have adequate rates. The commenter believes that if this duty is fulfilled, policyholders would be protected from an insurer's financial condition becoming hazardous.

RESPONSE: The Department initially notes that the Commissioner continually strives to fulfill his statutory duty to review and approve rates which are not inadequate, excessive, or unfairly discriminatory. The commenter, however, mistakenly relies on the proposition that an insurer whose rates are adequate will not become in a hazardous financial condition. The issue of insurer solvency is of great concern at both the state and Federal levels. Insurer insolvencies have occurred across many jurisdictions regardless of rate setting requirements and approval procedures. Many insurers have become insolvent, including life insurers, for which rates are generally unregulated, due to many factors, including investment practices.

COMMENT: One commenter stated that it fully supports these rules, to the extent that the rules conform to the NAIC model. However, the commenter stated that the factors set forth in N.J.A.C. 11:2-27.4(a)16 through 28, which are not based on the NAIC model, are confusing. The commenter thus suggested deletion of these provisions. Specifically, the commenter expressed concern with N.J.A.C. 11:2-27.4(a)24 in that the factor does not specify what constitutes a "conflict of interest" for purposes of that factor; and N.J.A.C. 11:2-24.4(a)27 in that the factor does not provide a definition of rating and underwriting standards for judgment.

RESPONSE: The factors to which the commenter refers are based on factors adopted by the Texas Department of Insurance. The Department believes that the factors are reasonable, appropriate, and provide a basis upon which the Commissioner may reasonably determine that an insurer is in a hazardous financial condition. The Department also notes that while the commenter stated that the provisions of N.J.A.C. 11:2-27.4(a)16 through 28 are "confusing," they did not (with two exceptions) explain how the provisions are confusing.

With respect to the request for clarification as to what constitutes "conflict of interest," the Department interprets this provision to mean that the scope of the person's authority or discretion would permit him or her to take actions or make decisions that may potentially threaten the financial health of the insurer that also may materially benefit the person. For example, the insurer may delegate authority to bind coverage to a person, and base the person's salary on the volume of business written. The person may then bind coverage based on his own pecuniary gain, rather than sound underwriting principles. This, in turn, may threaten the insurer's financial condition.

Finally, the Department believes that the factor in N.J.A.C. 11:2-27.4(a)27 (a finding that the insurer does not follow a policy on rating and underwriting standards appropriate to the risk) is self-explanatory. The commenter apparently requests that the Department provide a definition of appropriate underwriting and rating standards. The Department does not define such standards. Rather, an insurer's rating plan is required to meet applicable statutory standards (for example, rates must not be excessive, inadequate or unfairly discriminatory). An insurer must therefore develop appropriate guidelines for the underwriting of risks as part of its rating plan. Failure to follow appropriate underwriting guidelines in the underwriting of risks could result in inadequate rates, which, in turn, could threaten the financial health of the insurer.

COMMENT: Several commenters expressed concern that the proposed rules do not incorporate provisions of the NAIC model which authorizes the Commissioner to order the insurer to take "corrective action" upon determining that an insurer is in a hazardous financial condition. The commenters stated that rehabilitation or liquidation should be a measure of last resort, and that the Commissioner should have the ability to order insurers to take corrective action to avoid disruptions associated with the rehabilitation and liquidation of insurers.

The commenters also stated that the NAIC model provisions relating to the private hearing and judicial review of an Order issued by the Commissioner as described above should similarly be included.

RESPONSE: The Department notes the commenters' concerns and will consider their suggestions for possible future amendment.

COMMENT: One commenter expressed concern with the definition of "hazardous financial condition" as set forth in the rules as it relates to insurers which seek relief from obligations imposed by the Fair Automobile Insurance Reform Act of 1990 (N.J.S.A. 17:33B-1 et seq.) (FAIR Act) pursuant to N.J.A.C. 11:2-35. The commenter stated that the definition of "hazardous financial condition" includes an insurer unlikely to be able to pay "other obligations" in the normal course of business. The commenter questioned whether those "obligations" would include taxes and assessments under the FAIR Act. If so, the commenter believes that an insurer applying for relief from FAIR Act obligations would be "inviting" a rehabilitation order under the proposed rules. The commenter believes that this result is not intended by the FAIR Act, which does not seek to remove insurers from the private sector through rehabilitation or liquidation. The commenter also believes that this would effectively circumvent the exemption provisions provided in the FAIR Act as implemented by N.J.A.C. 11:2-35. The commenter stated that the Department noted in the adoption of N.J.A.C. 11:2-35 (see 23 N.J.R. 3167) that "... an insurer is not required presently to be in an unsafe or unsound financial condition to obtain relief." The commenter suggested that the Department amend the rules to provide that a request for relief from FAIR Act obligations are "in the normal course of business" and that the definition of "hazardous financial condition" should specifically exclude FAIR Act obligations.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The standard for determining whether an insurer is in an "unsafe or unsound financial condition" to obtain relief from various FAIR Act obligations is set forth in various sections of the FAIR Act (see for example, N.J.S.A. 17:33B-19, 17:33B-23, and 17:33B-24). There is no statutory standard, however, for the determination of "hazardous financial condition" for the institution of delinquency proceedings pursuant to N.J.S.A. 17:30C-6f and

17B:32-6f. The Department believes that it is reasonable and appropriate to provide a definition of hazardous financial condition, and the factors the Commissioner will consider in determining whether a hazardous financial condition exists for purposes of instituting delinquency proceedings, or instituting other actions mandated by law (upon, for example, withdrawal of surplus lines eligibility pursuant to N.J.S.A. 17:22-6.46). While a request for relief from FAIR Act obligations is independent from the institution of delinquency proceedings to rehabilitate or liquidate an insurer, they are not mutually exclusive. A request for relief from FAIR Act obligations may be evidence of, but not conclusive upon, whether the insurer is in a hazardous financial condition. It is a factor to be considered.

COMMENT: One commenter expressed concern that the proposed rules as currently drafted would allow unwarranted and undesirable government intrusion into the private marketplace in that a judicial deference to the Commissioner in insurance insolvency matters is recognized by the courts of this State. The commenter stated that in order to evaluate the Commissioner's prediction that an insurer's financial condition, even if solvent, threatens the policyholders, shareholders, creditors, or the public, the court must have a complete record preserved of the administrative process. Accordingly, the commenter recommended that the rules provide that the factors will not be considered unless they have a negative impact on the insurer's financial condition, and that a complete record will be preserved of the administrative process, including all evidence considered by the Commissioner, together with written findings and conclusions supporting his determination.

RESPONSE: As noted in response to a previous comment, these proposed rules do not alter or address the process or procedures by which delinquency proceedings are instituted pursuant to statute. These rules merely provide factors that the Commissioner will consider in determining whether an insurer is in a "hazardous financial condition" for purposes of instituting delinquency proceedings to rehabilitate or liquidate an insurer pursuant to N.J.S.A. 17:30C-6f and 17B:32-6f. All findings of fact and conclusions of law would be specified in the application submitted to the Court.

The Department also disagrees that the rules should provide that the factors will not be considered unless they have a negative impact on the insurer's financial condition. The Department has determined that a finding of actions or circumstances set forth in the rules generally have a negative impact on an insurer's financial condition. The Department thus believes that providing that the factors will not be considered unless they have a negative impact on an insurer's condition is redundant and unnecessary.

Full text of the adoption follows:

SUBCHAPTER 27. DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION

11:2-27.1 Purpose

The purpose of this subchapter is to set forth the factors which the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition as defined herein. A determination of hazardous financial condition provides the grounds upon which the Commissioner may seek an order from the Superior Court to rehabilitate, liquidate the business or conserve the assets within this State of domestic, foreign or alien insurers pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq.; and provides one of the grounds upon which the Commissioner shall withdraw the eligibility of an eligible surplus lines insurer to insure surplus lines risks in the State pursuant to N.J.S.A. 17:22-6.46.

11:2-27.2 Scope

This subchapter shall apply to all domestic, foreign and alien insurers and all other entities subject to N.J.S.A. 17:30C-1 et seq. and 17B:32-1 et seq.; and to all eligible surplus lines insurers.

11:2-27.3 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the insurer as defined in N.J.S.A. 17:27A-1.

"Department" means the New Jersey Department of Insurance.

"Eligible surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

"Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, an insurer, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to policyholders, certificate holders and other insureds with respect to known claims and reasonably anticipated claims; or

2. To pay other obligations in the normal course of business.

"Insurer" means a person subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the Commissioner pursuant to N.J.S.A. 17:30C-1 et seq. or 17B:32-1 et seq. or by the equivalent insurance supervisory official of another state. "Insurer" includes all persons purporting to be engaged in the business of insurance as an insurer in this State and all persons in the process of organization to become insurers.

"Life and health insurer" means an insurer authorized or admitted pursuant to the provisions of Title 17B of the Revised Statutes to solely transact the business of life insurance, health insurance or annuities in this State as those terms are defined in N.J.S.A. 17B:17-3, 17B:17-4 and 17B:17-5, respectively.

"MSVR" means the mandatory securities valuation reserve as described in N.J.S.A. 17B:20-2.

"NAIC" means the National Association of Insurance Commissioners.

11:2-27.4 Determination of hazardous financial condition; factors

(a) The Commissioner shall consider the following factors, either singly or in a combination of two or more, in determining whether an insurer is in a hazardous financial condition:

1. Adverse findings reported in financial condition and market conduct examination reports and/or failure to comply with recommendations contained therein;

2. Adverse findings from the NAIC Insurance Regulatory Information System and its related reports;

3. The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annualized premium and net investment income which could lead to an impairment of capital and surplus;

4. A finding that the insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

5. A finding that an assuming reinsurer is not able to meet the obligations being assumed or that the insurer's reinsurance program does not provide sufficient protection for the company's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

6. A finding that the insurer's operating loss in the last 12 month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in non-admitted assets and cash dividends paid to shareholders, is greater than 50 percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required;

7. A finding that any parent, affiliate, subsidiary or reinsurer is insolvent, or, in the opinion of the Commissioner, is threatened with insolvency or is delinquent in payment of its monetary or other obligations;

8. A finding that contingent liabilities, pledges or guarantees, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer;

9. A finding that any person controlling an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

10. The age and doubtful collectability of receivables;

11. A finding that the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and dem-

onstrate the competence, expertise and reputation deemed necessary by the Commissioner;

12. A finding that the management of an insurer has failed to respond to inquiries from the Commissioner regarding the condition of the insurer or has furnished false and misleading information concerning such inquiries;

13. A finding that the management of an insurer has filed any false or misleading financial statement, has released any false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry or has omitted an entry of a material amount in the books of the insurer;

14. A finding that, in the opinion of the Commissioner, the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

15. A finding that, in the opinion of the Commissioner, the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems;

16. A finding that the surplus as regards policyholders is not adequate in relation to the amount of the insurer's loss and loss adjustment expense reserve liabilities established;

17. A finding that a life insurer's surplus as regards policyholders plus MSVR reserves is not adequate in relation to the amount of liabilities less MSVR reserves less separate account liabilities;

18. A finding that the insurer has reinsurance reserve credits, recoverables or receivables due from insurance companies in receivership and such credits, recoverables or receivables are greater than 25 percent of surplus or 15 percent of admitted assets;

19. A finding that a life and health insurer has taken a credit for reserves for business assumed from an insurance company in receivership under a modified co-insurance system or in any other manner in which the ceding insurer withholds assets, and such reserve credit is greater than 25 percent of surplus or 15 percent of admitted assets;

20. A finding that the insurer has issued subordinated premium or surplus debentures to finance its operations without the prior approval of the Commissioner for use as policyholder surplus;

21. A finding that the insurer has failed to maintain books and records sufficient to permit examiners to determine the financial condition of the insurer;

22. A finding that the insurer has moved the location of the books and records necessary to conduct an examination of such insurer without notifying the Department of such location;

23. A finding that the owners or management of an insurer have engaged in unlawful transactions;

24. A finding that the insurer has delegated the administration of an insurance function necessary to such insurer's survival directly or indirectly to a person without adequate controls and/or which creates a conflict of interest;

25. A finding that the insurer has a pattern of not settling valid claims within a reasonable time after due proofs of loss have been received by such insurer;

26. A finding that the insurer has been issued a final administrative or judicial order, initiated by an insurance regulatory agency of another state, with a finding that such insurer is insolvent or in a hazardous financial condition;

27. A finding that the insurer does not follow a policy on rating and underwriting standards appropriate to the risk; and

28. A finding of any other fact or circumstance that indicates that an insurer is in a hazardous financial condition.

(b) In making a determination of an insurer's financial condition pursuant to this subchapter, the Commissioner may adjust assets and liabilities as necessary to accurately reflect the insurer's financial position in any manner including, but not limited to, the following:

1. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding, or which has entered into an invalid reinsurance agreement;

2. Make appropriate adjustments to asset values in its investment portfolio or attributable to investments in or transactions with parents, subsidiaries, or affiliates;

3. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and

4. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12 month period.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL EXAMINERS

Notice of Stay of Operative Date

Professional Practice Structure

Professional Fees and Investments, Prohibition on Kickbacks

N.J.A.C. 13:35-6.17(a)2

Take notice that on May 13, 1992, the Board of Medical Examiners voted to stay, for a period of 90 days ending August 11, 1992, the April 15, 1992 operative date of a single sentence within N.J.A.C. 13:35-6.17(a)2. The sentence is as follows:

"Financial interest" includes a licensee's financial interest in a contractual arrangement with a health care facility (such as a hospital, nursing home or clinic, etc.), whereby the licensee agrees to provide health care services on referral, for example, cardiac or radiologic diagnostic testing, to patients including those receiving Emergency Room care or admitted to the health care facility." (See 24 N.J.R. 640.)

The stay is in response to concerns raised by the New Jersey Hospital Association with regard to the Board's interpretation of the Health Care Cost Reduction Act (P.L.1991, c.187, "HCCRA"); specifically, with regard to the concept "financial interest" as it relates to contracts between hospitals and doctors who make referrals to those facilities. The Hospital Association suggests that because the Board's interpretation of the concept of "financial interest" embraces a monetary interest resulting from a contractual agreement between a physician and a hospital, a hospital's ability to obtain physicians to provide services such as cardiac or radiologic diagnostic testing will be hampered. The Association suggests that the concept of "financial interest" should be confined to an actual ownership interest.

Take further notice that the Board has invited the New Jersey Hospital Association or other interested parties to submit for Board review and consideration during the 90-day period of the stay alternative interpretations, which are consistent with the HCCRA, of the concept of "financial interest" as it relates to contracts between hospitals and referring doctors.

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF SHORTHAND REPORTING

Fees

Adopted Amendments: N.J.A.C. 13:43-3.1 and 4.1

Proposed: April 6, 1992 at 24 N.J.R. 1232(a).

Adopted: May 19, 1992 by the Board of Shorthand Reporting, Charles Tramer, Jr., Chairman.

Filed: June 8, 1992 as R.1992 d.275, **without change**.

Authority: N.J.S.A. 45:15B-1.

Effective Date: July 6, 1992.

Expiration Date: September 1, 1993.

The Board of Shorthand Reporting afforded all interested parties an opportunity to comment on the proposed amendments to its fee schedule, N.J.A.C. 13:43-3.1 and 4.1. The official comment period ended on May 6, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on April 6, 1992, at 24 N.J.R. 1232(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the National Shorthand Reporters Association and the Certified Shorthand Reporters Association of New Jersey.

ADOPTIONS

A full record of this opportunity to be heard can be inspected by contacting the Board of Shorthand Reporting, Post Office Box 45019, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

One letter commenting upon the proposed fee increases was received during the 30 day comment period. The Certified Shorthand Reporters Association of New Jersey stated its opinion that the application and examination fees should be no more than a total of \$100.00 and that the onus of any additional monies to be realized by the Board should be placed upon licensees through biennial licensing fees. While the Board understands the Association's desire to minimize the initial applicant's costs, the Board believes it would be discriminatory to require the licensee class to bear an unequal share of examination costs, particularly when one applicant may take the examination several times. The Board believes that the most equitable method of assessing examination costs is to require each applicant to pay the full cost of the examination.

Full text of the adoption follows.

13:43-3.1 Certification; examination

(a) Rules concerning examination and certification are:

1. A request for an initial official application form shall include the applicant's name, address and telephone number, where available, along with a certified check or money order made payable to "State of New Jersey, Board of Shorthand Reporting." Such fee and request shall be required only for the initial application.

2. An applicant for initial examination shall make written application under oath on the form furnished by the board. Such application must be filed with the secretary-treasurer of the board not less than three weeks before the announced date of examination and must be accompanied by a certified check or money order made payable to "State of New Jersey, Board of Shorthand Reporting." If the board determines that an applicant is not qualified to take the examination it shall notify him of that fact. Note: Fees are not refundable.

3. An applicant for subsequent examination shall forward a certified check or money order to the board, along with a letter indicating intent to take the examination, and the applicant's name, address and telephone number, where available.

4.-6. (No change.)

(b) (No change.)

13:43-4.1 Fee Schedule

(a) The following fees shall be charged by the Board:

1. Application fee	\$ 75.00
2. Examination fee	75.00
3. Initial license fee:	
i. During the first year of a biennial renewal period	110.00
ii. During the second year of a biennial renewal period	55.00
4. Biennial renewal fee	110.00
5. Late renewal fee	50.00
6. Reinstatement fee	125.00
7. Duplicate license fee	20.00
8. Replacement wall certificate	40.00

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Stay Pending Appeal

Adopted Amendment: N.J.A.C. 13:70-13A.8

Proposed: February 18, 1992 at 24 N.J.R. 555(a).

Adopted: May 27, 1992 by the New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.

Filed: May 24, 1992 as R.1992 d.265, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: July 6, 1992.

Expiration Date: January 1, 1995.

TRANSPORTATION

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:70-13A.8 Stay pending appeal

(a) A notice of appeal filed with the Commission pursuant to this subchapter may be accompanied by a request for a stay pending a final decision by the Commission. Such a request for a stay shall be made on a form prescribed by the Commission. The Executive Director of the Commission may approve such stay requests in matter involving:

1.-3. (No change.)

(b) (No change.)

(b)

NEW JERSEY RACING COMMISSION

Harness Rules

Stewards Hearing

Adopted Amendment: N.J.A.C. 13:71-3.3

Proposed: February 18, 1992 at 24 N.J.R. 555(b).

Adopted: May 27, 1992 by the New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.

Filed: May 29, 1992 as R.1992 d.266, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: July 6, 1992.

Expiration Date: January 1, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-3.3 Stewards hearing

(a) All appeals from decisions of the board of judges involving major suspensions of 10 days or more shall be considered by the State steward. Such appeal hearing shall be a de novo proceeding and the steward may modify any penalty imposed by the board of judges upon notice and opportunity to be heard afforded to the affected person or persons.

(b) (No change.)

(c)

NEW JERSEY RACING COMMISSION

Harness Rules

Stay Pending Appeal

Adopted Amendment: N.J.A.C. 13:71-3.8

Proposed: February 18, 1992 at 24 N.J.R. 556(a).

Adopted: May 27, 1992 by the New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.

Filed: May 29, 1992 as R.1992 d.267, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: July 6, 1992.

Expiration Date: January 1, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-3.8 Stay pending appeal

(a) A notice of appeal filed with the Commission pursuant to this subchapter may be accompanied by a request for a stay pending a final decision by the Commission. Such a request for a stay shall be made on a form prescribed by the Commission. The Executive Director of the Commission may approve such stay requests in matter involving:

1.-3. (No change.)

(b) (No change.)

(a)

NEW JERSEY RACING COMMISSION**Harness Rules****Racing and Track Rules; Driving Procedures****Adopted Amendment: N.J.A.C. 13:71-20.6**

Proposed: March 2, 1992 at 24 N.J.R. 686(a).

Adopted: May 27, 1992, by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: May 29, 1992 as R.1992 d.268, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:5-30.

Effective Date: July 6, 1992.

Expiration Date: January 25, 1995.

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

On May 27, 1992, the New Jersey Racing Commission, pursuant to authority of N.J.S.A. 5:5-30, and in accordance with the applicable provisions of the Administrative Procedures Act, adopted amended rule N.J.A.C. 13:71-20.6, as proposed in the notice published March 2, 1992 at 24 N.J.R. 686(a), with a change upon adoption which is not considered so substantive as to require additional public notice and comment. This change occurs in paragraph (b)1, where the proposed term "pass on" is changed to "use" in order to clarify that no horse shall be in the extended inside lane of the track for any purpose except when entering the final homestretch run. This change does not require additional public notice and comment, as it will not affect the nature or scope of the original 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]*):

13:71-20.6 Racing and track rules; driving procedures

(a) (No change.)

(b) With the approval of the Racing Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack. In the event the homestretch is expanded pursuant to this subsection, the following shall apply:

1. No horse shall *[pass on]* ***use*** the extended inside lane except when entering the final homestretch run;

2. The lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane; and

3. Judge's discretion shall prevail in all instances regarding the open stretch.

STATE

(b)

DIVISION OF THE STATE MUSEUM**Division of the State Museum Rules****Adopted New Rules: N.J.A.C. 15:5**

Proposed: April 6, 1992 at 24 N.J.R. 1239(a).

Adopted: June 12, 1992 by Leah Slosberg, Director, Division of State Museum, with the approval of Daniel J. Dalton, Secretary of State.

Filed: June 12, 1992 as R.1992 d.286, **without change.**

Authority: N.J.S.A. 18A:73-1 et seq., and N.J.S.A. 52:16A-11.

Effective Date: July 6, 1992.

Expiration Date: July 6, 1997.

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

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 15:5.

TRANSPORTATION

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS****Speed Limits****Routes N.J. 23 in Passaic County****Adopted Amendment: N.J.A.C. 16:28-1.25**

Proposed: May 4, 1992 at 24 N.J.R. 1688(b).

Adopted: June 5, 1992 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: June 10, 1992 as R.1992 d.276, **without change.**

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

Effective Date: July 6, 1992.

Expiration Date: June 1, 1993.

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

Full text of the adoption follows.

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-vii. (No change.)

viii. Zone five in Passaic County, Wayne Township: 55 mph between the Route I-80 Ramp B overpass and the Route U.S. 202 connector (approximate mileposts 5.68 to 9.21);

ix. Zone six in Passaic County, Wayne Township: 40 mph between the Route U.S. 202 connector and the Township of Wayne—Township of Pequannock corporate line (approximate mileposts 9.21 to 9.64).

2. For northbound traffic:

i. Zone one: 50 mph in Pequannock Township, Riverdale Borough, Kinnelon Borough, Butler Borough, West Milford Township from the intersection of Laguna Drive to milepost 17.5; thence

ii.-iv. (No change.)

v. 40 mph between the Township of Little Falls—Township of Wayne corporate line (Passaic River) and the Route I-80 Ramp B overpass (approximate mileposts 4.54 to 5.68).

3. For southbound traffic:

i.-iii. (No change.)

iv. Zone four: 50 mph in Kinnelon Borough, West Milford Township, Butler Borough, Pequannock Township to the intersection of Laguna Drive (milepost 7.4).

(1) (No change.)

v.-vi. (No change.)

vii. Zone two in Wayne Township, Passaic County: 40 mph between the Route I-80 Ramp B overpass and the Route U.S. 46 Eastbound Ramp (approximate mileposts 5.68 to 5.56);

viii. Zone three in Wayne Township, Passaic County: 30 mph between the Route U.S. 46 Eastbound Ramp and the North Leg (Entrance to Willowbrook Mall) (approximate mileposts 5.56 to 4.89);

ix. Zone four in Wayne Township, Passaic County: 40 mph between the Township of Little Falls—Township of Wayne corporate line and the North Leg (Entrance to Willow Brook Mall) (approximate mileposts 4.89 to 4.54).

4. For both directions of traffic:

i.-iv. (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Restricted Parking and Stopping

Routes N.J. 23 in Sussex County and N.J. 181 in Morris County

Adopted Amendments: N.J.A.C. 16:28A-1.15 and 1.54

Proposed: April 6, 1992 at 24 N.J.R. 1240(a).

Adopted: June 11, 1992 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: June 15, 1992 as R.1992 d.288, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-198.

Effective Date: July 6, 1992.

Expiration Date: June 1, 1993.

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

Full text of the adoption follows.

16:28A-1.15 Route 23 and Route 23 (Temporary)

(a) The certain parts of State highway Route 23 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected by the Department.

1. No stopping or standing:

i. Along both sides:

(1) In Sussex County:

(A)-(C) (No change.)

(D) Hardyston Township:

I. For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other approved parking restrictions.

(2)-(3) (No change.)

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

16:28A-1.54 Route 181

(a) The certain parts of State highway Route 181 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected by the Department.

1. No stopping or standing along both sides in Jefferson Township, Morris County:

i. For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other approved parking regulations.

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Restricted Parking and Stopping

Routes N.J. 46 in Passaic County

Adopted Amendment: N.J.A.C. 16:28A-1.32

Proposed: May 4, 1992 at 24 N.J.R. 1689(a).

Adopted: June 5, 1992 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: June 10, 1992 as R.1992 d.277, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-198.

Effective Date: July 6, 1992.

Expiration Date: June 1, 1993.

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

Full text of the adoption follows.

16:28A-1.32 Route U.S. 46

(a) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.

1.-17. (No change.)

18. No stopping or standing in the City of Clifton, Passaic County:

i. Along both sides:

(1) For the entire length within the corporate limits, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking rules.

(b) (No change.)

(c)

**DIVISION OF TRANSPORTATION ASSISTANCE
BUREAU OF FREIGHT SERVICES**

Trucks

Designated Routes for Double Trailer Truck Combinations

Adopted Amendments: N.J.A.C. 16:32-1.1, 1.2 and 1.3

Adopted Repeal and New Rule: N.J.A.C. 16:32-1.4

Proposed: March 16, 1992 at 24 N.J.R. 929(b).

Adopted: April 29, 1992 by George Warrington, Deputy Commissioner, Department of Transportation.

Filed: June 4, 1992 as R.1992 d.270, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:3-84.

Effective Date: July 6, 1992.

Expiration Date: February 8, 1995.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons:

Bernard Brown, President, National Freight, Inc.

Gail Thompson, Califon, New Jersey

David E. Borngesser, APA Transport Corp.

Samuel Cumminghame, New Jersey Motor Truck Association

Stephen S. Richards, Yellow Freight System, Inc.

COMMENT: Four of the commenters applauded the Department for expanding the current 102-inch wide truck network to the operation of twin trailers. They supported the Department's efforts.

RESPONSE: The Department thanked the commenters for their support.

COMMENT: The Department should reconsider allowing tandem trucks on any roads in this state. Our State is heavily used as a mere throughway for trucks of all types traveling to out of state destinations. The 10 percent loss in Federal funding could be recouped by imposing special state border truck tolls. Tax the trucks and rebuild our railway system. Make New Jersey a transportation innovator.

RESPONSE: As of June 1, 1991, Federal regulations governing the Surface Transportation Assistance Act (STAA) (23 CFR Part 658) concerning dimensioned vehicles have preempted State regulations. Amendments to N.J.A.C. 16:32 afford the Department the opportunity to be in compliance with the Federal regulations while retaining a degree of autonomy regarding its definition of a "terminal."

Full text of the adoption follows.

SUBCHAPTER 1. DESIGNATED ROUTES FOR DOUBLE TRAILER TRUCK COMBINATIONS

16:32-1.1 Double trailers

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

(c) Notwithstanding any other provision of this chapter, double-trailer truck combinations shall enter and exit this State only on those specific routes designated for double-trailer truck combinations as authorized in this section. On a temporary basis only, until such time as Interstate Route 287 is open from Montville Township in Morris County to the New York State line, double-trailer truck combinations may be operated on Route 17 from the interchange with Interstate Route 80 to the New York State line, subject to the provisions of this chapter.

16:32-1.2 Width restrictions

The maximum width permitted on the routes designated in N.J.A.C. 16:32-1.1 and N.J.A.C. 16:32-1.3(b) is 102 inches, exclusive of mirrors and other safety devices.

16:32-1.3 Reasonable access to terminals and other facilities

(a) Any person or terminal operator seeking reasonable access for double-trailer truck combinations, or other STAA authorized vehicles as defined in 23 CFR Part 658.5 and 658.13, or trucks wider than 96 inches but not more than 102 inches in width, from the system designated in N.J.A.C. 16:32-1.1, may do so by utilizing the route system as designated in N.J.A.C. 16:32-3.3, excluding the Garden State Parkway.

1. For the purposes of these rules, a terminal is defined as any location where freight originates, terminates, or is handled in the transportation process and, when serviced by twin trailers, includes sufficient off-street area for ingress, egress, drop off or pick up and maneuvering of twin trailer combinations. Additionally, a motor carrier operating facility, a distribution center, or a rail, water-borne, or air terminal shall be considered the same as a terminal.

2. Access from a designated route to a terminal should avoid areas considered residential as defined in Title 39 of the New Jersey Statutes Annotated (N.J.S.A. 39:1-1 et seq.).

(b) A double-trailer truck combination is permitted access from the system designated in N.J.A.C. 16:32-1.1 to facilities providing food, fuel, repairs and rest, within one mile roadway distance from the designated system except upon those roads, highways, streets, public alleys or other thoroughfares which cannot safely accommodate a double-trailer truck combination and are so designated by the Department.

16:32-1.4 Reasonable access system review process.

(a) The Department anticipates that from time to time requests for additions to the reasonable access system will be made. These requests will be investigated by taking into consideration items including, but not limited to:

1. Sight distance at intersections;
2. Traffic volumes;
3. Roadway geometrics;
4. Roadside development or environment;
5. Accident records;
6. The use of the route by other trucks to date;
7. Alternate routings.

(b) Approval or denial of such requests will be issued based upon those criteria contained in N.J.A.C. 16:32-3.5.

[(b)] *(c)* The Department will respond to requests for additions to the reasonable access system within 90 days of receipt of same. If the Department fails to respond to a request within the aforementioned 90-day period, approval for such request shall be deemed automatic.

[(c)] *(d)* Requests should be sent to the Manager, Bureau of Traffic Engineering and Safety Programs, New Jersey Department of Transportation, CN 613, 1035 Parkway Avenue, Trenton, New Jersey 08625. They should be specific as to the exact route or routes of access being requested.

(a)

DIVISION OF PROCUREMENT BUREAU OF CONSTRUCTION SERVICES, PROCUREMENT

Classification of Prospective Bidders Renewal of Classification Rating

Adopted Amendment: N.J.A.C. 16:44-1.8

Proposed: March 2, 1992 at 24 N.J.R. 703(a).

Adopted: April 29, 1992 by George Warrington, Deputy Commissioner, Department of Transportation.

Filed: June 4, 1992 as R.1992 d.271, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:7-35.2 et seq.

Effective Date: July 6, 1992.

Expiration Date: May 25, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:44-1.8 Renewal of classification ratings

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

(c) Upon renewal of classification, contractors with a NJDOT past performance rating within the previous four years will be evaluated on the basis of their average performance rating and a Project Rating will be established in the following manner:

1. If a contractor's average performance rating does not meet the criteria of (c)2, 3, or 4 below, the contractor's average past performance percentage will be multiplied by a dollar level equal to three times the largest successfully completed NJDOT or equivalent contract performed during the prior four years. The contractor's Project Rating will be determined by applying the resulting dollar figure to Table I at N.J.A.C. 16:44-1.4(e).

2-4. (No change.)

TREASURY-GENERAL

(b)

STATE INVESTMENT COUNCIL

International Government and Agency Obligations

Adopted Amendments: N.J.A.C. 17:16-20.1 and 20.3

Proposed: May 4, 1992 at 24 N.J.R. 1690(a).

Adopted: June 5, 1992 by the State Investment Council, Roland M. Machold, Director, Division of Investment.

Filed: June 5, 1992 as R.1992 d.274, **without change**.

Authority: N.J.S.A. 52:18A-91.

Effective Date: July 6, 1992.

Expiration Date: May 2, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:16-20.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any pension and

ADOPTIONS

OTHER AGENCIES

annuity group fund except the Consolidated Police and Firemen's Pension Fund, in:

1. Direct obligations of sovereign governments;
2. Obligations of political subdivisions of an approved sovereign government;
3. Obligations of the sovereign's agencies which are unconditionally guaranteed as to principal and interest by the sovereign's full faith and credit;
4. Obligations of international agencies which are directly backed by the collective credit of regional countries; and
5. Obligations of agencies of the Canadian Government or Canadian Provinces which qualify under N.J.A.C. 17:16-16.

(b) The Director shall submit a list of international governments, their subdivisions and their agencies, and international agencies to the Council for its approval. Such list may be amended or enlarged from time to time by the Council and shall constitute the "Approved List of International Governments and Agencies."

(c) The Director shall only select issues of international government and agency obligations from the "Approved List" for purchase by the pension and annuity group, including Common Pension Fund D.

17:16-20.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this subchapter, the Director shall have obtained a public prospectus or circular describing the issue.

(b) In the case of an issue which is privately placed, the Director shall obtain, in addition to the requirements of (a) above:

- 1.-2. (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications

Casino Hotel Facilities

Adopted Amendment: N.J.A.C. 19:41-2.2

Proposed: April 6, 1992 at 24 N.J.R. 1246(a).

Adopted: June 3, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: June 5, 1992 as R.1992 d.273, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j), and 99.

Effective Date: July 6, 1992.

Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

Written comments on the proposed amendment were received from the Division of Gaming Enforcement (Division).

COMMENT: The Division supports adoption of the proposed amendment as published stating that the Division "... agrees that complete and necessary visual surveillance can be accomplished via up to date CCTV systems without the adjunct of a catwalk." The Division further agrees that removing the requirement for catwalk surveillance creates a potential for cost savings which "... adds further support to adoption of the proposed amendment." The Division also takes the position that the "... existing areas occupied by catwalks be considered controlled areas requiring security access procedures to be submitted to the Division for review and approval."

RESPONSE: The Commission concurs with the Division's comments, and agrees that catwalk areas continue to be controlled areas until and unless the catwalks are removed and the space re-programmed including appropriate review by the Commission and Division of the need for access security controls.

19:41-2.2 The hotel

(a) No casino license shall be issued unless the casino shall be located within an approved hotel which conforms in all respects to all facilities requirements of the Act and unless, in accordance with sections 1, 6, 27, 70, 83, 98, 100, 103 and 136 of the Act and the regulations of the Commission, such approved hotel:

- 1.-10. (No change.)

Recodify existing 12. as 11. (No change in text.)

PUBLIC NOTICES

EDUCATION

(a)

DIVISION OF EXECUTIVE SERVICES

Notice of Action on Petition for Rulemaking N.J.A.C. 6:8-9

Petitioner: Board of Education of the School District of South Orange-Maplewood.

Take notice that on January 10, 1992, the Department of Education received a petition for rulemaking concerning N.J.A.C. 6:8-9, to afford local school districts the option of utilizing alternatives for remedial course instruction during summer sessions in Approved Public Elementary and Secondary School Summer Sessions. The State Board of Education approved the Commissioner of Education's recommendation for further deliberation on the matter (see 24 N.J.R. 653(b), 867(a) and 1400(a)).

The Department of Education staff studied the proposed petition and recommended that it was untimely to address the petition in isolation due to the major Code revisions that were to be forthcoming from the recommendations made by the Task Force on Monitoring and Assessment and the study of the Quality Education Commission report. South Orange-Maplewood's petition and the Task Force recommendations for developing student outcomes and assessment standards are parallel. Thus, it would be prudent to have the committee responsible for drafting the new monitoring regulations for N.J.A.C. 6:8 consider the specifics of the petition during their deliberations. The rules pertaining to summer sessions are contained in this chapter.

Subsequently, the Commissioner recommended and the State Board approved referring the specific suggestions concerning remedial course program options for summer sessions to the committee drafting the new monitoring rules. The committee was instructed to seek input from the Division of Educational Programs and Student Services, intensely study the issue at hand, and report to the Commissioner when the rules were scheduled for Preliminary Discussion Level on June 3, 1992, on how the matter should be addressed.

On June 3, 1992, the Commissioner reported that the department concluded its deliberation on the matter and recommended:

1. The current rules governing approved public elementary and secondary school summer sessions at N.J.A.C. 6:8-9 should be amended to reflect consistency with the rules at N.J.A.C. 6:8-7.1(d)ii governing program completion during the regular year program. The regular year program rules offer options for obtaining credit toward graduation. It is inconsistent to offer options for one program and not the other.

2. When the new rules concerning a Thorough and Efficient System of Free Public Schools (N.J.A.C. 6:8) are developed and presented to the State Board on June 3, 1992, they should include the options for receiving credit for approved summer sessions which are consistent with the options provided during the regular year program.

Therefore, in accordance with N.J.A.C. 1:30-3.6, the State Board approved this recommendation for amending N.J.A.C. 6:8-8 to respond to the petition submitted by the South Orange-Maplewood Board of Education. Due to the timing of the petition, the Department of Education was able to provide draft rule amendments as part of the proposed new monitoring rules which were presented to the State Board at preliminary discussion level on June 3, 1992. The rule will be further discussed by the State Board at their July 1, 1992 public meeting and scheduled as a proposal level rule on August 5, 1992. Public testimony will be heard by the board on July 15, 1992 and September 16, 1992. Final adoption of the rule pertaining to the petition should be on November 4, 1992.

A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-3.6.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF ENERGY

Notice of Public Hearing on the Proposed Implementation Chapter of the 1991 New Jersey Energy Master Plan, N.J.S.A. 52:27F-14

DEPE Docket Number: 28-92-06.

Take notice that the New Jersey Department of Environmental Protection and Energy (Department), Scott A. Weiner, Commissioner, is proposing an Implementation Chapter to the 1991 New Jersey Energy Master Plan, pursuant to the authority of N.J.S.A. 52:27F-14. The Implementation Chapter will set forth the steps that will guide State departments, agencies, local governments, and the private sector, in implementing the recommendations in the 1991 New Jersey Energy Master Plan, adopted in November 1991.

In accordance with the requirements of N.J.S.A. 52:27F-14b, two open public meetings will be held, following the schedule stated below, to receive written and oral testimony on the Implementation Chapter. These hearings will be quasi-legislative in nature. The swearing of witnesses and cross-examination of presenters will not be permitted.

The draft of the Implementation Chapter, currently being developed in open, informal meetings with interested members of the general public, will be available on August 3, 1992, from the New Jersey Department of Environmental Protection and Energy, Office of Energy.

The following schedule will be followed for the public hearings:

Sessions will start at the times noted and continue until each person or organization has been given an opportunity to testify:

September 8, 1992

Public Hearing Room
DEPE Building
401 E. State St.
Trenton, New Jersey
10:00 A.M.

September 14, 1992

Rutgers University
Labor Education Center
Ryderson Lane and Clifton Ave.
New Brunswick, New Jersey
6:00 P.M.

Requests to testify should indicate the name of the individual, organization represented, and hearing location for presentation of the testimony. The Office of Energy would appreciate the submission of prefiled testimony. A Certified Court Reporter will be present at each hearing location and session. To pre-register to submit testimony at a specific location or to request additional information please contact:

New Jersey Department of Environmental Protection
and Energy
Office of Energy
401 E. State Street
CN 418
Trenton, NJ 08625-0207

Written comments relevant to the proposed Implementation Chapter may be submitted until September 22, 1992, to:

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

Upon completion of the hearings, the Department of Environmental Protection and Energy will take under consideration all testimony in the development of the Final adopted Implementation Chapter. Upon adoption of the Implementation Chapter, sufficient copies will be printed for distribution to the Governor and Legislature, and interested members of the general public.

(a)

DIVISION OF PARKS AND FORESTRY**Natural Areas System****Notice of Adoption of Management Plan****Amendments, Bear Swamp East Natural Area**

Authority: N.J.S.A. 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; and N.J.A.C. 7:5A.

Take notice that in accordance with N.J.A.C. 7:5A-1.8 and the recommendation of the Natural Areas Council (Council), Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy (Department), has adopted amendments to the management plan for Bear Swamp East Natural Area.

The Bear Swamp East Natural Area, located within Downe Township, Cumberland County, is a State-owned parcel administered by the Department's Division of Parks and Forestry through the Office of Natural Lands Management. Bear Swamp East, which encompasses 1,420 acres, was designated to the Natural Areas System primarily because it supports the nest site for one of New Jersey's bald eagle pairs and because the nest is located within one of the State's oldest and most well developed lowland hardwood forests. On August 11, 1988, the Department adopted a management plan for the Bear Swamp East Natural Area. The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long and short term management techniques and public uses to ensure preservation of the area in accordance with its designation objective (see N.J.A.C. 7:5A-1.8). The amendments to this management plan concern reassignment of several miscellaneous management duties to the State Park Service through the superintendent of Belleplain State Forest. At a meeting held on June 10, 1991, the Natural Areas Council recommended that these amendments be submitted to the Commissioner of Environmental Protection and Energy for his approval in accordance with the procedure at N.J.A.C. 7:5A-1.8. The Commissioner agreed with all of the amendments recommended by the Council.

The management plan for the Bear Swamp East Natural Area is hereby amended to allow the State Park Service to assume responsibility for the following miscellaneous duties:

1. The Division of Fish, Game and Wildlife and the Office of Natural Lands Management shall no longer have shared responsibility for posting of the boundaries of the restricted use zone during the critical eagle nesting period with signs indicating the regulations barring use and the reasons for doing so. This duty shall be the sole responsibility of the State Park Service.

This management responsibility is being assumed by the State Park Service in order to consolidate this duty within a single agency located in the offices of nearby Belleplain State Forest at Woodbine. The superintendent of Belleplain State Forest requested that his agency be responsible for all signage, which will result in more efficient management of the natural area.

2. The State Forestry Services shall no longer be responsible for maintaining berms restricting vehicle access to the natural area. This duty shall become the responsibility of the State Park Service.

This management responsibility is being assumed by the State Park Service at the request of the superintendent of Belleplain State Forest and will result in more efficient management of the natural area. Further, placement of this responsibility with Belleplain State Forest is appropriate since Belleplain now provides patrols and enforcement for this natural area.

3. The State Forestry Services shall no longer be responsible for maintenance of the four-acre successional field within the southern section of the natural area in an early successional stage through mowing in late summer. This duty shall be the sole responsibility of the State Park Service.

This management responsibility is being assumed by the State Park Service at the request of the superintendent of Belleplain State Forest. The responsibility for periodic mowing of this field is more appropriate to the superintendent of Belleplain State Forest because the Belleplain offices are located in nearby Woodbine, and because the superintendent regularly patrols and monitors the status of this natural area.

Copies of the adopted plan and amendments may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625

Department of Environmental Protection and Energy
Division of Parks and Forestry
Office of Natural Lands Management
CN 404

Trenton, New Jersey 08625

This notice is published as a matter of public information.

(b)

OFFICE OF REGULATORY POLICY**Amendment to the Atlantic County Water Quality Management Plan****Public Notice**

Take notice that on June 4, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Atlantic County Water Quality Management Plan was adopted by the Department. This amendment proposal was submitted by the Moorings at Sweetwater residential development. The amendment designates Block 565, Lot 1238.01 and Block 567, Lots 1239, 1256.01 and 1279 in Mullica Township, Atlantic County, as "ground water discharge (under 20,000 gallons per day)" service area to serve 7 existing occupied one bedroom apartments and 17 proposed one bedroom apartments. The proposed wastewater flow for the total 24 units is 3,120 gallons per day. The project site lies within a Pinelands Village Management Area regulated by the Pinelands Commission. Approval of this amendment does not guarantee consistency with the Pinelands Comprehensive Management Plan.

(c)

OFFICE OF REGULATORY POLICY**Amendment to the Ocean County Water Quality Management Plan****Public Notice**

Take notice that on May 18, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Ocean County Water Quality Management Plan was adopted by the Department. This amendment which was submitted by McSweeney and Drewes for the Jackson Township Board of Education, designates the site of the Jackson Township public facilities, located at the junction of Coventry and Van Hiseville Roads, as a subregional service area of the Ocean County Utility Authority's (OCUA) Northern Water Pollution Control Facility (WPCF). This site is presently designated in the Jackson Township Wastewater Management Plan (WMP) as served by an on-site treatment facility with discharge to surface water (NJDES Permit Number NJ0029513). The permitted flow from this existing facility is 100,000 gallons per day. Currently the site is within the Ocean County Central Wastewater Management Planning Area but not within the OCUA Central Service Area as delineated in the Jackson Township WMP. Also, as part of this amendment, it is proposed that a dedicated force main be built to convey wastewater to the OCUA Northern WPCF.

The public facilities to be served include the following Board of Education buildings: Switlik School, Switlik School portables, Clayton Building-High School, Memorial Building-High School, administration building and field house; the Jackson Township municipal building and the police station.

(d)

OFFICE OF REGULATORY POLICY**Amendment to the Monmouth County Water Quality Management Plan****Public Notice**

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Monmouth County Water Quality Management

(WQM) Plan. This amendment, proposed by the South Monmouth Regional Sewerage Authority (SMRSA), would adopt a Wastewater Management Plan (WMP) for the SMRSA district. The WMP addresses wastewater management planning for the Boroughs of Belmar, South Belmar, Spring Lake, Spring Lake Heights, Sea Girt, Manasquan and Brielle and a portion of the Township of Wall.

The WMP delineates all of the planning area as the existing and future sewer service area and projects a wastewater flow for the service area for the year 2010 of 6.725 million gallons per day. The Wall Township WMP adopted December 5, 1989 is incorporated by reference. Wall Township retains wastewater management plan responsibility for the Township.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-029, 401 East State Street, Third Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons should submit written comments on the amendment to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. A copy of the comments should be sent to William T. Birdsall, Birdsall Engineering, 1700 F Street, Belmar, New Jersey 07719-3098. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Mr. Ed Frankel at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the date of the public hearing.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan Public Notice

Take notice that on June 3, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan was adopted by the Department. This amendment adopts a Monroe Township Municipal Utilities Authority (MTMUA) Wastewater Management Plan (WMP). The planning area includes most of Monroe Township and two small areas presently served by MTMUA in Cranbury Township. The WMP, which was proposed by the MTMUA, provides for the expansion of the Middlesex County Utilities Authority sewer service area to include all of Monroe Township except the Jamesburg Training School for Boys which will continue to be served by its own on-site sewage treatment plant.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Raritan Water Quality Management Plan Public Notice

Take notice that on June 3, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment, proposed by Montgomery Township, amends the Montgomery Township Wastewater Management Plan. Among the changes identified are: expansion

of the Pike Brook and Cherry Valley sewage treatment plants and sewer service areas, proposed discharge to groundwater facilities for the Princeton Montessori School and Princeton Research Instruments, and deletion of the previously proposed Belle Mead Business Park wastewater facility.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Raritan Water Quality Management Plan Public Notice

Take notice that on June 3, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment, which was proposed by the Glen Meadows/Twin Oaks Homeowners Association, amends the Clinton Township Wastewater Management Plan with respect to the proposal for the Glen Meadows and Twin Oaks developments. It is proposed that a single wastewater treatment plant be constructed to serve a total of not more than 63 homes within the two developments. The design capacity of the new facility will be 25,000 gallons per day. The facility will discharge treated effluent to an intermittent tributary of the South Branch Raritan River. The existing Twin Oaks community septic system will be abandoned.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Northeast Water Quality Management Plan Public Notice

Take notice that on June 3, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment proposal was submitted by the Pequannock, Lincoln Park and Fairfield Sewerage Authority. The amendment adopts an amendment to the Pequannock, Lincoln Park and Fairfield Sewerage Authority Wastewater Management Plan (WMP) to expand the sewer service area of the Pequannock, Lincoln Park and Fairfield Sewerage Authority sewage treatment plant to include the Rowit site, Lot 2, Block 1600 in West Caldwell Township. This additional service area includes one proposed 9,600 square foot office building.

(e)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment, which was proposed by Commerce Bank, N.A., would modify the Moorestown Township and Mount Laurel Municipal Utilities Authority (MLMUA) Wastewater Management Plans. The amendment would identify the Commerce Bank site located at Block 278-S, Lot 14A and the RF/Max site located at Block 278-S, Lots 14B and 14C in Moorestown Township, Burlington County, as sewer service area of the MLMUA Hartford Road sewage treatment plant (STP). The RF/Max site presently lies within Moorestown Township's sewer service area 3, which prohibits sewer service to new development. Only the existing real estate office in this area will be served by the MLMUA STP. The Commerce Bank site presently lies within the future sewer service area of the proposed Moorestown Township Water Pollution Control Plant (WPCP) No. 2. At such time as this proposed STP is operational and

PUBLIC NOTICES

a trunk line reaches the vicinity of both project sites, the wastewater flow from these sites will cease discharge to the MLMUA Hartford Road STP and connect into the Moorestown Township WPCP No. 2.

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-029, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons should submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. Bruce Easterly, Taylor, Wiseman, Taylor, 306 Fellowship Road, Mount Laurel, New Jersey 08054. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds

Preparation of Responses to Requests from Closed Adoption and Non-adoption Case Records

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: Preparation of Responses to Requests from Closed Adoption and Non-adoption Case Records.

B. Purpose for which the grant program funds shall be used: This program is intended to eliminate a substantial backlog of closed case record inquiries and to respond in a timely manner to new inquiries which are received at a rate of 1,100 to 1,500 per year. After the backlog has been eliminated, the objective will be to maintain timeliness of response to closed case record inquiries.

C. Amount of money in the grant program: Annualized funding up to the amount of \$100,000 is available to fund the agent or agency awarded the contract. Funding will be continuous with the contract subject to annual renewal.

D. Organizations which may apply for funding under this program: Nonprofit child welfare service provider agencies and individual child welfare practitioners may submit proposals under this announcement. Since the records are reposit in Trenton, preference will be given to proposals from agencies/individuals that are located or will locate in the Trenton/Mercer County area.

E. Qualifications needed by an applicant to be considered for funding: An eligible applicant will meet all of the following criteria:

1. The applicant must have demonstrated experience in the provision of social services to children, individuals and families.
2. The applicant must have demonstrated experience in working with confidential and sensitive information in a judicious manner. The applicant must also comply with the confidentiality laws and rules governing the Department of Human Services and the Division of Youth and Family Services.
3. The applicant must be prepared to initiate service activity immediately upon completion of the contract negotiation and must be fully operational within 60 days following completion of the contract negotiation.
4. The applicant must demonstrate sound fiscal practices and management stability. A copy of the applicant's most recent financial audit should be submitted.

INSURANCE

F. Procedure for eligible organizations to apply: Agencies interested in applying for these funds may obtain a copy of the Request for Proposal from:

William B. Cowherd, Administrator
Office of Employee Support and Determinations
New Jersey Division of Youth and Family Services
50 East State Street
CN 717
Trenton, New Jersey 08625-0717
Telephone number (609) 292-0590

Agencies interested in applying for these funds may also obtain a copy of the Request for Proposal by attending a bidders conference scheduled for Monday, July 13, 1992, at 50 East State Street (Capital Center), Trenton, New Jersey, at 10:00 A.M.

G. Address to which applications must be submitted: Agencies interested in applying for these funds should submit one original and three copies of the completed Request for Proposal and all required supporting materials to:

Marc Cherna, Assistant Director
Office of Program Operations
New Jersey Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

H. Deadline by which applications must be submitted: The completed application and all required supporting materials and copies must be submitted by Friday, July 31, 1992.

I. Date by which applicants shall be notified of acceptance or rejection: Applicants shall be notified of acceptance or rejection by September 30, 1992.

INSURANCE

(b)

OFFICE OF THE COMMISSIONER

Notice of Public Hearing on the December 17, 1991 Order of the Commissioner Deferring Certain NJAFIUA Claim Payments for a Period of 12 Months

Take notice that, in accordance with the decision of the Superior Court, Appellate Division, in *In the Matter of the Order of the Commissioner of Insurance Deferring Certain Claim Payments by the New Jersey Automobile Full Insurance Underwriting Association*, Dkt. No. A-2629-91T5 (decided May 11, 1992), the Department of Insurance (Department) will hold a public hearing regarding the 12-month deferral of certain claim payments by the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA), which deferral was previously requested by the Trustee for the NJAFIUA pursuant to N.J.S.A. 17:33B-3b(2) and ordered by the Commissioner of Insurance (Commissioner) on December 17, 1991 by Order No. A91-343. The hearing shall be held as set forth below:

Date: Thursday, July 9, 1992

Time: 9:30 A.M.

Place: Department of Insurance
Mary Roebing Building
Room 219-220
20 West State Street
Trenton, New Jersey 08625

The purpose of the hearing is to receive public comment from interested parties regarding whether Order No. A91-343, which is reproduced in this Public Notice, should be affirmed, modified or rescinded. The hearing shall be conducted pursuant to the provisions of N.J.S.A. 52:14B-4g. The hearing shall be conducted by a Hearing Officer designated by the Commissioner. The Hearing Officer shall make recommendations to the Commissioner in the form of a written report, which shall be issued no later than 30 days after the record is closed and shall be made public. A verbatim transcript of the hearing will be prepared by a certified stenographic reporter; copies of the transcript may be obtained by ordering them directly from the reporter at the hearing or thereafter.

At the beginning of the hearing, the Trustee of the NJAFIUA or his representative will present a summary of the factual information regard-

ing the deferment of certain claim payments of the NJAFIUA. Thereafter, interested parties may present oral comments and may direct questions about the matter through the Hearing Officer. The Department reserves the right to limit oral comments and questions in either time or number in order to complete the hearing by 4:30 P.M. on the date scheduled. Interested parties may also submit written comments prior to the hearing, at the hearing and for five business days thereafter (until July 16, 1992). Written comments shall be submitted to the Department at the following address:

Attention: Claims Deferral Hearing Officer
Division of Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

No provision is made in N.J.S.A. 52:14B-4g for written comments on the Hearing Officer's Report and they will not be accepted.

Interested parties may, by appointment, review the Statement of Items comprising the record on the appeal of Order No. A91-343. Persons wishing to make an appointment may do so by telephoning: (609) 984-3602.

The Department requests that persons who wish to present oral comments or questions notify the Department of their intention no later than 12:00 noon, July 8, 1992, either by writing to the Department at the address set forth above or by telephoning the number set forth above. If it is necessary to limit either appointments to review the Statement of Items, or oral comments at the hearing, preference will be given to persons who notified the Department on a first come, first served basis.

ORDER NO: A91-343

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE

IN THE MATTER OF THE	)	Administrative Action
APPLICATION OF THE	)	
TRUSTEE FOR THE NEW	)	DECISION AND
JERSEY AUTOMOBILE	)	ORDER
FULL INSURANCE UNDER-	)	
WRITING ASSOCIATION	)	
TO DEFER CERTAIN CLAIM	)	
PAYMENTS	)	

This matter having been opened to the New Jersey Commissioner of Insurance (Commissioner) pursuant to the authority of N.J.S.A. 17:33B-3, N.J.S.A. 17:30E-1 et seq., N.J.S.A. 17:1C-6 and all powers expressed and implied therein, and upon application of Marshall Selikoff, the duly appointed Trustee for the New Jersey Automobile Full Insurance Underwriting Association (Trustee for the Association), to defer certain claim payments of the Association in accordance with N.J.S.A. 17:33B-3b(2);

The New Jersey Automobile Full Insurance Underwriting Association (Association) was created by legislation in 1983 to provide automobile insurance for eligible drivers who could not obtain insurance in the voluntary market. N.J.S.A. 17:30E-1 et seq. By 1990, however, the Legislature recognized that the Association had accumulated a deficit of over \$3.3 billion in unpaid claims and other losses. N.J.S.A. 17:33B-3. In March of 1990, the Legislature adopted the New Jersey Fair Automobile Insurance Reform Act (FAIRA or FAIR Act) (N.J.S.A. 17:33B-1 et seq.) as a comprehensive reform of New Jersey's automobile insurance laws. The FAIR Act counts among its principal goals, the elimination of the Association, the orderly evaluation, prioritization and satisfaction of obligations payable on behalf of the Association and the provision of a funding mechanism to pay off those debts and obligations. N.J.S.A. 17:33B-2(b)(3). Thus, pursuant to N.J.S.A. 17:30E-7(e), the Association ceased issuing new or renewal policies on September 30, 1990. Former Association insured now receive automobile insurance coverage either through the newly established Market Transition Facility (MTF) or from the voluntary market.

The FAIR Act authorized the Commissioner to appoint a Trustee to carry out these legislative purposes. N.J.S.A. 17:33B-3(b). In accordance with N.J.S.A. 17:33B-3b(2), the Commissioner approved a Plan of Operation (Plan) promulgated by the Trustee of the Association, which includes, as permitted by statute, a schedule for the prioritization of claim payments by type of claim. N.J.S.A. 17:33B-3b(2) additionally states that the Trustee's Plan may provide for the deferral of the payment of residual bodily injury losses over a period not to exceed four years. This

Plan may provide for the deferment of certain other payments, excluding payments for present economic loss, upon certification by the Commissioner that the Trustee cannot by any other available means secure the monies necessary to pay such losses.

In accordance with the FAIR Act, the Trustee's Plan permits the deferral of certain claims pursuant to a deferral plan which is to provide the deferral options that are financially feasible. Although contemplating submission of a deferral plan 120 days in advance, deferral requests can be approved by the Commissioner "within such shorter time period as the Commissioner may allow." Trustee's Plan of Operation, Article 6.

Because the Association's revenues were severely limited once it was no longer able to issue new or renewal policies or assess residual market equalization charges, the Association's cash receipts are largely limited to monies received from the New Jersey Automobile Insurance Guaranty fund ("NJAIGF"), although minor revenues are also received from the Division of Motor Vehicle surcharges and AIRE Board payments. The NJAIGF is a separate fund within the State Treasury created by the FAIR Act which collects and disburses to the Trustee, upon approval of the Commissioner of Insurance and the State Treasurer, various assessments, surtaxes and fees intended by the FAIR Act to provide funding to the Association.

Pursuant to N.J.S.A. 17:33B-5(e), the Association Trustee has applied for and received, on two occasions, monies from the NJAIGF. Specifically on July 1, 1991 \$283.3 million was disbursed to the JUA in order to provide funding for its operating expenses. On August 7, 1991, an additional \$188.8 million was disbursed. The Trustee's requests for draw-downs have depleted the NJAIGF of all monies available except for approximately \$44 million that is being held while litigation is pending regarding the entitlement to these funds. A third application from the Association Trustee for an additional draw-down of approximately \$31.1 million has been approved by the Commissioner of Insurance and is presently awaiting the review and approval of the State Treasurer. However, if this disbursement occurs before December 31, 1991, the Association will receive less than \$31.1 million because the full \$31.1 million will not be available until after December 31, 1991.

On June 27, 1991, August 7, 1991, October 2, 1991, and November 20, 1991, the Association Trustee submitted to the Commissioner of Insurance documentation and analyses which indicate that while the addition of NJAIGF monies will produce favorable long-term financial effects, significant short-term cash deficiencies cannot be avoided. The Trustee's studies indicate that, even with the two previously noted NJAIGF draw-downs and the anticipated third disbursement, the Association will run short of cash at the latest by January 1992. Specifically, if there is no deferral of claim payments and the third disbursement is received, the Association is expected to run \$38.7 million short of funds by January 1992 net of "float" (i.e., the amount of checks that have been issued but not yet cashed). This situation has arisen because the value of the claims expected to be submitted for payment during the early stages of the Association's liquidation have exceeded the amount of revenue generated by the FAIR Act for the same period. Moreover, if the Association does not receive any additional disbursement from the NJAIGF and does not implement a deferral of claims, the Association advises that it will run out of cash totally by December 27, 1991.

To counter the emergence of this shortfall and to assure that the Association has a safety margin of sufficient funds available to cover (1) the balance of its outstanding checks and drafts ("float"), estimated to be \$20-\$25 million after the deferral, and (2) its other operating expenses estimated to be \$30-\$35 million per month exclusive of residual bodily injury losses for a two month period, the Association Trustee included in his analyses a request for approval of a Long-Term Claim Payment Deferral Plan, as permitted by N.J.S.A. 17:33B-3b(2) and the Trustee's Plan of Operation. The Trustee's November 20, 1991, request for a long term deferral of claims requests deferral for twelve (12) months of residual bodily injury claim payments as defined in the Trustee's Plan of Operation (Article 2, Paragraph 15), including those for uninsured motorist and underinsured motorist claims beginning on December 9, 1991. This Deferral Plan is to apply to all such claims on which checks and/or drafts have not been drawn by the Trustee or the Association through its servicing carriers by the effective date and time of this Order. For example, (a) final closing papers on a residual bodily injury claim are received by an Association servicing carrier on December 9, 1991, but by 12:01 A.M., December 18, 1991, no check and/or draft has been drawn to pay the claim. That claim is subject to deferral as permitted by this Order, and will be paid with six percent (6%) interest no later than December 1, 1992; (b) final closing papers on a residual

bodily injury claim are received by an Association servicing carrier on June 15, 1992. That claim is subject to deferral, as permitted by this Order, and will be paid with six percent (6%) interest no later than June 1, 1993.

The financial data submitted by the Trustee sets forth that even with the expected draw-down of approximately \$31 million from the NJAIGF, the Association will run short by \$38.7 million of funds by January 1992. Moreover, even when the aforesaid claim payments are deferred, a deferral instituted as late as January 1, 1992, leaves the Association dangerously short of funds (i.e., \$10.3 million net of float), certainly well below the Association's necessary \$87.5 million (gross of float) safety margin for the months of January, February, April and May of 1992. Additionally, the Association has determined that the future monthly cash flow for the remainder of the fiscal year ending June 30, 1992, will be insufficient to meet the Association's claims and expenses beginning January 1992. This determination was based on the Association's own prior experience, as well as projections for fiscal year 1992. As such, the Trustee recommended a deferral beginning on December 9, 1991, which for the most part permits the Association to retain cash on hand sufficient to satisfy this necessary safety margin. This deadline has now passed and the need for a deferral of claims has not abated.

By way of Bulletin No. 91-10 issued on July 16, 1991, the Commissioner solicited public comments regarding the appropriate elements for, or procedural aspects of, a long-term deferral of Association claim payments. 23 N.J.R. 2432. Comments were received by August 26, 1991. The Commissioner reviewed and considered the comments received in preparing this Decision and Order.

DECISION

In the exercise of my administrative discretion, I conclude that prudence and sound fiscal management require that the Association maintain a cash reserve balance or "safety margin" in the amount of at least \$87.5 million to cover outstanding checks and drafts and operating expenses. The amount of said cash reserve has been mutually agreed to by the Trustee and the Department based on the judgment that the Association's total amount of outstanding checks and drafts during any one month (\$20-25 million) and its monthly operating expense of \$30-35 million per month for 2 months, when combined with the uncertainties inherent in any financial forecasting, warrant the retention of at least \$87.5 million on a monthly basis in the Association's accounts.

The analysis by the Insurance Department staff confirms the financial predictions of the Association Trustee and indeed forecasts a financial shortfall that is \$20 million in excess of that forecasted by the Association Trustee. The Department staff analysis confirms that the Association will be unable to satisfy its financial obligations by January 1992 unless a deferral of claims is implemented now. Indeed, a further delay of the long-term deferral will leave the Association with no margin to absorb any month-to-month fluctuation in revenues and disbursements. Should the Association run out of revenues, medical bills and other present economic losses incurred by insureds simply could not be paid, which would substantially harm the public and run counter to the Legislature's plan intent in enacting the FAIR Act, that present economic losses be paid even if the deferral of residual bodily injury claims were needed to accomplish this.

I thus conclude, based on both the financial projections submitted by the Association and the Department staff analysis of Association financial data which confirms the Association's projections, that a deferral of claims is necessary beginning now to avoid a shortfall of revenues expected by January 1992. Moreover, based on these projections, I conclude that a deferral of residual bodily injury claims, including uninsured motorist and underinsured motorist claim payments is necessary for at least 12 months. Given the duration of this deferral, although not mandated by applicable statutes or the Trustee's Plan of Operation, I conclude that simple interest not to exceed six percent (6%) shall be paid on all deferral claims set forth in the Order below.

Moreover, in light of comments received, I am directing the Association Trustee to develop uniform procedures to implement this long-term deferral, which procedures may set forth criteria for exemptions based on hardship and for the uniform handling of deferred claim payments.

Now, therefore,

IT IS on this 17th day of December, 1991, ORDERED that:

1. The payments by the Association of any residual bodily injury claims, as defined in the Association Trustee's Plan of Operation, including uninsured motorist claims and underinsured motorist claims, are hereby deferred from payment for 12 months, except for such claims as may be granted exemption from deferral by the Association Trustee

based on hardship grounds to be developed by the Trustee and approved by the Commissioner. This order shall remain in effect for 12 months unless modified by further order of the Commissioner.

2. This Order applies to all residual bodily injury claims as described in Paragraph 1 above on which checks and/or drafts have not been drawn by the Trustee or the Association through its servicing carriers by 12:01 A.M. on December 18, 1991, the effective time and date of this Order.

3. When claims deferred under this Order are paid, said claims shall include simple interest calculated at six percent (6%) beginning on the date of deferral.

4. Claim payments for present economic loss shall not be deferred by this Order.

5. The Trustee for the Association is hereby directed to take any and all action necessary to execute the terms of this Order, consistent with applicable law, the Trustee's Plan of Operation, and with written operating procedures to be submitted by the Trustee to the Department of Insurance within 20 days of the date of this Order and thereafter approved by the Commissioner.

6. A copy of this Order shall be delivered to the Trustee for the Association, to the Administrative Office of the Courts of New Jersey, to each of the Trustee's servicing carriers, and upon payment of the reasonable expense of copying and mailing, to any member of the public making a written request therefor.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Notice of Action on Petitions for Rulemaking Wage and Hour Regulations: Exemptions from Overtime

N.J.A.C. 12:56-7.1

Petitioners: New Jersey Business and Industry Association, New Jersey Food Council, and New Jersey Retail Merchants Association.

Take notice that during the month of March, 1992, the Department of Labor (the Department) received petitions for the amendment of N.J.A.C. 12:56-7.1 (see 24 N.J.R. 1827(a)). This rule establishes the minimum salary permitted to exempt a bona fide executive or administrative worker from the overtime pay requirements of the State's Wage and Hour Laws, N.J.S.A. 34:11-1 et seq.

Effective April 1, 1992, the required salary for an executive exempt from overtime increased from \$350.00 to \$400.00 per week. The New Jersey Business and Industry Association, the New Jersey Food Council and the New Jersey Retail Merchants Association petitioned the Department to repeal its increase in the salary level above which no overtime payments would be required for executives. Petitioners argued that a 14 percent increase in the level of executive salaries exempt from the overtime payment requirements imposes a financial burden which is inflationary and counterproductive to improving the economy and business climate.

Take further notice that after a thorough review of the petitions, the Department has determined that the increase in the executive salary level for exemption from overtime pay will remain at \$400.00 per week. The Department pegs the minimum executive salary for overtime exemption to the State's minimum wage. Longstanding Departmental policy and basic fairness dictate this increase.

It has been the policy and practice of the Department, under the direction of its commissioners, to maintain the minimum executive salary at an amount at least twice the minimum hourly wage. This precedent was established back in 1966 with the enactment of the wage and hour laws and the Department has consistently utilized the described "formula" to establish the level of executive salary exempt from overtime payments. Even during times of double-digit inflation, rising as high as 28 percent, the Department did not upwardly adjust the minimum executive salary level. The only factor impacting adjustments in the executive salary level for determining entitlement to overtime is the minimum wage established by the State.

Since the State Legislature enacted a new minimum wage, the Department, in keeping with established precedent, increased the State's minimum executive salary for overtime payment requirements. While it

is true, as petitioners argue, that the federal regulations exempt executives from overtime who earn \$250.00 per week, the State of New Jersey's minimum wage is higher than that established by the Federal government; the Federal minimum wage only sets a floor below which none of the states may establish a wage. The minimum wage reflects the minimum wages deemed necessary by the State to balance the competing interests impacting its local economy and business environment. Commenting on the legislative proposal to reduce the amount of the minimum wage scheduled to take effect on April 1, 1992, Governor Florio noted the undue emphasis being given to the significance of the minimum wage level to the overall economy of the State and observed that the minimum wage level, which benefits those who are truly struggling to make ends meet, is only one component of a variety of social and economic influences that shape the business climate in New Jersey.

The State's planned increase in the minimum wage from \$4.25 to \$5.05 per hour, representing almost a 19.0 percent increase, became effective April 1, 1992. Therefore, a 14 percent increase in the minimum executive salary requirement for exemption from overtime is consistent with the State's new minimum wage. It is a parallel adjustment in light of the increase in the minimum wage to be paid New Jersey's workers.

It is within the Commissioner's discretion to set the minimum executive salary for exemption from overtime. Since the State has recently spoken on this matter by not reducing the scheduled increase in the minimum wage level, the Department will similarly maintain the increased level prescribed by its traditional formula.

For the above reasons, the Department hereby denies petitioners' request to repeal N.J.A.C. 12:56-7.1.

A copy of this notice of action has been mailed to the petitioners as required by N.J.A.C. 1:30-3.6.

OTHER AGENCIES

(a)

NEW JERSEY EXPRESSWAY AUTHORITY

Notice of Self-Evaluation Plan and Transition Plan under the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., 28 CFR Subsection 35.105 and 35.150

Take notice that the New Jersey Expressway Authority is seeking public comment from interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in this Authority's development of its self-evaluation plan and transition plan under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sec. 12101 et seq., 28 CFR subsection 35.105, 35.150.

The Authority as a public entity under the ADA, shall by January 26, 1993, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of the ADA and Federal implementing regulations, and, to the extent modification of any such services, policies, and practices is required, shall proceed to make the necessary modifications. 28 CFR Sec. 35.105(a). In the event that structural changes to facilities will be undertaken to achieve program accessibility, this Department shall, by July 26, 1992, develop a transition plan setting forth the steps necessary to complete such changes. 28 CFR Sec. 35.150(d). Under the ADA, the Authority must provide interested persons an opportunity to participate in its development of its self-evaluation plan and its transition plan by submitting comments. 28 CFR subsection 35.105(b), 35.150(d).

Interested persons should submit written comments by August 10, 1992 to:

New Jersey Expressway Authority
P.O. Box 351, Farley Service Plaza
Hammononton, New Jersey 08037
Attention: Vincent L. Leonetti, Executive Director

All comments timely submitted by interested person in response to this notice shall be considered by the Authority with respect to its self-evaluation plan and transition plan.

(b)

Election Law Enforcement Commission

Notice of the Availability of the Quarterly Report of Legislative Agents for the First Quarter of 1992, Ending March 31, 1992

Take notice that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission, in compliance with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the first quarter of 1992, accompanied by a Summary of the Quarterly Report.

At the conclusion of the first quarter of 1992, the Notices of Representation filed with this office reflect that 597 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation and regulation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative Agents for the first calendar quarter of 1992, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Election Law Enforcement Commission, the Office of Legislative Services, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

—The names of registered Agents, their registration numbers, their business addresses and whom they represent.

—A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.

—A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the first calendar quarter of 1992:

- No. 345-5 Bruce Jones representing Impact Government Relations
- No. 741-1 Wilson Beebe representing NJ State Funeral Directors Association, Inc.
- No. 742-1 Howard Weiss representing NJ Medical Underwriters, Inc.
- No. 443-2 Jeffrey Freeman representing National Rifle Association
- No. 18-3 Robert Bonazzi representing NJ Education Association
- No. 345-6 Carol Katz representing Impact Government Relations
- No. 747-1 Dale Franklin Hoover representing HIP/Rutgers Health Plan
- No. 173-6 Michael Cole representing Riker, Danzig, Scherer & Hyland
- No. 743-1 Edward Hazzouri representing Sun Company, Inc.
- No. 744-1 Robert Cockren representing National Wholesale Druggist's Association
- No. 745-1 John Conaty representing United Parcel Service
- No. 746-1 Deborah Bozarth representing Association of Trial Lawyers of America, NJ Chapter
- No. 532-2 James Laskey representing Norris, McLaughlin & Marcus
- No. 748-1 Lloyd Curtis representing Pepsi-Cola Company
- No. 749-1 Stephen Rybka representing NJ Natural Gas Co.
- No. 18-4 Mary Lou Armiger representing NJ Education Association
- No. 750-1 Paul Forlenza representing IBM
- No. 751-1 Dennis DeMatte representing Public Power Association of NJ
- No. 752-1 Frank Wade representing NJ State Building Trades Council AFL-CIO
- No. 644-2 Gregory Delozier representing NJ Association of Realtors
- No. 753-1 Rodger Iverson representing National Rifle Association for Legislative Action, Coalition of NJ Sportsmen
- No. 754-1 Jeffrey Beck representing US Health Care, Inc.
- No. 755-1 Kenneth Potavin representing Insurance Services Office, Inc.
- No. 755-2 Edward Murphy representing Insurance Services Office, Inc.
- No. 755-3 Jane Grego Golden representing Insurance Services Office, Inc.
- No. 22-4 William Holzapfel representing LeBoeuf, Leiby, MacRae
- No. 365-4 John Russo representing Princeton Public Affairs Group
- No. 566-4 John Hall representing Kraft & McManimon
- No. 756-1 Melville Miller, Jr. representing Legal Services of NJ, Inc.
- No. 756-2 Harris David representing Legal Services of NJ, Inc.
- No. 756-3 Donna Hildreth representing Legal Services of NJ, Inc.
- No. 756-4 Leighton Holness representing Legal Services of NJ, Inc.

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- No. 756-5 Dawn Miller representing Legal Services of NJ, Inc.
No. 756-6 Connie Pascale representing Legal Services of NJ, Inc.
No. 756-7 Margaret Stevenson representing Legal Services of NJ, Inc.
No. 757-1 Gregory Storey representing NY Shipping Association, Inc.
No. 173-7 Jeanne Bratsafolis representing Riker, Danzig, Scherer & Hyland
No. 173-8 Vincent Sharkey, Jr. representing Riker, Danzig, Scherer & Hyland
No. 246-2 Constantine Lambos representing Lambos & Giardino
No. 291-6 Theresa Lillo representing Nancy H. Becker Associates
No. 583-6 Linda Kellner representing Public Policy Advisors, Inc.
No. 718-2 Deborah Lee Meek representing Panhandle Eastern Corp.
No. 757-2 James Capo representing NY Shipping Assn., Inc.
No. 758-1 Richard McDonough representing PROPAC Underwriters Inc.
NO. 759-1 Marlene Lynch Ford representing H. Hovnanian Industries
NO. 760-1 James Kenny representing MCI Telecommunications Corp.
No. 761-1 Michael Kalison representing University Health System NJ
No. 762-1 Dennis Sullivan representing Middlesex Water Company
No. 762-2 Walter Brady representing Middlesex Water Company
No. 763-1 Donald Linky representing Connecticut Mutual Life Insurance Co.
No. 764-1 Thomas Terrill representing University Health System of NJ
No. 765-1 Andrew Dwight Bedsole representing Dupont Chemicals
No. 766-1 Jerry Lane representing State Farm Insurance Companies
No. 766-2 John Durham representing State Farm Insurance Companies
No. 766-3 Ronald Brown representing State Farm Insurance Companies
No. 766-4 David Tideman representing State Farm Insurance Companies
No. 769-1 Robert Healy representing Middlesex County Regional Chamber of Commerce
No. 173-9 Anthony Koester representing Riker, Danzig, Scherer & Hyland
No. 173-10 Samuel Moulthrop representing Riker, Danzig, Scherer & Hyland

Following is a listing of all Legislative Agents who have filed Notices of Termination during the first calendar quarter of 1992.

Legislative Agent	Registration Number
James Biggs	287-1
Gavin Blane	152-1
Joseph Bordo	519-1
Thomas Brizzolara	464-1
Anthony Catanoso	312-1
David Dieterich	37-1
Mark Feinberg	701-1
Martin Greenberg	163-1
Eileen Heldman	173-4
Robert Jones	572-1
Kathleen Kositzky	708-1

TREASURY-TAXATION

Eve Lampert	489-1
David Lloyd	58-1
John Markert	690-1
Barbara McConnell	375-1
Joyce Patterson	314-1
Judith Peters	514-1
James Rouse	479-1
Ralph Shrom	75-6
John Trafford	30-4
John Tucker	299-1
Kelly Wilson	605-1

For further information, contact the staff of the Commission at (609) 292-8700.

(a)

CASINO CONTROL COMMISSION

Public Notice

Casino License Fees

Take notice that, in accordance with N.J.A.C. 19:41-9.4(e), the Casino Control Commission has determined that the following hourly fee rates shall apply for the efforts of the Commission and the Division of Gaming Enforcement on matters directly related to each casino applicant or licensee, effective July 1, 1992: \$68.00 per hour for professional staff members of the Commission; \$37.00 per hour for inspection staff members of the Commission; and \$72.00 per hour for professional staff members of the Division.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Notice of Petroleum Products Gross Receipts Tax Tax Rate; July 1, 1992 through December 31, 1992

This notice is to advise petroleum products gross receipts taxpayers that for the period July 1, 1992 through December 31, 1992 the applicable tax rate for fuel oils, aviation fuels, and motor fuels, as converted to a cents per gallon rate pursuant to N.J.S.A. 54:15B-3 will be \$0.04 per gallon. The rate is effective for tax due for months ending during that period and this rate remains unchanged from the per gallon rate effective during the prior six month period.

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 4, 1992 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.1992 d.1 means the first rule adopted in 1992.

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 20, 1992

NEXT UPDATE: SUPPLEMENT MAY 18, 1992

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
23 N.J.R. 1981 and 2071	July 1, 1991	24 N.J.R. 165 and 318	January 21, 1992
23 N.J.R. 2079 and 2204	July 15, 1991	24 N.J.R. 319 and 508	February 3, 1992
23 N.J.R. 2205 and 2446	August 5, 1991	24 N.J.R. 509 and 672	February 18, 1992
23 N.J.R. 2447 and 2560	August 19, 1991	24 N.J.R. 673 and 888	March 2, 1992
23 N.J.R. 2561 and 2806	September 3, 1991	24 N.J.R. 889 and 1138	March 16, 1992
23 N.J.R. 2807 and 2898	September 16, 1991	24 N.J.R. 1139 and 1416	April 6, 1992
23 N.J.R. 2899 and 3060	October 7, 1991	24 N.J.R. 1417 and 1658	April 20, 1992
23 N.J.R. 3061 and 3192	October 21, 1991	24 N.J.R. 1659 and 1840	May 4, 1992
23 N.J.R. 3193 and 3402	November 4, 1991	24 N.J.R. 1841 and 1932	May 18, 1992
23 N.J.R. 3403 and 3548	November 18, 1991	24 N.J.R. 1933 and 2102	June 1, 1992
23 N.J.R. 3549 and 3678	December 2, 1991	24 N.J.R. 2103 and 2314	June 15, 1992
23 N.J.R. 3679 and 3840	December 16, 1991	24 N.J.R. 2315 and 2486	July 6, 1992
24 N.J.R. 1 and 164	January 6, 1992		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1	Uniform administrative procedure
1:1-10.6	Discovery in conference hearings
1:6, 1:7, 1:10, 1:10A, 1:11, 1:13, 1:20, 1:21	Special hearing rules
1:6A-9.2, 14.1, 14.4, 18.1, 18.3, 18.5	Special Education Program
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision
1:31	Organization of OAL

PROPOSAL NOTICE (N.J.R. CITATION)

DOCUMENT NUMBER

ADOPTION NOTICE (N.J.R. CITATION)

24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
24 N.J.R. 675(a)	R.1992 d.212	24 N.J.R. 1873(a)
24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
24 N.J.R. 1936(a)		
24 N.J.R. 1843(a)		
24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)

Most recent update to Title 1: TRANSMITTAL 1992-2 (supplement February 18, 1992)

AGRICULTURE—TITLE 2

2:22	Insect control
2:24-4	Volunteer Inspector Program: noncommercial apiaries and bees
2:32	Sire Stakes Program
2:50	Milk producers
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing nonagricultural uses of enrolled lands
2:76-6.15	Farmland Preservation Program: pre-existing nonagricultural uses on lands permanently deed restricted

24 N.J.R. 1662(a)		
24 N.J.R. 1141(a)	R.1992 d.278	24 N.J.R. 2421(a)
24 N.J.R. 1142(a)	R.1992 d.239	24 N.J.R. 2241(a)
24 N.J.R. 893(a)	R.1992 d.229	24 N.J.R. 2048(a)
24 N.J.R. 893(b)		
24 N.J.R. 896(a)		

Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)

BANKING—TITLE 3

3:1-6.6	Entity examination charges
3:1-16.1	Mortgage processing: administrative change regarding definition of "receipt"
3:1-19	Consumer checking accounts
3:4-1	Capital requirements for depository institutions
3:12-1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1-5.5, 5.7	Qualified corporations as fiscal or transfer agents
3:23	Department license fees
3:25	Debt adjustment and credit counseling
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees: extension of comment period
3:38-1.9, 5.2, 5.3	Branch offices; mortgage services licensure exemption; solicitor registration

24 N.J.R. 1420(a)	R.1992 d.250	24 N.J.R. 2242(a)
		24 N.J.R. 1791(a)
24 N.J.R. 1662(b)		
24 N.J.R. 1665(a)		
24 N.J.R. 675(b)	R.1992 d.242	24 N.J.R. 2242(b)
24 N.J.R. 1667(a)		
24 N.J.R. 2106(a)		
23 N.J.R. 3406(b)	R.1992 d.226	24 N.J.R. 2048(b)
23 N.J.R. 3686(c)		
24 N.J.R. 1937(a)		

Most recent update to Title 3: TRANSMITTAL 1992-4 (supplement April 20, 1992)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1, 2, 5, 7, 9, 10	Preproposal regarding readoption of chapters	24 N.J.R. 1667(b)		
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-3.7, 7.10, 7.12	Reinstatement of permanent employee following disability retirement	24 N.J.R. 2107(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
4A:6-16	Sick leave injury (SLI) benefits: carpal tunnel syndrome and asbestosis	24 N.J.R. 2108(a)		

Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)

COMMUNITY AFFAIRS—TITLE 5

5:10-1.3	Maintenance of hotels and multiple dwellings: administrative correction regarding completion of inspections by municipality or county			24 N.J.R. 1791(b)
5:10-25	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)		
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:13	Limited dividend and nonprofit housing corporations and associations	24 N.J.R. 1668(a)		
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:18-1.5, 4.7	Uniform Fire Code: eating and drinking establishments; exemption from fire suppression system requirement	24 N.J.R. 1938(a)		
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-3	State Fire Prevention Code: administrative corrections			24 N.J.R. 1875(a)
5:18A-2.9, 4.6	Fire Code enforcement: conflict of interest	24 N.J.R. 678(a)	R.1992 d.243	24 N.J.R. 2422(a)
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		
5:22-1, 2	Rehabilitation of one and two-unit residences and multiple dwellings: exemptions from taxation	24 N.J.R. 1669(a)		
5:23	Uniform Construction Code	24 N.J.R. 1420(b)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)		
5:23-2.15, 2.18, 2.20, 3.14	Uniform Construction Code: special inspections	24 N.J.R. 1147(a)	R.1992 d.244	24 N.J.R. 2243(a)
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.7, 3.8, 4.20	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)		
5:23-3.10, 5	UCC: enforcing agency classification; licensing of enforcement officials	24 N.J.R. 1446(a)	R.1992 d.272	24 N.J.R. 2424(a)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-3.21	Uniform Construction Code: one and two-family dwellings in flood zones	24 N.J.R. 680(a)	R.1992 d.208	24 N.J.R. 1879(a)
5:23-4.3	Elevator Safety Subcode: enforcement	24 N.J.R. 1148(a)	R.1992 d.245	24 N.J.R. 2244(a)
5:23-4.5	Municipal enforcing agencies: UCC standardized forms	24 N.J.R. 168(a)	R.1992 d.230	24 N.J.R. 2052(a)
5:23-4.5, 4.11, 4.14	UCC enforcement: conflict of interest	24 N.J.R. 678(a)	R.1992 d.243	24 N.J.R. 2422(a)
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-4.18, 4.20	Uniform Construction Code: gas service entrances	24 N.J.R. 1846(a)		
5:23-4.20	Departmental fees: administrative correction regarding electrical fixtures and receptacles			24 N.J.R. 1879(b)
5:23-5.4	Uniform Construction Code: enforcement interns	24 N.J.R. 1669(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:24-3	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)	R.1992 d.287	24 N.J.R. 2429(a)
5:25-2.5, 5.2, 5.4, 5.5	New home warranty and builders' registration: violations and penalties; claim eligibility	24 N.J.R. 1149(a)	R.1992 d.246	24 N.J.R. 2244(b)
5:26-9.1, 9.2	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)	R.1992 d.287	24 N.J.R. 2429(a)
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)	Expired	
5:70	Congregate Housing Services Program	24 N.J.R. 513(a)	R.1992 d.214	24 N.J.R. 1880(a)
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)	R.1992 d.216	24 N.J.R. 1880(b)
580-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:100-2.3, 2.4, 2.5	Ombudsman for Institutionalized Elderly: resident advance directives	24 N.J.R. 1455(a)	R.1992 d.284	24 N.J.R. 2431(a)
5:100-2.3, 2.4, 2.5	Ombudsman for Institutionalized Elderly: extension of comment period on resident advance directives	24 N.J.R. 1847(a)		

Most recent update to Title 5: TRANSMITTAL 1992-4 (supplement April 20, 1992)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1992-1 (supplement February 18, 1992)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
EDUCATION—TITLE 6				
6:5-2.4, 2.5	Organization of Department: reporting responsibilities; public information requests	Exempt	R.1992 d.279	24 N.J.R. 2431(b)
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-3.4	Tuition rates for county special services schools: administrative correction	_____	_____	24 N.J.R. 1882(a)
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 2109(a)		
6:22-6.1	Accommodation of pupils in substandard school facilities: administrative correction	_____	_____	24 N.J.R. 1882(b)
6:26	Establishment of pupil assistance committees	24 N.J.R. 1670(a)		
6:28	Special education	24 N.J.R. 1150(a)	R.1992 d.280	24 N.J.R. 2434(a)
6:29-2.4	Attendance at school by pupils or adults infected by HIV	24 N.J.R. 2124(a)		
6:46	Private vocational schools	24 N.J.R. 514(a)	R.1992 d.203	24 N.J.R. 1793(a)
6:46	Private vocational schools: correction to chapter expiration date	_____	_____	24 N.J.R. 1883(a)
6:53	Vocational education safety and health standards	24 N.J.R. 516(a)	R.1992 d.204	24 N.J.R. 1793(b)
6:64	Public, school, and college libraries	24 N.J.R. 2126(a)		
6:79-1	Child nutrition programs (recodify to 6:20-9)	24 N.J.R. 324(a)	R.1992 d.202	24 N.J.R. 1791(c)

Most recent update to Title 6: TRANSMITTAL 1992-1 (supplement January 21, 1992)

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1A	Water supply loan programs	24 N.J.R. 707(a)	R.1992 d.252	24 N.J.R. 2245(a)
7:1F	Industrial Survey Project	24 N.J.R. 717(a)	R.1992 d.209	24 N.J.R. 1883(b)
7:1H	County environmental health standards: request for public input	23 N.J.R. 2237(a)		
7:1J	Spill Compensation and Control Act: processing of damage claims (repeal 17:26)	24 N.J.R. 1255(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 1968(a)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:6-1.24, 9.2	Boating rules: rotating lights; "personal watercraft"	24 N.J.R. 1694(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: waiver of sunset provision of Executive Order No. 66(1978)	24 N.J.R. 912(a)		
7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	_____	_____	24 N.J.R. 2252(a)
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)	R.1992 d.219	24 N.J.R. 1884(a)
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2-12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs System	23 N.J.R. 3686(d)	R.1992 d.238	24 N.J.R. 2053(a)
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System	23 N.J.R. 3688(a)	R.1992 d.237	24 N.J.R. 2056(a)
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System: change of public hearing and extension of comment period	24 N.J.R. 344(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:14-8.3	Water Pollution Control Act: administrative correction regarding affirmative defense by violator	_____	_____	24 N.J.R. 2448(a)
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1, 2, 3, 5-14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)		
7:25-5	1992-93 Game Code	24 N.J.R. 1847(b)		
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-18.1	Filleting of flatfish at sea	24 N.J.R. 1456(a)		
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		
7:26-1.4, 2.13, 6.3, 6.8	Solid waste management: scrap metal shredding residue, animal manure, interdistrict and intradistrict flow	24 N.J.R. 1995(a)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions	23 N.J.R. 2458(a)		
7:26-4.3	Resource recovery facilities: administrative correction regarding compliance monitoring fees	_____	_____	24 N.J.R. 2058(a)
7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)		
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-4.6	Solid waste program fees: extension of comment period	24 N.J.R. 1458(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies: reopening of comment period	24 N.J.R. 2002(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26-8.16	Hazardous constituents in waste streams: reopening of comment period	24 N.J.R. 2003(a)		
7:26B	Environmental Cleanup Responsibility Act rules: extension of comment period	24 N.J.R. 1281(a)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. A	Environmental Cleanup Responsibility Act rules	24 N.J.R. 720(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 1458(b)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 2003(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-16.1, 16.3, 16.4, 16.5	Air pollution by volatile organic compounds: administrative corrections	_____	_____	24 N.J.R. 1889(a)
7:27-25	Control and prohibition of air pollution by vehicular fuels: public meeting and hearing on oxygenated fuels program	24 N.J.R. 2128(a)		
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:50-4.70	Pinelands Comprehensive Management Plan: administrative correction	_____	_____	24 N.J.R. 1891(a)

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HEALTH—TITLE 8

8:21A	Good drug manufacturing practices; tamper-resistant packaging for over-the-counter products	24 N.J.R. 2003(c)		
8:24-1.3, 2.5, 3.3, 13.2	Retail food establishments: "community residence"; eggs and egg dishes	24 N.J.R. 915(a)	R.1992 d.281	24 N.J.R. 2448(b)
8:31A-7.4, 7.5	SHARE Hospital system: rebasing and Minimum Base Period Challenge	24 N.J.R. 734(b)	R.1992 d.249	24 N.J.R. 2255(a)
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:31C-1.5, 1.6	Residential alcoholism treatment facilities: target occupancy penalty	24 N.J.R. 1463(a)		
8:33	Health care facilities and services: Certificate of Need application and review process	24 N.J.R. 2222(a)		
8:33C	Regionalized perinatal services: Certificate of Need criteria and standards	24 N.J.R. 2005(a)		
8:33H	Long-term care services: Certificate of Need policy manual	24 N.J.R. 2014(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)	Expired	
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)	Expired	
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)	Expired	
8:35A	Maternal and child health consortia: licensing standards	24 N.J.R. 2027(a)		
8:42	Home health agencies: standards for licensure	24 N.J.R. 2031(a)		
8:43G-19	Hospital licensing standards: obstetrics	24 N.J.R. 2045(a)		
8:57-2.1, 2.2, 2.3	AIDS prevention and control: reporting requirements	23 N.J.R. 3735(a)	R.1992 d.215	24 N.J.R. 1891(b)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: clarification of proposal summary regarding reporting of HIV infection	24 N.J.R. 59(a)		
8:65-2.5	Controlled Dangerous Substances: physical security controls	24 N.J.R. 174(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)	R.1992 d.241	24 N.J.R. 2256(a)
8:65-7.5, 7.10	Controlled dangerous substances: partial filling of prescriptions for Schedule II substances	23 N.J.R. 3618(a)	R.1992 d.205	24 N.J.R. 1795(a)
8:65-10.1	Controlled dangerous substances: addition of methcathinone to Schedule I	_____	_____	24 N.J.R. 2451(a)
8:65-10.3	Controlled dangerous substances: correction regarding anabolic steroids	_____	_____	24 N.J.R. 2256(b)
8:65-10.8	Controlled dangerous substances: exempt chemical preparations	_____	_____	24 N.J.R. 1895(a)
8:71	Interchangeable drug products (see 23 N.J.R. 3336(a); 24 N.J.R. 145(a))	23 N.J.R. 1509(a)	R.1992 d.222	24 N.J.R. 1897(b)
8:71	Interchangeable drug products (see 23 N.J.R. 3334(b); 24 N.J.R. 144(b))	23 N.J.R. 2610(a)	R.1992 d.135	24 N.J.R. 948(a)
8:71	Interchangeable drug products (see 24 N.J.R. 145(b))	23 N.J.R. 3258(a)	R.1992 d.136	24 N.J.R. 948(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)	R.1992 d.137	24 N.J.R. 949(a)
8:71	Interchangeable drug products (see 24 N.J.R. 947(b))	24 N.J.R. 61(a)	R.1992 d.221	24 N.J.R. 1897(a)
8:71	Interchangeable drug products	24 N.J.R. 735(a)	R.1992 d.220	24 N.J.R. 1896(a)
8:71	Interchangeable drug products	24 N.J.R. 1673(a)		
8:71	Interchangeable drug products	24 N.J.R. 1674(a)		
8:100	State Health Plan	24 N.J.R. 1164(a)		
8:100-16	State Health Plan regarding Long-Term Care Services: correction to Economic Impact statement	24 N.J.R. 1675(a)		

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HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1, 3.2, 3.4, 3.5	Teaching university	24 N.J.R. 1464(a)		
9:7-2.3, 2.11	Student Assistance Programs: administrative corrections	_____	_____	24 N.J.R. 2451(b)
9:9-7.2, 7.3, 7.8	NJCLASS program: family income limit, maximum loan amount, repayment	24 N.J.R. 1675(b)		
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)	R.1992 d.223	24 N.J.R. 1898(a)
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	24 N.J.R. 1859(a)		
9:16-1	Primary Care Physician and Dentist Loan Redemption Program	24 N.J.R. 1192(a)		

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HUMAN SERVICES—TITLE 10

10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)		
10:15B-1.2	IV-A "At Risk" Child Care Program: client eligibility income schedules	_____	_____	24 N.J.R. 2257(a)
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		
10:35	County psychiatric facilities	24 N.J.R. 208(a)		
10:36	Patient supervision of State psychiatric hospitals	24 N.J.R. 1728(a)		
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:49	New Jersey Medicaid Program: basic requirements for recipients and providers	24 N.J.R. 1728(b)		
10:52-1.6	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:53-1.5	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:72	New Jersey Care: Special Medicaid Programs Manual	24 N.J.R. 2145(a)		
10:72-1.1, 3.4, 4.1	New Jersey Care: Medicaid eligibility of children	24 N.J.R. 1860(a)		
10:81-1.6, 1.11, 1.12, 2.1, 2.2, 2.4, 2.7, 2.8, 3.8, 3.9, 3.18, 3.19, 4.2, 4.23, 5.2, 5.7, 5.8, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 14.1, 14.18, 14.20, 14.21	Public Assistance Manual: Family Development Program and REACH/JOBS provisions	24 N.J.R. 2147(a)		
10:81-14.21	Public Assistance Manual: administrative correction concerning REACH assistance	_____	_____	24 N.J.R. 2257(b)
10:82-1.2-1.5, 1.11, 2.7-2.11, 4.4, 4.8	Assistance Standards Handbook: AFDC program requirements	24 N.J.R. 2155(a)		
10:82-1.2, 1.6, 1.7, 1.10, 1.11, 2.1, 2.2, 2.3, 2.6-2.9, 2.11-2.14, 2.19, 2.20, 3.13, 3.14, 4.4, 4.5, 4.15, 5.10, 5.11	Assistance Standards Handbook: AFDC program revisions regarding Standard of Need, prospective budgeting, and AFDC-N equalization	24 N.J.R. 1194(a)	R.1992 d.261	24 N.J.R. 2258(a)
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	24 N.J.R. 2160(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
10:85-3.1, 3.3, 4.1	General Assistance allowance determination: household size concept	24 N.J.R. 926(a)	R.1992 d.260	24 N.J.R. 2263(a)
10:85-3.2, 10.1	General Assistance Manual: Family Development Program and work training requirements	24 N.J.R. 2160(b)		
10:86	Family Development Program Manual	24 N.J.R. 2161(a)		
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)		
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)		
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)		

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CORRECTIONS—TITLE 10A

10A:1	Department administration, organization, and management	24 N.J.R. 1465(a)	R.1992 d.269	24 N.J.R. 2451(c)
10A:5-1.3, 7	Temporary close custody	24 N.J.R. 1676(a)		
10A:10	Interjurisdictional agreements and statutes	24 N.J.R. 1939(a)		
10A:16	Medical and health services	24 N.J.R. 1677(a)	R.1992 d.283	24 N.J.R. 2452(a)
10A:18	Inmate mail, visits, and telephone use	24 N.J.R. 1204(b)		
10A:20-4	Residential Community Release Agreement Programs: administrative correction to adoption notice	_____	_____	24 N.J.R. 953(a)
10A:23	Lethal injection	24 N.J.R. 1677(a)	R.1992 d.283	24 N.J.R. 2452(a)
10A:34	Municipal and county correctional facilities	24 N.J.R. 683(a)	R.1992 d.193	24 N.J.R. 1796(a)

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INSURANCE—TITLE 11

11:1-31	Surplus lines insurer eligibility	24 N.J.R. 9(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
11:2-26	Insurer's annual audited financial report	24 N.J.R. 1940(a)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(a)	R.1992 d.282	24 N.J.R. 2456(a)
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:3-2	Personal automobile insurance plan	24 N.J.R. 331(a)		
11:3-3	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		

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11:3-15.6, 15.7, 15.9	Automobile insurance Buyer's Guide and Coverage Selection Form	24 N.J.R. 523(a)	R.1992 d.218	24 N.J.R. 1898(b)
11:3-20.5, App. 11:3-33.2	Automobile insurance: Excess Profits Report Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 529(a) 24 N.J.R. 2128(b)	R.1992 d.254	24 N.J.R. 2264(a)
11:3-40	Insurers required to provide automobile coverage to eligible persons	24 N.J.R. 336(a)	R.1992 d.207	24 N.J.R. 1796(b)
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)		
11:5-1.9, 1.38	Real Estate Commission: fee cap for mortgage services; transmittal of funds to lenders	24 N.J.R. 1957(a)		
11:5-1.9, 1.38	Real Estate Commission: extension of comment period regarding fee cap for mortgage services; transmittal of funds to lenders	24 N.J.R. 2129(a)		
11:5-1.27	Real Estate Commission: administrative correction concerning requirements for broker's licensure examination	_____	_____	24 N.J.R. 1799(a)
11:5-1.38-1.42	Real Estate Commission: dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3424(b)	R.1992 d.232	24 N.J.R. 2058(b)
11:5-1.38-1.42	Real Estate Commission: extension of comment period regarding dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3739(b)		
11:7	Insurance of municipal bonds	24 N.J.R. 1958(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: failure to act timely on written application for coverage; premium quotation	24 N.J.R. 2128(b)		

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LABOR—TITLE 12

12:56-10	Wage and Hour: employment of learners; sub-minimum wage	24 N.J.R. 2129(b)		
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)		
12:235-9.4	Workers' Compensation: appeal procedures regarding discrimination complaint decisions	24 N.J.R. 1684(a)		

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COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:31-1, 2	Small businesses, minorities', and women's enterprises: direct loan and loan guarantee programs	24 N.J.R. 2131(a)		
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LAW AND PUBLIC SAFETY—TITLE 13

13:2-22	Alcoholic Beverage Control: licensee training and certification	24 N.J.R. 1958(b)		
13:18-6.9	Replacement license plates fee upon verification of motor vehicle liability coverage	24 N.J.R. 1467(a)	R.1992 d.263	24 N.J.R. 2283(a)
13:20-34.2, 34.3, 34.5, 34.7	License plate identifying marks	24 N.J.R. 1467(b)	R.1992 d.264	24 N.J.R. 2283(b)
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:35-2.6-2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)		
13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)		
13:35-6.17	Corporate medical practice: stay of operative date regarding allowable fees for medications and health aids	_____	_____	24 N.J.R. 1905(a)
13:35-6.17	Corporate medical practice: stay of operative date concerning "financial interest" and referrals to health care facilities	_____	_____	24 N.J.R. 2460(a)
13:35-6A	Medical practice: declaration of death upon basis of neurological criteria	23 N.J.R. 3635(a)		
13:37	Certification of homemaker-home health aides: open public forum	24 N.J.R. 1861(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:39-3.9	Pharmaceutical practice: reciprocal registration	24 N.J.R. 553(a)	R.1992 d.235	24 N.J.R. 2062(a)
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:40-6.1	Board of Professional Engineers and Land Surveyors: fee schedule	24 N.J.R. 1231(a)	R.1992 d.247	24 N.J.R. 2285(a)
13:41-3.2	Board of Professional Planners: fee schedule	24 N.J.R. 554(b)	R.1992 d.240	24 N.J.R. 2062(b)
13:43-3.1, 4.1	Board of Shorthand Reporting: fee schedule	24 N.J.R. 1232(a)	R.1992 d.275	24 N.J.R. 2460(b)
13:44D-1.1, 2.1, 4.6	Public movers and warehousemen: moving vehicle requirement	24 N.J.R. 341(a)	R.1992 d.199	24 N.J.R. 1800(a)
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)	Expired	
13:44E-2.7	Chiropractic practice: referral fees	24 N.J.R. 1470(a)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)	R.1992 d.248	24 N.J.R. 2285(b)
13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)		
13:45A-26.1, 26.2, 26.4, 26.14	Automotive dispute resolution: motor vehicles purchased or leased in State	24 N.J.R. 53(a)	R.1992 d.236	24 N.J.R. 2063(a)
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:59-1.1, 1.2, 1.3, 1.4, 1.8	State Police: release of criminal history information	24 N.J.R. 1963(a)		
13:70-13A.8	Thoroughbred racing: stay pending appeal of official's decision	24 N.J.R. 555(a)	R.1992 d.265	24 N.J.R. 2461(a)
13:70-15.1	List of racing officials: administrative correction			24 N.J.R. 2063(b)
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)	R.1992 d.200	24 N.J.R. 1800(b)
13:71-3.3	Harness racing: stewards appeal hearings	24 N.J.R. 555(b)	R.1992 d.266	24 N.J.R. 2461(b)
13:71-3.8	Harness racing: stay pending appeal of official's decision	24 N.J.R. 556(a)	R.1992 d.267	24 N.J.R. 2461(c)
13:71-20.6	Harness racing: passing lane in homestretch	24 N.J.R. 686(a)	R.1992 d.268	24 N.J.R. 2462(a)
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)	R.1992 d.201	24 N.J.R. 1801(a)
13:75-1.7	Violent Crimes Compensation Board: denial of compensation	24 N.J.R. 1862(a)		

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