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NEXT UPDATE: SUPPLEMENT NOVEMBER 15, 1993

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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

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 111(1993)
New Jersey Commission on Environmental Education

Issued: November 15, 1993.
Effective: November 15, 1993.
Expiration: When legislation is adopted and signed which supersedes this Order.

WHEREAS, the citizens of the State of New Jersey have an inherent right to a healthy environment; and

WHEREAS, there is a direct relationship between the health of the environment and the level of environmental awareness among the State's citizenry; and

WHEREAS, environmental education is an integral part of a complete educational experience for students at the elementary, secondary and post-secondary levels; and

WHEREAS, environmental education should be an integral part of a lifelong learning process that involves both the formal education that occurs in school and the informal education that occurs in all walks of life; and

WHEREAS, the New Jersey Commission on Environmental Education was originally convened by former Governor Thomas Kean in 1989 pursuant to Executive Order No. 205; and

WHEREAS, the New Jersey Commission on Environmental Education was created to identify for the Governor the knowledge, attitudes, values, behaviors and skills that should be recommended for the development of an environmental education master plan; and

WHEREAS, the New Jersey Commission on Environmental Education has identified the knowledge, attitudes, values, skills and behaviors that an environmentally literate citizenry should acquire, and has codified a Plan of Action for developing such a citizenry through the implementation of a variety of strategies; and

WHEREAS, there exists a need to achieve the goals set forth in the Plan of Action developed by the Commission, thus warranting the reconvening of the Commission.

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 reconvened the New Jersey Commission on Environmental Education, which shall consist of 27 members, as follows:

A. Three public or private school teachers, one from each of the following groupings: grades kindergarten to third, grades fourth to sixth, and grades seventh to twelfth;

B. Two representatives of each of the following groups: academia in the fields of environmental education and/or environmental science; non-partisan, public interest groups; the field of environmental health; non-academic science professionals; the agricultural community; labor/industry; cultural institutions including, but not limited to, organizations such as museums and nature centers;

C. One representative of each of the following: clergy; school administration; a local school board; and a student representative (grade nine through undergraduate levels);

D. The Commissioners of the following State Departments, or their designees: Education; Higher Education; Environmental Protection and Energy; and Health; and

E. Also included are the Environmental Prosecutor, or a designee; and a representative from the Governor's Office.

The public members shall be appointed by the Governor for terms of three years, and in the first year the public members shall be appointed to staggered terms as follows:

(1) Seven shall be appointed to terms of one year;
(2) Seven shall be appointed to terms of two years; and
(3) Seven shall be appointed to terms of three years.

The Governor shall appoint a chair to the Commission from among its membership, who shall serve in such position at the pleasure of the Governor.

2. The Commission shall meet quarterly throughout the calendar year, and shall:

A. Advise and monitor the Executive Committee on the implementation of the Plan of Action;

B. Advise and monitor the Executive Committee on the utilization of monies from an Environmental Education Trust Fund administered by the Department of Environmental Protection and Energy;

C. Support an annual Environmental Education Week and other activities designed to foster environmental awareness; and

D. Report to the Governor as requested on issues relating to environmental education;

E. Submit an annual report to the Governor on the status of environmental education in the State.

3. There is hereby convened an Environmental Education Executive Committee of nine members, established as a sub-group of the Environmental Education Commission, which shall be chaired by the Chair of the Commission with the Commissioner of the Department of Environmental Protection and Energy and the Commissioner of the Department of Education as vice-chairs, and shall consist of the Commissioners of the following State Departments, or their designees: Higher Education; Health; and Law and Public Safety. The Executive Committee shall also consist of a representative from the Governor's Office and two representatives from the Commission, to be designated by the Governor.

The Chair shall preside over the meetings of the Executive Committee, and shall administer the agenda as submitted by the Committee.

4. The Executive Committee shall meet at least once every other month, beginning in the month following the effective date of this Order, and shall:

A. Enhance communication with and coordinate the involvement of State departments, including but not limited to those departments represented on the Commission in the implementation of the Plan of Action;

B. In consultation with the Environmental Education Commission, utilize monies available through the Environmental Education Trust Fund, administered by the Department of Environmental Protection and Energy, in order to achieve the goals and objectives of the Plan of Action;

C. Conduct an inventory of each State Department, the formal and non-formal education communities, business and industry, environmental groups and organizations, municipal and county government, and civic, youth and religious organizations in the area of environmental education and identify potential areas where environmental education can be infused into government operations.

D. Communicate the findings of the inventory to the Commission at their regularly scheduled meetings, work with the Commission in preparing its annual report, and otherwise establish a "clearinghouse" of information for an environmental education network.

Upon the request of four of the Executive Committee members, the Chair shall schedule a special meeting of the Executive Committee.

5. The New Jersey Department of Environmental Protection and Energy will be the lead agency, in close coordination with the Department of Education, in helping the Commission and the Executive Committee implement the Plan of Action.

6. This Order shall take effect immediately, and shall remain in effect until such time legislation is adopted and signed which supersedes this Order.

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 112(1993)
Day Off for Employees in Executive Departments of State Government—November 26, 1993

Issued: November 19, 1993.
Effective: November 19, 1993.
Expiration: Indefinite.

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. November 26, 1993, the day following Thanksgiving, shall be granted as a day off to employees who work in the Executive Departments of State Government and who are paid from State funds or from Federal funds made available to the State, whose functions, in the opinion of their appointing authority, permit such absence.

2. An alternate day off shall be granted to the aforementioned category of employees whose functions, in the opinion of their appointing authority, precludes such absence on November 26, 1993.

RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Banking Institutions: Sale of Alternative Investments Proposed New Rules: N.J.A.C. 3:4-3.

Authorized By: Jeff Connor, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:1-8.1.
Proposal Number: PRN 1993-668.

Submit comments by January 19, 1994 to:
Stephen Szabatin, Deputy Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Comptroller of Currency and the Federal Reserve Board have been concerned in recent months with practices followed by national banking institutions which sell mutual funds and annuities to their customers and others. Unless careful distinctions and disclosures are made, customers may be misled into believing that mutual funds, annuities and other retail investment products are insured by the Federal Deposit Insurance Corporation (F.D.I.C.) or other governmental agency, which is not the fact. The proposed new rules at N.J.A.C. 3:4-3 follow suggested guidelines from these Federal authorities, which will apply to depositories regulated by the New Jersey Department of Banking. Mutual funds, annuities and retail investment products may not be sold or advised by bank tellers; the area for such sales must be distinct and clearly marked; the prospectus or offering statements, and all advertising, must disclose that alternative investment products are not insured by any governmental agency and that they may fluctuate in value; and depositories must obtain signed disclosure statements from customers at the time a sale is initiated. Records of sales activity of alternative investment products must be available for inspection by the Department of Banking, as well as third party contractor's records. Banking institutions which offer these products are directed to draft policies and procedures consistent with these rules.

Social Impact

Adoption of the proposed new rules will assure that meaningful and adequate disclosures are made to customers of depositories which offer alternative investment products for retail sale to the general public. It is anticipated that the proposed rules will help depositories to avoid problems which have arisen in the banking industry in the past when customers were misled at the time of investment into believing that mutual funds and other investment products were government insured. Customers apparently did not have sufficient information to understand that their investments could fluctuate in value or that they could lose their principal.

Economic Impact

It is expected that some expenditure of funds may be necessary to effect compliance with disclosures in printed materials and advertising by affected depositories. However, these costs may be offset by increased sales of alternative investment products and less likelihood of litigation due to customer misunderstanding. It is also desirable that State regulated institutions engage in practices which are consistent with those utilized by Federally supervised depositories.

Regulatory Flexibility Analysis

The proposed new rules impose compliance and recordkeeping requirements on depositories, many of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The compliance requirements include provisions regarding the location of sales of alternative investment products, sign postings, prohibitions regarding investment advising by tellers, use of names similar to the bank's, prospectus statements and disclosures. Recordkeeping requirements include the filing of customer signed acknowledgements and the making of records available to the Department for inspections.

The rules will assist the affected institutions in establishing and maintaining practices in their sales of alternative investment products to the public which are consistent with those required for Federally supervised institutions. The need for professional services to be employed in order to comply is not anticipated.

The Department does not view the proposed new rules as unnecessarily burdensome. Furthermore, no differing standards based on business size are proposed because of the overriding need for the maintenance of high integrity and level of customer confidence in the safety, soundness and reliability of the banks.

Full text of the proposed new rules follows:

SUBCHAPTER 3. BANKING INSTITUTIONS: SALE OF ALTERNATIVE INVESTMENTS, DISCLOSURES

3:4-3.1 Scope and purpose

The purpose of this subchapter is to establish guidelines for State chartered banks, savings banks, and savings and loan associations which offer alternative investment products (also known as nondeposit investment products) to their depositors or others, as permitted by law, to avoid misunderstandings by customers about risks involved in such investments, and to make clear to customers that such investments are not guaranteed or insured by the bank or thrift, the F.D.I.C., or any other Federal or State agency, and that the sale of these products poses minimal risk to the safety and soundness of the depository.

3:4-3.2 Definitions

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

"Alternative investment" (nondeposit investment) means mutual funds, annuities and other retail nondeposit investment products.

"Depository" means a New Jersey State chartered bank, savings bank or savings and loan association.

"F.D.I.C." means the Federal Deposit Insurance Corporation.

3:4-3.3 Location of sales; signs; employees

(a) Alternative investment products shall be sold in a physical location separate and distinct from the area where business involving insured bank deposits is conducted and in particular shall not be sold from teller stations.

(b) Signs shall be posted to indicate clearly the types of investment products offered and that the alternative investment products are not F.D.I.C. insured.

(c) Retail deposit-taking employees of the bank are prohibited from offering investment advice, and should direct customers seeking investment services to the employee of either the bank or a third-party, specifically designated and trained as an investment advisor. Alternative investment sales personnel shall meet all applicable statutory and industry requirements for licensing and registration.

3:4-3.4 Mutual fund: name, prospectus

(a) A bank or affiliate which advises a mutual fund shall not sell that fund under a name which is the same or similar to the bank's name.

(b) A prospectus or offering statement shall be provided to the customer in advance of the sale, which complies with all applicable State and Federal laws and regulations.

(c) A depository or affiliate which advises a mutual fund shall disclose orally and in writing, at the time the account is opened, the role of the depository, its holding company, or an affiliate as an advisor to the mutual fund, and that the mutual fund is not guaranteed or insured by the depository, the F.D.I.C. or any Federal or State agency.

(d) Mutual fund sales confirmations issued by the depository shall also contain the disclosure that the mutual fund is not guaranteed

or insured by the depository, the F.D.I.C. or any Federal or State agency.

3:4-3.5 Advertising; sales confirmations

All forms of advertising or promotional material, and confirmations issued by the depository relating to the sale of alternative investment products, shall include a statement that "This investment is not guaranteed or insured by the depository, the F.D.I.C. or any other Federal or State agency." Printed advertisements shall include this statement in clear, prominent, bold-faced type, unless in a specific case this statement is not true.

3:4-3.6 Additional disclosures

(a) At the time an account for sale of alternative investment products is opened the depository shall provide the customer with a written disclosure statement which includes the following information:

1. That this investment product is not a deposit or obligation of the depository, the F.D.I.C. or any other governmental agency;
2. That this investment product is not guaranteed by the depository or insured by the F.D.I.C. or other Federal or State agency;
3. That alternative investment products are subject to risk, including possible loss of principal, and may fluctuate in value;
4. That the depository, its holding company or its affiliate may have an advisory role in the product, where applicable; and
5. The existence of any sales charges, early withdrawal penalties, surrender charge penalties or deferred sales charges.

3:4-3.7 Acknowledgment

At the time a new investment account is opened, the depository shall obtain the customer's signature on its written disclosure form, acknowledging that the customer has received and understands the disclosures required by this subchapter. This form shall be filed in the customer's investment account record.

3:4-3.8 Inspection of records

(a) Records relating to the depository's sale of alternative investment products shall be made available to the Department of Banking during examinations or at any other time as requested by the Commissioner.

(b) The depository's agreement with a third party to handle sales of alternative investment products shall contain a provision permitting the inspection of records set forth in (a) above.

3:4-3.9 Policy and procedures

Every banking institution which offers retail alternative investment products shall develop policies and procedures consistent with this subchapter.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Special Education

Proposed Readoption with Amendments: N.J.A.C. 6:28

Proposed New Rules: N.J.A.C. 6:28-12

Authorized By: State Board of Education, Mary Lee Fitzgerald, Secretary, State Board of Education and Commissioner, Department of Education.

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:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 101-476, 102-119 and 99-457.

Proposal Number: PRN 1993-665.

Submit written comments by January 19, 1994 to:

Elease E. Greene-Smith, Rules Analyst
New Jersey Department of Education
225 East State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66(1978), the special education rules, N.J.A.C. 6:28, will expire on April 10, 1994.

Most of the rules contained in this chapter were adopted in 1989. Amendments were adopted in 1990, 1991, 1992 and 1993 in order to comply with Federal mandates in the Individuals with Disabilities Education Act, the New Jersey Federal Corrective Action Plan and the State Plan for Special Education. Amendments were also adopted within those four years to implement certain aspects of the *Plan to Revise Special Education* and to implement rules which were the result of new laws enacted by the New Jersey legislature.

The Department recommends a number of changes which are described in the summary within each subchapter.

A review of each subchapter of the chapter follows:

N.J.A.C. 6:28-1 General Provisions

This subchapter includes the general requirements which apply to all publicly funded programs for pupils with educational disabilities. Also described are both the process and content for special education plans to be submitted by every public and private provider of special education to the Department of Education. Definitions are provided in this subchapter in order to allow readers to understand the text. The Federal requirements for local district board of education policies and procedures are also contained in this subchapter.

At N.J.A.C. 6:28-1.3, "referral" has been removed in accordance with the changes to N.J.A.C. 6:28-3.2 and 3.3. Referral will be eliminated as a separate step in the process of identifying potentially educationally disabled pupils to the child study team for evaluation. Removing referral as a mandated procedure will streamline the process and reduce paperwork requirements for districts.

The term "referral" has been removed from all the sections in which it appears and replaced with the word "identification." Wherever the term "referring teacher" appears it has been replaced with "staff members identifying the potentially educationally disabled pupil." The citations are as follows: N.J.A.C. 6:28-1.2(g), 2.3(b), 2.3(c)1, 2.3(h)1v, 2.7(a), 3.4(d)6iii, 3.4(d)6v, 3.5(c), 3.5(d), 4.5(a)7, 6.2(a), 8.1(d)2, 11.3(a)1, 11.6(g)1ii, 11.7(a), 11.7(a)2ii, 11.7(c), 11.8(d)7v, 11.9(a)1, and 11.9(b)3.

A definition of "transition services" has been proposed in N.J.A.C. 6:28-1.3 in order to comply with a directive from the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS). The proposed definition complies with 34 C.F.R. 300.10(a) and is the same as the Federal definition of transition.

N.J.A.C. 6:28-2 Procedural Safeguards

This subchapter describes all of the rights and protections available to parents and school districts to assure the provision of appropriate services and programs to pupils with educational disabilities.

N.J.A.C. 6:28-2.3(c)1 has been amended to include the Federal requirement in 34 C.F.R. 300.504 that notice be provided whenever the district proposes or declines to take an action regarding the identification, classification, evaluation or placement of a pupil.

N.J.A.C. 6:28-2.10 has been amended to clarify the requirements for least restrictive environment. These changes are proposed to clarify that districts are responsible for making available the full continuum of alternative placements and for placing pupils with disabilities in appropriate programs in the least restrictive environment. The proposed amendments also clarify that consideration shall be given to the potentially beneficial or harmful effects which a placement may have on the pupil with educational disabilities or the other pupils in the class.

N.J.A.C. 6:28-3 Services

This subchapter addresses all requirements regarding the composition and responsibilities of the child study team; the identification, evaluation, determination of eligibility; and the development of individualized education programs (IEPs) and provision of related services for pupils with educational disabilities.

N.J.A.C. 6:28-3.1(e) has been proposed to ensure that each pupil with an educational disability has a case manager. This is not a new requirement. In this proposal, this requirement has been moved from the evaluation plan section and placed in this section of the rules which addresses child study team responsibilities.

N.J.A.C. 6:28-3.2(d) has been moved from N.J.A.C. 6:28-3.3(b) and recodified.

N.J.A.C. 6:28-3.2(e) and (f) have been moved with no change in text and recodified from N.J.A.C. 6:28-3.2(d) and (e).

N.J.A.C. 6:28-3.2(g) has been proposed to require that the child study team provide a parent with written notice within 30 days from identification of the pupil as potentially educationally disabled, regarding their determination whether or not to evaluate the pupil.

N.J.A.C. 6:28-3.2(h) through (m) have been recodified and moved from N.J.A.C. 6:28-3.3(a) through (g).

N.J.A.C. 6:28-3.3, Referral, has been removed and the subsection has been reserved. All of the provisions in this subsection are now proposed in N.J.A.C. 6:28-3.2, except N.J.A.C. 6:28-3.2(f) which has been removed to eliminate the requirement for screening before the evaluation of a potentially preschool handicapped child. This is an unnecessary step which delays the initiation of the evaluation. With this proposed change, identification would lead to an immediate evaluation for preschool children identified as potentially educationally disabled.

N.J.A.C. 6:28-3.4(a) has been amended to remove the requirement for child study teams to write an evaluation plan. This will decrease the district's paperwork requirements, remove unnecessary steps in the process and decrease the amount of time between identification and evaluation of a potentially disabled pupil. This requirement is not Federally mandated. Parental rights will still be protected because parents would receive proper written notice when consent is requested for evaluation.

N.J.A.C. 6:28-3.4(b) has been amended to add the Federally required language that evaluations shall include assessments in all areas of suspected disability. This is not a new requirement. It was included in the evaluation plan and has been moved to this subsection in order to retain this rule.

N.J.A.C. 6:28-3.6(a) has been amended to remove the provision which establishes the Individualized Education Program (IEP) as a two-part document; basic plan and instructional guide. It is proposed that the instructional guide be eliminated. It is not Federally required and it has caused IEPs to be overly prescriptive and much more specific than intended. Because the IEP has been a two-part document, two separate IEP meetings have been required. This has caused burdensome paperwork requirements for districts. The terms "basic plan" and "instructional guide" have been removed from all sections in which they appear. These terms have been replaced with "individualized education program." The specific citations in which this language has been amended are: N.J.A.C. 6:28-2.1(c), 2.1(c)1, 2.1(c)2, 3.6(b), 3.6(d), 3.6(e), 3.6(f), 11.9(a), 11.9(a)1 through 3 and 11.9(b).

N.J.A.C. 6:28-3.6(d)5vii has been amended to comply with a directive from the U.S. Department of Education that New Jersey's rules specify that planning for transition services occur at age 14, or younger, if deemed appropriate. Also proposed is an amendment which requires that the pupil's preference be taken into account when planning transition services. These changes comply with 34 CFR 300.18, 300.344(c) and 300.346(b).

N.J.A.C. 6:28-3.6(d)5viii has been proposed to comply with the U.S. Department of Education's directive that New Jersey's rules specify that the child study team take action if it is determined that services are not needed in one or more areas of transition services. This change complies with 34 CFR 300.346(b).

N.J.A.C. 6:28-3.6(d)5xv has been amended to include the requirement that districts include specialized equipment, as appropriate, in the IEP. This had been required as part of the instructional guide of the IEP which is now proposed for elimination.

N.J.A.C. 6:28-3.6(g) through (i) have been amended to remove the instructional guide and its required timelines for completion.

N.J.A.C. 6:28-3.7(a)2 has been amended to remove the requirement for the child study team to write an evaluation plan when conducting a reevaluation.

N.J.A.C. 6:28-3.7(a)3 through 5 have been recodified as paragraphs (a)2 through 4 with no change in text due to the removal of N.J.A.C. 6:28-3.7(a)2.

N.J.A.C. 6:28-4 Programs

This subchapter describes the requirements for placement of pupils with educational disabilities and the array of instructional programs available.

N.J.A.C. 6:28-4.2 has been amended to add the statement that the full continuum of alternative placements shall be available to pupils with disabilities.

N.J.A.C. 6:28-4.3(b)8i has been amended to expand the maximum group size for replacement instruction resource centers and to allow group sizes for single subject content areas to increase by one-third with the addition of a classroom aide. This proposed amendment is made because districts have had difficulty in scheduling single subject replacement, particularly in small schools and in some cases, it has resulted in increased costs for staff. This proposed change is intended to give districts increased flexibility.

N.J.A.C. 6:28-4.6(a)3 has been amended to eliminate the requirement for an approved exception to increase/decrease the length of the school day/year or required hours or periods of instruction or classification placement. These decisions are made for each pupil when the IEP is agreed to by the district and parents. Therefore, these approvals are unnecessary by the county office.

N.J.A.C. 6:28-4.7(b) and (b)5 have been amended at the directive of the U.S. Department of Education that New Jersey's rules specify that planning for transition services will occur at age 14, or younger, if deemed appropriate and that representatives of any agency that is likely to be responsible for providing or paying for a transition service and the pupil be invited to the IEP meeting. This change complies with 34 CFR 300.344(c).

N.J.A.C. 6:28-4.7(b)6 has been amended at the directive of the U.S. Department of Education that New Jersey's rules specify the steps to be taken to consider the pupil's preferences and interests, if the pupil does not attend the IEP meeting where transition services are discussed. This change complies with 34 CFR 300.344(c).

N.J.A.C. 6:28-4.7(b)7 has been amended at the directive of the U.S. Department of Education that New Jersey's rules specify the steps to be taken to obtain the participation of an agency in the planning of transition services, if the other agency does not send a representative to the IEP meeting. This change complies with 34 CFR 300.344(c).

N.J.A.C. 6:28-5 Approved Clinics and Agencies

General requirements for the establishment and ongoing approval of clinics and agencies eligible to provide services to the public schools are included in this subchapter.

No change is proposed in this subchapter.

N.J.A.C. 6:28-6 Services in Nonpublic Schools

This subchapter contains the rules for provision of services for nonpublic school pupils pursuant to P.L. 1977 c.192 and 193 and in accredited nonpublic schools according to N.J.S.A. 18A:46-14.

No substantive change is proposed in this subchapter.

N.J.A.C. 6:28-7 Programs by 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

This subchapter describes the approval procedures and requirements for providing programs in the listed settings.

No substantive change is proposed in this subchapter.

N.J.A.C. 6:28-8 Programs Operated by the Departments of Corrections and Human Services

This subchapter contains the Department's approval and monitoring policies and procedures for State-operated facilities.

No substantive change is proposed in this subchapter.

N.J.A.C. 6:28-9 Monitoring, Corrective Action and Complaint Investigation

This subchapter contains the procedures that will be used by the Department of Education to investigate substantiated complaints regarding special education programs and services, to monitor these programs and services, and to initiate corrective action.

N.J.A.C. 6:28-9.2(d) has been amended to remove the appeal process to the Commissioner of Education when a complaint investigation is completed. Because there are two possible routes to filing an appeal, it appears that this is a two-step process and that the Federally required 60 calendar day timeline may be violated.

N.J.A.C. 6:28-10 Early Intervention Programs

This subchapter describes the Department's role in the enactment of P.L. 1991, c.115, which transferred the lead agency responsibility for early intervention programs to the Department of Health.

No change is proposed in this subchapter.

N.J.A.C. 6:28-11 Pilot Rules and Regulations

This subchapter was adopted in 1987 and applies only to 10 selected pilot projects in the State of New Jersey which operate under the *Plan to Revise Special Education.*

N.J.A.C. 6:28-11.5 has been reserved to conform to the changes in referral proposed in N.J.A.C. 6:28-1.3 and 3.3.

N.J.A.C. 6:28-11.6(a) has been amended to remove the referral step as a mandated procedure. This change conforms to the proposed amendments in N.J.A.C. 6:28-3.3. The word "referral" has been removed from this subchapter.

N.J.A.C. 6:28-12 Outcomes-Based Innovative Project

A new subchapter to N.J.A.C. 6:28 is proposed in order to establish a Department project to facilitate outcomes-based special education through local innovation. The proposed amendments establish the criteria which the Department will apply to approve district applications for this project through a Request for Proposals.

Technical Amendments

A series of technical corrections is proposed to correct citations within the text of N.J.A.C. 6:28. These changes are necessary due to the recodification of N.J.A.C. 6:3-6, Pupil Records, and amendments which were made to N.J.A.C. 6:28 in July 1992 and July 1993. The technical corrections are as follows:

It is proposed that technical corrections be made in N.J.A.C. 6:28-1.1(n), 1.4(a)3, 2.1(f), 2.9(a), (b) and (c), 3.9(b)1, 6.2(j), 6.5(b)11, 7.8(a) and 7.8(a)2. In each citation the reference will be changed from N.J.A.C. 6:3-2 to N.J.A.C. 6:3-6.

It is proposed that technical corrections be made in N.J.A.C. 6:28-1.4(a)10, 4.5(a)5, 4.7(b)1, 6.5(b)5 and 6, and 11.9(a)2. In each citation the reference will be changed from N.J.A.C. 6:28-3.6(e) to N.J.A.C. 6:28-3.6(d).

The following technical corrections are proposed:

1. The reference in N.J.A.C. 6:28-2.6(b)7 to N.J.A.C. 6:28-2.7(h) will be changed to N.J.A.C. 6:28-2.7(g).
2. The reference in N.J.A.C. 6:28-2.9(c) to N.J.A.C. 6:28-2.3(c) will be changed to N.J.A.C. 6:28-2.3(a).
3. The reference in N.J.A.C. 6:28-4.5(a)7 to N.J.A.C. 6:28-3.3 will be changed to N.J.A.C. 6:28-3.2.
4. The reference in N.J.A.C. 6:28-7.6(a) to N.J.A.C. 6:28-3.6(j) will be changed to N.J.A.C. 6:28-3.6(f).
5. The reference in N.J.A.C. 6:28-11.9(a)2 to N.J.A.C. 6:28-3.6(c) will be deleted.

Social Impact

The rules proposed for readoption and the proposed amendments are designed to continue and to improve the quality of services to special education pupils. Similar rules have existed in New Jersey since the 1960s. The quality and quantity of special education programs and the number of children with educational disabilities served since the 1960s has increased due to the public support of special education. Public advocacy groups were largely responsible for effecting legislation for pupils with educational disabilities. There is large scale support for programs from a variety of sources including legislators and parents who are accustomed to the level of services being offered today and want to maintain and improve the quality and availability of programs.

The proposed readoption and the amendments will have a significant positive impact on school district operations and, therefore, on the education of pupils with disabilities. In some instances, the proposed amendments will eliminate obstacles to effective and efficient program delivery, unnecessary paperwork or burdensome processes. This will allow districts to deliver special education services in a more timely manner and enable them to focus their energies and attention on the improvement of educational programs. In other instances, the amendments will provide clarification in areas where parents and districts have been confused about their responsibilities and rights, particularly in the section on least restrictive environment.

Using the Federal count of December first each year, the growth in the number of pupils with educational disabilities from 1987, the year that existing regulations were adopted, to 1993 is as follows:

1987	1993
167,326	182,000

Economic Impact

State categorical aid is the monies which go to the local districts for the provision of special education programs and services. As reflected in the table below it is a combination of both State appropriations and Federal aid.

The amended rules will have a positive economic impact in that unnecessary paperwork and burdensome requirements will be eliminated. There will be important added efficiencies and cost savings for school districts.

A schedule of State categorical aid from fiscal year 1987 to 1993 is given below.

State Aid Appropriated

1987	1993
$250,684,000	$582,598,634

Federal aid to New Jersey from 1987 to 1993 is as follows:

1987	1993
$56,308,254	$84,878,643

Regulatory Flexibility Analysis

The proposed rules apply to public school districts and to approved private schools for the handicapped and clinics and agencies which could be small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. They contain the necessary reporting, recording and compliance requirements for these agencies which include submitting annual applications for approval, special education plans and participation in the development of IEPs. Any costs incurred in compliance with the requirements of these rules would be reimbursed to the schools by inclusion in their tuition which is paid through State and local district funds. In these instances, the Department is unable to change these requirements based on business size because these agencies serve pupils with educational disabilities from public schools with public school money and must meet both Federal and State standards that are similar to public schools. The Department is unable to make the requirements different for that reason and further, believes that the rules are necessary and not so burdensome as to require differing standards.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:28.

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

6:28-1.1 General requirements

(a)-(m) (No change.)

(n) Each district board of education shall provide mandated pupil records according to N.J.A.C. 6:3-[2]**6** to programs operated by the Departments of Human Services or Corrections when a pupil is placed in a State facility. The parent or adult pupil shall receive notice of release of these records to the facility. Permitted records according to N.J.A.C. 6:3-[2]**6** may be released only with consent.

6:28-1.2 Plans for special education

(a)-(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] **exiting** education, [referred] **identified as potentially educationally disabled**, 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.

. . .

["Referral" means making a written request that a child study team meet to determine the need for an evaluation according to N.J.A.C. 6:28-3.3.]

. . .

"Transition services" means a coordinated set of activities for a pupil with educational disabilities, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

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.-2. (No change.)

3. Compilation, maintenance, access to and confidentiality of pupil records according to N.J.A.C. 6:3-[2]**6**;

4.-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)](**d**)5, and 4.1(i); and

11. (No change.)

6:28-2.1 General requirements

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

(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. The [basic plan] **individualized education program** shall be written within 30 calendar days of the determination that the pupil is eligible for special education and/or related services; and

2. The [basic plan] **individualized education program** shall be implemented as soon as possible but no more than 30 calendar days after the individualized education program meeting.

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

(f) Upon request by a parent or adult pupil, each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6:28), pupil records rules (N.J.A.C. 6:3-[2]**6**) and information regarding the availability of free and low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

(g) (No change.)

6:28-2.3 Parental notice, consent, participation and meetings

(a) (No change.)

(b) For those pupils classified as eligible for speech-language services, additional consent shall be obtained prior to initial evaluation by the child study team and/or implementation of a special education program and/or related services resulting from that [referral] **identification**.

(c) Written notice which meets the requirements of this section shall be provided to the parent(s) when a district board of education:

1. Proposes **or declines** to initiate or change the [referral] **identification**, classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil;

2.-4. (No change.)

(d)-(g) (No change.)

(h) Meetings shall be conducted to determine eligibility and to develop, review and revise the [basic plan of a] pupil's individualized education program.

1. Each meeting shall include the following participants:

i.-iv. (No change.)

v. [Referring certified] **Certified** school personnel **identifying the pupil as potentially educationally disabled,** the school principal or designee and other appropriate individuals if they choose to participate.

2.-6. (No change.)

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

6:28-2.6 Mediation

(a) (No change.)

(b) Mediation shall be provided as follows:

1.-6. (No change.)

7. Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement, unless both parties agree or emergency relief is granted by the Office of Administrative Law according to N.J.A.C. 6:28-2.7[(h)](**g**).

6:28-2.7 Due process hearings

(a) A due process hearing may be requested in regard to the [referral] **identification**, classification, evaluation or educational placement of a pupil age three through 21 and/or the provision of a free, appropriate public education to that pupil. For pupils above the age of 21, any disputes regarding the provision of programs and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

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

(i) 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)](**g**) above.

6:28-2.9 Pupil records

(a) All pupil records shall be maintained according to N.J.A.C. 6:3-[2]**6**.

(b) The parent(s), adult pupil or their designated representative shall be permitted to inspect and review the contents of the pupil's records maintained by the district board of education under N.J.A.C. 6:3-[2]**6** without unnecessary delay and before any meeting regarding the individualized education program.

(c) Any consent required for pupils with educational disabilities under N.J.A.C. 6:3-[2]**6** shall be obtained according to N.J.A.C. 6:28-1.3 "Consent" and 2.3[(c)](**a**).

6:28-2.10 Least restrictive environment

(a) Each public agency of education shall ensure that:

1. A full continuum of alternative placements according to N.J.A.C. 6:28-4.2 is available to meet the needs of pupils with educational disabilities for special education and/or related services;

2. Pupils with educational disabilities are placed in appropriate programs in the least restrictive environment;

[1.]**3.** To the maximum extent appropriate, a pupil with an educational disability [shall be] **is** educated with children who are not educationally disabled;

[2.]**4.** (No change in text.)

[3.]**5.** Placement **of pupils with educational disabilities** [shall be] **is** provided in [an] appropriate educational settings as close to home as possible;

[4.]**6.** Consideration [shall be] **is** given to**:** [any]

i. The potentially **beneficial or** harmful effects which a placement may have on the pupil **with educational disabilities or the other pupils in the class, and**/or;

ii. [the] **The** ability of the program to implement the pupil's individualized education program; [and]

[5.]**7.** When the individualized education program does not describe specific restrictions, the pupil [shall be] **is** educated in the regular school program provided in the school he or she would attend if not educationally disabled[.]**; and**

[6.]**8.** To the maximum extent appropriate each pupil with an educational disability [shall] participates 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)-(d) (No change.)

(e) One member of the child study team shall be designated as the case manager for each pupil with an educational disability.

6:28-3.2 Identification

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

(d) Potentially educationally disabled pupils considered to require services beyond those available within the regular public school program shall be identified to the child study team.

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

(g) When identification of a potentially educationally disabled pupil is made by an individual other than the parent, the child study team shall make a determination whether or not to conduct an

initial evaluation and provide the parent(s) with written notice of this determination within 30 days of the identification.

(h) Interventions in the regular public school program to alleviate educational problems shall be provided to the pupil unless the pupil's educational problem(s) is such that direct identification to the child study team can be supported and documented. Written documentation of the intervention(s) and its effect, if any, shall be made by the staff of the regular program. The parent(s) shall be informed of the interventions attempted and receive a copy of the written documentation.

(i) When parental consent for initial evalution is withheld, a district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(j) The parent(s) may make a written request for an evaluation of his or her child which shall be forwarded to the child study team.

(k) Audiometric screening shall be conducted for every pupil identified to the child study team according to N.J.A.C. 6:29-5.

(l) Vision screening shall be conducted by the school nurse for every pupil identified to the child study team.

(m) 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, the 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.

6:28-3.3 [Referral] **(Reserved)**

[(a) Prior to any decision regarding referral of a pupil to a child study team for determination of eligibility for special education programs or services, interventions in the regular public school program to alleviate educational problems shall be provided to the pupil unless the pupil's educational problem(s) is such that direct referral to the child study team can be supported and documented. Written documentation of the intervention(s) and its effect, if any, shall be made by the staff of the regular program. The parent(s) shall be informed of the interventions attempted and receive a copy of the written documentation.

(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. When parental consent for initial evaluation is withheld, a district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(c) The parent(s) may initiate referral of his/her child by making a written request which shall be forwarded to the child study team.

(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) Vision screening shall be conducted by the school nurse for every pupil referred to the child study team.

(f) When a parent identifies a child age three to five as potentially preschool handicapped, the district board of education shall use a screening procedure which includes, at a minimum, an observation of the child to determine if the child should be referred to the child study team for comprehensive evaluation. Screening shall be completed within 30 calendar days of parental request.

(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) [After notice of referral has been provided, the child study team shall meet and determine the need for an initial evaluation. If it is determined that an evaluation is needed, the child study team shall write an evaluation plan. Prior to the development of the evaluation plan, a determination of the pupil's communication skills and dominance in English and the native language shall be completed. The parent(s) and adult pupil shall be provided with a copy of the evaluation plan. Consent shall be obtained prior to conducting the initial evaluation. The evaluation plan shall include:

1. The specific information to be obtained to assess in all areas of the suspected disability;

2. The evaluation procedures necessary to obtain this information;

3. The language(s) or method(s) of communication to be used in the evaluation process; and

4. The designation of a child study team member as case manager.] **Prior to conducting an initial evaluation, the child study team shall request and obtain consent to evaluate.**

(b) All evaluations leading to a determination of a pupil's eligibility for special education and/or related services shall be completed without undue delay consistent with the timelines established in N.J.A.C. 6:28-2.1 **and shall include assessment in all areas of the suspected disability**.

(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.-5. (No change.)

6. Include functional assessment as follows:

i.-ii. (No change.)

iii. An interview with the teacher(s) [referring] **identifying the potentially educationally disabled** pupil;

iv. (No change.)

v. A review of [prereferral] interventions documented by the classroom teacher(s) and others who work with the pupil; and

vi. (No change.)

(e)-(j) (No change.)

6:28-3.5 Determination of eligibility

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

(c) Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the [referring] staff member **identifying the potentially educationally disabled pupil** shall be given a written summary, signed by the child study team, of all decisions and any recommended course(s) of action.

1. (No change.)

(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 **identifying the potentially educationally disabled pupil**. Classification according to the following definitions shall be based on all evaluations conducted:

1.-12. (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)](**a**) The [basic plan of the] individualized education program shall be written upon completion of the child study team's evaluation according to the timelines in N.J.A.C. 6:28-2.1(c), and prior to the pupil's placement in a special education program.

[(c)](**b**) The [basic plan of the] individualized education program shall be developed with the participation of the parent(s) and members of the district board of education child study team who have participated in the evaluation and any additional persons required to attend the meeting according to N.J.A.C. 6:28-2.3(h).

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

[(e)](**d**) With the exception of an individualized education program for a pupil classified as eligible for speech-language services, the [basic plan] **individualized education program** shall include, but not be limited to:

1.-4. (No change.)

5. A description of the pupil's educational program which includes:

i.-vi. (No change.)

vii. For pupils with educational disabilities age 14 and over, **or younger, if deemed appropriate,** [post-secondary outcomes in one or more of the following areas, as appropriate: educational programs, vocational programs, work settings, or independent living.] [Annual] **annual** goals and objectives shall be related to the post/secondary outcomes[;]**. Transition services shall be based on the individual pupil's needs, taking into account the pupil's preferences and interests and shall include:**

(1) Instruction;

(2) Community experiences;

(3) The development of employment and other post-school adult living objectives; and

(4) If appropriate, acquisition of daily living skills and functional vocational evaluation.

viii. If the participants in the individualized education program meeting determine that transition services shall not be needed in one or more of the specified areas in (d)5vii(1) through (3) above, the individualized education program shall include a statement to that effect and the basis upon which the determination was made.

Recodify existing viii.-xi. as **ix.-xii.** (No change in text.)

[xii.]**xiii.** The criteria, procedure and schedule to determine if the pupil's goals and objectives are being met; [and]

[xiii.]**xiv.** Any exemptions from local disciplinary policies and/or procedures[.] **and;**

xv. Any specialized equipment.

[(f)](**e**) The [basic plan] **individualized education program** for the pupil classified as eligible for speech-language services shall include [(e)] (**d**)1, 2, 3, 4, and 5i, ii, iii, x, xi, and xiii above. When appropriate, [(e)](**d**)5vii and xii above shall be included. [in the basic plan] The statement of the current educational status in [(e)] (**d**)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] **identify** the pupil with an educational disability to the child study team.

[(g) Following the development of the basic plan and prior to the twentieth 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) The instructional guide shall include, but not be limited to, the following:

1. A planned schedule of time the pupil will be served by specialists, special education teachers, bilingual or English as a second language teachers and regular education teachers;

2. Instructional strategies fitted to the pupil's learning style;

3. Techniques and activities designed to support the personal and social development of the pupil;

4. Any special equipment and instructional media and materials needed for learning; and

5. Specific descriptions of instructional responsibilities of the regular and special education teachers.]

[(j)](**f**) 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.-2. (No change.)

Recodify existing (k) through (n) as (**g**) through (**j**) (No change in text.)

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 classification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1. (No change.)

[2. The child study team shall write an evaluation plan as described in N.J.A.C. 6:28-3.4(a). The parent(s) shall be provided with a copy of the evaluation plan and notice according to N.J.A.C. 6:28-2.3.]

Recodify existing 3.-5. as **2.-4.** (No change in text.)

6:28-3.9 Services to pupils in programs operated by the State of New Jersey

(a) (No change.)

(b) For a pupil in residence in a State facility, the responsible district board of education shall:

1. Maintain the educational records sent by the State facility according to N.J.A.C. 6:28-[2]**6**; and

2. (No change.)

(c) (No change.)

6:28-4.2 Program options

(a) **A full continuum of alternative placements shall be available to meet the needs of pupils with educational disabilities for special education and/or related services.** Educational program options include the following:

1.-10. (No change.)

(b) (No change.)

6:28-4.3 Program criteria: supplementary instruction, speech-language services and resource center programs

(a) (No change.)

(b) Resource center programs shall offer individual and small group instruction and shall meet the following criteria:

1.-7. (No change.)

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] **nine** pupils.

(3) The group sizes in (b)8i(1) and (2) above 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.

ii. For [two] **multiple** content areas—[three] **four** pupils.

9.-13. (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] **(d)5iv**;

6. (No change.)

7. Instruction may be provided for up to 60 calendar days in a school year. If the school physician believes that instruction for a longer period of time is indicated, [referral] **identification** shall be made according to N.J.A.C. 6:28-[3.3]**3.2** for determination by the child study team of eligibility for special education and/or related services.

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

6:28-4.6 Exceptions

(a) Exceptions to the requirements of this chapter shall be:

1.-2. (No change.)

3. Regarding [length of school day and/or the academic year or] class size or [classification according to N.J.A.C. 6:28-4.4(a)6 or] age range according to N.J.A.C. 6:28-4.4(a)4 [or required hours or periods of instruction]. An exception shall not be required regarding the provision of an extended academic year program.

(b) (No change.)

6:28-4.7 Transition

(a) (No change.)

(b) For pupils with educational disabilities age 14 and over, **or younger, if determined appropriate**, 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] **(d)5vii**.

i. (No change.)

2.-3. (No change.)

4. The individualized education program shall designate the person(s) responsible to serve as a liaison to post-secondary resources and make referrals to the resources as appropriate; [and]

5. [Post-secondary resource professionals shall be included in meetings according to N.J.A.C. 6:28-2.3(h) as appropriate.] **In addition to the required participants in an initial individualized education program meeting or an annual review meeting, the pupil with educational disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the individualized education program meeting. Notice of the meeting shall be provided to the participants according to N.J.A.C. 6:28-2.3(h)4;**

6. If the pupil with educational disabilities does not attend the individualized education programs meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the pupil's preferences and interests are considered; and

7. If an agency invited to send a representative to the individualized education program meeting does not do so, the district board of education or public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

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)-(i) (No change.)

(j) The district board of education in which the nonpublic school is located shall maintain all records of nonpublic school pupils receiving programs and/or services under this subchapter according to N.J.A.C. 6:3-[2]**6**.

6:28-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of educationally disabled pupils

(a) (No change.)

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1.-4. (No change.)

5. The pupil shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18A:7A-5c, d, e f, and g and as implemented in N.J.A.C. 6:8-2.2, 6:8-4.3(a)3i(3)(A), (B) and (C), 3iii, iv and v, 5ii, 6:8-6.1(a), 6:8-7.1(c)1 and (d)1. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6[(e)5iv] **(d)5iv**.

i.-iii. (No change.)

6. The pupil shall receive a comparable program to that required to be provided by the local district board of education according to N.J.S.A. 18A:35-1, 2, 3, 5, 7 and 8, 18A:40A-1, 18A:6-2 and 3, 18A:58-16, N.J.A.C. 6:29-4.2 and 6.6 and 6:28-1, 2, 3, and 4. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6[(e)5iv] **(d)5iv**.

7.-10. (No change.)

11. The nonpublic school has been provided copies of N.J.A.C. 6:28, N.J.A.C. 1:6A and N.J.A.C. 6:3-[2]**6**.

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

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)](**f**) 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) (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]**6** 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]**6** 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)-(c) (No change.)

(d) When a pupil enters a State facility:

1. (No change.)

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] **identification** to the child study team is required.

(e) (No change.)

6:28-9.2 Complaint investigation

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

(d) Upon receipt of the complaint investigation report, either party may appeal the findings and/or recommendations by filing a petition with[:]

[1. The Commissioner of Education in accordance with N.J.A.C. 6:24; or

2.] The United States Secretary of Education in accordance with 34 C.F.R. 76.781.

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] **identified** as potentially educationally disabled;

2.-5. (No change.)

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

6:28-11.4 Identification

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

(e) Each pilot district shall follow identification requirements according to N.J.A.C. 6:28-3.2.

6:28-11.5 [Referral] **(Reserved)**

[Each pilot district shall follow referral requirements according to N.J.A.C. 6:28-3.3.]

6:28-11.6 Comprehensive evaluation

(a) [After notice of the referral has been provided, the child study team shall meet to determine the need for a comprehensive evaluation. If it is determined that an evaluation is needed, the child study team shall write an evaluation plan and designate a case manager. A determination of the pupil's communication skills and dominance in English and the native language shall be completed as part of

the development of the evaluation plan. Consent shall be obtained prior to conducting the initial evaluation.] **Prior to conducting an initial evaluation, the child study team shall request and obtain consent to evaluate.** The purpose of the evaluation shall be to:

1.-2. (No change.)

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

(g) A comprehensive evaluation shall consist of the following:

1. A minimum of two child study team members shall evaluate a pupil to determine eligibility for special education and/or related services and the program needs of the pupil. Evaluator selection shall be based upon the nature of the educational problem, available pupil records, eligibility criteria and program planning. A parent shall have the right to receive a third child study team member assessment of their child upon request.

i. (No change.)

ii. All preschool pupils [referred] **identified** to the child study team shall undergo a comprehensive medical evaluation.

iii. (No change.)

2. Assessment by a child study team member must include an appraisal of the pupil's current functioning and an analysis of instructional implication(s) appropriate to the discipline reporting. The initial assessment must comply with the eligibility criteria of N.J.A.C. 6:28-11.8, address those areas included in the evaluation plan based upon the presenting problem of the [referred] **identified** pupil, and result in a written report.

(h)-(m) (No change.)

6:28-11.7 Determination of eligibility

(a) When an evaluation is completed, members of the child study team who participated in the assessment and parent(s) shall meet with the school principal and [referring] staff member(s), **identifying the potentially educationally disabled pupil,** if they choose to participate, in order to:

1. (No change.)

2. Determine whether the pupil is eligible for special education and/or related services;

i. (No change.)

ii. Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the [referring] staff member **identifying the potentially educationally disabled pupil** shall be given a written summary of all decisions and any recommended course(s) of action, signed by the participating child study team members.

3.-4. (No change.)

(b) (No change.)

(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] **identified** to the child study team to determine if the pupil is eligible for special education and/or related services.

(d)-(f) (No change.)

6:28-11.8 Eligiblity criteria

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

(d) The following criteria are established for each domain:

1.-6. (No change.)

7. Communication criteria are as follows:

i.-iv. (No change.)

v. Pupils [referred] **identified** solely for speech-language services shall require at least the evaluation and observation of the speech correctionist or speech-language specialist and information from the pupil's teacher.

(e)-(g) (No change.)

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] **shall be developed according** to N.J.A.C. 6:28-3.6 and this subsection.

1. The [basic plan of the] individualized education program shall be developed at a meeting attended by the child study team members who evaluated the pupil, the pupil's parent(s), teacher(s) having knowledge of the pupil's educational performance and the pupil, if appropriate. The [referring] certified school personnel **identifying the pupil**, the school principal or designee and other appropriate individuals may participate in the meeting.

2. The [basic plan of the] individualized education program shall conform with N.J.A.C. 6:28-3.6(a), (b), [(c)] **(d)**, (e) and (f) 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) an (i) and the following:

i. A description of curriculum areas that lead to the achievement of the desired outcome goals;

ii. Educational strategies that address the pupil's specific learning characteristics;

iii. Techniques and activities that accommodate the use of those strategies;

iv. A description of the pupil's weekly schedule of instruction, related services, instructors and responsible persons(s).]

(b) 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 parents, shall meet to review and revise the [instructional guide and the basic plan of the] individualized education program as specified in this subchapter.

1.-2. (No change.)

3. Eligibility criteria described in N.J.A.C. 6:28-11.8 shall apply only to pupils being [referred] **identified** to special education for the first time. The child study team shall document the reason(s) for continuing a pupil in special education and/or related services when the pupil no longer meets the eligibility criteria.

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

SUBCHAPTER 12. OUTCOMES-BASED INNOVATIVE PROJECT

6:28-12.1 General provisions

(a) For the purpose of establishing innovative outcomes-based special education projects, exceptions to State requirements in this chapter shall be granted to a select number of district boards of education by the Department of Education in accordance with a Request for Proposal submitted to the Department which shall:

1. Address each of the criteria listed in (c) below;

2. Be submitted to the director of the Office of Special Education on forms prepared by the Department; and

3. Be submitted in a timely manner.

(b) Exceptions to Federal requirements shall not be granted.

(c) District boards of education shall be selected for participation in this project based on a formal written proposal which shall:

1. Demonstrate that the district has a clear commitment to and is taking responsibility for improved pupil outcomes in special education;

2. Describe clearly stated, measurable pupil outcomes;

3. Demonstrate a high probability that the innovative program design will result in achievement of the intended pupil outcomes;

4. Assure full compliance with all federal special education requirements;

5. Demonstrate that the district's educational community, including the local district board of education, parents, administration and staff, have been involved in the development of the proposed innovative program;

6. Demonstrate that the proposal is designed to meet the educational needs of pupils with educational disabilities in the district; and

7. Demonstrate a commitment to full participation in the evaluation of the project by the Department of Education.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System

Proposed Amendments: N.J.A.C. 7:11-2.1, 2.2, 2.3, 2.4, 2.9, 2.10 and 2.13

Proposed New Rule: N.J.A.C. 7:11-2.4

Authorized By: Jeanne M. Fox, Chair, New Jersey Water Supply Authority and Acting Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 58:1B-7.

DEPE Docket Number: 62-93-11/385.

Proposal Number: PRN 1993-677.

In accordance with N.J.A.C. 7:11-2.11(a)4, **a pre-public hearing meeting** concerning this proposal will be held on:

Tuesday, January 4, 1994 at 10:00 A.M.
New Jersey Water Supply Authority Administration Building
1851 State Highway 31
Clinton, New Jersey 08809

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

Thursday, February 3, 1994 at 10:00 A.M. to close of comments
New Jersey Water Supply Authority Canal Field Office
Route 579 (Exit 2, Interstate Route I-95)
Ewing Township, Mercer County, New Jersey 08628

Submit written comments, identified by the Docket Number given above, on or before March 14, 1994 to:

Janis Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection and Energy
401 East State Street, 4th Floor
CN 402
Trenton, New Jersey 08625
and
Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
1851 State Highway 31
Post Office Box 5196
Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority at the address given below, explains in further detail the financial justification for the proposed revised rate schedule.

Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
1851 State Highway 31
Post Office Box 5196
Clinton, New Jersey 08809

The agency proposal follows:

Summary

The New Jersey Water Supply Authority (Authority) is proposing to amend its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System (System), to cover operation and maintenance costs for the fiscal year commencing July 1, 1994. It is also proposing to establish a new Capital Fund Assessment commencing July 1, 1994.

The General Rate Schedule for Operations and Maintenance in N.J.A.C. 7:11-2.2 was last adjusted operative July 1, 1993 (increased from $112.72 to $115.66 per million gallons (MG)) to cover the operation expenses of the System.

Projected operating costs for fiscal year 1995 now indicate that an operations and maintenance rate component of $117.84 will be needed starting July 1, 1994. Most of the increased operations and maintenance expenses are due to the projected increases in employee salaries and benefits; maintenance of on-site employee residences; maintenance supplies and maintenance of non-vehicular equipment; equipment rental; special and professional services; insurance premiums; telephone; and printing and office supplies. The operations and maintenance expense component sales base for fiscal year 1994 was 151.053 million gallons per day (MGD). The Authority anticipates that the applicable operations and maintenance sales base for Fiscal Year 1995 will be 151.049 MGD (decreased).

The Debt Service Assessment rate for the 1969 bonds involved in the construction of the Spruce Run/Round Valley Reservoir System Outlet Pipeline and Dam Rehabilitation Projects was based on a sales base of 150.558 MGD for fiscal year 1994. The Authority anticipates that the applicable sales base for fiscal year 1995 will be 150.554 MGD (decreased). Application of this sales base results in no change in the per MG rate of $14.01 per MG for the 1969 bonds (N.J.A.C. 7:11-2.3(b)).

The Debt Service Assessment rate for the 1981 water supply bond funds used to finance the removal of sediment from 32 miles of the Delaware and Raritan Canal was previously adjusted effective July 1, 1993 (Fiscal Year 1994) based on a sales base of 150.983 MG. The Authority anticipates that the applicable sales base for fiscal year 1995 will be 150.979 MGD. Application of this sales base results in no change in the per MG rate of $33.42 per MG for the 1981 bonds (N.J.A.C. 7:11-2.3(c)).

The Debt Service Assessment rate for the 1988 water systems revenue bonds issued to finance the Authority's current capital improvement program was based on a sales base of 150.983 MGD for fiscal year 1994. The Authority anticipates that the applicable sales base for fiscal year 1995 will be 150.979 MGD, resulting in no change in the previously established rate of $57.38 per MG for fiscal year 1995 before decreasing to $57.34 for fiscal years 1996, 1997 and 1998.

In addition to the existing rate components mentioned above, the Authority is proposing to establish a new "Capital Fund Component" starting July 1, 1994. This new component will be used to fund the Authority's upcoming Capital Improvement Program (1994-1999), which includes 16 projects to rehabilitate various culverts, canal embankments, and flow control structures, without incurring long-term debt. In the past, similar capital improvements have been funded through bond issues. The new Capital Fund Component assessment will be $15.00 per MG effective July 1, 1994, increasing to $20.00 per MG on July 1, 1995, and to $25.00 per MG on July 1, 1996, and thereafter (N.J.A.C. 7:11-2.4).

Final action on the rate adjustment is scheduled for the April 4, 1994, meeting of the Authority.

Social Impact

The proposed amendments will have minimal social impact. The proposed amendments represent the Authority's efforts to ensure that rates for raw water withdrawn, diverted or allocated from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir Complex are equitably assessed and sufficient to provide the revenues required by the Authority.

The 11 billion gallon capacity Spruce Run Reservoir and the 55 billion gallon capacity Round Valley Reservoir in Hunterdon County in conjunction with the 60 mile long Delaware and Raritan Canal in Hunterdon, Mercer, Somerset, and Middlesex Counties provide both active and passive recreational opportunities to the public in addition to a basic raw water supply for approximately 1,200,000 individuals living in central New Jersey.

Economic Impact

The proposed adjustments to the rate schedule will result in a net increase in the total charge for the raw water supplied from the System ranging from $17.18 in fiscal year 1995 to $27.14 in fiscal year 1998 per MG. It is estimated that the annual impact of the proposed wholesale water rate increase on the typical household will amount to $1.72 in fiscal year 1995 provided these increased costs are passed through by the wholesale water customers without further fees. The new Capital Fund Component to become effective on July 1, 1994 is deemed to be the most cost effective method of accomplishing needed capital improvements without incurring additional long term debt.

Environmental Impact

The adequate financing of systems upkeep and operation, which is provided by the proposed amendments, will result in a positive en-

vironmental impact. Properly maintained Authority systems and operations protect not only the water users but also the surrounding environment of the Spruce Run/Round Valley Reservoir and the Delaware and Raritan Canal.

The reservoirs and canal also provide habitat for many species of waterfowl and wildlife in an increasingly urbanized region of the State.

The Authority's Raritan Basin System is capable of supplying a dependable water supply of 225 MGD throughout a re-occurrence of the worst drought of record while still maintaining adequate river flows through release of stored waters to support the ecological systems and wildlife which are dependent upon adequate stream flows in the River Basin.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that these amendments and new rule would not impose reporting, recordkeeping or other compliance requirements on small businesses because the amendments and new rule affect only the rate charged to users for water purchased from the Authority. The water companies which contract to purchase water from the Authority and which are impacted by these rules do not qualify as "small businesses" pursuant to 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]):

7:11-2.1 General provisions

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

(c) The total rate charged under this schedule shall include the General Rate Schedule for Operations and Maintenance set forth at N.J.A.C. 7:11-2.2, the Debt Service Assessments set forth at N.J.A.C. 7:11-2.3, **and the Capital Fund Component set forth at N.J.A.C. 7:11-2.4.** (See N.J.A.C. 7:11-[2.12]**2.13** Special user rates for exception.)

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including, but not limited to, all of the following:

1.-7. (No change.)

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of [151.053] **151.049** million gallons per day has been used in setting the rate listed at (b) below.

(b) General Rate Schedule for Operations and Maintenance:

Allocation	Rate/Million Gallons
Million Gallons per Day (MGD)	[$115.66] **$117.84**

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The [debt service assessment] **Debt Service Assessment** rate for the 1969 Water Conservation Bonds shall be based on a sales base of [150.558] **150.554** million gallons per day. This [debt service assessment] **Debt Service Assessment** rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation	Rate/Million Gallons
[7/1/93] **7/1/94** to 6/30/2002	Million Gallons per Day (MGD)	$14.01

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following [debt service assessment] **Debt Service Assessment** rate, based on a sales base of [150.983] **150.979** million gallons per day, in addition to that included in (b) above, will be applied to all customers.

Period	Allocation	Rate/Million Gallons
[7/1/93] **7/1/94** to 10/30/2006	Million Gallons per Day (MGD)	$33.42

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of [150.983] **150.979** million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallons
[7/1/93] **7/1/94** to 6/30/95	Million Gallons per Day (MGD)	$57.38
7/1/95 to [6/30/97] **6/30/98**	Million Gallons per Day (MGD)	$57.34

7:11-2.4 Capital Fund Component

(a) The Capital Fund Component rate per million gallons listed at (b) below is based on estimated annual capital expenses to properly maintain, rehabilitate or replace, and/or upgrade the Raritan Basin System facilities.

(b) Capital Fund Assessment

Period	Allocation	Rate/Million Gallons
7/1/94 to 6/30/95	**Million Gallons per Day (MGD)**	**$15.00**
7/1/95 to 6/30/96	**Million Gallons per Day (MGD)**	**$20.00**
7/1/96 to 6/30/99	**Million Gallons per Day (MGD)**	**$25.00**

7:11-[2.4]**2.5** Daily allotment charge

(a) Effective on the date of commencement of charges as specified in the water use agreement, and except for special use described in N.J.A.C. 7:11-[2.12]**2.13**, the user shall pay a daily allotment charge amounting to 100 percent of the value of the quantity specified in the agreement for 24-hour withdrawal at the rates specified in this Schedule, as it may be amended from time to time.

1. The total charge shall include the General Rate Schedule for Operations and Maintenance described in N.J.A.C. 7:11-2.2 [and], the applicable Debt Service Assessment as described in N.J.A.C. 7:11-2.3, **and the Capital Fund Component as described in N.J.A.C. 7:11-2.4.**

2. Water diverted, withdrawn or allocated from the Raritan River Basin as supported by Spruce Run/Round Valley Reservoir water releases shall be modified by the appropriate Production Factor as specified in N.J.A.C. 7:11-[2.6]**2.7**.

Recodify existing N.J.A.C. 7:11-2.5 through 2.8 as **2.6 through 2.9**. (No change in text.)

7:11-[2.9]**2.10** Standby charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-[2.8]**2.9** above, shall pay a monthly minimum charge based on the capacity of [his] **the user's** withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge, based on charges as set forth under N.J.A.C. 7:11-2.2 [and], **2.3 and 2.4.**

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	[$115.66] **$117.84** plus annual debt service assessment[s] rates for 1981 Water Supply Bonds [and], 1988 Water System Revenue Bonds **and Capital Fund Component.**

2. For Standby Contracts within the Raritan River Basin:

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	[$115.66] **$117.84** plus annual debt service assessment rate for 1969 Water Conservation Bonds, 1981 Water Supply Bonds [and], 1988 Water System Revenue Bonds **and Capital Fund Component.**

7:11-[2.10]**2.11** Rate adjustment

(a) The New Jersey Water Supply Authority reserves the right to review and revise the Schedule from time to time by the establishment of a new Schedule promulgated pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any regulations promulgated thereto.

1. A purchaser shall be notified of such changes not less than six months in advance of the effective date of such revision pursuant to N.J.A.C. 7:11-[2.11]**2.12**.

2. Adjustments made under this section shall be subject to public hearing and all other requirements of N.J.A.C. 7:11-[2.11]**2.12**.

3. Any contract for the sale of water shall be subject to any adjustment resulting from this review.

(b) The New Jersey Water Supply Authority reserves the right to review the sales bases from time to time to make adjustments, if necessary, in the Schedule. Any such adjustments shall be promulgated pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any regulations promulgated thereto.

1. If any adjustment is required, at least six months notice in advance of the effective date of such revision shall be provided to all purchasers pursuant to N.J.A.C. 7:11-[2.11]**2.12**.

2. Adjustments made under this section shall be subject to public hearing and all other requirements of N.J.A.C. 7:11-[2.11]**2.12**.

3. Any contract for the sale of water shall be subject to any adjustment resulting from this review.

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

Recodify existing N.J.A.C. 7:11-2.11 and 2.12 as **2.12 and 2.13**. (No change in text.)

7:11-[2.13]**2.14** Short term user rate

"Short term service" means the supply of water from the System, to the extent from time to time available, in excess of aggregate uninterruptible service, for certain interim, interruptible, non-guaranteed or short-term uses, such as growing agricultural or horticultural products or meeting extraordinary requirements in consumer demand for potable or industrial water, which a System water purchaser is authorized to withdraw pursuant to a contract. Such purchaser shall pay at the rate specified under the General Rate Schedule for Operations and Maintenance as set forth at N.J.A.C. 7:11-2.2 [and], the applicable Debt Service Assessments as set forth at N.J.A.C. 7:11-2.3 **and the applicable Capital Fund Component as set forth at N.J.A.C. 7:11-2.4** as applied to the total water actually diverted during any month.

7:11-[2.14]**2.15** (No change in text.)

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System

Proposed Amendments: N.J.A.C. 7:11-4.3, 4.4 and 4.9

Authorized By: Jeanne M. Fox, Chair, New Jersey Water Supply Authority and Acting Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 58:1B-7.

DEPE Docket Number: 63-93-11/386.

Proposal Number: PRN 1993-679.

In accordance with N.J.A.C. 7:11-4.13(a)4, **a pre-public hearing meeting** concerning this proposal will be held on:

Wednesday, January 12, 1994 at 10:00 A.M.
New Jersey Water Supply Authority
Manasquan Reservoir System Administration Building
Hospital Road
Wall, New Jersey 07719

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

Wednesday, February 9, 1994 at 10:00 P.M. to close of comments

Wall Township Administration Building
2500 Municipal Court
Wall, New Jersey 07719

Submit written comments, identified by the Docket Number given above, on or before March 18, 1994 to:

Janis Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection and Energy
401 East State Street, 4th Floor
CN 402
Trenton, New Jersey 08625
and
Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
1851 State Highway 31
Post Office Box 5196
Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority at the address given below, explains in further detail the financial justification for the proposed revised rate schedule.

Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
1851 State Highway 31
Post Office Box 5196
Clinton, New Jersey 08809

The agency proposal follows:

Summary

The New Jersey Water Supply Authority (Authority) is proposing to amend its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System (System), to cover operation and maintenance costs for the fiscal year commencing July 1, 1994. It is also proposing to adjust its existing debt service assessment on system loans effective July 1, 1994.

The operations and maintenance expense component in N.J.A.C. 7:11-4.3 was last adjusted effective July 1, 1993 (decreased from $341.47 to $323.93 per million gallons, (MG)) to cover the operation expenses of the System.

Projected operating costs for fiscal year 1995 indicate that an operations and maintenance rate component of $350.34 (increased) will be needed starting July 1, 1994. The projected operations and maintenance expenses for employee salary requirements; employee benefits costs; electrical energy costs; printing and office supplies; insurance; and capital equipment costs have increased for fiscal year 1995. The principal increases in the projected operating expenses result from (a) salary increases reflecting union agreements that froze wages through September 1993 and then provided for two upward adjustments, five percent effective October 1993 and six percent effective July 1994, as well as the addition of one new assistant plant operator position, (b) an anticipated seven percent increase in electrical energy costs, (c) an anticipated 10 percent increase in insurance premiums, and (d) increased overhead charges for support services from the Authority's headquarters in Clinton, New Jersey. However, these increased costs are somewhat offset by decreases in the projected costs for electricity for pumping; maintenance of equipment; special and professional services; service and maintenance contracts; telephone; fees and permits; and in-lieu tax payments as well as projected increases in miscellaneous revenues/credits resulting in a net increase in the overall Operations and Maintenance budget for fiscal year 1995. The operations and maintenance expense component sales base will remain unchanged at 16.097 million gallons per day (MGD) for fiscal year 1995.

The debt service cost in N.J.A.C. 7:11-4.4 will decrease from $772.82 to $765.75 per million gallons on July 1, 1994.

The calculation of the operations and maintenance component as well as the debt service assessments is based upon a contractual sales base of 16.097 MGD as of July 1, 1994.

Final action on the rate adjustment is scheduled for the April 4, 1994, meeting of the Authority.

Social Impact

The proposed amendments will have a positive social impact and effect. The proposed amendments represent the New Jersey Water Supply Authority's efforts to ensure that rates for the untreated water

purchased from the Manasquan Reservoir System are equitably assessed to all purchasers and sufficient to provide the revenues required by the Authority.

This four billion gallon capacity reservoir provides a needed water supply to keep pace with the continuing growth in Monmouth County while reducing the dependence of water purveyors on the stressed ground water resources of the region.

Economic Impact

The proposed rate adjustments will result in a total charge for the uninterruptible untreated water supply from the Manasquan Reservoir System of $1,116.09 per million gallons ($350.34 for operation and maintenance plus $765.75 for debt service) starting July 1, 1994.

The proposed adjustments to the rate schedule will result in a net increase of $19.34 per million gallons in the total charge for the raw water supplied from the System effective July 1, 1994. It is estimated that the annual impact of the proposed wholesale water rate adjustment on the typical household will amount to a $1.93 increase provided the increased costs are passed through by the wholesale water customers without further fees.

Environmental Impact

The adequate financing of upkeep and operation of the Manasquan Reservoir System, which is provided by the proposed amendments, will result in a positive environmental impact. Sixty percent of the existing water supply in Monmouth County was derived from stressed ground water resources. The Manasquan Reservoir System relieves the use of a portion of the existing ground water supply and meets the needs of a developing area. This water supply system has a very important and positive environmental impact since its operation reduces the stress on the valuable ground water resources of the region by providing an alternate surface water supply. By reducing the pumping of ground water, salt water intrusion will be limited and present ground water levels will not be further reduced.

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

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that this rule adjustment will not impose reporting, recordkeeping, or other compliance requirements on small businesses because the rule proposal affects only municipalities and major water purveyors, none of which qualify as small businesses as defined in 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]):

7:11-4.3 Operations and maintenance expense component

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

(c) Operations and maintenance expense component:

Effective Date	Rate/Million Gallons (based upon a 16.097 mg per day sales base)
July 1, [1993] **1994**	[$323.93] **$350.34**

7:11-4.4 Debt service cost component

(a) (No change.)

(b) The following Debt Service rates based on a sales base of 16.097 million gallons per day, apply to all water purchasers who entered into a water purchase contract before July 1, 1990, the date upon which the Authority commenced operation of the Manasquan Reservoir System (Initial Water Purchase Contract) and began to make uninterruptible service available to the purchasers ("System Operation Date").

Period	Rate/Million Gallons
[7/1/93 to 1/31/94 (Coverage 115 percent)	$740.40
2/1/94 to 6/30/94 (Coverage 120 percent)	$772.82]
7/1/94 to 6/30/95 (Coverage 120 percent)	**$765.75**

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

7:11-4.9 Standby charge

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of **the** purchaser's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction debt thereof.	[$323.93] **$350.34** plus annual service assessment rate established in N.J.A.C. 7:11-4.4.

(a)

OFFICE OF ENERGY

Certificate of Need for Electric Facilities

Proposed Readoption: N.J.A.C. 14A:14

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 48:7-16 through 25 and Reorganization Plan No. 002-1991, paragraph 2, as set out under N.J.S.A. 13:1D-1.

DEPE Docket Number: 61-93-11/287.

Proposal Number: PRN 1993-669.

Submit written comments, identified by the Docket Number given above, by January 19, 1994 to:

Janis E. Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules governing the issuance of Certificate of Need for Electric Facilities, N.J.A.C. 14A:14, are set to expire on January 30, 1994. As required by the Executive Order, the Department of Environmental Protection and Energy (Department) has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department is therefore proposing to readopt this chapter without amendments.

The rules were originally adopted effective February 6, 1984, pursuant to the Electric Facility Need Assessment Act (P.L. 1983 c.115), N.J.S.A. 48:7-16 through 25. The Act recognized the obligation of the State to assure safe and adequate supplies of electricity for New Jersey residents without unnecessarily burdening residents with the costs associated with construction of facilities which would generate power in excess of that required. Pursuant to Reorganization Plan 002-1991, paragraph 2, as set out under N.J.S.A. 13:1D-1, the Commissioner of the Department of Environmental Protection and Energy is responsible for issuing the certificate. The readoption of the rules is necessary to ensure continued oversight of proposed public utility capacity increases.

The Certificate of Need process described in the rules ensures that prior to a public utility's constructing new capacity, the Department will perform a comprehensive review to confirm the need for the facility and to determine that no more efficient, economical, or environmentally sound alternative is available. To date, only one Certificate of Need application has been submitted, and it was withdrawn prior to completion of the review. Therefore no Certificate of Need has been issued.

The Certificate of Need process has recently been subject to scrutiny and criticism by many interested parties including the public utilities and the Board of Regulatory Commissioners and was in fact the focus of a recent report issued by the Advisory Council on Electricity Planning and Procurement entitled, "Recommendations for an Enhanced Electric Utility Planning and Procurement Process." Council members included representatives of the Board of Regulatory Commissioners, the Department of Environmental Protection and Energy, Department of the Public Advocate—Division of Rate Counsel, public utilities, non-utility generators, New Jersey Business and Industry Association, energy service companies and environmental groups. The Council was created to review

and recommend changes in the current means of regulating the electric utility industry. The Council that prepared the report was chaired by Commissioner Carmen Armenti of the Board of Regulatory Commissioners (BRC). The Council first met in July 1992 and issued its final report in July 1993, at which point it was disbanded.

The Council evaluated existing electricity planning, procurement and regulatory processes and recommended changes in these processes. The Council spent a significant amount of its efforts evaluating electricity planning and supply options and determining how the regulatory controls on utility and non-utility generators should be exercised. One such means is the Certificate of Need process. Therefore, the Council's recommendations will affect the Certificate of Need rules.

The Energy Facility Needs Assessment Act applies only to public utilities. In the past decade there has been a significant increase in the number of companies other than public utilities entering the field of electricity generation and supply. These include non-utility generators as well as companies that provide assistance in developing plans to reduce end users' needs for electricity. These companies compete with the public utilities in the energy supply market. While the utility and non-utility generators are providing the same service, that is, generating electricity, they are treated differently under State regulations. These differences were defined by the Advisory Council and include the Certificate of Need process.

The Advisory Council addressed the Certificate of Need process in the recommendations included in its final report. While the findings of the Council are not legally binding, they do represent a consensus of the major interested parties with regard to the direction of electric utility regulation. It is important to note that while the report does include recommendations for changes in the Electric Facility Need Act, it also stresses the need to maintain the original objectives of the Act.

With regard to the existing Electric Facility Need Assessment Act, the Advisory Council recommended in its report that certain of the specific requirements of the Act be replaced by an Integrated Resource Plan (IRP) process. In addition, the report suggests that further changes to the Act may be possible once a formal process for procurement of electricity supply sources is established. The report recommends that once the IRP and supply-side procurement processes are defined and formalized, the DEPE and BRC should cooperate to develop and work with the Legislature to make the necessary changes to the Act. It is stressed in the report that such changes should not be initiated until such time as the replacement programs, that is, IRP and supply-side procurement, are finalized to avoid subjecting the regulated community to duplicate processes.

The findings of the Advisory Council indicate a need to eventually replace the requirements of the Electric Facility Need Assessment Act with a process which is more efficient and which reflects the recent changes in the electric supply sector, specifically the increased competition. It is anticipated that the legislative initiative will be initiated within the year. For that reason, the Department has determined that it is not in the best interest of the regulated community or the State to entertain any substantive changes to the Certificate of Need rules at N.J.A.C. 14A:14 at this time. Upon enactment of changes to the Act, the Department will propose the necessary revisions to the rules.

The rules include certain outdated references to the Department of Energy, the Division of Energy Planning and Conservation, Department of Commerce, Energy and Economic Development and the Board of Public Utilities. As part of the future revision to the rules these references will be updated to reflect the current names and organizational responsibilities.

The specific provisions of the rules at N.J.A.C. 14A:14 are outlined below:

Subchapter 1, General Provisions, describes the scope of the rules and the specific requirements for the format of any submissions required under the rules. In addition, this subchapter provides that proprietary information submitted pursuant to the chapter shall be entitled to confidential treatment.

Subchapter 2, Definitions, defines construction to exclude those activities not directly related to installation of permanent equipment or structures. Electric facility is defined to include units with combined production of 100 megawatts or more, or units added to an existing facility which will increase installed capacity 25 percent or by more than 100 megawatts. The means for measuring size in megawatts is specified. Other terms defined to provide specifics on calculating the capacity include installed reserve, load, operating flexibility and site. Those terms related to the administration of the rules, including Board, Commissioner, Division, and State instrumentality, are also defined.

Subchapter 3, Notice of Intent, describes the schedule of submissions for a Notice of Intent, which precedes the Certificate of Need application. The procedure outlined specifies the filing of a Notice of Intent at least one year prior to the anticipated application submission. The requirements for the contents of the Notice of Intent are specified and include a description of the proposed facility, an explanation of the need for the facility and a description of the alternatives to the proposed facility. This subchapter also describes the procedures to be followed by the Commissioner of the Department upon receipt of the Notice of Intent, which include holding public informational hearings, publishing interim reports on the issues raised, and issuing an Early Assessment Report.

Subchapter 4, Certificate of Need, describes the minimum contents for the application for the Certificate of Need, requires the applicant to submit an application fee of $250,000, requires that the Department submit the application for comment to other State agencies, and requires the Department to transmit the application to the Office of Administrative Law for review in a contested case hearing. In addition, the subchapter outlines the process by which the Department will approve, conditionally approve or deny the application for a Certificate of Need following the decision of the administrative law judge.

Subchapter 5, Periodic Review, specifies that all granted Certificates of Need be reviewed every three years until the electric facility is placed in operation.

Social Impact

The proposed readoption does not make any substantive changes to the rules and therefore will not result in any change in the existing process for electricity planning. The original intent of the rules was to provide for the comprehensive review of utility plans to increase capacity to ensure that such increases were in fact needed. The need for this oversight has not diminished and therefore the readoption will continue to have the intended positive social impact of protecting the rate payers while ensuring that supply needs are met.

Economic Impact

The proposed readoption will not result in any economic impact beyond that of the existing rules. An applicant for a certificate of need incurs application submission and notice costs and a fee of up to $250,000. A positive economic impact results from the regulatory review designed to ensure that a proposed capacity increase will not result in a financial burden to rate payers. This positive economic impact will be maintained. The application fee is intended to offset the Department's cost of review.

Environmental Impact

The proposed readoption will continue to have a positive environmental impact. Subjecting public utility plans for construction of electric generating facilities to the scrutiny required by these rules ensures not only that no unnecessary facilities are built, but also that no more efficient or environmentally sound alternative is available. Since electric generating facilities may affect the environment via air emissions, water discharges, land use, water use and other means, these environmental impacts are lessened by ensuring that such facilities are built pursuant to these regulations.

Regulatory Flexibility Statement

The proposed readoption without amendments will not impose any burden on small businesses. The rules apply only to public utilities which are not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14A:14.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Rules Implementing the Higher Education Equipment Leasing Fund Act

Reproposed New Rules: N.J.A.C. 9:17

Authorized By: Board of Higher Education,
Edward D. Goldberg, Chancellor and Secretary.
Authority: N.J.S.A. 18A:72A-3 and 5 and P.L. 1993, c.136.
Proposal Number: PRN 1993-676

Submit written comments by January 19, 1994 to:
Dr. Jeanne Oswald
Administrative Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 9:17, rules implementing the Higher Education Equipment Leasing Fund Act, was proposed and published in the November 1, 1993 New Jersey Register at 25 N.J.R. 4887(a). Subsequent to the proposal it was determined that the proposed rules were not exactly as the Board had adopted them and that there was a need for further clarification at N.J.A.C. 9:17-1.3 of the information required on an applicant's proposal. Therefore the rules are being reproposed at this time. The following proposal supersedes the above mentioned proposal.

On June 5, 1993, P.L. 1993, c.136 was enacted. The law establishes a higher education equipment leasing fund in the New Jersey Educational Facilities Authority. The act authorizes the Authority to issue bonds in a total outstanding principal amount of $100,000,000 to finance the purchase of scientific, engineering, technical, computer, communications and instructional equipment for lease to New Jersey public and independent institutions of higher education.

The Educational Facilities Authority may enter into lease agreements with the institutions to finance the acquisition of the equipment by the institutions. The Board of Higher Education is required to approve all Equipment Leasing Fund purchases prior to the execution of a lease agreement between the college or university and the Authority. A brief summary of each section follows:

N.J.A.C. 9:17-1.2 consists of definitions pertinent to the rules.

N.J.A.C. 9:17-1.3 delineates the process for purchase of equipment under the Higher Education Equipment Leasing Fund and specifies the information that must be included in proposals to the Board of Higher Education.

N.J.A.C. 9:17-1.4 delineates how the principal and interest on bonds will be paid and specifies action that will be taken if an institution fails to pay the appropriate amounts due to the Authority.

N.J.A.C. 9:17-1.5 delineates the allocation of the first $100 million among the sectors and specifies how future allocations and reallocations will be determined. The section also specifies that the Chancellor will establish priority areas for the use of funds for emerging needs programs. Institutions may apply for emerging needs funds, and the Chancellor will make recommendations for funding approval to the Board of Higher Education.

N.J.A.C. 9:17-1.6 summarizes reporting requirements for the Authority and the Board of Higher Education.

Social Impact

In order to be prepared for careers in a world of rapidly changing technology, it is critically important that New Jersey students be educated using state of the art instructional equipment. The Equipment Leasing Fund will be used to support instructional, computing or research requirements and to meet emerging technology needs. All public colleges and universities and independent institutions eligible to receive public funds under the Independent Colleges and Universities Act are eligible to purchase equipment through the Fund.

Economic Impact

Higher education plays a vital role in the economic development of the nation and of the State by providing the education and training of the workforce of the future and by advancing science and technology through research; over 340,000 students are enrolled in New Jersey colleges. New Jersey has an intense concentration of high technology industry and research facilities and the headquarters of some of the world's most productive corporations. As the State enters the last decade of the 20th century, it has become obvious that New Jersey's institutions of higher education will have to change and improve their educational equipment in order to not only prepare students to secure jobs in a "high-tech" world, but to create additional jobs as well. The Equipment Leasing Fund will provide a stable, ongoing mechanism to ensure that the need to upgrade equipment in response to technological advancements is met. The rules reflect the allocation of the authorized total outstanding principal amount of $100,000,000.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed rules do not impose reporting, recordkeeping or other compliance requirements on small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules apply only to colleges and universities.

Full text of the proposed new rules follows:

CHAPTER 17
RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION EQUIPMENT LEASING FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

9:17-1.1 Purpose and authority

The rules in this chapter are established to implement the Higher Education Equipment Leasing Fund Act, P.L. 1993, c.136 (the "Amending Act"), an act supplementing the New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72-1 et seq. (collectively the "Act").

9:17-1.2 Definitions

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

"Act" means the New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72A-1 et seq.

"Amending Act" means the Higher Education Equipment Leasing Fund Act, P.L. 1993, c.136.

"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority shall be given by law.

"Board" means State Board of Higher Education.

"Bond" or "bonds" means bonds or notes of the Authority issued pursuant to the authority granted by the Amending Act.

"Chancellor" means the Chancellor of Higher Education.

"Emerging needs program" means a degree program, function or activity at one or more public or private institutions of higher education directed to meeting new and advanced technology needs within an existing academic program, or to support new academic programs in science and technology or to support new instructional technologies, as solely determined by the Board.

"Equipment" means any property consisting of, or relating to, scientific, engineering, technical, computer, communications or instructional equipment for use by institutions.

"Institution" means a public or private institution of higher education as defined in the Act.

"Lease agreement" means any lease agreement by and between the Authority and any participating institution relating to the Higher Education Equipment Leasing Fund.

9:17-1.3 Process for purchase of higher education equipment

(a) Upon approval by the governing board of an institution or an entity authorized to act on their behalf, participating institutions shall propose equipment purchases to the Board to be acquired with the proceeds of bonds. No proposal shall be for an amount less than 25 percent of the respective institution's total allocation pursuant

to N.J.A.C. 9:17-1.5 or $1,000,000, whichever is less, unless it is for the final portion of its allocation. Proposals shall include information concerning:

1. A copy of the governing board or authorized entity resolution approving the institution's purchase and a brief description of the process used to generate the request;
2. How the proposed purchase relates to the current institutional mission and plans;
3. The program or function to be served by the equipment, including specific educational objectives to be met;
4. The equipment and number of units to be purchased and the estimated cost of the equipment to be purchased;
5. The useful life of the equipment determined either by reference to the Internal Revenue Service's Class Life Asset Depreciation Range System set forth in Revised Procedure 87-56, as amended, supplemented or superseded, or by appraisal of any independent engineering or accounting firm as appropriate;
6. The estimated timetable for the acquisition and installation of the equipment;
7. The source of revenue to pay the institution's annual share of principal and interest of bonds issued to acquire equipment for use by the institution; and
8. Other information as may be required by the Chancellor on a case by case basis and relating to a specific proposal.

(b) Proposals shall be submitted in a format provided by the Chancellor.

(c) Descriptions of the equipment submitted in the proposal may be illustrative, and the equipment to be purchased may be changed as a result of the bidding processes, advances in technology or for other reasons provided that the equipment is approved by the governing board of the affected institution and the Board.

(d) Equipment to be purchased must be approved at a public meeting of the Board.

(e) The total dollar amount of purchases approved for any institution shall not exceed the institution's allocation as approved by the Board.

(f) The Board shall forward to the Authority requests for equipment approved by Board resolution.

(g) Lease agreements with institutions for the lease-purchase of equipment approved by the Board shall require the respective institution to pay to the Authority 25 percent of the principal and interest on the bonds to be issued to finance the equipment purchase for the respective institution.

(h) The Authority shall not issue bonds to finance the equipment purchases with terms exceeding the useful life of the equipment to be purchased and in no case exceeding 10 years.

(i) No bonds shall be issued by the Authority without the prior written consent of the State Treasurer.

(j) Proceeds from the sale of bonds shall cover the cost of bond issuance and administrative costs of the program.

(k) Any purchase of equipment by an institution shall be in the name of the Authority. The Authority shall hold title to the equipment until the bonds issued to finance the purchases have been repaid whereupon title shall be transferred to the respective institutions at their cost.

9:17-1.4 Payment of principal and interest

(a) The State Treasurer shall contract with the Authority to pay to the Authority the amount necessary to pay the principal and interest on all bonds subject to annual appropriation.

(b) Each institution shall pay the Authority (or the bond trustee) 25 percent of the principal and interest on bonds deemed issued to acquire equipment for the institution and in accordance with its lease agreement.

(c) Upon receipt, the Authority (or the bond trustee) shall remit all such payments immediately to the State Treasurer.

(d) If an institution fails or is unable to pay to the Authority in full, when due, any such obligation of an institution to the Authority, an amount sufficient to satisfy the deficiency shall be retained by the State Treasurer from State aid or an appropriation payable to the institution. As used in this section, "obligation of an institution" means any amount payable by the institution under a lease agreement to meet principal and interest on the bonds issued to acquire equipment for the institution under this program. The Department shall notify the State Treasurer of the amount to be retained to satisfy the obligation of each institution. A copy of such notification shall be submitted to the Chancellor.

9:17-1.5 Allocation of funds

(a) The money deposited into the fund created pursuant to section 5 of the Amending Act shall initially be allocated in the following manner:

1. $24,000,000 for the leasing of equipment to State colleges;
2. $19,440,000 for the leasing of equipment to Rutgers, the State University;
3. $10,080,000 for the leasing of equipment to the University of Medicine and Dentistry of New Jersey;
4. $6,480,000 for the leasing of equipment to the New Jersey Institute of Technology;
5. $22,000,000 for the leasing of equipment to the county colleges;
6. $10,500,000 for the leasing of equipment to private institutions; and
7. $7,500,000 for the leasing of equipment for the emerging needs programs at institutions.

(b) The Board shall, by resolution, allocate funds to individual State colleges, county colleges, and private institutions of higher education within the sector allocations above.

(c) The Board may reallocate to any institution or to the "emerging needs program" any balance in the amounts authorized if the amounts are not committed within 18 months of the effective date of the Amending Act (June 5, 1993) or within 18 months of subsequent allocations by the Board. Funds will be considered committed when a lease agreement has been entered into between an institution and the Authority.

(d) No reallocation shall be made pursuant to (c) above if:

1. The request for approval has been received by the Board within 15 months of June 5, 1993 or within 18 months with respect to any amounts that are reallocated or subsequently allocated by the Board;
2. The facility in which the equipment will be housed is under construction or renovation;
3. Delays are the result of Federal, State, or local governmental approvals or regulatory requirements not attributable to the institution; or
4. Other compelling and documentable reasons exist as determined by the Board.

(e) An institution's inability to secure the necessary funds to pay the 25 percent principal and interest payments of bonds issued to finance equipment to such institution shall not constitute good cause for not committing funds as required in (c) above.

(f) The Chancellor shall contact all institutions to which funds have been allocated 15 months following such allocation to determine what, if any, funds will become available for reallocation at 18 months.

(g) The Board shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority pursuant to the Amending Act.

(h) The Chancellor shall periodically establish and notify institutions of priority areas for the use of funds for emerging needs programs to meet new and advanced technology needs or support new academic programs in science and technology. Institutions may submit an application for funds for a program within the priority areas. The Chancellor shall review applications on a case by case basis and make recommendations for Board approval to fund emerging needs programs.

9:17-1.6 Reporting requirements

The Authority shall report its equipment purchases to the Board once in each year in which equipment purchases are made. The Board then shall report to the Governor and the Legislature on equipment purchases that have been approved by the Board and financed through this program.

HUMAN SERVICES

(a)

JUVENILE MONITORING UNIT

Manual of Standards for Juvenile Detention Commitment Programs

Proposed Readoption with Amendments: N.J.A.C. 10A:33

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

Authority: N.J.S.A. 2A:4A-43(c) and Governor's Reorganization Plan No. 001-1993.

Proposal Number: PRN 1993-674.

Submit comments by January 19, 1994 to:

Joseph DeJames, Director
Department of Human Services
Juvenile Monitoring Unit
CN 700
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed rules are a readoption with amendments of N.J.A.C. 10A:33 originally adopted July 16, 1984 and again in 1989. The only substantive change in these rules is that the regulatory jurisdiction for county-operated juvenile detention facilities changed on July 1, 1993 from the Department of Corrections to the Department of Human Services. This jurisdiction was transferred pursuant to the Governor's Reorganization Plan (No. 001-1993). Accordingly, while the New Jersey juvenile code (N.J.S.A. 2A:4A-20 et seq.) still refers to the Department of Corrections' responsibility with regard to juvenile detention facilities, this responsibility was transferred to the Department of Human Services by way of the Reorganization Plan.

The juvenile code provides for short-term (60 days maximum) commitment of juveniles adjudicated delinquent to county-operated juvenile detention facilities that are approved by the State Department of Human Services (N.J.S.A. 2A:4A-43c). A juvenile detention commitment program is discretionary and currently eight counties have approved programs. In 1992, only 254 juveniles were committed to juvenile detention facilities Statewide under the program, compared to 11,664 juveniles admitted to juvenile detention facilities on a predispositional basis.

While the juvenile code mandates county responsibility to provide care and custody for juveniles awaiting court disposition of delinquent offenses, additional services and care are necessary in those juvenile detention facilities which desire to also accept adjudicated delinquents for short-term rehabilitation. The rules proposed for readoption establish additional minimum standards which must be met by all juvenile detention facilities seeking to establish and operate such a juvenile detention commitment program.

The rules proposed for readoption do not alter or replace the current minimum requirements established for juvenile detention facilities as delineated in the Manual of Standards for Juvenile Detention Facilities. Rather, the minimum standards for commitment programs will be required in addition to the current standards in applicable facilities.

The chapter proposed for readoption consists of 11 subchapters, which cover the purpose of the rules and definitions of terms; recitation of legal authority; county and Departmental eligibility; the adoption by reference of the N.J.A.C. 10A:32 standards; population capacity; monitoring, inspection and evaluation; submission of a program proposal; admissions; classification; program plan and goals; and program requirements.

Social Impact

It is anticipated that the rules proposed for readoption will have a positive social impact on the juvenile detention facilities, juveniles in residence, and the general community. The establishment of these minimum standards of care and service will ensure that only those facilities which provide an acceptable program rehabilitation and have adequate space will be permitted to receive juveniles under the juvenile detention commitment program.

Economic Impact

The economic impact of the rules proposed for readoption is expected to be very minimal. The standards do not require counties to develop juvenile detention commitment programs or to provide such services in their juvenile detention facilities. The decision to provide this Family Court dispositional option is voluntary on the part of each county. In 1992, only 254 juveniles were committed to juvenile detention facilities statewide under the program, compared to 11,664 juveniles admitted to juvenile detention facilities on a predispositional basis. Furthermore, the quality of care and services provided in most of the facilities which are eligible to develop a juvenile detention commitment program already exceeds the minimum standards currently in effect. Therefore, the cost to implement the proposed additional standards should be negligible.

Regulatory Flexibility Statement

There is no regulatory flexibility analysis associated with this proposed readoption since the facilities impacted by the proposed rules are county-operated and not small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:33.

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

10A:33-1.1 Purpose

In accordance with the [revised] New Jersey juvenile code[,] (N.J.S.A. 2A:4A-20, et seq.), juveniles adjudicated delinquent may [now] be sentenced to a term of incarceration of up to 60 consecutive days in county-operated juvenile detention facilities. **Until June 30, 1993 such facilities were regulated by the New Jersey Department of Corrections pursuant to N.J.S.A. 2A:4A-37 and N.J.S.A. 2A:4A-43(c). Effective July 1, 1993 the regulatory responsibility for county-operated juvenile detention facilities was transferred to the New Jersey Department of Human Services pursuant to the Governor's Reorganization Plan (No. 001-1993). Accordingly, while the juvenile code still refers to the Department of Corrections' responsibility with regard to juvenile detention facilities, this responsibility was transferred to the Department of Human Services by way of the Reorganization Plan.** Since the juvenile code specifically requires that the Department of [Corrections] **Human Services** certify all juvenile detention facilities which may be utilized for this new dispositional alternative, the Department has promulgated the minimum standards contained in this chapter which must be met by those facilities receiving adjudicated delinquents under [this Act] **the code**. The standards in this chapter are in addition to the existing Manual of Standards for Juvenile Detention Facilities located at N.J.A.C. 10A:32.

10A:33-1.2 Definitions

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

...

"Department" means the New Jersey Department of [Corrections] **Human Services**.

...

10A:33-2.2 Legal authority of Department

(a) N.J.S.A. 2A:4A-43c(1) provides that[, "If] **if** the juvenile detention facility in the county in which the juvenile has been adjudicated delinquent has a juvenile detention facility meeting the physical and program standards established pursuant to this subsection by the Department of [Corrections] **Human Services**, the court may, in addition to any of the dispositions enumerated in this subsection, incarcerate the juvenile in a youth detention facility for a term not to exceed 60 consecutive days. The Department of [Corrections] **Human Services** shall promulgate such rules and regulations from time to time as deemed necessary to establish minimum physical facility and program standards for the use of juvenile detention facilities pursuant to this subsection.["]

(b) N.J.S.A. 2A:4A-43c(2) provides that ["No] **no** juvenile may be incarcerated in any county detention facility unless the county

has entered into agreement with the Department of [Corrections] **Human Services** concerning the use of the facility for sentenced juveniles. Upon agreement with the county, the Department of [Corrections] **Human Services** shall certify detention facilities which may receive juveniles sentenced pursuant to this subsection and shall specify the capacity of the facility that may be made available to receive such juveniles; provided, however, that in no event shall the number of juveniles incarcerated pursuant to this subsection exceed 50[%] **percent** of the maximum capacity of the facility.["]

10A:33-3.2 Departmental eligibility

(a) Only those counties in which the population of the approved juvenile detention facility has consistently been less than the maximum population capacity established by the Department of [Corrections] **Human Services** are eligible to participate in the [juvenile detention commitment program] **Juvenile Detention Commitment Program.**

1. (No change.)

(b) Only those counties which have been consistently in substantial compliance with the Manual of Standards For Juvenile Detention Facilities[,] (N.J.A.C. 10A:32), as determined by the Department of [Corrections] **Human Services**, are eligible to participate in the [juvenile detention commitment program] **Juvenile Detention Commitment Program.**

10A:33-4.1 Adoption of standards

(a) (No change.)

(b) All juvenile detention facilities must be in compliance with both the Manual of Standards For Juvenile Detention Facilities (N.J.A.C. 10A:32) and the Manual of Standards For Juvenile Detention Commitment Programs (N.J.A.C. 10A:33) in order to be certified by the Department of [Corrections] **Human Services** to receive juvenile commitments.

10A:33-5.1 Juvenile detention commitment program

(a) Pursuant to N.J.S.A. 2A:4A-43c(2), the Department of [Corrections] **Human Services** shall specify the capacity of the juvenile detention facility that may be made available to receive sentenced juveniles.

1. Based upon the county's past and present juvenile detention needs, as determined by such factors as the number of admissions, length of stay, daily population count, peak population figures, etc., the Department of [Corrections] **Human Services**, in collaboration with the county, shall specify the maximum number of juvenile commitments which may be housed in the facility.

2. (No change.)

10A:33-5.2 Population statistics

Reports regarding population statistics, in such form and such frequency as shall be required by the Department of [Corrections] **Human Services**, shall be submitted to the Department of [Corrections] **Human Services.**

10A:33-6.1 Population and capacity monitoring

Based upon juvenile detention needs, as determined by population statistics reports and periodic, on-site population monitoring visits, the Department of [Corrections] **Human Services**, in collaboration with the county, may reduce or increase the number of spaces for juvenile commitments certified to be housed at the facility.

10A:33-6.2 Program inspection

(a) Based upon periodic inspection of the facility's physical plant and evaluation of the programmatic components, the Department of [Corrections] **Human Services** may modify or withdraw its certification of the facility for juvenile commitments.

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

10A:33-7.1 Program proposal submission

(a) Prior to certification of a facility to receive juvenile commitments, a program proposal shall be submitted to the Department of [Corrections] **Human Services** which shall include, but not necessarily be limited to, the following information:

1.-7. (No change.)

10A:33-8.2 Maximum juvenile detention facility population capacity

No juvenile, on either a pre-dispositional or juvenile detention commitment status, shall be admitted to a detention facility which has reached its maximum approved capacity for the entire facility, as designated by the Department of [Corrections] **Human Services.**

10A:33-8.3 Maximum Juvenile Detention Commitment Program population capacity

No adjudicated juvenile sentenced to a juvenile detention facility shall be admitted once the facility has reached its maximum approved capacity for the juvenile detention commitment program, as designated by the Department of [Corrections] **Human Services**, in collaboration with the county.

10A:33-11.2 Social services

(a) (No change.)

(b) In accordance with the maximum population capacity, as designated by the Department of [Corrections] **Human Services**, for both pre-dispositional juvenile detention and the juvenile detention commitment program, there shall be at least one full-time social worker employed for every 20 juveniles of the approved population capacity.

1. (No change.)

(c)-(f) (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled Eligibility Criteria; Exclusion of Income

Proposed Amendments: N.J.A.C. 10:69A-1.2 and 6.2

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

Authority: N.J.S.A. 30:4D-20, 21 and 24; P.L. 1992, c.30.

Proposal Number: PRN 1993-661.

Submit comments by January 19, 1994 to:

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

The agency proposal follows:

Summary

This proposal concerns an amendment to the regulations which will impact on the Pharmaceutical Assistance to the Aged and Disabled (PAAD) eligibility of certain Japanese Americans entitled to reparations from the Federal government.

Reparation payments will not be counted as income in determining PAAD eligibility. This amendment is needed to comply with the enactment of P.L. 1992, c.30 which specifically excluded reparations to Japanese Americans from countable income in determining PAAD eligibility.

A statement that accompanied the State legislation indicated (in part) that the "bill will ensure that Japanese American residents of New Jersey who receive the reparations to which they are entitled under Federal law are not ineligible for the PAAD program for reasons which would not render them ineligible for Federally funded benefit programs in this state."

Social Impact

These proposed amendments impact on PAAD applicants and beneficiaries entitled to Japanese American reparations from the Federal government. Reparation payments will be excluded from consideration as countable income for PAAD eligibility purposes. A very small number of additional senior and/or disabled individuals may be eligible for prescription coverage.

There will be virtually no impact on pharmacists who will fill prescriptions for PAAD beneficiaries in the usual manner.

Economic Impact

There is no change in the income eligibility standards for PAAD applicants. Single persons with incomes of $16,171 and married persons with incomes of $19,828 qualify for PAAD. Those PAAD applicants who receive reparation payments to Japanese Americans by the Federal government will have this income excluded when eligibility is being determined.

PAAD beneficiaries are required to pay a $5.00 co-payment for each prescription.

These amendments have no impact on pharmaceutical providers. There is no change in their reimbursement.

The Division does not anticipate there will be a significant group of eligibles who will be entitled to claim the income exemption. Therefore, there should be no change or minimal change in total PAAD program expenditures as a result of these amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required. The individuals affected by the amendment are certain PAAD applicants and beneficiaries and not small businesses as defined in the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-16 et seq.

The PAAD program is administered by the Division of Medical Assistance and Health Services, which is a governmental agency.

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

10:69A-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1.-9. (No change.)

10. Chapter 30, Laws of 1992, effective June 29, 1992.

[10.]**11.** (No change in text.)

(b) (No change.)

10:69A-6.2 Income standards

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

(c) All income, from whatever source derived, is considered in determining eligibility for the purposes of PAAD. Jointly owned income sources will be allocated according to degree of ownership.

1. (No change.)

2. Sources of income which are excluded in considering eligibility for PAAD are as follows:

i.-v. (No change.)

vi. Agent Orange payments[.];

vii. Reparation payments to Japanese Americans by the Federal Government pursuant to sections 105 and 106 of the Civil Liberties Act of 1988, P.L. 100-383 (50 U.S.C. App. 1989b-4 and 1989b-5).

(d)-(i) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Requirements for Residential Child Care Facilities

Money and Allowance

Proposed Amendment: N.J.A.C. 10:127-6.5

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

Authority: N.J.S.A. 30:1-14 and 30:4C-4.

Proposal Number: PRN 1993-671.

Submit comments in writing by January 19, 1994 to:

Richard Crane, Chief
Bureau of Licensing
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 30:1-14 and 30:4C-4, the Department of Human Services is authorized to inspect, evaluate and approve publicly or privately operated facilities that provide board, lodging, care and treatment services for children who are placed and/or financed by the Division of Youth and Family Services or any other New Jersey State agency. The proposed amendment constitutes a minor substantive change to the existing rules, N.J.A.C. 10:127, the Manual of Requirements for Residential Child Care Facilities, which was recently repealed and adopted on August 16, 1993, and will expire on August 16, 1998.

During the final review of the recently adopted Manual of Requirements, the Division discovered an error that needs to be corrected. The manual specifies that residential facilities must provide opportunities for children to receive or earn an allowance. When a child damages the building or the facility's property, the facility is permitted to withhold a portion of the child's allowance as restitution for the damage. The manual limits the portion of the child's allowance that may be withheld, so that the child is not completely deprived of all allowance. The error appeared in the amount of allowance that a facility is permitted to withhold as restitution payment.

Specifically, the manual, as adopted, specifies at N.J.A.C. 10:127-6.5(b)2 that the restitution payments shall not exceed 30 percent of a child's weekly income from allowance. However, the Division intended to set a limit of 50 percent of a child's weekly income from allowance. The limit of 30 percent appeared in the proposal and adoption due to an overlooked typographical error. The proposed amendment restores the limit to 50 percent as originally intended.

The adopted rules constitute a comprehensive revision of the previous Manual of Requirements for Residential Child Care Facilities, which expired on August 26, 1993. The adopted new rules were developed with extensive input from the community, including representatives from residential facilities, the legal profession and child advocacy groups, including the New Jersey Association of Children's Residential Facilities (NJACRF). An Ad Hoc Citizens Advisory Committee was established by the Division to review and comment on the new rules prior to their adoption. The Advisory Committee discussed the issue of restitution payments and agreed that a limit on such payments should be set at 50 percent of a child's weekly income from allowance. The previous manual set no limit on restitution payments, so that all of a child's allowance could have been withheld. The proposed amendment restores the 50 percent limit that was originally agreed on by the Advisory Committee and supported by the Division.

Social Impact

The Division anticipates that the proposed amendment to this chapter will have a positive impact on residential child care facilities by restoring the limit on withholding a child's allowance that was previously agreed on by the representatives of such facilities on the Advisory Committee and the NJACRF. The proposed amendment will also restore consistency within the chapter, and between this chapter and other rules promulgated by the Division.

Specifically, the adopted chapter contains a separate subchapter (N.J.A.C. 10:127-10) that addresses services for pregnant and parenting adolescents. This subchapter sets a limit on the portion of an adolescent's allowance that may be withheld as restitution for damages caused by the adolescent or her infant. This limit is set at 50 percent of the adolescent's weekly income, which is consistent with the limit in the proposed amendment. In addition, the Division's Manual of Requirements for Children's Group Homes (N.J.A.C. 10:128), was adopted on February 19, 1991. This chapter also limits restitution payments to 50 percent of a child's weekly income (N.J.A.C. 10:128-6.5(b)2). The proposed amendment will establish a consistent limit on such payments for children served in various kinds of programs regulated by the Division.

Economic Impact

The proposed amendment will have a minimal economic impact on residential child care facilities and on the children served by such facilities. The amendment slightly reduces the facility's costs for repairing damages, and slightly increases the costs to be borne by the child responsible for the damages. In most cases, however, the total amount of a child's allowance is only a few dollars per week, so that the difference between the adopted limit of 30 percent and the proposed limit of 50 percent of a child's weekly allowance will typically amount to less than

$1.00 per week. The proposed amendment will only affect those children that damage the facility and those facilities that choose to withhold restitution payments, so that the economic impact will be limited. The proposed amendment will have no impact on payments for the children's placement by the Division or any other State agency.

Regulatory Flexibility Analysis

Some 45 residential child care facilities are regulated by the Division, and all of these are considered small businesses as defined under N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. It is not appropriate or necessary to establish differential rules that would apply to larger or smaller entities, as all regulated entities are considered small businesses. Therefore, compliance with the proposed amendment is required, without variation, in order to ensure that the rules are consistently met. The proposed amendment will not result in any administrative or capital costs, and will not necessitate the use of outside professional services by any residential facilities.

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

10:127-6.5 Money and allowance

(a) (No change.)

(b) The facility shall not require a child to assume responsibility for expenses for his or her care and treatment, except for amounts needed to pay for damage done to the facility by the child.

1. (No change.)

2. The restitution payments shall not exceed [30] **50** percent of a child's weekly income from allowance.

3.-4. (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES
Review of Children in Out-of-Home Placement
Proposed New Rules: N.J.A.C. 10:133H-3

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

Authority: N.J.S.A. 30:4C-4(h), 30:4C-26a and 30:4C-50 et seq.

Proposal Number: PRN 1993-670.

Submit written comments by January 19, 1994 to:

Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Youth and Family Services is in the process of placing the Division's policies into the New Jersey Administrative Code. The Division has chosen to accomplish this by convening a group to review and put into rules the Division's policies which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public. The group, known as the Operations Policy to Rules (OPTR) Group, is community-based, with representatives from private non-profit groups which represent the affected public and government agencies.

This proposal is a product of the OPTR project.

Based on the premise that every child deserves a safe, stable and permanent home in which to grow up, the Division has determined that all children placed out of home should have a semiannual review of that placement. The purposes of each placement review are to determine whether the placement should continue and whether the placement plan is appropriate or should be revised.

These reviews benefit the child and his or her parents by making sure that those persons know what the plan is, evaluate progress toward the child being placed in a permanent home and have the opportunity to express their opinions.

The Division is working on a number of rules proposals with the OPTR Group. Pieces move through the OPTR process at different speeds, depending on their complexity and how controversial the material is within the Group. This proposal, which the Division believes should logically be the third subchapter of Chapter 133H, is ready for proposal before subchapters 1 and 2. Therefore, the Division reserves subchapters 1 and 2 for the topics of Placement Selection and Authorization for Placement: Voluntary Consent of Parent or Court Order.

A summary of the proposed rules follows:

Proposed N.J.A.C. 10:133H-3.1 states the source of the Division's statutory authority to promulgate these rules.

Proposed N.J.A.C. 10:133H-3.2 establishes the scope of these rules.

Proposed N.J.A.C. 10:133H-3.3 references the definitions used in the proposed rules.

Proposed N.J.A.C. 10:133H-3.4 states the purpose of having a placement review.

Proposed N.J.A.C. 10:133H-3.5 states what information the Division considers during a placement review.

Proposed N.J.A.C. 10:133H-3.6 states when the Division conducts a placement review.

Proposed N.J.A.C. 10:133H-3.7 states who the Division notifies about the date, time and location of the placement review.

Proposed N.J.A.C. 10:133H-3.8 describes how the placement review is conducted.

Proposed N.J.A.C. 10:133H-3.9 states the Division's responsibility to provide information to the Child Placement Review Board.

Proposed N.J.A.C. 10:133H-3.10 establishes when the Division reviews the placement of a child placed for adoption.

Proposed N.J.A.C. 10:133H-3.11 indicates the types of living arrangements which are subject to placement review.

Proposed N.J.A.C. 10:133H-3.12 states the types of living arrangements which are not subject to placement review.

Proposed N.J.A.C. 10:133H-3.13 states when the Division ceases to provide information to the Child Placement Review Board.

Social Impact

In June, 1993, the Division had 7,934 children in all types of out-of-home placement. Each of these children, their parents, legal counsel for the child, the parent and the Division, if any, the child's out-of-home placement provider and the Child Placement Review Board are affected by these rules, as each is invited to the regularly scheduled placement review.

While the Division is already conducting placement reviews of children in placement, these rules will allow anyone who may be involved in these placement reviews to know what the process is, including their rights and responsibilities. Requiring the placement reviews through regulations helps to assure that they take place regularly and cover certain information. The impact of these rules will be that people with children placed with the Division will have the opportunity to obtain and participate in placement reviews in a knowledgeable way.

The projected reaction to these rules is positive because these rules have been developed with the OPTR Group, which represents a wide array of interested persons and organizations.

Economic Impact

The Division does not expect any economic impact from the adoption of these rules, as the proposed rules state current Division policy. The proposed rules add no new requirements on Division operations that would require additional capital improvements or expenditures for staff or equipment on the part of the Division or any individual.

The Division has eight persons whose full-time job is to conduct placement reviews and others who conduct placement reviews on a part-time basis. In addition, direct service staff must prepare documentation for and attend placement reviews as an integral part of their many duties. The cost of this particular task cannot be estimated with any degree of accuracy.

The Federal Adoption Assistance and Child Welfare Act of 1980 requires that for a state to receive Federal reimbursement for a child in out-of-home placement, a court or administrative review of the out-of-home placement must take place at least every six months. These rules, when adopted, will help to ensure that these placement reviews take place as scheduled. New Jersey will continue to be eligible for Federal funding, which was $18.4 million for foster care and $4.9 million for adoption in 1992.

Regulatory Flexibility Statement

Neither the Division nor clients receiving Division services is considered a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed new rules do not impose

reporting, recordkeeping, or compliance requirements on small businesses. Therefore, a regulatory flexibility analysis is not necessary. These new rules state the Division's policy on reviews of children in placement.

Full text of the proposed new rules follows:

CHAPTER 133H
GENERAL PLACEMENT REQUIREMENTS

SUBCHAPTER 1. PLACEMENT SELECTION (RESERVED)

SUBCHAPTER 2. AUTHORIZATION FOR PLACEMENT: VOLUNTARY CONSENT OF PARENT OR COURT ORDER (RESERVED)

SUBCHAPTER 3. REVIEW OF CHILDREN IN OUT-OF-HOME PLACEMENT

10:133H-3.1 Authority

The Division has the authority to promote the regular review of each child's out-of-home placement in order to provide the opportunity for eventual return to his or her home or out-of-home placement in an alternative permanent home, pursuant to N.J.S.A. 30:4C-50 et seq.

10:133H-3.2 Scope

The provisions of this subchapter shall apply to the Division and to each child placed by the Division, each parent, any legal counsel for the child, the parent or the Division, and each out-of-home placement provider. The provisions of this subchapter shall not apply to those situations cited in N.J.A.C. 10:133H-3.12.

10:133H-3.3 Definitions

The definitions in N.J.A.C. 10:133-1.3 are hereby incorporated in this subchapter by reference.

10:133H-3.4 Purpose of the placement review

(a) The purpose of a placement review shall be to determine:

1. Whether the out-of-home placement should continue, consistent with the provisions of 10:133H-3.5; and

2. Whether the placement plan required by N.J.S.A. 30:4C-55 is appropriate or should be revised, including specifically:

i. Whether the case goal is still appropriate or should be modified, in accordance with the considerations set forth in N.J.A.C. 10:133C-4.6;

ii. Whether the intermediate objectives relating to the case goal are appropriate or should be modified;

iii. Whether the statement of the duties and responsibilities of the Division, the parent, the out-of-home placement provider, and the child, if age appropriate, including the sevices to be provided by the Division to the child, the parent, and the out-of-home placement provider, should be modified;

iv. Whether the Division has made reasonable efforts to return the child home, including the provision of visitation in accordance with the applicable law;

v. Whether the Division has made diligent efforts to locate family members who may be willing and able to care for the child; and

vi. Whether the continued out-of-home placement of the child is in the best interest of the child.

10:133H-3.5 Determination of whether out-of-home placement should continue

(a) In deciding whether the out-of-home placement should continue, the Division shall consider and determine the following:

1. Whether the circumstances and reasons originally necessitating the out-of-home placement of the child continue to exist or if additional or different circumstances have occurred which support continued out-of-home placement;

2.Whether the Division in the provision of services has made every effort to return the child home and the failure to achieve that return home is not due to a lack of appropriate Division services or actions, as specified in the case plan, see N.J.A.C. 10:133D-2;

3. Whether the Division has provided ample opportunity for visitation between the child and parent, siblings and relatives, so as to maintain the parent-child and family relationships;

4. Whether continued out-of-home placement serves the best interest of the child better than returning home;

5. Whether a less or more restrictive out-of-home placement would better meet the child's needs;

6. Whether an out-of-home placement in closer proximity to the child's family is available and if it would better serve the child's needs; and

7. Whether efforts have been made to place siblings together.

10:133H-3.6 Frequency of placement reviews

(a) The Division shall conduct a placement review between six and a half and seven and a half months from the date of placement and annually thereafter.

(b) The Division placement review schedule shall alternate with the review schedule of the Child Placement Review Board which is within 45 days following the child's out-of-home placement, and annually thereafter. Thus, out-of-home placement of each child is reviewed no less frequently than once every six months.

10:133H-3.7 Notice of Division placement review

(a) The Division shall provide adequate prior written notice of the date, time and location of the placement review to the parent, the out-of-home placement provider, the child, if age appropriate, legal counsel for the child, the parent, and the Division if applicable, and the Child Placement Review Board.

(b) In addition to those persons cited in (a) above, the Division may provide prior written notice of the date, time and location of the placement review to another person(s) or professional(s) providing care or services to the child beyond those services provided by the Division.

(c) Each person invited to the placement review shall be entitled to attend and participate in the placement review to the extent deemed appropriate by the Division and in concert with the consent of the parent. In the absence of personal attendance, the invited person may submit information in writing to the Division concerning the case goal and case plan for the child.

10:133H-3.8 Convening and conducting the Division placement review

(a) The Division placement review shall be convened and conducted by a Division representative as defined in N.J.A.C. 10:133-1.3, who has no responsibility for case management or delivery of service to the child who is the subject of the placement review or to the child's parent.

(b) Division representatives who participate in the Division placement review shall include the designated Division representative who conducts the placement review, the Division representative having direct service responsibility for the child, and that Division representative's supervisor. When the Division representative for the parent is different from that for the child, then that Division representative shall also be present at the placement review or submit information about the parent's situation or circumstances to the Division representative conducting the placement review.

(c) The Division representative conducting the placement review shall ensure that the following are assessed or determined at the placement review:

1. The circumstances that necessitated the out-of-home placement and the efforts made by the Division to prevent out-of-home placement;

2. The proximity of the child's out-of-home placement to his or her own home and the efforts made by the Division to provide continued contact between the child, parent, and siblings not residing with the child;

3. Whether the continued out-of-home placement of the child is in the child's best interest;

4. Whether the child is making an adequate adjustment to the out-of-home placement, as indicated by the child's behavior;

5. Whether returning the child to his or her own home is contrary to the child's welfare;

6. The current objectives of the case plan and whether they are being implemented and are likely to lead to achieving the case goal;

7. Whether the child's case goal is the most likely to meet his or her needs and whether progress is being made toward its achievement;

8. Whether the services the Division is providing to the child, his or her parent, and the out-of-home placement provider meet the identified service needs;

9. Whether the Division, parent and out-of-home placement provider are fulfilling their respective responsibilities in accordance with the case plan;

10. Whether the parent and the Division are maintaining the visitation schedule;

11. Whether obstacles exist that are preventing achievement of the case goal and the efforts being made by the Division to alleviate the obstacles;

12. Whether progress is being made to identify, search for, and assess relatives of the child in order to determine their appropriateness and willingness to care for the child;

13. Whether the child has siblings in out-of-home placement, what the case plan and case goal are for each of them, and what efforts the Division is making to place the siblings together until they can be reunited with their parent;

14. Whether recommendations by the Child Placement Review Board or court orders are being followed; and

15. The time frame and conditions required for return of the child to his or her own home or an alternate permanent living arrangement.

(d) The Division shall inform the parent and the child, if appropriate, of the outcome of the Division's placement review, except that those persons cited in N.J.A.C. 10:133H-3.7(b) may receive only that information from the placement review which has a direct effect on the care or services being provided by that person or professional.

(e) The Division representative who conducts the placement review shall share critical case information with the office management staff following the placement review.

10:133H-3.9 Division responsibility to the Child Placement Review Board

(a) Pursuant to N.J.S.A. 30:4C-50 et seq., the Division shall provide the following information in its notice of out-of-home placement to the Family Court within five calendar days of a child's out-of-home placement:

1. The reasons for the out-of-home placement;
2. The Division's efforts to prevent out-of-home placement;
3. The short-term case plan;
4. The case goal; and
5. The names and addresses of all parties, Division and non-Division, who have direct responsibility for or interest in the child.

(b) The Division shall submit to the Child Placement Review Board complete and relevant case information for its initial 45-day review and for its annual review.

(c) Subsequent to the initial placement review by the Division between months six and a half and seven and a half of a child's out-of-home placement, the Division shall submit to the Child Placement Review Board complete and relevant case information. The Division shall continue to submit this information prior to the annually scheduled Child Placement Review Board review.

10:133H-3.10 Review of adoption placement

When a child is legally available for adoption and in a selected adoption home or the consent to foster parent adoption is signed by the office manager, the Division shall continue to conduct a placement review no less frequently than once every six months. Since the Child Placement Review Board shall suspend its review, the Division shall submit to the Child Placement Review Board a status report once every four months stating the progress being made toward adoption finalization.

10:133H-3.11 Living arrangements subject to a placement review

(a) Each child in the following living arrangements or circumstances is subject to a placement review. The Division shall notice the Family Court, under N.J.S.A. 30:4C-53, of these situations:

1. A child who has been placed voluntarily or non-voluntarily by the Division from his or her home, free or with maintenance provided by the Division; and

2. A child who has not been placed by the Division from his or her home but for whom the Division provides maintenance or provides permanency services.

10:133H-3.12 Living arrangements not subject to a placement review

(a) Each child in the following living arrangements or circumstances is not subject to a placement review. The Division shall not notice the Family Court as under N.J.S.A. 30:4C-53 of these situations:

1. A child who is residing with a relative or stepparent at the time of application or referral for services, whose parent made the arrangement, and for whom the Division does not provide maintenance;

2. A child who has been ordered by the Family Court to be placed in a correctional facility, where the Division is not the child's legal guardian; and

3. A child who is placed in New Jersey by an out-of-State agency and that agency retains legal and financial responsibility for the child, with the Division providing courtesy supervision of the out-of-home placement.

10:133H-3.13 Termination of providing information to Child Placement Review Board

(a) The Division shall notice the Family Court of the following circumstances and cease to provide information to the Child Placement Review Board unless otherwise ordered by the Family Court:

1. When a child returns to his or her own home;
2. When a child attains the age of 18; or
3. When the Division transfers the responsibility of a child's care to another agency or otherwise terminates its services.

(b) The Division may continue to hold a placement review at the discretion of the office manager in the above-cited situations if the Division continues services or monitoring of the case.

(c) The Division shall provide notice but no further information to the Child Placement Review Board when:

1. The child is adopted and the final judgment of adoption is entered by the Family Court;
2. The child enters the armed forces;
3. The child marries; or
4. The child dies.

CORRECTIONS

(a)

THE COMMISSIONER

Records

Proposed New Rules: N.J.A.C. 10A:22

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

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

Proposal Number: PRN 1993-657.

Submit comments by January 19, 1994 to:
William H. Fauver, Commissioner
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:22, Records, expired on July 5, 1993. The Department of Corrections has reviewed these rules and, with the exceptions of the proposed amendments, has determined these rules to be necessary, reasonable, and proper for the purpose for which the rules were originally promulgated and is, therefore, proposing them for readoption at this time. Due to the expiration of

the rules at N.J.A.C. 10A:22, the rules are proposed as new rules, but since the expiration is so recent the changes are being treated as amendments to the recently expired text.

Subchapters 1 and 3 are currently on reserve status.

Subchapter 2 provides guidelines for the maintenance of confidentiality of inmate and parolee records and outlines the procedure for the release and examination of records by authorized individuals and agencies. The amendments in this subchapter add minor changes in language for the purpose of clarification and, because the titles Special Assistant for Legal Affairs and Director of Professional Services have been eliminated, all references to these titles have been removed. At N.J.A.C. 10A:22-2.4, the term "non-institutional persons" needed to be more clearly defined, thus this term has been deleted and replaced with the words "non-Department of Corrections individuals." The words "New Jersey" have been added to the reference to the State Parole Board. The reference to the Bureau of Parole has been deleted since that Bureau is part of the Department of Corrections. The incorrect cross reference at N.J.A.C. 10A:22-2.4 has been changed from N.J.A.C. 10A:22-2.6 to read "shall be in accordance with N.J.A.C. 10A:22-2.7." Reference to the Attorney General at N.J.A.C. 10A:22-2.4(c) has been deleted and relocated at N.J.A.C. 10A:22-2.7(d) which appropriately deals with determining what documents are confidential. A proposed amendment to N.J.A.C. 10A:22-2.5 broadens the scope of the availability of information by changing the words "correctional facility" to "Department." N.J.A.C. 10A:22-2.5(a) and (b) have been combined and specifies that only the amount of information necessary or relevant in connection with staff performance duties shall be provided. Subsections (c) through (d) at N.J.A.C. 10A:22-2.5 have been recodified as (b) through (c). Subsection N.J.A.C. 10A:22-2.7(a) is being deleted since the initial screening procedure for determining the nature of information sought is no longer in effect and subsections (b) through (f) are being recodified as (a) through (e). The newly recodified N.J.A.C. 10A:22-2.7(b) has been rewritten to specify that when Department staff cannot determine whether confidential information should be released, the Office of the Attorney General will be contacted for guidance. N.J.A.C. 10A:22-2.10(d) has been deleted because this rule has been superseded by the newly codified N.J.A.C. 10A:22-2.7(b). N.J.A.C. 10A:22-2.10(e) has also been deleted because a court order is required for the release of information if the Department of Corrections denies a request. At N.J.A.C. 10A:22-2.11, the present rules regarding the fees for copying records which were originally based on N.J.S.A. 47:1A-2 are being amended to comply with the revised law at N.J.S.A. 47:1A-2 (P.L. 1991, c.177) which took effect July 1, 1991. The increased fees which are established by law are based upon the total number of pages to be copied and will be changed as follows:

First through 10th page from $.50 to $.75 per page;

Eleventh through 20th page from $.25 to $.50 per page;

Over 20 pages from $.10 to $.25 per page.

The proposed amendment at N.J.A.C. 10A:22-2.11 will increase fees for the copying of records deemed to be public and those records not deemed to be public. This proposed amendment states that, pursuant to N.J.S.A. 47:1A-2, when and if the fees for copying public records change, these changes will be published as a Public Notice in the New Jersey Register.

Subchapter 4 establishes the procedures for the expungement and sealing of records upon receipt of an Order from the courts or the Bureau of Correctional Information and Classification Services (C.I.C.S.) directing the expungement or sealing of inmate records which may be expunged or sealed, and the appropriate responses which should be given by the Department of Corrections' employees when inquiries are received regarding the records of inmates which have been expunged or sealed.

Social Impact

The readoption with amendments of N.J.A.C. 10A:22 through its proposal herein as new rules will continue to ensure that the limitation of access to inmate and parolee records to certain governmental agencies, attorneys, and physicians protects both the privacy of the inmate and parolee. This readoption should also continue to ensure that Department of Corrections' employees comply with court mandates and the Bureau of Correctional Information and Classification Services (C.I.C.S.) requests for the expungement and sealing of records. The proposed fee increases for the copying of public records are determined and mandated by the New Jersey Legislature. The proposed fees represent increases in the costs of providing these services. As with any increase in cost of service, this may have a negative impact on those who request documents.

Economic Impact

The proposed readoption of N.J.A.C. 10A:22 with amendments should not result in any new economic impact because additional funding is not required to implement or maintain these rules. Maintenance of inmate records and internal handling of these records are simply part of the administrative cost of operation and as such are regularly budgeted items. Copying costs will be borne by the private agency or individual permitted access to the records; governmental agencies are exempt from copying changes. Pursuant to N.J.S.A. 47:1A-1, the increase in public record copying fees shall reimburse the State for the expenses incurred for providing the service of copying public records. Although the increase in these fees may impose an economic burden on individuals who request documents, the intent of the Department of Corrections is to comply with the law and to provide a uniform fee schedule.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed readoption with amendments 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 readoption with amendments impacts on inmates and the New Jersey Department of Corrections and has no effect on small businesses.

Full text of the expired rules proposed as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 10A:22.

Full text of the proposed amendments to the expired rules proposed for readoption as new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10A:22-2.4 Availability of information to [non-institutional persons] **non-Department of Corrections** [or outside] agencies **or individuals**

(a) Information from adult inmate and parolee records shall be provided to law enforcement agencies or [persons] **individuals**, who request [it] **such information** in the performance of their public duties, **and shall be** in accordance with N.J.A.C. 10A:22-[2.6]**2.7**.

(b) Adult inmate or parolee records may be made available to the following **non-Department of Corrections** agencies or [persons] **individuals**:

1.-3. (No change.)

4. The **New Jersey** State Parole Board;

[5. The Bureau of Parole;]

[6.]**5.** A county probation department; and

[7.]**6.** Police departments.

(c) [Upon advice of the Attorney General or the Department's Special Assistant for Legal Affairs, Office of the Deputy Commissioner, selected] **Selected** records of adult inmates or parolees shall be made available to government agencies or other authorized [persons] **non-Department of Corrections individuals** upon request. These agencies and [persons] **individuals** include, but are not limited to, the following:

1.-5. (No change.)

10A:22-2.5 Availability of information to [correctional facility] **Department of Corrections'** personnel

(a) Information from inmate and parolee records shall be provided to [correctional facility personnel on a limited basis] **Department of Corrections' personnel who need relevant information for use in connection with their work responsibilities. Only the amount of information necessary or relevant in connection with staff performance of duties shall be provided**.

[(b) Non-confidential information may be provided to correctional facility staff persons who need the relevant information for use in connection with their work responsibilities.]

[(c)](**b**) Medical and psychiatric/psychological records or information shall be provided as limited below:

1. (No change.)

2. Medical or psychiatric/psychological information may be made available to [those staff persons] **Department of Corrections' personnel**, to whom the information is relevant in connection with the staff

person's need to make a decision concerning the inmate [(for example] **such as**, job placement, discipline, **and** parole [etc.)]. Only that amount of information that is necessary to permit proper exercise of discretion shall be provided.

[(d)]**(c)** In the event a question arises as to the disclosure of medical or psychiatric/psychological information to [correctional facility staff persons] **Department of Corrections' personnel**, the question shall be referred to the Superintendent for review and the decision of the Superintendent shall be final.

10A:22-2.6 Availability of medical information to inmates

(a) An inmate may obtain a copy of his or her medical records or a summary thereof by submitting a written request, on Form 301-XII, to the correctional facility's [Director of Professional Services or Supervisor] **supervisor** of the Medical Department, or to the Superintendent in those correctional facilities which do not have a [Director of Professional Services or Supervisor] **supervisor** of the Medical Department.

(b)-(g) (No change.)

10A:22-2.7 Procedure for release of confidential inmate or parolee records

[(a) All requests for information shall be initially screened by the institutional classification officer to determine the purpose for which the information is sought and the legitimacy of the request.]

[(b)]**(a)** (No change in text.)

[(c)]**(b)** The only confidential information which shall be released shall be the specific information that is directly related to the stated purpose for which the information is requested [(see N.J.A.C. 10A:22-2.3 and 4)].

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

[(e)]**(d)** If [the institutional classification officer is unsure as to the legitimacy or authenticity of the request, he or she shall telephone the Department of Corrections' Special Assistant for Legal Affairs, Office of the Deputy Commissioner, for guidance. In the event a question or dispute arises concerning release of material or the authority of the agency or person to obtain such information, the decision of the Special Assistant for Legal Affairs, Office of the Deputy Commissioner, will be final] **Department of Corrections staff cannot determine whether confidential information should be released, the Office of the Attorney General shall be contacted for guidance.**

[(f)]**(e)** (No change in text.)

10A:22-2.8 Records authorized by the inmate or parolee for inspection or release

(a) The following categories of records may be inspected by or released to authorized persons or agencies, upon written consent of the adult inmate or parolee[;]**:**

1.-6. (No change.)

(b) (No change.)

10A:22-2.9 Litigation

All requests for release of information or records concerning any matter which is the subject of pending or ongoing litigation shall be referred to the Deputy Attorney General of record[, or to the Department of Corrections' Special Assistant for Legal Affairs, Office of the Deputy Commissioner,] for handling pursuant to the applicable rules of court.

10A:22-2.10 Juvenile records

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

[(d) In the event a question or dispute arises pertaining to disclosure of information or confidentiality of certain information concerning juveniles, the Department of Corrections' Special Assistant for Legal Affairs, Office of the Deputy Commissioner, shall be contacted for guidance. The decision of the Special Assistant for Legal Affairs, Office of the Deputy Commissioner, will be final.

(e) In the event a request for release of information is denied, the material shall not be released without a court order.]

10A:22-2.11 Reimbursement for costs of copying

(a) [Except] **Pursuant to N.J.S.A. 47:1A-2, except** as otherwise provided in this subchapter [or by law,] correctional facilities and other administrative units within the Department of Corrections may charge the following fees for copying records **deemed to be public**:

1. First through 10th page	$[.50]	**0.75** per page
2. Eleventh through 20th page	$[.25]	**0.50** per page
3. Over 20 pages	$[.10]	**0.25** per page

(b) Governmental agencies or officers **who request records in the performance of their official duties** shall be exempt from payment of fees for copying records.

(c) The copying fees for records other than records deemed to be public shall also be based on the fee schedule in (a) above.

(d) When or if fees for the copying of public records change in accordance with the N.J.S.A. 47:1A-2, these changes shall be published as a public notice in the New Jersey Register, and revised in (a) above through a notice of administrative change pursuant to N.J.A.C. 1:30-2.7.

INSURANCE

(a)

DIVISION OF FRAUD PREVENTION

Automobile Physical Damage Insurance Inspection Procedures

Proposed Amendment: N.J.A.C. 11:3-36.6

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:33B-33.

Proposal Number: PRN 1993-680.

Submit comments by January 19, 1994 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
20 West State Street
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

On January 25, 1991, the Department of Insurance ("Department") adopted N.J.A.C. 11:3-36 (see 23 N.J.R. 579(a)). These rules establish procedures for the inspection of an automobile by the insurer prior to the issuance of physical damage insurance coverage. In the Department's continuing review of its insurance inspection procedures, the Department has found the need to delay indefinitely the implementation of N.J.A.C. 11:3-36.6(f)7, 8 and 9 in order to keep these rules cost effective.

The Department recognizes that the digital imagery technology required by N.J.A.C. 11:3-36.6(f)7, 8 and 9 are not at a level where it is cost effective. The Department notes that one of the advantages of the digital imagery requirements of this section is that it allows almost immediate retrieval of inspection photos when needed in order to settle a claim. The Department believes that the current retrieval procedures are working satisfactorily and that there is no need at this time to require all insurers to spend large sums of money that would be necessary to comply with the present rules.

The Department also believes that it is not necessary at this time to require the digital imagery duplication of photos. Currently, there does not seem to be a problem with photos being lost or claim settlements delayed as a result of the current procedure. The Department believes that the cost for requiring insurers to adhere to the imagery requirements of this provision is cost prohibitive. Therefore, the Department proposes that N.J.A.C. 11:3-36.6(f)7, 8 and 9 be repealed. Since N.J.A.C. 11:3-36.6(f)6 is intended to provide for a hard-copy backup system for the digital imagery system, the Department likewise proposes that it be repealed.

Social Impact

The proposed amendments are designed to improve the cost effectiveness physical damage insurance inspection system which curtails fraudulent physical damage claims.

The proposed amendments will affect all insurers which write private passenger automobile insurance in this State. The proposed amendments delete requirements that would have required all insurers that write private passenger automobile insurance to commence the use of digital imagery by April 1, 1994. The Department believes that the repeal of this provision at this time will prove cost effective for insurers.

Economic Impact

The Department expects these amendments to improve the cost effectiveness of the physical damage inspection system and prevent insurers from incurring additional costs which they may have incurred in order to adhere to the digital imaging requirements of this rule. Although these rules will no longer require insurers to commence use of a digital imagery system as of April 1, 1994, in eliminating the rules' mandate, the Department recognizes that some insurers may find digital imagery useful and cost-effective based on their individual systems.

Regulatory Flexibility Statement

The proposed amendments do not impose reporting or recordkeeping or any other compliance requirements on insurance companies authorized to transact private passenger automobile insurance in this State. The Department is deleting the digital imagery system requirements in these rules because at this time, the Department does not believe it is cost effective for insurers; therefore, no regulatory flexibility analysis is needed.

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

11:3-36.6 Standards and procedures for inspection

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

(f) Insurers shall utilize authorized representatives and systems to implement the provisions of this subchapter which meet the following standards:

1.-3. (No change.)

4. Takes photographs as required in (e)2 through 3 above; **and**

5. Provides for the storage and retrieval of reports and photographs in a manner that facilitates their use as set forth in paragraph (j) below[;]**.**

[6. Provides for a backup system or other duplicate or secondary source for the report and photographs to ensure against loss;

7. For inspections conducted on and after April 1, 1994, provides the ability to view inspection reports and photographs on a computer system monitor;

8. For inspections conducted on and after April 1, 1994, provides the ability to print inspection reports and photographs from a computer system with a code that identifies the document by policy number, inspection report number or other common identifying code; and

9. For inspections conducted on and after Apri1, 1, 1994, provides the ability for all of the insurer's New Jersey claims offices to view or access the inspection report and photographs.]

(g)-(l) (No change.)

(a)

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Informational Rate Filing Requirements for Small Employer Health Benefits Plans

Proposed New Rules: N.J.A.C. 11:21-9

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:27A-25f, and 17B:27A-46.

Proposal Number: PRN 1993-666.

Submit comments by December 1, 1993 to:

Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

These proposed new rules implement the provisions of P.L. 1992, c.162 (the "Act") (N.J.S.A. 17B:27A-17 et seq.), which provides at N.J.S.A. 17B:27A-25f that carriers shall make an informational rate filing with the Commissioner of Insurance ("Commissioner") prior to offering small employer group health benefits plans. These proposed rules set forth the form, manner and procedures for making the informational filings.

The Department of Insurance ("Department") is promulgating these rules in accordance with P.L. 1993, c.162, section 16, which provides a special procedure whereby the Commissioner may adopt certain actions. Pursuant to this procedure, the Department is required to publish notice of its intended actions in three newspapers of general circulation, which shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views. Notice of the intended action is additionally required to be provided by mail or other means to affected trade and professional associations, carriers subject to the provisions of N.J.S.A. 17B:27A-27 et seq. and such other interested persons or organizations which may request notification.

Concurrently, the Department is further required to forward the notice of its intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. P.L. 1993, c.162, section 16 further provides a minimum 15-day comment period for all interested persons to comment in writing on the intended action. Following the expiration of the comment period, the Department may adopt the intended action and the adopted action is submitted to OAL for publication in the New Jersey Register. The adopted action becomes effective on the date of the submission or on such later date as the Department may establish. The Department is modifying this adoption procedure by extending the 15-day comment period to December 1, 1993. The Department is extending the comment period in order to provide interested persons additional time in which to submit comments prior to the adoption of the rules.

Within a reasonable time following the submission of the comments, the Department is required to prepare a report for public distribution which lists all parties who provided comments, summarizes the content of the comments, and provides the Department's response to the data, views and arguments contained in the comments. A copy of this report is also filed with the OAL for publication in the New Jersey Register.

N.J.A.C. 11:21-9.1 sets forth the purpose and scope of the subchapter.

N.J.A.C. 11:21-9.2 provides that words and terms defined at N.J.S.A. 17B:27A-17 and N.J.A.C. 11:21 shall be applicable. A definition of "classification factor" is added.

N.J.A.C. 11:21-9.3 sets forth the filing requirements. Carriers must file a schedule of premiums and premium rates, a detailed actuarial memorandum and an actuarial certification. The rules provide for rate changes and require a subsequent informational filing for that purpose.

N.J.A.C. 11:21-9.4 sets forth the filing procedures, and provides for curing the deficiencies of incomplete filings upon notice by the Department to the carrier. A formal departmental hearing may be requested by and is available to any carrier aggrieved by the Commissioner's determination.

N.J.A.C. 11:21-9.5 provides for public disclosure of filed data or information except for actuarial memoranda containing confidential and proprietary information.

N.J.A.C. 11:21-9.6 allows for penalties to be imposed for violations of the provisions of this subchapter.

Social Impact

These proposed new rules are part of a package designed to implement the provisions of N.J.S.A. 17B:27A-17 et seq., which establish the New Jersey Small Employer Health Benefits Program (SEH Program). The SEH Program is intended to broaden availability and enhance competition in the small employer group health benefits market.

By requiring carriers to submit informational rate filings together with supporting actuarial information, the Act enables the Commissioner to obtain information necessary to fulfill the Department's regulatory responsibilities.

These rules set forth the format, filing requirements and procedures applicable to informational filings for the SEH Program.

Informational filings made pursuant to this subchapter are public documents and therefore available for public inspection except as provided at N.J.A.C. 11:21-9.5.

Economic Impact

These rules will impact the Department and carriers issuing health benefits plans in the small employer market. The Department will bear the cost associated with the review and maintenance of these informational filings. Additional staff may have to be hired for this purpose since group rate filings have not previously been required.

As distinguished from the impact of the Act itself which requires that informational filings be made, these proposed rules have a negligible economic impact on carriers. Most of the documents required to be filed must be created by carriers issuing health benefits plans in order to market them. These rules simply provide the form and manner in which the informational filing is made and require that copies of those documents also be submitted to the Department for filing.

The Department expects that the costs of creating additional documents, and providing information in the format required, will be minimal.

Regulatory Flexibility Analysis

These rules may apply to "small businesses" as that term is defined in the New Jersey Regulatory Flexibility Act at N.J.S.A. 52:14B-17. These "small businesses" are carriers issuing health benefits plans in the small employer market. The Department has no information about the number of carriers that may be "small businesses," since carriers currently doing business in New Jersey may or may not continue to issue health benefits plans to small employers.

Carriers issuing health benefits plans in the small employer market will be required to make the informational filing as provided by the Act in the form specified in these proposed rules which apply uniformly to all carriers regardless of size.

As noted above, most of the information required is routinely created by a carrier in order to market health benefits plans to small employers. To comply with these rules, however, a carrier may be required to obtain the services of an actuarial consultant if these services are not available in-house. The Department notes, however, that the use of professional actuaries is usually required in the development of the carrier's health benefits plan, rating plan and classification system.

All carriers are required to make an informational rate filing in accordance with the Act. The compliance requirements in these proposed rules are minimal and provide some flexibility in the format of the information filed so long as the required data is present in the filing. These proposed rules promote uniformity and consistency in the information available to the Commissioner and the public regarding a carrier's schedule of premiums, rating plan, and classification system for small employer health benefits plans. Therefore, no differentiation based on business size is appropriate, or has been provided.

Full text of the proposed new rules follows:

SUBCHAPTER 9. CARRIERS' INFORMATIONAL RATE FILING REQUIREMENTS FOR SMALL EMPLOYER HEALTH BENEFITS PLANS

11:21-9.1 Purpose and scope

(a) The purpose of this subchapter is to establish informational rate filing requirements and procedures for carriers issuing or renewing small employer health benefits plans pursuant to N.J.S.A. 17B:27A-25f.

(b) This subchapter applies to all carriers issuing health benefits plans to small employers pursuant to the Act.

11:21-9.2 Definitions

(a) Words and terms defined at N.J.S.A. 17B:27A-17 and N.J.A.C. 11:21, when used in this subchapter, shall have the meanings as defined by the Act or for the chapter unless the context clearly indicates otherwise.

1. "Classification factor" means any factor used by the carrier to vary rates based upon characteristics of the employee, employer or policyholder.

11:21-9.3 Informational rate filing requirements

(a) All carriers issuing standard health benefits plans pursuant to the Act shall, prior to issuing any such plan, file with the Commissioner an informational rate filing which shall include the following data:

1. A schedule of premiums specifying the standard health benefits plans offered, indicating the delivery system for each plan, describing the benefit differentials for the in-network and out-of-network benefits for selective contracting arrangements and listing the premium rates to be charged;

2. A description of the rating plan and the numerical value of the classification factors utilized in the calculation of a group's premium rate or rates, including but not limited to: age, gender, industry, geographic location, effective date, and rating categories (for example, standard and substandard) resulting from underwriting rules (for example, medical and non-medical);

3. A detailed actuarial memorandum setting forth the assumptions and methods used in the development of the rates, which shall include:

i. Recent claim cost experience, a description of the source of the claim costs and the time period for which the claim costs were calculated;

ii. The assumptions used in developing the anticipated loss experience, including trend, plan relativity assumptions and the anticipated distribution of business by rating classification described in (a)2 above and any other factors used; and

iii. If the policyholder will or may receive policyholder dividends other than the dividends required by N.J.S.A. 17B:27A-25g(2), the carrier shall also submit the following:

(1) The assumptions for claim adjudication and payment expense, other administrative expenses, commissions, premium taxes, federal income taxes, risk margin, profit margin and any other margins applicable to the filing;

(2) The assumptions for anticipated investment income; and

(3) The assumptions and the carrier's practices for distributing anticipated divisible surplus including a statement explaining how divisible surplus will be determined and paid; and

4. A certification signed by a member of the American Academy of Actuaries attesting to the accuracy and completeness of the information provided pursuant to (a)1, 2 and 3 above and of the following information which shall also be included:

i. A statement that the filing is complete;

ii. The issue period for which the filed rates are effective, which shall not exceed 12 months;

iii. The coverage period, if any, for which the rates for a group are guaranteed;

iv. A statement of the anticipated incurred loss ratio for each plan and deductible option which shall not be less than 75 percent of the premium therefor;

v. For rates to be charged for new business issued on and after January 1, 1994, and upon the first anniversary date on and after March 1, 1994, of existing policies or contracts, a statement that the rating classification will not produce rates (for an individual and for each family status) for the highest rated group which are greater than 300 percent of rates (for an individual and for each family status) produced for the lowest rated group for each policy form (plan and deductible option);

vi. For rates to be charged beginning on the second policy or contract anniversary dates after the dates established in (a)4v above, a statement that the rating classification will not produce rates (for an individual and for each family status) for the highest rated group which are greater than 200 percent of rates (for an individual and for each family status) produced for the lowest rated group for each policy form (plan and deductible option);

vii. Whether the policies provide that the policyholder will or may receive policyholder dividends other than the dividends required by N.J.S.A. 17B:27A-25g(2); and

viii. A statement that the factors which will be used to establish claim reserves are appropriate.

(b) Any carrier which seeks to change its rates for its small employer group health benefits plans shall, prior to the effective date of the revised rates, submit to the Commissioner an informational filing which shall include all of the data set forth in (a) above.

11:21-9.4 Informational filing procedures

(a) Informational filings submitted pursuant to this subchapter shall be sent to the Department at the following address:

Attention: SEH Informational Filings
Division of Life/Health Actuarial Services
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625-0325

(b) If the Commissioner determines that an informational filing submitted pursuant to this subchapter is incomplete, the Commissioner shall provide written notice to the carrier specifying those portions of the filing which are deficient and the information required to be submitted by the carrier. The notice shall specify whether or not the informational filing is deemed to be in substantial compliance with the requirements of N.J.A.C. 11:21-9.3. If the Commissioner takes no action with respect to the informational filing within 30 days of the date of submission thereof, the informational filing shall be deemed complete.

(c) If the informational filing is found to be in substantial compliance with the requirements of N.J.A.C. 11:21-9.3, the carrier shall, within 30 days of receipt of written notice in (b) above, provide the Commissioner with the information required to complete the filing. Failure on the part of the carrier to comply with the provisions of this subsection will result in the imposition of a monetary fine pursuant to N.J.A.C. 11:21-9.6.

(d) If the informational filing is found not to be in substantial compliance with the requirements of N.J.A.C. 11:21-9.3, no insurance contract or policy may be entered into using the submitted rates. In such event, the carrier may use the submitted rates only when the Commissioner has determined that the informational filing is complete, and has provided written notice of that fact to the carrier.

(e) Any carrier aggrieved by a determination of the Commissioner pursuant to (b), (c) or (d) above may request a hearing on the Commissioner's determination, within 20 days of the receipt of notice of such determination, as follows:

1. A request for a hearing shall be in writing and shall include:

i. The name, address, and daytime telephone number of a contact person familiar with the matter;

ii. A copy of the notice involved;

iii. A statement requesting the hearing; and

iv. A concise statement specifying the reason(s) the carrier is aggrieved by the Commissioner's determination.

2. The hearing shall be conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

11:21-9.5 Public disclosure of filed information

All data or information filed with the Department pursuant to N.J.A.C. 11:21-9.3(a) are public records and may be disclosed in accordance with N.J.S.A. 47:1A-1 et seq., except that actuarial memoranda which contain confidential and proprietary information pursuant to N.J.A.C. 11:21-9.3(a)3 shall not be disclosed by the Department to any person other than employees and representatives of the Department.

11:21-9.6 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of fines or other penalties provided by law, including suspension or revocation of a carrier's authority to do business in the State of New Jersey.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Direct Loan Program
Allocation of Direct Loan Assistance
Proposed Amendment: N.J.A.C. 12A:31-1.4

Authorized By: New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Barbara Lancaster, Chair.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t).

Proposal Number: PRN 1993-667.

Submit comments by January 19, 1994 to:
Richard L. Timmons, Assistant Deputy Director
New Jersey Economic Development Authority
CN 990
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On June 7, 1993, the New Jersey Development Authority ("NJDA") adopted an amendment to this rule changing the interest rate charged to borrowers on direct loans from the Federal Discount Rate, to 100 basis points above two-thirds of the value of Moody's "A" Rated Utility Index (see 25 N.J.R. 2484(b)). The amendment proposed herein is made in order to match the interest rate charged to borrowers to the rate paid by NJDA on bonds issued to casinos in order to obtain funds residing with the Casino Reinvestment Development Authority. This current proposed amendment adds language to the previous amendment which was inadvertently omitted.

Social Impact

The most significant social impact of the proposed amendment will be to enable NJDA to remain self-sustaining by insuring that the interest rate charged to borrowers exceeds the cost of funds to NJDA thereby enabling NJDA to both recover their administrative costs and to increase its capital base to expand its direct loan program and to assist more businesses.

Economic Impact

This proposed amendment will have a negligible impact on the individual borrower of funds from NJDA in that the interest rate will still be less than that available from conventional lenders. It will have a beneficial impact on the State by enabling NJDA to continue and to expand its program of financial assistance to small and minority and women owned businesses.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, as this proposed amendment imposes no 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 proposed amendment changes the basis for determining the interest rate to be charged on direct loans.

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

12A:31-1.4 Allocation of direct loan assistance

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

(e) The interest rate on direct loans shall be equal to 100 basis points above two-thirds of the [value] **average rate** of Moody's "A" Rated Utility Index [at the time of the] **for bonds available for purchase during the last 26 weeks preceding the date of** loan closing, with a minimum of five percent.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping Routes N.J. 49 in Cumberland County and N.J. 67 in Bergen County

Proposed Amendments: N.J.A.C. 16:28A-1.34 and 1.71

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1993-675.

Submit comments by January 19, 1994 to:
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 Department of Transportation proposes to amend N.J.A.C. 16:28A-1.34 to establish a handicapped parking space along Route N.J. 49 in the City of Millville, Cumberland County, and to amend N.J.A.C. 16:28A-1.71 to establish a revised "no parking bus stop" along Route N.J. 67 in Fort Lee Borough, Bergen County. The provisions of these amendments will improve the flow of traffic and enhance safety along the highway system.

These amendments are being proposed at the request of the local governments of the City of Millville and the Borough of Fort Lee, and as part of the Department's on-going review of current conditions. Based upon recommendation from the Chief of Police, the Board of Commissioners of the City of Millville approved Ordinance 68-1991 on November 19, 1991, requesting that a handicapped parking space be established along Route N.J. 49. The bus stops in the Borough of Fort Lee have been revised because of the use of articulated buses along the highway system in Bergen County. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs confirmed that the establishment of a handicapped parking space along Route N.J. 49 in Cumberland County and a revised "no parking bus stop" along Route N.J. 67 in Bergen County were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendments will establish a handicapped parking space restriction along Route N.J. 49 in the City of Millville, Cumberland County, and a revised "no parking bus stop" restriction along Route N.J. 67 in Fort Lee Borough, Bergen County. These actions will improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for the installation of appropriate parking restriction signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do 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 amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.34 Route 49

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

(e) The certain parts of State highway Route 49 described in this subsection shall be designated and established as restricted parking space, for the use of persons who have been issued Special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

1. Along the north side (Main Street) in the City of Millville, Cumberland County:

i. Beginning 35 feet from the easterly curb line of North 6th Street to a point 57 feet easterly therefrom.

16:28A-1.71 Route 67

The certain parts of State highway Route 67 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

[i. Along Lemoine Avenue:

(1) Far side bus stops:

(A) Palisade Avenue—Beginning at the prolongation of the southerly curb line of Palisade Avenue and extending 100 feet southerly therefrom.

(B) Columbia Avenue—Beginning at the southerly curb line of Columbia Avenue and continuing to a point 120 feet south therefrom.]

i. Far side bus stop:

(1) Tom Hunter Road—Beginning at the southerly curb line of Tom Hunter Road and extending 155 feet southerly therefrom.

[(2)]**ii.** Near side bus stops:

[(A) Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 107 feet northerly therefrom.]

Recodify existing (B)-(C) as **(1)-(2)** (No change in text.)

[(D)]**(3)** Bridge Plaza South—Beginning at the northerly curb line of Bridge Plaza South and extending [105] **155** feet northerly therefrom.

[(E) Forest Road—Beginning at the northerly curb line of Forest Road and extending 105 feet northerly therefrom.]

[(3)]**iii.** Mid-block bus stop:

[(A)]**(1)** Between Main Street and Bridge Plaza South—Beginning **at a point** 132 feet north of the northerly curb line of Main Street and extending [149] **170** feet northerly therefrom.

[ii. Along Palisade Avenue:

(1) Far side bus stops:

(A) Riverdale Drive—Beginning at the southerly curb line of Riverdale Drive and extending 165 feet southerly therefrom.

(B) Route N.J. 5—Beginning at the southerly curb line of State highway Route 5 and extending 114 feet southerly therefrom.

(2) Near side bus stop:

(A) Horizon Road—Beginning at a point 30 feet north of the prolongation of the northerly curb line of Horizon Road and extending 125 feet northerly therefrom.

2. All bus stops are to be specified lengths measured from the curb line of the intersecting street, or the prolongation of the curb line of the street which intersects.]

[3.]**2.** Along the easterly (northbound) side in Fort Lee Borough, Bergen County:

[i. Along Lemoine Avenue:]

[(1)]**i.** Far side bus stops:

[(A) Wall Street—Beginning at the northerly curb line of Wall Street and extending 107 feet northerly therefrom.

(B) Palisade Avenue—Beginning at the northerly curb line of Palisade Avenue and extending 155 feet northerly therefrom.]

(1) Euclid Road—Beginning at the northerly curb line of Euclid Road and extending 155 feet northerly therefrom.

(2) Horizon Road—Beginning at the northerly curb line of Horizon Road and extending 155 feet northerly therefrom.

[(C)](3) Main Street—Beginning at the northerly curb line of Main Street and extending [130] **155** feet northerly therefrom.

[(D)](4) Bridge Plaza South—Beginning at the northerly curb line of Bridge Plaza South and extending [150] **155** feet northerly therefrom.

[(E)](5) Lincoln Avenue—Beginning at the prolongation of the northerly curb line of Lincoln Avenue and extending [140] **155** feet northerly therefrom.

[(F) Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 101 feet northerly therefrom.

(G) Kensington Road—Beginning at the northerly curb line of Kensington Road and continuing to a point 120 feet north thereof.

(H) Washington Avenue—Beginning at the northerly curb line of Washington Avenue and extending 105 feet northerly therefrom.]

[(2)]**ii.** Mid-block bus stop:

[(A)](1) Between Bridge Plaza North and Lincoln Avenue—Beginning 326 feet north of the northerly curb line of Bridge Plaza North and extending [154] **155** feet northerly therefrom.

[ii. Along Palisade Avenue:]

[(1)]**iii.** Near side bus stops:

[(A) Route 5—Beginning at the prolongation of the southerly curb line of Route 5 and extending 155 feet southerly therefrom.]

[(B)](1) Palisade Terrace—Beginning at the northerly curb line of Palisade Terrace and extending 155 feet southerly therefrom.

(2) Palisade Avenue—Tom Hunter Road—Beginning at the southerly curb line of Palisade Avenue and extending 155 feet southerly therefrom.

[(2) Far side bus stop:

(A) Horizon Road—Beginning at the northerly curb line of Horizon Road and extending 100 feet northerly therefrom.]

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Lane Usage

Route I-80 in Morris County

Proposed New Rule: N.J.A.C. 16:30-3.9

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:21, 39:4-6, 39:4-81 and 39:4-88.

Proposal Number: PRN 1993-672.

Submit comments by January 19, 1994 to:

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 Department of Transportation proposes a new rule at N.J.A.C. 16:30-3.9 designating a rush hour high occupancy vehicle (HOV) lane on Route I-80 in Morris County between Route 15 and the I-287 interchange. The left travel lane will be restricted to high occupancy vehicles (HOV) passenger vehicles with a minimum of two persons between the hours of 6:00 A.M. and 9:00 A.M., eastbound, and 3:00 P.M. to 7:00 P.M., westbound, Monday through Friday. Buses and motorcycles will also be permitted to use the HOV lane, regardless of the number of occupants.

Traffic signs will be installed along I-80 to alert motorists of the HOV use for the new lanes. The HOV lanes will be restricted to an approximate 10 mile section traversing the following municipalities in Morris County: Rockaway Township; Denville Township; Parsippany-Troy Hills Township; Wharton Borough; and Rockaway Borough.

The proposed new rule follows careful consideration by the Department of Transportation including several components:

First, an independent advisory committee was formed to consider the proposal. The committee was made up of representatives from Morris County Department of Transportation, Morris County Rides (MC RIDES), the Somerset County Planning Board, the North Jersey Transportation Coordinating Council, the Federal Highway Administration, New Jersey Transit, the New Jersey State Police, the New Jersey Turnpike Authority and the New Jersey Department of Transportation.

Second, technical analyses by Parsons, Brinckerhoff, Quade & Douglas were provided to support the advisory committee. The study found that HOV lanes on I-80 were viable, cost-effective, enforceable, and appropriate to complement the State's current employer trip reduction program. The study predicted that HOV lanes on I-80 could carry up to 1,100 HOVs during the morning peak period and 1,500 HOVs during the evening peak period, saving HOV passengers about 10 minutes compared to those traveling in adjacent lanes.

Third, an attitude and public opinion survey was conducted. Residents living along the corridor were conceptually supportive of HOV lanes, with 72 percent of the 1,201 people surveyed saying that they "favor strongly" or "favor somewhat" building special lanes for buses and carpools to those traveling in adjacent general use lanes.

After completion of the technical analyses and public opinion surveys, the advisory committee recommended that the Department of Transportation establish these HOV lanes. The Department has concurred with this recommendation and is implementing this proposed new rule through this proposal.

New Jersey is already home to one of the nation's most successful HOV lanes. The Lincoln Tunnel priority bus lane carries 725 buses per hour, removing the equivalent of 34,000 single passenger cars from the road. Elsewhere around the country, in California, Connecticut and Virginia, in suburban settings similar to Morris County, HOV lanes have successfully taken root.

New Jersey can no longer afford to attack traffic congestion just by building more highways. The Department of Transportation must encourage more people to travel in fewer vehicles, not only to improve mobility within the State, but also to improve its poor air quality. This is particularly important in light of the Federal Clean Air Act Amendments of 1990. New Jersey is one of the few States not in compliance with the law as it applies to ozone and carbon monoxide. These pollutants are produced primarily by vehicle emissions. The HOV lanes will enhance those State programs designed to improve air quality through increased passenger occupancy.

The HOV lanes will be opened upon completion of highway construction on I-80 adding a new travel lane in each direction, and after appropriate signs have been installed along I-80 to inform motorists of the HOV designation.

Social Impact

The proposed new rule will designate a special reserved lane along Route I-80 in the Townships of Rockaway, Denville and Parsippany-Troy Hills and in the Boroughs of Wharton and Rockaway in Morris County. These HOV lanes are designed to encourage multiple occupancy of vehicles. Increased passenger occupancy will result in a more efficient use of the State highway network. Persons using the HOV lane will have improved mobility over those persons riding in general use lanes on I-80.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will pay for the installation of signs authorizing the use of the left travel lanes as HOV lanes and State Police enforcement. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Enforcement costs are estimated at $300,000 for the first year and less in subsequent years. The U.S. Department of Transportation is providing most of the funding for implementation of the HOV lane.

There will be a positive economic benefit to those persons who use the HOV lanes as a result of decreased travel times, less congested travel flow, shared travel costs and improved air quality.

Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule 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 new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rule follows:

16:30-3.9 Route I-80

(a) The certain parts of State highway Route I-80 described in this subsection are designated as special reserved lanes for High Occupancy Vehicles (HOVs) along the eastbound and westbound lanes. Such lanes may only be used by passenger vehicles with two persons minimum, or by buses or motorcycles regardless of occupancy.

1. In Rockaway Township, Denville Township, Parsippany-Troy Hills Township, Wharton Borough, and Rockaway Borough, Morris County, the left travel lane:

i. Eastbound—from 6:00 A.M. to 9:00 A.M., Monday through Friday from approximate milepost 34.3 (vicinity of Route N.J. 15) to milepost 44.9 (vicinity of Baldwin Road).

ii. Westbound—from 3:00 P.M. to 7:00 P.M., Monday through Friday, from approximate milepost 45.0 (vicinity of Beverwyck Road) to milepost 34.8 (vicinity of Route N.J. 15). In the Dual-Dual Section, the HOV lane is in the Express Lane Section only.

(b) The requirements of this rule shall become operative upon installation of appropriate signage of the HOV lane designation along I-80 by the New Jersey Department of Transportation.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Mid-Block Crosswalk
Route N.J. 71 in Monmouth County
Proposed Amendment: N.J.A.C. 16:30-10.16

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-34.
Proposal Number: PRN 1993-656.

Submit comments by January 19, 1994 to:
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 establish "mid-block crosswalks" along Route N.J. 71 in the Boroughs of West Long Branch and Eatontown, Monmouth County. This action is taken to enhance pedestrian safety and traffic flow. Each mid-block crosswalk will provide a designated area for persons to legally cross the roadway at other than an area controlled and directed by a police officer or a traffic control device, such as a traffic signal.

As part of a review of current conditions, and upon request from the local governments, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that the establishment of "mid-block crosswalks" along Route N.J. 71 in the Boroughs of West Long Branch and Eatontown, Monmouth County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:30-10.16 to establish these mid-block crosswalks.

Social Impact

The proposed amendment will establish "mid-block crosswalks" along Route N.J. 71 in the Boroughs of West Long Branch and Eatontown, Monmouth County. The proposed amendment will provide designated areas for persons to legally cross the roadway at other than an area controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public and pedestrians.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "mid-block crosswalk" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

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, pedestrians and the governmental entities responsible for the enforcement of the rules.

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

16:30-10.16 Route 71

(a) The certain parts of State highway Route 71 described in this subsection shall be designated as a mid-block crosswalk:

1. In Monmouth County:

i. (No change.)

ii. Borough of West Long Branch:

(1) From a point 230 feet north of the northerly curb line of College Road to a point 15 feet northerly therefrom.

iii. Borough of Eatontown:

(1) From a point 40 feet south of the southerly curb line of Park Avenue to a point 6 feet southerly therefrom.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS AND BENEFITS

Teachers' Pension and Annuity Fund
Board Meetings; Procedures
Proposed Amendment: N.J.A.C. 17:3-1.1

Authorized By: Board of Trustees, Teachers' Pension and Annuity Fund, Regina Trauner, Secretary.
Authority: N.J.S.A. 18A:66-56.
Proposal Number: PRN 1993-456.

Submit comments by January 19, 1994 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board of Trustees of the Teachers' Pension and Annuity Fund proposes to adopt by reference Roberts' Rules of Order as the basis for its practices and procedures to be used for the conduct of its monthly

meetings. This amendment does not alter any substantive rules but merely attempts to codify the rules governing the conduct of the Board's monthly meetings.

Social Impact

The proposed amendment may beneficially affect the practices and procedures used to conduct future meetings of the Teachers' Pension and Annuity Fund's Board of Trustees.

Economic Impact

There will not be any adverse economic impact as the result of the adoption of this amendment since it merely codifies the rules governing the procedures to be used concerning the conduct of the Board's meetings.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements upon 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 and Benefits only impact upon public employers and/or public employees, this amendment will not have any adverse effect upon small business or private industry in general.

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

17:3-1.1 Board meetings

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

(c) The current rules within Roberts' Rules of Order, effective as of the effective date of this amendment, as well as future amendments thereto, are adopted and incorporated herein by reference as the source to be used by the Board of Trustees of the Teachers' Pension and Annuity Fund in the conduct of its monthly meetings.

COMMUNITY AFFAIRS

(a)

NEW JERSEY COUNCIL ON AFFFORDABLE HOUSING

Substantive Rules

Reproposed Amendments: N.J.A.C. 5:91-1.3, 5:92-1.1 and 13.1

Reproposed New Rules: N.J.A.C. 5:93

Authorized By: New Jersey Council on Affordable Housing, Christiana Foglio, Chairperson.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1993-673.

A public hearing will be held from 1:00 P.M.-5:00 P.M. on Wednesday, January 19, 1994 at the following location:

William Ashby Building
101 South Broad Street, Room 134
Trenton, New Jersey 08625

Submit written comments by February 3, 1994 to:

Art Bernard, Executive Director
Council on Affordable Housing
CN 813
Trenton, NJ 08625

Summary of Hearing Officer Recommendations and Agency Responses:

Hearings on the proposed amendments and new rules were held on April 14, 15 and 22, 1993 in Galloway, North Brunswick, and Morristown, New Jersey, with either Christine Foglio or Art Bernard serving as hearing officer. The new rules proposed at N.J.A.C. 5:91-14 (see 25 N.J.R. 1118(a) were adopted at 25 N.J.R. 3753(a), effective August 16, 1993, and the recommendations of the hearing officer are contained in that adoption. The hearing officer recommendations and the agency responses for the rules proposed at N.J.A.C. 5:93 and the amendments at N.J.A.C. 5:92-1.1 are summarized below, in the Summary of Comments and Agency Responses.

As a result of the comments received, the Council has determined that the reproposal of the new rules and the amendment of N.J.A.C. 5:91-1.1 is appropriate. The reproposal follows the summary of comments and responses.

The hearing record may be reviewed by contacting Art Bernard, Council on Affordable Housing, CN 813, Trenton, N.J. 08625.

List of Commenters

1. Edward Buzak, Esq., Montville, NJ
2. Stephen Eisdorfer, Esq., Assistant Deputy Public Advocate, Department of the Public Advocate, Trenton, NJ
3. Harvey S. Moskowitz, P.P., Moskowitz, Heyer & Gruel, PA—Planning Consultants
4. John Lynch, P.P., AICP, Consultants, Queale & Lynch, Yardley, PA
5. John M. Payne, Esq., Rutgers University, S.I. Newhouse Center for Law & Justice, Newark, NJ
6. Jeffrey Surenian, Esq., Lomell, Muccifori, Adler, Ravaschiere, Amabile & Pehlivanian, Toms River, NJ
7. Dr. Timothy E. Paul, M.S., M.D., M.B.A., Division of Mental Health Advocacy, State of New Jersey
8. Richard Dieterly, Esq., Gebhardt & Kiefer, Clinton, NJ
9. Peter Buchsbaum, Esq., Greenbaum, Rowe, Smith, Ravin & Davis, Woodbridge, NJ
10. Joseph Riggs, President, New Jersey Builders Association, Plainsboro, NJ
11. Regina Purcell, Associate Director for Social Concerns, New Jersey Catholic Conference, Trenton, NJ
12. Tri-City Peoples Corporation, Newark, NJ
13. Diane Sterner, Executive Director, Affordable Housing Network, Trenton, NJ
14. Alice Belcher, Senior Planner, Sussex County Planning Department
15. Stephen H. Shaw, Esq., Sparta, NJ
16. David G. Sciarra, Esq., and Melville D. Miller, President, Legal Service of New Jersey, New Brunswick, NJ
17. Glenn S. Patterson, City of New Brunswick
18. Francis A. Margalotti, Borough Attorney, Oceanport Borough, NJ
19. Granville D. MaGee, Esq., Upper Freehold Township, MaGee, Pagano and Isherwood, Wall Township, NJ
20. Barbara A. Seward, Red Bank, NJ
21. Carolyn J. Gara, Treasurer/CFO, Township of Warren, NJ
22. Richard S. Cramer, P.P., AICP, Senior Supervising Planner, Townplan Associates, Middletown, NJ
23. Melanie A. Hudak, Lawrenceville, NJ
24. Ronald S. Dancer, Mayor, Township of Plumsted, NJ
25. Donna M. Rose, Executive Administrator, Monmouth Housing Alliance, Red Bank, NJ
26. Francis Banisch, III, PP/AICP, Banisch Associates, Sergeantsville, NJ
27. Fred Michaeli, Planners Diversified, Summit, NJ
28. Louis S. Glass, P.P., AICP, Louis Glass Associates Planning, Bala Cynwyd, PA
29. Patrick J. McNamara, Esq., Township of Aberdeen, Carpenter, Bennett & Morrissey, Newark, NJ
30. John D. Maczuga, P.P., AICP, Bay Pointe Engineering Assoc., Inc., Pt. Pleasant Beach, NJ
31. Robert Broughton, Director, Gloucester County Office of County and Municipal Government Services, and Kenneth A. DiMuzio, Esq., Special Counsel, Hoffman, DiMuzio & Hoffman, Woodbury, NJ
32. The Affordable Housing Coalition of Burlington County, Inc., Mt. Holly, NJ
33. Clifford R. Lundin, Mayor, Borough of Hopatcong, NJ
34. George J. Wickard, Chairman, Hunterdon County Planning Board, Flemington, NJ
35. Kenneth A. DiMuzio, Esq., Logan Township Attorney, and Peter P. Karabashian, Logan Township Planner, Hoffman, DiMuzio & Hoffman, Woodbury, NJ
36. Edward J. Dolan, Chairman of Legislative Committee, New Jersey Manufactured Housing Association (NHMHA), Trenton, NJ
37. Vincent W. Domidion II, Colts Neck, NJ
38. Roy C. Epps, President, and Kristin Mateo, Housing Specialist, Civic League of Greater New Brunswick, Inc., New Brunswick, NJ
39. P. David Zimmerman, P.P., Planning Consultant, Morristown, NJ

40. George Fuchs, Chairman, Planning Board, Borough of Far Hills, NJ
41. John T. Chadwick, IV, P.P., Franklin Park, NJ
42. Richard R. Ragan, P.P., Ragan Design Group, Medford, NJ
43. Donald Cush, Planning Chairman, Chairman, Township of Clinton, NJ
44. Grace Anne LaBarre, Director, Community Development, County of Morris, Morristown, NJ
45. Morris County Comprehensive Emergency Assistance System Committee (CEAS), Morristown, NJ
46. David Hildreth, Supervisor, Middlesex County Board of Social Services, New Brunswick, NJ
47. Barbara Burgess Wolfe, Mayor, East Amwell Township, Ringoes, NJ
48. William J. Butler, Housing Coordinator, Collaborative Support Programs of New Jersey, Freehold, NJ
49. Barbara Walsh, P.P., County of Bergen, Hackensack, NJ
50. James J. Truncer, Secretary-Director, Board of Recreation Commissioners, Lincroft, NJ
51. Robert Bzik, P.P., AICP, Director, Somerset County Planning Board, Somerville, NJ
52. Gary Kratz, Borough Administrator, Borough of Waldwick, NJ
53. James C. Henbest, Acting Housing Officer, Township of Dover, NJ
54. Michael F. Spicer, Esq., Jamieson, Moore, Peskin & Spicer, Princeton, NJ
55. Eric K. Snyder, Eric K. Snyder & Associates, Inc., Andover, NJ (Frelinghuysen Township; Township of Byram; Borough of Andover; Township of Liberty)
56. Malcolm Kasler, P.P., AICP, Kasler Associates, Hackensack, NJ (City of Hackensack; Borough of Bergenfield; Township of Mahwah; Borough of Englewood Cliffs; Township of Teaneck; Borough of Saddle River; Borough of Harrington Park; Borough of Old Tappan; and Borough of Montvale)
57. Jill A. Hartmann, P.P., Michael Kauker Associates, Butler, NJ
58. Ronald R. Reisner, Esq., Tucci & Reisner, West Long Branch, NJ
59. Carolyn B. Neighbor, P.P., The Schoor DePalma & Caner Group, Inc., Phillipsburg, NJ
60. William Dressel, Jr., Assistant Executive Director, New Jersey League of Municipalities, Trenton, NJ
61. Fred F. Suljic, P.P., Administrator, County of Sussex, Newton, NJ

Summary of Public Comments and Agency Responses on Original Proposal:

The Council has organized the comments on its original proposal (25 N.J.R. 1118(a)) and its responses by subject, with subchapter categories.

Subchapter 1. General Provisions

1. COMMENT: With regard to the definition of "suitable site," the Council might provide more direction as to what it means by "compatible land uses" and "access to appropriate streets."

RESPONSE: Given the unique character of each municipality and the unique circumstances of each site, it is difficult to provide specific guidance on these matters. Each case must be viewed individually within the framework of sound planning principles.

2. COMMENT: The definition of "certified applicant" assumes certification by a municipal authority. The Council should amend the definition to clarify that the municipal authority may be a designated State or regional authority.

RESPONSE: The Council's rules specifically allow a municipality to contract with an authority approved by the Council. Such authority may be the DCA Affordable Housing Management Service or another authority approved by the Council.

3. COMMENT: Are buildings with four units or less considered a multifamily unit for purposes of filtering?

RESPONSE: No.

4. COMMENT: The proposed regulations perpetuate the fallacy of the prior round, which is to measure present or indigenous need using substandard housing conditions as a surrogate.

RESPONSE: The choice to define indigenous need through census surrogates is consistent with the previous methodology, which was upheld by the courts. *Calton Homes, Inc.* v. *Council on Affordable Housing,* 244 *N.J. Super.* 438 (App. Div. 1990), *certif. denied* 127 *N.J.* 326 (1991); see also *In re Township of Warren,* 132 *N.J.* 1 (1993). It is also consistent, although somewhat different, with the consensus methodology employed by the Superior Court judges assigned to Mount Laurel cases following the Mount Laurel II Decision. See *AMG Realty Co.* v. *Township of Warren,* 207 *N.J. Super.* 388 (Law Div. 1984).

5. COMMENT: The Council should develop a better definition of "alternative living arrangements."

RESPONSE: The Council studied a variety of facilities before developing its definition of alternative living arrangements. It found that some facilities are primarily residential and provide little health care. Others provided a great deal of health care. The facilities that the Council found to be primarily residential facilities were included in the definition.

Subchapter 2. Municipal Determination of Present and Prospective Need

6. COMMENT: The Council's estimate of need improperly excludes: those living in physically sound housing but obliged to pay more for housing than they can afford without giving up other necessities of life; those who have no permanent housing at all; those who have been obliged to double or triple up in existing housing units; those who are currently residing in institutions or group quarters because of the unavailability of safe, decent affordable housing; the mentally ill and the physically handicapped. By not including all of these households, the Council seriously misleads the public and our policy makers as to the reality of the State's housing problems. The State's Comprehensive Housing Assistance Strategy (CHAS) indicates that New Jersey has 660,000 households in need. Clearly, the Council's new need number of 118,000 units is too low.

RESPONSE: The Council on Affordable Housing (Council) was created by the Fair Housing Act to address the need for low and moderate income housing caused by municipal exclusionary zoning as defined in the *Mount Laurel* decisions, *Burlington County N.A.A.C.P.* v. *Mount Laurel,* 67 *N.J.* 151 (1975) (*Mount Laurel I*) and *Southern Burlington County N.A.A.C.P.* v. *Mount Laurel,* 92 *N.J.* 158 (1983) (*Mount Laurel II*). In developing its estimate of need, the Council has included those low and moderate income households living in substandard housing, all low and moderate income households the Council believes have formed between 1987 and 1993 and all the low and moderate income households that are expected to form during a 1993-1999 projection period.

The methodology developed by the Council is very similar to the one developed in Superior Court prior to the formation of the Council. The Supreme Court which established the constitutional obligation that led to the formation of the Council, has upheld the Council's definition of need in its *Calton Homes* and *Warren* decisions.

It is not true that the Council's estimates of need exclude households in the various categories mentioned in the comment. For example, overcrowding is one of the surrogates of deficient housing used by the Council in estimating those low and moderate households living in substandard housing. The use of overcrowding in this methodology was adopted by the Council after the Superior Court, in *Ringwood* (see *Countryside Properties, Inc.* v. *Borough of Ringwood,* 205 *N.J. Super.* (Law Div. 1984)) found this method of estimating low and moderate income households in substandard housing to be more reliable than other proposed methodologies. The Council's estimates also include, to a certain extent, the homeless, mentally ill and those paying a disproportionate share of their income on housing. While the Council's methodology has never counted households in dormitory shelters or people who have no means of shelter, it does include those living in motels or existing transitional housing if such shelter is substandard. The methodology also includes all low and moderate income households that have formed since 1987 and all future low and moderate income households expected to form between 1993 and 1999. These households include the homeless, mentally ill and those paying a disproportionate share of income on housing.

The commenter, the general public and State policy makers should not view the Council as the sole component of the State's comprehensive housing strategy. The State Comprehensive Housing Assistance Strategy (CHAS) was developed to allocate Federal dollars to respond to all households in need.

The CHAS estimates that there are 660,000 households in need, including households living in standard housing. However, it does not conclude that New Jersey needs 660,000 new housing units. Rather, it develops a strategy of expansion and better integration of housing subsidy and social service programs for households in need. It speaks of program

after program designed not only to supply housing, but to also supplement income and address the social service needs of all low and moderate income households. In mentioning the Council, the CHAS does so in the context of addressing the segment of need caused by municipal land use practices. As discussed above, the Council has developed criteria for quantifying that segment of need and has determined that municipal land use and development practices have created a need for the construction or rehabilitation of 118,000 low and moderate income units.

7. COMMENT: The methodology allocates housing need to municipalities based on the State Development and Redevelopment Plan (SDRP). Undeveloped land has been weighted by planning area in the allocation of housing need. The weighting system used by the Council results in a disproportionate share of need in those areas of the State designated as Planning Areas 1 and 2.

RESPONSE: The Council discussed the use of the SDRP in allocating housing need. The weighting system referred to by the commenter was part of that discussion that resulted in a memorandum of understanding between the Council and the State Planning Commission. The weighting system is designed to allocate more of the State's housing need to those communities that have both the land and the existing infrastructure necessary to accommodate the housing need.

8. COMMENT: The allocation of housing need to SDRP Planning Areas 4 and 5 are contrary to the SDRP and has severe planning consequences to these areas of the State.

RESPONSE: The policy of the SDRP is that all areas of the State can and will grow. As growth occurs, each municipality should accept a share of the region's housing need. Within Planning Areas 4 and 5, municipalities should accommodate this need in planned or existing centers.

9. COMMENT: To the extent filtering occurs, it probably benefits moderate income households more than low income households. Therefore, municipalities should receive reductions from their moderate income housing obligations and provide for more low income units when they compile their housing elements.

RESPONSE: The Council has no statistical data that would justify such a policy. In addition, municipalities receive reductions for filtering based on their past acceptance of a diverse housing stock. Much of that housing stock was in place prior to the Council's rules regarding the distribution of low and moderate income units. The communities that accepted a diverse housing stock came closer to addressing the spirit of the *Mount Laurel II* decision than many other communities. By doing so, they created long term opportunities for low and moderate income people prior to specific rules by the Council. It is not statistically justified or appropriate to qualify the reductions in any way.

10. COMMENT: The undeveloped land cap proposed in the rules does not recognize that some communities can address some of their obligation without relying on vacant land. It is also based on the premise that all land will be developed at six units per acre. However, in some communities, much higher densities are appropriate. The elimination of the undeveloped land cap would allow for municipalities to demonstrate their capacity to address their housing obligation based on the character of the community.

RESPONSE: The Council agrees with the commenter and has revised its rule proposal.

11. COMMENT: Housing units subtracted from specific communities via the undeveloped land cap should be reallocated to other municipalities within the housing region.

RESPONSE: The Council has revised its rule proposal and has eliminated the undeveloped land cap.

12. COMMENT: What does the Council mean in N.J.A.C. 5:93-2.16(c) when it says that the undeveloped land cap shall not circumvent the Council's adjustment process?

RESPONSE: The undeveloped land cap has been eliminated from the rule reproposal, in part, because the Council's adjustment process provides for a more accurate calculation of municipal development potential.

13. COMMENT: Why was Sussex County included in a region with Bergen, Hudson and Passaic Counties when Sussex County has stronger commuter ties with Morris, Essex and Union Counties?

RESPONSE: Commuting patterns was only one factor in establishing housing regions. The Council also tried to develop a stronger link to the need generated from a housing region and the amount of undeveloped land available to address the need. This was a consideration cited by the Supreme Court in the *Mount Laurel II* opinion.

14. COMMENT: The need for Sussex County increased by 67 percent at a time when the need in other parts of the State decreased. This increase is not warranted in an area of the State that is designated as Planning Area 4 and 5.

RESPONSE: The Council would not agree with the characterization that need increased or decreased in various parts of the State. The need was recalculated to reflect a 1987-1999 need. Those calculations reflect the latest census information, a realistic appraisal of 1987-1993 growth and a 1993-1999 projection of growth. The estimates also are consistent with the SDRP as reflected in a memorandum of understanding between the Council and the State Planning Commission. The housing obligations also reflect past housing activity. Therefore, many of the communities that have a higher 1987-1999 than 1987-1993 obligation are communities that chose not to address their previous obligation.

15. COMMENT: The Council has generated estimates of undeveloped land based on a land satellite. The Council should develop a mechanism to alter municipal housing allocations based on errors made by the satellite.

RESPONSE: The Council used the satellite data in order to direct the housing need into areas that could accommodate the need in a manner that was sensitive to the SDRP. The satellite does not result in precise estimates of undeveloped land; but it classifies land consistently, based on the image reflected from the Earth. Because these measurements are uniform throughout the State, the Council has determined that the satellite is a reasonable and fair tool with which to calculate reasonable regional shares that may be used to allocate housing need to municipalities in each housing region. (See Appendix B.) Therefore, the Council will not accept challenges to a particular municipality. Rather, based on an error in the calculation of undeveloped land, a party in the process seeking to alter the Landsat calculation must demonstrate that the regional share of undeveloped land is incorrect. In other words, the focus in such a determination must not be on the estimate of undeveloped land for any one municipality; but rather on the relationship defined by the undeveloped land in a specific municipality divided by the undeveloped land in the region.

16. COMMENT: The Council should accept alternatives to its exterior housing survey when parties want to present a case that the census estimates of substandard housing occupied by low and moderate income households is incorrect. There is a data base of the housing stock in Hunterdon and Somerset Counties that the Council should consider.

RESPONSE: The Council may consider alternatives that are presented, and will base its evaluation on the reliability of the alternative approach in determining the structural condition of the housing unit.

17. COMMENT: The Council should develop a process to recalculate a municipal housing obligation based on errors in the SDRP.

RESPONSE: When a party moves to amend a municipal housing obligation based on an error in the SDRP, the Council will consult with the Office of State Planning and determine if an error has been made and, if so, whether the error warrants a recalculation of the municipal housing obligation.

18. COMMENT: The Council should develop rules that would allow municipalities to determine their own need based on the long-term ability of the municipality to address low and moderate income housing. This would be preferable to calculating a municipal obligation every six years based on a regional need.

RESPONSE: The Council considered such an approach and decided to utilize the proposed methodology. The Council did not believe that such an alternative approach had been developed to a point that it was as credible as the proposed methodology. The approach advocated by the commenter also has not been developed to the point where it provides coherent direction as to crafting a housing element and fair share plan.

19. COMMENT: The methodology for determining housing need should include low and moderate income households living in overcrowded rental housing units.

RESPONSE: Overcrowding is one of the census surrogates of substandard housing that is used in determining the number of low and moderate income households living in substandard housing.

20. COMMENT: The undeveloped land cap does not make sense in various parts of the State because it caps the municipal housing obligation based on a suburban density that is much lower than the prevailing density of a specific municipality.

RESPONSE: The Council agrees and has eliminated the undeveloped land cap from the methodology.

21. COMMENT: The Council should develop a more realistic method of estimating indigenous need that does not assume that every substandard housing unit is occupied by a low and moderate income household.

RESPONSE: In developing its rules, the Council elicited the comments of professionals in the field on this subject. The consensus was that, although the census is an imperfect means to estimate the quality of housing at the municipal level, it was the best tool available. However, the Council's methodology does not assume that every substandard unit is occupied by a low or moderate income household. Therefore, the commenter's premise is incorrect.

22. COMMENT: The Council should cap the municipal 1987-1999 obligation to be no more than 25 to 30 percent more than the municipal 1987-1993 housing obligation.

RESPONSE: There are problems associated with limiting the 1987-1999 obligation based on a percentage of an obligation for any previous period. Such a cap does not consider the policies of the SDRP; it does not consider growth that has occurred in the municipality; nor does it include other factors that affect a municipality's responsibility and capacity to accept affordable housing.

23. COMMENT: What does it mean when a municipality has an unmet 1987-1999 housing obligation but has a VL designation?

RESPONSE: The VL designation means that the Council's records indicated that the municipality has received a vacant land adjustment for its inclusionary obligation. In municipalities that received repose from the Superior Court, the Council's information is secondhand. Therefore, the Council will have to verify that a vacant land adjustment is appropriate. However, assuming a vacant land adjustment is appropriate, the VL deisgnation indicates that the municipality has a realistic development potential of zero. Thus, the municipal inclusionary obligation to address the 1987-1999 housing obligation is limited to ensuring a contribution toward affordable housing as development and redevelopment occurs.

24. COMMENT: The Council should reduce its estimates of need because it is not likely that the State will be able to produce the housing to meet the need.

RESPONSE: The Council has included low and moderate income households living in substandard units and projections of low and moderate income household formation in its estimates of need. It has also adopted a cumulative approach to estimating need, establishing the principle that the need does not disappear if unaddressed. These estimates of need are not synonymous with what may actually occur during any six year planning period. However, by providing the opportunity, municipalities make it much more likely that the low and moderate income housing will actually be built.

In addition, the commenter's remarks seem predicated on new construction activity by the private sector. Yet, there are several other ways to address much of the need. Approximately half of the need may be addressed through rehabilitation activity. A municipality may choose to enter into a regional contribution agreement, or create accessory apartments, or construct its own housing through a non-profit corporation.

25. COMMENT: The Council should clarify how it uses the term "undeveloped residential land" that appears in N.J.A.C. 5:93-2.16.

RESPONSE: The Council has deleted this concept, because it was part of the undeveloped land cap that has been deleted from the proposal.

26. COMMENT: Since spontaneous rehabilitation is a projection of substandard housing units that will be rehabilitated by the private sector and benefit low and moderate income households, it probably should not exceed the indigenous need.

RESPONSE: The Council agrees with the commenter and has limited the impact of spontaneous rehabilitation to the indigenous need at N.J.A.C. 5:93-2.12.

27. COMMENT: If a municipality received an altered 1987-1999 housing obligation based on successful challenges to the covered employment or growth area calculations, the altered covered employment and/or growth area data should be used to calculate the prior cycle prospective need.

RESPONSE: Data refinements that were approved by the Council during the previous substantive certification process will be recognized in recalculating prior cycle prospective need. Those recalculations shall be made on a case-by-case basis as municipalities present information regarding prior cycle data refinements.

28. COMMENT: When a municipality receives a vacant land adjustment under the rule proposal, it must capture a contribution towards low and moderate income housing as development and redevelopment occur. The same should be true when a municipal obligation is limited by the undeveloped land cap.

RESPONSE: The undeveloped land cap has been removed from the rule reproposal, for the reasons indicated in the Summary which follows.

29. COMMENT: The proposed housing allocations do not reflect environmentally sensitive areas within specific municipalities.

RESPONSE: The allocation of 1987-1999 housing need was heavily skewed to areas where infrastructure exists and areas to which infrastructure can be extended. Thus, most of the housing need was allocated to SDRP Planning Areas 1, 2 and 3. Very little of the need was allocated to those planning areas considered environmentally sensitive by the State Planning Commission. In addition, the Council's adjustment process and criteria for selecting suitable sites within municipalities are totally consistent with DEPE regulations.

30. COMMENT: The Council should be very open to amendments in housing allocations based on flaws inherent in the land satellite. The satellite cannot determine lands that have limited development potential due to wetlands, steep slopes and underlying rock formations.

RESPONSE: The land satellite is a tool to direct housing need in a manner that is sensitive to the land available in the municipality and the policies of the SDRP. The Council believes that its use is a vast improvement to allocating housing need without any sense of undeveloped land and the goals of the SDRP. It is not sensitive to various environmental constraints. However, the Council's adjustment process and site selection criteria are sensitive to environmental considerations. In order to alter the municipal housing allocation based on Landsat, a municipality must convince the Council that its regional share of undeveloped land is clearly incorrect.

31. COMMENT: Non-residential equalized evaluation is a factor used in allocating housing need to municipalities. The data used for this factor is generated from a 1990 publication from the Division of Local Government Services. How would a municipality dispute the information in this publication?

RESPONSE: The Council believes that this publication provides the best source of this type of data for all municipalities in the State.

32. COMMENT: The proposed methodology replaces the covered employment factor with a factor based on non-residential rateables. As a result, some municipalities have seen their housing obligations increase dramatically. It appears that one solution would be to moderate the difference by creating a ratio of covered employment to non-residential rateables.

RESPONSE: In proposing this change to the methodology, the Council found that the many inaccuracies in covered employment data resulted in errors regarding the regional shares of covered employment assigned to municipalities. These errors resulted in inaccurate housing allocations that needed to be corrected. Correcting these errors was both costly and time consuming.

The Council has found a strong relationship between non-residential rateables and actual employment. The non-residential rateables data is much more accurate than the covered employment data. Therefore, the Council believes that it will result in more accurate housing allocations that will expedite the substantive certification process.

33. COMMENT: The 20 percent cap permits a full 100 percent of the 1993 housing stock to be dedicated to providing low and moderate income housing units. This would allow municipalities to rezone and double their housing stock in potentially six years. It would be more prudent to limit the housing obligation based on 35 percent of the existing housing stock.

RESPONSE: The rule referenced by the commenter was a response to the language in the Fair Housing Act that allows the Council to limit the municipal housing obligation to ensure against drastic alteration of a municipality. The Council sees no reason to alter this rule at this time. COAH believes that raising the limit to 35 percent would result in an impermissible dilution of the housing obligation.

34. COMMENT: The apparent object of the prior cycle prospective need calculation, to avoid rewarding municipalities that failed to meet their 1987-1993 obligation, is a sound one; but the concept is not taken far enough. In addition to requiring municipalities to address their prior cycle prospective need (or a portion thereof), the Council should require municipalities to address their prior cycle reallocated present need.

RESPONSE: Reallocated present need is estimated through use of the census. It is an estimate of substandard units occupied by low and

moderate income households at a specific point in time. Therefore, the Council does not view it as a cumulative obligation.

35. COMMENT: It is unclear how the 1.2 multiplier and the 95 percent ceiling on demolitions are derived.

RESPONSE: Demolitions are multiplied by 1.2 to account for the fact that there are more demolitions in the low and moderate income housing stock than in the housing stock as a whole. The 95 percent ceiling is to ensure that the share of low and moderate income demolitions do not exceed total demolitions.

36. COMMENT: The proposed rules on filtering are somewhat of an improvement because of the addition of an age factor in estimating the rate of filtering. The underlying problem is that the data from the American Housing Survey is aggregated and is not available at the municipal level. The Council should eliminate filtering from the calculation or, in the alternative, either cap filtering by some regional standard or require municipalities to find specific housing units that are likely to "filter" in the municipality.

RESPONSE: Filtering is a projection based on the American Housing Survey. The Council believes the Survey is the best information available on which to base such projections. In addition, the proposed methodology is sensitive to changes in filtering trends. Whereas the latest American Housing Survey demonstrated that the Council overstated the amount of filtering that occurred since 1987, the Council adjusted the projections downward and incorporated a revised estimate of actual filtering in the estimates of prior cycle prospective need.

37. COMMENT: As with filtering, it would be more accurate to utilize an age factor in conjunction with the two to four family unit factor to estimate conversions.

RESPONSE: Conversions are not correlated with age, as is the case for filtering, since almost all of the recent multifamily building has been units of five or more. There is no need to correlate two- to four-unit structures with age because the vast majority already are old.

38. COMMENT: The concept of spontaneous rehabilitation is flawed because it fails to incorporate any estimate of whether the rehabilitated unit will remain affordable to the low and moderate income household. It should be eliminated from the methodology.

RESPONSE: Spontaneous rehabilitation involves a housing unit that: was initially occupied by a low or moderate income household; has undergone extensive rehabilitation; and is still occupied by a low or moderate income household.

39. COMMENT: It is inappropriate to allow a reduction for every paper unit contained in a housing element certified by the Council or granted repose by the Superior Court. Such a plan may have met the test of realistic opportunity at one time, but, in hindsight, or due to changing circumstances, no longer provides for a realistic opportunity.

RESPONSE: The reductions are subject to further review by the Council, pursuant to N.J.A.C. 5:93-3.5. That review may occur when a municipality petitions for substantive certification or when, pursuant to the motion process in the Council's procedural rule, a party requests an amendment to a municipal plan. The Council has amended its rule proposal to make it clear that sites previously zoned for inclusionary development are subject to review.

40. COMMENT: The Council should clarify N.J.A.C. 5:93-2.14 to state that if the reduction information is incorrect, the municipal obligation may increase or decrease.

RESPONSE: N.J.A.C. 5:93-3.1(b) states that the municipal housing obligation will increase or decrease if the reduction assumed by the Council is incorrect. The Council has also modified its rule proposal to clarify that it will review inclusionary sites zoned in the past to determine if they warrant a reduction.

41. COMMENT: The undeveloped land cap should be eliminated. It is unnecessary, due to the Council's adjustment process. It also eliminates housing need in areas where housing can be built, because the density assumption upon which it is based is inappropriate in various parts of the State.

RESPONSE: The undeveloped land cap has been eliminated from the methodology, for the reasons indicated in the Summary which follows.

42. COMMENT: If the Council caps the municipal obligation based on undeveloped land, it should reallocate the housing obligation so that the housing units are not lost.

RESPONSE: The undeveloped land cap has been deleted from the methodology, for the reasons indicated in the Summary which follows.

43. COMMENT: The cap based on 20 percent of the municipal housing stock is flawed because it assumes the municipality can only zone to address its housing need.

RESPONSE: The Council is not empowered to require municipalities to spend municipal dollars to subsidize low and moderate income housing opportunities. Municipalities are free to zone land in order to address their housing obligation. Therefore, the Council believes that the assumption behind the cap based on 20 percent of the municipal housing stock is appropriate.

44. COMMENT: The Council has corrected some of the weaknesses of the land satellite with geographically sensitive census data. Areas depicted, by the census, as having a density of .5 units per acre or more are depicted as developed. This is not fair to those municipalities that have been developed with larger lots.

RESPONSE: The Council believes that the .5 units per acre is a reasonable standard. The commenter should be aware that the undeveloped land is weighted by planning area. In Planning Areas 4 and 5, where one would expect to be able to justify larger lots, the undeveloped land was not a factor in allocating housing need.

45. COMMENT: Using undeveloped land as a factor resulted in unfairly high allocations to Sussex County.

RESPONSE: Undeveloped land was weighted by planning area. In Planning Areas 4 and 5, undeveloped land was discounted altogether. It is the Council's understanding that all of Sussex County is in Planning Areas 4 and 5. Therefore, the undeveloped land factor was not a factor in Sussex County's housing allocations.

46. COMMENT: The use of equalized assessed value is not a valid tool in the determination of the value of nonresidential ratables within a housing region as the assessed values are only equalized within a municipality and the equalization factors within a housing region could differ.

RESPONSE: The equalization ratio is calculated for each municipality and summed to the housing region. The Council has determined that it is an entirely appropriate tool for comparing values of property in each municipality relative to the housing region.

47. COMMENT: The Council should modify its rules to conform with the legislation that requires no municipality with a post-credited, post adjusted fair share beyond 1000 units to do more than implement a plan for 1000 units "within six years from the grant of substantive certification absent extraordinary circumstances."

RESPONSE: The Council has modified its rules, at subchapter 14, to conform to this recent legislation, as indicated in the Sumamry which follows.

48. COMMENT: The income factor used to allocate housing need results in a disproportionate amount of housing need in some municipalities.

RESPONSE: The income factor is only one factor in allocating need to municipalities. The Council believes wealthier municipalities have a greater capacity and responsibility to create opportunities for low and moderate income housing.

49. COMMENT: The proposed rules show a marked decrease in the number of low and moderate income households living in substandard housing. It achieves this reduction by changing the statistical indicators for estimating the number of physically substandard units.

RESPONSE: The Council used the indicators of housing deficiency that were available to it. The census did not collect the same data in 1990 as in 1980. The methodology is more fully explained in Appendix A.

50. COMMENT: Any housing need that is lost as a result of the 20 percent cap should be reallocated to other municipalities within the housing region.

RESPONSE: The Council has included a factor designed to allocate housing need in a manner that is sensitive to the undeveloped land in a municipality and the goals of the SDRP. The methodology results in a reasonable allocation of housing need. Having allocated the need in such a way, the Council does not believe that a municipality should have its housing obligation increased due to the limitations of other municipalities.

51. COMMENT: The Council's estimates of filtering are flawed in at least two respects. First, the Council's estimates of filtering do not include standard housing units affordable to low or moderate income households that are lost from the housing stock. These lost units are in addition to units lost through demolitions. Second, filtering cannot be allocated to municipalities based on regional shares of multifamily housing and older housing. Filtering is a market phenomenon predicated on the existence of housing surpluses, which cause housing prices to drop

because of the excess of housing supply over demand. Any allocation of filtering that disregards the local market conditions is arbitrary, illogical and bears no relationship to the real world.

RESPONSE: Filtering projects the movement of sound housing units between low and moderate income households and non-income eligible households over time. It is a net figure after considering units that filter to and from low and moderate income households.

Filtering takes place in locations with high shares of multifamily dwellings. In New Jersey, 40 percent of three million units, or 1.2 million units, are occupied by those of low- and moderate-income. Of these, 40,000 to 50,000 are deteriorated, and 150,000 are public or publicly assisted. One million of 1.2 million units have filtered to the poor. Filtering takes place in significant numbers; it has been approximated using the American Housing Survey and is built into the housing model.

52. COMMENT: The use of the land satellite is flawed because it does not consider environmentally sensitive lands, contaminated ground water and limited sewer capacity.

RESPONSE: The Council's use of the land satellite has been explained fully in response to other comments. Many of the concerns raised by the commenter are addressed by the Council's adjustment process and site selection criteria.

53. COMMENT: The Council's proposed rules do not address what effect any future State Plan map amendments may have on municipal housing allocations.

RESPONSE: The Council will consider amendments to the SDRP in calculating housing obligations after 1999.

Subchapter 3. Credits and Reductions

54. COMMENT: The Council has provided for a one to one credit if a municipality has provided the appropriate zoning, the obligation has been transferred via a regional contribution agreement or if the housing has been built. The Council should provide a greater credit for housing that has been built.

RESPONSE: The Council has provided a reduction in excess of one to one for rental housing. It has provided this rental bonus because rental housing is more accessible to a larger segment of the low and moderate income population and because it requires much deeper subsidies to build than sales housing. To allow a larger reduction for all housing constructed would substantially dilute any incentive to construct rental housing. Larger reductions might also result in an unconstitutional dilution of the housing obligation.

55. COMMENT: The lack of credit for low and moderate income housing units that were rehabilitated during the 1980's penalizes municipalities that operated local rehabilitation programs. Clearly, the census surrogates do not reflect actual deteriorated units or the number of such units would surely have diminished since the 1980 census.

RESPONSE: The Council does not reduce the estimate of substandard units occupied by low and moderate income households provided by the census due to rehabilitation activity that occurred before the census. No matter what the nature of the pre-census rehabilitation, the census is indicating the substandard housing units are still there. The quality of housing changes over time. It can get better or worse. Therefore, it does not follow that there would be less substandard units in a municipality simply because of the existence of a rehabilitation program. However, the Council recognizes that the census is an imperfect means to estimate the quality of the local housing stock. Therefore, it has provided a survey for parties to use if they believe the Council's estimate is mistaken.

56. COMMENT: Township owned housing made available to a caretaker at a reduced rent should receive credit from the Council.

RESPONSE: In general, housing units must be available to the general public to receive credit. Generally, there must also be some controls on affordability. The requested change is not compatible with the standards, since only the caretaker, and not the general public, can be considered eligible.

57. COMMENT: A municipality receives a reduction for all affordable units built, zoned or transferred via a regional contribution agreement. However, if the opportunities created by the municipality exceed the 1987-1999 housing obligation, the Council depicts the municipality as having no obligation. The Council should depict a negative obligation.

RESPONSE: The Council will re-examine municipal zoning on a case-by-case basis to determine if the zoning still creates a realistic opportunity. The Council has provided direction regarding this review in a newly-proposed rule, N.J.A.C. 5:93-3.5. However, in general, the Council will provide a reduction for every unit built, zoned for or transferred by way of a regional contribution agreement. The municipality will receive a reduction for these units as the municipal obligation accrues in the future.

58. COMMENT: Some municipalities received repose to address more units than would have been required by the 1987-1999 housing obligation. As a result, their calculated need is zero. The Council bases its percentages for rental and senior citizen units on the calculated need. Will municipalities with a zero calculated need receive credit for senior and rental units created by way of a court settlement?

RESPONSE: In general, the Council's philosophy has been to apply its rules uniformly for all municipalities. If the settlement conforms to the Council's rules for the 1987-1993 period, it is likely that these units will receive a credit. If the settlement preceded the Council's rules, it is likely that these units will receive a credit. However, the Council must review the facts of the case before granting any credits.

59. COMMENT: Some municipalities received substantive certification or repose after the Council proposed its 1987-1999 housing obligations. Their compliance is not reflected in the reductions allowed by the Council. Can these municipalities receive a reduction?

RESPONSE: Yes. The Council will review the terms of the court repose. However, the general philosophy is to reduce the 1987-1999 housing obligation based on municipal efforts manifested by zoning activity, actual construction and participation in a regional contribution agreement.

60. COMMENT: The Council should devise a system in which it reduces the housing obligation for those municipalities that have addressed their obligation and reassigned that need to municipalities that have ignored their obligation.

RESPONSE: The Council decided not to be punitive in assigning housing allocations. It believes it did devise a system that recognizes the contributions of those municipalities that did address the housing obligation. Given the cumulative approach adopted by the Council, municipalities that ignored the obligation have, in general, a larger remaining obligation. Municipalities that choose to continue to ignore their obligation can expect a larger cumulative obligation and continued exposure to litigation.

61. COMMENT: The Council should award an additional reduction for municipalities that have addressed their entire 1987-1993 obligation within a prescribed period of time.

RESPONSE: The Council's rules provide for a one to one unit credit for sales units that are constucted and a bonus for rental units constructed. They also provide the possibility of reductions for municipally zoned land. The Council believes that further reductions may be an impermissable dilution of the housing obligation.

62. COMMENT: In general, subchapter 3 is difficult to follow. It does not clearly inform the reader what the substantive standards are for crediting units.

RESPONSE: If the commenter can be more specific, the Council can consider ways of clarifying the rules.

63. COMMENT: It is inappropriate to credit pre-1987 units on the basis of looser standards than those adopted by the Council on December 15, 1986. The constitutional standard of the *Mount Laurel* doctrine is an objective one, and the Council's 1986 regulation is a minimum acceptable level of eligibility.

RESPONSE: As of 1986, the Council has had standards for providing credit for a low or moderate income housing unit. The Fair Housing Act includes language that most commenters seem to agree requires the Council to provide credit for housing activity that preceded 1986. It seems reasonable to the Council to recognize legitimate low and moderate income housing activity that does not adhere fully to rules that did not exist at the time this housing activity was initiated.

64. COMMENT: N.J.A.C. 5:93-3.1(e)1 seems to deny a credit for publicly funded units after December 15, 1986, unless at least half the units are affordable to low income households. As long as half the units in the overall municipal housing element are targeted to low income households, there would seem no reason to deny credit for a development that is devoted only to moderate income households.

RESPONSE: The Council's 1986 rules made it very clear that at least half of the units in inclusionary developments must be devoted to low income households. In general, developments have since included a 50/50 split of low and moderate income units.

65. COMMENT: The Council should not grant an automatic reduction for sites that have been zoned for low and moderate income housing. Where a site has not been the subject of a development

application for six years, and another developer proposes a more realistic site, then the Council should go through a process to determine if site substitution is appropriate.

RESPONSE: The reduction for low and moderate income units that have been zoned but have not been built should not be viewed as automatic. The Council will review these sites for suitability and determine why each site has not developed before granting a reduction. In some cases, amendments to the existing zoning may be required. It is also possible that a site substitution may be necessary.

66. COMMENT: The Council should amend its rules on credits to conform with recently enacted legislation.

RESPONSE: The Council has amended the rule at N.J.A.C. 5:93-3.2, to conform to the recent legislation which amended the Fair Housing Act. The amendment is more specifically described in the Summary which follows.

67. COMMENT: The Council has provided a reduction for municipal zoning even if no low and moderate income housing has been constructed. This provision violates the constitutional provision that municipalities satisfy their fair share housing obligations only by creating realistic opportunities for the provision of affordable housing. The courts have previously rejected interpretations of the FHA that would have permitted credits for past affordable housing activities unless there had been an express judicial determination that those activities created realistic housing opportunities.

RESPONSE: The reductions are based on zoning approved by the Council or zoning approved by the court. In each case, the court or the Council has made a determination that a realistic opportunity exists. If the Council is not correct in its assessment of court approved zoning, the reduction applied to the municipality is subject to change. Also, as indicated in a previous comment, the Council shall re-examine past zoning to determine if a realistic opportunity still exists prior to granting reductions.

68. COMMENT: The Council should not allow credits for units constructed between 1980 and 1986 that are occupied by low and moderate income households unless the unit is affordable. The Supreme Court has said that to satisfy a municipality's fair share housing obligation, housing opportunities must be realistic. To be realistic, the units must be actually constructed and affordable to low and moderate income households. The rule as proposed could result in an unconstitutional dilution of the obligation.

RESPONSE: The proposed rule at N.J.A.C. 5:93-3.2 is the result of an Appellate Division decision *(Bernards Township v. State of New Jersey, Council on Affordable Housing, 233 N.J. Super)* that overturned a Council rule that had required controls on affordability in order to receive a credit. Since the rule proposal in March 1993, the Fair Housing Act has been amended to require the Council to grant such credits. There has been concern expressed that allowing credits without controls for units constructed between 1980-1986 may result in an unconstitutional dilution of the housing obligation. However, since the original adoption of this requirement at N.J.A.C. 5:92-6.3, on August 5, 1991, only one community has applied for these credits.

69. COMMENT: N.J.A.C. 5:93-3.2(a) appears to contain a typographical error. The final sentence should read "Subchapter 12 of N.J.A.C. 5:92 and Appendix C and Appendix F, incorporated by reference."

RESPONSE: There was an error. N.J.A.C. 5:93-3.2(a) has been changed to refer to N.J.A.C. 5:92-12 and Appendix E, which contains a deed restriction.

70. COMMENT: The Council must develop a procedure for the deduction of credit if a municipality were to submit a request to amend their substantive certification after the receipt of credit for zoning.

RESPONSE: In order to retain the reduction, a municipality must retain the realistic opportunity.

Subchapter 4. Municipal Adjustments

71. COMMENT: The adjustment process should be tempered to permit the municipality to calculate its build-out residential capacity, as advocated by the State Development and Redevelopment Plan (SDRP).

RESPONSE: The commenter is not correct. There is no SDRP policy regulating the Council's adjustment process.

72. COMMENT: The Council's rules on adjusting municipal housing obligations should allow municipalities to exclude all wetland buffer areas and any critical environmental site identified by the SDRP from its land inventory that is used to quantify the municipal housing obligation.

RESPONSE: The Council's general philosphy regarding the exclusion of land for environmental reasons is that a site may be excluded for low and moderate income housing if it is similarly prohibited from all other uses by DEPE regulation. Thus, wetland transition buffers may be excluded from consideration.

73. COMMENT: The Council's adjustment process should allow municipalities to eliminate buffer areas surrounding historic structures, even if the structure is not on the State Register.

RESPONSE: The Council believes that the State Register of Historic Places is a reasonable standard for determining if the development of affordable housing must be tempered due to the unique character or circumstances of a specific site or structure.

74. COMMENT: It is appropriate for municipalities that have or will receive vacant land adjustments to enact a development fee ordinance or require a lower income set-aside on all substantial redevelopment activity.

RESPONSE: The Council agrees and such requirements are incorporated in the reproposal at N.J.A.C. 5:93-4.2(g).

75. COMMENT: At N.J.A.C. 5:93-4.2(d)4, the Council should not require communities to purchase land for recreational purposes within one year of substantive certification when the municipality is seeking a vacant land adjustment.

RESPONSE: This rule codifies a policy the Council has had for years. The Council believes that municipalities that want an adjustment for recreational purposes should ensure that the land in question be used for recreational purposes. It should not be developed for another use.

76. COMMENT: The proposed adjustment rule states that municipalities seek vacant land adjustments may seeking waivers to exempt them from collecting development fees. Is not the collection of development fees an option?

RESPONSE: When a community demonstrates it does not have enough land to address the entire housing obligation, it has the obligation to capture something for affordable housing as development or redevelopment occurs. In such a case, the collection of a development fee may be a requirement.

77. COMMENT: If a community receives a vacant land adjustment, it should be required to zone every parcel of land for low and moderate income housing or impose development fees on the remaining undeveloped parcels of land. A community should not be able to avoid zoning parcels of land by constructing its own housing on a parcel of land at higher densities than those anticipated in the Council's adjustment process.

RESPONSE: As indicated in a previous comment, the Council believes in establishing a realistic development potential for a community and providing the community with the flexibility to respond in a way that addresses the needs of the community. The Council does not believe that the housing obligation should vary based on the response chosen by the municipality. The Council does agree with the commenter in that a community that receives a vacant land adjustment should capture a contribution toward affordable housing as development or redevelopment occurs. That contribution may be in the form of a development fee.

78. COMMENT: Municipalities that receive a vacant land adjustment should be able to transfer up to 50 percent of their housing obligation provided: they zone all remaining sites in the community for inclusionary zoning or a development fee; at least 30 percent of the units to be produced under the municipal housing element be constructed within the municipality itself; and that the municipality provides for 10 percent more units than the realistic development potential.

RESPONSE: Although the rule proposal requires communities seeking a vacant land adjustment to capture a contribution toward affordable housing in addition to its plan addressing the realistic development potential, the Council finds the commenter's suggestion to be fairly arbitrary and almost punative to those communities that choose to enter into a regional contribution agreement. The Council believes that a municipal obligation should not vary based on choosing one or more acceptable options for addressing the housing obligation. The Council also believes that the Appellate Division's decision in *In re Borough of Roseland,* 247 *N.J. Super* 203 (App. Div. 1991), *certif. denied* 127 *N.J.* 326 (1991) supports its position.

79. COMMENT: If a community has a housing obligation of 100 and it has sufficient land based on the criteria in subchapter 4 of the proposed rules to address 125 affordable units, the municipality should be able to receive a vacant land adjustment during this certification period.

RESPONSE: Such a municipality may receive a vacant land adjustment by proceeding through the adjustment process and developing a plan for a realistic development potential that exceeds its

1987-1999 housing obligation. Such a municipality must also develop a plan to capture a contribution toward the housing obligation as development or redevelopment occurs. All vacant land adjustments will be reviewed after each certification period to determine if a change in facts require a change in the strategy for capturing a contribution toward the housing obligation as development or redevelopment occurs.

80. COMMENT: When a municipality receives a vacant land adjustment, the rules require municipalities to capture a contribution toward affordable housing as development or redevelopment occurs. The precise requirements are vague and should be clarified.

RESPONSE: This requirement may vary depending on the character of the municipality. At this point, the Council cannot provide greater precision to this rule.

81. COMMENT: The Council should not include parcels of less than two acres in its calculation of realistic development potential.

RESPONSE: In areas of the State where land is a scarce resource, it is important to maximize the potential of delivering affordable housing. Although all realistic land parcels are used in calculating the realistic development potential, a municipality need not use all land parcels in developing its response to the housing need.

82. COMMENT: The Council should clarify how small parcels of land (less than two acres in size) are being treated in the adjustment process.

RESPONSE: The parcels are included in the calculation of the realistic development potential, unless there is a valid reason for exclusion. In effect, they are treated as any other parcel of land in the municipality.

83. COMMENT: The language in N.J.A.C. 5:93-4.2 that states that all vacant land in municipality shall be presumed to be suitable for low and moderate income housing is unfair to municipalities that have not been exclusionary. Such municipalities need this undeveloped land to expand their ratable base.

RESPONSE: N.J.A.C. 5:93-4.5 creates a waiver provision so that a municipality need not use an entire resource to address its obligation. The criteria for such a waiver include an analysis of past inclusionary practices, a demonstration of hardship and a demonstration that the municipality has actively pursued its municipal housing obligation by petitioning for certification prior to litigation.

84. COMMENT: A municipality should not be forced to provide for water and sewer in areas where the supply of such services is under the jurisdiction of a municipal authority, a regional authority or a private utility company. It is unreasonable to expect private citizens to pay for infrastructure costs in such instances. Such costs should be borne by the developers of the projects in question as part of the off-site contribution process.

RESPONSE: The Council expects municipalities to do everything within their control to provide infrastructure to inclusionary sites. Certainly, municipalities will be expected to reserve sewer and water capacity for low and moderate income housing where sewer and water capacity is a scarce resource. Municipalities shall be expected to support necessary 208 plan amendments and endorse CPI applications. The Council has provided an application and process at N.J.A.C. 5:93-4.3(d) for those municipalities that believe the cost of providing infrastructure is prohibitive.

85. COMMENT: The Council should deny substantive certification unless the municipality is able to prove that it has done everything possible to facilitate the development of public sewer or water where necessary to achieve the development of the municipality's fair share of affordable housing.

RESPONSE: Municipalities shall be required to select sites that have water and sewer before the Council will consider sites that do not have such access. In SDRP Planning Areas 4 and 5, municipalities will be required to proceed through a center designation process that identifies a geographic area that can be served by sewer and water service. If infrastructure is available, municipalities shall be required to cooperate with private sector efforts to make the infrastructure available.

86. COMMENT: The adjustment process now includes a requirement to collect development fees. This is inappropriate.

RESPONSE: The Council believes that it is important for development and redevelopment activity to contribute toward the creation of affordable housing when land is a scarce resource. The development fee is one vehicle toward that goal.

87. COMMENT: The proposed vacant land adjustment process provides that the Council may determine that non-vacant land (golf courses, farms, etc.) would create a realistic opportunity for low and moderate income housing if subject to inclusionary zoning. The Council should clarify that it will make this determination on a site-by-site basis, if there is a realistic opportunity of conversion to residential use during the six-year certification period. If the owner of the golfing or farming activity indicates an intent to continue using the site for its present use, the site should not be included in the calculation of realistic development potential. Inclusion of such a site would limit the opportunity for addressing the realistic development potential.

RESPONSE: The Council believes that the rule is clear in describing a site-specific analysis that results in calculating the realistic development potential. If the owner of land presently used for a golfing or farming activity indicates an intent to continue using the site for its present use, that intent will be considered in the Council's determination of the realistic development potential. If a site is excluded from the calculation of the realistic development potential, the Council will consider requiring overlay zoning on these sites such that, if they do develop, they will produce low and moderate income housing.

88. COMMENT: N.J.A.C. 5:93-4.2(d)2ii should be clarified to indicate that environmentally sensitive land such as wetlands may be included in the inventory of land that is realistically available for development to the extent that it could be utilized as the open space component of an inclusionary development.

RESPONSE: This was not the Council's intent. Such a policy would lead to a gross exaggeration of the capacity of a given site based on sound planning principles.

89. COMMENT: The Council should eliminate the concept of a buffer surrounding a site designated on the State Register of Historic Places.

RESPONSE: The rule at N.J.A.C. 5:93-4.2(d)3, allows municipalities to apply for a buffer area surrounding historic structures. Upon review of a recommendation from the Historic Preservation Office, the Council shall determine if a buffer is necessary.

90. COMMENT: In calculating realistic development potential, the Council establishes a minimum of six units per acre and a maximum 20 percent set-aside. The rule should state that the Council will require higher densities where the site will support them. The rule should also establish a 20 percent set-aside as a minimum.

RESPONSE: In general, the Council views the density of six units per acre to be a minimum in the calculation of realistic development potential. It has and will utilize higher densities when the surrounding land uses indicate that higher densities are appropriate.

The 20 percent set-aside is viewed as a maximum. This is because municipalities have the option to zone for their entire housing obligation. The Council is not empowered to require municipalities to spend municipal funds to subsidize inclusionary developments. Absent such subsidies, a 20 percent set-aside is, generally, the maximum requirement of the private sector.

91. COMMENT: Municipalities that have already received vacant land adjustments should be required to implement the provisions in the rule proposal that capture a contribution toward affordable housing as development and redevelopment occur.

RESPONSE: This requirement will be incorporated into these municipalities' plans when they repetition for substantive certification.

92. COMMENT: After the realistic development potential is determined, the rule proposal says that the Council may require at least some combination of methods to capture a contribution toward affordable housing as development or redevelopment occurs. Insofar as this language is intended to give the Council discretion in which combination of backup provisions to apply, this language is acceptable. However, it could be read to allow the Council not to require any backup provisions at all.

RESPONSE: The language is intended to give the Council discretion in the appropriate method(s) to capture the contribution toward affordable housing. In general, some method(s) will be required of all municipalities seeking a vacant land adjustment.

93. COMMENT: The rule pertaining to providing an adjustment due to the cost of providing infrastructure does not consider the possibility that a developer could assume some of these costs.

RESPONSE: In assessing such municipal requests for an adjustment, the Council will consider the possibility of a developer contributing to the costs.

94. COMMENT: Although the waiver provision provided in N.J.A.C. 5:93-4.5 is necessary, it should be used sparingly. Otherwise it has the potential for opening a big loophole in the rules.

RESPONSE: The rule provides criteria for granting a waiver. The municipality has the burden of persuading the Council that a waiver is appropriate.

95. COMMENT: The attempt to focus upon realistic development potential of available land is a fair attempt to analyze development potential after it is determined how much land is truly available within a municipality. The attempt in subchapter 13 to coordinate site-specific relief within the structure of the SDRP is also an admirable goal. It makes good planning sense to identify which areas of the State are suitable for higher density development and which areas are not suitable. Equal weight should also be given to the municipal land use element of each municipal master plan. This is necessary to consider areas that municipalities consider unsuitable for higher densities.

RESPONSE: The Council believes that the SDRP and State rules protecting critical resources are adequate in assessing specific municipal sites. Where the municipality disagrees, the Council's administrative process provides opportunities for discussion and assessment.

96. COMMENT: The Council's use of non-residential rateables instead of covered employment to allocate housing need is flawed because it does not consider out-of-State employees and slowed growth in these rateables due to the recession.

RESPONSE: The use of covered employment data would not address the problems perceived by the commenter. The use of the non-residential factor reflects the Council's belief that, as a municipality accepts non-residential rateables, it increases its capacity and responsibility to provide low and moderate income housing.

97. COMMENT: The Council's requirement to purchase land reserved for recreation within one year of recreation could be burdensome to municipalities. It is recommended that the Council limit the provisions of N.J.A.C. 5:93-4.2(d)4ii to apply only to those sites which would exceed need standards for recreation and would otherwise satisfy established criteria for an inclusionary development.

RESPONSE: The provisions referred to by the commenter refer to a situation where a municipality does not have sufficient vacant land to address the housing obligation. The rule establishes a minimum standard of land that can be reserved for recreation. Having reserved this land, all sites that satisfy established criteria are considered for inclusionary development. Thus, the principles, if not the specifics, of the rule are very close to those suggested by the commenter.

98. COMMENT: If a municipality is seeking a vacant land adjustment, the minimum density the Council should consider is six units per acre.

RESPONSE: In general, six units per acre will be the minimum density considered. The Council may require higher densities where it determines that such densities are consistent with sound land use planning.

99. COMMENT: The language respecting endorsing applications for sewer and water capacity should be more specific. There should be a requirement for endorsing all appropriate amendments to 208 or water quality management plans, execution of appropriate utility service contracts and execution of any other documents required in conjunction with the provision of water or sewer. In addition, municipalities should be obligated to contact DEPE, when requested, in support of particular water/sewer applications.

RESPONSE: As stated in response to an earlier comment, the Council expects municipalities to do everything within their control to provide infrastructure to inclusionary sites. Although the commenters suggestion leaves room for interpretation, in general, all of these suggestions are within the municipality's control.

100. COMMENT: When the Council has certified a site that is not served by infrastructure, the rules indicate that the municipality must amend its plan if a site, not currently included in the plan to provide affordable housing, receives infrastructure. This should not be automatic. The developer, currently in the plan, and the municipality should be given the opportunity to demonstrate that the site included in the plan is viable.

RESPONSE: Any request for a plan amendment must involve the opportunity for all parties to respond to the requested amendment. In addition, the rule referred to by the commenter includes language that allows the Council to waive the requirement if the municipality has a viable plan to provide water and/or sewer to the site originally included in the plan.

101. COMMENT: The proposed rules require municipalities to purchase potential recreational sites within one year of substantive certification in order to exclude these sites from consideration for affordable housing. This time frame appears too restrictive, given the competitiveness for limited public dollars.

RESPONSE: The rule is designed so that sites designated for recreational purposes are used for recreational purposes. Given the limits of municipal land use powers, the Council has determined that the purchase of the site within one year will prevent sites designated for recreational purposes from being developed for another use.

102. COMMENT: Does the proposed rule of reserving land for recreational purposes allow a municipality to exceed the three percent cap if the planning board designates the site for recreation in its master plan; and the site is acquired for recreation purposes within one year from the Council's grant of substantive certification?

RESPONSE: No. The conditions referenced by the commenter are conditions for reserving land within the three percent cap.

103. COMMENT: The Council should be realistic about what can be achieved in one year regarding the purchase of recreational land. The Green Acres process is a long one.

RESPONSE: The planning for the recreational needs of a community should not begin with the response to the housing obligation. Recreational planning is an on-going concern. Although the Council understands the need to be flexible for unique circumstances, it believes its rule is appropriate.

104. COMMENT: The Council should not require municipalities to include member-owned golf courses in their inventory for purposes of determining their right to a vacant land adjustment.

RESPONSE: The Council's rules do not include member owned golf courses for purposes of calculating the realistic development potential of the municipality. However, when land is a scarce resource, the rules require a contribution toward affordable housing as development or redevelopment occurs. That contribution may take the form of overlay zoning, a development fee ordinance, etc. Golf courses owned by the members may develop at some point in time; and, if they do, they can make a significant contribution toward affordable housing.

105. COMMENT: The Council should require, whether or not sites are currently in a water quality plan, that any applicable independent authority with utility jurisdiction provide a letter to the Council clearly setting forth its intent to provide service. The relevant utility should also agree to submit to the Council's jurisdiction if the site is to be approved by the Council as realistic.

RESPONSE: The Council is meeting with representatives of DEPE to explore the feasibility of the comment.

Subchapter 5. Preparing A Housing Element

106. COMMENT: If the Council will not include people living within institutions as part of the present need, it may not allow municipalities to address their housing obligation with creating alternative living arrangements. The Supreme Court has held, in *Warren*, that the Council's definition of housing need and its determination of what municipal actions satisfy the housing need must be congruent. Where alternative units are included, they should be subject to the 25 percent age cap.

RESPONSE: The Council's estimate of need includes households that were living in substandard housing (including motels). It also includes all low and moderate income households that have formed since 1987 and all future low and moderate income households expected to form between 1993 and 1999. Thus, it includes low and moderate income households who are very poor, the elderly, and low and moderate income households who are physically or mentally challenged. Alternative living arrangements provide a housing alternative to address these needs.

Alternative living arrangements house more than the elderly. By placing them under the 25 percent limitation for senior units, one establishes an unfortunate competition between two groups that require housing and often have special needs. For these reasons, the requirements have not been changed as the commenter requested.

107. COMMENT: The Council should allow municipalities to address some of their housing obligation through transitional housing.

RESPONSE: The Council has revised its definition of alternative living arrangements to include transitional housing. Thus, a municipality may address some if its housing obligation through transitional housing.

108. COMMENT: The Council's presumptive density and set-aside are based solely on residential use. Since the State Plan encourages mixed use development, the rule should recognize that presumptive density in mixed use development may be lower where the nonresidential component is being used as the bridge mechanism to create affordable houisng.

RESPONSE: The Council has seen very few mixed use developments proposed in the housing elements submitted for its review. Therefore, the Council does not believe it can establish a presumptive density in mixed use developments. If municipalities propose such developments, they will be reviewed on a case by case basis.

109. COMMENT: It is contrary to the SDRP's cross-acceptance process for the Council to require municipalities to create or expand an existing center to accommodate a need for new low and moderate income housing.

RESPONSE: This policy is totally consistent with the policies of the SDRP and has been the subject of a memorandum of understanding with the State Planning Commission. (See Appendix F).

110. COMMENT: The Council should provide guidance regarding when a municipality may have to deviate from the presumptive densities and set-asides published in its rule.

RESPONSE: The Council has reproposed N.J.A.C. 5:93-5.6(b) and (c). These rules provide direction regarding the Council's criteria in its review of densities, as discussed in the Summary of the changes between the proposal and reproposal which follows.

111. COMMENT: Would the bonus allowed for rental housing open to the general public result in three units of credit or two?

RESPONSE: The commenter should be aware that the Council has reproposed the criteria for receiving the maximum rental bonus, at N.J.A.C. 5:93-5.13, and that the crediting formula is described in the Summary which follows. The bonus allowed in the new N.J.A.C. 5:93-5.13(d)1 would result in 2.0 units of credit.

112. COMMENT: The increased bonus for rental housing open to the general public may result in an unwarranted dilution of the need.

RESPONSE: The need for rental units and the subsidies necessary to produce them are so great as to warrant incentives to municipalities to provide plans that respond to the need. The Council has capped the number of units that may be eligible for the bonus due to concern about diluting the obligation.

113. COMMENT: The Council should allow municipalities to reserve more than 25 percent of their housing units for senior citizens.

RESPONSE: The Council believes that the 25 percent provides adequate protection to those low and moderate income senior citizen households that may be viewed as an at-risk population. It should be noted that senior citizens are eligible to occupy all low and moderate income units.

114. COMMENT: The Council's rule proposal pertaining to rental housing is inadequate. It would allow municipalities to receive credit by offering only slight incentives to developers. The Council should require a 50 percent requirement for rental housing and the Council should not approve plans unless municipalities provide actual signed agreements to provide rental housing.

RESPONSE: The Council is prevented by the Fair Housing Act from requiring municipalities to expend municipal money to address their low and moderate income housing obligations. Therefore, if a municipality chooses, it may address its housing obligation through use of its zoning powers. The Council also believes it is problematic for a municipality to use the zoning power to regulate tenure. The Council does believe that municipalities can offer incentives to construct rental housing through its zoing powers and has devised incentives for the development community to build rentals.

115. COMMENT: The Council should not offer a two for one credit for the construction of rental housing that is open for the general public. These incentives have never worked in the past.

RESPONSE: The Council has never offered such an incentive in the past. Therefore, the Council does not believe the commenter's assessment is accurate. However, the Council has reproposed rules on the rental bonus, at N.J.A.C. 5:93-5.13, as described in the Summary which follows.

116. COMMENT: Rehabilitation costs are established at $8,000 (without administration). This suggests that $8,000 must be spent on rehabilitation per dwelling unit. If a community wanted to do its own rehabilitation, either through municipal employees or nonprofit organizations, or can solicit assistance from developers, it should be permitted. The value of the rehabilitation should be specified and not an absolute expenditure.

RESPONSE: The Council is concerned that units with substantial code violations be brought up to code. The Council certainly will entertain innovative means to achieve the same goal.

117. COMMENT: The Council's rule proposal allows communities to receive credit for purchasing units that have been vacant for 18 months and making them available to low and moderate income households. Why does the unit have to be vacant for 18 months?

RESPONSE: The Council's methodology reduces the municipal obligation based on filtering. The assumption behind filtering is that the existing housing stock changes hands and, on balance, some of the need is addressed by the existing housing stock. Thus, the Council was concerned about a double count if a community received a reduction for filtering and then received credit based on the purchase of a unit in the existing housing stock. The Council believes that, if a unit has been vacant for a substantial period of time, it has not filtered down to a low and moderate income household. Therefore, it is appropriate to allow its inclusion in a municipal housing element. Municipalities that seek a waiver to the 18-month time period should demonstrate that: the unit is unlikely to be occupied by a low and moderate income household; and/or the unit is likely to be severely damaged by vandalism if not purchased for low and moderate income occupancy.

118. COMMENT: N.J.A.C. 5:93-5.1(b)7 states that a housing element shall consider existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing. How is this done?

RESPONSE: This section of the rule is a requirement of the Fair Housing Act. It is accomplished through an analysis of the structures within the municipality.

119. COMMENT: The rule proposal requires municipalities in Planning Areas 4 and 5 to address their obligations for new units in centers. In some communities, especially those with very small obligations, such a rule may not be appropriate.

RESPONSE: This rule is clearly consistent with the policies of the SDRP. There are always exceptions to rules and the Council would not rule out creative approaches that result in a realistic opportunity.

120. COMMENT: The requirements for municipalities that wish to construct their own housing are too onerous. The municipality must demonstrate the ability to control the land and must provide a timetable for construction.

RESPONSE: The Council's mandate is to determine that a realistic opportunity exists within a six year certification period. If a municipality is going to accept the responsibility to build units, it seems very basic for the Council to know: where the units are going to be built; does the municipality have the ability to build on the site; and when the units are going to be built.

121. COMMENT: The Council's presumptive minimum gross density of three to five units per acre for single family detached units is unrealistic. Instead of developing a presumptive minimum density, the Council should consider the existing zoning and require a sufficient density bonus to provide a realistic opportunity.

RESPONSE: The Council is reproposing its rule on presumptive densities, N.J.A.C. 5:93-5.6, to provide more flexibility to market changes. In response to the comment, the Council agrees that density bonuses are important. The Council also believes that a clustered pattern of development is important. For example, even if the zoning was altered from six acre lots to a two acre lot, it would likely be cost-prohibitive to construct a low or moderate income home on a two acre lot. Given a clustered development pattern, it may be possible to create affordable housing with a significant density bonus and a relatively low gross density. However, clustering is an option and the Council will not allow an option that does not result in the production of low and moderate income housing.

122. COMMENT: When do municipalities receive credit for accessory apartments? When can municipalities receive a rental bonus for an accessory apartment?

RESPONSE: When the Council determines that the municipality has created a realistic opportunity for an accessory apartment, it will approve the accessory apartments, with the other elements of the municipal plan, by granting substantive certification. The rental bonus is available when the unit is constructed.

123. COMMENT: With regard to ECHO units, a municipality should receive a credit for an ECHO unit even if a private property owner purchases the unit for a family member.

RESPONSE: ECHO units have been used almost exclusively to house a parent. The Supreme Court, in its recent *Warren* Decision, eliminated most residential preferences based on the Council's methodology for determining need. Thus all housing must be affirmatively marketed. Given that direction, the Council does not believe it can allow a municipality to address the obligation with an ECHO unit at this time.

124. COMMENT: Can a municipality that chooses to address part of its rental obligation through zoning address the remainder with a different type of response?

RESPONSE: Yes.

125. COMMENT: The Council's proposed bonuses for rental housing are a good idea; however, the bonuses should not be capped at 25 percent.

RESPONSE: The Council has capped the bonus due to a concern that a limit is necessary in order to avoid a dilution of the State's housing need.

126. COMMENT: The Council should not define acceptable rehabilitation activity with a dollar requirement.

RESPONSE: The Council believes that the substandard units identified by the census require at least moderate rehabilitation. In analyzing rehabilitation activity around the State, the Council has found that its $8,000 requirement is not excessive. Many communities have averaged well above the minimum requirement. The $8,000 average allows municipalities to rehabilitate less expensive units, provided they do not ignore units that require more substantial work.

127. COMMENT: If a community can administer a rehabilitation program for less than $2,000 per unit, a municipality should be able to seek a waiver from the Council's imposed funding requirement.

RESPONSE: Municipalities may receive a waiver if they can demonstrate that they can administer a rehabilitation program for less than $2,000.

128. COMMENT: The Council should include manufactured housing as an acceptable means for addressing a municipal housing obligation.

RESPONSE: The methods of addressing the housing obligation that are included in the rules do not represent an all-inclusive list. The Council will certainly entertain proposals to create affordable housing through manufactured housing.

129. COMMENT: The Council should rethink its requirement that rehabilitation of substandard housing average at least $8,000 over a two year period. It is quite possible to eliminate all existing code violations for less than $8,000. Also, administratively, it establishes a situation in which less expensive rehabilitation will not receive credit if it falls within the wrong two year period.

RESPONSE: The $8,000 average was established to allow municipalities to complete less expensive rehabilitation projects, provided they do not ignore the more expensive rehabilitation existing in the municipality. In reviewing rehabilitation activity around the State, the Council has determined that the standard is not excessive.

130. COMMENT: The Council was correct in separating alternative living arrangements from the 25 percent restriction on age restricted units.

RESPONSE: The Council believes that separating alternative living arrangements from the limitation on age restricted units will allow municipalities more flexibility in developing plans for households with special needs.

131. COMMENT: The Council should liberalize its rules on senior citizens and increase the 25 percent limitation on housing restricted to senior citizens.

RESPONSE: No senior citizen may be excluded from low and moderate income housing produced by the Council's process. Therefore, the Council has determined that it is not necessary to allow more units to be restricted to senior citizens. Except in New Jersey's urban centers, where exclusionary zoning has not been the problem that it has been in suburban and rural areas of the State, the Council believes that increasing the limitation would have a negative impact on other segments of the low and moderate income population.

132. COMMENT: The Council must develop rules to address the present market for high density rentals and single family detached sales housing on small lots.

RESPONSE: The Council's rules encourage rental housing and provide guidance for municipalities interested in zoning for small lot single family detached housing. The Council is also reproposing its rules for zoning for inclusionary developments at N.J.A.C. 5:93-5.6. The Council believes that the published rule proposal is sensitive to changes in the market.

133. COMMENT: The Council should develop rules so that a developer can challenge zoning that is no longer economically viable. If a site has been zoned for two or more years and has not been developed, a developer should be able to challenge the zoning.

RESPONSE: The Council's procedural rules establish a procedure in which any party can seek an amendment to a municipal plan. However, it should be noted that the Fair Housing Act was designed, in part, to incorporate low and moderate income housing into the municipal planning process. Once a municipality has developed a plan and received substantive certification, the Council does not believe it is appropriate to encourage challenges to the municipal housing element based on inactivity by the private sector. However, in the reproposed rules at N.J.A.C. 5:93-5.11(d), the Council has added a rule that provides for developers to make a motion to alter density if the developer is ready to build and if the original yield of the site is addressed.

The Council has granted reductions from the municipal housing need based on zoning that responded to the previous housing obligation. When municipalities come before the Council to address the 1987-1999 obligation, the Council shall review the appropriateness of sites that have been zoned but have not been the location of development activity.

134. COMMENT: If the Council is going to grant a larger rental bonus for family rentals, it should decrease the set-aside for developers that build them. The subsidies necessary to build rentals are very deep and the reduction in the set-aside is necessary to produce the rental units.

RESPONSE: The Council has already recognized the deeper subsidies by providing for a presumptive set-aside that is lower than the set-aside for sales units.

135. COMMENT: Facilities that offer long term residential halfway house treatment for adult males recovering from drug and alcohol abuse should be able to be included in municipal plans addressing the low and moderate income housing obligation. These facilities should receive credit even if they lack controls on affordability because such facilities generally serve low and moderate income households. In addition, the unit of credit should be the bed rather than the bedroom.

RESPONSE: The Council has received numerous requests to grant credit for various types of alternative living arrangements. One of the basic considerations for granting credit is whether the facility is primarily a residential facility or a health care facility. Another consideration is whether some portion of the beds are restricted to low and moderate income persons. Each type of facility has been judged on its merits after full consideration of the facts. In using the bedroom as a unit of credit, the Council believes that it is encouraging better shelter for low and moderate income households.

136. COMMENT: Rather than using a fixed ratio to limit the percentage of senior citizen units in a municipality, such limitation should be based on the percentage of seniors living or projected to live within each municipality.

RESPONSE: The Council does not believe it should reinforce existing disparities in the location of low and moderate income senior citizens and families with such a rule.

137. COMMENT: Why, in considering accessory apartments, does the Council give preference to areas with an older housing stock? Why must municipalities contribute $10,000 in order to create an accessory apartment; and why cannot accessory apartments be limited solely for family members? Finally, why do the proposed rules limit the number of accessory apartments a municipality may propose to 10?

RESPONSE: During the 1987-1993 period, the Council allowed municipalities to zone for accessory apartments without subsidizing their construction during a two year trial period. Very few of these units were actually created; and the municipalities that chose this option were then required to amend their plans to create a realistic opportunity for the units they hoped would result from a zoning approach.

As a result of further experimentation, the Council found that in municipalities with a large older housing stock, there was some interest in creating accessory apartments when the municipality offered a $10,000 subsidy. However, the interest created does not in the Council's opinion, warrant municipalities seeking to address more than 10 units of accessory apartments in their municipal housing elements and fair share plans. Accessory apartments may not be limited to family members because they are viewed as a long-term response to a regional housing obligation, which must be marketed to the region in the same manner as all other housing created under the Fair Housing Act.

138. COMMENT: The census indicates too many substandard units occupied by low and moderate income households in certain portions of the State. The Council should develop procedures to correct these errors.

RESPONSE: The Council has developed a housing survey that may be used by parties in the Council's process to demonstrate that there are more or less substandard units occupied by low and moderate income households than depicted in the census.

139. COMMENT: If the Council is going to increase its bonus for rental units available to families, can the extra credit be applied retroactively to rental units addressing the 1987-1993 housing obligation?

RESPONSE: Yes. However, this bonus shall only apply to units actually constructed.

140. COMMENT: The rule on rental housing creates a list of ways to create rental housing. Is this list meant to limit the ways in which a municipality may respond?

RESPONSE: No.

141. COMMENT: It is wrong to allocate no housing obligation to suburban municipalities under heavy development pressure. It discourages all affirmative action and perpetuates exclusionary zoning.

RESPONSE: The Council established criteria that linked the 1987-1993 obligation with an ongoing obligation. It provided reductions for those municipalities that had addressed their previous obligation. Since the State has not grown as fast as expected, and some municipalities had created opportunities based on previous expectations of growth, the Council's methodology did not yield an additional housing obligation.

In many of the municipalities with no additional housing obligation, there are sites zoned for inclusionary development that remain unbuilt. These municipalities retain the obligation to maintain the realistic opportunity to create affordable housing by fast-tracking development applications and eliminating cost-generating standards.

142. COMMENT: The Council should allow municipalities to create more than 10 accessory apartments.

RESPONSE: The Council has experimented with accessory apartments. It has found little or no interest in low or moderate income accessory apartments when there is no subsidy available to augment their creation. However, the Council has seen some interest in accessory apartments when the municipality has a large aging housing stock, the municipality is willing to subsidize their creation and the municipality is willing to market the program within the municipality. The Council believes that the interest in accessory apartments demonstrated so far warrants a municipality to request the ability to create up to 10 accessory apartments.

143. COMMENT: For municipalities that have operated rehabilitation programs pursuant to a substantive certification, the Council should allow municipalities to fund the rehabilitation program based on: the average number of units rehabilitated each year; or an anticipatory note to provide funding as interest develops in the program.

RESPONSE: Municipalities are expected to phase in the funding to accomplish the rehabilitation within the substantive certification period. The municipality may use any vehicle to provide the funding, provided the vehicle is realistic.

144. COMMENT: The Council cannot realistically use 1980s conditions as the baseline for the market's ability to subsidize affordable housing.

RESPONSE: The Council's rules do not assume a return to the robust growth of the mid-1980s. Subchapter 5 of the reproposed rules offers a menu of options for municipalities to consider in developing their response to the housing obligation. Relying on the private sector is only one option.

145. COMMENT: In view of the increased cost of subsidizing lower income housing inherent in the proposed rules and the current and anticipated condition of the real estate market, the Council should reduce the 20 percent set-aside required of private developers.

RESPONSE: Although the real estate market has been poor for quite some time, economic conditions have historically been cyclical. The requirement to provide low and moderate income housing was not the major cause for the economic boom of the mid-1980s; nor was it the reason for the prolonged recession. The Council believes that when the economy improves, the private sector will be able to build and market housing, including low and moderate income housing. The current low interest rates and yearly increases in the income limits that are used to price low and moderate income units are factors that should aid the private sector's ability to respond to the housing need. However, the commenter should be aware that the Council has reproposed its rules for zoning for inclusionary developments at N.J.A.C. 5:93-5.6. These rules are believed to be more responsive to changes in the housing market.

146. COMMENT: The housing element should be required to be specific about the sites and structures considered appropriate for inclusion in the compliance plan. This is particularly important with respect to conversion/rehabilitation structures, which are often dealt with only in vague terms.

RESPONSE: In accordance with N.J.A.C. 5:93-5.1, all sites and structures proposed to address the need for new low and moderate income housing units must be specified in order to obtain substantive certification.

147. COMMENT: The Council's rule on rehabilitation prohibits rehabilitation activity that is strictly cosmetic. It should prohibit activity that is primarily cosmetic. The word "strictly" suggests less vigor than is desirable.

RESPONSE: The Council's rule requires the repair or replacement of a major system. The Council believes that the rule, when read in totality, creates an appropriate standard.

148. COMMENT: The six and 10 year controls on rehabilitated housing units are too short.

RESPONSE: The Council believes that significantly longer controls would discourage rehabilitation activity. The six and 10 year controls comport with the requirements of the Fair Housing Act.

149. COMMENT: The Council should restructure its funding requirement for rehabilitation to encourage municipalities to rehabilitate the most serious problems first.

RESPONSE: The $8,000 average hard cost requirement is designed to foster significant rehabilitation activity. If a municipality chooses to rehabilitate a housing unit that requires less than $8,000 worth of work, it must also find a unit that requires more substantial rehabilitation. The Council believes the standard is sensitive to the needs of low and moderate income households living in substandard housing.

150. COMMENT: If a municipality fails to implement its rehabilitation program or falls behind its timetable, the Council should require the municipality to amend its new construction program to make up the shortfall in its rehabilitation component.

RESPONSE: Adding to the new construction component is one remedy that may be used by the Council when a municipality fails to implement its rehabilitation program.

151. COMMENT: If the Council was convinced that a municipality was making every effort to address its rehabilitation component, it would be inappropriate to limit the waiver provision of N.J.A.C. 5:93-5.2(m) to urban aid cities.

RESPONSE: The Council views urban aid municipalities as different due to the magnitude of their rehabilitation components, their past inclusionary practices and the special needs of these cities.

152. COMMENT: If the Council is going to provide a minimum presumptive density, it should establish one number. The range of three to five units per acre provides little guidance.

RESPONSE: The Council has reproposed this rule, at N.J.A.C. 5:93-5.6.

153. COMMENT: The Council should change N.J.A.C. 5:93-5.6(b) to say that the Council may require higher densities when the existing zoning in the area is higher than the specified minimum. Since the rule gives different minimums for different types of use, it is inappropriate to specify the three unit per acre minimum for single family detached housing.

RESPONSE: The Council has reproposed this rule, in response to the commenter's concerns.

154. COMMENT: The proposed phasing schedule is too generous to developers. As proposed, a developer could finish 99 percent of the market units and walk away from the last 25 percent of the low and moderate income units. As an incentive to completion of the low and moderate income units, the phasing schedule should provide that 100 percent of the low and moderate income units must be completed before 90 percent of the market rate units are completed.

RESPONSE: The Council agrees and has reproposed the rule at N.J.A.C. 5:93-5.6, as described in the Summary which follows.

155. COMMENT: The limitation of 10 accessory apartments does not make sense if a community can demonstrate a realistic opportunity for more. At the very least, municipalities should be permitted to reopen their certification to demonstrate that more than 10 units have been created.

RESPONSE: As explained in earlier responses, the Council's experience with accessory apartments indicates 10 provides realistic guidance on an accessory apartment program. If a municipality has constructed 10 accessory apartments and wishes to do more, the municipality may seek a waiver.

156. COMMENT: There is no justification for the requirement that municipalities purchase either 100 percent of the units or no more than 30 percent of them. The inference is that market rate households will not live with more than a small number of poor people. This kind of social engineering by regulation is both wrong and offensive.

RESPONSE: This requirement was based on Federal National Mortgage Association (FNMA, or Fannie Mae) financing requirements. FNMA no longer requires the number of restricted units in an

inclusionary development to be 30 percent or less of the total units in the development. Therefore, the Council will entertain applications that propose to purchase more than 30 percent, but less than 100 percent, of all units within a specific development. In submitting such an application to the Council, the municipality will be asked to consider the impact of the proposed purchase on the value of the market units, the budget of the condominium association and the ability to obtain financing.

157. COMMENT: Increasing the mandatory percentage of rental units to 25 percent is desirable. Increasing the rental bonus is not. The difficulty with producing rental units is both economic and social. If a municipality does not want rental units, the bonus for family units will not produce more rentals.

RESPONSE: The Council believes and hopes that an increased bonus for family rentals will result in more family units. It is too early for the Council, or the commenter, to say definitively that it will or will not be effective.

158. COMMENT: Will the Council impose the requirements of subchapter 5 on sites that are already zoned for inclusionary development as a result of substantive certification or a court ordered repose?

RESPONSE: The Council shall review the zoning of existing sites to determine if they still present a realistic opportunity. Also, municipalities and other parties may propose amendments to existing sites through the Council's plan amendment process.

159. COMMENT: The proposed rules should make allowances that the possibilities to produce new low and moderate income units where there is no existing water and sewer are extremely limited.

RESPONSE: The proposed rules consider the existence of infrastructure in a variety of ways. Housing allocations are directed to SDRP Planning Areas 1 and 2 by weighting undeveloped land within the various planning areas. The Council's adjustment process and site selection criteria place heavy emphasis on the existence of water and sewer facilities. In addition, consistent with the policies of the SDRP, municipalities in Planning Areas 4 and 5 are expected to create centers that can be provided with water and sewer to accommodate the need for low and moderate income housing.

160. COMMENT: The Council has made efforts to make the rental units produced through its process more affordable. Rentals, under the current Council rules, require much deeper subsidies than sales units. The Council should not require even deeper subsidies.

RESPONSE: The Council has determined that it is necessary to create more affordable rental units to benefit the target population. The Council has found cases where permissible rents exceed fair market rents for given areas of the State. The proposed rents reflect, more accurately, rents that are achievable in the market.

161. COMMENT: N.J.A.C. 5:93-5.3(b) seems to require all municipal sites to be within a 208 planning area. This requirement is too drastic.

RESPONSE: In general, inclusionary sites will require infrastructure. In the context of sound planning, the Council believes it is prudent to require sites to be within a 208 planning area or to require a 208 plan amendment.

162. COMMENT: The Council's rules pertaining to centers is problematic because no centers have yet been designated. The greatest spur toward center designation would be an interim requirement which stated that affordable housing will be permitted on all reasonable sites in Planning Areas 3, 4 and 5 without respect to centers, unless a municipality has made a reasonable effort to obtain such designations.

RESPONSE: The Council's language regarding centers is the result of extensive discussions with the State Planning Commission. The Council believes that the center designation process is critical in order to create infrastructure that is necessary to construct low and moderate income housing. To approve sites, without the ability to extend or create infrastructure, would not be productive.

163. COMMENT: The rules on regional contribution agreements should allow small municipalities to jointly provide for administration, marketing, management and monitoring of regional contribution agreements.

RESPONSE: A regional contribution agreement is an agreement between two municipalities. It is unclear from the commenter's suggestion whether the Council could approve a "joint" agreement under the limits of the Fair Housing Act. If the commenter can be more specific, the Council can better consider the suggestion.

164. COMMENT: The ability for municipalities to meet the requirement of providing sufficient dollars to fund one-third of its rehabilitation component during the first year of the substantive certification period could be a burden for municipalities that have large rehabilitation components.

RESPONSE: The Council is responsible for creating the realistic opportunity for a rehabilitation program. It is necessary for the program to be adequately funded, especially in the first year when the program must build an administrative capacity and begin marketing activities.

165. COMMENT: Relating the ability to provide ECHO housing to the limits on senior citizen units is too restrictive. There are other individuals that could benefit from ECHO units.

RESPONSE: The Council has decided to delete ECHO units from its menu of options available for addressing the housing obligation. Although the Council believes that ECHO housing is a valuable method of caring for a family member, the recent Supreme Court Decision in *Warren* requires units created under the Fair Housing Act to be marketed within the housing region. Given that most ECHO units are targeted for parents, the Council does not believe ECHO housing comports with the direction provided by the Supreme Court.

166. COMMENT: The rule proposal that requires municipalities to identify centers for designation threatens to impose a cumbersome process of paperwork upon municipalities, as they would have to obtain agreement from two State agencies on site specific locations where development should occur.

RESPONSE: The Council and the State Planning Commission entered into a memorandum of understanding to eliminate as much of the confusion as possible. (See Appendix F.) The Council, for its part, is looking for sites with infrastructure. Infrastructure is not available in Planning Areas 3, 4 and 5. Although infrastructure can be extended from Planning Area 2 into Planning Area 3, such is not the case in Planning Areas 4 and 5. In these areas, the creation of centers is important in order to deliver infrastructure necessary to construct low and moderate income housing.

167. COMMENT: N.J.A.C. 5:93-5.2(i) should be amended to encourage rehabilitation grants and loans that are well below market rates. Where loans are offered, the loan should not require low and moderate income households to pay more than 28 percent of gross income on housing.

RESPONSE: The intent of the proposed rule is to encourage rehabilitation activity. The Council's staff will review the manner in which loans are to be administered prior to substantive certification. N.J.A.C. 5:93-5.2(l) also states that the Council will monitor the progress of rehabilitation programs and may require changes in them over time. Given those checks that are built into the rule, the Council does not believe it needs to be as specific as the commenter suggests at this time.

168. COMMENT: The Council should ensure that at least 50 percent of the units rehabilitated are occupied by low income households.

RESPONSE: Municipalities must not discriminate against low income households. Municipalities must not exclude rental units from their rehabilitation efforts. Having provided such direction, the Council does not believe that it is necessary to require that 50 percent of the units rehabilitated be occupied by low income households. It also believes that it is impractical to preclude the rehabilitation of a unit occupied by moderate income households, for the lack of low income applicants.

169. COMMENT: N.J.A.C. 5:93-5.13 and 7.2, when read together, permit half of all low income units to be restricted to senior citizens. The Council should amend its rules to insure that no more than 25 percent of all low income units in the municipality may be restricted to senior citizens.

RESPONSE: The Council believes that its rules contain sufficient checks to ensure against a disproportionate share of low income units being targeted to senior citizens. N.J.A.C. 5:93-7.2(a) requires that at least half of all units in each inclusionary development be affordable to low income households.

170. COMMENT: The rental bonus provided in N.J.A.C. 5:93-5.14 is unnecessary because the rule requires municipalities to use other affirmative measures rather than zoning. Therefore, the reductions in need that result are an unconstitutional dilution of the need.

RESPONSE: Municipalities may address their rental housing obligation by zoning land. The other measures included in the rule are provided to give municipalities direction regarding various options that may be used separately or in combination. The rental bonus is available to encourage municipalities to go beyond creating a realistic opportunity and construct the rentals, or receive a commitment to construct the rentals. However, the rental bonus is "capped" to guard against an impermissible dilution of the need.

171. COMMENT: Although indigenous need may be estimated for each municipality, no municipality should be permitted to include a rehabilitation component in its housing element and fair share plan unless it can establish with specificity the existence within the municipality of at least as many units as would be eligible for rehabilitation under the proposed fair share plan. Where the municipality cannot identify eligible rehab units with specificity, this component of the need should be addressed by other strategies, including new construction.

RESPONSE: In other parts of the methodology, the Council develops criteria used to identify a regional need for new units. The indigenous need is an estimate derived from the census; and the Council understands they are not precise. Therefore, it is not appropriate to require municipalities to prove that substandard units exist or require that "unfound units" be addressed by new construction.

172. COMMENT: The Council should provide an extra credit for municipalities that choose to construct low and moderate income housing.

RESPONSE: The Fair Housing Act provides each municipality with flexibility in addressing its housing obligation. It is perfectly acceptable for a municipality to transfer part of its housing obligation to another municipality or to allow the private sector to construct housing. A unit created by each of these techniques is of equal value to the Council.

173. COMMENT: If the Council retains its three to five unit per acre standard for inclusionary developments, it should allow municipalities to require lower densities if the municipality can demonstrate that a lower density still results in a realistic opportunity.

RESPONSE: The Council has reproposed a rule that responds to the comment within N.J.A.C. 5:93-5.6, as described in the Summary which follows.

174. COMMENT: The proposed rule offers an inadequate incentive for private developers to build rental housing. The Council should provide higher densities for developers to construct low and moderate income rentals.

RESPONSE: There are a number of ways a municipality can construct rentals with and without the private sector. The density bonus is only one option presented by the rule and the density incentive for building rentals has been increased in the republished rule proposal. In addition, the rule provides incentives for the municipality to help ensure the production of rental housing through use of a rental bonus.

175. COMMENT: The Council has the power to require municipalities to zone for rental housing and it should impose such a requirement.

RESPONSE: The Council does not share the commenter's legal opinion.

176. COMMENT: The current market is most likely to subsidize low and moderate income units with zoning and density bonuses that permit small lot single family detached housing. As a general rule, however, the subsidized affordable units cannot be provided on the same site as the market rate single family units, nor can the affordable units be provided as single family units. The proposed rules need to reflect these realities if they are to guide municipalities in preparing fair share plans for the creation of realistic opportunities to provide affordable housing.

RESPONSE: The Council believes its rules do reflect the current real estate market, including the market for single family detached housing. The Council has considered and approved requests to construct this product as an alternative to a higher density product. All of these approved amendments have proposed to include the low and moderate income units on site. At least one is providing single family detached housing units for low and moderate income households. Absent some data to suggest otherwise, the Council cannot accept the commenter's assertions as a given.

177. COMMENT: The proposed rule offers an inadequate incentive for private developers to build rental housing. The Council should provide higher densities for developers to construct low and moderate income rentals.

RESPONSE: There are a number of ways a municipality can construct rentals with and without the private sector. The density bonus is only one option presented by the rules and the density incentive for building rentals has been increased in the republished rule proposal. In addition, the rules provide incentives for the municipality to help ensure the production of rental housing through use of a rental bonus.

178. COMMENT: The Council has the power to require municipalities to zone for rental housing and it should impose such a requirement.

RESPONSE: The Council does not share the commenter's legal opinion.

Subchapter 6. Regional Contribution Agreements

179. COMMENT: The $20,000 per unit minimum per unit transfer for regional contribution agreements and the clarification that excess RCA funds may be used for any Council approved activity are welcome rule amendments and will help urban areas use RCA funds to develop affordable housing.

RESPONSE: It is hoped that both amendments will help urban municipalities revitalize their housing stock.

180. COMMENT: N.J.A.C. 5:93-6.4(c) should be revised to read the same as N.J.A.C. 5:93-6.2(c). This would allow receiving communities to use excess funds for any Council approved activity. The present language limits their use to low and moderate income housing.

RESPONSE: The language in N.J.A.C. 5:93-6.4(c) and 6.2(b) was not meant to conflict. The language has been amended in the reproposal to make it clear that excess funds may be used for the same activities that may be approved as part of a regional contribution agreement.

181. COMMENT: The proposed rules require a sending and receiving municipality to enter into a contractual agreement before the Council reviews a RCA. How would this work, if the Council requires changes in the contract that cannot be agreed to by the contracting parties? As an alternative to this potentially difficult situation, the Council could require a sending municipality not to negotiate with another receiving municipality once a memorandum of understanding has been signed.

RESPONSE: It should be clear that there is no regional contribution agreement until it is approved by the Council and a regional contribution agreement is not effective until substantive certification is granted. The contract is designed to bind the parties should the Council approve the regional contribution agreement. If the parties cannot agree to changes in the final contract, required by the Council, there is no regional contribution agreement.

182. COMMENT: Do the inclusionary pricing requirements at N.J.A.C. 5:92-7.4 apply to RCAs?

RESPONSE: Yes.

183. COMMENT: The minimum RCA contribution should be raised to $30,000 or more, so that the contribution pays for more or all of the subsidy necessary to build a new unit in a receiving municipality.

RESPONSE: In passing the Fair Housing Act, the Legislature established a State program responsible for funding housing activities related to municipal low and moderate income housing obligations. One of the activities specifically mentioned as eligible for funding was the regional contribution agreement. Therefore, the Legislature specifically acknowledged that the contribution from a sending municipality would not always be sufficient to create a unit in a receiving community.

In raising the minimum contribution from $10,000 to $20,000 in the reproposed N.J.A.C. 5:93-6A, the Council has tried to establish a realistic threshold that will allow New Jersey's urban centers to revitalize its housing stock without discouraging regional contribution agreements altogether. The rule proposal discusses some of the factors that were considered in doubling the minimum contribution.

184. COMMENT: Regional contribution agreements should only be used to create a new unit. They should not be used to fund scattered-site rehabiliation programs.

RESPONSE: One of the stated purposes of the Fair Housing Act is to revitalize New Jersey's urban centers. The rehabiliation of the existing housing stock certainly fosters this Legislative goal.

185. COMMENT: If the receiving community has excess funds and has negotiated with the sending municipality to keep the excess funds for housing purposes, the sending municipality should get some extra credit for the extra housing its transferred money produces.

RESPONSE: The sending municipality can only receive one unit of credit for each unit transferred to a receiving municipality.

186. COMMENT: The $20,000 minimum regional contribution agreement contribution is excessive. The market should decide the value of a regional contribution agreement.

RESPONSE: The Council has found that, in some housing regions, there are a surplus of potential receivers. This lowers the price a receiving community can achieve. This may benefit the sending municipality, but it does not further the Legislature's goal of revitalizing New Jersey's urban centers. The $20,000 threshold, in the Council's judgment, when merged with State subsidies available to augment the regional contribution agreements, will allow the State's urban centers to revitalize their housing stock.

187. COMMENT: There should be a waiver provision that allows municipalities to enter into regional contribution agreements for less than $20,000.

RESPONSE: The Council believes that $20,000 is an appropriate minimum contribution. The Council has included a waiver provision in the reproposed rules, at N.J.A.C. 5:93-15, and does not believe that specific waiver provision requested by the commenter is necessary, given the existence of N.J.A.C. 5:93-15.

188. COMMENT: The $20,000 minimum contribution should not be adopted. If a suburban municipality can rehabilitate a housing unit for $8,000, why must it pay so much money to rehabilitate a substandard unit in an urban setting? The market should decide the price of a regional contribution agreement.

RESPONSE: The $20,000 contribution is based in part on the quality of the housing stock in New Jerey's urban centers. The other factors that led to the minimum contribution are delineated in N.J.A.C. 5:93-6.4(b). The Council believes that regional contributions are designed to help revitalize New Jersey's cities. The Council's experience in administering regional contribution agreements is that a complete laissez-faire approach to regional contribution agreements leads to disparate results in the Council's housing regions.

189. COMMENT: Municipalities should be able to enter into a regional contribution agreement with the Council. The Council should be able to allocate money from a sending municipality to any urban center in the State, even if the urban center is in a different housing region.

RESPONSE: The Fair Housing Act does not empower the Council to enter into a regional contribution agreement. The transfer of regional contribution agreement dollars to municipalities in different housing regions raises serious legal questions, especially in light of the recent *Warren* decision.

190. COMMENT: The Council's rules should permit qualified agencies at the county level in urban counties or at the municipal level in metropolitan municipalities to initiate regional contribution agreements between municipalities. These regional contribution agreements should be approved even if neither municipality participates in the Council's process.

RESPONSE: The Fair Housing Act provides only for regional contribution agreements between two municipalities.

191. COMMENT: The Council has proposed new requirements for a regional contribution agreement. It has substituted a contract for a memorandum of understanding and has increased the minimum contribution to $20,000. There should be some sort of consideration for municipalities that have already entered into a memorandum of understanding for a contribution that addressed the Council's previous rules regarding a contribution.

RESPONSE: The Council understands that there is a certain amount of disruption whenever rules change. The Council will consider the appropriate action to take on a case-by-case basis.

192. COMMENT: The criteria for rehabilitation performed by a receiving municipality should be the same as outlined in subchapter 5 of the rule proposal.

RESPONSE: The criteria are the same.

193. COMMENT: Before approving a regional contribution agreement, the Council should require proofs from the sending and receiving municipality that the proposed housing will have convenient access to bona fide employment opportunities.

RESPONSE: Before approving a regional contribution agreement, the Fair Housing Act requires a review by the receiving municipality's county planning board. In that review, the county planning board reviews the proposed regional contribution agreement for convenient access to employment opportunities.

Subchapter 7. Inclusionary Developments

194. COMMENT: The Council should devise a rule that links increases in pricing units to the increases in the costs associated for the developer to build the units. This would ensure that low and moderate income households are not penalized by a temporary downturn in interest rates which increase the potential selling price of a low or moderate income unit.

RESPONSE: Although the current low interest rates allow much higher prices on sales units than in previous years, the Council's experience is that these prices are unattainable in the real estate market for low and moderate income housing. In addition, an amendment based on current low interest rates may not be appropriate when interest rates increase.

The Council's greatest concern regarding the higher prices permitted due to low interest rates is the potential for hardship waivers. If an owner of a low or moderate income unit cannot achieve the maximum permitted price for a housing unit, he/she may ask the authority that administers the affordable units for permission to sell to a household earning above 80 percent of median. The inability to achieve the maximum permitted sales prices does not, in and of itself, constitute a hardship. The authority may, and in most cases, should, deny the request. The low and moderate income units have not been produced with a guarantee of a maximum return on investment.

195. COMMENT: Affordable housing should be priced to consider the other bills a low and moderate income household may have to pay.

RESPONSE: It is very difficult to establish housing prices based on the financial situation of individual households. Instead, the Council has established housing prices based on criteria that have been used by lending institutions and other governmental programs.

196. COMMENT: The Council's rule proposal permits 80 percent of the housing units created to include one bedroom or less. Such a rule does not address the needs of low and moderate income families.

RESPONSE: N.J.A.C. 5:92-7.3 was drafted with a number of goals in mind. One of the goals was to provide more flexibility in designing an inclusionary development. However, in trying to provide more flexibility, the drafted rule permitted inclusionary developments with very little housing that may be considered adequate for families. This was an error and has been redrafted in the reproposal.

197. COMMENT: Within inclusionary developments, the rule encourages integration of low and moderate income housing with the market units. There should be nothing to stop a developer from building units off site, or transfer to a municipally owned site.

RESPONSE: The Council encourages the integration of low and moderate income units with market units. The Council will consider the merits of building low and moderate income units on another site, when presented with a specific request.

198. COMMENT: The Council may want to waive the strict application of its rules pertaining to the bedroom distribution, upon a showing of good cause or hardship.

RESPONSE: The Council may entertain such a waiver for a specific inclusionary development, provided the bedroom distribution for the entire municipality addresses the bedroom distribution requirements.

199. COMMENT: The Council should encourage municipalities to require inclusionary developments to use energy efficient and cost-effective heating systems. A low and moderate income household using electric heat could easily exceed the HUD approved utility allowance.

RESPONSE: The Council does encourage municipalities to require energy efficient and cost-effective heating systems. The Council's rules on rentals require that rents plus utility costs not exceed 30 percent of the income for a specific household size. Thus, if a development uses an insufficient heating system, the rent must be reduced. In addition, the Council shall publish a rule requiring low and moderate income units to use the same heating source as the market units within an inclusionary development.

200. COMMENT: The Council's rules increase the subsidies necessary to produce low and moderate income housing. This increased subsidy is unwarranted and not productive during a period when the real estate market is so competitive.

RESPONSE: The Council has developed rules designed to make low and moderate income housing more accessible to its target population. The Council has decreased the presumptive downpayment requirement in a manner that is consistent with the lending practices of most lending institutions. It has made housing units of various bedroom sizes more affordable to smaller households. It has made rentals more affordable. All of these changes address the needs of low and moderate income households and the Council has determined that such changes are in the public interest.

201. COMMENT: The Council should not require homeowner associations to set fees and special assessments for low and moderate income occupants at less than 100 percent of the fees paid by owners of market units. Such a reduction is likely to produce resentment on the part of the market unit owners.

RESPONSE: The Council's rule proposal does not require low and moderate income households to pay lower homeowner fees. It establishes that the owners of affordable units shall pay at least one-third of the

regular fee. A municipality may require the low and moderate income households to pay more, provided it is done within the context of the Council's rules.

202. COMMENT: Low income units should be reserved for low income households as required by the rule proposal. However, the Council may want to rethink its requirement to reserve moderate income units for moderate income households. A low income household with sufficient assets may be able to afford a moderate income housing unit.

RESPONSE: The Council will allow a low income household to purchase a moderate income unit.

203. COMMENT: The Council should require more low income housing for the very poor who cannot take advantage of for-sale housing. The Council should also create housing for larger households and special needs populations that require housing.

RESPONSE: The Council has, in the reproposed rules, increased its requirement for municipalities to provide for rental opportunities. It is also requiring that its rental units be more affordable. The Council has also eliminated the 25 percent limitation on alternative living arrangements that serve special needs populations.

204. COMMENT: The Council should clarify N.J.A.C. 5:93-7.2 to state that, where the total of low and moderate income housing units is an odd number, the extra unit shall be a low income unit.

RESPONSE: The rule says that at least 50 percent of the units shall be low income units. Thus, an odd number of units would result in at least one more low income unit.

205. COMMENT: The well-intentioned price stratification table of the prior cycle was overly complex and the Council has wisely abandoned it. However, the rule that replaced it is unsatisfactory because it does not require any units to be priced at less than 43 percent of median income. The Council could do this in a number of ways. It could price the average unit at 57.5 percent of median and price individual units based on what prospective applicants could afford. In order to achieve the average sales price, prospective applicants could be denied a unit if pricing a unit based on the applicants income would reduce the average price below the 57.5 standard. In the alternative, the Council could develop a price stratification system to include those below 40 percent of median income.

RESPONSE: The Council has amended the rule to require price stratification. The example has been deleted from the rule in the reproposal. The price of units within an inclusionary development shall average 57.5 percent. There shall be at least three prices for moderate income units and two prices for low income units.

206. COMMENT: One bedroom units should be affordable to two person households; and two bedroom units should be affordable to three person households. There is no reason to project a two person household in a two bedroom unit. The standards proposed are more generous than realistic.

RESPONSE: The Council's efforts to make units more affordable are designed to make the units produced more reflective of the needs of the target population. The Council has found that a large group of low and moderate income households including, but not limited to, single parents, are adversely affected by the current pricing system.

207. COMMENT: The Council's simplified price stratification system and the five percent downpayment requirement are welcome and realistic proposals.

RESPONSE: The Council believes these changes will simplify the process of pricing units and will result in more affordable units.

208. COMMENT: The Council should require housing units to be priced to be more affordable to low income households. The Council's income stratification requirements do not reach low enough to target an acceptable mix of low and moderate income households. To improve in this area, the Council should lower the average affordability level from 57.5 percent to 50 percent.

RESPONSE: As has been indicated in previous responses, the Council is not empowered to force municipalities to subsidize affordable housing with municipal funds. A municipality that so chooses may require the private sector to build low and moderate income units. In fact, the private sector has built most of the low and moderate income units thus far constructed. While the Council shares the commenter's interest in making housing more affordable, the Council also recognizes that requiring deeper subsidies in order to produce low and moderate income housing, limits the ability to produce affordable housing.

The Council has made a significant effort to make sale and rental units more affordable in the rule proposal. It has lowered downpayments. It has required that units of one, two and three bedrooms be priced for smaller households. It has lowered the maximum rents of rentals. The Council has determined that to lower the prices and rents further may be counterproductive and result in much less production.

209. COMMENT: There is no policy justification for permitting housing created through rehabilitation of vacant units in receiving municipalities to be any less affordable than housing created through new construction.

RESPONSE: New affordable units created through conversion or rehabilitation of an existing vacant structure shall be priced as any other inclusionary development.

210. COMMENT: Unless the Council requires more affordable units, it is not requiring housing that is affordable to low and moderate income households. It is permitting the construction of least cost housing. The Supreme Court has held that providing least cost housing does not satisfy the housing obligation unless all alternatives have been explored and demonstrated to be not effective in delivering low and moderate income housing.

RESPONSE: The housing produced pursuant to the Council's rules is clearly affordable to low and moderate income households, as these terms are defined in the Fair Housing Act. The housing, therefore, is not "least cost" housing, as that term is used in *Mount Laurel II.*

211. COMMENT: Low income households have historically had problems accumulating sufficient income to afford downpayment and closing costs. To the extent that the Council allows municipalities to satisfy their fair share of the need for low income housing, it must require that such municipalities assure access to subsidies for downpayments and closing costs, or, if need be, provide those subsidies themselves.

RESPONSE: The Fair Housing Act does not require municipalities to expend municipal funds in addressing its housing obligation. The Council's rules on development fees require a percentage of collected fees be used for affordability assistance, which might take the form of downpayment and closing cost assistance.

212. COMMENT: The Council should revise its rules on pricing housing units so that no household pays more than 25 percent of its income on the costs associated with home ownership. This will provide the possibility of a household below a specific income strata to obtain financing from a lending institution.

RESPONSE: The Council believes that its 28 percent standard is appropriate, since it is used by most lending institutions. The reason for providing some stratification of prices is to make access to affordable sales housing possible to a greater spectrum of the target population.

213. COMMENT: The Council has acted appropriately in requiring that some one-bedroom units be priced for one person households and some two-bedroom units be priced for two person households. Similarly, some three-bedroom units should be priced for four person households.

RESPONSE: The Council agrees and has amended the rule at N.J.A.C. 5:93-7.2 in the reproposal, for the reasons indicated in the Summary.

214. COMMENT: The Council's proposed rules on rental housing are a substantial improvement over N.J.A.C. 5:92-14.4. However, the rule still does not provide sufficient rental housing, especially for low income households. Since there are far more minority low income households than whites, the rule reinforces and perpetuates New Jersey's existing pattern of extreme racial segregation in violation of the State and Federal civil rights laws.

RESPONSE: As the commenter notes, the Council believes the creation of affordable rental housing is a priority and the new rule at N.J.A.C. 5:92-5.14 encourage the production of rental housing. The Council's rules, including those concerning rental housing, do not discriminate on the basis of race.

215. COMMENT: The Council should require that half of the units within each bedroom distribution be affordable to low income households.

RESPONSE: The rule reproposal at N.J.A.C. 5:93-7.2 provides developers a limite amount of flexibility in structuring the low and moderate income units. At least one-third of the units withine ach bedroom distribution shall be affordable to low income households. However, within each inclusionary development, at least half the low and moderate income units must be affordable to low income households.

216. COMMENT: If the Council decides to grant extra credit for housing activity, it should provide extra credit for municipal actions that render units more affordable.

RESPONSE: The Council's reproposal requires sales and rentals to be significantly more affordable than the units created by N.J.A.C. 5:92. The Council has also required a percentage of developer fees to be used for affordability assistance. Given these requirements, the Council has limited its use of extra credit to stimulate rental activity. The Council is not presently considering the extra credit contemplated by the commenter.

Subchapter 8. Development Fees

217. COMMENT: Substantive certification should not be a precondition for the collection of development fees.

RESPONSE: The Council has determined that the collection of fees should be an integral part of a comprehensive planning process that addresses the municipality's entire housing obligation. The fee should be reviewed in the context of how they help the municipality address this housing obligation. The Council believes that this approach is consistent with the Supreme Court's view in *Holmdel* that development fees are a constituent part of the overall plan to provide for the entire housing obligation that is subject to the Council's review and certification.

218. COMMENT: The Council should require municipalities to perform some type of fiscal analysis to support the use of a development fee.

RESPONSE: The *Holmdel* decision required the Council to develop standards for permissible development fees. Having adopted those standards, the Council does not believe it is necessary for municipalities to perform a fiscal analysis to justify fees already permitted by rule.

219. COMMENT: The Council's proposed rules regarding development fee penalties state that once the Council revokes the ability to collect fees, that the affected municipality can no longer impose fees. The Council may want to waive that provision so that it can capture a meaningful contribution for low and moderate income housing from, for example, a large non-residential developer.

RESPONSE: The Council does not believe it is necessary to include special waiver provisions to this rule, since it has proposed a general waiver provision.

220. COMMENT: The caps on development fees levied against residential and non-residential developments are artificially low and will lead to the lost opportunity to collect fees in New Jersey's communities.

RESPONSE: As indicated in the response document when the Council adopted rules on development fees, the Supreme Court directed the Council to develop standards related to acceptable fees. The Council believes its fees are reasonable and will not have a negative economic impact around the state.

221. COMMENT: Municipalities should be able to enter into agreements with developers to collect fees in excess of the standards adopted by the Council without offering comparable off-setting incentives.

RESPONSE: Based on the Supreme Court's *Holmdel* Decision, municipalities are authorized to collect development fees only to the extent that they conform with standards promulgated by the Council. The Council has established fees that municipalities may impose without allowing any off-setting incentive or entering into any negotiation. To collect additional fees, a municipality must provide a financial incentive for the increased fee.

222. COMMENT: The Council's development fee regulations allow the Council to disburse funds from a municipal housing trust fund for violations of the Council's regulations. Such a rule is excessive.

RESPONSE: This penalty is one of several the Council may impose. Depending on the violation, such a penalty may be totally appropriate.

223. COMMENT: The Council should eliminate the requirement that 30 percent of development fees be used to render units more affordable. This requirement is arbitrary and unnecessary, since all money used to subsidize housing renders it more affordable.

RESPONSE: The Council believes that the 30 percent requirement for affordability assistance is necessary given the needs of the poor. Many of the poor require help in the form of downpayment assistance, mortgage subsidies and rental assistance. The development fees represent a new resource to address these needs.

224. COMMENT: The Council should provide funding to address some of the burden of implementing a housing element. Otherwise the burden will fall on the local property tax bill, which is restricted by the State cap law.

RESPONSE: The Fair Housing Act does not provide the Council with funding authority. It does create a funding source within the Department of Community Affairs designed, in part, to supplement municipal low and moderate income housing strategies. In addition, the Council has proposed rules that allow municipalities to impose fees on all non-inclusionary development and use that money to implement, administer or even prepare a housng element and fair share plan.

225. COMMENT: The fees permitted by the Council are inadequate. They create an incentive to pay fees rather than construct low and moderate income units. Eventually, these rules must be reconsidered or challenged as inadequate on constitutional grounds.

RESPONSE: The Council believes that its rules on development fees are totally consistent with the direction provided by the Supreme Court in *Holmdel.* They provide for an increased collection of fees as the value of land is increased by density bonuses or other appropriate alterations in the cost of developing the land. Such measures that add to the value of the land are certainly typical of most inclusionary developments. In most inclusionary developments, density bonuses have been awarded. In addition, the *Mount Laurel* doctrine requires eliminating cost generating standards and fast-tracking the review of development applications.

226. COMMENT: In municipalities where fees were collected in exchange for density bonuses, those density bonuses have now become vested rights through the municipal approval process. It would be totally inequitable to allow the developer the right to retain those density bonuses, yet compel the municipality to refund the fees.

RESPONSE: In many cases where developers paid fees in exchange for density bonuses, the Council approved those fees during the substantive certification process. In other cases, the rule allows substantive increases in fees when a density bonus has been permitted. The rule does require the refund of money when the developer has paid for an increase in density after a downzoning. There may be other situations in which the rules require the return of money after a density bonus has been awarded. The Council will consider arguments in these cases as they are presented.

227. COMMENT: When would a municipality collect a development fee when no building permit is required (for example, a parking lot expansion)?

RESPONSE: The Council believes its rule governing the payment of development fees addresses most situations. The fees on a parking lot expansion may be collected upon the commencement of construction.

228. COMMENT: The Council should clarify its intent not to intercede in agreements that resulted in monetary contributions toward the implementation of a municipal housing element granted repose from the Courts.

RESPONSE: It is not the Council's intent for its development fee rules to void settlement agreements that it or a court has approved. If these agreements have been approved as part of a comprehensive review of the municipality's response to the entire fair share, the agreements should stand.

229. COMMENT: The Council allows fees to be collected at building permit and certificate of occupancy. The fee is a percentage of value, which is not known until after certificate of occupancy. Municipalities must now estimate value. If they overestimate value, money will have to be refunded. This is an administrative headache. The Council should develop something better.

RESPONSE: There are a number of solutions to this problem. Municipalities could collect the fee later or they can estimate value on the low side. The rule was developed so that municipalities could collect some money earlier in the development process and apply that money to the implementation of the plan.

Subchapter 9. Controls on Affordability

230. COMMENT: The Council's requirement to provide certificates of reoccupancy to ensure continued affordability is redundant. The Council is protected by having deed and master deed restrictions placed on the units.

RESPONSE: The requirement is intended to ensure that the appropriate officials check to determine if the Council's deed restriction and lien are in place on the affordable unit.

231. COMMENT: Subchapter 9 establishes a procedure in which a municipality may extend the period of controls by resolution of the governing body. The municipality should state its reasons for so doing. Also, such an extension may be interpreted as an unenforceable extension in violation of the owner's restrictive covenant.

RESPONSE: COAH does not believe the municipality must state reasons for extending controls on affordability. The ability of the municipality to extend the controls is written into the agreement signed by the owner and the municipality.

232. COMMENT: Subchapter 9 requires the seller of an affordable unit to provide notice to the authority at the first non-exempt sale after controls have been in effect for the period specified in N.J.A.C. 5:93-9.2. The authority then must provide notice to the municipality and other parties who can exercise the option to purchase the unit and maintain it as an affordable unit. The municipality has the first option to purchase the unit. However, if the other parties are under the impression that the municipality will purchase the unit and then the municipality fails to exercise the option, the unit can be lost. The other parties should have an additional 30 days to exercise the option when the municpality fails to exercise its option.

RESPONSE: The Council believes that the rule, as written, provides adequate notice to all parties who may want to purchase the unit. The parties who received notice should contact each other and keep informed.

233. COMMENT: The Council should clarify N.J.A.C. 5:93-9.4(c). This section discusses the scenario of the non-exempt transaction that terminates controls on affordability. The Council should add a reference to N.J.A.C. 5:93-9.8, to make it clear that this seller has two options. The seller can sell the unit at the controlled price to an income eligible household and continue controls on affordability; or the seller can sell the unit at a price negotiated with any willing buyer, provided that the vast majority of proceeds in excess of the controlled price are returned to the authority acting on behalf of the municipality.

RESPONSE: COAH has added the reference to the reproposed N.J.A.C. 5:93-9.4(c).

234. COMMENT: What is the term of the controls on affordability for accessory apartments?

RESPONSE: A 10 year control is acceptable. However, at least 30 years is required, if the municipality wants a rental bonus.

235. COMMENT: The deed restriction provisions have become onerous. They are adding to the difficulties in selling deed restricted units at the upper ranges of the moderate income categories.

RESPONSE: The Council believes that affordable low and moderate income housing units are a scarce resource. Long term controls on affordability are absolutely essential in addressing the needs of low and moderate income households over time. The problems of marketing units at the upper end of the moderate income categories might be solved by an improved market for the market units and/or a reduction in the price of the moderate income units.

236. COMMENT: The Council should require longer controls on affordability even in the urban areas of the State. The secondary mortgage markets will now accept 40 year controls. With controls expiring on Federal units, the Council must realize the problems associated with controls expiring.

RESPONSE: The Council has republished rules requiring controls of at least 30 years on newly-constructed low and moderate income units in non-urban aid cities.

237. COMMENT: When a municipality recaptures money after the controls on affordability have expired, the Council should not allow that money to be spent on a regional contribution agreement.

RESPONSE: The money is deposited in a housing trust fund, along with any money collected via development fees. The Council believes that all money within the account may be used for any activity expressly permitted by the Fair Housing Act and the Council's rules.

238. COMMENT: When an owner rents a low or moderate income unit at an uncontrolled price, the Council should consider requiring that municipalities adopt civil or criminal penalties.

RESPONSE: The deed restriction that is part of this rule proposal does not allow affordable units to be rented without prior approval of the authority. Violation of this or any part of the agreement, can result in any number of remedies including, but not limited to, foreclosure, acceleration of all sums due under the mortgage, recoupment of any funds from a sale in violation of the agreement or injunctive relief.

Developer Interest in Resale Controls

239. COMMENT: Subchapter 9, dealing with resale controls, should be changed to give the developer the option to administer price controls on its own where it is cheaper for it to do so. Builders should not be held hostage to potentially expensive local processes.

RESPONSE: The responsibility to ensure controls on affordability belongs to the municipality. If a party believes the municipal effort to ensure affordability is inadequate or if the service costs too much, the party can register that complaint with the Council.

240. COMMENT: N.J.A.C. 5:93-9.3(a) should be amended to allow blanket up-front approvals of deed restrictions. There should be no need for a municipal agency or other reviewer to examine the deed restriction for each individual purchaser or renter.

RESPONSE: When a new development is being offered for sale, it is possible that the municipal authority can review the deed restriction that is proposed and ensure that it is the one the Council requires to be used. Then the authority can provide the type of approval sought by the commenter.

241. COMMENT: Is N.J.A.C. 5:93-9.16 applicable if there has already been a foreclosure that extinguishes controls on affordability?

RESPONSE: No.

242. COMMENT: Must the Affordable Housing Agreement referred to in subchapter 9 and a deed containing reference to the agreement be filed with each sales transaction?

RESPONSE: Yes.

243. COMMENT: N.J.A.C. 5:93-9.13 refers to a notice of foreclosure. Who is required to give this notice and when is it given? If the authority or other agency purchases a unit at the maximum permitted sales price, what happens if the financial institution is owed in excess of that price?

RESPONSE: The notice would be provided by the financial institution foreclosing on the property. The Council believes that it is in the financial institution's interest to provide notice to the authority and other agencies at the same time it is providing the owner of a low or moderate income unit with its intent to foreclose. These entities can assist the financial institution in recouping loan proceeds. The Council is not empowered to require this notice and, therefore, the rule states that failure of the financial institution to provide notice of a foreclosure action shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution. If the sale of a low or moderate income unit at the maximum permitted price does not satisfy the debt, the financial institution need not sell the property.

244. COMMENT: The language in N.J.A.C. 5:93-9.13 is ambiguous or incorrect. The rule can be clarified by making it clear that a deed in lieu of foreclosure is "to" and not "by" a financial institution.

RESPONSE: The Council has made the change in the reproposal, to make it clear that a deed in lieu of foreclosure is "to" a financial institution.

245. COMMENT: A notice of foreclosure is usually given only to those parties who have a properly recorded interest in the property. A financial institution cannot be expected to notice other entities.

RESPONSE: If the deed restriction and repayment lien have been properly filed and recorded as required in N.J.A.C. 5:93-9.3(e), the Authority will have a properly recorded interest in the property and will receive notice.

246. COMMENT: The Council should clarify or provide consistency in its use of the terms "conveyance" and "deed."

RESPONSE: The Council has used the term "conveyance" to refer to any transfer of an affordable property and "deed" to refer to the documents that effect the conveyance.

247. COMMENT: The Council should clarify or provide consistency in its use of the terms "restrictive covenant" and "deed restriction."

RESPONSE: The terms "restrictive covenant" and "deed restriction" are used interchangeably to refer to the documents included and attached to the deed that restricts the price and conditions of occupancy on the low or moderate income unit. The Council has used the term "deed restriction" in lieu of "restrictive convenant" throughout the reproposed rules. The Council has also added a cross-reference to N.J.A.C. 5:93-9.2(a) to indicate Exhibit E.

248. COMMENT: The Council should clarify when a foreclosure action by a financial institution results in the expiration of controls on affordability.

RESPONSE: A foreclosure by a financial institution (as referenced in the rule at N.J.A.C. 5:93-9.13) on a first purchase or first money mortgage secured by equity in a low or moderate income unit may (at the financial institution's option) extinguish controls. A foreclosure for any other reason should not extinguish controls, since the deed restriction, by its terms, should only be subordinate to the first mortgage.

249. COMMENT: The Council should consider income verification on occupants of low and moderate income units in light of Justice Stein's concurring opinion in *Prowitz v. Ridgefield Park,* 122 *N.J.* 199 (1991). Such income verification may be necessary to maintain lower taxes on low and moderate income households.

RESPONSE: In general, the Council does not view income verification to be necessary or desirable. The Council believes that given the limits

on equity appreciation most low and moderate income households will eventually move as their incomes increase.

250. COMMENT: Where the Council's regions do not coincide with the U.S. Census Primary Metropolitan Statistical Areas, there is the potential conflict between HUD's definition of low and moderate income housing and the Councils'. It is hoped that the Council will allow credit for all housing created based on on HUD's definition of low and moderate income housing.

RESPONSE: Although it is difficult to envision every possible conflict, it is the Council's philosophy to encourage affordable housing activities. It is anticipated that most HUD-sponsored activities will result in credit for the host municipalities.

Subchapter 10. Cost Generation

256. COMMENT: The Council should not use the DCA Model Subdivision and Site Plan Ordinance or standards from the site improvement advisory Board to determine if municipal landscaping, buffering and reforestation requirements are excessive.

RESPONSE: Part of the *Mount Laurel* obligation is to eliminate unnecessary cost-generating standards. The standards referred to will be developed pursuant to enabling legislation designed to develop standards for the entire State. The Council believes they should be entirely appropriate given the legislative mandate and the Council's responsibility.

252. COMMENT: The Council's rule precludes the use of traffic and environmental impact studies from being used to alter site density. However, specific information that may affect the yield of a specific site, such as wetland information, may not be known until the site plan is submitted.

RESPONSE: If a site plan depicts environmental constraints that were not apparent during the municipal planning process and the Council's review of the municipal plan, the municipality is expected to cooperate with the developer in granting reasonable variances necessary to accommodate the municipal housing obligation. If, after such cooperation, a site cannot reasonably yield sufficient low and moderate income units, the Council will entertain a plan amendment to address the lost units in another way.

253. COMMENT: The Council's reliance on standards generated by the Site Improvement Advisory Board is likely to preclude flexibility and innovation in town design.

RESPONSE: Since the standards have not yet been promulgated and since the Council has not yet applied these standards, The Council believes that the commenter cannot fairly judge what the end result will be.

254. COMMENT: The Council should provide further guidance in subchapter 10 as to when the Council would revoke substantive certification.

RESPONSE: Municipalities are expected to implement their plans, fast-track inclusionary developments and eliminate unnecessary cost-generating standards from its approval requirements. It is very difficult and probably counterproductive to predetermine an action before confronted with a situation. The Council will develop a body of decisions as they are approached with specific cases.

255. COMMENT: The Council's proposed N.J.A.C. 5:93-10 is an unwarranted intrusion into municipal land use powers.

RESPONSE: The rule proposal is designed to provide guidance to the part of the *Mount Laurel* doctrine that requires fast-tracking of inclusionary developments and elimination of unnecessary cost-generating standards.

256. COMMENT: The practice of allowing a developer to allege that a municipality is not expediting or fast-tracking municipal approvals and to seek revocation of the municipality's substantive certification is fraught with problems. It will encourage inclusionary developers to threaten municipal officials in order to expedite their approvals.

RESPONSE: Municipalities that expedite approvals and eliminate unnecessary cost-generating standards should not be concerned about an adverse decision from the Council.

257. COMMENT: The Council should not rely on the DCA Model Subdivision and Site Plan Ordinance in its review of cost-generating features. It should rely on the standards established by the Site Improvement Advisory Board.

RESPONSE: The commenter may have an early draft of the rule proposal. In the draft that appeared in the proposal published in the March 15, 1993 issue of the New Jersey Register, the Council indicates that it will rely on the standards established by the Site Improvement Advisory Board.

258. COMMENT: When an inclusionary developer chooses from a municipally-provided list of consultants to prepare fiscal, traffic and environmental impact studies, what party pays for the study?

RESPONSE: The developer.

259. COMMENT: Subchapter 10, pertaining to cost generation, should be deleted. With the passage of P.L. 1993, c.32, an entire mechanism has been established to develop uniform site improvement standards.

RESPONSE: Subchapter 10 goes beyond P.L.1993, c.32 to provide guidance related to cost generation and expediting approvals. Both subjects are necessary, based on the direction provided by *Mount Laurel II* and the Fair Housing Act.

260. COMMENT: Municipal time frames for action on development applications are already governed by the Municipal Land Use law. There is no reason for the Council to append its own requirements.

RESPONSE: One of the prime reasons for the spiraling cost of producing housing is the delay caused by the review of development applications at all levels of government. The *Mount Laurel II* decision and the Fair Housing Act include specific language to expedite the review of development applications and the Council's rules provide guidance regarding expectations for local planning boards.

261. COMMENT: Language in subchapter 10 stating that municipalities are expected to cooperate in granting reasonable variances necessary to construct an inclusionary development should be deleted, because the Municipal Land Use Law clearly sets forth standards which must be met for variances.

RESPONSE: A municipality, to meet its *Mount Laurel* obligations, must provide a realistic opportunity for the creation of affordable housing, including the elimination of barriers to the creation of affordable housing. This obligation continues during site plan review. It is not possible to envision every problem that can occur when a specific development takes the form of a site plan application. Although the mapping of sites included in a housing element may indicate the approximate extent of wetlands, the precise extent of the wetlands may be greater than originally envisioned. Whereas the yard requirements imposed on specific developments may seem reasonable on paper, their application on a site may not allow for the completion of a proposed low and moderate income development. In some cases, such scenarios might require a plan amendment expanding the number of municipal sites designed to address the housing obligation. However, in other cases, the granting of reasonable variances will address potential design problems encountered in developing an inclusionary site. The granting of such variances to further a municipality's *Mount Laurel* obligation is consistent with the Municipal Land Use Law, N.J.S.A. 40:55D.

262. COMMENT: Subchapter 10 includes references to excessive road width, culvert size, pumping station size etc. This language should be deleted in favor of simply relying upon the ultimate standards adopted under P.L.1993, c.32.

RESPONSE: The rule proposal does reference P.L.1993, c.32; and to the extent that the standards resulting from this legislation address the issues raised in subchapter 10, the Council will rely on them.

263. COMMENT: Subchapter 10 provides for the phasing of off-tract improvements. The proper term is off-site improvements.

RESPONSE: The Council has reproposed this rule to include on-site, off-site and off-tract improvements, as these terms are defined in the Municipal Land Use Law.

264. COMMENT: The phasing of off-site improvements should not be permitted, since all off-site improvements should be completed before the first segment of development takes place and certificates of occupancy are issued on-site.

RESPONSE: The full impact of developments may not be experienced until various phases of the development are completed. Given that reality, the Council believes it is appropriate to allow for the phased construction and phased bonding of off-site improvements.

265. COMMENT: The Council should not prohibit a restriction on the bedroom mix of market rate units. Municipalities should be permitted to control these market units.

RESPONSE: Municipal bedroom requirements on the market units within an inclusionary development could impact the marketability and the economic feasibility of an inclusionary development. Moreover, municipalities should not be dictating the bedroom distribution in any development. See *Oakwood at Madison, Inc.* v. *Twp. of Madison,* 177

N.J. Super 11, 14, 18 (Law Div. 1971), *certif. granted* 62 *N.J.* 185 (1973), *on remand* 128 *N.J. Super* 438 (Law Div. 1974), *affirmed and modified* 73 *N.J.* 481 (1977); also *Molino v. Mayor and Council of Glassboro,* 116 *N.J. Super* 95, 201 (Law Div. 1971).

266. COMMENT: Pursuant to N.J.A.C. 5:93-10.3, if a developer chooses an expert from a list provided by the municipality, is each party bound by the recommendations of that expert?

RESPONSE: The referenced rule states that each party shall rely on the consultant's recommendations. If the municipality or the developer cannot accept the recommendation, it is possible that they will be able to resolve the problem themselves. If the parties cannot resolve the dispute, subchapter 10 allows the parties to request Council intervention through a mediator, or by a motion.

267. COMMENT: The section of subchapter 10 that says municipalities will be expected to cooperate with developers of inclusionary developments in granting reasonable variances necessary to construct the development should be eliminated.

RESPONSE: At times, the zoning of a specific site may appear to foster an inclusionary development. However, when designing the project, the combination of buffer areas, set-backs, distance between buildings and environmental regulations may not allow the inclusionary developer to complete the entire development. In such circumstances, it is expected that the municipality will cooperate with the developer so that he or she will be able to build the entire development. If such cooperation is not possible, it is likely that the municipality will have to find an alternative approach to address low and moderate income units that cannot be built on site.

268. COMMENT: In reviewing a development application for an inclusionary development, a municipality that chooses to should be able to pay its own professional, rather than allow a developer to choose a professional from the list of three.

RESPONSE: The rule referenced by the commenter is designed to prevent municipalities from requiring inclusionary developers to pay for the preparation and review of special studies pertinent to an inclusionary development. Municipalities that choose to pay their professionals themselves may do so.

269. COMMENT: N.J.A.C. 5:93-10.4 allows developers to provide the Council with notice of filing a development application with a municipality. The Council should not accept such filings unless the municipality has deemed the application complete.

RESPONSE: The intent of this rule is to foster fast-tracking of inclusionary developments. The rule will allow the Council to monitor the time required to receive municipal approvals of development applications.

270. COMMENT: The Council's rules in subchapter 10 are unnecessary and should be eliminated. These rules will encourage developers to threaten municipalities with legal action if they do not receive what they want when they want it.

RESPONSE: In proposing subchapter 10, it is not the Council's intent to encourage legal action. It is the Council's intent to provide municipalities with the standards related to the part of the *Mount Laurel* obligation requiring the fast-tracking of inclusionary developments and the elimination of unnecessary cost generating standards.

271. COMMENT: The authority of a municipality to establish standards for development within its boundaries is set forth with the municipal land use law. The Council is not authorized to usurp this power. Therefore, the rules proposed in subchapter 10 of the rule proposal should be deleted.

RESPONSE: It is not the Council's intent to usurp municipal authority granted by the municipal land use law. The rules referenced by the commenter are designed to provide guidance to that part of the *Mount Laurel* obligation requiring municipalities to fast-track developments and eliminate unnecessary cost-generating standards.

272. COMMENT: The provisions of subchapter 10 are essential to move sites through the approval process so that affordable housing actually gets built. Zoning is of little benefit, if an inclusionary development application has a never-ending series of bureaucratic hurdles placed before it.

RESPONSE: One intent of the rule is to expedite the approval process.

273. COMMENT: N.J.A.C. 5:93-10.4(b) should be revised to make it clear that a mediator can only assist the parties to resolve the dispute.

RESPONSE: The Council believes the rule is clear. Mediators cannot resolve disputes. They can help the parties resolve their difference. If the mediation effort fails, the Council or a court of competent jurisdiction may order a solution to the dispute.

274. COMMENT: The Council's proposed rules relating to restriction of escrow fees for inclusionary developers is probably illegal under Sections 8(b) and 53.2 of the Municipal Land Use Law. The reviews paid for by the escrow fees focus on legitimate environmental and planning concerns. Inclusionary development should not be exempted from this process.

RESPONSE: The rule referred to by the commenter does not exempt inclusionary developers from professional review of development applications. It does provide a developer with a choice. It allows the developer to rely on a study by a professional chosen off a municipally-prepared list. Under this option, the developer is not required to pay for both the study and for its review. The Council has determined that this option is totally consistent with the *Mount Laurel* obligation of eliminating unnecessary cost generating requirements. Nor does it conflict with the Municipal Land Use Law. N.J.A.C. 5:93-10.3(b) proposes stricter standards than section 52.2 of the Municipal Land Use Law. However, these stricter standards are appropriate in the *Mount Laurel* context.

275. COMMENT: The proposed rules allow developers to file a motion for an administrative order even if the developer has not filed a complete application. It allows such a motion, even if the municipality has not exhausted the time periods allowed by the Municipal Land Use Law. Such motions should not be encouraged or allowed by the Council's rules.

RESPONSE: The goal of this section is to expedite the approval process. In fact, the Council states that one of its goals is for municipalities to act on a development application within time limits approximating those outlined in the Municipal Land Use Law. It is not the Council's intent to override the municipal powers granted by the Municipal Land Use Law. The rule is designed to guard against abuses.

276. COMMENT: The Council should expand its list of unnecessary cost generating items to include: application fees for permits; utility connection fees; net density requirements, which have already been termed illegal in the *Manalapan Builders* case; height requirements that limit buildings to less than three stories; storm water run-off standards that control the volume; and environmental requirements that are not mandated by State law.

RESPONSE: The list of items in N.J.A.C. 5:93-10.2 should not be viewed as all-inclusive.

277. COMMENT: Fiscal and environmental impact studies are unnecessary, with respect to proposed inclusionary developments. General environmental effects and fiscal consequences should have been considered in zoning the site in the first place.

RESPONSE: The Council has determined that such studies aid in the municipal site plan review. However, such studies, in general, are not to be used to alter the municipal housing obligation or the gross density of a specific site.

278. COMMENT: The rule proposal that would allow developers included in certified housing elements the right to seek action on a development application should be expanded to allow developers to seek relief from specific zoning or subdivision requirements.

RESPONSE: Subchapter 10 calls for municipalities to expedite inclusionary developments and cooperate with developers of inclusionary developments. The rule specifically calls for cooperation regarding reasonable variances. The intent of this rule is to expedite construction of low and moderate income units. It is certainly within the spirit of this rule for developers to seek relief from specific zoning and/or subdivision requirements.

279. COMMENT: The relief available under subchapter 10 should be available to all developers who participate in a housing plan, not just inclusionary developers with low and moderate income units on their properties. There is no reason for excluding developers who have agreed to pay a contribution rather than actually constructing low and moderate income housing units.

RESPONSE: Developers that are paying a fee that is the equivalent of a low or moderate income unit are entitled to the relief discussed in subchapter 10.

280. COMMENT: It is not clear whether municipalities that zoned for low and moderate income units will receive the extra rental bonus proposed by the Council.

RESPONSE: The rental bonus is not granted when a municipality zones, unless there is a commitment from the developer to build rental

housing within a definite period of time within the period of substantive certification. If the developer does not build the units within the stated time frame, the Council will re-examine the bonus.

281. COMMENT: The Council should not impose a burden on a municipality to justify utilizing development standards that exceed those promulgated pursuant to N.J.S.A. 40:55D-40.1.

RESPONSE: The intent of this legislation was to create standards that are to be used throughout the State. Given the *Mount Laurel* obligation to eliminate unnecessary cost generating standards, the Council believes this requirement is appropriate.

282. COMMENT: The Council should not bind municipalities to a recommendation of its consultant, in the event the developer has selected the consultant from a municipal-approved list.

RESPONSE: Both the developer and the municipality are to rely on the consultant's recommendation. This rule is based on the Council's belief that inclusionary developers should not be required to pay for special studies and then pay again for the municipal review of these special studies.

283. COMMENT: Subchapter 10 inappropriately invites developers to make the Council a part of their development process before local planning boards. The proposed rule will make the Council a super planning board.

RESPONSE: It is not the Council's intent to become a super planning board. It is the Council's intent to expedite the review of inclusionary developments.

Subchapter 11. Affirmative Marketing

284. COMMENT: It is acknowledged that the Supreme Court recently invalidated the residency preference section of the rules. The Council should be encouraged to examine its methodology for allocating need and determine a method that would retain some type of residency and employee preference, since this provision served as a significant impetus to municipalities to begin to participate in the program to provide affordable housing.

RESPONSE: The Council has reproposed N.J.A.C. 5:93-11. This subchapter provides for preferences the Council believes are consistent with the *Warren* decision.

285. COMMENT: The affirmative marketing requirements are very complicated and involved. There is a need for an intermediate State agency to take title to affordable units on a temporary basis, until the units can be delivered to the appropriate qualifying household.

RESPONSE: The proposed rules are designed to provide municipalities more guidance regarding effective marketing so that all low and moderate income units can be delivered to the ultimate consumer. Municipalities may contract with another authority to provide this function if such authority, such as the Department of Community Affairs' Affordable Housing Management Service, is approved by the Council.

286. COMMENT: Municipal efforts at affirmative marketing have been dismal. The Council should require a small per unit payment into an affirmative marketing fund to be pooled on a regional basis and used to contract with an experienced housing agency to provide competent, aggressive, extensive outreach to all parts of the region. A token $25.00 per unit payment would not materially affect the cost of the unit but would create a substantial fund, if used regionally.

RESPONSE: Based on the experience of the DCA Affordable Housing Management Service, the Council does not believe that a $25.00 per unit fee would make a significant impact in funding such a regional authority. However, the Council will explore the feasibility of establishing such authorities.

287. COMMENT: There is anecdotal evidence that low and moderate income households have purchased their units with cash. The Council should undertake a review of income eligibility criteria and devise a set of rules that impute available non-household income to the applicant more effectively than at present. The goal should be to restrict applicant eligibility to households that, but for the *Mount Laurel* programs, would have no meaningful access to affordable housing.

RESPONSE: The Council is aware of the anecdotal evidence and believes that, for the most part, households receiving low and moderate income housing do not have other significant assets beyond their household income. The Council believes that the procedures published in N.J.A.C. 5:93-9 for certifying a household will provide municipalities with more guidance and help alleviate the problem perceived by the commenter.

288. COMMENT: The Council should take steps to ensure that units produced are actually being made available to the target population within the housing region. This includes both serious affirmative marketing and continual monitoring.

RESPONSE: The reproposed rules place great emphasis on regional marketing and include reporting requirements. The rules also allow the Council to require changes in the marketing program, if it proves ineffective.

289. COMMENT: The Council should not approve regional contribution agreements without a consideration of their effect upon racial segregation in the suburbs.

RESPONSE: The Fair Housing Act allows municipalities to transfer up to 50 percent of their housing obligation by way of a regional contribution agreement.

290. COMMENT: Before applicants for low and moderate income units are selected, the Council should assure that the applicant selection pool reflects the demographic makeup of the eligible population in the region. If it is not, the affirmative marketing has not been effective and further marketing must be done before any applicants are selected.

RESPONSE: The Council has reproposed N.J.A.C. 5:93-11, to place greater emphasis on regional marketing and random selection of applicants. It also requires more specificity in planning and the marketing effort. By placing more emphasis on the specifics of the plan prior to certification, the Council believes municipalities will have a better understanding of the Council's expectations of the affirmative marketing effort.

291. COMMENT: The Council's rules on affirmative marketing must assure the creation of programs of housing counseling and education for potential urban and minority applicants. The urban poor will move to the suburbs, if there is an educational program available to assure urban residents of the existence of housing opportunities in the suburbs and to help the urban residents make informed decisions as to the feasibility of applying for this housing.

RESPONSE: The Council, in reproposing N.J.A.C. 5:93-11, has provided more direction regarding counseling and education that must be provide to low and moderate income applicants.

292. COMMENT: The Council should amend its affirmative marketing rule as follows:

1. Delete proposed N.J.A.C. 5:93-11.7;

2. Adopt new regulations requiring each municipality to participate in a regional consortium that will:

(a) operate offices in urban communities in the region,

(b) maintain current information on all low and moderate income housing in the region,

(c) provide application materials and accept applications for low and moderate income housing in the region,

(d) maintain regionwide waiting lists,

(e) conduct community outreach and individual housing counseling in urban areas;

3. Adopt regulations providing for the establishment of regional consortia to be funded by participating municipalities;

4. Revise proposed N.J.A.C. 5:93-11.1 to incorporate the standards for affirmative marketing set forth in the HUD Affirmative Fair Marketing Handbook and, most particularly, the standards for pre-sale or rent-up assessment of the effectiveness of the affirmative marketing; and

5. Comprehensively review its proposed regulations to identify and eliminate barriers to access to affordable housing in the suburbs by blacks, Hispanics, persons with disabilities, women, and families with children.

RESPONSE: The Council shall explore the feasibility of establishing a regional authority responsible for supporting municipal affirmative marketing efforts. The Council believes its reproposed affirmative marketing rules respond to the commenter's concerns.

293. COMMENT: The Council should develop procedures for an aggrieved party to register complaints concerning non-compliance by municipalities or developers with the Fair Housing Act. Such a rule should include the power to deny or revoke substantive certification, to itself modify a municipal housing plan or impose a housing plan on a municipality.

RESPONSE: The Council has adopted a motion process in its procedural rules at N.J.A.C. 5:91-12 that has been used to register such complaints. The Council believes the existing rules address the commenter's concern.

294. COMMENT: The Council's monitoring should: require municipalities to report at frequent intervals on their progress in carrying out each component of their plan; require municipalities to report each application for development approval under the terms of their housing plans; and require that data be collected and reported at frequent intervals on the racial, economic and demographic characteristics of households that apply for, and receive, low and moderate income units.

RESPONSE: The Council will consider this and other comments as it develops a program designed to collect data, assist in solving implementation problems experienced by municipalities and enforce the terms of substantive certification.

Subchapter 13. Site Specific Relief and The State Development and Redevelopment Plan (SDRP)

295. COMMENT: The Council's rule that permits it to grant a developer relief in Planning Areas 3, 4, and 5 is contrary to the SDRP and the *Mount Laurel II* decision.

RESPONSE: The rule is not contrary to the SDRP or the *Mount Laurel II* decision. The rule is the subject of a COAH memorandum of understanding with the State Planning Commission. Furthermore, the *Mount Laurel II* decision never limited the low and moderate income housing obligation to "growth areas," as stated by the commenter. In fact, the term "growth area" is an antiquated term from a previous State plan. It is not used to the SDRP.

296. COMMENT: N.J.A.C. 5:93-13.3(a)3i seems to express a willingness to grant a developer site-specific relief in Planning Area 3. Such development should be directed to Planning Areas 1 and 2.

RESPONSE: Municipalities may virtually avoid the concern of site-specific relief by filing a housing element prior to an exclusionary lawsuit and petitioning for substantive certification within two years of such filing. The relief referred to by the commenter will not be considered unless: the municipality did not file a housing element; the municipality did not petition for substantive certification within two years of filing a housing element; and the realistic development potential within the development boundaries of centers and of Planning Areas 1 and/or 2 is not adequate to address the municipal inclusionary component. There are other scenarios discussed in N.J.A.C. 5:93-13.3 that the public should read carefully; but, in general, the rule is designed to encourage municipalities to petition for substantive certification within two years of filing a housing element and fair share plan and promote a pattern of development that is consistent with the SDRP.

297. COMMENT: The Council's rules on granting relief in SDRP Planning Areas 4 and 5 involve coordination with the State Planning Commission. These procedures will, in all likelihood, take a great deal of time. The Council in reviewing housing elements and developer's sites cannot be tied to a bureaucratic center designation process that, for all intents and purposes has not occurred.

RESPONSE: The *Mount Laurel II* opinion and the Fair Housing Act create a strong link between the Council and the State Planning Commission. The Council believes that the low and moderate income housing obligation should be addressed within the framework of sound comprehensive planning. The process outlined in the rule proposal is designed to foster the direction provided by the Supreme Court and the Legislature and sound planning principles. The Council will be working with the State Planning Commission to expedite the process. To indicate that this process will not work or will take an inordinate amount of time, at this point, is speculation.

Miscellaneous

298. COMMENT: The Council should extend the comment period.

RESPONSE: The Council initially assigned a comment period of 60 days, due to the importance of this rule proposal. The Council believes that the 60-day comment period and the several public hearings provided adequate and sufficient opportunity for public comment.

299. COMMENT: The process that the Council used in developing its rule proposal did not provide for sufficient public input.

RESPONSE: The process of developing the rule proposal solicited an enormous amount of public input. As documented in the Summary at 25 N.J.R. 1118(a), it included three public hearings on an issue paper and weekly meetings of a broad cross-section of parties involved in the Council's process.

300. COMMENT: The Council must review its proposed regulations to ensure they do not perpetuate discrimination against minorities living within the housing region.

RESPONSE: The Council does not believe its rule proposal discriminates against minorities living within the housing region. The Council has eliminated the 50 percent residential preference, as directed by the Supreme Court in the *Warren* decision. It also believes it has provided more direction for, and required more specificity of, municipalities in marketing housing units throughout the housing region.

301. COMMENT: The Council's rules appear more rigid. The Council should allow municipalities to seek waivers of any rule, provided that the Council is satisfied with the reason for it.

RESPONSE: The Council has incorporated a waiver provision in its rule reproposal, at N.J.A.C. 5:93-15.

302. COMMENT: The Council should do something to correct the way certification periods are overlapping. Otherwise, a municipality has no incentive to petition for substantive certification in a timely manner.

RESPONSE: The Council's methodology is cumulative. Thus, a municipal obligation does not disappear when the municipality fails to address it. The municipal obligation should increase in time, unless the Council has significantly overstated the State's projected growth. In addition, municipalities that do not petition in a timely manner risk that their housing obligation will increase while they are in the Council's process. Therefore, they will, pursuant to N.J.A.C. 5:91-14.2, be required to amend their plan to address a larger obligation or receive a certification of only two years.

303. COMMENT: There is currently no meaningful system or protocol for the monitoring or enforcement of municipal plans or compliance. There are no established procedures for parties wishing to register or file grievances with the Council concerning noncompliance by municipalities in fulfilling substantive agreements.

RESPONSE: The reproposed rules reflect an increased commitment to monitoring. In addition, the Council's procedural rules at N.J.A.C. 5:91 outline a motion process that may be used by any party.

304. COMMENT: There should be a mechanism in which municipalities that have received judgments of repose can receive plan amendments in the same manner as municipalities that have received substantive certification.

RESPONSE: The Council has no jurisdiction in cases that have remained in Superior Court. When a municipal period of repose expires, a municipality can petition for substantive certification and enter the Council's administrative process.

Summary

The Fair Housing Act, N.J.S.A. 52:27D-301 et seq., enacted by the New Jersey Legislature in response to the New Jersey Supreme Court's decisions in the *Mt. Laurel* cases *(Burlington County N.A.A.C.P. v. Township of Mount Laurel,* 67 *N.J.* 151 (1975), *(Mt. Laurel I)* and *South Burlington County N.A.A.C.P. v. Mount Laurel,* 92 *N.J.* 158 (1983) *(Mt. Laurel II),* established a nine-member Council on Affordable Housing.

The Council is directed to prepare a comprehensive planning and implementation response to the constitutional obligation to provide, through municipal land use regulations, a realistic opportunity for a fair share of regional present and prospective needs for housing low and moderate income households. The Act directs the Council to estimate State and regional fair share and establish guidelines and criteria to be used by municipalities in addressing the constitutional obligation.

The Fair Housing Act permits officials at the municipal level to prepare a housing element and fair share plan that addresses the municipal fair share for low and moderate income housing. The Council is directed to review the municipal housing element and fair share plan and is empowered to grant the municipality substantive certification.

The reproposal is a result of a comprehensive review of the Council's prior rules and the Council's experience in administering those rules. The review process began with a staff analysis of the rules which resulted in a series of issue papers that were distributed to the public in January, 1991. Three public hearings were conducted to solicit input on the issue papers and on any suggestions for changes to the Council's rules. The results of the public hearings and all the other input the Council received were organized into an agenda for a working group of parties interested in the Council's administrative process.

The working group consisted of representatives from: The League of Municipalities; The Federation of Municipal Planning Officials; The Alliance on Affordable Housing; The Consulting Planner's Association; The New Jersey Builder's Association; The Society of Court Appointed Masters; The New Jersey Housing Mortgage Finance Agency; The Department of Community Affairs; The Civic League of Greater New Brunswick; The State Planning Commission; The Affordable Housing Network of New Jersey; The Association of New Jersey Environmental Commissions; and The Rutgers Center for Urban Policy Research. Individuals with expertise in specific areas joined the working group on

various issues and enhanced the quality of input. The recommendations that emanated from these group meetings were presented to the Council. The Council used this substantial input to [render decisions on their proposed rules] **propose rules that appeared in the March 15, 1993 Register.**

The Council conducted three public hearings on the March 15, 1993 proposal during a 60 day comment period. After considering the public's comments, the Council has decided to republish its rules.

The reproposal implements the intent of the legislature to provide for timely achievement of an appropriate fair share of the regional need for low and moderate income housing. Proposed N.J.A.C. 5:93 is designed to serve, for [1993 and following] **future** years, the purpose served by the substantive rules in N.J.A.C. 5:92. The rules at N.J.A.C. 5:92 will be retained in the New Jersey Administrative Code for various purposes pertinent to the Council's award of substantive certification under the new rules at N.J.A.C. 5:93, particularly the assignment of credit for past action taken by municipalities to provide affordable housing. Amendments have been made at N.J.A.C. 5:92-1.1 to clarify the use of the chapter.

The proposed new chapter N.J.A.C. 5:93 contains rules which cover the following areas:

N.J.A.C. 5:93-1 provides the purpose, scope and definitions for the chapter.

N.J.A.C. 5:93-2 outlines the methodology for estimating housing need (determining calculated need). The methodology may be viewed as a continuation of the Council's 1987-1993 methodology. The court, in *Mt. Laurel II,* stated that every municipality in New Jersey is responsible for at least some portion of its substandard housing stock which is occupied by low and moderate income households in every municipality. As delineated more specifically in Appendix A, the Council has estimated, using United States Census data, the number of deteriorated units occupied by low and moderate income households in every municipality. The court also said in *Mt. Laurel II,* that some communities have accepted a disproportionate number of low and moderate income households. Therefore, the court limited the responsibility of municipalities that had high levels of substandard units occupied by the poor. The regional standard was determined by dividing the number of substandard units occupied by the poor by the total occupied housing stock within a given region. The same ration was calculated for each municipality within the housing region. If a municipality had an excess of substandard housing occupied by the poor, the excess went into a regional pool for distribution to other municipalities within the housing region.

The portion of substandard units occupied by the poor that remains the municipal obligation is called the indigenous need. The portion above the regional standard that is distributed to other municipalities within the housing region is called reallocated present need. It should be clear that both are a function of census estimates of substandard housing.

The third basic component of need is called prospective need. It is a projection of low and moderate income households. Population projections are converted into projections of households. Approximately, 40 percent of the projected households qualify as low or moderate income households and are included in the prospective need.

In developing its 1987-1993 projections of need, the Council employed the concepts of indigenous need, reallocated present need and prospective need. These components of need were quantified as follows:

Indigenous Need	85,134
Reallocated Present Need	34,411
Prospective Need	80,421
Total Need	199,966

In accepting these basic concepts, the Council's methodology was similar to the one employed by the courts in the *Mt. Laurel* decisions. However, the Council recognized that the private market would probably respond to some of this need. In using the census, the Council recognized that sound market units change hands and become available to low and moderate income households (filtering). Conversions take place and result in a new unit in an existing structure. These also benefit the poor. Also, to a limited extent, substandard units occupied by the poor are "brought up to code" (spontaneous rehabilitation).

After projecting the ability of the private sector to respond to the need and the impact of demolitions, the Council calculated the municipal responsibility at 145,707 units. (The 145,707 units were divided into indigenous need, reallocated present need and prospective need.) The indigenous and reallocated present need were a function of the 1980 census. The Council has reasoned that if municipalities are going to be responsible for estimates of substandard housing, those estimates should reflect the best and the most recent data available. Therefore, the estimates based on the 1990 census have replaced the estimates that resulted from the 1980 census.

Between 1980 and 1990, the United States Census Bureau decided to collect different information on housing. Thus, not all the census surrogates for substandard housing that were available in 1980 are available in 1990. Specifically, the lack of an elevator in a residential structure of at least four stories and the lack of private access variables were not collected by the Census Bureau in 1990. These variables were replaced by other variables that have been demonstrated to be surrogates for substandard housing. In addition, the variable measuring the source of heat was modified by the Census Bureau. Perhaps due to the changes wrought by the U.S. Census Bureau; and/or rehabilitation activity during the 1980s; and/or demolition activity during the 1980, the resulting estimates of substandard units occupied by low and moderate income households are lower than those adopted by the Council for the 1987-1993 period.

The third basic component of need is prospective need, which is a function of growth projections. In 1986, when the Council projected need, even the most conservative projections available forecast tremendous growth in New Jersey. It did not happen.

As the Council deliberated on the relationship between the previous and future estimates of need, it did not make sense for municipalities to be responsible for projected growth that did not occur. So, with the advantage of being almost through the 1987-1993 projection period, the Council has adjusted the 1987-1993 prospective need based on the best estimates of growth that actually occurred. Therefore, under the approach considered by the Council, 1987-1993 prospective housing need will be reduced.

To the reduced 1987-1993 prospective need, the Council will add a projection of 1993-1999 prospective need that reflects the best projections available at this point in time. The projection is the same projection used by the State Planning Commission in developing the State Plan and by the Department of Community Affairs in developing the Comprehensive Housing Assistance Strategy.

Therefore, the Council's methodology results in 1987-1999 estimates of housing need. These estimates are again mitigated by estimates of the private sector's ability to respond to the need. The resulting individual municipal obligations (precredited need) may be reduced based on the realistic opportunity created by the municipality in addressing its 1987-1993 fair share obligation and any eligible new construction credits that preceded the municipal response to its 1987-1993 housing obligation.

Although the housing regions are very similar to those employed previously, there have been some changes. Sussex County has been added to the housing region that also includes Bergen, Passaic, and Hudson Counties. Warren County has been added to the Morris, Essex and Union County region; and Mercer County has been added to the Monmouth and Ocean County region. These changes are consistent with the direction provided by the Fair Housing Act in that they consist of no less than two and no more than four contiguous counties and they conform to a great extent to the primary metropolitan statistical areas, as defined by the United States Census Bureau. In reconfiguring the housing regions, the Council was guided by the criteria within the Fair Housing Act and the following considerations:

1. There should be a strong link between counties within the same region with regard to commuter patterns;
2. The housing regions, to the extent practicable given the restraints imposed by the Fair Housing Act, should consist of enough undeveloped land to address the regional need; and
3. Each region should include a center city to facilitate regional contribution agreements.

The goal of redefining housing regions to develop a better relationship between housing need and the capacity to address the regional need is consistent with the direction provided by the Supreme Court in *Mount Laurel II.* For this reason, Sussex County was included in the Bergen, Hudson, Passaic region and Warren County was included with Morris, Union and Essex Counties. The inclusion of Mercer County with Monmouth and Ocean provides another major urban center to that region while conforming to the Council's other criteria for a housing region. The Council believes that the addition of Mercer County to this region will foster regional contribution agreements and the goals of the Fair Housing Act.

After determining the Statewide 1993-1999 prospective need, the prospective need was assigned to housing regions. Prospective households headed by people younger than 65 were assigned to housing regions based on a proportional share of nonresidential ratable growth. This assignment of prospective need is designed to maintain the relationship between jobs and the housing obligation. The projected households headed by people over 65 or more remained in their housing region of origin.

The Council has allocated regional need to municipalities based on regional shares of equalized assessed value on non-residential ratables, undeveloped land and median income. The equalized assessed value factor replaces covered employment. Over the past six years, there have been numerous instances where covered employment was found to be assigned to the wrong community. This error in data often resulted in disputes that prolonged the Council's administrative process and similar proceedings in court. The Council has determined that a very strong relationship exists between jobs and non-residential ratables. Therefore, the Council believes that it is fostering the principle that housing should be located in close proximity to jobs by replacing the covered employment data base with non-residential ratables. In addition, the Council believes the change will result in a more reliable data source, less disputes over data and a more expeditious process.

The use of an undeveloped land factor is an attempt to develop a better relationship between the need for housing and the municipal capacity to respond to that need. The Council believes that this relationship is important in fostering as much low and moderate income housing as possible.

In 1986, when the Council last allocated need, there was no data base of undeveloped land for the entire State. As a result, there was no undeveloped land factor and large allocations were made to municipalities with little vacant land.

To remedy this problem, the Council attempted to develop its own data base of undeveloped land. In developing this data base, the Council considered: the collection of municipal existing land use maps; interpretation of aerial photographs; the use of tax records; and the use of existing geographic information systems. Each alternative proved not to be practical for various reasons. As a result, the Council decided to develop a data base using land satellite imagery.

The land satellite has been used for various agricultural uses. It is capable of differentiating corn from soybean crops and conifers from deciduous trees. It has been used to map the spread of gypsy moth defoliation in forests. The Council found that it could also differentiate between developed and undeveloped land, as is explained in Appendix B.

The satellite's interpretation of ground cover is not viewed as a precise accounting of undeveloped land for each municipality. However, the satellite's interpretation is consistent throughout the State. Therefore, the data that result yield the most reliable available regional shares of undeveloped land by municipality.

The undeveloped land estimates are further refined by State Planning Commission Planning Areas. These estimates are then weighted to reflect the goals of the State Planning Commission. As a result of the weighting system, the most housing need is allocated to Planning Areas 1 and 2 where infrastructure currently exist, and the least housing need is allocated to Planning Areas 4 and 5, where there is no existing infrastructure. (See N.J.A.C. 17:32).

The Council has replaced a factor based on municipal aggregate income with a factor based on the differences in municipal median household incomes. The previous aggregate income factor tended to allocate more housing need to well-populated middle class municipalities that may have accepted a diversity of housing types. The logic underlying the factor based on income differences is that wealthier municipalities have a greater responsibility and capacity to address the need for low and moderate income housing.

Before arriving at the municipal calculated need, the municipal obligation may be limited, based on its existing housing stock.

Municipal need for new construction shall not exceed 20 percent of the 1993 occupied housing stock. Since a municipality may rely on inclusionary zoning to address the need for additional low and moderate income units and since such zoning often requires four market units to support each low or moderate income unit, the 20 percent limitation prevents a municipality's housing stock from increasing by more than 100 percent as a result of a low and moderate income obligation.

Subchapter 3 provides a one-to-one credit for every low and moderate income unit constructed since April 1, 1980. Since the Council did not adopt criteria for eligible low and moderate income units prior to December 15, 1986, the criteria for credit are somewhat more liberal for low and moderate income units constructed between April 1, 1980 and December 15, 1986. In addition, the rule provides credit for rehabilitation activity subsequent to the 1990 census. All of these credits are designed to encourage municipalities to create and maintain low and moderate income housing.

Subchapters 2 and 3 describe a process designed to quantify the municipal obligation for low and moderate income housing. It is possible that the municipality lacks the resources, as measured in land and infrastructure, to address the entire obligation. Therefore subchapter 4 outlines a process through which a municipality may achieve an adjustment to its housing obligation. These procedures may not be used to adjust the rehabilitation component, since the rehabilitation component deals with units existing in the community.

Subchapter 4 introduces the concept of realistic development potential. Through this concept, the Council will make site by site determinations regarding which sites could realistically develop for low and moderate income housing during the period of substantive certification if appropriately zoned. Only the sites determined by the Council to be realistic would be included in calculating the municipal realistic development potential. Where the municipal realistic development potential is less than the housing need, the Council is empowered to require the municipality to capture a contribution towards the housing need as development or redevelopment takes place. A municipality that has already received a vacant land adjustment in addressing its 1987-1993 need shall have a realistic development potential of zero.

The Council believes that the changes in its adjustment process will provide more flexibility to municipalities and developers. The Council also believes that the changes will result in more housing for low and moderate income people, because municipalities seeking an adjustment will be required to "capture" a contribution toward the housing obligation as development and redevelopment occur in the municipality. Such a contribution may be in the form of new units and/or a development fee.

Subchapter 5 outlines the Council's criteria for reviewing various approaches for addressing the municipal fair share. The menu of acceptable approaches is not necessarily all inclusive. The Council believes that the detailed criteria provided will help demystify the process of preparing a housing element and fair share plan and enhance the municipal ability to respond.

Subchapter 6 provides rules relating to regional contribution agreements. These rules are very similar to N.J.A.C. 5:92. The modifications clarify that the Council will not review a regional contribution agreement until there is a contract between the sending and receiving municipalities. The rules also create a minimum contribution for a regional contribution agreement of $20,000. This threshold has been proposed based on the Council's experience in implementing the Fair Housing Act, having considered various factors in N.J.A.C. 5:92-6.4.

Subchapter 7 amends the Council's rules pertaining to inclusionary developments. The proposed rules provide a greater emphasis on rental housing for families. The rules also require sales and rental units to be priced at more affordable levels for low and moderate income households. In addition, the Council's nine-tiered stratification system for pricing sales housing has been replaced by a more flexible system that still requires a stratification of sales prices. The Council believes these changes will benefit its target population and will provide more flexibility for municipalities and developers in delivering affordable housing.

Within Subchapter 7, the Council is proposing a change in the method of pricing low and moderate income housing units and qualifying low and moderate households. In the past, pricing and income qualification have been based on the Section 8 uncapped income limits for each Primary Metropolitan Statistical Area (PMSA), as annually determined by the United States Department of Housing and Urban Development (HUD). Unfortunately, the PMSA areas do not always correspond to the regions established by the Council for the purpose of calculating housing need. This results in a difference in pricing and qualifications within the same housing region. This difference in pricing and income qualification conflicts with the regional nature of the housing obligation and the Council's method of determining the need for low and moderate income housing. Consequently, the same housing unit in the same housing region designed to address the same need can be priced very differently. As a result, individual households that were included in the need calculation cannot afford housing constructed in individual counties within the same housing region.

The Council believes that the standards set for pricing and income qualification in a region should be the same as that used to determine need. Therefore, the Council is proposing regional income standards to eliminate such inequities based on New Jersey income data.

Subchapter 8 includes standards relating to the collection and use of development fees.

Subchapter 9 contains the standards which control affordability, and is designed to provide assurances that low and moderate income units remain affordable over time. The subchapter contains requirements for household eligibility standards at N.J.A.C. 5:93-9.1(b); specification of the length of controls; measures restricting deeds and options on sales and rental units; standards on foreclosure; a provision for annual indexed increases for sales and rental units while controls are in place; and procedures for sales, resale and rentals prior to the expiration of controls. Copies of the uniform deed restriction, referenced in Subchapter 9, are included in Appendix E, and are available from the Council.

Subchapter 10, Cost Generation, Relief and Revocation, provides standards, as required by *Mt. Laurel II* and the Fair Housing Act, for the evaluation of costs, in order to eliminate unnecessary cost generating factors. In order to receive and to retain substantive certification, municipalities will be required to eliminate development standards that are not essential to protect the public welfare and to expedite municipal approvals/denials of inclusionary development applications. Provisions for relief subsequent to substantive certification are included at N.J.A.C. 5:93-10.4, allowing developers to file a motion to expedite the review process. A Council determination that a municipality has delayed action, required unnecessary cost-generating standards, or obstructed the construction of an inclusionary development may result in the revocation of a municipality's substantive certification.

Subchapter 11 contains standards for affirmative marketing of low and moderate income housing, including initial sales and rentals, monitoring and reporting of marketing activities, and standards for residency preference, should a municipality choose to exercise such preference.

Subchapter 12 provides for Council action in the case of municipalities which have not submitted monitoring forms by August 30 of each year, including revocation of substantive certification, of certification to collect development fees, or any other action the Council may determine to be necessary.

Subchapter 13 provides standards for site-specific relief in State Planning Commission planning areas 1, 2, 3, 4 and 5. These standards have been developed in concert with the State Planning Commission and are subject of a memorandum of understanding between the Council and the Commission.

Subchapter 14 limits the municipal housing obligation to 1,000 units during any six year period, unless a municipality has a history of growth that suggests it is realistic for the municipality to accommodate more than 1,000 units duirng any six year period.

Subchapter 15 provides the regulatory framework for the Council to grant a waiver from its rules.

Appendix A, developed by the Center for Urban Policy Research at Rutgers University, provides background information regarding the calculation of need for low and moderate income housing in New Jersey. It includes an explanation of the methods and a copy of the base data used.

Appendix B provides a background for the estimation of undeveloped land in New Jersey, through the use of Thematic mapper Satellite data, 1990 United States Census data, and the TIGER files.

Appendix C provides the description of a structural conditions survey developed by the Council for the use of any party in the Council's process to present data to the Council to alter the census-generated indigenous need estimates.

Appendix D contains background data regarding the cost of providing infrastructure. The material in this appendix is expected to be of use to municipalities in providing data to the Council so that an assessment of the cost of infrastructure may be performed.

Appendix E provides the form of the deed restriction and lien to be used with new sales units.

Appendix F contains the State Planning Commisision—Council on Affordable Housing memorandum of understanding discussed earlier in the Summary, and provides a flow chart of the activities regulated in Subchapter 13.

Appendix G contains a checklist for the county review of a Regional Contribution Agreement.

Summary of Changes between Proposal and Reproposal:

After reviewing the comments and the original rule proposal, the Council is proposing the following changes to its proposed rules:

1. In N.J.A.C. 5:93-1, the Council has added definitions for "active recreation," "durational adjustment," "senior citizen," "head of household," "prior cycle credits" and "prior cycle fair share." These definitions are designed to clarify the Council's rules on adjustments, durational adjustments, senior citizen housing, regional contribution agreements and credits. The definition of "prior cycle credits" replaces the definition of "pre-1987 credits." This replacement, and the deletion of the undeveloped land cap from N.J.A.C. 5:93-5, has resulted in an amended definition of "calculated need." The Council has also expanded its definition of inclusionary development to include the creation of new low and moderate income units from existing residential and non-residential structures.

The Council has amended its definition of "inclusionary component" due to the cumulative nature of the housing obligation and an amendment to the Fair Housing Law limiting municipal six year obligations to 1000 units.

COAH has changed its definition of "certified household" and expanded the definition to link the process of certifying applicants to the criteria in N.J.A.C. 5:93-9.1. The definition of "fair share plan" has also been expanded to provide more direction as to the contents of the fair share plan. The Council has amended its definition of "alternative living arrangement" to include transitional facilities. The Council has determined that, since its methodology does include some share of the homeless population, it is appropriate to provide a means for municipalities to respond to the needs of the homeless.

The Council has also added a definition for "low income tax credits."

2. The undeveloped land cap has been eliminated from N.J.A.C. 5:93-2. As a result of deleting this section, there has been a recodification of remaining sections of this subchapter. References to the undeveloped land cap have also been deleted. The undeveloped land cap has been eliminated because the Council has determined it was not necessary due to the Council's adjustment process; and because the density assumption used to compute the undeveloped land cap was faulty where the existing pattern of development exceeded the presumed density of six units per acre.

In addition, N.J.A.C. 5:93-2.12 has been amended so that the projection of low and moderate income units expected to be rehabilitated by the private sector (spontaneous rehabilitation) does not exceed the current estimates of substandard units within the municipality.

3. There are several changes to N.J.A.C. 5:93-3. N.J.A.C. 5:93-3.1(b) has been modified to reflect the fact that COAH granted credits for housing constructed prior to the date a municipality petitioned for substantive certification. The term "pre-1987 credits", used in the March 15, 1993 proposal, was, therefore, inaccurate. N.J.A.C. 5:93-3.2(a) has been changed to eliminate an incorrect reference in the previous rule proposal. N.J.A.C. 5:93-3.2(b) has been amended to conform with an amendment to the Fair Housing Act that was signed into law since the publication of this rule proposal. This change allows a municipality to verify household income with a certification instead of a copy of a tax return. Finally, new N.J.A.C. 5:93-3.5, 5.6(b) and 5.13(d) have been proposed to make it clear that the Council will examine all existing zoning and plans to make a determination that a reduction is in order.

4. The following changes have been proposed to N.J.A.C. 5:93-5:

N.J.A.C. 5:93-5.6 has been revised to provide criteria for the review of zoning for inclusionary sites. The criteria balances planning considerations with the Council's belief that the ultimate construction of low and moderate income housing will be facilitated by encouraging developments that allow market units to be constructed as single family detached housing. The rule permits some flexibility to zone some land for higher densities because planning considerations may dictate higher densities. In addition, the Council recognizes that housing markets change and by permitting some zoning at higher densities, land will be available to accommodate the changes in housing demand.

N.J.A.C. 5:93-5.9 has been expanded at subsection (d) to provide controls on affordability for accessory apartments. This addition has also been incorporated in N.J.A.C. 5:93-9.2 at (g) and (h).

The rule regarding ECHO housing units at N.J.A.C. 5:93-5.10 has been eliminated as an acceptable means of addressing the municipal housing obligation. ECHO housing is typically reserved for a family member. The Council has determined that such a preference is inconsistent with the

direction provided by the Supreme Court in its *Warren* Decision. As a result of this deletion, the remaining sections of this subchapter have been recodified.

New N.J.A.C. 5:93-5.10 has been amended to allow a municipality to purchase more than 30 percent but less than 100 percent of the units within a development and make them available to low and moderate income households. This change is a result of a change in policy from the secondary mortgage market. However, due to concern about the viability of such proposals, the Council is providing direction for municipal consideration in developing a plan to purchase vacant housing units.

New N.J.A.C. 5:93-5.11 has been expanded at subsection (d) to clarify that the Council will entertain motions from the private sector to alter density requirements of an inclusionary site when: the developer demonstrates a capacity to build within a specified time frame; and the anticipated yield of the site is addressed.

New N.J.A.C. 5:93-5.12 has been modified so that a municipality's ability to receive credit for senior citizen housing accumulates with its obligation. Thus, municipalities that did not create the limit of senior citizen housing during the first substantive certification cycle may create more senior citizen units than if they had utilized its limit on senior citizen units during the last certification period. The cumulative limitation remains 25 percent.

In new N.J.A.C. 5:93-5.13, the Council has increased the minimum presumptive density when a municipality addresses its rental obligation through its zoning powers. The Council has also modified its rental bonus proposal. The rental bonus shall only be available for rental units that are open to the general public and conform to N.J.A.C. 5:93-7. As a result of this change, some rentals produced with low income tax credits will not be eligible for the bonus unless the rents are reduced to conform with the standards in subchapter 7. The rental bonus for rental units available to the general public remains at 2.0 and the rental bonus for rentals restricted to senior citizens remains at 1.33. However, the rental bonus for senior citizens is only available for up to 50 percent of the rental obligation. In addition, the Council has clarified that a rental obligation that is a condition of a previous substantive certification is to be considered a continuing obligation.

5. N.J.A.C. 5:93-6.1(a) has been modified so that a municipality's ability to transfer units via a regional contribution accumulates with its obligation. The formula used bases the allowable 50 percent transfer on the cumulative housing obligation. In addition the language in 5:93-6.4(c) has been amended to conform with the language in N.J.A.C. 5:93-6.2(b). This change is proposed to provide consistent direction on the use of RCA funds.

6. Several changes are proposed to N.J.A.C. 5:93-7:

N.J.A.C. 5:93-7.2 has been amended to provide specific exemptions for projects created with low income tax credits.

N.J.A.C. 5:93-7.3 has been re-written to require more housing suitable to larger households. This language corrects an error in the previous rule proposal.

N.J.A.C. 5:93-7.4 has been amended in various ways. The Council has amended its rule proposal so that at least half of all three bedroom units are affordable to four person households. Sales units must be priced in such a way that they are offered at three different moderate income prices and two different low income prices. The rule proposal requires low and moderate income units to be heated by the same source as the market units within an inclusionary development. Finally, the rule has been amended to make it clear that a low income household can be placed in a moderate income unit.

7. N.J.A.C. 5:93-8.15(c) has been amended to exempt development fees collected pursuant to N.J.A.C. 5:93-8.10(c) from the requirement that 30 percent of the fee be used for affordability assistance. The fees collected pursuant to N.J.A.C. 5:93-8.15(c) are in lieu of the construction of a low and moderate income housing unit. The Council believes that all money collected in lieu of producing a unit can be used to produce a unit elsewhere in the municipality or in a sending municipality. In addition, the Council has modified N.J.A.C. 5:93-8.17 to provide notification to the municipal chief financial officer and the municipal clerk if the Council decides it is necessary to direct the disbursement of development fees.

8. Within N.J.A.C. 5:93-9, the following changes are proposed:

N.J.A.C. 5:93-9.1 has been altered to make it clear that there must be an authority with various responsibilities associated with the pricing of low and moderate income units and the placement of low and moderate income applicants. The Council has amended this rule to clarify that the authority must enforce the terms of the deed restriction. This section has also been amended to provide guidance on the definition of income and the calculation of annual gross income. Finally, the term "eligible household" has been eliminated from this section. The Council has determined that the term certified household incorporates the concept of income eligibility. Thus, the term "eligible household" is unnecessary.

The Council has amended N.J.A.C. 5:93-9.2 to increase the term of controls on affordability on new low and moderate income units from at least 20 to 30 years in New Jersey municipalities that are not urban aid municipalities. This change is reflected throughout the rest of subchapter 9 and in the deed restriction that appears in Appendix E.

Also this section includes direction on accessory apartments and alternative living arrangements.

The Council has added a reference to N.J.A.C. 5:93-9.4 that makes it clear that, at the non-exempt transaction that terminates controls on affordability, the seller of a low and moderate income unit has several options.

N.J.A.C. 5:93-9.5 and 9.7 have been amended to provide more flexibility in the term of resale controls when a municipality or a non-profit on affordability, provided the deed restriction is approved by the Council.

In response to several comments, the term "restrictive covenant" has been replaced by the term "deed restriction." Also, N.J.A.C. 5:93-9.13 has been amended to make it clear that a foreclosure is "to" and not "by" a financial institution.

N.J.A.C. 5:93-9.15 has been amended. The amendment states that the Council will index rentals based on the Housing Consumer Price Index for the United States. An exception is made for rentals created with low income tax credits.

N.J.A.C. 5:93-9.16 has been amended to make it clear that the inability of a seller, upon resale, to achieve the maximum permitted price is not, in itself, grounds for a hardship waiver.

9. N.J.A.C. 5:93-10 has been amended to eliminate any reference to the "Model Subdivision and Site Plan Ordinance," since that ordinance has not been adopted as rules. N.J.A.C. 5:93-10.2 has been amended to make it clear that municipal housing elements and fair share plans shall allow for phased construction and bonding of on-site, off-site, and off-tract improvements required of inclusionary developments. Also N.J.A.C. 5:93-10.3(a) has been amended so that the studies, referenced in this section, be used to determine pro-rata off-site and off-tract improvements.

10. N.J.A.C. 5:93-11 has been rewritten as a result of comments from the public and the Supreme Court's *Warren* Decision. The reproposal eliminates the Council's 50 percent residency preference and replaces it with a preference the Council believes is consistent with the *Warren* Decision. The reproposal provides greater direction regarding specific regional marketing efforts required of the municipality.

11. The Council has added a subchapter 14 that responds to a law that limits a municipal housing obligation within any six year certification period to 1000 housing units.

12. The Council has also added a waiver provision to N.J.A.C. 5:93, as Subchapter 15, and has amended both N.J.A.C. 5:91-1.3 and 5:92-13.1 to refer to the new waiver provision. This chapter provides the regulatory framework for the Council to waive a specific rule where such a waiver would not contravene provisions of The Fair Housing Act.

13. The amendments in subchapters 2 and 9 are also reflected in Appendix A and E of the rule proposal.

Social Impact

The repeal, amendments and new rules contained in this proposal could have an impact on all of the 567 municipalities in the State of New Jersey, and the population in those municipalities. The 1987-1999 calculated need, after credits and reductions, totals 86,308. The changes presented in this reproposal have been developed after careful study of the application of the current rules, as well as factors which have an impact on housing issues, such as the State Development and Redevelopment Plan and available infrastructure. There are a number of benefits to be expected from the application of these new standards.

The public will benefit since the rules will be the basis for the creation of addition housing affordable to low and moderate income households. The existence of a variety of housing types in all municipalities will increase consumer choice. Hardship conditions due to high housing costs or housing unavailability in some areas will be lessened.

The public will also benefit because the Council's housing allocations are based on the availability of infrastructure. Thus, consistent with the

policies of the State Planning Commission, the housing need is targeted to areas of the State that have the capacity to respond to the housing need.

In those areas where infrastructure does not yet exist, housing need will be addressed in centers, again in conformance with the State Development and Redevelopment Plan (SDRP). The concentration of housing opportunities into centers that can be serviced by infrastructure will foster low and moderate income opportunities in New Jersey's exurban and rural areas. This will minimize the negative traffic, environmental and scenic impacts of developing New Jersey's farmland and environmentally sensitive areas.

The rules pertaining to the regional contribution agreements will help generate money that will be used to foster the revitalization of New Jersey's urban centers. Thus, the public will benefit by an improved housing stock and quality of life in the cities.

The proposed rules should benefit low and moderate income households in a number of ways. The rules have been revised to price low and moderate income units in a more affordable fashion. The rules propose that the source of heat be the same for low and moderate income units as market units. The initial period of controls on affordability has been extended from 20 to 30 years in many areas of the State. The affirmative marketing rules have been rewritten, in light of comments and the Supreme Court's *Warren Decision,* in a manner to increase opportunities for all households within a housing region. In addition, the rules pertaining to cost generation (subchapter 10) are designed to minimize the time between zoning land for low and moderate income housing and the delivery of the ultimate product.

Economic Impact

The reproposed rules can be expected to have a significant economic impact on the municipalities within the jurisdiction of the Council, as delineated in the Summary and in Appendix A.

Creation of housing units affordable to low and moderate income households will provide them access to sound shelter within their means. Such housing opportunities will enable New Jersey workers to live closer to their jobs and make it easier for potential employers to attract a labor force. This combination should enhance New Jersey's ability to retain and attract rateables that are vital in stimulating the economy. In-fill housing and rehabilitation may reduce expenditures on sewer and water extensions by utilizing existing systems with excess capacity.

Proposed amendments to N.J.A.C. 5:93-3.5, 5.6 and 5.11 provide developers with an avenue for the Council to consider the viability of zoning proposed in a municipal housing element within the context of the marketability of various housing types along with other municipal planning considerations. This will allow the Council to provide zoning for a product that is more marketable; and should be a stimulus for the development industry.

The transfer of money from suburban to urban areas via regional contribution agreements should help revitalize the housing stock in New Jersey's cities. This infusion of money should help stabilize the tax base and the economy of the cities.

The specific costs will vary from municipality to municipality, and will be based upon what was done in the past to provide affordable housing, the choices made by an individual municipality in the application of the rules.

Approximately 40 percent of the population of New Jersey reside in what can be considered low or moderate income households. The benefit to these individuals, and to their communities, can be significant. While the municipalities involved may incur costs associated with the application of these rules, such costs can be defrayed through the collection of development fees. Costs may also include those required to comply with Subchapter 5, Preparing a Housing Element.

The economic impact of participation in the Council's process, however, is significantly less than the impact created by involvement in a lawsuit. This fact is a major reason for the development of these standards, which allow a community to make economic choices to its advantage.

Regulatory Flexibility Statement

The primary purpose of these substantive and procedural rules is to regulate and facilitate the preparation of a municipal housing element and fair share plan, in accordance with the Fair Housing Act. The regulated public consists of the municipalities within the Council's jurisdiction. While small businesses may become involved as objectors to a particular municipality's plan, they are not directly regulated by these rules. Therefore, a regulatory flexibility analysis is not required.

These rules do not regulate small businesses, but small businesses may become involved in the Council's process as objectors and as owners of sites designated for low and moderate income housing. As objectors, small businesses may, if they choose, employ legal counsel to represent them before the Council, but they by no means need to do so.

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

5:91-1.3 Waiver

Any party desiring a waiver or release from the express provisions of the rules in this chapter may submit a written request to the Council to the attention of the Executive Director**, in accordance with the provisions of N.J.A.C. 5:93-13.1**. [Waivers may be granted only by the Council where such would not contravene the provisions of the Act.]

5:92-1.3 Waiver

Any party desiring a waiver or release from the express provisions of the [regulations] **rules** in this chapter may submit a written request to the Council to the attention of the Executive Director**, in accordance with the provisions of N.J.A.C. 5:93-13.1**. [Waivers may be granted only by the Council where such would not contravene the provisions of the Act.]

Full text of the proposed new rules follows (additions to the original proposal indicated in boldface **thus**; deletions from the original proposal indicated in brackets [thus]):

CHAPTER 92

SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING **FOR THE PERIOD AUGUST 4, 1986 THROUGH (THE EFFECTIVE DATE OF N.J.A.C. 5:93)**

5:92-1.1 Short title; **purpose; scope**

(a) The provisions of this chapter [will be known as "the substantive rules and regulations of the New Jersey Council on Affordable Housing."] **shall be known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the Period August 4, 1986 through the effective date of N.J.A.C. 5:93."**

(b) The purpose of this chapter will be the crediting of past actions taken by municipalities in addressing their obligations to house low and moderate income households.

(c) These rules can be applied to all municipalities within the Council's jurisdiction.

CHAPTER 93

SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING (THE EFFECTIVE DATE OF THESE RULES)

SUBCHAPTER 1. GENERAL PROVISIONS

5:93-1.1 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Substantive Rules of the New Jersey Council an Affordable Housing for the Period Beginning on (the effective date of these rules)."

(b) The purpose of this chapter will be the provision of criteria to be used by municipalities in addressing their constitutional obligation to provide a fair share of affordable housing for moderate and low income households.

(c) All municipalities within the jurisdiction of the Council are subject to evaluation, in accordance with the provisions of this chapter, for the period beginning on the (effective date of these rules).

5:93-1.2 Severability clause

If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

5:93-1.3 Definitions

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

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters, and a private entrance, which is created within an existing home, or through the conversion of an existing attached accessory structure on the same site, or by an addition to an existing home or accessory building.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq).

"Active recreation" means leisure time activities usually of a more formal nature and performed with others, often requiring equipment and taking place at prescribed places, sites or fields. Active recreation sites include swimming areas; playgrounds; tot lots; play fields; and tennis and other court game facilities. Active recreation shall not include areas designated for bike riding, hiking, walking and picnicking.

"Adjustment" means a modification and/or deferral of the municipal low and moderate income housing obligation, pursuant to N.J.S.A. 52:27D-307(c)(2) and N.J.A.C. 5:93-4.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c.530 (N.J.S.A. 55:14K-1 et seq.).

"Affordable" means a sales price or rent within the means of a low or moderate income household as defined in N.J.A.C. 5:93-7.4.

"Alternative living arrangement" means a structure in which households [maintain private rooms] **live in distinct bedrooms**, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: **transitional facilities for the homeless,** Class A,B,C,D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

"Approvable site" means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.

"Authority" means the entity designated by the municipality for the purpose of monitoring the occupancy, resale and rental restrictions of low and moderate income housing units.

"Available site" means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.

"Calculated need" means the low and moderate income housing obligation resulting from the procedures in N.J.A.C. 5:93-2. It is the result of subtracting reductions, [pre-1987] **prior cycle** credits[, the undeveloped land cap] and the 20 percent cap from the precredited need. To the extent that the Council has knowledge of [pre-1987] **prior cycle** credits and eligible reductions, these credits and reductions have been applied to the municipal housing obligation.

"Census subregion" means a geographic subdivision of the State as determined by the United States Bureau of the Census.

"Center" means a compact form of development with a core or node (focus of residential, commercial and service development) and a community development area that ranges in scale from an urban center to a regional center, town, village, and hamlet. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Certified [applicants] **household**" means a household determined to be **income** eligible for **a** low [and] **or a** moderate income housing [by a municipal authority after the authority has verified the household's gross annual income] **unit by a municipal authority after the authority has verified the household's gross annual income, credit history and compared the household's family size to the occupancy requirements delineated in N.J.A.C. 5:93-9.1(b)14.**

"Community capacity" means an estimate based on 20 percent of a municipality's existing 1993 housing stock, pursuant to N.J.A.C. 5:93-2.17.

"Conversion" means the conversion of existing commercial, industrial or residential structures for low and moderate income housing purposes.

"Council" means the New Jersey Council on Affordable Housing established under the Act and which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

"DCA" means the New Jersey Department of Community Affairs.

"DEPE" means the New Jersey Department of Environmental Protection and Energy.

"Developable site" means a site that has access to appropriate water and sewer infrastructure, and has received water consistency approvals from the DEPE or its designated agent authorized by law to issue such approvals.

"Development fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in N.J.A.C. 5:93-8.

"DOT" means the New Jersey Department of Transportation.

"Durational adjustment" means a deferral of the municipal low and moderate income housing obligation based on the lack of infrastructure pursuant to N.J.S.A. 52:27D-307(c)(2) and N.J.A.C. 5:93-4.

"Environ" means that area of a municipality outside the development boundaries of a center. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the tax assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal assessor.

"Exempt sales" means and shall include the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

"Fair market value" means the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposed to satisfy its obligation to create a realistic opportunity to meet its fair share of low and moderate income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, **addresses the development regulations necessary to implement the housing element, and addresses the requirements of N.J.A.C. 5:93-7 through 11.**

"Gross density" means the total number of dwelling units existing or permitted on a housing site divided by the total area of the tract. The result is expressed as dwelling units per acre.

"Head of household" means a person under whose name a housing unit is owned or rented.

"Household" means the person or persons occupying a housing unit.

"Housing element" means that portion of a municipality's master plan consisting of reports, statements, proposals, maps, diagrams and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing and which contains at least those items identified in section 10 of the Act.

"Housing market area" means the geographic region from which it is likely that buyers or renters would be drawn for inclusionary development. The housing market area is the "housing region" as determined by the Council, in which an inclusionary development is located.

"Housing Region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties, which exhibit significant social, economic and income similarities and which constitute, to the greatest extent practicable, the Primary Metropolitan Statistical Areas (PMSA) as last defined by the United States Census Bureau.

"Inclusionary component" means the result of subtracting the rehabilitation component, **credits (granted pursuant to N.J.A.C. 5:93-3), the impact of the 20 percent cap (pursuant to N.J.A.C. 5:93-2.16) and the impact of the 1,000 unit limitation (pursuant to N.J.A.C. 5:93-14)** from the [calculated] **precredited** need, provided the result shall not be less than zero. For a municipality that receives a vacant land adjustment pursuant to N.J.A.C. 5:93-4, the inclusionary component shall be initially synonymous with the realistic development potential.

"Inclusionary development" means a development containing low and moderate income units. **This term includes, but is not necessarily limited to, new construction, the conversion of a non-residential structure to a residential structure and the creation of new low and moderate income units through the substantial rehabilitation of a vacant residential structure.**

"Indigenous need" means deficient housing units occupied by low and moderate income households within a municipality and is a component of present need. Municipal indigenous need, as a percentage of the total 1993 occupied housing stock, shall not exceed the percentage derived from dividing the deficient housing units occupied by low and moderate income households by the total 1993 occupied housing stock for the housing region in which the municipality is located.

"Initial occupancy" means the period beginning with the date on which the developer is granted permission by the local government to begin occupancy and ending on the date 95 percent occupancy is attained.

"Inventory" means that calculation undertaken by a municipality in accordance with the Fair Housing Act, N.J.S.A. 52:27D-329, in developing its housing element which accounts for its housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households in substandard housing capable of being rehabilitated, as provided for in section 10a of the Act.

"Judgment of repose" means a judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

"Landsat" means a satellite that maps land cover by interpreting spectral information reflected from the earth's surface.

"Low income housing" means housing affordable according to Federal Department of Housing and Urban Development or the standards included in this chapter for home ownership and rental costs, occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located, and which is subject to affordability controls promulgated by the Council.

"Low income tax credit" means an income tax credit granted for investing in a Federal program designed to produce low and moderate income rental units.

"Market rate units" means housing within an inclusionary development, not restricted to low and moderate income households, that may sell at any price determined by a willing seller and a willing buyer.

"Median aggregate household income above the floor" means the result of multiplying the number of households in the municipality as of 1990 by the 1989 municipal median household income above the floor.

"Median household income above the floor" means the result of subtracting the regional household floor income from the 1989 median municipal household income.

"Minority" means an individual who is a member of one of the following racial or ethnic groups:

1. Black: An individual having origins in any of the black racial groups of Africa, but not of Hispanic origin;

2. American Indian or Alaskan Native: An individual having origins on any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition;

3. Hispanic: An individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or

4. Asian or Pacific Islander: An individual having origin in any of the original peoples of the Far East, southeast Asia, and the Indian subcontinent or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

"Moderate income housing" means housing affordable according to Federal Department of Housing and Urban Development or the standards in this chapter for home ownership and rental costs, occupied or reserved for occupancy by households with a gross household income in excess of 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located, and which is subject to the Council affordability controls in this chapter.

"Multifamily unit" means a structure contaning five or more dwelling units.

"Municipal estimated land capacity" means an estimate based on Landsat data, tax data and assumptions pertaining to density and set-asides used in developing the undeveloped land cap pursuant to N.J.A.C. 5:93-2.16 and assumptions pertaining to density and set-asides.

"Municipal need for new construction" means a calculation used to determine the [undeveloped land cap and] 20 percent cap pursuant to N.J.A.C. 5:93-2.16 [and 17].

"Municipal present need" means the sum of indigenous need and the municipal share of reallocated present need.

"Net density" means the total number of dwelling units within a designated portion of a tract divided by the total land area of the designated portion of the tract, including the open-space, roadways, parking areas and common facilities devoted exclusively to that portion of the tract. The result is expressed as dwelling units per acre.

["Planning area" means an area defined by a set of common criteria which focus on the degree and type of development or natural resources. Planning areas serve as organizing mechanisms for growth and development planning throughout the State. This definition is in accord with and derived from the State Development and Redevelopment Plan.]

"Open-space" means any parcel or area of water or land essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures, streets and offstreet parking and other improvements that are designed to be incidental to the natural openness of the land.

"Overlay zone" means a zoned area of a municipality in which low and moderate income housing may be built as a matter of right in addition to another use. In approving such a zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that when the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee.

"Petition for Substantive Certification" means that petition which a municipality files, or is deemed to have filed, which engages the Council's mediation and review process.

"Planning area" means an area defined by a set of common criteria which focus on the degree and type of development or natural resources. Planning areas serve as organizing mechanisms for growth and development planning throughout the State. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Pre-credited need" means the municipal low and moderate income housing obligation resulting from subtracting filtering, residen-

tial conversion and spontaneous rehabilitation from the sum of indigenous need, reallocated present need, prior cycle prospective, prospective need and demolitions.

["Pre-1987 credits" means credits approved by the Council for low and moderate income housing constructed between April 1, 1980 and December 15, 1986.]

"Present need" means the sum of indigenous need and reallocated present need as determined by N.J.A.C. 5:93-2.5.

"Price differential" means the difference between the controlled unit sale price and the fair market value as determined at the date of a proposed contract of sale, after reasonable real estate broker fees have been paid.

"Priority" means a system of selecting applicants.

"Prior cycle credits" means credits granted by the Council for low and moderate income units constructed after April 1, 1980 as part of granting substantive certification for the 1987-1993 housing obligation.

"Prior cycle fair share" means the responsibility for low and moderate income housing established by the Council when the Council granted substantive certification for the 1987-1993 housing obligation.

"Prior cycle prospective need" means that portion of the 1987-1993 prospective need included in the 1987-1999 low and moderate income housing need calculations.

"Prospective need" means a projection of low and moderate housing needs based on development and growth which is reasonably likely to occur in a region or a municipality. See N.J.S.A 52:27D-304(j).

"Qualified non-profit" means an organization granted non-profit status in accordance with section 501(c)(3) of the Internal Revenue Service code.

"Realistic development potential" means the municipal obligation as calculated pursuant to N.J.A.C. 5:93-4.2(e).

"Reallocated present need" means that portion of a housing region's present need that is redistributed throughout the housing region.

"Receiving municipality" means, for purposes of a Regional Contribution Agreement (RCA), a municipality which agrees to assume a portion of another municipality's fair share obligation.

"Reduction" means a one for one deduction of precredited need based on a fair share plan to construct low and moderate income units, transfer low and moderate income units via a regional contribution agreement and/or zone for low and moderate income housing that implements a housing element that has been certified by the Council or the Superior Court.

"Regional aggregate weighted median household income above the floor" means the result of adding the median aggregate household income above the floor for municipalities in the housing region.

"Regional household floor income" means 100 dollars less than the lowest municipal median household income in the housing region.

"Regional median household income above the floor" means the result of adding the median household income above the floor for each municipality in the housing region.

"Rehabilitated unit" means a previously deficient housing unit which has undergone significant renovation to meet municipal or other applicable housing code standards as further described in N.J.A.C. 5:93-5.2(b).

"Rehabilitation component" means the result of subtracting spontaneous rehabilitation from indigenous need. For a municipality where filtering and conversions exceed reallocated present, prior cycle prospective need, prospective need and demolitions, the rehabilitation component equals calculated need.

"Repayment clause" means the obligation of a seller exercising a repayment option to pay 95 percent of the price differential to a municipality at closing for use in the municipal housing plan.

"Repayment option" means the option of a seller of a low or moderate income unit to sell a unit pursuant to N.J.A.C. 5:93-12.7 at fair market value subject to compliance with the terms of a repayment clause.

"Resolution of Participation" means a resolution adopted by a municipality in which the municipality chooses to prepare a fair share plan and housing element in accordance with the Act.

"Section 8 income limits" means a schedule of income limits that define 50 percent and 80 percent of median income by household size. When used herein, Section 8 income limits shall refer to the "uncapped" schedule as published by the Council, in accordance with its rules.

"Sending municipality" means for purposes of a RCA, a municipality which transfers a portion of its fair share obligation to another willing municipality.

"Senior citizen" means a person who is 62 years of age or older.

"Set-aside" means the percentage of housing units devoted to low and moderate income households within an inclusionary development.

"State Development and Redevelopment Plan (SDRP)" means the State plan for development promulgated by the State Planning Commission pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.).

"Substandard housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system.

"Substantive certification" means a determination by the Council approving a municipality's housing element and fair share plan in accordance with the provisions of the Act and the rules and criteria as set forth in this chapter. A grant of substantive certification shall be valid for a period of six years in accordance with the terms and conditions contained therein, in accordance with N.J.S.A. 52:27D-322.

"Suitable site" means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

"Surrogate" means a census indicator of deficient housing used in the calculation of present need as defined in N.J.A.C. 5:93-2.

"Survey" means that independent determination of need undertaken by a municipality in preparing its housing element, which is developed and produced in a manner and in such form as is required by this chapter.

"Target group" means identifiable organizations that may aid in attracting low and moderate income households to inclusionary developments. Examples of target groups include: public housing authorities, non-profit organizations, departments of aging, Section 8 programs, religious organizations, urban community action groups and personnel departments of local employers.

"Total need" means the sum of present and prospective need.

"Vacant land" means undeveloped and unused land area.

SUBCHAPTER 2. MUNICIPAL DETERMINATION OF PRESENT AND PROSPECTIVE NEED

5:93-2.1 General provisions

(a) Municipal present need and prospective need shall be calculated by summing municipal indigenous need and the municipal share of the appropriate housing region's reallocated present need and prospective need. The resulting total shall be modified by: prior-cycle prospective need; secondary sources of supply and demand; reduction for 1987-1993 housing activities; [pre-1987] **prior-cycle** credits; [the undeveloped land cap,] and the 20-percent cap (see Appendix A, incorporated herein by reference). The end product of this process is the determination of municipal calculated need. This is the figure municipalities shall address in their housing elements. An example for a hypothetical municipality in the Southwest Region (Region 5)—Johnsonville—is provided to illustrate each of the individual calculations. The following flow diagram summarizes the sequence of calculations en route to the determination of calculated need.

FLOW DIAGRAM FOR THE CALCULATION OF
LOW- AND MODERATE-INCOME HOUSING NEED
Using the Johnsonville Example

INDIGENOUS NEED	+	REALLOCATED PRESENT NEED	=	PRESENT NEED			
33		95		128			
PRESENT NEED	+	PROSPECTIVE NEED	=	TOTAL NEED			
128		568		695			
TOTAL NEED	+	PRIOR-CYCLE PROSPECTIVE NEED	+	DEMOLITIONS			
695		248		9			
(-) FILTERING	(-)	RESIDENTIAL CONVERSION	(-)	SPONTANEOUS REHABILITATION	=	PRE-CREDITED NEED	
89		16		8		839	
(-) REDUCTION	(-)	[PRE-1987]**PRIOR-CYCLE** CREDITS	[(-)	UNDEVELOPED] [LAND CAP]	(-)	20% CAP	= CALCULATED NEED*
439		101		[0]		0	299

*Prior-cycle vacant land adjustment communities are indicated by "VL" even though their number is calculated. This indicates that although there is not much vacant land left in these communities, the affordable housing number may be met in other ways and is retained as part of overall Calculated Need.

(b) Exhibit 1 in the Technical Appendix A provides municipal-specific base data that may be employed to determine municipal Present and Prospective Need. Data for a hypothetical municipality, "Johnsonville," precedes the municipal base data for illustrative purposes in both Exhibits 1 and 3. Exhibit 2 in Appendix A duplicates the base data for each housing region that is presented in Columns A through L herein. Exhibit 3 is included for the convenience of the user of this guide. It provides a variety of data for each community, often from the 1990 Census, which would otherwise have to be researched in the process of undertaking this calculation.

(c) Selected municipalities receiving State aid (urban aid cities) pursuant to P.L. 1978, c.14 (N.J.S.A. 52:270-178 et seq.) as refined by the criteria in N.J.A.C. 5:93-2.3(b) shall calculate municipal calculated need as per the procedures delineated in N.J.A.C. 5:93-2.17.

5:93-2.2 Indigenous need—1993

(a) Indigenous need in a municipality is actual or capped deficient housing occupied by low- and moderate-income households as further defined in N.J.A.C. 5:93-1.3. Municipal indigenous need shall be determined from the total of deficient housing units occupied by low- and moderate-income households for the U.S. Census subregion in which the municipality is located. The data, derived from a multiple-index approach, are not available at the municipal level. To determine the municipal share of need from the U.S. Census subregion total, it is necessary to employ a single-index approach using surrogates of deficient housing available at both the municipal and U.S. Census subregion level. To calculate municipal indigenous need:

1. Locate the appropriate municipality in Exhibit 1 in Appendix A. Example: Johnsonville in Region 5 (Southwest).

2. Divide Column 2 (municipal single-index need) by Column 3 (subregional single-index need). The resulting percentage yields the municipal share of the U.S. Census subregion's total of deficient housing units occupied by low- and moderate-income households.

Example:

$$\frac{\text{Johnsonville single index need (Column 2)}}{\text{Subregional single index need (Column 3)}} = 410 \div 4544 = .090$$

(Municipal Share of Regional Need)

3. Multiply the result of the quotient obtained in (a)2 above by the number in Column 1 (subregional multiple index need).

Example:

Subregional Multiple Index Need (Column 1)		Municipal Share of Regional Need		
364	×	.090	=	33

This is the count of estimated low- and moderate-income deficient units in a municipality.

4. Column A from Appendix A, Exhibit 2, reproduced below displays the percentage for each housing region that is obtained by dividing the actual deficient housing units occupied by low- and moderate-income households in the region by the estimated total of 1993 occupied housing units in the region.

TABLE 1
(COLUMN A, FROM APPENDIX A, EXHIBIT 2)
1993 REGIONAL AVERAGE PERCENT
DEFICIENT HOUSING

Region	Percent Deficient
1. Northeast	.0290
2. Northwest	.0250
3. West Central	.0180
4. East Central	.0120
5. Southwest	.0150
6. South-Southwest	.0220

Multiply this percentage by the municipal projection of 1993 occupied housing stock in Exhibit 1, Column 4.

Example:

Johnsonville Total 1993* Occupied Housing Estimate (Column 4)		Region 5 Percentage of Low- and Moderate-Income Deficiency (Column A)		
12,695	×	.015	=	190

*Estimate as of July 1, 1993

5. Municipal Indigenous Need shall be the smaller number resulting from the calculations in (a)3 and 4 above.

Example: Johnsonville's Indigenous Need = 33.

6. If the calculation in (a)3 above is larger than (a)4 above, the difference between the two shall be distributed throughout the housing region as Reallocated Present Need as per N.J.A.C. 5:93-2.3 and 5:93-2.4. The results of this calculation are displayed for each housing region in Column B.

(b) Municipal indigenous need may also be determined through a survey of the municipality's housing stock as indicated in Appendix C incorporated herein by reference, when such survey is deemed adequate and accepted by the Council for identifying deficient housing units occupied by low- or moderate-income households.

5:93-2.3 Distribution of need 1993; 1993-1999

(a) Distribution of need applies the concept of fair share to the portion of regional housing need that is not locally responsible housing deficiency. This differs somewhat for present and prospective need and is explained in the Appendix A. The distribution of each housing region's reallocated present need and prospective need shall be accomplished through use of economic and land-use factors expressed as a percentage representing the municipal share of the housing region's total for each factor. The factors employed to distribute the housing region's need are the municipality's share of regional undeveloped land (Appendix A, Exhibit 1, Column 5), equalized nonresidential valuation (Exhibit 1, Column 6), aggregate household income differences (Exhibit 1, Column 7), and change in equalized nonresidential valuation (Exhibit 1, Column 8). All but equalized nonresidential valuation change are summed (Exhibit 1, Columns 5, 6 and 7), averaged and displayed in Exhibit 1, Column 9. This is the average of the Present Need allocation factors. Three economic and land-use factors (Exhibit 1, Columns 5, 7 and 8) are also summed, averaged, and displayed in Exhibit 1, Column 10. Column 10 represents the average of the Prospective Need allocation factors.

(b) Reallocated Present Need and Prospective Need shall be distributed to municipalities unless the municipality received State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and exhibits at least one of the following (see Appendix A, Attachment, for a listing of selected urban aid cities):

1. A level of existing low- and moderate-income housing deficiency, according to the six housing deficiency criteria, that exceeds average regional low- and moderate-income housing deficiency for the region in which the urban aid municipality is located;

2. A population density of greater than 10,000 persons per square mile or 14.1 per acre; or

3. A population density of 6,000 to 10,000 persons per square mile or 9.4 to 14.1 per acre plus less than five percent of vacant, nonfarm, municipal land as measured by the average of vacant land valuation and vacant land parcels of all local land valuation/parcels in the *1990 Statement of Financial Condition of Counties and Municipalities* (obtainable from the Division of Local Government Services, Trenton, New Jersey: New Jersey Department of Community Affairs, Trenton, New Jersey 08625) incorporated herein by reference.

(c) Only those municipalities designated herein to receive reallocated present need and prospective need shall be included in the housing region totals of vacant land, equalized nonresidential valuation, change in equalized nonresidential valuation, and aggregate household income differences for purposes of distributing need.

5:93-2.4 Reallocated present need—1993

(a) Reallocated present need is the share of excess deficient housing that is distributed to non-urban aid municipalities in the region as delineated in N.J.A.C. 5:93-2.3(b). Table B below displays the Reallocated Present Need by housing region:

TABLE [1] **B**
(Column B of Appendix A, Exhibit 2)
1993 REGIONAL POOL OF EXCESS DEFICIENT HOUSING UNITS

Region	Excess Deficient Housing Units
1. Northeast	7,002
2. Northwest	5,306
3. West Central	1,477
4. East Central	1,329
5. Southwest	1,751
6. South-Southwest	676
New Jersey	17,542

(b) To calculate reallocated [percent] **present** need, divide the municipal number in Appendix A, Exhibit 1, Column 9 by 100 and multiply the resulting quotient by the total reallocated present need for the housing region in which the municipality is located to yield municipal Reallocated Present Need.

Example:

Regional Pool of Excess Deficient Units (Region 5)	×	Average of Johnsonville's Present Need Allocation Factors (Column 9)	
1,751	×	$\frac{5,414}{100}$	= 95

5:93-2.5 Present need—1993

Present need is the sum of indigenous need and reallocated present need. To determine municipal present need, add indigenous need (as calculated in N.J.A.C. 5:93-2.2) and reallocated present need (as calculated in N.J.A.C. 5:93-2.4).

Example:

Johnsonville's Present Need = Indigenous Need (33) + Reallocated Present Need (95) = 128

5:93-2.6 Prospective need: 1993-1999

(a) Prospective need is the share of future households that are low and moderate income and as such require affordable housing not provided by the market except for secondary supply (see Appendix A). Prospective need for each housing region is projected in Table C below:

TABLE C
1993-1999 PROSPECTIVE NEED

Region	Regional Prospective Need
1. Northeast	4,787
2. Northwest	1,033
3. West Central	8,654
4. East Central	14,424
5. Southwest	8,993
6. South-Southwest	4,236
New Jersey	42,127

(b) To calculate municipal prospective need, divide the municipal number in Exhibit 1, Column 10 in the Appendix A by 100 and multiply the resulting quotient by the prospective need for the housing region in which the municipality is located to yield municipal Prospective Need.

Example:

1999 Prospective Need (Region 5) (Column C)	×	Average of Johnsonville's Prospective Need Allocation Factors (Column 10)	
8,993	×	$\frac{6,312}{100}$	= 568

5:93-2.7 Total need—1993; 1993-1999

Total need is the sum of present and prospective need. To determine municipal total need, add present need (as calculated in N.J.A.C. 5:93-2.5) and prospective need (as calculated in N.J.A.C. 5:93-2.6).

Example:

Johnsonville's Total Need = Present Need (128) + Prospective Need (568) = 695

5:93-2.8 Prior-cycle prospective need: 1987-1993

(a) Prior-cycle prospective need is the recalculated prospective need for the prior period. It is included in this chapter because it is part of the 1987-1999 need before reductions are taken. It is recalculated because procedures are more accurate since the 1990 Census has become available as a check against the original 1987-1993 projections.

(b) Recalculated prospective need is obtained by applying 0.52 to the prior-cycle prospective need. Before using the prior-cycle prospective need, it is adjusted for the effects of prior-cycle secondary sources of housing supply and demand. Recalculated demolitions are added to prior-cycle prospective need, and the sum is diminished by scaled-down prior-cycle secondary sources of supply. Each municipality's net (after secondary sources of supply and demand (demolitions) have been accounted for) prior-cycle prospective need is found in Appendix A, Exhibit 3, Column 1.

PRIOR-CYCLE PROSPECTIVE NEED = 248

Municipal Need Prior to Secondary Sources	=	Total Need	+	Prior-Cycle Prospective Need
944		695		248

5:93-2.9 Demolitions

(a) Demolitions are a source of secondary housing demand, as they eliminate housing opportunities for low- and moderate-income households. Therefore, a number representing demolitions affecting low- and moderate-income households shall be added to municipal need—total need plus prior-cycle prospective need—to this point, "Municipal need" or "municipal need to this point" refers to total need plus prior-cycle prospective need being altered serially by secondary sources of supply and demand, a reduction, pre-1987 credits, and undeveloped land and 20-percent caps up to the point that calculated need (the actual municipal obligation) is determined (see Appendix A). To determine this number:

1. Average 1988, 1989, and 1990 municipal demolitions as reported in New Jersey Residential Building Permits (1988, 1989 and 1990 Summaries) (available from the New Jersey Department of Labor, Division of Labor Market and Demographic Research, CN 388, Trenton, N.J. 08625).

Example:

Johnsonville averaged five demolitions per year for the three years.

2. Multiply the one-year average by six to estimate 1993-1999 demolitions (Exhibit 3, Column 2).

Example:

Johnsonville Average Demolitions	×	Number of Years Projected	
5	×	6	= 30

3. To determine the percentage of demolitions affecting low- and moderate-income households in a municipality, multiply the number of demolitions for six years by the 1990 subregional low- and moderate-income percentage for that municipality.

Number of Demolitions in Six Years	×	Low- and Moderate-Income Percentage (Exhibit 1, Column 11)	
30	×	.2402	= 7.2

4. Multiply the number of demolitions affecting low- and moderate-income households (calculated in (a)3 above) by 1.2 to reflect a greater proportion of overall demolitions affecting this income group. The number of demolitions affecting low- and moderate-income households shall be the result of this product or 95 percent of the total projected demolitions, whichever is lower. The resulting number shall be added to municipal need.

Example:

Demolitions Impacting Low- and Moderate-Income Households	×	Low- and Moderate-Income Factor	
7.2	×	1.2	= 9

(9 is lower than 95 percent of 30, or 28.5—so 9 is used.)

5:93-2.10 Filtering

(a) Filtering causes a reduction in municipal need (total and prior-cycle prospective) based on the recognition that the housing needs of low- and moderate-income households are partially met by sound housing units formerly occupied by the higher-income sector of the housing market (see Appendix A). Filtering is highly correlated with the presence of older and multifamily (five units or more) housing units. Table D, Column 1 displays regional filtering projections. Column 2 displays the total number of multifamily housing units in each region in 1990. Column 3 displays the total number of pre-1940 (older) units in each region.

TABLE D
FILTERING

Region	COLUMN 1 1993-1999 Filtering Projection	COLUMN 2 1990 Multifamily (5 Units or More) Unit Totals	COLUMN 3 1990 Pre-1940 Unit totals
1. Northeast	4,895	193,286	255,434
2. Northwest	4,535	156,893	206,403
3. West Central	2,830	70,199	61,647
4. East Central	3,550	74,459	93,848
5. Southwest	2,994	63,582	80,208
6. South-Southwest	1,382	41,231	58,521
New Jersey	20,185	599,650	756,061

(b) To determine the impact of filtering on municipal need after all the calculations up to and including N.J.A.C. 5:93-2.9:

1. Determine the municipal number of total multifamily units in 1990 as reported in the U.S. Census of Housing (Appendix A, Exhibit 3, Column 3).

Example:

Johnsonville had 2,719 total multifamily units in 1990.

2. Divide this number by the number of total multifamily units for the region (Table D, Column 2) in which the municipality is located.

3. Determine the municipal number of pre-1940 units in 1990 as reported in the U.S. Census of Housing.

Example:

Johnsonville had 272 pre-1940 units in 1990. (Appendix A, Exhibit 3, Column 4)

4. Divide this number by the total of pre-1940 units in 1990 for the region (Table D, Column 4) in which the municipality is located.

5. Weight the calculation resulting from (b)2 above by two, then average the above calculations. This yields the municipality's weighted share of older and multifamily housing units in the housing region.

Example:

Johnsonville's Multifamily Units, 1990		Total Multifamily Units in 1990 (Region 5) (Column E)		Johnsonville's Share of Multifamily Units
2,719	÷	63,582	=	.04276

Johnsonville's pre-1940 Units, 1990		Total Pre-1940 Units in 1990 (Region 5) (Column F)		Johnsonville's Share of Pre-1940 Units
257	÷	80,208	=	.00339

6. Average the shares in (b)5 above after weighting the first by two

(.04276 + .04276 + .00339) ÷ 3 = .02964 (Johnsonville's Weighted Share of Older and Multifamily Units)

7. Multiply this percentage by the filtering projections in Table D, Column 4 for the region in which the municipality is located to yield the reduction to municipal total need (plus prior-cycle prospective need) due to filtering.

Example:

Johnsonville's Share of Region 5 Older and Multifamily Units	×	Filtering Projection (Region 5) (Column D)	
.02964	×	2,993	= 89

5:93-2.11 Residential conversion

(a) Residential conversion is the creation of dwelling units from already existing residential structures. It is a significant source of housing supply to low- and moderate-income households and it causes a reduction to municipal need (see Appendix A). Residential conversion is highly correlated with the presence of two- to four-family housing units. Table E, Column 1 below displays projections of conversions for each housing region. Table E, Column 2 displays the total of two- to four-family housing units in each housing region in 1990.

TABLE E
RESIDENTIAL CONVERSION

Region	COLUMN 1 1993-1999 Conversion Projections	COLUMN 2 1990 2-4 Family Unit Totals
1. Northeast	2,649	218,392
2. Northwest	2,229	150,817
3. West Central	930	44,103
4. East Central	886	45,844
5. Southwest	881	27,265
6. South-Southwest	775	40,576
New Jersey	8,351*	526,997

*May not be equivalent to Appendix A figure because all secondary sources of supply may not be used; Appendix A displays what is used.

(b) To determine the impact of conversions on municipal need:

1. Determine the municipal number of total two- to four-family housing units in 1990 as reported in the U.S. Census of Housing (Detailed Housing Characteristics Part 32—New Jersey).

Example:

Johnsonville had 490 two- to four-family units. (Appendix A, Exhibit 3, Column 5)

2. Divide the number by the total number of two- to four-family housing units for the region (Table E, Column 2) in which the municipality is located to obtain the municipal share of two- to four-family housing units in the housing region.

Example:

Johnsonville's 1990 Total 2-4 Family Housing Units		Regional 1990 Total 2-4 Family Housing Units (Region 5) (Column H)		Johnsonville's Share of 2-4 Family Housing Units in Region
490	÷	27,265	=	.01797

3. Multiply this percentage by the conversion projection in Table E, Column 1 for the region in which the municipality is located to yield the reduction to municipal need due to conversion.

Example:

Johnsonville's Share of 2-4 Family Housing Units		1993-1999 Conversion Projections (Region 5) (Column G)	
.01797	×	881	= 16

5:93-2.12 Spontaneous rehabilitation

(a) Spontaneous rehabilitation measures the private market's ability to rehabilitate deficient low- and moderate-income housing units up to applicable state and local code standards; and shall cause a reduction to municipal need (see Appendix A). Spontaneous rehabilitation is highly correlated with income. A combination of income differences from $100.00 below the lowest municipal median household income in the region weighted by the number of households in a municipality ($100.00 below the lowest municipal median household income in the region is used that there will be no negative differences in the regional pool) and household income differences not weighted is used to develop this measure. The former is weighted twice; the latter once. Table F, Column 1 below displays spontaneous rehabilitation projections by housing region.

TABLE F
SPONTANEOUS REHABILITATION

Region	COLUMN 1 1993-1999 Spontaneous Rehabilitation Projections	COLUMN 2 1993 Regional Household Income Floor ($)	COLUMN 3 1993 Weighted Regional Income Differences ($)	COLUMN 4 1993 Unweighted Regional Income Differences ($)
1. Northeast	710	20,515	19,234,394,000	4,393,888
2. Northwest	597	23,705	16,299,646,900	3,698,545
3. West Central	249	31,008	8,828,753,140	1,835,119
4. East Central	237	22,719	11,539,122,100	2,526,644
5. Southwest	236	19,015	10,120,912,300	2,557,328
6. South-Southwest	207	18,343	3,422,312,000	1,234,261
New Jersey	2,237	—	69,445,140,000	16,245,786

(b) To determine the impact of spontaneous rehabilitation on municipal need to this point:

1. Determine the municipal 1993 median household income as adjusted from the 1990 Census of Population (Appendix A, Exhibit 3, Column 6).

Johnsonville's 1993 median household income is $55,927.

2. Subtract the regional floor income (lowest municipal median household income in the region in 1993—$19,015; Table F, Column 2) from the 1993 municipal median household income.

$55,927 - $19,015 = $36,913

3. Multiply this number by the number of occupied housing units (households) in the municipality as of 1993 (U.S. Census of Population—1990, update; Appendix A, Exhibit 1, Column 4). This yields municipal 1993 aggregate household income above the floor (weighted income).

Example:

Johnsonville's number of households in 1993 is 12,695.

Calculation:

$36,913 × 12,695 = $468,592,783

4. Divide 1993 municipal median aggregate weighted household income above floor by the 1993 summed regional aggregate weighted median household income above floor for the housing region in which the municipality is located (see Table F, Column 3) to obtain the municipal share of regional aggregate weighted household income above the floor.

Example:

Johnsonville's Aggregate 1993 Weighted Household Income (above the floor)		1993 Aggregate Weighted Household Income (above the floor) (Region 5) (Column K)		Johnsonville's Share of Aggregate 1993 Weighted Household Income (above the floor)
$468,592,783	÷	$10,120,912,300	=	.04630

5. Divide 1993 municipal median household income above the floor (unweighted) by the 1993 summed regional median household income above the floor (unweighted) for the housing region in which the municipality is located (see Table F, Column 4) to obtain the municipal share of regional household income above the floor (unweighted).

Example:

Johnsonville's 1993 Household Income (Unweighted) (above the floor) (Step 2 above)		1993 Aggregate Household Income (Unweighted) (above the floor) (Region 5) (Column L)		Johnsonville's Share of 1993 Aggregate Household Income (Unweighted) (above the floor)
$36,913	÷	$2,557,328	=	.01443

6. Multiply the weighted share of regional income times two and add it to the unweighted share. Divide this sum by three. Multiply the result by the spontaneous rehabilitation projections for the housing region in which the municipality is located (see Table F, Column 1) [to yield the reduction to municipal total need (plus prior-cycle prospective need) due to spontaneous rehabilitation.] **This yields the reduction to municipal total need (plus prior cycle prospetive need) due to spontaneous rehabilitation unless the result exceeds the indigenous need. In cases where the result exceeds the indigenous need, the reduction due to spontaneous rehabilitation shall equal the indigenous need.**

Example:

Johnsonville's Weighted Share of 1993 Aggregate Household Income × 2 (Step 4 above)		Johnsonville's Unweighted Share of 1993 Aggregate Householdd Income (Step 5 above)		1993-1999 Region 5 Spontaneous Rehabilitation Estimate (Column I)	
[(.04630 + .04630	+	.01443)	+3]	× 236	= 8

5:93-2.13 Pre-credited need: 1987-1999

Pre-credited need is total need and prior-cycle prospective need modified by secondary sources of demand and supply.

Total Need	+	Prior-Cycle Prospective Need	+		-	Filtering
695		248		9		89

Residential Conversions	-	Spontaneous Rehabilitation	=	Pre-Credited Need
16		8		839

5:93-2.14 Reduction

(a) The Council [offers] **shall allow** a one-for-one reduction of cumulative 1987 to 1999 need for affordable housing activities undertaken from 1987 to 1993. It is a reduction for units zoned for or transferred, whether or not the units have been constructed, **pursuant to Subchapter 3.**

(b) Information for the reduction is derived from the Council, court, and other records of affordable housing activity. This information is specific to individual municipalities and is contained in Appendix A, Exhibit 3, Column 7. Municipal need at this point is pre-credited need minus the reduction. A municipality cannot take a reduction that will bring municipal need number below zero.

Pre-Credited Need	-	Reduction (Exhibit 3—Column 7)	=	Municipal Need After Reduction
839		439		400

5:93-2.15 [Pre-1987] **Prior-cycle** credits

A one-for-one credit shall be granted for low- and moderate-income housing constructed [between April 1, 1980 and December 15, 1986] **subsequent to April 1, 1980** that conforms to the criteria in N.J.A.C. 5:93-3.1 [and 3.2]. Municipal need at this point is pre-credited need after the reduction, minus [pre-1987] **prior-cycle** credits. [A pre-1987 credit] **Prior-cycle credits** cannot [be taken that will bring] **reduce** a municipal need number below zero.

Municipal Need After Reduction	(-)	[Pre-1987] **Prior-cycle** Credits (Exhibit 3—Col. 8)	=	Municipal Need After [Pre-1987] **Prior-cycle** Credits
400	-	101	=	299

[5:93-2.16 Undeveloped land cap

(a) In order to minimize the number of municipalities that will require a vacant land adjustment in accordance with N.J.A.C. 5:93-4, the Council shall permit a municipality to cap its need based on the Council's estimate of undeveloped residential land.

(b) The undeveloped residential land a community has for the purposes of accommodating affordable housing need is:

1. Its [landsat]**LANDSAT**-determined undeveloped land multiplied by a share of land for residential purposes (average of ratio of residential parcels to all developed land parcels and residential equalized valuation to all developed properties' equalized valuation multiplied by 1.5, and capped at 95 percent of all land locally);
2. Times a density of six units per acre;
3. Times a 20-percent set-aside for affordable housing.

(c) The information used in (b) above is available by municipality in the *53rd Annual Report of the Division of Local Government Services 1990—Statements of Financial Condition of Counties and Municipalities* (Trenton, NJ: New Jersey Department of Community Affairs, 1991), incorporated herein by reference.

(d) Municipal estimated land capacity is determined by multiplying available residential land by six units per acre and then by the 20-percent set-aside.

Undeveloped Residential Lands (acres) (Exhibit 3—Col. 9)	×	Appropriate Density for Low and Moderate (unit/acre)	×	Share of Low and Moderate (20%)	=	Estimated Land Capacity
5,937	×	6	×	.2	=	7,124

(e) The undeveloped land cap is the difference between municipal estimated land capacity and the need for new construction. The need for new construction is municipal need, net of pre-1987 credits, minus the rehabilitation component. The rehabilitation component in this example is indigenous need minus spontaneous rehabilitation (see N.J.A.C. 5:93-1.3, Definitions). (In this case it is 33 minus 8 = 25.)

Municipal Need After Pre-1987 Credits		Rehabilitation Component		Need for New Construction
299	-	25	=	274

1. If the need for new construction is lower than the municipal estimated land capacity, the need is not reduced. The undeveloped land cap is zero.
2. If the need for new construction is greater than the municipal estimated land capacity, the amount over capacity is subtracted from the need for new construction. This difference is the undeveloped land cap. Municipal need at this point equals pre-credited need minus the reduction, minus pre-1987 credits, and minus the undeveloped land cap.

Municipal Need for New Construction		Estimated Land Capacity		Undeveloped Land Cap
274		7,124		0
Municipal Need After Pre-1987 Credits	–	Undeveloped Land Cap	=	Municipal Need After Undeveloped Land Cap
299		0		299

(f) Questions on the amount of undeveloped land in a community shall be resolved through the Council's adjustment process (N.J.A.C. 5:93-4). The undeveloped land cap shall not circumvent the Council's adjustment process.]

5:93-[2.17]**2.16** Twenty-percent (20%) cap

(a) A cap of 20 percent of the estimated 1993 occupied housing stock (community capacity) cannot be exceeded by a municipality's need for new construction. The need for new construction [at this point is equal to either the aforementioned municipal need for new construction or estimated land capacity, whichever is smaller] **is the precredited need minus the reductions, prior-cycle credits, and the rehabilitation components**. This is based on the premise that if the affordable housing was provided as a 20-percent set-aside of inclusionary housing, and if the planned affordable housing was more than 20 percent of existing units, then the new affordable housing and accompanying market units would exceed the number of existing housing units in the community.

(b) Community capacity is determined by multiplying the estimated 1993 occupied housing in the municipality (Appendix A, Exhibit 1, Column 4) by 0.20 and comparing this to the municipal need for new construction.

1. If the community capacity is larger than municipal need for new construction, the 20-percent cap is zero. This is the case for the present example.

2. If community capacity is smaller than municipal need for new construction, the difference between community capacity and the municipal need for new construction is subtracted from the latter to yield the 20-percent cap. The 20-percent cap is the difference between community capacity and the municipal need for new construction. Municipal need at this point equals pre-credited need minus the reduction, minus [pre-1987] **prior-cycle** credits, [minus the undeveloped land cap,] minus the 20-percent cap.

Johnsonville's 1993 Occupied Housing Estimate		Twenty Percent (20%)	=	Community Capacity
12,695 units	×	0.20	=	2,539 units
Municipal Need for New Construction		Community Capacity	=	Twenty Percent (20%) Cap
274		2,539	=	0
Municipal Need After [Undeveloped Land Cap] **Prior-Cycle Credit**	–	Twenty Percent (20% Cap)	=	Municipal Need After 20-Percent Cap
299		0		299

5:93-[2.18]**2.17** Calculated need: 1987-1999

Municipal calculated need is the sum of total need, prior-cycle prospective need, and demolitions; minus filtering, conversion, and spontaneous rehabilitation, yielding, pre-credited need; minus the reduction, [pre-1987] **prior-cycle** credits, [undeveloped land cap,] and 20-percent cap (see Appendix A).

Example:

	plus		*plus*	
Total Need		Prior-cycle Prospective Need		Demolitions
695	+	248	+	9
minus Filtering	*minus* Residential Conversion	*minus*	Spontaneous Rehabilitation	*equals* Pre-Credited Need
– 89	– 16	–	8	= 839
minus Reduction	*minus*	[Pre-1987] **Prior-Cycle** Credits	*[minus]*	[Undeveloped Land Cap
– 439	–	101	–	0]
minus 20% Cap	*equals* Calculated Need			
0	= 299			

5:93-[2.19]**2.18** Vacant land adjustment communities; prior cycle

Municipalities that received an adjustment from the courts or the Council due to undeveloped land in the first affordable housing cycle have received a calculated need number. However, the Council has developed a streamlined process for these communities to receive substantive certification. The calculated need is retained in the system as a goal for future affordable housing efforts as development and redevelopment occur in the community.

5:93-[2.20]**2.19** Calculation of indigenous need: selected urban aid cities

(a) Selected municipalities receiving state aid (urban aid cities) pursuant to P.L. 1978, c.14 (N.J.S.A. 52:270-178 et seq.) that are exempt from the distribution of reallocated present need and prospective need as described in N.J.A.C. 5:93-2.3 (see Appendix A, Attachment shall determine their indigenous need as indicated below:

1. Follow the procedures delineated in N.J.A.C. 5:93-2.2(a)1 to 3. These calculations yield the count of actual low- and moderate-income deficient units in the selected urban aid city. This estimate of low- and moderate-income deficient units may also be determined through a survey of the municipality's housing stock when such survey is deemed adequate and accepted by the Council for identifying deficient housing units occupied by low- or moderate-income households.

2. Modify the number calculated in (a)1 above as instructed in N.J.A.C. 5:93-2.9, 2.10, 2.11, and 2.12 (demolitions, filtering, residential conversions and spontaneous rehabilitation.)

3. Perform the calculation required in N.J.A.C. 5:93-2.2(a)4.

4. Municipal Indigenous Need (for Urban Aid Cities) shall be the smaller number resulting from the calculations in (a)2 and 3 above.

5. If the calculation in (a)2 above is larger than the calculation in (a)3 above, the difference between the two shall be distributed throughout the housing region as reallocated present need (see Appendix A).

6. No additional calculations need be made by these cities at this point.

5:93-[2.21]**2.20** Low- and moderate-income split

The municipal calculated need obligation shall be divided equally between low- and moderate-income households.

Example:

Johnsonville's total obligation of 299 units would include 150 low-income and 149 moderate-income units.

(An odd number is always split in favor of the low-income unit.)

SUBCHAPTER 3. CREDITS/REDUCTIONS

5:93-3.1 General

(a) The Fair Housing Act provides that the Council determine municipal fair share, after crediting on a one for one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Given the approach the Council has developed for determining calculated need, the Council has determined that it is appropriate to allow credits for units constructed after April 1, 1980. Since it was not until December 15, 1986 that the Council established criteria for an eligible low and moderate income unit, the crediting criteria for housing units created between April 1, 1980 (the date of the census) and December 15, 1986 shall be different than the period subsequent to December 15, 1986.

(b) In determining calculated need, COAH has granted [credits for housing units constructed between April 1, 1980 and December 15, 1986. These credits are based on the criteria delineated in N.J.A.C. 5:93-3.2.] **prior-cycle credits. These are credits that have been granted by the Council for the construction of low and moderate income units subsequent to April 1, 1980.** In determining calculated need, the Council has also provided a reduction to the municipal housing obligation based on the realistic opportunity a municipality created in response to its 1987-1993 housing need through regional contribution agreements, plans for new construction or through its zoning powers. The source for this information includes data from the Council's records, county planning boards and Masters appointed by the court. To the extent that this information is incomplete or incorrect, the Council shall modify the calculated need, in accordance with this chapter.

(c) Municipalities shall not receive both a reduction and a credit for the same housing unit. The Council's intent with the reductions and the credits is to ensure that a municipality's obligation is lowered by one, provided: the municipality has created a realistic opportunity that resulted in a sound housing unit; or, if the unit has not yet materialized, the municipality continues to offer the realistic opportunity. A reduction shall be considered a credit when a low or moderate income unit is constructed (or in the case of a regional contribution agreement, constructed or rehabilitated) and appropriately restricted to a low or moderate income household.

(d) Unless otherwise stated, a municipality shall receive credits for housing activity prior to the date of the publication of its petition for substantive certification, provided such activity complies with criteria for credits in this subchapter. A municipality shall document eligible new construction with certificates of occupancy; eligible rehabilitation with final inspections; and transferred units with evidence of the required transfer of funds to the sending municipality.

(e) For units constructed after December 15, 1986, a municipality shall receive credits for housing activity that complies with the criteria in this subchapter and with the rules governing new construction, and transferred units (via a regional contribution agreement) between 1987-1993, in accordance with N.J.A.C. 5:92, a housing unit constructed under the auspices of a government funded, financed or otherwise assisted housing program designed specifically for households whose income does not exceed 80 percent of median shall also be eligible for a credit provided:

1. At least half of the units are affordable to households whose incomes do not exeed 50 percent of median income; and

2. The units are governed by controls on affordability that are substantially the same as those set forth in N.J.A.C. 5:92.

(f) A credit and/or a reduction in excess of the municipal precredited need shall be applied on a one for one basis against its future housing obligation.

5:93-3.2 Credits for units constructed between April 1, 1980 and December 15, 1986 [(pre-1987 credits)]

(a) A housing unit created and occupied between April 1, 1980 and December 15, 1986 is eligible for a one for one credit when it has been developed specifically for households whose income does not exceed 80 percent of median income and the unit is governed by controls on affordability that are the same as those set forth in [Subchapter 12 of Appendix C and Appendix F,] **N.J.A.C. 5:92-12 and Appendix E,** incorporated herein by reference.

(b) A municipality may receive a one for one credit for each unit satisfying the following criteria:

1. The unit shall have been constructed between April 1, 1980 and December 15, 1986. The municipality shall document the date of construction with a certificate of occupancy date;

2. The unit shall have been certified to be in sound condition as a result of an exterior inspection performed by a licensed building inspector; and

3. The unit is currently occupied by a low or moderate income household. The municipality shall document [the] household income [with the most recent Federal tax return] **eligibility with a certification of household income in a form adopted by the Council. Such certification shall be signed by a head of household. It shall be reviewable only by the Council or its staff and shall not be a public record.**

5:93-3.3 Credits for housing activity subsequent to December 15, 1986

(a) A municipality shall receive a one for one credit for every low or moderate income unit constructed within its borders or within a receiving municipality as a result of a regional contribution agreement that addresses its 1987-1993 housing need provided:

1. The unit has not been addressed in N.J.A.C. 5:93-14, Reductions; and

2. The unit complies with the criteria referenced in N.J.A.C. 5:93-3.1(e).

5:93-3.4 Rehabilitation subsequent to the 1990 census

(a) A municipality may receive credit for rehabilitation of low and moderate income substandard units performed subsequent to April 1, 1990.

(b) Units shall be eligible for crediting if:

1. They were rehabilitated up to the applicable code standard and that the average capital cost expended on rehabilitating the housing units was at least $8,000; and

2. The unit is currently occupied by the occupants who resided within the unit at the time of rehabilitation or by other eligible low or moderate income households.

(c) Credits for rehabilitation shall not exceed the rehabilitation component and shall only be credited against the rehabilitation component.

5:93-3.5 Reductions for unbuilt housing

Where land has been zoned for low and moderate income housing, the Council shall review sites for suitability and determine if the previously zoned sites present a realistic opportunity for low and moderate income housing before granting a reduction. In its review, the Council shall include but not be limited to a consideration of environmental factors, the location of existing infrastructure and the likelihood of the current zoning to result in the creation of low and moderate income housing during the period of substantive certification. Such a review shall result in a determination of the appropriate reduction and may result in requirements for zoning amendments.

SUBCHAPTER 4. MUNICIPAL ADJUSTMENTS

5:93-4.1 Purpose and background

(a) Subchapters 2 and 3 delineate the criteria for determining the municipal housing obligation. However, there may be instances where a municipality can exhaust an entire resource (land, water

or sewer) and still not be able to provide a realistic opportunity for addressing the need for low and moderate income housing as determined by the Council. This subchapter outlines standards and procedures for municipalities to demonstrate that the municipal response to its housing obligation is limited by the lack of land, water or sewer. The procedures in this subchapter shall not be used to reduce or defer the rehabilitation component.

(b) Where a municipality attempts to demonstrate that it does not have the capacity to address the housing obligation calculated by the Council, the municipality shall identify sites that are realistic for inclusionary development in order to calculate the realistic development potential of the community, in accordance with N.J.A.C. 5:93-4.2. Where the realistic development potential is less than the municipal calculated need minus any credits granted pursuant to N.J.A.C. 5:93-3.4, the municipality shall provide a response toward the obligation not addressed by the realistic development potential. Examples of such a requirement include, but are not necessarily limited to, a redevelopment ordinance, an ordinance permitting apartments in developed areas of the municipality and a mandatory development fee ordinance.

(c) With the concept of realistic development potential, the Council is recognizing that some sites are more realistic and/or appropriate than others for the location of inclusionary development. For example, some sites may lack infrastructure or be surrounded by incompatible land uses. However, these sites and others have the potential to develop or redevelop over time and, as such development takes place, the Council has determined that such sites shall contribute toward the housing obligation.

(d) A municipality seeking an adjustment due to available land capacity shall base the number of units that may be restricted to senior citizens and the number of units that may be transferred via a regional contribution agreement on the realistic development potential. The realistic development potential shall equal the calculation pursuant to N.J.A.C. 5:93-4.2(e). If additional low and moderate income housing opportunities develop pursuant to N.J.A.C. 5:93-4.2(g) (describing the municipal response in addition to the realistic development potential), the municipality may seek a plan amendment, pursuant to N.J.A.C. 5:91-13 to age restrict or transfer more units, based on a demonstrated increased realistic development potential.

5:93-4.2 Lack of land

(a) Municipalities that request an adjustment due to available land capacity shall submit an existing land use map at an appropriate scale to display the land uses of each parcel within the municipality. Such a map shall display the following land uses: single family, two-to-four family, other multi-family, commercial, industrial, agricultural, parkland, other public uses, semipublic uses and vacant land.

(b) Municipalities that request an adjustment due to available land capacity shall submit an inventory of vacant parcels by lot and block that includes the acreage and owner of each lot.

(c) The Council shall review the existing land use map and inventory to determine which sites are most likely to develop for low and moderate income housing. All vacant sites shall initially be presumed to fall into this category. In addition, the Council may determine that other sites, that are devoted to a specific use which involves relatively low-density development would create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses. The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development.

(d) Municipalities may present documentation that the Council shall use to eliminate a site or part of a site from the inventory of sites described in (c) above. Partial elimination of a site shall not necessarily eliminate an entire site as unsuitable. Municipalities may seek to eliminate sites from the inventory described in (c) using the criteria set forth below. Municipalities shall submit transparent overlays drawn to the same scale as the existing land use map depicting those sites which the municipality maintains are inappropriate for development.

1. Agricultural lands shall be excluded when the development rights to these lands have been purchased or restricted by covenant.

2. Environmentally sensitive lands shall be excluded as follows:

i. Within the areas of the State regulated by the Pinelands Commission, Division of Coastal Resources of the DEPE and the Hackensack Meadowlands Development Commission of DCA, the Council shall adhere to the policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; the Coastal Permit Program Rules, N.J.A.C. 7:7-1, Coastal Resource and Development Rules, N.J.A.C. 7:7E-1; and the Zoning Regulations of the Hackensack Meadowlands District, N.J.A.C. 19:4.

ii. In the areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, municipalities may exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEPE, whichever agency has jurisdiction; when on-site delineation is required by the Council; flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent, as determined from the U.S.G.S. Topographic Quadrangles, which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of flood hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this rule shall not prohibit construction of low and moderate income housing on the remainder of the site. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.

iii. Where the Legislature adopts legislation that requires the mapping of other natural resources and provides a mechanism for their regulation, the Council shall include such resources in its criteria and guidelines for municipal adjustment.

3. Historic and architecturally important sites may be excluded as follows:

i. Municipalities may apply to exempt a buffer area to protect sites listed on the State Register of Historic Places. The Council shall forward such request to the Office of New Jersey Heritage for a recommendation pertaining to the appropriateness and size of a buffer.

ii. Upon receipt of the Office of New Jersey Heritage's recommendation, the Council shall determine if any part of a site should be eliminated from the inventory described in (c) above.

iii. Within historic districts, a municipality may regulate low and moderate income housing to the same extent it regulates all other development.

4. Recreational lands may be excluded as follows:

i. Municipalities may reserve three percent of their total developed and developable acreage for active municipal recreation and exclude this acreage from consideration as potential sites for low and moderate income housing. However, all sites designated for recreation must be designated for recreational purposes in the municipal master plan. In determining developable acreage, municipalities shall calculate their total vacant and undeveloped lands and deduct from that total number the lands excluded by the Council's rules regarding historic and architecturally important sites, agricultural lands and environmentally sensitive lands. Municipalities shall also exclude from this calculation of total vacant and undeveloped lands, those owned by nonprofit organizations, counties and the State or Federal government when such lands are precluded from development at the time of substantive certification. Municipalities shall submit appropriate documentation demonstrating that such lands are precluded from development. Existing active municipal recreation areas shall be subtracted from the three percent

calculation of total developed and developable acreage to determine additional land that may be reserved for active municipal recreation.

ii. Sites designated for recreation must be purchased and limited to recreational purposes within one year of substantive certification. Sites that are not purchased and limited to recreational purposes shall, if determined necessary by the Council, be zoned to permit inclusionary development.

5. Individual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (c) above.

(e) The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory described in (c) above, for inclusionary development. The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the realistic development potential of each municipality. Example: Lowmod Borough has three suitable sites. The sites are 10 acres, five acres and one acre. The larger sites may accommodate eight units/acre. The one acre site may accommodate six units/acre. All sites are assigned a 20 percent set-aside. The realistic development potential equals 25 low and moderate income units.

$$\begin{aligned} 10 \text{ acres} \times 8 \text{ units/acre} \times .2 &= 16 \\ 5 \text{ acres} \times 8 \text{ units/acre} \times .2 &= 8 \\ 1 \text{ acre} \times 6 \text{ units/acre} \times .2 &= \underline{1} \\ &\quad 25 \end{aligned}$$

A municipality that received an adjustment due to lack of vacant land in addressing its 1987-1993 need obligation shall be presumed to have addressed its realistic development potential, provided the municipality continues to implement the terms of its previous substantive certification.

(f) The municipality may address its realistic development potential through any activity approved by the Council, pursuant to N.J.A.C. 5:92-5. The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the realistic development potential if the municipality can devise an acceptable means of addressing its realistic development potential. The realistic development potential shall not vary with the strategy and implementation techniques employed by the municipality.

(g) If the realistic development potential described in (e) above is less than the municipal calculated need minus credits, pursuant to N.J.A.C. 5:93-3.4, the Council shall review the existing municipal land use map for areas that may develop or redevelop. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development. After such an analysis, the Council may require a least any combination of the following in an effort to address the housing obligation:

1. Zoning amendments that permit apartments or accessory apartments;

2. Overlay zoning requiring inclusionary development or the imposition of a development fee consistent with N.J.A.C. 5:93-8; in approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that where the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee; or

3. Zoning amendments that impose a development fee consistent with N.J.A.C. 5:93-8.

5:93-4.3 Lack of water and sewer

(a) When a community has sufficient land, but insufficient water and/or sewer to support inclusionary development, the Council shall review each possible site for inclusionary development to determine if it is realistic for the site to receive the required water and/or sewer during the period of substantive certification. The Council shall require sufficient information to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in a 208 plan amendment, developed in accordance with the rules of the New Jersey Department of Environmental Protection and Energy. If the site had been zoned for inclusionary development, the Council shall consider how long the site had been zoned and if the developer had filed a development application.

(b) If the Council determines that a site may receive water and/or sewer during the period of substantive certification, it shall require the site to be zoned for inclusionary development, or, if the site had already been zoned for inclusionary development, it shall require the continuation of that zoning. If the Council determines that a site may not receive water and/or sewer during the period of substantive certification, the Council shall not require inclusionary zoning, but may require overlay zoning requiring inclusionary development (if water and sewer become available) and/or the imposition of a development fee consistent with N.J.A.C. 5:93-8.

(c) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the municipal housing obligation. The requirement to address the municipal housing obligation shall be deferred until adequate water and/or sewer are made available. In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

1. Notwithstanding the lack of adequate water and/or sewer at the time a municipality petitions for substantive certification, the municipality shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis;

2. Municipal officials shall endorse all applications to the DEPE or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council;

3. Where the DEPE or its designated agent approves a proposal to provide infrastructure to a site for the development of low and moderate income housing identified in the housing element, the municipality shall permit such development; and

4. Where a municipality has designated sites for low and moderate income housing that lack adequate water and/or sewer and where the DEPE or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element, the municipality shall amend its housing element and fair share housing ordinance to permit development of such site for low and moderate income housing. The amended housing element and fair share housing ordinance shall be submitted to the Council within 90 days of the site's approval by the DEPE or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

(d) Municipalities may demonstrate that the cost of providing water and/or sewer to realistic sites identified in (a) and (b) above, is prohibitive by completing "The Costs of Providing Infrastructure" application provided by the Council (see Appendix D, incorporated herein by reference) and submit it to the Council for its review. The Council shall forward "The Costs of Providing Infrastructure" application to the DCA Division of Local Government Services for review. The Council shall consider the report of the Division of Local Government Services in determining whether to permit an adjustment due to prohibitive costs associated with providing water and/or sewer to inclusionary sites. Where the Council determines the cost associated with providing water and/or sewer to inclusionary sites is prohibitive, it shall limit the municipality's fiscal responsibility of providing water and/or sewer. However, notwithstanding any limits placed on the municipality's fiscal responsibility to provide water and/or sewer, the Council may require the municipality to designate and zone appropriate sites to accommodate the municipal housing obligation or to adopt other approaches consistent with N.J.A.C. 5:93-4.2(g). The municipality shall also adhere to the requirements outlined in (c)1 to 4 above.

5:93-4.4 Application for grants

A municipality that has demonstrated that land, water and/or sewer limits its ability to address the municipal rehabilitation component may be required to address its rehabilitation component by submitting an application for Federal and/or State housing programs. Such a municipality shall be required to apply for a county, State and/or Federal grant if the Council determines that the success of such a grant application is realistic and necessary to address the rehabilitation component.

5:92-4.5 Waivers

(a) The Council shall entertain waiver requests by motion, in accordance with N.J.A.C. 5:91-12, from municipalities seeking relief from the following requirements:

1. The use of an entire resource (land, water, sewer) in addressing the municipal housing obligation; and

2. The requirement to impose development fees on all development within the municipality.

(b) The criteria for evaluating such a waiver request shall include one or more of the following:

1. Past inclusionary practices, measured by the following criteria: jobs to housing ratio; municipal median income as compared to regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region;

2. A demonstration of hardship. To demonstrate hardship related to the imposition of development fees, the municipality shall, at a minimum, document that the imposition of development fees would retard necessary economic development within the municipality. To demonstrate hardship related to utilizing all available land, water and sewer capacity, the municipality shall (where applicable), at a minimum, document prospects for obtaining additional capacity and the public good realized by allowing competing land uses a reservation of the limited capacity; or

3. A demonstration that the municipality has actively pursued its municipal housing obligation by petitioning for certification prior to litigation.

SUBCHAPTER 5. PREPARING A HOUSING ELEMENT

5:93-5.1 Overview of a housing element

(a) Once a municipality has subtracted its credits (pursuant to N.J.A.C. 5:93-3[.4]) from its calculated need, and/or received an adjustment pursuant to N.J.A.C. 5:93-4, it shall develop a plan to address the municipal housing obligation. In addressing the need, a municipality may address its rehabilitation component through a rehabilitation program or by creating new units. The remaining portion of the municipal housing obligation may be addressed through a combination of techniques, including, but not necessarily limited to: municipally sponsored construction; inclusionary zoning; regional contribution agreements; alternative living arrangements; the purchase of ECHO housing; the creation of accessory apartments; the purchase of housing units that have never been occupied; and the purchase of housing units that have been vacant for at least 18 months. (The Council has determined that if a housing unit has been vacant for 18 months or more, it is reasonable to conclude that such a unit is not "filtering down" to low and moderate income households and that encouraging the purchase of the unit for low and moderate income households may prevent the unit from deterioration or vandalism.) This subchapter shall discuss the standards and, in some cases, limitations, of each implementation technique. It shall outline standards for senior citizen housing and rental housing. This subchapter shall also discuss the status of sites included in the housing element that addressed the 1987-1993 municipal housing obligation.

(b) A municipality's housing element shall be designed to achieve the goal of providing affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing. The housing element shall include the municipality's strategy for addressing its present and prospective housing needs and shall contain the following:

1. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;

2. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the six years subsequent to the adoption of the housing element, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

3. An analysis of the municipality's demographic characteristics, including, but not limited to, household size, income level and age;

4. An analysis of the existing and probable future employment characteristics of the municipality;

5. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing;

6. If a development fee is imposed pursuant to N.J.A.C. 5:93-8, a copy of the spending plan as required in (c) below;

7. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing;

8. A map of all sites designated by the municipality for the production of low and moderate income housing and a listing of each site that includes its owner, acreage, lot and block;

9. The location and capacities of existing and proposed water and sewer lines and facilities relevant to the designated sites;

10. Copies of necessary applications for sewer service and water quality management plans submitted pursuant to Sections 201 and 208 of the Federal Clean Water Act, 33 U.S.C. §1251, et seq.;

11. A copy of the most recently adopted municipal master plan and, where required, the immediately preceding, adopted master plan;

12. For each designated site, a copy of the New Jersey Freshwater Wetlands maps where available. When such maps are not available, municipalities shall provide appropriate copies of the National Wetlands Inventory maps provided by the U.S. Fish and Wildlife Service;

13. A copy of appropriate United States Geological Survey Topographic Quadrangles for designated sites; and

14. Any other documentation pertaining to the review of the municipal housing element as may be required by the Council.

(c) If a municipality intends to collect development fees, it shall prepare a plan to spend development fees that includes the following:

1. A projection of revenues anticipated from imposing fees on development, based on historic development activity;

2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;

3. A description of the anticipated use of all development fees;

4. A schedule for the creation or rehabilitation of housing units;

5. If the municipality envisions being responsible for public sector or non-profit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development; and

6. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

5:93-5.2 Rehabilitation

(a) Each municipality shall be provided with the Council's estimate for substandard units occupied by low and moderate income households. This estimate shall be the municipality's indigenous need, unless the municipality or an objector performs the Council's Structural Conditions Survey (see Appendix D, incorporated herein by reference). Where the municipality or objector performs the Structural Conditions Survey, the Council shall review the results of the data collected and shall modify the indigenous need if it determines a modification is warranted.

(b) The purpose of a rehabilitation program is to rehabilitate substandard housing units occupied by low and moderate income households. A substandard housing unit is defined as a unit with health and safety code violations that require the repair or replacement of a major system. A major system shall include a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system. Upon rehabilitation, housing deficiencies shall be corrected and the house shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or, if none is available, the BOCA National Existing Structures Code. The rehabilitation activity shall not include luxury improvements, the purchase of appliances (with the exception of stoves) or improvements that are strictly cosmetic.

(c) A municipality that chooses to rehabilitate units shall designate an entity to administer the rehabilitation program. The municipality may designate an employee to administer the program or may enter into an agreement for a governmental agency or private consultant to administer all or some of the program.

(d) The municipality shall prepare a marketing plan for its rehabilitation program, subject to the Council's approval. The rehabilitation program shall be marketed through a combination of some, though not necessarily all, of the following: brochures; posters in prominent locations; cable television and radio announcements; notices included in utility bills; notices in municipal tax bills; notices included in municipal publications; and informational meetings with welfare organizations, urban action community groups, personnel departments of local employers, social workers, civic and religious leaders, senior citizen groups and fraternal organizations.

(e) A municipality that chooses to administer a rehabilitation program shall maintain files on each program applicant. The files may be used in responding to monitoring requests and to protect the municipality against charges of irregularity. The files shall include:

1. The name of each applicant;
2. If the applicant is not approved, the reasons for the disapproval; and
3. If the applicant is approved:

i. Proof of income eligibility (Federal tax return);
ii. The initial inspection by the building inspector;
iii. Bids by contractors;
iv. The final contract to do the work;
v. Progress reports;
vi. A copy of the final inspection; and
vii. The lien on the property.

(f) Rental units may not be excluded from a municipal rehabilitation program.

(g) The Council shall require six year controls on affordability on owner-occupied units and 10 year controls on affordability on rental units. The controls on affordability may be in the form of a lien filed with the appropriate property's deed. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9.15.

(h) A municipality that chooses to rehabilitate its rehabilitation component shall be responsible for funding its program. This requirement includes administrative and actual rehabilitation activities. A municipality shall provide $2,000 per unit of its rehabilitation component towards administration and $8,000 per unit for rehabilitation activity to total $10,000 per unit of its rehabilitation component. Given this requirement:

1. Municipalities shall provide sufficient dollars to fund one-third of the municipal rehabilitation component within one year of substantive certification. In each subsequent year of the substantive certification period, the municipality shall provide sufficient dollars to fund one-sixth of the municipal rehabilitation component.

2. Municipalities may rehabilitate substandard units that require less than $8,000 of work, provided they also rehabilitate substandard units that require more than $8,000 of work. Municipal rehabilitation activity shall average at least $8,000 per unit for each two year period of substantive certification.

3. The Council may waive part or all of the funding required for administration if there is an agreement with an agency to administer the program at reduced cost.

4. Municipalities that seek a waiver from the $8,000 rehabilitation standard may do so by presenting case studies documenting local housing conditions.

(i) Financing of rehabilitation programs shall be structured to encourage rehabilitation and continued occupancy. Low interest rates and forgivable loans are encouraged. Leveraging of private financing is also encouraged if the result is low interest loans that encourage rehabilitation. If a housing unit is sold prior to the end of the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit.

(j) If the municipality structures a loan program to recapture money, recaptured money shall be used for another low and moderate income housing purpose or to repay a municipal bond issued to finance a low and moderate income housing activity.

(k) The municipality, as a condition of certification, shall develop a rehabilitation manual that complies with COAH's rules and summarizes the administration of the rehabilitation program. The manual shall include a copy of the lien to be used and shall describe:

1. The rehabilitation program's staff and their responsibilities;
2. Procedures for program marketing;
3. Eligible repairs and improvement;
4. The amount of money available for rehabilitation;
5. Financing terms;
6. Income qualification criteria;
7. Procedures for application intake;
8. Procedures for review and approval of work (such procedures should require interim inspection of work); and
9. The length of affordability controls.

(l) Municipalities that administer rehabilitation programs shall complete annual monitoring reports required by the Council (See N.J.A.C. 5:93-12). After reviewing the progress of rehabilitation activity, the Council may require technical assistance meetings to identify implementation techniques designed to increase rehabilitation activity. Failure to submit monitoring reports or respond to direction designed to increase rehabilitation activity may result in further Council action.

(m) A municipality receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) may seek a waiver from addressing its entire rehabilitation component in one six year period of substantive certification. A municipality seeking such a waiver shall demonstrate that it cannot rehabilitate the entire rehabilitation component in six years and/or that an extraordinary hardship exists, related to addressing the entire rehabilitation component in six years.

5:93-5.3 New construction; site criteria and general requirements

(a) Municipalities may create new low and moderate income units within its borders by sponsoring their construction, with or without a non-profit corporation, or by zoning sites for inclusionary development.

(b) Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. In reviewing sites, the Council shall give priority to sites where infrastructure is available. All sites designated for low and moderate income housing shall receive approval for consistency review, as set forth in Section 208 of the Clean Water Act, 33 U.S.C. 1251 et seq., prior to substantive certification. Where a site is denied consistency review, the municipality shall apply for an amendment to its Section 208 plan to incorporate the denied site.

(c) For each site designated for new construction of low and moderate income units, the municipality shall provide the following minimum documentation:

1. A general description of each site to be used for inclusionary development, including, but not limited to, the following: acreage, current zoning, surrounding land uses, and street access. Maps shall be submitted showing the location of all sites;

2. A description of any environmental constraints, including steep slopes, wetlands and flood plain areas. The municipality shall include calculations of the amount of acreage that is environmentally con-

strained and any remaining buildable acreage. Documentation shall include the appropriate wetland and flood plain maps required pursuant to N.J.A.C. 5:93-5.1;

3. Information shall be submitted regarding location, size and capacity of lines and facilities within the service area, as well as the status of the 201/208 plans. Documentation shall include maps showing the location of the sewer and water facilities; and

4. For each site, the total number of housing units; the gross and net density of the proposed development; the total number of low and moderate income units; and the number of low and moderate income units that will be for sale and for rent.

(d) Municipalities shall structure plans for new construction, conversion and gut rehabilitation (including new construction, conversion and gut rehabilitation that is part of a regional contribution agreement) that conform to the Council's rules pertaining to bedroom mix, age restriction, price stratification, rental housing, controls on affordability and affirmative marketing.

(e) Unless otherwise permitted, the Council shall not provide credit for housing that is restricted in occupancy to any specific group.

5:93-5.4 New construction; conformance with the State Development and Redevelopment Plan (SDRP)

(a) In Planning Areas 1 and 2, as designated in the SDRP, the Council shall encourage inclusionary development within centers. However, municipalities may locate inclusionary developments within the environs as defined in the SDRP.

(b) In Planning Area 3, the Council shall encourage inclusionary development within centers. Where a municipality proposes an inclusionary site within Planning Area 3 outside of a center, the Council may permit such a site if infrastructure is available or can be easily extended from Planning Area 2.

(c) In Planning Areas 4 or 5, as designated in the SDRP, the Council shall require inclusionary development to be located in centers. Where the Council determines that a municipality has not created a realistic opportunity within the development boundaries of a center to accommodate that portion of the municipal inclusionary component that the municipality proposes to address within the municipality, the Council shall require the municipality to identify an expanded center(s) or a new center(s) and submit the expanded or new center(s) to the State Planning Commission for designation.

(d) In municipalities that are divided by more than one Planning Area, the following principles shall apply:

1. The Council shall encourage and may require the use of sites in Planning Areas 1 and 2 prior to approving inclusionary sites in Planning Areas 3, 4 and 5 that lack sufficient infrastructure;

2. The Council shall encourage and may require the use of sites within Planning Area 3 prior to approving inclusionary sites in Planning Areas 4 and 5 that would require the expansion of existing infrastructure; and

3. The Council shall encourage and may require the use of sites to which existing infrastructure can easily be extended prior to approving inclusionary sites that require the creation of new infrastructure in an area not presently serviced by infrastructure.

5:93-5.5 Municipally sponsored construction and gut rehabilitation

(a) A municipality may elect to provide low and moderate income units through a municipally sponsored construction program. A municipally sponsored construction program shall address four major areas of concern. It shall document that there is municipal control of the site(s); an administrative mechanism to construct the proposed housing; a funding plan and evidence of adequate funding capacity; and timetables for construction of the units. More specifically, the following minimum documentation shall be submitted:

1. The municipality shall demonstrate that it has control or has the ability to control the site(s). Control may be in the form of outright ownership or an option on the property;

2. An administrative mechanism shall be submitted for the development indicating who will monitor construction, income qualify applicants and administer the units once they are occupied. The municipality may contract with an outside agency to provide these functions, provided a written agreement between the administrative agency and the municipality is submitted to the Council.

3. The municipality shall submit detailed information demonstrating that it has adequate funding capabilities. The documentation shall include:

i. A pro forma statement for the project; and

ii. Evidence that the municipality has adequate and stable funding. If State or Federal funds will be used, the municipality shall provide documentation indicating the funding available to the municipality and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. As outside funds become available, the municipality may reduce its reliance on municipal resources; and

4. A construction schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The construction schedule shall provide for construction to begin within two years of substantive certification.

5:93-5.6 Zoning for inclusionary development

(a) Municipalities that choose to provide zoning for inclusionary development shall select sites that conform to the criteria in N.J.A.C. 5:93-5.3 and shall submit the information required in N.J.A.C. 5:93-5.3.

(b) [The Council shall presumptively require a minimum gross density of three to five units per acre and a maximum set-aside of 20 percent, where the market units within the inclusionary development are detached single family units. The Council will presumptively require a minimum gross density of six units per acre and a maximum set-aside of 20 percent where the market units are attached housing units. Sites zoned for inclusionary development shall permit the low and moderate income units to be addressed by a diversity of attached housing types.] **The Council's review of municipal plans to zone for inclusionary development shall include, but not necessarily be limited to: the existing densities surrounding the proposed inclusionary site; the need for a density bonus in order to produce low and moderate income housing; whether the site is approvable, available, developable and suitable pursuant to N.J.A.C. 5:93-1.3; the site's conformance with the State Development and Redevelopment Plan pursuant to N.J.A.C. 5:93-5.4; the existence of steep slopes, wetlands and floodplain areas on the site; the present ability of a developer to construct low and moderate income housing at a specific density; the length of time an inclusionary site has been zoned at a specific density and set-aside without being developed; and the number of inclusionary sites that have developed within the municipality at specific densities and set-asides.**

1. When a municipality is receiving an adjustment pursuant to N.J.A.C. 5:93-4.2, the municipality shall be required to zone inclusionary sites at a minimum gross density of six (6) units per acre with a 20 percent set-aside.

2. In all other municipalities, when the review described in (b) indicates that such densities are appropriate, the Council shall require that a substantial percentage of inclusionary sites be zoned to allow market units within an inclusionary development to be constructed as single family detached units. For these sites, the Council shall generally favor a gross density of four units per acre with a 15 percent set-aside. Municipalities may also seek to zone sites for a gross density of five (5) units per acre or more with a 20 percent set-aside. The Council shall determine set-asides for densities between four (4) and (5) and between (5) and (6) through a process of interpolation.

(c) The Council may require higher densities in circumstances including, but not limited to:

1. Where the existing zoning exceeds [three units per acre;] **the density proposed by the municipality; or;**

[2. When it determines that land is a scarce resource within the municipality; or]

[3.]**2.** When the Council determines that higher densities are required to provide an opportunity for inclusionary development in

a specific municipality, based on the particular circumstances of that municipality.

(d) Municipalities zoning for inclusionary development shall require low and moderate income housing units to be built in accordance with the following schedule:

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	75
100	[100] **90** **100**

(e) The Council encourages a design of inclusionary developments that integrates the low and moderate income units with the market units.

5:93-5.7 Regional contribution agreements

A municipality may address its housing obligation by entering into a regional contribution agreement in accordance with N.J.A.C. 5:93-6.

5:93-5.8 Alternative living arrangements

(a) Municipalities may receive credit against the municipal housing obligation for alternative living arrangements by entering into an agreement for the location of such a facility with the provider of the facility or by granting preliminary approval to a developer of an alternative living arrangement.

(b) The unit of credit for an alternative living arrangement shall be the bedroom.

5:93-5.9 Accessory apartments

(a) Municipalities may seek credit for up to 10 accessory apartments. A municipality seeking credit for accessory apartments shall:

1. Demonstrate that the housing stock lends itself to accessory apartments. The Council will favor a large (measured in square feet), older housing stock;

2. Provide at least $10,000 per unit to subsidize the creation of the accessory apartment;

3. Demonstrate that rents of accessory apartments will average 57.5 percent of median income, including utilities. The rent shall be based on the number of bedrooms in accordance with N.J.A.C. 5:93-7.4; and

4. Demonstrate that accessory apartments will be affirmatively marketed, in accordance with N.J.A.C. 5:93-11.

(b) Accessory apartments shall be exempt from Council bedroom mix requirements (N.J.A.C. 5:93-7.3).

(c) Accessory apartments reserved for senior citizens shall be included with the 25 percent that may be reserved for senior citizens pursuant to N.J.A.C. 5:93-5.13.

(d) Controls on affordability on accessory apartments shall remain in effect for at least 10 years. To be eligible for a rental bonus (pursuant to N.J.A.C. 5:93-5.13), controls on affordability shall remain in effect for at least 30 years.

[5:93-5.10 Purchase of ECHO (Elder Cottage Housing Opportunities) housing units

(a) Municipalities may receive credit for ECHO housing units that may be placed on a property owner's lot, provided the municipality purchases the ECHO unit and makes it available to property owners within the municipality.

(b) ECHO housing units shall be credited against the 25 percent that may be reserved for senior citizen households pursuant to N.J.A.C. 5:93-5.13.]

5:93-[5.11]**5.10** Purchase of housing units that have never been occupied and vacant housing units

(a) Municipalities may receive credit against the municipal housing obligation by purchasing housing units that have never been occupied and offering them in sound condition at affordable prices and/or rents to low and moderate income households. [No more than 30 percent of the units in any one development may be purchased and restricted to low and moderate income households, unless 100 percent of the units in the development are so purchased and restricted.] **The sales price or rent of affordable units shall conform to the standards in N.J.A.C. 5:93-7. Municipalities that propose to purchase more than 30 percent but less than 100 percent of the business units in any one development and restrict them to low and moderate income households shall consider the impact of such a purchase on the value of the market units within the development. Municipalities shall also consider the impact of the purchase on the economic viability of any condominium or homeowners association.**

(b) Municipalities may receive credit against the municipal housing obligation by purchasing housing units that have been vacant for at least 18 months and offering them in sound condition at affordable prices and/or rents to low and moderate income households. To receive such credit, the municipality shall demonstrate to the Council's satisfaction, that the housing has been vacant for at least 18 months. The sales price or rent of the affordable units shall be consistent with the standards in N.J.A.C. 5:93-7.

(c) The Council shall review plans to purchase housing units that have never been occupied and housing units that the Council has determined to be vacant for at least 18 months in a manner similar to its review of municipally sponsored construction, conversion and gut rehabilitation. Affordable low and moderate income housing created pursuant to this section shall, as best as practicable, conform to the Council's bedroom mix rules (N.J.A.C. 5:93-7.3) and shall be affirmatively marketed pursuant to N.J.A.C. 5:93-11.

5:93-[5.12]**5.11** Status of sites addressing the 1987-1993 municipal obligation

(a) Municipalities that received substantive certification for their 1987-1993 obligation based, in part, on the municipal choice to sponsor the construction of low and moderate income housing are responsible for constructing the low and moderate income housing. Failure of the community to satisfy the conditions of substantive certification and construct the housing shall not absolve the municipality from its responsibility.

(b) Sites zoned for inclusionary development in addressing the 1987-1993 housing obligation shall retain such zoning if:

1. The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court; or

2. The developer of the site has filed a development application with the municipality;

(c) A municipality seeking to amend its plan to replace or delete a site used in addressing the 1987-1993 housing obligation shall follow the procedures set forth in N.J.A.C. 5:91-13.

(d) A developer seeking an amendment to the density requirements of an inclusionary site shall follow the procedures set forth in N.J.A.C. 5:91-13. In submitting such requests, the developer shall demonstrate:

1. An ability to construct low and moderate income units within a defined period of time; and

2. A plan to address the low and moderate income units required of the site as a condition of substantive certification.

5:93-[5.13]**5.12** Senior citizen housing

[(a) In general, a municipality may restrict for senior citizens 25 percent of the housing obligation remaining after subtracting credits (pursuant to N.J.A.C. 5:93-3.4) from its calculated need. A municipality that receives an adjustment due to available land may restrict housing for senior citizens based on the following formula:

Senior citizen housing = .25 {realistic development potential + (rehabilitation component — credits pursuant to N.J.A.C. 5:93-3.4)}]

(a) Municipalities may restrict housing for senior citizens based on the following formulae:

For municipalities that have received substantive certification or a judgment of repose and are not seeking a vacant land adjustment: senior citizen units = .25 (municipal precredited need – prior cycle credits – credits pursuant to N.J.A.C. 5:93-3.4 – the impact

of the 20 percent cap – the impact of the 1000 unit limitation pursuant to N.J.A.C. 5:93-14) – any units restricted to senior citizens in addressing the 1987-1993 housing obligation.)

For municipalities that receive a vacant land adjustment:

senior citizen units = .25 (prior-cycle fair share + realistic development potential + rehabiliation component – credits pursuant to N.J.A.C. 5:93-3.4 – any units restricted to senior citizens in addressing the 1987-1993 housing obligation.)

(Municipalities that have not received substantive certification or a judgment of repose shall have a prior-cycle fair share of zero for this calculation. Municipalities that received a vacant land adjustment with a previous substantive certification or judgment of repose shall have a realistic development potential of zero for this calculation.)

For municipalities that have never received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

senior citizen units = .25 (municipal precredited need – credits pursuant to N.J.A.C. 5:93-3 – the impact of the 20 percent cap – the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93-14.)

If the municipality is transferring housing units via a regional contribution agreement, the maximum amount of age restricted units in the sending municipality shall not exceed 25 percent of the newly constructed low and moderate income units to be created in the sending municipality. Housing units transferred via a regional contribution agreement may include senior citizen housing units provided that the sum of the newly constructed senior citizen units created in the sending and receiving municipalities does not exceed the total permitted above. This restriction shall not apply to the rehabilitation of existing age restricted units in either the sending or receiving municipality.

(b) A receiving municipality may seek a waiver to restrict more low and moderate income units to senior citizens than permitted by (a) above. In reviewing such a request, the Council shall consider the municipality's past inclusionary practices, measured by objective criteria, such as: jobs to housing ratio; municipal median income as compared to the regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region. The Council shall also consider the waiver request within the context of the objectives of the receiving municipality's project plan.

5:93-[5.14]**5.13** Rental housing

[(a) Every municipality shall create a realistic opportunity for at least 25 percent of its inclusionary component to be constructed as rental units. A municipality may provide this opportunity through one or any combination of the following:

1. Tax credits administered by the Agency and other funding administered by the Federal government, DCA and the Agency;
2. A municipally sponsored rental development;
3. Agreements with developers for the municipality to purchase low and moderate income units and maintain them as rental units;
4. The creation of accessory apartments pursuant to N.J.A.C. 5:93-5.8;
5. Permitting inclusionary sites to be developed as sales or rental housing with a density increase if the developer chooses to build rental housing. The Council shall presumptively require a minimum density of eight units per acre and a maximum set-aside of 15 percent for rental housing. A municipality, choosing this approach, shall provide this option to build rental housing on sufficient sites to address the 25 percent rental obligation.

(b) The Council shall grant a rental bonus toward the municipal housing obligation for each rental unit constructed. The Council may also grant this rental bonus when it determines that the municipality has provided or received a firm commitment for the construction of rental units. This rental bonus shall be applied to each rental unit until such time the municipality addresses the 25 percent requirement set forth in (a) above. The rental bonus shall equal one and one-third (1.33) for rental units restricted to senior citizens and two (2.0) for rental units open to the general public.

(c) Municipalities that choose to transfer the rental obligation via a regional contribution agreement shall do so by creating new rental units in the receiving municipality. Municipalities that transfer the rental obligation shall receive a one unit credit for each rental unit transferred.]

(a) In addressing the 1987-1999 housing need, every municipality shall have an obligation to create a realistic opportunity to construct rental units. For a municipality not receiving an adjustment pursuant to N.J.A.C. 5:93-4.2, the rental obligation shall equal .25 (calculated need – the impact of the 1000 unit limitation pursuant to N.J.A.C. 5:93-14 – the rehabilitation component). For a municipality that receives an adjustment pursuant to N.J.A.C. 5:93-4.2, the rental obligation shall equal 25 percent of the realistic development potential.

(b) Any rental obligation (pursuant to N.J.A.C. 5:92-14.4(a) and (b)) that was a condition of substantive certification in addressing the 1987-1993 municipal fair share shall be considered as an ongoing obligation in addressing the 1987-1999 housing need.

(c) The municipal approach to addressing the rental obligation may include, but not necessarily be limited to, any combination of the following:

1. Tax credits administered by the Agency and other funding administered by the Federal government, DCA and the Agency;

2. A municipally sponsored rental development;

3. Agreements with developers for the municipality to purchase low and moderate income units and maintain them as rental units;

4. The creation of accessory apartments pursuant to N.J.A.C. 5:93-5.9;

5. Permitting inclusionary sites to be developed as sales or rental housing with a density increase if the developer chooses to build rental housin. The Council shall presumptively require a minimum density of ten units per acre and a maximum set-aside of 15 percent for rental housing. Municipalities that choose a zoning response to all or part of the rental obligation shall permit such densities and set-asides on all inclusionary sites until the requirement for rental housing has been addressed.

(d) The Council shall grant a rental bonus for rental units that are constructed and conform to the standards contained in N.J.A.C. 5:93-7. The Council may also grant the rental bonus prior to construction when it determines that the municipality has provided or received a firm commitment for the construction of rental units. A municipality may lose the benefit of the rental bonus granted in advance of the actual construction of the rental units if the municipality has not: constructed the rental units within the time periods established as a condition of substantive certification; or granted preliminary or final approval for the construction of the rental units (where a developer agreed to construct the rental units). A municipality may also lose the benefit of a rental bonus if the preliminary or final approval is no longer valid or if the developer has abandoned the development.

1. A municipality shall receive two units (2.0) of credit for rental units available to the general public.

2. A municipality shall receive one and one-third (1.33) units of credit for rental units restricted to senior citizens. However, no more than 50 percent of the rental obligation defined in (a) and (b) shall receive a bonus for rental units restricted to senior citizens unless

i. The rental units have been constructed prior to the effective date of this rule;

ii. The development has a valid preliminary or final approval from the municipality and the developer remains committed to building rental housing as of the effective date of this rule; or

iii. The time limit for constructing the rental units as per the conditions of substantive certification has not expired.

3. No rental bonus shall be granted for rental units in excess of the rental obligation defined in (a) and (b).

(e) Municipalities that choose to transfer the rental obligation via a regional contribution agreement shall do so by creating new rental units in the receiving municipality. Municipalities that transfer the rental obligation shall receive a one unit credit for each rental unit transferred.

SUBCHAPTER 6. REGIONAL CONTRIBUTION AGREEMENTS

5:93-6.1 General provisions

[(a) In general, a municipality may propose the transfer of up to 50 percent of the housing obligation remaining after subtracting credits (pursuant to N.J.A.C. 5:93-3.4) from its calculated need. A municipality that receives an adjustment due to available land may propose a regional contribution agreement based on the following formula:

RCA = .5 [realistic development potential + (rehabilitation component — credits pursuant to N.J.A.C. 5:93-3.4)]]

(a) Municipalities may propose the transfer of up to 50 percent of their housing obligation based on the following formulae:

For municipalities that have received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

RCA = .5 (municipal precredited need – prior cycle credits – credits pursuant to N.J.A.C. 5:9-3.4 – the impact of the 20 percent cap – the impact of 1,000 unit limitation to N.J.A.C. 5:93-14) – any units transferred as a result of a previously approved regional contribution agreement.)

For municipalities that receive a vacant land adjustment:

RCA = .5 (prior-cycle fair share + realistic development potential + rehabilitation component – credits pursuant to N.J.A.C. 5:93-3.4 – any units transferred as a result of a previously approved regional contribution agreement.)

Municipalities that have not received substantive certification or a judgment of repose shall have a prior-cycle fair share of zero for this calculation. Municipalities that received a vacant land adjustment with a previous substantive certification or judgment of repose shall have a realistic development potential of zero for this calculation.

For municipalities that have never received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

RCA = .5 (municipal precredited need – credits pursuant to N.J.A.C. 5:93-3 – the impact of the 20 percent cap – the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93-14)

However, a municipality may not transfer any portion of its rehabilitation component. A municipality may propose such a transfer to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. The Council shall not review a regional contribution agreement without a contractual agreement between the two municipalities.

(b) Notwithstanding the contractual agreement that initiates the review of a regional contribution, described in (a) above, the Council may require any contractual amendments it deems necessary upon reviewing the regional contribution agreement.

(c) The Council shall maintain current lists of municipalities which have stated an intent to enter into RCAs as receiving municipalities and shall provide copies of such lists to potential sending municipalities as requested.

5:93-6.2 Terms

(a) At least 50 percent of the units accepted by a receiving municipality shall be affordable to low income households. The Council may modify this requirement if it determines that the sending municipality has adequately provided for its low income housing obligation elsewhere in its housing element. In the same case of regional contribution agreements for scattered site rehabilitation of occupied units, the receiving community shall ensure, as best as practicable, that 50 percent of the rehabilitated units are occupied by low income households.

(b) A receiving municipality may use revenues collected as a result of a regional contribution for any activity approved by the Council for addressing the low and moderate income obligation. Eligible activities shall include, but are not necessarily limited to, those activities outlined in N.J.A.C. 5:93-5[.1].

(c) All RCAs shall specify payment schedules which conform to a construction or rehabilitation schedule and which relate to the receiving municipality's ability to deliver housing units in a timely fashion.

(d) All RCAs shall require that a receiving municipality submit a proposed project plan which shall be in such form and contain such information as the Agency may require.

(e) Sending and receiving municipalities shall, as part of their contract negotiations, determine the use of transferred funds that may be in excess of the amount necessary to implement the RCA. Such funds shall either be returned to the sending community and/or utilized by the receiving community to produce additional low and moderate income housing units or for a capital expenditure ancillary to or benefiting low and moderate income households. However, if a receiving municipality can accomplish the housing activity approved as part of its project plan for less than the minimum per unit transfer pursuant to N.J.A.C. 5:93-6.4(b), the difference between the cost of the housing activity and the minimum per unit transfer shall be used within the receiving municipality. The specific use of excess funds by the receiving community need not be specified in the RCA contract, but shall be subject to Council approval.

5:93-6.3 Credits

No receiving municipality shall receive credit towards its fair share obligation for units provided pursuant to a RCA, where credit for such units has been awarded to a sending municipality.

5:93-6.4 Amount and duration of contributions

(a) In negotiating RCAs, cosmetic improvements may be included in determining the negotiated price of rehabilitating a housing unit. However, to be eligible for rehabilitation, a housing unit shall be substandard as defined in N.J.A.C. 5:93-1.3. Upon rehabilitation, housing deficiencies shall be corrected and the unit shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or if none is available, the BOCA National Existing Structures Code (available from Building Officials and Code Administrators, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795)

(b) A sending municipality shall transfer at least $20,000 to a receiving municipality for each unit transferred as part of a regional contribution agreement. This threshold has been established after consideration of:

1. The housing stock in New Jersey's urban municipalities;
2. The average cost of a regional contribution since 1986;
3. The maximum subsidies available under the Neighborhood Preservation Balanced Housing Program established pursuant to N.J.S.A. 52:27D-320; and
4. The average internal subsidization required for a developer to provide each low and moderate income unit within an inclusionary development.

(c) The receiving municipality may spend less than $20,000 per unit in implementing the regional contribution agreement, provided the remaining funds are used [to produce or rehabilitate additional low and moderate income units.] **for an activity approved by the Council for addressing the low and moderate income obligation. Eligible activities shall include, but are not necessarily limited to, those activities outlined in N.J.A.C. 5:93-5.**

(d) RCAs shall run concurrent with the sending municipality's period of substantive certification, not to exceed six years. Contributions may be prorated in municipal appropriations concurrent with the certification period, not to exceed six years.

(e) All RCAs that include a scattered site rehabilitation program shall be structured so that the final transfer payment occurs within five years of the approval of the regional contribution agreement. All rehabilitation activity shall occur within the sending community's period of substantive certification. Rehabilitation schedules shall be structured for completion within five years of the approval of a regional contribution agreement. Rehabilitation schedules shall be subject to Council approval and shall not be structured to require a disproportionate share of rehabilitation during the latter portion of the five year period.

5:93-6.5 Monitoring and enforcement

(a) All RCAs shall require receiving municipalities to file annual reports with the Agency setting forth the progress in implementing

the project to be produced under an RCA. This report shall be in such form as the Council and the Agency may from time to time require.

(b) The Council shall take such actions as may be necessary to enforce a RCA with respect to the timely implementation of a project by the receiving municipality. In implementing its enforcement responsibilities, the Council may:

1. Initiate or join a lawsuit to enforce a RCA;
2. Bar a delinquent receiving municipality from entering into further RCAs for a specified period of time;
3. Recommend that the Agency and the Department of Community Affairs withhold further assistance available under the Act; and/or
4. Take such other actions as the Council may determine necessary, including ordering a sending municipality, for good cause, to temporarily or permanently cease payment to a receiving municipality.

SUBCHAPTER 7. INCLUSIONARY DEVELOPMENTS

5:93-7.1 Purpose and scope

The purpose of this chapter is to provide standards that pertain to the creation of low and moderate income housing units. The rules that follow shall pertain to all inclusionary developments, including those created as part of a regional contribution agreement. This subchapter provides standards on: the distribution of low and moderate income units; bedroom distribution; and establishing the rents and prices of low and moderate income units.

5:93-7.2 Distribution of low and moderate income units

(a) [At] **With the exception of inclusionary developments constructed pursuant to low income tax credit regulations, at** least half of all units within each inclusionary development shall be affordable to low income households.

(b) [At] **With the exception of inclusionary developments constructed pursuant to low income tax credit regulations, at** least half of all rental units shall be affordable to low income households.

(c) [At] **With the exception of inclusionary developments constructed pursuant to low income tax credit regulations, at** least one-third of all units in each bedroom distribution (pursuant to N.J.A.C. 5:93-73) shall be affordable to low income households.

5:93-7.3 Bedroom distribution

(a) Inclusionary developments that are not restricted to senior citizens shall be structured [such that] **in conjunction with realistic market demands so that**:

1. [At a minimum, 20 percent of all low and moderate income units shall be one bedroom units;] **The combination of efficiency and one bedroom units is at least ten percent and no greater than 20 percent of the total low and moderate income units;**
2. [At a maximum, 20 percent of all low and moderate income units may be efficiency units; and] **At least 30 percent of all low and moderate income units are two bedroom units; and**
3. [At a minimum, 20 percent of all low and moderate income units shall be three bedrooms.] **At least 20 percent of all low and moderate income units are three bedroom units.**

(b) Low and moderate income units restricted to senior citizens may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of senior citizen low and moderate income units within the inclusionary development. The standard can be met by creating all one bedroom units or by creating a two bedroom unit for each efficiency unit. Applications to waive this standard shall be made in accordance with N.J.A.C. 5:93 and shall be referred by the Council to the DCA Division on Aging for review and recommendations.

5:93-7.4 Establishing rents and prices of units

(a) The following criteria, **in conjunction with realistic market information,** shall be used in determining maximum rents and sale prices:

1. Efficiency units shall be affordable to one person households;
2. One half of all one bedroom units shall be affordable to one person households; and one half of all one bedroom units shall be affordable to two person households;
3. One half of all two bedroom units shall be affordable to two person households; and one half of all two bedroom units shall be affordable to three person households; and
4. [Three bedroom units shall be affordable to five person households.] **One half of all three bedroom units shall be affordable to four person households and one half of all three bedroom units shall be affordable to five person households.**

(b) Median income by household size shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the households within the county. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households in each housing region. This quotient represents the regional weighted average of median income for a household of four. This regional weighted average is adjusted by household size based on multipliers used by HUD to adjust median income by household size. The maximum average rent and price of low and moderate income units within each inclusionary development shall be affordable to households earning 57.5 percent of median income. [In averaging 57.5 percent, prices of sales units may be stratified. The following stratification example represents a method for establishing sales prices. Prices of sales units shall be established so that for every six units:] **The municipal ordinance shall require moderate income sales units to be available for at least three different prices and low income sales units to be available for at least two different prices.**

[1. One is priced at 43.0 percent of median;
2. Two are priced at 48.0 percent of median;
3. One is priced at 59.5 percent of median;
4. One is priced at 71.5 percent of median; and
5. One is priced at 75.0 percent of median.]

(c) In averaging 57.5 percent under (b) above, developers and/or municipal sponsors of rental units may establish one rent for a low income unit and one rent for a moderate income unit for each bedroom distribution.

(d) Municipal ordinances regulating owner occupied and rental units shall require that low and moderate income units utilize the same heating source as market units within the inclusionary development.

[(d)](**e**) Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of five percent, the monthly principal, interest, insurance, property taxes (property taxes shall be based on the restricted value of low and moderate income units) and condominium or homeowner fees do not exceed 28 percent of the eligible gross monthly income. Municipalities shall, by ordinance, require that master deeds of inclusionary developments regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. The percentage that shall be paid by low and moderate income purchasers shall be at least one-third of the condominium or homeowner association fees paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from the Council.

[(e)](**f**) Municipalities shall require that gross rents, including an allowance for utilities, be established so as not to exceed 30 percent of the gross monthly income of the appropriate household size referenced in (a) above. The allowance for utilities shall be consistent with the utility allowance approved by HUD for use in New Jersey.

[(f)](**g**) Low income housing units shall be reserved for households with a gross household income less than or equal to 50 percent of the median income approved by the Council. Moderate income housing units shall be reserved for households with a gross household income [equal to or more than 50 percent, but] less than 80 percent of the median income approved by the Council. For example, a household earning 48 percent of median income may be placed in any low income unit; however, a household earning 53 percent may not qualify for a low income unit. A household

earning 67 percent of median may be placed in any moderate income housing unit. **A household earning less than 50 percent of median may be placed in a moderate income housing unit.** Low and moderate income units shall not be offered to households that are not income eligible without Council approval pursuant to N.J.A.C. 5:93-9.16.

SUBCHAPTER 8. DEVELOPMENT FEES

5:93-8.1 Purpose

(a) The New Jersey Supreme Court, in *Holmdel Builder's Ass'n v. Holmdel Township,* 121 *N.J.* 550 (1990) (issued December 13, 1990), determined that mandatory development fees are both statutorily and constitutionally permissible. The Court further anticipated that the Council would promulgate appropriate development fee rules specifying, among other things, the standards for these development fees. The purpose of this subchapter is to provide such guidance.

(b) Except as otherwise provided in these rules, a municipality may only collect and spend development fees through participation in the Council's substantive certification process or through a comprehensive review designed to achieve a judgment of repose. The exceptions to this rule are set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive. These exceptions are permitted because some communities have already received substantive certification; others have achieved a judgment of repose; and still others are litigating exclusionary zoning cases. Some of these municipalities have already collected fees. The Council has created a process for these municipalities to collect and/or retain fees. However, in the future, the ability to collect and spend development fees shall be limited to municipalities that petition for substantive certification. Urban aid municipalities are also considered a special case. These municipalities have historically housed a disproportionate share of New Jersey's poor and, as a result, may have exceedingly high fair share obligations that would be extremely difficult to address in a six year period. Therefore, the Council will allow these municipalities to collect fees outside of substantive certification provided the municipality adheres to the rules in this subchapter. The rules that follow provide basic requirements for collecting and spending development fees. They then provide additional requirements for municipalities in various categories.

(c) While the rules that follow shall govern those municipalities that petition for substantive certification and urban aid cities, the Council will review development fee ordinances and plan to spend money upon the request of the court with jurisdiction in an exclusionary zoning lawsuit.

5:93-8.2 Basic requirements

(a) Except as set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive, the Council shall not review or approve any development fee ordinance unless the municipality has petitioned for substantive certification.

(b) No municipality shall collect development fees unless the municipality has adopted a housing element and the Council has approved its development fee ordinance.

(c) No municipality shall spend development fees unless the Council has approved a plan for spending such fees. With the exception provided for in N.J.A.C. 5:93-8.3, municipalities that have not received substantive certification or a judgment of repose shall not spend development fees until they have received substantive certification or a judgment of repose.

5:93-8.3 Urban aid municipalities

Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) shall not collect or spend development fees without conforming to the requirements set forth in N.J.A.C. 5:93-8.2. Council approval of the municipal development fee ordinance shall allow the municipality to collect development fees for a period specified by the Council, not to exceed six years, commencing with the Council's approval of the development fee ordinance. Notwithstanding any other provision of this chapter, these municipalities shall have one year from the Council's approval of their development fee ordinance to submit a plan for spending development fees. These municipalities may collect and spend development fees without petitioning for substantive certification.

5:93-8.4 Municipalities that collected fees and received certification

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have received substantive certification. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinance, provided it conforms to the procedures in N.J.A.C. 5:93-8.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without comforming to N.J.A.C. 5:93-8.2.

(c) Notwithstanding any other provision of this chapter, the municipalities in this category shall submit plans to spend the development fees (regardless of when these fees were collected) prior to the expiration of their substantive certification periods.

5:93-8.5 Municipalities that collected fees and are proceeding toward certification

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have petitioned for substantive certification. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinances provided they conform to the procedures in N.J.A.C. 5:93-8.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without conforming to N.J.A.C. 5:93-8.2.

(c) Notwithstanding any other provision of this chapter, municipalities in this category shall submit plans to spend the development fees and receive approval of these plans prior to receiving substantive certification.

5:93-8.6 Municipalities that have not collected fees that have received substantive certification, or are proceeding toward substantive certification

(a) This rule deals with municipalities that have not collected development fees and that have received substantive certification or are proceeding toward substantive certification. Municipalities in this category shall not collect fees until they have adopted a housing element and received the Council's approval of its development fee ordinance. No municipality in this category shall spend development fees unless the Council has approved a plan for spending such fees.

(b) Municipalities that have not received substantive certification shall submit plans for spending the development fees and receive approval for these plans prior to receiving substantive certification.

(c) Notwithstanding any provision of this chapter, municipalities in this category that have received substantive certification shall submit plans for spending the development fees prior to the expiration of the substantive certification period or period of repose.

5:93-8.7 Other municipalities that have not collected fees

(a) Except as provided for in N.J.A.C. 5:93-8.3 through 8.6 inclusive, municipalities that have not collected fees shall not collect fees until they have adopted a housing element, petitioned for substantive certification and received the Council's approval of its development fee ordinance.

(b) No municipality in this category may spend development fees unless the Council has approved a plan for spending such fees and granted substantive certification. Municipalities shall submit these plans when they petition for substantive certification. Municipalities that have petitioned for substantive certification prior to the effective date of this rule shall submit plans for spending development fees prior to receiving substantive certification.

5:93-8.8 Development fee ordinance review

(a) The Council shall not review a development fee ordinance unless the municipality has submitted:

1. A copy of an adopted housing element that complies with the Municipal Land Use Law, N.J.S.A. 40:55D et seq.;
2. A copy of the proposed ordinance designed to collect development fees;
3. A description of any changes to the municipal zoning ordinance during the previous two years;
4. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance;
5. If the municipality has received a court ordered judgment of repose, a copy of the compliance plan, implementation ordinances and information regarding the period of time encompassed by the judgment of repose;
6. A description of the types of developments that will be subject to fees;
7. A description of the amount and nature of the fees imposed;
8. A statement regarding the use of density bonuses or other devices to counterbalance development fees; and
9. If development fees have been collected prior to December 13, 1990 and the municipality wishes to retain some or all of these fees, the following information must be submitted to the Council within 90 days of the effective date of this rule:

i. A copy of the ordinance pursuant to which the fees were collected; and the proposed ordinance, if any, designed to reimpose some or all of these fees;

ii. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance used to collect the fees;

iii. The name of each developer that paid a development fee;

iv. The amount paid by each developer and the formula for the amount collected;

v. The equalized assessed value of each development at the time of collection;

vi. An accounting of all money collected and identification of the municipal account that houses all development fees;

vii. If any money collected through a development fee ordinance has been spent, an accounting of the expenditure; and

viii. Any other information the Council may require.

(b) Municipalities that collected fees prior to December 13, 1990, shall be able to retain such revenues or reimpose such fees to the extent that the fees collected by the municipality do not exceed the amount permitted by this chapter. Municipalities interested in retaining development fees collected prior to December 13, 1990 shall also conform to the procedures outlined in N.J.A.C. 5:91-15, Procedures for retaining development fees.

5:93-8.9 Content of plans to spend development fees

Plans to spend development fees shall consist of the information required in N.J.A.C. 5:93-5.1(c).

5:93-8.10 Development fees; residential

(a) Residential development fees shall be a maximum of one-half of one percent of the equalized assessed value for residential development, provided no increased density is permitted.

(b) Where there is a zoning change that permits increased residential development, the municipality may impose a development fee of up to six percent of the equalized assessed value for each additional unit that may be realized as a result of the rezoning.

Example: If a rezoning allowed two extra units to be constructed, the fees could equal one-half of one percent of equalized assessed value on the first unit and six percent of equalized assessed value on the two incremental units.

(c) Municipalities may allow developers of sites zoned for inclusionary development to pay a fee in lieu of building low and moderate income units, provided the Council determines the municipal housing element and fair share plan provides a realistic opportunity for addressing the municipal fair share obligation. The fee may equal the cost of subsidizing the low and moderate income units that are replaced by the development fee. For example, an inclusionary development may include a 20 percent set-aside, no set-aside and a fee that is the equivalent of a 20 percent set-aside or a combination of a fee and set-aside that is the equivalent of a 20 percent set-aside.

(d) Municipalities may collect fees exceeding those permitted in this section, provided they enter into agreements with developers that offer a financial incentive for paying higher fees. The financial incentive may be in the form of a tax abatement. No agreement may provide for a voluntary developer fee without also providing for a comparable off-setting incentive. All agreements are subject to Council approval.

5:93-8.11 Development fees; non-residential

(a) Non-residential development fees shall be a maximum of one percent of the equalized assessed value for non-residential development.

(b) Municipalities may collect fees exceeding those permitted in this section provided they enter into agreements with developers that offer a financial incentive for paying higher fees. Such agreements may include, but are not limited to, a tax abatement, increased commercial/industrial square footage, increased commercial/industrial lot coverage and/or increased commercial/industrial impervious coverage in return for an increased fee. The fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received. All agreements are subject to Council approval.

5:93-8.12 Eligible exactions, ineligible exactions and exemptions

(a) Except as provided for in N.J.A.C. 5:93-8.10, inclusionary developments shall be exempt from development fees. All other forms of new construction may be subject to development fees.

(b) Development fees may be collected when an existing structure is expanded or undergoes a more intense use. The development fee that may be collected shall be calculated on the increase in the equalized assessed value of the improved structure.

(c) Municipalities shall not reduce densities from pre-existing levels and then require developers to pay development fees in exchange for an increased density.

(d) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a major change in the approval. Municipalities that collected development fees prior to December 13, 1990 may not retain any fees imposed subsequent to granting preliminary or final development approval, unless the developer seeks a major change in the approval.

(e) Municipalities may exempt specific types of development from fees or may impose lower fees for specific types of development, provided each classification of development is addressed consistently. For example, all retail development may be exempt from fees.

(f) Municipalities may exempt specific areas of the municipality from the imposition of fees or reduce fees in order to promote development in specific areas of the municipality.

5:93-8.13 Collection of fees

Municipalities may collect up to 50 percent of the fee on any specific development at the time of issuance of the building permit. The remaining portion may be collected at the issuance of the certificate of occupancy.

5:93-8.14 Housing trust fund

All development fees shall be deposited in a separate interest bearing housing trust fund. In establishing the housing trust fund, the municipality shall provide whatever express written authorization that may be required by the bank to permit the Council to direct the disbursement of development fees pursuant to N.J.A.C. 5:93-8.17 and 8.18.

5:93-8.15 Use of money

(a) A municipality may use revenues collected from development fees for any activity approved by the Council for addressing the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, regional contribution agreements, purchase of land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the housing element. Municipalities are encouraged to use

development fee revenues to attract other funds such as, but not limited to, available public subsidies and funds from private lending institutions.

(b) Funds shall not be expended to reimburse municipalities for past housing activities.

(c) At least 30 percent of the revenues collected from development fees shall be devoted to render units more affordable. Examples of such activities include, but are not limited to, downpayment assistance, low interest loans, and rental assistance. **Development fees collected pursuant to N.J.A.C. 5:93-8.10(c) shall be exempt from this requirement.** This requirement may be waived in whole or in part when the municipality demonstrates the ability to address the requirement of affordability assistance from another source.

(d) Municipalities may contract with a private or public entity to administer the implementation of any part of its housing element, including the requirement for affordability assistance.

(e) No more than 20 percent of the revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement: a rehabilitation program; a new construction program; a regional contribution agreement; a housing element; and an affirmative marketing program. Administrative funds may be used for: income qualification of households; monitoring the turnover of sale and rental units; and compliance with Council monitoring requirements. Development fees shall not be used to defray the costs of existing staff.

5:93-8.16 Monitoring

Municipalities that collect development fees shall complete and return all monitoring forms related to the collection of fees, expenditure of revenues and implementation of the plan certified by the Council or approved by the court. Quarterly financial reports, and annual program implementation and auditing reports shall be completed on forms designed by the Council.

5:93-8.17 Penalties

(a) The municipality's ability to collect fees and the Council's approval of an ordinance and spending plan shall be conditioned on compliance with all requirements of this subchapter. Occurrence of the following may result in the Council taking an action pursuant to [section] (b) below:

1. Failure to submit a plan pursuant to N.J.A.C. 5:93-5.1(c) within the time limits imposed by the Council;

2. Failure to meet deadlines for information required by the Council in its review of a housing element, development fee ordinance, or plan for spending fees;

3. Failure to proceed through the Council's administrative process toward substantive certification in a timely manner;

4. Failure to address the Council's conditions for approval of a plan to spend development fees within the deadlines imposed by the Council;

5. Failure to address the Council's conditions for substantive certification within deadlines imposed by the Council;

6. Failure to submit accurate monitoring reports within the time limits imposed by the Council;

7. Failure to implement the plan to spend development fees within the time limits imposed by the Council, or within reasonable extensions granted by the Council;

8. Expenditure of development fees on activities not permitted by the Council;

9. Revocation of certification; or

10. Other good cause demonstrating that the revenues are not being used for the intended purpose.

(b) Consistent with this rule, any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event that any of the conditions described in N.J.A.C. 5:93-8.17(a) occur, the Council shall be authorized, on behalf of the municipality, to direct the manner in which all development fees collected pursuant to that ordinance shall be expended. [Should any such condition occur, such] **Such** revenues shall immediately become available for expenditure [at the direction of the Council upon the municipal clerk's receipt of written notification from the Council] **once the Council has notified the municipal clerk and chief financial officer** that such a condition has occurred. In furtherance of the foregoing, any such municipality shall, in establishing a bank account pursuant to N.J.A.C. 5:93-8.14, ensure that the municipality has provided whatever express written authorization may be required by the bank to permit the Council to direct the disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by the Council to the municipality's clerk **and chief financial officer.**

(c) The Council may, after a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., revoke development fee ordinance approval for any municipality that fails to comply with the requirements of this subchapter. Where such approval has been revoked, the Council shall not approve an ordinance permitting such municipality to collect development fees for the remaining period of the substantive certification period or judgment of repose. With regard to municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) the Council shall not approve any ordinance permitting such municipalities to collect development fees for the remainder of the approval period (of up to six years) following a Council determination that they failed to comply with this subchapter.

(d) Neither loss of development fees, nor loss of the municipality's ability to collect development fees shall alter the municipality's responsibilities pursuant to substantive certification or a court ordered judgment of repose.

5:93-8.18 Designation of entities to receive development fees

(a) The Council shall solicit plans from public sector entities and non-profit agencies to create or rehabilitate affordable housing.

(b) The Council shall designate such agencies to receive revenues from development fees when the Council takes an action pursuant to N.J.A.C. 5:93-8.17.

(c) To the extent practicable, when the Council takes an action pursuant to N.J.A.C. 5:93-8.17, the Council shall assign development fee revenues to projects planned within the municipality that generated the revenues or within close proximity to the municipality (such as within the county or region).

5:93-8.19 Ongoing collection of fees

(a) Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and have received Council approval to collect development fees, shall not collect such fees for more than the period specified by the Council, not to exceed a six year period, unless the municipality has refiled an adopted housing element with the Council and received the Council's approval of its development fee ordinance. These municipalities shall submit a plan for spending development fees within one year of the Council's approval of their development fee ordinance. Municipalities that fail to renew their ability to collect development fees within the six year period may resume the collection of development fees by complying with the requirements of this section.

(b) Except as provided for in (a) above, the ability for all other municipalities to collect development fees shall expire with their substantive certification or judgment of repose, unless the municipality has filed an adopted housing element with the Council; petitioned for substantive certification; and received the Council's approval of its development fee ordinance. Municipalities that fail to renew their ability to collect development fees prior to the expiration of their substantive certification or judgment of repose may resume the collection of development fees by complying with the requirements of this section.

5:93-8.20 Severability

If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining parts of this subchapter. If any part of this subchapter is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

SUBCHAPTER 9. CONTROLS ON AFFORDABILITY

5:93-9.1 Purpose and scope

(a) This subchapter is designed to provide assurances that low and moderate income units are created with controls on affordability over time and that low and moderate income people occupy these units. To that end, municipalities shall designate a municipal authority with the responsibility of ensuring the affordability of sales and rental units over time. The authority shall also be responsible for: affirmative marketing; income qualification of low and moderate income households; placing income eligible households in low and moderate income units upon initial occupancy; [and] placing income eligible households in low and moderate income units as they become available during the period of affordability controls; **and enforcing the terms of the deed restriction and mortgage loan.** Municipalities [may] **shall** establish a municipal authority or [may] contract with the Department of Community Affairs Affordable Housing Management Service (AHMS).

(b) In placing [eligible] households in low and moderate income units, municipalities shall utilize the following [income eligibility] verification and certification procedures:

1. Every household member 18 years of age or over who will live in the affordable unit and receives income shall be required to provide income documentation as applicable and determined by the reviewer for the Authority. **This includes income received by adults on behalf of minor children for their benefit.** Household members 18 years of age or over not receiving income must produce documentation of current status.

2. Verification may include, but is not limited to, the following:

i. Four consecutive pay stubs including overtime, bonuses, or tips dated within 120 days of the interview date or a letter from employer stating present annual income figure as projected annually;

ii. A copy of regular IRS Form 1040 (Tax computation form) 1040A, or 1040 EZ as applicable and State income tax returns filed for each of the three years prior to the date of interview;

iii. A letter or appropriate reporting form verifying benefits such as Social Security, Unemployment, Welfare, Disability or Pension income (monthly or annually);

iv. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant such as alimony and child support;

v. Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, certificates of deposit, stocks or bonds;

vi. Evidence or reports of income from assets such as real estate or businesses that are directly held by any [Eligible] Household Member;

vii. Evidence or reports that verify assets that do not earn regular income such as non-income producing real estate or savings that do not earn interest; and

viii. A notarized statement of explanation in such form as to be satisfactory to the reviewer.

3. Generally, sources of annual income shall be based on regular income reported to the IRS and which can be utilized for mortgage approval. [Complete income information is essential to unit selection.] **Household annual gross income shall be calculated by projecting current gross income over a 12-month period.**

4. Income includes but is not limited to wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, AFDC, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, CDs, money market, mutual funds, stocks and bonds and imputed income from non-income producing assets such as equity in real estate.

5. Assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate. Assets not earning income includes present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference will be treated as the monetary value of the asset and the imputed interest added to income.

6. Income from assets that have delayed earnings, such as IRA's or annuity programs shall not be included in current income until such payments are being received. However, these assets must be reported and verified.

7. Net rent from real estate is considered income after the monthly mortgage payment including real estate taxes and insurance is deducted. Other expenses are not deductible. In addition, the equity in the rented real estate is considered an asset and will have the imputed interest income on the calculated value of equity added to income.

8. Income does not include payments, rebates or credits received under Federal or State low income home energy assistance programs, Food Stamps, payments received for care of foster children, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to family assets such as inheritances, one-time lottery winnings, and insurance settlements except for additional income earned from these additions, and casual, sporadic or irregular gifts and bonuses.

9. Standard credit information services that provide conventional credit and tenant reports may be utilized when certifying [an Eligible Household] **a household** with required written permission from the household. An unsatisfactory credit history or credit information that demonstrates a disproportionate debt to income ratio may result in a denial of certification. Court-ordered payments for alimony or child support to another household shall be considered a regular monthly debt whether or not it is being paid regularly.

10. Households whose total Gross Annual Income is measured at 50 percent or below 50 percent of the authorized median income guideline shall be certified as low income households and referred to units designated for low income households.

11. Households whose total gross annual income is measured above 50 percent but below 80 percent of the authorized median income shall be certified as moderate income households and referred to units designated for moderate income households.

12. Generally, households will be referred to units where predetermined total monthly housing costs correspond to the household's calculated ability to pay using 28 percent of gross monthly income as a standard for homeownership and 30 percent of gross monthly income as a standard for rental units.

13. At the discretion of the Authority, households may also be required to produce documentation of household composition for determining the correct unit size and the applicable median income guide.

14. Generally, households will be referred to available units using the following standards for occupancy:

i. A maximum of two persons per bedroom;

ii. Children of same sex in same bedroom;

iii. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms; and

iv. Children not in same bedroom with parents.

15. Households may be considered for units other than as above, but in no case shall a household be referred to a unit that provides for more than one additional bedroom per household occupancy standards as stated in (b)14 above.

16. A form for certification shall be prepared and signed by the Authority. Only [Eligible] households receiving certification shall be referred to Affordable Housing units.

17. Certified Households who reject an opportunity for affordable housing may be replaced on the referral list at their request and may be reinterviewed for certification when their name appears on a listing for a subsequent unit.

18. Certification shall be valid for no more than 120 days unless a valid sales contract or lease has been executed within that time period. In this event, certifications shall be valid until such time as the sales contract or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed in writing at the request of a Certified Household for no more than an additional period of 120 days at the discretion of the Authority.

19. [Eligible] Households who are denied certification may make a written request for a redetermination. [Eligible] Households shall

be required to produce additional documentation to support their claim. [Eligible] Households who are denied certification a second time may request a hearing by forwarding a written request to the Authority within 30 days following the household's receipt of a denial notification. If a written request has not been received within the 30 day time period, the ineligible determination will be final. The hearing decision shall be final.

5:93-9.2 Length of controls

(a) In developing housing elements, municipalities shall determine measures to assure that newly constructed low and moderate income sales units remain affordable to low and moderate income households for an appropriate period of not less than 20 years. The authority shall do so by requiring all conveyances of newly constructed low and moderate income sales units subject to the Act, to contain the [restrictive covenant] **deed restriction** and mortgage lien adopted by the Council. **(See Appendix E)**

(b) Municipalities receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:93-2.3(b) shall adopt measures to assure that newly constructed low and moderate income sales units remain affordable to low and moderate income households for a period of not less than 10 years. The authority shall do so by requiring all conveyances of newly constructed low and moderate income sales units subject to the Act to contain the [restrictive covenant] **deed restriction** and mortgage lien adopted by the Council. **(See Appendix E)**

(c) Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for at least six years.

(d) Rehabilitated renter-occupied housing units that are improved to code standard shall be subject to affordability controls for at least 10 years.

(e) Municipalities shall adopt measures to assure that newly constructed low and moderate income rental units remain affordable to low and moderate income households for a period of [at least 20] **30** years. Municipalities receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:93-2.3(b) shall adopt measures to assure that newly constructed low and moderate income rental units remain affordable to low and moderate income households for a period of at least **10 years**. Affordability controls on rental units may exceed the prescribed periods if the developer agrees to a longer period.

(f) Housing units created through conversion of a non-residential structure shall be considered a new housing unit and shall be subject to controls on affordability as delineated in (a), (b) and (e) above.

(g) Affordability controls on accessory apartments shall be for a period of at least 10 years. However, in order to be eligible for a rental bonus, (pursuant to N.J.A.C. 5:93-5.13) controls on affordability shall extend for a period of 30 years.

(h) Alternative living arrangements shall be controlled in a manner, suitable to the Council, that provides assurances that such a facility will house low and moderate income households for at least 10 years.

5:93-9.3 General provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sales units

(a) No municipality shall issue a certificate of occupancy for initial occupancy of a low or moderate income sales unit unless there is a written determination by the authority that the unit is to be controlled by a deed restriction and mortgage lien as adopted by the Council. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien. Amendments to the deed restriction and lien shall be permitted only if they have been approved by the Council. A request for an amendment to the deed restriction and lien may be made by the authority, the municipality or a developer.

(b) No municipality shall permit the initial occupancy of a low or moderate income sales unit prior to issuance of a certificate of occupancy in accordance with (a) above.

(c) Municipalities shall, by ordinance, require a certificate of reoccupancy for any occupancy of a low or moderate income sales unit resulting from a resale and shall not issue such certificate unless there is a written determination by the authority that the unit is to be controlled by the deed restriction and mortgage lien prior to issuance of a certificate of occupancy, regardless of whether the sellers had executed the deed restriction and mortgage lien adopted by the Council upon acquisition of the property. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien.

(d) The certificate of reoccupancy shall not be required in sales for which controls are allowed to expire or in which the repayment option is being exercised pursuant to N.J.A.C. 5:93-9.4.

(e) The mortgage lien and the [restrictive covenant] **deed restriction** shall be filed with the records office of the county in which the unit is located. The lien and [restrictive covenant] **deed restriction** shall be in the form adopted by the Council, as delineated in the Appendix E, unless amendments have been approved by the Council, for a specific municipality.

(f) The [restrictive covenant] **deed restriction**, including the repayment clause, and the mortgage lien shall have priority over all mortgages on the property except for a first mortgage placed on the property by the mortgagee prior to the expiration of resale controls.

5:93-9.4 Option to buy sales units

(a) The [restrictive covenant] **deed restriction** governing the deeds of low and moderate income units shall include an option permitting purchase of the affordable housing unit at the maximum allowable restricted sales price at the time of the first non-exempt sale after controls on affordability have been in effect on the unit for the period, specified in N.J.A.C. 5:93-9.2. The option to buy shall be available to the municipality, the Department of Community Affairs, the Agency, or a qualified non-profit as defined in this chapter.

(b) All [restrictive covenants] **deed restrictions** governing low and moderate income units shall require the owner to notify the authority and the Council by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first non-exempt sale after controls have been in effect on the housing unit for the period specfied in N.J.A.C. 5:93-9.2.

(c) Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price or any mutually agreeable sales price that does not exceed the maximum allowable restricted sales price shall be available for 90 days. The authority shall notify the municipality, the Department of Community Affairs, the Agency, and the Council that the unit is for sale. If the municipality exercises this option, it may enter into a contract of sale. If the municipality fails to exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the 90 day period, shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sales price is not exercised by a written offer to purchase the housing unit within 90 days of receipt of the intent to sell, the owner may proceed to sell the housing unit **(pursuant to N.J.A.C. 5:93-9.8)**. If the owner does not sell the unit within one year of the date of the delivery of notice of intent to sell, the option to buy the unit shall be restored and the owner shall be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.

(d) Any option to buy a housing unit at the maximum allowable restricted sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

5:93-9.5 Municipal option; sales units

(a) Any municipality that elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:93-9.4 may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sales price or rent [for a period of up to 20 years] **provided the unit is controlled by a deed restriction in accordance with Exhibit E or an alternative approved by the Council; or;**

2. Convey the unit at fair market value subject to the provisions of (c) below.

(b) Municipalities that purchase low income housing units shall maintain them as low income housing units.

(c) Municipalities that elect to purchase low or moderate income housing units and convey them at a fair market value shall:

1. Notify the Council of any proposed sale and sales price 90 days before closing;

2. Notify the Council of the price differential as defined in N.J.A.C. 5:93-1.3; and

3. Deposit the price differential in an interest bearing housing trust fund devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing.

(d) Money deposited in housing trust funds may not be expended until the municipality submits and the Council approves a spending plan in accordance with N.J.A.C. 5:93-5.1(c). Money deposited in housing trust funds shall be subject to the restrictions, monitoring requirements and penalties outlined in N.J.A.C. 5:93-8.15 through 17.

5:93-9.6 State option; sales units

(a) When the Department of Community Affairs or Agency elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:93-9.4, it may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental; or

2. Convey the unit at fair market value and utilize the price differential to subsidize the construction, rehabilitation or maintenance of low and moderate income housing within the appropriate housing region.

5:93-9.7 Non-profit option; sales units

(a) Non-profit agencies may apply to the Council at any time for the right to purchase low or moderate income units subsequent to the period of controls on affordability [of up to 20 years] **provided the unit remains controlled by a deed restriction in accordance with Appendix E, or an alternative approved by the Council.**

(b) Non-profit agencies that have been designated by the Council shall be eligible to purchase low or moderate income units pursuant to N.J.A.C. 5:93-9.4 for the sole purpose of conveying or renting the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental. Low income units shall be made available to low income purchasers or tenants and the housing unit shall be regulated by the [restrictive covenant] **deed restriction** and lien adopted by the Council, and included in Appendix E, incorporated herein by reference. The term of the controls on affordability shall be the same as those required by N.J.A.C. 5:93-9.2.

5:93-9.8 Seller option; sales units

(a) An eligible seller of a low or moderate income unit which has been controlled for the period established in N.J.A.C. 5:93-9.2, who has provided notice of an intent to sell, may proceed with the sale if no eligible entity as outlined in N.J.A.C. 5:93-9.4(c) and 9.7 exercises its option to purchase within 90 days.

(b) Subject to N.J.A.C. 5:93-9.9, the seller may elect to:

1. Sell to a qualified low and moderate income household at a price not to exceed the maximum permitted sales price in accordance with existing Council rules, providing the unit is regulated by the [restrictive covenant] **deed restriction** and lien adopted by the Council and included in Appendix E, incorporated herein by reference, for a period of at least 20 years; or

2. Exercise the repayment option and sell to any purchaser at market price, providing that 95 percent of the price differential is paid to the authority, as an instrument of the municipality, at closing.

(c) If the sale will be to a qualified low and moderate income household, the authority shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the [restrictive covenant] **deed restriction** and lien required by the Council, which has been included in Appendix E, incorporated herein by reference.

(d) The authority shall examine any contract of sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the authority may rely on comparable sales data or an appraisal. The authority shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The authority shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

(e) The authority shall adopt an appeal procedure by which a seller may submit written documentation requesting the authority to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final administrative determination of the authority.

(f) The repayment shall occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

(g) Repayment proceeds shall be deposited in a housing trust fund (see N.J.A.C. 5:93-8.14) and may be used as per N.J.A.C. 5:93-8.15. Money deposited in housing trust funds may not be expended until the municipality submits and the Council approves a spending plan (See N.J.A.C. 5:93-5.1(c)).

5:93-9.9 Municipal rejection of repayment option; sales units

(a) A municipality shall have the right to determine that the most desirable means of promoting an adequate supply of low and moderate income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:93-9.2. Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with the Council and the authority. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:93-9.8.

(b) Municipalities that exercise the option outlined in (a) above shall:

1. Provide public notice in a newspaper of general circulation; and

2. Notify the authority and Council of its governing body's action.

(c) The authority shall ensure that the deed restriction on all affected housing units reflects the extended period of controls.

5:93-9.10 Continued application of options to create, rehabilitate or maintain low and moderate income units; sales units

When a housing unit has been maintained as a low or moderate income unit after controls have been in effect for the period specified in N.J.A.C. 5:93-9.2, the [restrictive covenant] **deed restriction** governing the housing units shall allow municipalities, the State, non-profit agencies and sellers of low and moderate income units to again exercise all the same options as provided in this subchapter.

5:93-9.11 Eligible capital improvements prior to the expiration of controls; sales units

(a) Property owners of single family, owner-occupied housing may apply to the authority for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the authority if an increase in the maximum sales price is sought.

(b) At resale, all items of property which are permanently affixed to the units and/or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable resale price. Other items of property may be sold to the purchaser at a reasonable price that has been approved by the authority at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made

a condition of the unit resale provided the price has been approved by the authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

5:93-9.12 Subsidy to ensure affordability prior to the expiration of controls; sales units

If the use of median income data adopted by the Council to index the cost of housing renders a unit unaffordable to a low or moderate income household at the time of resale, a municipality shall not lose credit for the housing unit, provided that adequate controls on affordability remain in place, but the municipality may subsidize the housing unit to maintain affordability.

5:93-9.13 Impact of foreclosure on resale while controls are in place; sales units

A judgment of foreclosure or a deed in lieu of foreclosure [by] **to** a financial institution regulated by State and/or Federal law or [by] **to** a lender on the secondary mortgage market (including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) shall extinguish controls on affordable housing units provided there is compliance with N.J.A.C. 5:93-9.14. Notice of foreclosure shall allow the authority, the municipality, the Department of Community Affairs, the Agency or a non-profit entity to purchase the affordable housing unit at the maximum permited sales price and maintain it as an affordable unit for the balance of the intended period of controls. Failure to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and propective fair share obligation. Failure of the financial institution to provide notice of a foreclosure action to the authority shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution.

5:93-9.14 Excess proceeds upon foreclosures; sales units

In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the authority responsible for assuring affordability, any surplus funds, but only to the extent that such surplus funds exceed the difference between the maximum price permitted at the time of foreclosure and the amount necessary to redeem the debt to the financial institution, including costs of foreclosure.

5:93-9.15 Annual indexed increases while controls are in place; sales and rentals

(a) The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in the regional median income limit for each housing region. [However, in] **In** no event shall the maximum resale price established by the authority be lower than the last recorded purchase price.

(b) With the exception of rentals constructed pursuant to low income tax credit regulations, the rent of a low or moderate income housing unit may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income tax credit regulations shall be indexed pursuant to the regulations governing low income tax credits.

5:93-9.16 Procedures for initial sales, resale prior to the expiration of controls, and rentals

(a) Low and moderate income sales units shall not be offered to non-income eligible households at initial sale without Council approval. Parties that petition the Council for such approval shall document efforts to sell housing units to income eligible households and shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

(b) Persons wishing to sell affordable units shall notify the authority responsible for assuring affordability of the intent to sell. If no eligible buyer enters a contract of sale for the unit within 90 days of notification, the authority shall have the option to purchase the unit for a negotiated price that shall not exceed the maximum price permitted based on the regional increase in the median income as defined by HUD or other recognized standard adopted by the Council. If the authority does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this application. **In reviewing the request, the authority shall consider the specific reasons for any delay in selling the housing unit and the hardship to the seller in continuing to offer the affordable unit to an income eligible applicant. The inability to sell a unit for the maximum permitted resale price shall not, in itself, be considered an appropriate reason for allowing a housing unit to be sold to a non-income eligible household.** If the request is granted, the seller may offer a low income housing unit to a moderate income household and a moderate income housing unit to a household earning in excess of 80 percent of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of this subchapter.

(c) Owners of low and moderate income rental units shall not offer rental units to non-income eligible households without prior approval of the Council. Parties that petition for such approval shall document all efforts to rent to income eligible households and demonstrate to the satisfaction of the Council that alternatives, such as a reduction in rent, is not feasible. Parties that petition the Council shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

SUBCHAPTER 10. COST GENERATION

5:93-10.1 Purpose and scope

(a) Section 14(b) of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) incorporates the need to eliminate unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification. In order to receive and retain substantive certification, municipalities shall eliminate development standards that are not essential to protect the public welfare and to expedite (or "fast track") municipal approvals/denials on inclusionary development applications. In order to expedite the review of development applications, municipalities shall cooperate with developers of inclusionary developments in scheduling pre-application conferences. Municipal boards shall schedule regular and special monthly meetings (as needed) and provide ample time at these meetings to consider the merits of the inclusionary development application. The goal of such a schedule is to act on a development application within time limits approximating those outlined in the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) Failure to expedite the approval/denial of an inclusionary development application shall be considered a reason for revoking substantive certification.

(b) Inclusionary developments that are included in a housing element and fair share plan have proceeded through a very public process. Therefore, the focus of municipal review shall not be whether the sites are properly zoned. Rather, the focus shall be whether the design of the inclusionary development is consistent with the zoning ordinance and the mandate of the Fair Housing Act regarding unnecessary cost generating features. Municipalities shall be expected to cooperate with developers of inclusionary developments in granting reasonable variances necessary to construct the inclusionary development.

5:93-10.2 Standards

(a) In reviewing the fair share plans, the Council shall use the standards promulgated pursuant to N.J.S.A. 40:55D-40.1 through 40.7 (P.L. 1993 c.32) as a frame of reference. Municipalities that

wish to impose more stringent standards shall bear the burden of justifying the need for such standards. In its review of municipal ordinances, the Council shall give special attention to:

1. The combined impact of requirements that cumulatively prevent an inclusionary development from achieving the density and set-aside necessary to address the municipal fair share. Examples of such requirements include but are not limited to: building setbacks, spacing between buildings, impervious surface requirements and open space requirements;

2. Requirements to provide oversize water and sewer mains to accommodate future development without a reasonable prospect for reimbursement;

3. Excessive road width, pavement specifications and parking requirements;

4. [Requirements for sidewalks and paved paths in excess of those required in the "Model Subdivision and Site Plan Ordinance"] **Excessive requirements for sidewalks and paved paths**;

5. Excessive culvert and pumping station requirements; and

6. Excessive landscape, buffering and reforestation requirements.

(b) Municipal housing elements and fair share plans shall allow for phased construction and phased bonding of on-site, [and] off-site **and off-tract** improvements required of inclusionary developments.

(c) The Council shall not permit restrictions on the bedroom mix of the market rate units within an inclusionary development.

5:93-10.3 Special studies/escrow accounts

(a) It is common for municipalities to require inclusionary developers to conduct special studies related to the fiscal, traffic and environmental impacts of proposed inclusionary developments. These studies are then reviewed by municipal professionals who are paid from escrow accounts funded by the inclusionary developer as a requirement of the municipal review of the development application. The Council has determined that these studies shall not be used to alter the density of sites that are part of the municipal substantive certification. Such studies may be used to foster proper design and to determine pro-rata off-site **and off-tract** improvements. The Council has also determined that it is unnecessary for developers of inclusionary developments to pay for the initial preparation of such a study and for its review. Therefore, municipalities that receive substantive certification shall offer inclusionary developers the option of preparing fiscal, traffic and environmental impact studies or choosing a consultant from a list of at least three professionals (prepared by the municipality) to prepare the studies. If the developer chooses a consultant from the municipally prepared list, the developer and municipality shall rely on the consultant's recommendations.

(b) Fees to review development applications shall be estimated prior to payment of filing fees. Developers shall be entitled to review all charges against any escrowed fees and be provided with monthly accounting reports upon request.

5:93-10.4 Relief subsequent to substantive certification

(a) Developers may provide notice to the Council of the date they filed their development application with the municipality. The municipality need not have deemed the application complete for the developer to provide such notice.

(b) Developers and/or municipalities that cannot agree on specific standards that apply to a specific inclusionary development may request the Council to provide a mediator to resolve the dispute. The resulting mediation shall not require a transfer to the Office of Administrative Law pursuant to the Administrative Procedures Act.

(c) Inclusionary developers may seek an administrative order to expedite the municipal review of a development application by filing a motion pursuant to N.J.A.C. 5:91-12. Developers need not request mediation pursuant to (b) above in order to file such a motion; and the Council may hear such a motion concurrent with any such mediation.

(d) Inclusionary developers may request the Council to act as an advocate for inclusionary developments that require permits from DEPE and DOT.

5:93-10.5 Revocation of substantive certification

A Council determination, after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., that a municipality has delayed action on an inclusionary development application, required unnecessary cost generating standards or obstructed the construction of an inclusionary development may result in Council action revoking substantive certification.

SUBCHAPTER 11. AFFIRMATIVE MARKETING

[5:93-11.1 The affirmative marketing plan; definition and contents

(a) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by a developer or sponsor of affordable housing. It is a continuing program and covers the period of deed restriction.

(b) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;

2. The number of units, including the number of sales and rental units;

3. The price of sales and/or rental units;

4. The approximate starting date for advertising to target groups and for initial occupancy;

5. The name of rental manager and/or sales agent; and

6. A description of outreach efforts to groups that are not readily reached by commercial media efforts (see N.J.A.C. 5:93-11.4 for advertising program details).

(c) The affirmative marketing plan shall be a part of the fair share plan and shall be referenced by ordinance.

5:93-11.2 Training and general responsibilities

(a) The municipality shall assure the affirmative marketing of low and moderate income units. Municipalities shall designate a municipal authority to be responsible for implementing the affirmative marketing plan. A representative of the municipal authority shall attend an affirmative marketing training program approved by the Council. The municipality may contract with other agencies to administer the affirmative marketing program and the actual sales and rentals of the units. However, such a contract does not relieve the municipality of its responsibility to assure affirmative marketing of low and moderate income units.

(b) In implementing an affirmative marketing program, a municipality may delegate specific tasks to a developer of an inclusionary development provided that all applicant and sales records of low and moderate income units are returned to the municipality for reporting purposes and to aid with future resales.

(c) In implementing the affirmative marketing plan, municipalities shall provide counseling in areas of mortgage and rental qualification.

5:93-11.3 Advertising program

(a) The advertising program shall outline methods to be used in reaching all segments of the eligible population.

(b) The plan shall describe the media to be used in advertising the availability of housing, including:

1. Newspapers of general circulation;

2. Radio stations;

3. Television stations, local cable, etc.;

4. Other types of media, including publications of limited circulation, such as neighborhood oriented weekly newspapers, religious publications, and the publications of local real estate industry groups; and

5. Brochures and flyers. Brochures and flyers may be designed to meet specific housing information needs of those persons who are members of minority groups. For example, such brochures and flyers may utilize language translations.

(c) The advertising process for each inclusionary development shall begin at least three months prior to expected occupancy.

(d) Applications for low and moderate income housing shall be available in several convenient locations, including, at a minimum,

the municipal administrative building(s), the municipal library and at the developer's sales office.

(e) If the cost of advertising low and moderate income units are to be a developer's responsibility, the requirement shall be a condition of the municipal planning board's approval.

5:93-11.4 Marketing for initial sales and/or rent up; composition of marketing pool

(a) Households that apply for low and moderate income housing shall be screened for preliminary income eligibility by comparing their total income to the low and moderate income limits adopted by the Council, in accordance with this chapter. Applicants shall be notified as to their eligibility status.

(b) In order to insure a sufficient supply of qualified applicants, the advertising process shall continue until at least 10 income-eligible applicants, determined eligible in accordance with (a) above, have applied for each low and moderate income unit available or until all the low and moderate units within the inclusionary development are under contract for sale.

(c) Having screened applicants for preliminary income eligibility, the municipal authority may analyze the income and household sizes of applicants to determine which applicants have the assets and/or income necessary to purchase or rent each available low or moderate income unit.

(d) The municipal authority shall interview each applicant to: verify the applicant's income; determine the applicant's asset availability; and review the applicant's credit history. Applicants shall be required to submit income verification for each household member 18 years or older. This process shall be utilized in establishing the final certified applicant group.

(e) If there are more certified applicants than low and moderate income units, municipalities shall utilize a method of random selection to determine which certified applicants shall have the opportunity to rent or buy low and moderate income units. Reviewing applications as they are received (first come/first served) shall be an acceptable method of random selection. Therefore, as soon as an applicant is included in the certified applicant group, pursuant to (d) above, the applicant may be offered a low or moderate income unit.

(f) The process described in (a) through (e) above may run concurrently as households apply for low and moderate income units and shall be repeated until all low and moderate income units are occupied.

5:93-11.5 Continuing marketing activities

(a) The types of activities to be undertaken after the completion of initial occupancy of sales and rental units in order to fill vacancies resulting from normal turnover shall include:

1. Marketing activities to maintain a current pool of at least five income eligible applicants, determined eligible in accordance with N.J.A.C. 5:93-11.4(a), for each low and moderate unit;

2. Prescreened lists, which shall be updated annually by contacting each applicant and requesting an updated correction of income changes and family size; and

3. As units become available, the municipal authority shall select eligible applicants for the units, as described in N.J.A.C. 5:93-11.4(c) through (f).

5:93-11.6 Monitoring and plan submission deadlines

(a) Municipalities shall evaluate the results of their affirmative marketing activities and file a report with the Council by August 30th of each year. Such report shall include:

1. Monitoring forms approved by the Council;

2. Copies of any brochures, flyers, print advertisements and application forms used in the municipal affirmative marketing program;

3. An evaluation of the income and demographic characteristics of each applicant of low and moderate income housing, as well as the occupants of the units; and

4. An evaluation of any necessary adjustments in the affirmative marketing program as a result of the evaluation in (a) above.

(b) The Council shall review and assess the effectiveness of the municipal affirmative marketing program. If it is deemed that the affirmative marketing program is not effective, the municipality shall be required to amend the program.

5:93-11.7 Residency preference

(a) Municipalities may provide an occupancy preference for up to 50 percent of the low and moderate income units created in each inclusionary development. At initial occupancy and reoccupancy, income eligible households that reside or work in the municipality may be given the first opportunity to purchase or rent low and moderate income units up to this 50 percent limitation. These applicants shall be selected at random from a pool of certified applicants that reside or work in the municipality.

(b) Municipalities that choose to provide the residency preferences outlined in (a) above shall create a separate pool of non-resident certified applicants from the housing region that shall be selected at random for at least 50 percent of the low and moderate income units created in the municipality. Resident applicants who were not selected in the first pool may be placed in this regional pool.

(c) Urban aid municipalities shall be exempt from the residency preference limitations outlined in N.J.A.C. 5:93-11.7(a) and (b). Urban aid municipalities shall affirmatively market, but may provide an occupancy preference for all low and moderate income units created in the municipality.]

5:92-11.1 The affirmative marketing plan; definition and contents

(a) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by a developer or sponsor of affordable housing. It is a continuing program and covers the period of deed restriction.

(b) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;

2. The number of units, including the number of sales and rental units;

3. The price of sales and/or rental units;

4. The name of the rental manager and/or sales agent;

5. A description of outreach efforts to groups that are not readily reached by commercial media efforts (See N.J.A.C. 5:92-11.3 for advertising program details); and

6. A description of the random selection method that will be used to select occupants of low and moderate income housing.

(c) The affirmative marketing plan shall be a part of the fair share plan and shall be referenced by ordinance.

5:92-11.2 Training and general responsibilities

(a) The municipality shall assure the affirmative marketing of low and moderate income units. Municipalities shall designate a municipal authority to be responsible for implementing the affirmative marketing plan. A representative of the municipal authority shall attend an affirmative marketing training program approved by the Council. The municipality may contract with other agencies to administer the affirmative marketing program and the actual sales and rentals of the units. Where a municipality contracts with another agency to administer the affirmative marketing program, the municipality shall appoint a housing officer that shall act as a liaison to the contracting agency. In addition, where the contracting agency is not responsible for the entire affirmative marketing program, the municipality shall outline who or what municipal agency is responsible for the remaining portion of the affirmative marketing program.

(b) In implementing an affirmative marketing program, a municipality may delegate specific tasks to a developer of an inclusionary development provided that all applicant and sales records of low and moderate income units are returned to the municipality for reporting purposes and to aid with future resales.

(c) In implementing the affirmative marketing plan, municipalities shall be responsible for providing counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements, and landlord/tenant law.

5:92-11.3 Marketing program

(a) The advertising program shall be designed to reach all segments of the eligible population within the housing region.

(b) The plan shall describe the media to be used in advertising and publicizing the availability of housing. In developing the plan, the municipality shall consider the use of language translations. The plan shall include the following:

1. The names of specific newspapers with circulation throughout the housing region;

2. The names of specific radio and television stations broadcasting throughout the housing region;

3. The names of other publications circulated within the housing region that are likely to be read by low and moderate income households, such as neighborhood oriented weekly newspapers, religious publications and organizational newsletters;

4. The names of employers throughout the housing region that will be contacted to post advertisements and distribute flyers regarding available low and moderate income housing;

5. The names of specific community and regional organizations that will aid in soliciting low and moderate income applicants. Such organizations may include non-profit, religious, governmental, fraternal, civic, and other organizations.

(c) The marketing process for available low and moderate income units shall begin at least four months prior to expected occupancy. In implementing the marketing program, there shall be at least one paid advertisement in a newspaper of general circulation within the housing region during the first week of the marketing program. Such advertisement shall include at least the following:

1. The location of the units;

2. Directions to the housing units;

3. A range of prices for the housing units;

4. The size, as measured in bedrooms, of the housing units;

5. The maximum income permitted to qualify for the housing units;

6. The location of applications for the housing units; and

7. The business hours when interested households may obtain an application for a housing unit.

(d) Applications for low and moderate income housing shall be available in several convenient locations, including, at a minimum, the municipal administrative building(s), the municipal library and at the developer's sales office. Applications shall be mailed to prospective applicants upon request.

(e) If the cost of advertising low and moderate income units are to be a developer's responsibility, the requirement shall be a condition of the municipal planning board's approval.

5:92-11.4 Marketing for initial sales and/or rent up; composition of marketing pool

(a) Households that apply for low and moderate income housing shall be screened for preliminary income eligibility by comparing their total income to the low and moderate income limits adopted by the Council. Applicants shall be notified as to their eligibility status.

(b) Having screened applicants for preliminary income eligibility, the municipal authority may analyze the income and household sizes of applicants to determine which applicants have the assets and/or income necessary to purchase or rent each available low or moderate income unit.

(c) The municipal authority shall interview each applicant and utilize the procedures outlined in N.J.A.C. 5:93-9.1 to: verify the applicant's income and household size; determine the applicant's asset availability; and review the applicant's credit history. Applicants shall be required to submit income vertification for each household member 18 years or older. This process shall be utilized in establishing the final certified applicant group.

(d) The process described in (a) through (c) above may begin no sooner than one month after the advertising program outlined in N.J.A.C. 5:93-11.3 begins. Households shall be selected to proceed through the process described in (a) through (c) above through a method of random selection. Households shall be certified for low and moderate income units using the procedures outlined in N.J.A.C. 5:93-9.1. The process described in (a) through (c) shall be continued until all the low and moderate income units are occupied.

5:92-11.5 Continuing marketing activities

(a) The types of activities to be undertaken after the completion of initial occupancy of sales and rental units in order to fill vacancies resulting from normal turnover shall include:

1. Insuring a sufficient supply of income eligible applicants by continuing to implement the marketing plan throughout the housing region, as outlined in N.J.A.C. 5:93-11.3. At a minimum, the municipality shall maintain a current pool of at least five income eligible applicants for each low and moderate income unit.

2. Contacting each income eligible applicant annually to request updated information regarding income and family size.

(b) As units become available, the municipal authority shall select eligible applicants for the units, as described in N.J.A.C. 5:92-11.4(b) through (d) until the units are occupied by low and moderate income households.

5:92-11.6 Monitoring and reporting requirements

(a) Municipalities shall collect information on each applicant for low and moderate income housing on forms approved by the Council.

(b) Municipalities shall evaluate the results of their affirmative marketing activities and file a report with the Council by August 30 of each year. Such report shall include:

1. Monitoring forms approved by the Council;

2. An evaluation of the income and demographic characteristics of each applicant of low and moderate income housing, as well as the occupants of the units; and

3. An evaluation of any necessary adjustments in the affirmative marketing program as a result of the evaluation in (a) above.

(b) The Council shall review and assess the effectiveness of the municipal affirmative marketing program. If it is deemed that the affirmative marketing program is not effective, the municipality shall be required to amend the program.

5:92-11.7 Residency preference

(a) Municipalities may provide an occupancy preference for low and moderate income units created within the municipality that responds to the municipal rehabilitation component.

(b) Municipalities may provide an occupancy preference to low and moderate income households that reside or work in the housing region. Such a preference may apply to all low and moderate income units created within the municipality.

SUBCHAPTER 12. MONITORING

5:93-12.1 Completion of monitoring forms

(a) A municipality that has received substantive certification shall complete monitoring forms adopted by the Council and submit them to the Council no later than August 30 of each year. Failure to submit monitoring forms in a timely manner may result in a Council action, including:

1. The revocation of substantive certification;

2. The revocation of the certification required to collect development fees; and/or

3. Such other action as the Council may determine necessary.

SUBCHAPTER 13. SITE SPECIFIC RELIEF AND THE STATE DEVELOPMENT AND REDEVELOPMENT PLAN (SDRP)

5:93-13.1 Purpose and scope

(a) The Fair Housing Act allows municipalities two years following the filing of a housing element to petition for substantive certification. Municipalities that file housing elements with the Council prior to an exclusionary lawsuit and petition or are sued within two years of such filing shall not, except in extraordinary situations (see N.J.A.C. 5:91-4.5) be subject to the Council granting site specific relief to an objector of the municipal housing element. Municipalities that do not petition or are not sued within two years of filing a

housing element may be subject to the Council granting site specific relief to one or more objectors. The process of granting such relief is outlined in N.J.A.C. 5:91[-1 et seq].

(b) The Fair Housing Act at N.J.S.A. 52:27D-307 directs the Council to "give appropriate weight" in carrying out its duties to the implementation of the SDRP. It is the purpose of this subchapter to outline the way in which the goals and policies of the SDRP will be considered by the Council in awarding site specific relief to an objector to a municipal housing element. This process relies upon the SDRP's definitions of "Planning Areas" and "Centers." The principles outlined in the subchapter are illustrated in Appendix G.

5:93-13.2 Site-specific relief in Planning Areas 1 and 2

When considering granting site-specific relief to an objector in Planning Area 1 or 2, the Council shall grant such relief if the Council determines that the objector's site is available, approvable, developable and suitable.

5:93-13.3 Site-specific relief in Planning Area 3

(a) When considering granting site-specific relief to an objector in Planning Area 3, the Council shall determine if the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component.

1. If the objector's site is located within a center, the Council shall presumptively grant relief if the site is available, approvable, developable and suitable.

2. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component and the objector's site is not located in a center, the Council shall deny relief to the objector.

3. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is not adequate to address the municipal inclusionary component:

i. The Council shall grant relief to sites that are suitable if it determines the site lies within a center or Planning Area 1 and/or 2; has access to infrastructure; or that infrastructure can be easily extended from Planning Area 2;

ii. Where the objector's site does not lie within a center or Planning Area 1 and/or 2, does not have access to infrastructure or where infrastructure cannot be easily extended from Planning Area 2, the Council shall render a decision on granting relief after consideration of:

(1) A report from the Office of State Planning that contains recommendations pertaining to the appropriateness of the area surrounding the objector's site for center designation; and

(2) The presence of other suitable sites serviced by infrastructure or to which infrastructure can easily be extended from Planning Area 2.

5:93-13.4 Site-specific relief in Planning Areas 4 and 5

(a) When considering granting site-specific relief to an objector in Planning Areas 4 and 5, the Council shall determine if the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component.

1. If the objector's site is located within a center, the Council shall presumptively grant relief if the site is available, approvable, developable and suitable.

2. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component, and the objector's site is not located in a center, the Council shall deny relief to the objector.

3. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is not adequate to address the municipal inclusionary component, the Council shall render a decision on granting relief after consideration of a report from the Office of State Planning that contains recommendations pertaining to the appropriateness of the area surrounding the objector's site for center designation.

SUBCHAPTER 14. ONE THOUSAND UNIT LIMITATION

5:93-14.1 General

No municipality shall be required to address a fair share beyond 1,000 units within six years from the grant of substantive certification, unless it is demonstrated, following an objection and an evidentiary hearing, based upon th fact and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within the six year period. The facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the six year period preceding the petition for substantive certification.

SUBCHAPTER 15. WAIVER PROVISIONS

5:93-15.1 Waiver

(a) Any party may request a waiver from a specific requirement of the Council's rules at N.J.A.C. 5:91, 5:92 and 5:93 at any time. Such a waiver may be requested as part of a municipal petition, by motion in conformance with N.J.A.C. 5:91-12, or in such other form as the Council may determine, consistent with its procedural rules at N.J.A.C. 5:91.

(b) The Council will grant waivers from specific provisions of its rules if it determines:

1. That such a waiver fosters the production of low and moderate income housing;

2. That such a waiver fosters the intent of, if not the letter of, its rules; or

3. Where the strict application of the rule would create an unnecessary hardship.

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APPENDIX A
METHODOLOGY

INTRODUCTION

The section that follows details the procedures required to calculate the municipal low- and moderate-income housing obligation in New Jersey. Included here are procedures to calculate affordable housing need as well as the changes in these procedures that are included in the second round of affordable housing numbers. These changes emerge as a result of: (1) housing data that is no longer available in the 1990 U.S. Census; (2) improvements in methodological approaches that have emerged during the first round of implementation; and (3) a desire to hone the methodology so that it better interprets the *Mount Laurel* affordable housing mandate.

The procedures reflect the work of three primary groups:

1. The consultants at Rutgers University, Center for Urban Policy Research (CUPR);

2. The Methodology Subcommittee of the New Jersey Council on Affordable Housing (COAH), including participating COAH staff; and

3. The Working Group of professionals experienced in low- and moderate-income housing who have met regularly and provided input at several critical steps.

The basic method of housing need determination has been continued despite its complexity because it is fair and impartial and because it embodies the most up-to-date and sophisticated procedures for housing need determination and allocation. It has been accepted by field practitioners, its procedures are understood and used by these individuals, and the method's results are both internally consistent and intuitively correct. The existing system's procedures have been challenged in numerous court cases and have prevailed in almost every instance due to their accuracy and thoroughness.

The revised 1987-1999 procedures have evolved over a year-long period in which every aspect of the methodology has been reviewed and either retained or reworked. The procedure, while accepted and understood, will continue to be reviewed for its currency and adequacy as the second round of numbers unfolds and is discussed.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (COAH)
AFFORDABLE HOUSING NEED NUMBERS—1987-1999

A.	Indigenous Need	42,739			
B.	Reallocated Present Need	17,542			
C.	Present Need		60,281		
D.	Prospective Need		42,127		
E.	Total Need			102,408	
F.	Prior-Cycle Prospective Need			38,202	
G.	Secondary Sources of Supply (–) and Demand (+)				
	1. *Demolitions*			8,037	
	2. *Filtering*			–20,185	
	3. *Conversions*			– 8,143	
	4. *Spontaneous Rehabilitation*			– [2,208] **2,116**	
H.	Pre-Credited Need				[118,111] **118,203**
I.	Reduction			–[27,841] **27,846**	
J.	Pre-1987 Credits			– [3,163] **3,166**	
[K.	Undeveloped Land Cap			– 3,068]	
[L.]**K.**	20-Percent Cap			– [725] **883**	
[M.]L.	**Calculated Need**				**[83,313]** **86,308**
[N.]**M.**	Calculated Need By Region				

Region	Indigenous Need	Reallocated Present and Prospective Need*	Total
Northeast	14,307	[4,086] **5,394**	[18,393] **19,701**
Northwest	11,050	– [434] **347**	[10,616] **10,703**
West Central	4,755	3,938	8,693
East Central	4,575	[16,162] **17,628**	[20,737] **22,203**
Southwest	4,332	[8,669] **8,683**	[13,001] **13,015**
South-Southwest	3,720	[8,153] **8,273**	[11,873] **11,993**
STATE TOTAL	**42,739**	**[40,574]** **43,569**	**[83,313]** **86,308**

*These numbers are net of reduction, [pre-1987] **prior-cycle** credits, and [undeveloped land and] **the** 20-percent cap[s].

PROCEDURES: DEVELOPING HOUSING REGIONS

Housing subregions related to journey-to-work have historically been constructed using travel times on various categories of roads during prime commuting periods. The first formal procedure for the accomplishment of this was published by the American Society of Planning Officials in 1951, following planner-economist, J.D. Carroll's work on journey-to-work analysis and its importance in planning. Points on roads outward from an *employment center* representing travel times would be connected to each other in the same fashion as if one were to weave together points in the spokes of a wheel. These zones of potential residence, emanating outward from the center of an employment zone, would take on an amoeba-like form as various gradations of roadways (collectors, arterials, freeways, and so on) would allow different distances to be traveled for the same travel time. The "isotime zones," as they were called, represented an estimate of all places accessible from the employment center within the time specified on the outer edge of the zone. These were termed local markets or submarkets.[1]

While this procedure may have gained acceptance for the delineation of a submarket, clearly for data presentation purposes a more recognizable and permanent market area has had to be constructed. The market area, while keyed to journey-to-work, had to take into account the availability of employment and U.S. Census data to isolate centers of employment. Historically, this was available only on a county basis in the form of *County Business Patterns,* an annual tabulation of jobs by category in the United States published by the U.S. Department of Commerce. Recognizing the expanding scope of the market, *FHA Techniques of Housing Market Analysis* lists the prerequisites for housing market delineation:

> The location of actual and prospective employment centers and the availability of transportation facilities of all types underlie the selection of general locational alternatives as places of residence for the working population.
>
> The housing market area usually extends beyond city limits regardless of the magnitude of the market under consideration. In the larger markets, the market area may extend into several adjoining counties through the outward growth of the primary metropolitan area.
>
> The actual delineation of a housing market area and submarket areas is determined primarily by Census area definitions.[2]

Housing Regions in New Jersey

Information on journey-to-work for New Jersey counties may be obtained from the 1990 Census to modify the 1980 Public Use Microdata Sample (PUMS) for New Jersey—a five-percent sample of all New Jersey households.[3] Information can be crafted to scrutinize times traveled one-way to work (in minutes) for all those employed in households as of April 1990. Also a part of the data set are the origin and destination of the worktrip. The information to be used in the initial grouping procedure concerns worktrip origin and destination. This information is used only at the county level, i.e., for each employed member of the household, worktrip county of origin and county of destination. All modes of travel are included: automobile, bus, rail, and miscellaneous (walking, biking, and so on).

The program chosen to group counties is the CLUSTER procedure for the Statistical Analysis System (SAS) package. CLUSTER is a grouping procedure designed to help identify groups of observations that have similar attributes. It partitions the data into a smaller number of groups such that data units belonging to one group are "similar" in a certain sense, while data units belonging to different groups are "dissimilar" in the same sense. The procedure is dependent upon "distance" (value separation) between variables. It is unique in that it assumes no conceptual associations or distance values *a priori*. CLUSTER computes its own distance matrix and standardizes the matrix across the data set.[4]

Certain controls are placed on the grouping mechanism. Counties that could be grouped based on similar commuting ties have to be contiguous. In addition, no less than two nor more than four counties are allowed to cluster as part of any group. These are the requirements of the *Fair Housing Act*. The lower threshold is to ensure that no single county appeared "left over"; the upper threshold was chosen to avoid large commuting distances within any one identified region.[5]

After including certain judgmental decisions regarding the size of a region and its capacity to handle need, as well as the necessary inclusion in each region of at least one central city, the journey-to-work sorting of counties takes the following form:

Group 1	Group 2	Group 3	Group 4	Group 5	Group 6
Bergen	Essex	Middlesex	Monmouth	Camden	Atlantic
Passaic	Morris	Somerset	Ocean	Gloucester	Cape May
Hudson	Union	Hunterdon	Mercer	Burlington	Cumberland
Sussex	Warren				Salem

(SEE MAP ON FOLLOWING PAGE)

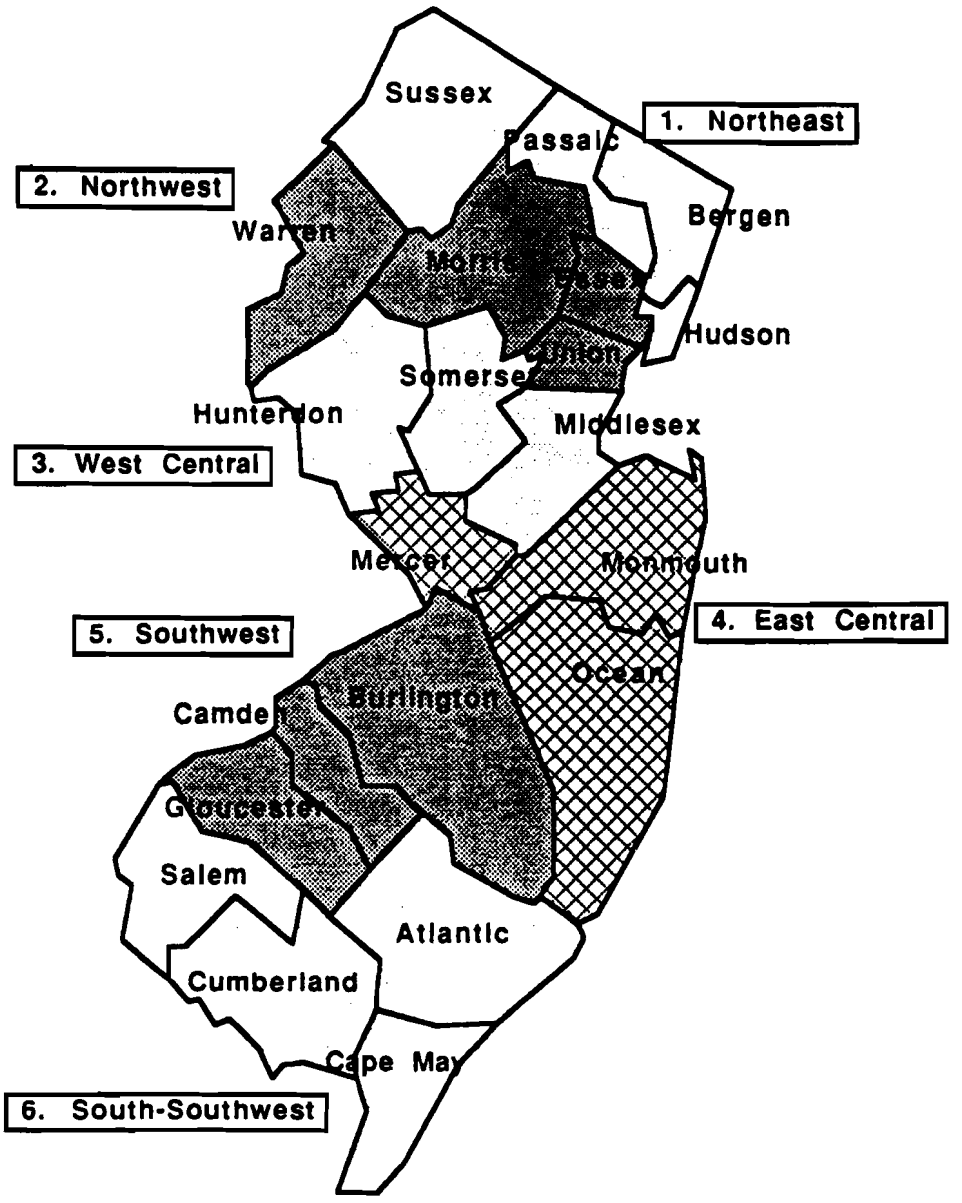
The above distribution of counties reflects vacant land concentrations and growing commuting ties between Sussex and the remaining counties in Group 1, Warren and the remaining counties in Group 2, and Mercer and the remaining counties in Group 4. Within each grouping, there are sufficient vacant land and established or growing commuting ties; also, each region has at least one established central city. This enables affordable housing need to be absorbed by regions and regional contribution agreements (RCAs) to be effected within regions.

In most cases, the commuting ties between counties of these groups are stronger among each other than between a single county of the group and another group as a whole. There may be selected instances where a single county of one group is related more intensely to a single adjacent county of another group than to members of its own group; yet overall, there are usually weaker commuting ties with the other group as a whole. The above listings provide the necessary sort of constituent New Jersey counties on both commuting ties and land sufficiency to implement affordable housing goals.

INCOME QUALIFICATION OF THE LOW- AND MODERATE-INCOME POPULATION

Data from the 1990 U.S. Census modifying the 1980 New Jersey Public Use Microdata Sample (PUMS) is again used to qualify a household according to HUD Section 8[6] family-income requirements. The PUMS tapes contain records for a sample of housing units with information on the characteristics of each unit as well as on the people who reside in these units. Information from this file makes it possible initially to eliminate all individuals living in institutions, group quarters, or as boarders/lodgers from potential low- and moderate-income housing demand. This removes from direct count those people who comprise prison/sanitarium, college, nursing home, boarders/boarding homes, and other related populations.[7] Sub-households and sub-families are not separately distinguished as this would double-count existing housing deterioration, and no information is available on how or if sub-families/sub-households would choose to separate in the future. Thus, one household per unit is counted. Applications for low- and moderate-income housing built under the first round of *Fair Housing Act* compliance (1987-1993) indicate unit sharing—parts of families and unrelated individuals seeking to reside together. This partially confirms continued, shared, or unrelated household use of new low- and moderate-income housing units.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
HOUSING REGIONS (1993–1999)



GROUP 1 *NORTHEAST*	GROUP 2 *NORTHWEST*	GROUP 3 *WEST CENTRAL*	GROUP 4 *EAST CENTRAL*	GROUP 5 *SOUTHWEST*	GROUP 6 *SOUTH-SOUTHWEST*
BERGEN	ESSEX	MIDDLESEX	MONMOUTH	CAMDEN	ATLANTIC
PASSAIC	MORRIS	SOMERSET	OCEAN	GLOUCESTER	CAPE MAY
HUDSON	UNION	HUNTERDON	MERCER	BURLINGTON	CUMBERLAND
SUSSEX	WARREN				SALEM

Once these selection procedures are undertaken, the PUMS may be employed to array all households by size and income status. HUD median family income for a region is determined, and 80 percent and 50 percent are assigned to household sizes of four for the upper limits of moderate and low incomes, respectively. Each household size of more or less than four is allowed a positive or negative adjustment of the 80 percent or 50 percent of median figure to qualify for moderate- or low-income designation.[8] (This is based on the philosophy that if you have more children/dependents or household members you can earn more and still qualify for moderate/low income; in reverse fashion, if you have fewer dependents or members, it is more difficult to qualify by establishing a lower income for qualification.)

The procedure spelled out above separates low- and moderate-income households, adjusted for household size, from all other households in the region. This relative selection of a population qualifying for housing need forms the basis of all need estimates. In subsequent steps, the housing units occupied by these households are initially checked for deterioration to determine Present Need. The number of income-defined households is then projected into the future to determine Prospective Need. The detailing of these steps is explained below.

PRESENT NEED

Indigenous Need

Indigenous Need is a component of Present Need which is the total deficient housing signaled by surrogates unique to each community. Where communities' deficient housing as a percentage of all occupied housing units exceeds the regional average, their excess need is sent to a housing pool for subsequent redistribution in the region. Housing from the pool is reallocated to all communities in the region with the exception of designated Urban Aid Cities. The Indigenous Need for communities below the regional average of housing deficiency is their tabulated deficient units. For those above the regional average, their Indigenous Need is their deficient housing capped by the regional average percent deterioration.

Recognizing the evolution of the concept of deteriorated housing from 1960 and earlier where enumerators attempted to physically identify bad housing from field survey, to the current period where deficient housing is isolated through housing-quality surrogates, information provided by the 1990 Census is used to signal housing deficiency via surrogates.[9]

Surrogates do not themselves confirm that a unit is deficient. They indicate that if a unit has these characteristics, it most likely would be independently found via field survey as deficient. Surrogates are developed by listing the characteristics of units found as deficient and viewing which characteristics consistently are associated with field-confirmed deficiency. Six housing quality surrogates are used with structure age to signal housing deficiency. The bulk of these indices represent the culmination of numerous empirical studies on factors indicative of inferior versus superior housing quality; the remainder are clear surrogates of inferior housing.[10] *They represent the full range of information available on housing quality from the 1990 Census.* No index is slighted, and all are simultaneously employed. They include:

(a) *Year Structure Built.* A distinction is made between units built before 1940 and from 1940 to 1990. This pre-World War II cutoff is the classic differentation point of new versus old housing in the literature.[11]

(1) *Persons per Room.* 1.01 or more persons per room is an index of overcrowding.

(2) *Plumbing Facilities.* Inadequate plumbing is indicated by either a lack of exclusive use of plumbing or incomplete plumbing facilities.

(3) *Kitchen Facilities.* Inadequate kitchen facilities are indicated by shared use of a kitchen or the non-presence of a sink with piped water, a stove, or a refrigerator.

(4) *Heating Fuel.* Inadequate heating is use of coal, coke, wood or no fuel for heating.

(5) *Sewer.* Inadequate sewer services are indicated by a lack of public[12] sewer, septic tank, or cesspool.

(6) *Water.* Inadequate water supply is indicated by a lack of either city water, drilled well, or dug well.

A unit has to have at least two characteristics to be isolated as deficient once it qualifies as housing a low- or moderate-income family. Since age is so highly correlated with structure deterioration and loss, if in 1990 the unit was more than fifty years old and had at least one other negative housing characteristic, it is selected as deficient. If, on the other hand, it was a newer unit in 1990, in the absence of the unit-age qualification, two or more negative structural characteristics signal housing deficiency.

Multiple deficient characteristics in a single housing unit is an important concept. Using multiple indicators in a high probability of isolating bad housing, yet a very low probability of classifying good housing as bad.

Three variables originally used to determine inadequate housing have been replaced by three additional variables. Lack of central heat, four or more stories with no elevator, and indirect access (passing through another unit to get to one's own) are no longer reported by the U.S. Census.

Three other variables related to both structural conditions and inferior or superior housing condition replaced the indicators that are no longer reported. These are:

(1) The use of nonstandard heating fuels or no fuel, indicating in most cases temporary or marginal housing;

(2) Lack of public sewer, septic tank, or cesspool, indicating unsanitary sewage disposal; and

(3) Lack of city water, a drilled well, or a dug well, also indicating a less-than-adequate water supply.

It should be realized that any of these characteristics need not signal deficiency on their own. The unit must be occupied by a poor household; be more than 50 years old and contain a single deficiency; or be similarly occupied, be 50 years old or less, but contain an additional detrimental condition, to signal deficiency. Even then, the unit may not be actually deficient, but there is a high probability that it will be subsequently lost from the stock.

This procedure for establishing housing deficiency: (1) is drawn from the literature of the field; (2) encompasses a broad array of physical insufficiency including such items as incomplete or inadequate kitchen and plumbing, crowding, inadequate heating fuels, and insufficient sewer and water resources; (3) ensures against erroneous inclusion of good units; and (4) provides a very high probability that the housing identified, at least in relative terms, is clearly less than adequate.

Due to confidentiality protection and data availability, the procedure to specify Indigenous Need can be estimated only to each of 52 subregions of the state.[13] It is taken down to the community level by six housing quality variables available at both the subregional level and the community level. These are:[14]

(1) *Plumbing Facilities*—nonexclusive use of complete plumbing
(2) *Persons per Room*—space inadequacy, i.e., 1.01 or more persons per room
(3) *Age of Housing*—housing built in 1939 or earlier
(4) *Water or Sewer Problem*—deficiency in one or the other, whichever is greater
(5) *No Telephone*—absence of telephone in unit
(6) *Nonstandard Heating Fuel*—use of coal, coke, or wood for heating, or no fuel

The pool of low- and moderate-income families living in deficient housing once calculated at the subregional level is distributed to individual communities on the basis of their share of six indices of deficient housing at the local level to the total deficient at the regional level, also measured by these indices. At the local level, these latter variables cannot be cross-tabulated with income in the same way as information at the subregional level can. Thus, the best available information and the most rigorous procedures are used to isolate the poor living in deficient housing at the subregional level, and this is taken to the municipal level through other housing quality variables less complete in terms of isolating the income of those who live in these units, but found comparably at these two geographic levels.[15]

In order to address present need with some lead time appropriate for planning and implementation, present need is actually projected to be estimated as if July 1, 1993 were the 1990 period and the sample of housing deficiencies was taking place at this time. This is done by reproducing the incidence rates of deterioration associated with certain age groups and household types in 1990, and projecting these households and their associated housing conditions to the 1993 period. The new array and number of households in 1993 carry with them the deterioration noted in 1990.

As noted earlier, for communities with severe housing deficiencies, their deficiencies are capped at the regional average percentage of deficiencies as a proportion of total occupied housing. The excess over this regional percentage is distributed to all communities in the region. This is covered below.

Municipal surveys to determine Indigenous Need may be presented to the Council as an alternative method to this procedure. (See Section 10—Fair Housing act.) The Council will provide guidance as to the appropriate form and scale of such surveys.

INDIGENOUS NEED BY REGION†

NORTHEAST	14,307
NORTHWEST	11,050
WEST CENTRAL	4,755
EAST CENTRAL	4,575
SOUTHWEST	4,332
SOUTH-SOUTHWEST	3,720
STATE TOTAL	42,739

†See earlier figure for mapped display of regions

Reallocated Present Need

Reallocated Present Need is the share of excess deterioration in a region transferred to all communities of the region with the exception of selected Urban Aid Cities. (See Attachment.) Urban Aid Cities, almost all of which are densely populated and have a higher-than average proportion of low- and moderate-income families living in deteriorated housing, are not expected to have this regional burden reinforced by future low- and moderate-income housing requirements.[16] Therefore, when the Reallocated Present Need pool for the region is computed from an average deficiency percentage for the entire region, Urban Aid Cities are not expected to share in that pool. Instead, *the excess* of deficient units over the regional percentage of deficiencies *is redistributed* to the region to no more than the level that would bring them to the regional average. The exact procedure for redistribution is covered under Distribution of Low- and Moderate-Income Housing Need.

REALLOCATED PRESENT NEED BY REGION

NORTHEAST	7,002
NORTHWEST	5,306
WEST CENTRAL	1,477
EAST CENTRAL	1,329
SOUTHWEST	1,751
SOUTH-SOUTHWEST	676
STATE TOTAL	17,542

Present Need

Present Need is the sum of Indigenous and Reallocated Present Need in a municipality. It represents individual municipal housing responsibility reflective of its own housing inadequacy/deficiency (except where it is regionally excessive) and regional responsibilities in terms of its share of the pool of housing replacement/repair that must be undertaken by primary suburban communities due to excess deterioration found in more urban communities.

PRESENT NEED BY REGION

NORTHEAST	21,309
NORTHWEST	16,356
WEST CENTRAL	6,232
EAST CENTRAL	5,904
SOUTHWEST	6,083
SOUTH-SOUTHWEST	4,396
STATE TOTAL	60,281

DISTRIBUTION OF LOW- AND MODERATE-INCOME HOUSING NEED

Low- and moderate-income housing need is distributed to each community using three of the four economic and land-use factors listed below. These factors in the first two cases represent measures of *responsibility,* i.e., the labor force either existing in the community or drawn to the municipality in the future—in both cases needing housing. In the second two cases, they represent measures of *capacity,* i.e., the physical (land) and fiscal (income) capacity to absorb and provide for such housing.[17] The last three factors are used to distribute excess *Present Need* (Reallocated Present Need); the first, third, and fourth factors are used to distribute Prospective Need. All factors operate individually, are equally weighted, and involve all municipalities in the region except Urban Aid municipalities. All allocations on the below variables reflect the fraction representing the community's share of the regional total.

1. *Change in equalized nonresidential valuation from 1980 to 1990.* This is reported in the *Annual Report of the Division of Local Government Services* 1980 (43rd Annual Report) and 1990 (53rd Annual Report). Change in equalized nonresidential property valuation is used in place of employment change for the reasons indicated below.

2. *Equalized nonresidential valuation (commercial and industrial).* This is by municipality and is also reported in the *Annual Report of the Division of Local Government Services* 1990 (53rd Annual Report).

Nonresidential property valuation is used as a replacement for actual employment in a municipality to avoid the zip code problem associated with the Covered Employment data. This refers to situations where the zip code address of a firm does not reflect actual location of its employment. This is true when an employer's mailing address is different from its actual location. It is assumed that where a firm pays its taxes is a good indicator of the location of the facility and thus its employment. Real property valuation (absent business personal property), through regression analysis, has been found to be an excellent surrogate for the intensity of use or number of employees in the structure. Equalized valuation through the application of an assessment-to-sales or equalization ratio is used to standardize for the differing levels of assessment relative to true or market values that exist in an individual community.

3. *Undeveloped Land*—Undeveloped land in the community that can accommodate development. All undeveloped land in the community is estimated through use of land satellite imagery (LANDSAT). The undeveloped land inventory is compiled via LANDSAT information prepared for the Council on Affordable Housing by the Department of Environmental Resources of Cook College at Rutgers University. It reflects photoimagery as of March 1991.

Undeveloped land is further refined by the State Development and Redevelopment Plan's Planning Areas. To be sensitive to the State Planning Commission's goals for each Planning Area, undeveloped land is weighted as follows:

PLANNING AREA	WEIGHTING	RESULT
1	1	Full count of undeveloped acres
2	1	Full count of undeveloped acres
3	0.5	Half count of undeveloped acres
4	0.0	Zero count of undeveloped acres
5	0.0	Zero count of undeveloped acres

Undeveloped land in the Pinelands growth areas (Regional Growth Areas and Pinelands Towns) are treated equivalently to Planning Area 3; all other Pinelands areas are treated equivalent to Planning Area 4 or Planning Area 5. CAFRA has regular State Plan territorial designations and is treated accordingly. Hackensack Meadowlands undeveloped acreage is treated equivalent to Planning Areas 1 and 2 within growth areas, and equivalent to Planning Areas 4 and 5 in protected or open space areas.

Vacant land by municipality has been checked with an independent source of information, the New Jersey Department of Treasury.[18] This second source of information found LANDSAT to be an excellent and comprehensive source of land-use information. The LANDSAT data file, however, is the source of undeveloped land for every municipality in New Jersey. Its strengths and weaknesses apply to most municipalities alike and, accordingly, make it a very comprehensive and important source of undeveloped land information especially good for *relative* comparisons.

4. *Aggregate Income Difference*—This is an average of the following two measures:

a. Municipal share of the regional sum of the differences between median 1993 municipal household income and an income floor ($100 below the lowest average household income in the region)[19] [taken once], and

b. Municipal share of the regional sum of the differences between median 1993 municipal household incomes and an income floor ($100 below the lowest 1993 median household income in the region) weighted by the number of the households in the municipality [taken twice].

This procedure replaces the unaltered share of aggregate income that tended to give large middle-class municipalities an overabundance of low- and moderate-income housing need because they had a lot of households with reasonably healthy incomes. The new procedure employs not income but income differences (household) which exist in municipalities from the municipality with the lowest average household income in the state.

Since this new income measure is also skewed in certain municipalities, both the straight difference from the median of the lowest municipality to the median of each other municipality, as well as this difference weighted by the number of households in the municipality, are used. The latter factor taken twice tends to dampen the extremes of the straight-difference income allocation index.

A variety of procedures were tried (including no income variable) to make the income factor both more equitable and more responsive to

locations of existing income capacity. It is believed that this procedure achieves both equity and more incisive income targeting.

Reallocated Present Need and Prospective Need shall be distributed to municipalities unless the municipality received state aid pursuant to P.L. 1978, C.14 (C.52:27D-178 et seq.) and exhibits at least one of the following (see Attachment for a listing of selected Urban Aid Cities:[20]

1. Level of existing low- and moderate-income housing deficiency, according to the six housing deficiency criteria, that exceeds average regional low- and moderate-income housing deficiency for the region in which the Urban Aid municipality is located;

2. Population density of greater than 10,000 persons per square mile, or 14.1 per acre;

3. Population density of 6,000 to 10,000 persons per square mile or 9.4 to 14.1 per acre *plus* less than 5 percent of vacant, non-farm, municipal land as measured by the average of the percentage of vacant land valuation and vacant land parcels of all local land valuation/parcels in the *53rd Annual Report of the Division of Local Government Services 1990—Statements of Financial Condition of Counties and Municipalities* (Trenton, NJ: New Jersey Department of Community Affairs, 1991).

PROSPECTIVE NEED

Population Projections

Population projections are derived from two different models from the New Jersey Department of Labor. Both of these models project population by county (21 counties) and age cohort (13 declensions) for 30 years into the future. These population models are termed the Historic Migration Model and the Economic Demographic Model.[21] The major differences between these models are the overall levels of projected growth and the assumptions used for migration. Relatively, both the Economic Demographic Model and the Historic Migration Model project about the same level of statewide population. Their main difference is how this population is distributed to counties. In the Historic Migration Model, future migration is related to past employment growth; in the Economic Demographic Model, future migration is related to projected employment growth.

The Historic Migration Model allocates growth in a very purposeful way to places of historic growth. Counties like Bergen, Middlesex, Somerset, Ocean, and Gloucester tend to be overprojected. The Economic Demographic Model projects growth more evenly to the state's various locations, including an adequate share to the central-city counties.

The procedure employed in this analysis uses the output of both models and averages their results. Thus, the locational differences of their population distributions are dampened by the averaging procedure. Retrospectively, averaging has given the most accurate results over time. This is intuitively probable in that locations of growth depart from history in the direction of future projections but never seem quite to attain these directions. There is tug of war between historical locations of growth and new locations of growth: Neither appears to be dominant. The Historic Migration Model, by definition, represents history. The Economic Demographic Model captures the future. Their average is the reality of not achieving either, or in another view, partially achieving each. The averaged projection dampens the distribution of this growth by allocating shares to central-city counties as well as suburban and rural counties. Each of the individual models allocates growth too regularly in one direction. The averaged projection seems to be much more on target in terms of the distributional realities of growth.

The CUPR Econometric Model is used to control the averaged population projections at the Labor Area level. The national to regional, to state, to Labor Area population step-down of a macroeconomic model sets the bounds for Labor Area totals, which thus affect county population totals. National population growth is stepped down to the state of New Jersey and then to its Labor Areas. Each of these stepdowns is a zero-sum game. If one entity increases, another must decrease to meet the result of the projection. Within Labor Areas, the New Jersey Department of Labor model projections are adjusted and then taken to the county level. Projections at the county level are undertaken using eight different age cohorts. The projections employed here are purposefully chosen to be similar to those used for the New Jersey Department of Community Affairs Comprehensive Housing Affordability Strategy (CHAS), the Impact Assessment of the New Jersey State Development and Redevelopment Plan, and the most recent transportation modeling efforts of the New Jersey Department of Transportation.

Household Projections

Household projections follow from population projections by age cohort. Household projections are accomplished by applying a headship rate (the propensity to form a household) to population growth in an age grouping. Headship rates increase with age. The growth in headship rate, however, is greatest in the younger age groups. Household headship rates vary indirectly with household size. As household size decreases, headship rates increase. This relates directly to marriages and divorces, causing households to shrink in size by forming two smaller households from a single larger household. Household growth, like population, is projected by county. Headship rates are determined by age group and county in New Jersey in 1990 and extended into the future at one-half the rate of change observed from 1980 to 1990. The aggregate growth in low- and moderate-income households is summed at the county level and sent to a regional pool to be subsequently distributed to municipalities via allocation factors.

Prospective Need

Prospective Need is the share of the total projected households that will qualify for low- and moderate-income housing. Prospective low- and moderate-income housing need is derived by projecting the population by age cohort from 1993 to 1999 and converting this to households. This takes the following steps:

1. A 1993 base is established by bounding it at one end by the age cohort distributions of the 1990 U.S. Census for New Jersey. The other end is bounded by the distribution of the projected population for 1995 by age cohort under CUPR's use of the two averaged NJDOL projections for 1995. Three-fifths of the distance from 1990 to 1995 is used to establish the 1993 age cohort distribution.

2. A July 1, 1999 projection-year end is also arrayed by age distribution. This is done in the following way:

Population by age distribution for CUPR's Model projection to the year 2000 is modified, as explained herein. One-fifth of the population change from 1995 to 2000 is subtracted from year 2000 totals to obtain a new population projection by age cohort for 1999. The age cohorts are:

Less than 25 years
25-29 years
30-34 years
35-44 years
45-54 years
55-64 years
65-74 years
75 years and over

3. Both the population age cohorts for the base year (1993) and the projection-end year (1999) are multiplied by 1990 New Jersey county-specific headship rates by age cohort.[22] Two distributions of total households emerge: one for 1993 and another for 1999.

4. Total households for each period are converted to low- and moderate-income households by carrying forward the income characteristics of all households in 1990 to 1993 and 1999 by age cohort. Low- and moderate-income households are sorted by applying the Section 8 household size/income qualification criteria that were used in 1992 to a different number of households that exist in each cohort in 1993 and 1999. Thus, to the degree that age cohorts are differently composed and growing differently, the low- and moderate-income population will also change as it ages into the future.

5. Low- and moderate-income households for 1993 are subtracted from low- and moderate-income households in 1999 to obtain the change in low- and moderate-income households from 1993 to 1999. This is done for eight age cohorts specific to each of 21 counties.

6. As a change from the 1987-1993 procedure, the growth of households below age 65 is put into a statewide pool and allocated to regions of the state according to the proportional share of nonresidential ratable growth that took place in these regions from 1980 to 1990. Thus, growth in the working-age component of low- and moderate-income households was assigned to regions where jobs previously grew. On the other hand, growth in the elderly and presumably non-working population was retained in the original region where this growth took place. This procedure creates a demand to house low- and moderate-income families of working age in locations where jobs grew and a similar demand to house the elderly where their growth occurred naturally.

PROSPECTIVE NEED BY REGION

NORTHEAST	4,787
NORTHWEST	1,033
WEST CENTRAL	8,654
EAST CENTRAL	14,424
SOUTHWEST	8,993
SOUTH-SOUTHWEST	4,236
STATE TOTAL	42,127

TOTAL NEED

Total Need 1987-1999 is composed of Indigenous Need, Reallocated Present Need, and Prospective Need. It is the total municipal need number before demand increases for demolitions and demand reductions for secondary sources of supply are introduced. In a very few cases, negative Prospective Need in a community, reflective of reduced housing demand due to employment loss, lessens Present Need demand and, as such, reduces Total Need.

TOTAL NEED (PRESENT AND PROSPECTIVE) BY REGION

NORTHEAST	26,096
NORTHWEST	17,389
WEST CENTRAL	14,886
EAST CENTRAL	20,328
SOUTHWEST	15,076
SOUTH-SOUTHWEST	8,632
STATE TOTAL	102,408

PRIOR-CYCLE PROSPECTIVE NEED (1987-1993)

Affordable housing need of the prior cycle is composed of Indigenous Need, Reallocated Present Need, and Prospective Need. The 1990 U.S. Census provides the most current information on housing deficiency. Thus, Present Need, or deteriorated housing (as determined in 1993) is the actual need as it is viewed today; no need is carried over. This applies to Indigenous Need and Reallocated Present Need of the prior cycle.

In the case of Prospective Need, where the need has been projected for the forthcoming period, if it is not met people are forced into more crowded housing or are obliged to pay more than 28 percent of their income for housing. Housing need is falsely reduced, and simultaneously the affordable housing situation worsens if no new housing is built. A new calculation period could ignore the inactivity that characterized the prior cycle. This should not be allowed to happen. The current affordable housing method accounts for this by bringing forward Prior-cycle Prospective Need after it has been recalculated to reflect the most current projection information available, and after it has been netted down to true new construction need by altered secondary sources of supply, also reflecting the most current information available. The most current projection for that period allows 1990 U.S. Census figures to dampen the prior projection by 48 percent by providing a mid-period (1990) correction to prior 1987-1993 projections. Recalculated (1987-1993) demolitions are added to Prior-cycle Prospective Need before the sum is netted down by reduced secondary sources of housing supply. Secondary sources of supply, limiting prior Prospective Need, are scaled down accordingly by the ratio of lower new-period (1993-1999) to higher old-period (1987-1993) secondary source incidence rates.

PRIOR-CYCLE PROSPECTIVE NEED BY REGION

NORTHEAST	3,259
NORTHWEST	5,040
WEST CENTRAL	5,802
EAST CENTRAL	13,529
SOUTHWEST	5,865
SOUTH-SOUTHWEST	4,706
STATE TOTAL	38,202

SECONDARY SOURCES OF HOUSING SUPPLY AND DEMAND

Secondary sources of housing supply and demand reflect the adjustments of the housing market to the uneveness and spontaneity of primary supply and demand. As housing ages or as it falls prey to accident, natural disasters, or publicly/privately initiated changes in land use, it may become obsolete and be removed from the stock. The term for this selective pruning is *demolition.* Demolitions occur regularly and affect various markets differently. In strong markets, demolitions are low; in weaker markets, they are proportionally higher. In both situations, demolitions add to future housing demand.

As housing is added by private developers to the upper and middle price categories of the stock, a large share of consumers who already occupy housing within the market are attracted to this housing. When they occupy the new housing through purchase or rental agreements, they release sound housing within the local market that is inferior to the new housing that has been built. This causes the housing that they once occupied to be available to a lower round of consumers, often at a reduced price. The process is termed *filtering.* Filtering reduces future housing need as a greater proportion of formerly higher priced housing is now available at potentially lower prices. Filtering takes place in active housing markets, especially those receiving a significant influx of new housing.

In selected submarkets, a demand may exist for smaller units, and this need may not be responded to by normal market operations. The market adjusts to this need by creating additional smaller units from larger ones. This is termed *residential conversion* and most often occurs in housing stocks containing larger structures that can be adapted to smaller units yet not destroy or significantly alter the value of adjacent units in the process. The older, urban two- to four-family home is an ideal conversion unit. Four or six units may be created where only one-half this number may have existed in this type of structure previously. Often these units are termed illegal conversions, not because they are not safe, sound housing, but rather because the enlarged structure no longer conforms to the unit restrictions of the zoning ordinance.

Another characteristic of the housing market is for deficient units to be upgraded privately. This also lessens housing need as a deficient unit is replaced by a sound unit. This happens usually because a market exists for the renovated structure, usually at a higher occupancy cost than when the structure fell into disrepair. *Spontaneous rehabilitation,* as it is called, occurs in stronger (as measured by income), growing markets and affects only a very small proportion of the low- and moderate-income housing stock.

Procedures

In the earlier-discussed allocation and reallocation procedures, only non-Urban Aid municipalities participated. *In the reductions or increases to housing need due to secondary supply and demand, all muncipalities, including Urban Aid locations, participate.* This is true because all municipalities have some type of housing need, and reductions apply to housing need no matter how the need is generated. Thus, when demand reductions due to filtering are calculated, the reduction for a particular location is based on the share of *all* multifamily units in the region.

For Urban Aid Cities, the demand reductions are taken before these areas send excess need to the reallocation pool; for all other locations, demand reductions are taken after this point. This is to prevent other less-dense, less-deteriorated, inner-ring cities from receiving a large share of reallocated need without an equivalent chance to participate in secondary demand reductions due to specific characteristics of their housing stock.

Demolitions

Demolitions are a secondary source of housing demand in that demand is created by households requiring housing because units are lost from the stock. Housing units are lost due to fire, structure abandonment, road improvements, community renewal, land-use change, and other reasons.[23] It is estimated that units lost from the low- and moderate-income stock (both reported and unreported demolitions) are about on a par with those added to the stock due to conversion. For the *entire* housing stock, the ratio of demolitions to conversions may be even higher.[24] It is also true that the level of demolitions is falling in New Jersey. In 1980, total reported demolitions for New Jersey municipalities were 4,000-5,000 per year; in 1985 the total was above 3,000 annually; and by 1990, the total was just over 2,200.[25]

In order to estimate the scale of demolitions, reported demolitions for each municipality for the years 1988, 1989, and 1990 are averaged and multiplied by six to obtain a six-year demolition estimate by municipality. These are the three latest indicators of demolitions for communities.[26]

Demolitions are adjusted for each municipality to the share of all demolitions that affect the low- and moderate-income housing sector by 120 percent of the subregional share of low- and moderate-income housing. This percentage share of all demolitions that affects low- and

moderate-income families is capped at 95 percent. Total demolitions are thus tallied by individual community and the share affecting low- and moderate-income housing is estimated by a multiple of the subregional low- and moderate-income housing deficiency percentage. This latter factor recognizes that demolitions take place at a much higher rate in the low- and moderate-income housing sector than for all housing locally. Demolitions at a statewide level are essentially offset by conversions for low- and moderate-income households. This latter relationship is covered more fully in a subsequent section.

DEMOLITION HOUSING NEED BY REGION

NORTHEAST	1,986
NORTHWEST	1,976
WEST CENTRAL	343
EAST CENTRAL	1,369
SOUTHWEST	738
SOUTH-SOUTHWEST	1,625
STATE TOTAL	8,037

Filtering

Filtering is a downward adjustment of housing which recognizes that the housing requirements of lower-income groups can be served by supply additions to the higher-income sectors of the housing market.[27] During the course of normal market operations, middle- and upper-income households vacate existing housing for new, more desirable units, leaving their units vacant for households of lesser income. Filtering is predicated on the existence of housing surpluses, which cause housing prices to drop because of the excess of housing supply over demand.

Filtering is measured using the *American Housing Survey* over the four-year period 1985 to 1989. The *American Housing Survey* is particularly useful in that the same unit is measured at various intervals. By specifying HUD Section 8 income eligibility by household size for the years in question, two components of the household population can be specified: those that meet *Mount Laurel II* income requirements, and those that are above these requirements. Given these two income determinations at the two periods in time, a specific unit can be tracked according to the income of the household that occupied it. If it was not occupied by a *Mount Laurel* income-eligible family in the first period and was in the second period, it filtered down. If the reverse is true, it filtered up. If it was similarly occupied for both periods, it did not filter.

Viewing the same housing units, it is found that the net filtering (units moving down minus units moving up) to the lower-income population in New Jersey is about 1.1 percent over the course of the *four*-year observation period 1985-1989.[28] About 12.5 percent of the stock moves down, and 11.4 percent moves up. The gross figure for *six*-year net filtering is 1.65 percent of the non-deteriorated, non-low- and moderate-income housing stock, or 150 percent of the amount observed over the *four*-year period. A derivative 1.22 percent figure is the one used in the filtering calculation. It is determined by multiplying the 1.65 percent, six-year rate by 0.75. The latter accounts for those units that filtered down over the period and do not have the same range of affordability as those units that were continuously occupied by low- and moderate-income families. In other words, only three-quarters of the potential units available for filtering are counted, assuming that 25 percent of the units that filter down to low- and moderate-income households are beyond what these houdholds can reasonably afford. Further, by using the non-deteriorated portion of the housing stock, the units that are counted as moving downward are assumed to be of adequate housing quality. Thus, both affordability and housing condition of the resulting units are controlled for in the filtering estimate.

Through cross-tabulation analysis, and taking into account the dominance of single-family homes in New Jersey, filtering is found to be more active in those locations that have higher percentages of older multifamily units (five units or more in a structure), and much less active in locations where there are small percentages of multifamily units, or even newer multifamily units.[29] Even though filtering takes place to some degree in all locations, it is much more of an urban, or older suburban (i.e., locations of older and multifamily housing), than a new suburban or exurban housing phenomenon.

Filtering for the period 1993 to 1999 is estimated by taking 1.22 percent of the 1993 non-deteriorated, non-low- and moderate-income housing stock by region and assigning this need reduction to communities within the region according to a weighted average of: (1) their share of multifamily housing units (five or more units) of the region; and (2) their share of the pre-1940 units of the region. The former is weighted times two, and the latter times one, to avoid crediting excessive filtering to locations of older, predominantly single-family housing.

The use of multiple variables to assign the filtering credit is new for this round of numbers. It reflects more extensive analysis of the filtering phenomenon than was the case for the 1987-1993 period. The age of housing stock was added to the regression equation and showed considerable explanation power.

FILTERING HOUSING SUPPLY† BY REGION

NORTHEAST	–4,895
NORTHWEST	–4,535
WEST CENTRAL	–2,830
EAST CENTRAL	–3,550
SOUTHWEST	–2,993
SOUTH-SOUTHWEST	–1,382
STATE TOTAL	–20,185

†Seconddary supply sources are shown as negative demand contributors.

Residential Conversion

Conversion is the creation of dwelling units from already existing structures. Almost all conversion consists of additional dwelling units being created from other residential units, and very rarely from nonresidential units. This type, termed residential conversion, is a significant and recognized source of housing supply to low- and moderate-income families. According to the U.S. Department of Housing and Urban Development, as family size has decreased over the past two decades, residential conversion creating multiple smaller units from larger units has also increased.[30]

Converted units are measured using the *Decennial Census* over the period 1980 to 1990. Conversions are the difference between the net change in total housing units (end minus beginning of period), minus the net of housing units constructed and demolitions lost over the period. The housing stock is always characterized by having more units measured as present at the end state versus the beginning than can be accounted for by building permits minus demolitions. This unexplained difference is termed "conversion," most of which takes place from larger residential units.

U.S. Census information indicates that residential conversion is equivalent to 15 percent of total units constructed over the decade 1980-1990. On a percentage basis, a greater share of residential conversion units flows to the low- and moderate-income population than to the population as a whole.

Residential conversion is closely related and distributed to municipalities on the basis of their percentage of two- to four-family structures.[31] Residential conversions influence housing supply at the regional level according to an observed share of Indigenous Need. They are distributed to municipalities within regions according to the presence of structure types conducive to conversion, i.e., two- to four-family units.[32]

Residential conversions to low- and moderate-income housing in normal markets are often on a par with demolitions for the low- and moderate-income sector. In stronger markets, conversions are more than demolitions; in weaker markets, less.

RESIDENTIAL CONVERSION HOUSING SUPPLY BY REGION

NORTHEAST	–2,530
NORTHWEST	–2,180
WEST CENTRAL	– 930
EAST CENTRAL	– 847
SOUTHWEST	– 881
SOUTH-SOUTHWEST	– 775
STATE TOTAL	–8,143

Spontaneous Rehabilitation

Spontaneous rehabilitation is the unsolicited private market reduction of housing need by structure rehabilitation sufficient to render the unit free of deficiencies.[33] Using the *American Housing Survey,* over four interim years between 1985 and 1989, spontaneous rehabilitation can be measured by using as a surrogate more than $500 spent on each of three of four categories of additions, alterations, replacements, or repairs during the course of a single year.[34] This spontaneous rehabilitation

happens to about 1.0 percent of the deficient units occupied by low- and moderate-income households annually. For a six-year period, the figure is estimated to be 6.0 percent applied to Indigenous Need at the regional level.

The key factor associated with rehabilitation of deteriorated units is wealth of the area as interpreted through a combination of weighted and unweighted income measures. Reductions for spontaneous rehabilitation are given to each municipality according to the municipality's share of a regional average income measure. In this case it is the same measure used as one of the allocation factors.[35] Larger, less wealthy—and smaller, more affluent—communities will experience a larger incidence of rehabilitation because in the first case, there is more opportunity for it to happen, and in the second, there is more money to support it.[36] **Spontaneous rehabilitation cannot exceed indigenous need locally and is capped at this level.**

Spontaneous rehabilitation at this juncture should not be confused with rehabilitation as a meliorative housing strategy once Calculated Need is determined. Spontaneous rehabilitation of low- and moderate-income need is a reduction before Calculated Need is tallied due to the workings of the private market. Public, publicly assisted, or private rehabilitation as a housing strategy, once need is determined, is one of several means of response to that need and has nothing to do with the need reduction determined here.

SPONTANEOUS REHABILITATION HOUSING SUPPLY BY REGION

NORTHEAST	- [701] 652
NORTHWEST	- [580] 542
WEST CENTRAL	- 249
EAST CENTRAL	- 235
SOUTHWEST	- [236] 229
SOUTH-SOUTHWEST	- 208
STATE TOTAL	-[2,208] 2,116

PRE-CREDITED NEED

Pre-credited Need is Total Need plus Prior-cycle Prospective Need after being adjusted by secondary sources of supply and demand. It is thus the sum of Indigenous Need, Prospective Need, Prior-cycle Prospective Need, and demolitions; and net of filtering, residential conversion, and spontaneous rehabilitation. Pre-credited Need is municipal affordable housing need prior to the reduction, pre-1987 credits, and undeveloped land and 20-percent caps, to be discussed subsequently.

PRE-CREDITED NEED BY REGION

NORTHEAST	[23,216] 23,264
NORTHWEST	[17,111] 17,148
WEST CENTRAL	17,022
EAST CENTRAL	30,595
SOUTHWEST	[17,569] 17,576
SOUTH-SOUTHWEST	12,597
STATE TOTAL	[118,111] 118,203

REDUCTION FOR PRIOR-CYCLE ACTIVITIES

The Council on Affordable Housing (COAH) recognizes affordable housing efforts of communities before COAH or those affordable housing efforts that have resulted from court settlements. This recognition involves a one-for-one deduction for affordable housing units zoned or transferred by these communities. This procedure views a cumulative 1987-1999 need calculation for new housing accomplished by including prior-cycle Prospective Need, which must be decreased by prior-cycle affordable housing zoning or transfer activity. In order to estimate the level of zoning or transfer activity of the prior cycle, information has been obtained from COAH records via staff, county planning boards, and from court records via the assigned Masters (planners appointed by the courts to mediate and oversee the settlement).

The reduction for prior-cycle activities is subtracted from Pre-credited Need; it cannot reduce Pre-credited Need below zero. Any unexpended reduction is carried over to the next cycle.

REDUCTION BY REGION

NORTHEAST	- [3,065] 3,070
NORTHWEST	- 5,397
WEST CENTRAL	- 7,718
EAST CENTRAL	- 8,075
SOUTHWEST	- 3,149
SOUTH-SOUTHWEST	- 437
STATE TOTAL	-[27,841] 27,846

[PRE-1987 CREDITS] PRIOR-CYCLE CREDITS

The *Fair Housing Act* provides that the Council on Affordable Housing determine municipal fair share after crediting on a one-for-one basis each current unit of low- and moderate-income housing of adequate standard constructed [between] **subsequent to** April 1, 1980 [and December 15, 1986], including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low- and moderate-income households.

A municipality may receive a one-for-one credit for each unit satisfying the criteria in *N.J.A.C. 5:92-3[.1* and *3.2].* [Pre-1987] **Prior-cycle** credits are subtracted from municipal need after the reduction.

[Pre-1987] **Prior-cycle** credits cannot reduce an obligation below zero. Unexpended credits are carried over to the next affordable housing calculation cycle.

[PRE-1987] **PRIOR-CYCLE** *CREDITS BY REGION*

NORTHEAST	- 223
NORTHWEST	-[1,046] 1,049
WEST CENTRAL	- 611
EAST CENTRAL	- 212
SOUTHWEST	-1,070
SOUTH-SOUTHWEST	- 0
STATE TOTAL	-[3,163] 3,166

[UNDEVELOPED LAND CAP—CURRENT CYCLE

There has always been a question regarding the 1987-1993 methodology as to why housing need is allocated to areas that cannot absorb it. In other words, they do not have enough undeveloped land to support additional residential growth. COAH has tried to address this problem by creating an undeveloped land factor to distribute housing need (see "Distribution of Low- and Moderate-Income Housing Need"). COAH has also tried to use its undeveloped land data to derive *estimated land capacity* and cap municipal housing obligations.

Undeveloped lands are adjusted to represent undeveloped residential land by multiplying their total by the averaged sum of residential and apartment parcels and equalized valuation, to total undeveloped parcels and equalized valuation. This information is obtained from tax records for each community (see below).

The undeveloped residential land in acres is multiplied by 1.5 to allow more land for residential purposes in the future and is capped at 95 percent of all undeveloped land. This is further multiplied by 6 units per acre and a 20-percent set-aside to determine the number of affordable housing units that can be accommodated in the locality in the future. This is termed a community's estimated land capacity. The difference between estimated land capacity and the need for new construction (if estimated land capacity is smaller than the need for new construction) is termed the undeveloped land cap. The undeveloped land cap reduces the need for new construction to the estimated land-capacity level. It is subtracted from municipal need after applying pre-1987 credits.

Municipalities that do not have enough land to develop their new construction need (after crediting secondary sources) will have their municipal need reduced to the new construction need they can accommodate (as determined by land capacity), plus their rehabilitation component.

It is important to note that this cap has been proposed to develop a better relationship between the municipal housing obligation and the municipal capacity to address the need. The cap and the data used to calculate the cap are not viewed by COAH as a substitute for COAH's adjustment process *(N.J.A.C. 5:92-4)*. A municipality shall utilize the adjustment process whenever it believes that it lacks the land capacity to address its housing obligation (Calculated Need).

UNDEVELOPED LAND CAP BY REGION

NORTHEAST	-1,377
NORTHWEST	- 52
WEST CENTRAL	0
EAST CENTRAL	-1,495
SOUTHWEST	- 20
SOUTH-SOUTHWEST	- 125
STATE TOTAL	-3,068]

TWENTY-PERCENT (20%) CAP

The 20-percent cap is a limitation of affordable housing activities for the period being projected for up to 20 percent of the existing (1993) occupied housing stock. This is termed the *community capacity.* The derivation of this limitation reflects a desire by COAH not to overwhelm local communities with affordable housing activities such that the community would experience "drastic alteration" from these activities. "Drastic alteration" has been defined as the doubling of a community's housing stock due to the presence of both inclusionary affordable housing units and simultaneously delivered market units at a ratio of 1:4. If the affordable housing component, or the "1", was more than 20 percent of existing housing units, the "4" would be more than 80 percent of existing housing units.

The sum of the inclusionary and market units would be greater than the 100 percent of existing housing units, and the community could more than double merely by meeting its affordable housing obligation through an inclusionary program.

To avoid this situation, the concept of community capacity has been instituted, which limits affordable housing production in a municipality to 20 percent of the existing local occupied housing stock. The percentage cap thus limits affordable housing differently according to the size of the community.

Community capacity is compared to municipal need for new construction,[37] and the difference (if community capacity is less than the municipal need for new construction), is the 20-percent cap. The 20-percent cap is subtracted from municipal need [after the undeveloped land cap] **, minus prior-cycle credits.** If community capacity is more than the municipal need for new construction, the 20-percent cap is zero.

20-PERCENT CAP BY REGION

NORTHEAST	-[158] 271
NORTHWEST	0
WEST CENTRAL	0
EAST CENTRAL	- [76] 105
SOUTHWEST	-[329] 341
SOUTH-SOUTHWEST	-[162] 167
STATE TOTAL	-[725] 883

CALCULATED NEED

Calculated Need is the municipality's estimated obligation under the *Mount Laurel* mandate for the period 1987 to 1999. It is municipal affordable housing need *after* the prior-cycle reduction, [pre-1987] **prior-cycle** credits, [the undeveloped land cap,] and the 20-percent cap. Relative to other municipalities, and taking into account existing jobs and job growth, undeveloped land, aggregate income, **and** what affordable housing activity has been undertaken[, and the capacity of the community,] **locally** this is the need that the municipality must address.

CALCULATED NEED BY REGION

NORTHEAST	[18,393] 19,701
NORTHWEST	[10,616] 10,703
WEST CENTRAL	8,693
EAST CENTRAL	[20,737] 22,203
SOUTHWEST	[13,001] 13,015
SOUTH-SOUTHWEST	[11,873] 11,993
STATE TOTAL	[83,313] 86,308

PRIOR-CYCLE VACANT LAND ADJUSTMENT COMMUNITIES

Communities that received a vacant land adjustment in the first affordable housing cycle (1987-1993) from COAH or the courts are indicated with both a Calculated Need number and a "VL" designation for the second round (1993-1999). The VL designation indicates that the Council has developed a streamlined process for these communities to receive certification. The Calculated Need is retained in the system as a goal for future affordable housing efforts as development and redevelopment occur in the community.

ATTACHMENT

URBAN AID CITIES BY COUNTY THAT MEET THE CRITERIA SPECIFIED UNDER DISTRIBUTION OF NEED*

(FISCAL YEAR 1993)

ATLANTIC

Pleasantville City

BERGEN

Garfield City
Lodi Borough

BURLINGTON

Mount Holly Township
Pemberton Township

CAMDEN

Camden City
Gloucester City
Pennsauken Township

CAPE MAY

Wildwood City

CUMBERLAND

Bridgeton City
Millville City
Vineland City

ESSEX

Belleville Township
Bloomfield Township
East Orange City
Irvington Township
Newark City
City of Orange Township

GLOUCESTER

Glassboro Borough
Paulsboro Borough
Woodbury City

HUDSON

Bayonne City
Hoboken City
Jersey City City
North Bergen Township
Union City City
West New York Town

HUNTERDON

None

MERCER

Trenton City

MIDDLESEX

Carteret Borough
New Brunswick City
Perth Amboy City

MONMOUTH

Asbury Park City
Keansburg Borough
Long Branch City
Neptune Township

MORRIS

None

OCEAN

Lakewood Township

PASSAIC

Passaic City
Paterson City

SALEM

Penns Grove Borough
Salem City

SOMERSET

None

SUSSEX

None

UNION

Elizabeth City
Hillside Township
Plainfield City
Roselle Borough

WARREN

Phillipsburg Town

*These 45 municipalities do not receive either Reallocated Present Need or Prospective Need.

NOTES

1. J. Douglas Carroll, Jr., "The Relation of Homes to Work Places and The Spatial Pattern of Cities," *Social Forces* 30 (1952): 271; and American Society of Planning Officials, *Relationships of the Journey to Work,* Planning Advisory Service Report No. 5 (Chicago: ASPO, April 1951).
2. U.S. Department of Housing and Urban Development, Federal Housing Administration, Economic and Market Analysis Division. *FHA Techniques of Housing Market Analysis* (Washington, D.C.: U.S. Government Printing Office, August 1970).
3. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing; Public Use Microdata Sample: New Jersey* (Washington, D.C.: U.S. Government Printing Office, 1982).
4. SPSS, Inc., *SPSS Users Guide* (New York: McGraw Hill, 1988); and SAS Institute, Inc., *SAS Users Guide* (Raleigh, NC: SAS Institute, 1989).
5. N.J.S.A. 52:27D-301 et seq.
6. United States Housing Act of 1937 (42 U.S.C. 1401 et seq.), Section 3(b)(2).
7. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing; Public Use Microdata Sample: New Jersey* (1982).
8. 42 U.S.C. 1401, Section 3(b)(2).
9. *See,* for example, U.S. Bureau of the Census, *Measuring the Quality of Housing: An Appraisal of Census Statistics and Methods* (Washington, D.C.: Government Printing Office, 1967); and U.S. Bureau of the Census, *A Preliminary Look at the Results of the Five City Survey* (Washington, D.C., July 9, 1975).
10. Beaton, W. Patrick, "The Use of Combinatorial Indices in Housing Quality Specification." Paper presented to the October 1984 meeting of the ACSP Conference, New York. Beaton, W. Patrick, "Quality Judgments, Quality Analysis, and Housing Policy Analysis" (unpublished paper). Beaton's data are derived from the probabilities of the *Five City Study* (see Note 34).
11. Burchell, Robert W. et al., *Mount Laurel II: Challenge and Delivery of Low-Cost Housing* (New Brunswick, N.J.: Center for Urban Policy Research, 1983), p. 112.
12. Data reflecting the lack of public sewer, septic tank, or cesspool have been retained in the *American Housing Survey.* So, too, are data reflecting the lack of city water or a drilled/dug well. The retention of these data points to their growing importance as surrogates of deteriorated housing.
13. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing, Public Use Microdata Sample: New Jersey* (1982).
14. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing* (Washington, D.C.: U.S. Government Printing office, 1982).
15. *See Countryside Properties, Inc. et al. v. Mayor and Council of the Borough of Ringwood and Planning Board of Ringwood et al.,* Law Division, Docket No. L-42095-81, July 24, 1984.
16. *See,* for example, New Jersey Department of Community Affairs, Division of State and Regional Planning, *A Revised Statewide Housing Allocation Report for New Jersey* (Trenton, NJ: Division of State and Regional Planning, 1978).
17. For discussion of fair share allocation criteria, *see* New Jersey Department of Community Affairs, "Fair Housing Act Issue Papers" (Trenton, NJ: Division of Housing and Development, January 10, 1986); New Jersey Department of Community Affairs, *Mount Laurel II: Methods of Calculating Municipal Fair Share* (Trenton, NJ: Division of Housing and Development, undated); Listokin, David, *Fair Share Housing Allocation* (New Brunswick, NJ: Center for Urban Policy Research, 1976); Brooks, Mary P., *Lower Income Housing: The Planner's Response* (Chicago: American Society of Planning Officials, 1972); and Burchell, Robert W. et al., *Mount Laurel II: Challenge and Delivery of Low-Cost Housing,* Chapter 7.
18. New Jersey Department of Treasury, Division of Taxation, Property Administration Branch. "Land by Categories of Use." Trenton, NJ: New Jersey Department of Treasury, 1990, 1991.
19. This is to ensure that all pool numbers on this variable are positive.
20. State of New Jersey, Department of Community Affairs, *A Revised Statewide Housing Allocation Report for New Jersey;* see also, Lerman, Carla L. et al., "Fair Share Report—*Urban League of Greater New Brunswick v. Carteret et al."*
21. State of New Jersey, Department of Labor, Division of Planning and Research, Office of Demographic and Economic Analysis, *Population Projections—New Jersey and Counties: 2000-2030* (Trenton, NJ: Division of Planning and Research, August 1992).
22. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing; Public Use Microdata Sample: New Jersey* (1982).
23. *See* Burchell, Robert W. and Listokin, David, *The Adaptive Reuse Handbook* (New Brunswick, NJ: Center for Urban Policy Research, 1981), Chapter 1, "Property Abandonment in the United States".
24. Center for Urban Policy Research, analysis, *American Housing Survey 1980-1987—Metropolitan Areas of New Jersey.*
25. State of New Jersey, Department of Labor, Division of Planning and Research, *Residential Building Permits* (series—annual 1990 and previous dates).
26. Ibid.
27. *See,* for example, Lansing, J.B. et al., "New Homes and Poor People—Study of Chains of Moves." *Geographical Analysis,* Vol. 6, No. 1 (1974), pp. 95-99; Kristof, F.S., "Federal Housing Policies—Subsidized Production, Filtration, and Objectives," *Land Economics,* Vol. 49, No. 2 (1983), pp. 163-174. *See also* Downs, Anthony, "New Jersey and Other Locations: The Filtering Process as a Source of Housing for Low-Income Households" (Trenton, NJ: New Jersey Council on Affordable Housing, October 1990).
28. Center for Urban Policy Research, analysis of *American (Annual) Housing Survey—1985-1989—Metropolitan Areas of New Jersey.*
29. Ibid.
30. U.S. Department of Housing and Urban Development, "Additions to the Housing Supply by Means Other Than New Construction" (December 1982). Paper prepared by the Division of Housing and Demographic Analysis, Office of Policy Development and Research. *See also* McGough, Duane, "A Second Look at Non-New Construction Additions to Housing Supply: The Implications for the New Jersey Housing Methodology" (Trenton, NJ: New Jersey Council on Affordable Housing), October 1990.
31. Center for Urban Policy Research, analysis, *American Housing Survey 1980-1987—Metropolitan Areas of New Jersey.*
32. 1990 rather than 1993 is used as a base to tabulate the share of multifamily units as demolitions over the period 1990-1992 are not available by structure type. It is possible to estimate total 1993 occupied housing units, but the distribution by structure type cannot accurately be determined without demolition information by structure type.
33. U.S. Department of Housing and Urban Development, "Additions to the Housing Supply by Means Other Than New Construction."
34. Burchell et al., *Mount Laurel II, op. cit.,* Chapter 5, Part IV.
35. The regional share of the summed differences from lowest statewide median household income (weighted and unweighted averages) is used to allocate the spontaneous rehabilitation credit.
36. Black, J. Thomas, "Private-Market Housing Restoration in Central Cities: A ULI Survey." *Urban Land,* November 1975, p. 3; Schaaf, A.H., "Economic Feasibility Analysis for Urban Renewal Housing Rehabilitation," *Journal of the American Institute of Planners,* Vol. 35, No. 6 (November 1969), p. 399.

[37. The municipal need for new construction may be different at this point than when used earlier for the undeveloped land cap depending upon whether need was reduced at the prior point.]

EXHIBIT 1

BASE DATA FOR MUNICIPAL HOUSING NEED CALCULATION BY MUNICIPALITY

(Part I)

EXHIBIT 1
NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
BASE DATA FOR MUNICIPAL LOW & MODERATE INCOME
HOUSING NEED CALCULATION
3-FEB-93

COUNTY	NAME	SUBREG MULTI INDEX NEED (1)	MUNIC. SINGLE INDEX NEED (2)	SUBREG SINGLE INDEX NEED (3)	1993 OCCUPIED HOUSING EST. (4)	% REG. VACANT AREA (5)	% REG. EQUAL. NON-RESID VALUE (6)	REG. INCOME DIFF. (7)	% REG. EQUAL. NONRES VALUE CHANGE (8)	PRES. NEED ALLOCA FACTOR (9)	PROS. NEED ALLOCA FACTOR (10)	1990 LOW- MOD INCOME SUBREG PERCENT (11)
	JOHNSONVILLE	364	410	4544	12695	4.109	8.293	3.840	10.987	5.414	6.312	24.0
ATLANTIC												
	ABSECON CITY	1832	462	20838	2664	1.569	.846	2.582	.871	1.666	1.674	43.0
	ATLANTIC CITY	1832	7357	20838	15612	1.012	58.768	1.583	63.973	20.454	22.189	43.0
	BRIGANTINE CITY	1832	362	20838	5064	0.000	.525	3.135	.211	1.220	1.115	43.0
	BUENA BORO.	1832	408	20838	1700	.302	.283	.820	.189	.468	.437	43.0
	BUENA VISTA TWP.	1832	631	20838	2717	.001	.247	1.180	.163	.476	.448	43.0
	CORBIN CITY	1832	47	20838	172	0.000	.019	.549	.016	.189	.188	43.0
	EGG HARBOR TWP.	1832	997	20838	9616	15.990	4.857	5.862	5.450	8.903	9.101	43.0
	EGG HARBOR CITY	1832	746	20838	1706	1.307	.311	.921	.253	.846	.827	43.0
	ESTELL MANOR CITY	1832	137	20838	462	0.000	.025	1.078	.009	.368	.362	43.0
	FOLSOM BORO.	1832	134	20838	703	0.000	.173	1.154	.083	.442	.412	43.0
	GALLOWAY TWP.	1832	1041	20838	8440	9.477	1.406	6.312	1.189	5.731	5.659	43.0
	HAMILTON TWP.	1832	794	20838	5947	6.954	3.226	4.448	4.277	4.876	5.226	43.0
	HAMMONTON TOWN	1832	1319	20838	4523	4.185	1.523	2.636	1.338	2.781	2.720	43.0
	LINWOOD CITY	1832	313	20838	2430	.715	.743	3.617	.698	1.691	1.676	43.0
	LONGPORT BORO.	1832	75	20838	600	.027	.071	.831	.005	.310	.288	43.0
	MARGATE CITY	1832	733	20838	3885	.094	.656	3.159	.561	1.303	1.272	43.0
	MULLICA TWP.	1832	438	20838	2009	.182	.178	1.671	.144	.677	.666	43.0
	NORTHFIELD CITY	1832	483	20838	2694	1.412	1.107	2.821	.790	1.780	1.674	43.0
	PLEASANTVILLE CITY	1832	1793	20838	6065	.	.	.	.	.	0.000	43.0
	PORT REPUBLIC CITY	1832	116	20838	357	.009	.035	1.177	.015	.407	.400	43.0
	SOMERS POINT CITY	1832	521	20838	4918	.452	1.299	2.397	1.124	1.383	1.324	43.0
	VENTNOR CITY	1832	1735	20838	4900	.201	.600	2.599	.277	1.133	1.026	43.0
	WEYMOUTH TWP.	1832	195	20838	742	0.000	.065	.893	.068	.319	.320	43.0
BERGEN												
	ALLENDALE BORO.	314	447	9239	1863	1.474	.469	1.018	.514	.987	1.002	17.7
	ALPINE BORO.	226	71	11300	542	3.777	.166	.969	.192	1.637	1.646	23.9
	BERGENFIELD BORO.	226	2152	11300	8626	.660	.719	1.293	.716	.891	.889	23.9
	BOGOTA BORO.	342	1490	13266	2771	.024	.158	.580	.120	.254	.242	38.1
	CARLSTADT BORO.	498	701	13568	2147	.439	3.575	.382	3.330	1.465	1.384	40.1
	CLIFFSIDE PARK BORO.	273	2642	13045	8978	.012	.462	1.083	.379	.519	.492	38.8
	CLOSTER BORO.	226	553	11300	2665	.656	.444	.908	.478	.669	.681	23.9
	CRESSKILL BORO.	226	499	11300	2559	.252	.333	.842	.260	.475	.451	23.9
	DEMAREST BORO.	226	316	11300	1542	.447	.082	.772	.080	.434	.433	23.9
	DUMONT BORO.	226	1562	11300	6208	.036	.256	1.108	.272	.467	.472	23.9

EAST RUTHERFORD BORO	498	1078	13568	3267	.346	1.963	.358	2.355	.889	1.019	40.1
EDGEWATER BORO.	273	743	13045	2386	.080	.746	.494	.651	.440	.408	38.8
ELMWOOD PARK BORO.	217	1005	14469	6676	.139	.901	.762	.603	.601	.501	36.8
EMERSON BORO.	226	253	11300	2208	.179	.331	.796	.277	.435	.417	23.9
ENGLEWOOD CITY	342	3097	13266	8958	1.301	1.867	1.385	1.888	1.518	1.525	38.1
ENGLEWOOD CLIFFS BOR	226	90	11300	1837	.133	2.534	1.097	2.334	1.255	1.188	23.9
FAIR LAWN BORO.	217	2080	14469	11391	.182	1.542	1.870	1.256	1.198	1.103	36.8
FAIRVIEW BORO.	273	1640	13045	4283	.001	.670	.398	.686	.356	.362	38.8
FORT LEE BORO.	273	1895	13045	15338	.217	2.997	2.171	3.358	1.795	1.915	38.8
FRANKLIN LAKES BORO.	314	253	9239	3122	4.174	1.168	1.875	1.464	2.406	2.504	17.7
GARFIELD CITY	217	4694	14469	10876	.	.	.	.	.	0.000	36.8
GLEN ROCK BORO.	314	1143	9239	3833	.762	.453	1.230	.516	.815	.836	17.7
HACKENSACK CITY	342	4106	13266	16558	.164	3.878	1.703	4.075	1.915	1.981	38.1
HARRINGTON PARK BORO	226	318	11300	1480	.256	.065	.873	.010	.398	.380	23.9
HASBROUCK HEIGHTS BO	498	1285	13568	4327	.019	.840	.735	.814	.531	.523	40.1
HAWORTH BORO.	226	274	11300	1122	.432	.210	.730	.204	.457	.455	23.9
HILLSDALE BORO.	226	645	11300	3314	1.120	.223	1.026	.174	.789	.773	23.9
HOHOKUS BORO.	314	348	9239	1373	.791	.092	1.057	.090	.647	.646	17.7
LEONIA BORO.	273	1168	13045	3208	.188	.293	.766	.370	.416	.441	38.8
LITTLE FERRY BORO.	498	750	13568	4140	.023	.627	.719	.609	.456	.450	40.1
LODI BORO.	217	2034	14469	8948	.	.	.	.	.	0.000	36.8
LYNDHURST TWP.	498	2545	13568	7104	.249	2.209	.913	2.182	1.124	1.115	40.1
MAHWAH TWP.	314	791	9239	7035	5.933	2.036	1.533	1.973	3.168	3.146	17.7
MAYWOOD BORO.	217	978	14469	3679	.014	.434	.682	.360	.377	.352	36.8
MIDLAND PARK BORO.	314	891	9239	2522	.200	.425	.653	.410	.426	.421	17.7
MONTVALE BORO.	226	230	11300	2383	1.740	2.263	1.002	2.622	1.668	1.788	23.9
MOONACHIE BORO.	498	133	13568	1086	.015	1.550	.268	1.604	.611	.629	40.1
NEW MILFORD BORO.	217	854	14469	6107	.091	.189	.942	.170	.407	.401	36.8
NORTH ARLINGTON BORO	498	1479	13568	5565	.030	.379	.704	.367	.371	.367	40.1
NORTHVALE BORO.	226	279	11300	1511	.181	.733	.586	.529	.500	.432	23.9
NORWOOD BORO.	226	278	11300	1557	1.285	.454	.707	.446	.815	.813	23.9
OAKLAND BORO.	314	295	9239	3895	2.365	.801	1.175	.751	1.447	1.430	17.7
OLD TAPPAN BORO.	226	103	11300	1317	.879	.278	.826	.277	.661	.661	23.9
ORADELL BORO.	217	598	14469	2764	.295	.437	1.198	.346	.643	.613	36.8
PALISADES PARK BORO.	273	1601	13045	5809	.004	.706	.607	.741	.439	.451	38.8
PARAMUS BORO.	217	611	14469	7739	5.249	6.410	1.764	6.067	4.475	4.360	36.8
PARK RIDGE BORO.	226	507	11300	2953	.675	.662	.905	.816	.748	.799	23.9
RAMSEY BORO.	314	635	9239	4700	.712	1.379	1.405	1.427	1.165	1.181	17.7
RIDGEFIELD BORO.	273	1014	13045	3861	.083	.978	.649	.679	.570	.470	38.8
RIDGEFIELD PK VILLAG	273	2344	13045	4936	.138	.773	.738	.959	.550	.612	38.8
RIDGEWOOD VILLAGE	314	3059	9239	8310	1.508	1.012	2.621	1.078	1.713	1.735	17.7
RIVER EDGE BORO.	217	649	14469	4049	.493	.325	.903	.287	.574	.561	36.8
RIVER VALE TWP.	226	180	11300	3175	1.393	.222	1.100	.185	.905	.893	23.9
ROCHELLE PARK TWP.	217	536	14469	2057	.110	.772	.418	.758	.433	.429	36.8
ROCKLEIGH BORO.	226	11	11300	62	.759	.679	.484	.646	.641	.630	23.9
RUTHERFORD BORO.	498	3030	13568	6619	.031	.961	1.076	.892	.690	.666	40.1
SADDLE BROOK TWP.	217	431	14469	4902	.324	1.936	.846	1.885	1.035	1.018	36.8
SADDLE RIVER BORO.	314	139	9239	1002	1.764	.037	1.537	.041	1.113	1.114	17.7
SOUTH HACKENSACK TWP	498	153	13568	736	.007	.956	.253	.764	.405	.341	40.1
TEANECK TWP.	342	4573	13266	12908	1.232	1.330	2.550	1.409	1.704	1.731	38.1
TENAFLY BORO.	226	1580	11300	4702	1.221	.596	1.500	.530	1.106	1.084	23.9
TETERBORO BORO.	498	2	13568	9	.010	.782	.388	.609	.393	.335	40.1
UPPER SADDLE RIV BOR	314	113	9239	2331	1.956	.457	1.448	.577	1.287	1.327	17.7
WALDWICK BORO.	314	485	9239	3298	.419	.329	.951	.291	.566	.554	17.7
WALLINGTON BORO.	498	1278	13568	4696	.069	.370	.409	.289	.283	.256	40.1
WASHINGTON TWP.	226	114	11300	3100	.606	.048	1.120	.012	.591	.579	23.9
WESTWOOD BORO.	226	1089	11300	4111	.777	.672	.769	.636	.739	.727	23.9
WOODCLIFF LAKE BORO.	226	194	11300	1654	1.108	1.022	1.127	1.235	1.086	1.157	23.9

	WOOD-RIDGE BORO.	498	1132	13568	2891	.178	.454	.714	-.034	.449	.286	40.1
	WYCKOFF TWP.	314	640	9239	5072	2.361	.494	1.811	.437	1.555	1.536	17.7
BURLINGTON												
	BASS RIVER TWP.	918	244	7618	568	0.000	.156	.284	.135	.147	.140	45.8
	BEVERLY CITY	585	537	10838	1031	.018	.100	.300	.081	.139	.133	37.5
	BORDENTOWN CITY	585	945	10838	1828	.058	.663	.629	.793	.450	.493	37.5
	BORDENTOWN TWP.	585	317	10838	2944	1.982	1.469	1.030	1.388	1.494	1.466	37.5
	BURLINGTON CITY	585	1582	10838	3892	.483	1.412	.569	1.155	.821	.736	37.5
	BURLINGTON TWP.	585	704	10838	4612	4.102	3.118	1.141	3.022	2.787	2.755	37.5
	CHESTERFIELD TWP.	918	272	7618	984	.023	.180	.768	.167	.324	.319	45.8
	CINNAMINSON TWP.	585	444	10838	4877	1.203	2.386	1.800	2.306	1.796	1.770	37.5
	DELANCO TWP.	585	499	10838	1216	.658	.491	.482	.407	.544	.516	37.5
	DELRAN TWP.	585	512	10838	4537	1.232	1.372	1.480	1.294	1.361	1.335	37.5
	EASTAMPTON TWP.	918	145	7618	2001	.643	.109	.777	.057	.509	.492	45.8
	EDGEWATER PARK TWP.	585	417	10838	3256	.311	.550	.972	.464	.611	.582	37.5
	EVESHAM TWP.	364	344	4544	13405	1.683	3.935	4.127	5.119	3.249	3.643	24.0
	FIELDSBORO BORO.	585	98	10838	189	.057	.088	.353	.084	.166	.165	37.5
	FLORENCE TWP.	585	1575	10838	3904	.751	.825	.933	.576	.836	.753	37.5
	HAINESPORT TWP.	918	268	7618	1196	2.027	.611	.508	.600	1.049	1.045	45.8
	LUMBERTON TWP.	918	371	7618	2713	2.203	1.004	.858	1.036	1.355	1.366	45.8
	MANSFIELD TWP.	918	309	7618	1591	1.295	.330	.559	.292	.728	.715	45.8
	MAPLE SHADE TWP.	364	1044	4544	8830	.147	1.552	1.319	1.383	1.006	.950	24.0
	MEDFORD TWP.	364	559	4544	7283	2.542	1.684	3.065	1.897	2.430	2.501	24.0
	MEDFORD LAKES BORO.	364	148	4544	1569	.022	.049	1.195	.039	.422	.419	24.0
	MOORESTOWN TWP.	364	1556	4544	6002	3.148	5.082	2.328	4.542	3.519	3.339	24.0
	MOUNT HOLLY TWP.	918	1441	7618	3691	.	.	.	.	.	0.000	45.8
	MOUNT LAUREL TWP.	364	410	4544	12695	4.109	8.293	3.840	10.987	5.414	6.312	24.0
	NEW HANOVER TWP.	918	145	7618	864	.003	.106	.295	.092	.135	.130	45.8
	NORTH HANOVER TWP.	918	540	7618	3280	0.000	.285	.494	.270	.260	.255	45.8
	PALMYRA BORO.	585	1105	10838	2909	.335	.361	.761	.295	.486	.464	37.5
	PEMBERTON BORO.	918	229	7618	497	0.000	.072	.285	.059	.119	.115	45.8
	PEMBERTON TWP.	918	1539	7618	10530	.	.	.	.	.	0.000	45.8
	RIVERSIDE TWP.	585	1478	10838	3070	.137	.546	.563	.560	.415	.420	37.5
	RIVERTON BORO.	585	626	10838	1068	.018	.108	.648	.109	.258	.258	37.5
	SHAMONG TWP.	918	120	7618	1898	.282	.113	1.137	.117	.511	.512	45.8
	SOUTHAMPTON TWP.	918	586	7618	4595	.307	.383	.746	.316	.479	.457	45.8
	SPRINGFIELD TWP.	918	261	7618	1039	.003	.218	.644	.228	.288	.292	45.8
	TABERNACLE TWP.	918	194	7618	2404	.489	.111	1.276	.098	.625	.621	45.8
	WASHINGTON TWP.	918	123	7618	302	0.000	.065	.295	-.004	.120	.097	45.8
	WESTAMPTON TWP.	918	133	7618	2204	3.019	.477	1.119	.537	1.538	1.558	45.8
	WILLINGBORO TWP.	364	484	4544	11255	.448	.678	3.078	.422	1.401	1.316	24.0
	WOODLAND TWP.	918	117	7618	425	0.000	.143	.435	.156	.193	.197	45.8
	WRIGHTSTOWN BORO.	918	581	7618	1268	0.000	.104	.119	.043	.075	.054	45.8
CAMDEN												
	AUDUBON BORO.	468	1750	11634	3600	.017	.574	.849	.379	.480	.415	42.2
	AUDUBON PARK BORO.	468	50	11634	495	.007	.001	.137	-.072	.048	.024	42.2
	BARRINGTON BORO.	468	487	11634	2678	.067	.462	.689	.234	.406	.330	42.2
	BELLMAWR BORO.	468	512	11634	4665	.292	1.323	.907	1.125	.841	.775	42.2
	BERLIN BORO.	492	335	7425	1980	.698	.790	.699	.892	.729	.763	38.1
	BERLIN TWP.	492	318	7425	1783	.405	.981	.609	1.425	.665	.813	38.1
	BROOKLAWN BORO.	468	391	11634	705	.059	.218	.290	.185	.189	.178	42.2
	CAMDEN CITY	1563	16363	20247	26016	.	.	.	.	.	0.000	62.6
	CHERRY HILL TWP.	251	975	6279	24903	1.872	16.950	7.804	18.197	8.875	9.291	29.5
	CHESILHURST BORO.	492	80	7425	492	.272	.024	.292	.020	.196	.195	38.1
	CLEMENTON BORO.	492	732	7425	2307	.085	.249	.429	.187	.255	.234	38.1
	COLLINGSWOOD BORO.	251	3100	6279	6350	.079	.781	1.019	.629	.626	.576	29.5
	GIBBSBORO BORO.	492	133	7425	751	.568	.449	.630	.662	.549	.620	38.1
	GLOUCESTER TWP.	492	1370	7425	19255	4.213	1.635	3.970	1.479	3.273	3.221	38.1
	GLOUCESTER CITY	468	2481	11634	4577	.	.	.	.	.	0.000	42.2
	HADDON TWP.	251	1788	6279	6209	.131	1.140	1.204	1.046	.825	.794	29.5

	HADDONFIELD BORO.	468	2210	11634	4484	.118	1.335	1.969	1.152	1.141	1.080	42.2
	HADDON HEIGHTS BORO.	468	1279	11634	3025	.049	.442	.847	.407	.446	.434	42.2
	HI-NELLA BORO.	492	81	7425	467	.028	.044	.150	.024	.074	.067	38.1
	LAUREL SPRINGS BORO.	492	349	7425	820	.006	.137	.436	.114	.193	.185	38.1
	LAWNSIDE BORO.	468	141	11634	1043	.140	.382	.333	.338	.285	.270	42.2
	LINDENWOLD BORO.	492	874	7425	8202	.372	.466	1.150	.420	.662	.647	38.1
	MAGNOLIA BORO.	468	450	11634	1768	.022	.241	.435	.176	.233	.211	42.2
	MERCHANTVILLE BORO.	1563	861	20247	1573	.005	.224	.473	.185	.234	.221	62.6
	MOUNT EPHRAIM BORO.	468	365	11634	1773	.014	.273	.530	.199	.272	.248	42.2
	OAKLYN BORO.	468	795	11634	1844	.019	.222	.459	.209	.233	.229	42.2
	PENNSAUKEN TWP.	1563	3023	20247	12423	.	.	.	.	.	0.000	62.6
	PINE HILL BORO.	492	620	7425	3961	.680	.098	.731	.083	.503	.498	38.1
	PINE VALLEY BORO.	492	7	7425	10	.202	.041	.924	.064	.389	.397	38.1
	RUNNEMEDE BORO.	468	490	11634	3418	.076	.534	.657	.471	.422	.401	42.2
	SOMERDALE BORO.	468	233	11634	2069	.064	.561	.548	.663	.391	.425	42.2
	STRATFORD BORO.	492	340	7425	2698	.046	.713	.862	.649	.540	.519	38.1
	TAVISTOCK BORO.	468	0	11634	11	.097	.022	2.000	.024	.706	.707	42.2
	VOORHEES TWP.	492	409	7425	9602	1.603	4.932	3.102	5.483	3.212	3.396	38.1
	WATERFORD TWP.	492	534	7425	3600	.552	.340	1.139	.288	.677	.660	38.1
	WINSLOW TWP.	492	1243	7425	10187	4.852	1.100	2.145	1.047	2.699	2.681	38.1
	WOODLYNNE BORO.	251	417	6279	884	.004	.042	.202	.018	.083	.075	29.5
CAPE MAY												
	AVALON BORO.	1105	100	15825	868	0.000	.856	1.095	.423	.650	.506	41.5
	CAPE MAY CITY	1105	494	15825	1914	0.000	1.840	.879	2.016	.906	.965	41.5
	CAPE MAY POINT BORO.	1105	55	15825	145	0.000	.011	.225	.013	.079	.080	41.5
	DENNIS TWP.	1105	503	15825	1856	1.623	.318	2.017	.373	1.319	1.338	41.5
	LOWER TWP.	1105	1205	15825	8777	3.187	1.628	2.583	1.496	2.466	2.422	41.5
	MIDDLE TWP.	1105	1287	15825	5549	5.078	1.778	2.422	1.861	3.093	3.120	41.5
	NORTH WILDWOOD CITY	1105	493	15825	2205	0.000	1.624	.524	.469	.716	.331	41.5
	OCEAN CITY CITY	1105	1685	15825	7315	0.000	2.424	3.385	1.789	1.936	1.725	41.5
	SEA ISLE CITY CITY	1105	246	15825	1230	0.000	.538	.980	.354	.506	.445	41.5
	STONE HARBOR BORO.	1105	104	15825	544	0.000	.899	.881	.823	.593	.568	41.5
	UPPER TWP.	1105	564	15825	3915	6.968	.962	3.750	.926	3.893	3.881	41.5
	WEST CAPE MAY BORO.	1105	175	15825	473	0.000	.105	.333	.120	.146	.151	41.5
	WEST WILDWOOD BORO.	1105	47	15825	215	0.000	.022	.147	.019	.056	.055	41.5
	WILDWOOD CITY	1105	738	15825	1896	.	.	.	.	.	0.000	41.5
	WILDWOOD CREST BORO.	1105	311	15825	1641	0.000	2.431	.960	1.368	1.130	.776	41.5
	WOODBINE BORO.	1105	274	15825	702	3.089	.153	.334	.164	1.192	1.196	41.5
CUMBERLAND												
	BRIDGETON CITY	1459	3167	14996	6715	.	.	.	.	.	0.000	45.0
	COMMERCIAL TWP.	1459	560	14996	1781	0.000	.126	.885	.124	.337	.336	45.0
	DEERFIELD TWP.	1459	315	14996	1012	0.000	.091	.789	.073	.294	.287	45.0
	DOWNE TWP.	1459	335	14996	636	0.000	.068	.467	.052	.178	.173	45.0
	FAIRFIELD TWP.	1459	545	14996	1869	2.911	.097	.807	.071	1.272	1.263	45.0
	GREENWICH TWP.	1459	181	14996	331	0.000	.026	.596	.017	.207	.204	45.0
	HOPEWELL TWP.	1459	335	14996	1413	4.285	.088	1.503	.100	1.959	1.963	45.0
	LAWRENCE TWP.	1459	348	14996	810	.000	.067	.772	.053	.280	.275	45.0
	MAURICE RIVER TWP.	1459	472	14996	1257	0.000	.129	.890	.066	.340	.319	45.0
	MILLVILLE CITY	1459	3118	14996	9806	.	.	.	.	.	0.000	45.0
	SHILOH BORO.	1459	87	14996	150	0.000	.010	.463	.010	.158	.158	45.0
	STOW CREEK TWP.	1459	176	14996	500	0.000	.025	.907	.021	.310	.309	45.0
	UPPER DEERFIELD TWP.	1459	505	14996	2422	10.536	.582	1.847	.348	4.322	4.244	45.0
	VINELAND CITY	1459	4851	14996	19045	.	.	.	.	.	0.000	45.0
ESSEX												
	BELLEVILLE TWP.	737	4462	25506	13280	.	.	.	.	.	0.000	39.1
	BLOOMFIELD TWP.	737	7699	25506	18158	.	.	.	.	.	0.000	39.1
	CALDWELL BORO. TWP.	45	1137	7759	3190	.009	.347	.661	.314	.339	.328	21.0
	CEDAR GROVE TWP.	45	494	7759	4114	.534	.782	1.062	.788	.793	.795	21.0
	EAST ORANGE CITY	1100	12252	21021	26603	.	.	.	.	.	0.000	53.8

	ESSEX FELLS TWP.	45	267	7759	722	.322	.040	1.112	.039	.491	.491	21.0
	FAIRFIELD TWP.	45	197	7759	2315	2.041	4.525	.949	5.254	2.505	2.748	21.0
	GLEN RIDGE BORO. TWP	737	1554	25506	2388	.016	.141	1.221	.151	.459	.462	39.1
	1RVINGTON TOWN	977	8521	15607	21674	.	.	.	.	.	0.000	48.2
	LIVINGSTON TWP.	45	768	7759	8687	2.154	3.561	2.890	3.600	2.869	2.881	21.0
	MAPLEWOOD TWP.	977	4365	15607	7780	.800	.675	1.803	.679	1.093	1.094	48.2
	MILLBURN TWP.	45	2252	7759	6792	2.096	2.718	2.778	2.087	2.531	2.320	21.0
	MONTCLAIR TWP.	737	8011	25506	14247	.319	1.204	2.567	1.315	1.363	1.400	39.1
	NEWARK CITY	6803	48278	48278	87711	.	.	.	.	.	0.000	63.3
	NORTH CALDWELL TWP.	45	176	7759	1927	.410	.074	1.421	.072	.635	.634	21.0
	NUTLEY TWP.	737	3781	25506	10425	.040	1.908	1.375	1.826	1.108	1.080	39.1
	ORANGE CITY TWP.	1100	4529	21021	11331	.	.	.	.	.	0.000	53.8
	ROSELAND BORO.	45	186	7759	1821	1.610	2.289	.752	2.812	1.550	1.725	21.0
	SOUTH ORANGE VILL TW	977	2722	15607	5084	.079	.511	1.552	.494	.714	.708	48.2
	VERONA TWP.	45	1686	7759	5453	.089	.490	1.286	.411	.621	.595	21.0
	WEST CALDWELL TWP.	45	594	7759	3501	1.417	1.502	1.251	1.427	1.390	1.365	21.0
	WEST ORANGE TWP.	1100	4239	21021	14644	3.499	2.231	2.403	2.434	2.711	2.779	53.8
GLOUCESTER												
	CLAYTON BORO.	1442	506	15315	2109	1.120	.321	.444	.216	.628	.593	41.1
	DEPTFORD TWP.	1442	891	15315	8716	4.445	3.120	1.746	2.577	3.104	2.922	41.1
	EAST GREENWICH TWP.	1442	388	15315	1767	4.560	.360	.891	.376	1.937	1.942	41.1
	ELK TWP.	1442	337	15315	1313	2.011	.089	.427	.121	.843	.853	41.1
	FRANKLIN TWP.	1442	1009	15315	4832	2.800	.483	1.043	.459	1.442	1.434	41.1
	GLASSBORO BORO.	1442	1040	15315	5126	.	.	.	.	.	0.000	41.1
	GREENWICH TWP.	1442	377	15315	1849	2.011	4.896	.639	4.031	2.515	2.227	41.1
	HARRISON TWP.	1442	417	15315	1671	3.920	.110	.790	.086	1.606	1.599	41.1
	LOGAN TWP.	1442	294	15315	1748	5.943	1.985	.794	2.590	2.907	3.109	41.1
	MANTUA TWP.	1442	761	15315	3524	4.289	.624	1.088	.518	2.000	1.965	41.1
	MONROE TWP.	1442	1262	15315	9529	4.901	1.439	1.642	1.403	2.660	2.648	41.1
	NATIONAL PARK BORO.	1442	330	15315	1115	.179	.052	.378	.038	.203	.198	41.1
	NEWFIELD BORO.	1442	193	15315	567	0.000	.168	.377	.133	.182	.170	41.1
	PAULSBORO BORO.	1442	1178	15315	2418	.	.	.	.	.	0.000	41.1
	PITMAN BORO.	1442	1378	15315	3399	.191	.554	.951	.461	.565	.534	41.1
	SOUTH HARRISON TWP.	1442	152	15315	647	.403	.015	.523	.013	.314	.313	41.1
	SWEDESBORO BORO.	1442	453	15315	731	.094	.164	.290	.116	.182	.166	41.1
	WASHINGTON TWP.	1442	490	15315	13805	3.874	2.595	4.213	3.059	3.561	3.715	41.1
	WENONAH BORO.	1442	343	15315	833	.096	.028	.761	.021	.295	.293	41.1
	WEST DEPTFORD TWP.	1442	807	15315	7670	3.740	5.009	1.586	3.513	3.445	2.946	41.1
	WESTVILLE BORO.	1442	699	15315	1837	.066	.392	.422	.313	.293	.267	41.1
	WOODBURY CITY	1442	1664	15315	4158	.	.	.	.	.	0.000	41.1
	WOODBURY HEIGHTS BOR	1442	236	15315	1115	.107	.373	.725	.231	.402	.354	41.1
	WOOLWICH TWP.	1442	112	15315	477	3.797	.269	.436	.206	1.501	1.480	41.1
HUDSON												
	BAYONNE CITY	1033	11522	21266	25950	.	.	.	.	.	0.000	50.2
	EAST NEWARK BORO.	1033	321	21266	743	.001	.132	.149	.142	.094	.097	50.2
	GUTTENBERG TOWN	5526	1015	39657	3695	.006	.195	.556	.168	.253	.243	63.3
	HARRISON TOWN	1033	2248	21266	5041	.135	1.136	.482	1.236	.584	.618	50.2
	HOBOKEN CITY	5526	9007	39657	15403	.	.	.	.	.	0.000	63.3
	JERSEY CITY	5632	47248	47248	83838	.	.	.	.	.	0.000	63.3
	KEARNY TOWN	1033	6107	21266	12746	4.978	3.159	1.276	2.889	3.137	3.047	50.2
	NORTH BERGEN TWP.	5526	7098	39657	19541	.	.	.	.	.	0.000	63.3
	SECAUCUS TOWN	1033	1069	21266	5659	4.392	6.269	1.137	7.270	3.933	4.266	50.2
	UNION CITY	5526	12307	39657	21076	.	.	.	.	.	0.000	63.3
	WEEHAWKEN TWP.	5526	3223	39657	5180	.216	1.555	.516	2.143	.762	.958	63.3
	WEST NEW YORK TOWN	5526	7007	39657	14736	.	.	.	.	.	0.000	63.3
HUNTERDON												
	ALEXANDRIA TWP.	2979	307	21228	1244	0.000	.041	.776	.033	.272	.269	40.3
	BETHLEHEM TWP.	2979	273	21228	1078	0.000	.086	.945	.090	.344	.345	40.3
	BLOOMSBURY BORO.	2979	178	21228	333	0.000	.060	.289	.048	.116	.112	40.3
	CALIFON BORO.	2979	143	21228	403	0.000	.045	.669	.048	.238	.239	40.3
	CLINTON TOWN	2979	247	21228	807	.152	.272	.663	.291	.362	.369	40.3

	CLINTON TWP.	2979	441	21228	3520	4.008	1.590	1.973	1.518	2.524	2.500	40.3
	DELAWARE TWP.	2979	613	21228	1609	.001	.093	.962	.056	.352	.340	40.3
	EAST AMWELL TWP.	2979	458	21228	1538	0.000	.145	1.075	.172	.407	.416	40.3
	FLEMINGTON BORO.	2979	683	21228	1809	.020	.721	.247	.684	.329	.317	40.3
	FRANKLIN TWP.	2979	294	21228	1024	.063	.131	.801	.123	.332	.329	40.3
	FRENCHTOWN BORO.	2979	326	21228	580	0.000	.092	.306	.088	.133	.131	40.3
	GLEN GARDNER BORO.	2979	179	21228	750	0.000	.024	.545	.024	.189	.189	40.3
	HAMPTON BORO.	2979	218	21228	577	0.000	.019	.306	.018	.108	.108	40.3
	HIGH BRIDGE BORO.	2979	508	21228	1447	0.000	.070	.674	.061	.248	.245	40.3
	HOLLAND TWP.	2979	405	21228	1764	0.000	.136	.593	.065	.243	.220	40.3
	KINGWOOD TWP.	2979	449	21228	1178	0.000	.106	.653	.102	.253	.252	40.3
	LAMBERTVILLE CITY	2979	1096	21228	1727	0.000	.281	.405	.294	.229	.233	40.3
	LEBANON BORO.	2979	152	21228	427	.170	.129	.576	.141	.292	.296	40.3
	LEBANON TWP.	2979	552	21228	1976	0.000	.182	.902	.199	.361	.367	40.3
	MILFORD BORO.	2979	202	21228	516	0.000	.113	.303	.044	.139	.116	40.3
	RARITAN TWP.	2979	504	21228	5781	3.570	1.304	2.289	1.085	2.388	2.315	40.3
	READINGTON TWP.	2979	782	21228	4781	6.019	1.208	2.071	1.451	3.099	3.180	40.3
	STOCKTON BORO.	2979	121	21228	261	0.000	.024	.257	.021	.094	.093	40.3
	TEWKSBURY TWP.	2979	398	21228	1702	.697	.189	2.025	.186	.970	.969	40.3
	UNION TWP.	2979	224	21228	1426	1.087	.400	1.017	.500	.835	.868	40.3
	WEST AMWELL TWP.	2979	235	21228	849	0.000	.115	.521	.105	.212	.208	40.3
MERCER												
	EAST WINDSOR TWP.	542	378	7340	8853	1.878	2.303	2.183	1.953	2.122	2.005	29.5
	EWING TWP.	542	1665	7340	12167	2.296	3.917	2.191	3.417	2.801	2.635	29.5
	HAMILTON TWP.	1793	5277	25835	32967	3.195	5.544	5.123	5.095	4.621	4.471	48.4
	HIGHTSTOWN BORO.	542	738	7340	2007	.049	.390	.709	.350	.383	.369	29.5
	HOPEWELL BORO.	542	392	7340	774	0.000	.172	.561	.154	.244	.238	29.5
	HOPEWELL TWP.	542	688	7340	3974	4.834	1.795	1.873	1.750	2.834	2.819	29.5
	LAWRENCE TWP.	1793	1104	25835	9342	1.856	7.767	2.373	7.278	3.999	3.835	48.4
	PENNINGTON BORO.	542	360	7340	931	.036	.195	.921	.194	.384	.384	29.5
	PRINCETON BORO.	542	1623	7340	3248	.033	1.819	.827	1.742	.893	.867	29.5
	PRINCETON TWP.	542	749	7340	5226	1.539	1.159	2.091	1.384	1.596	1.671	29.5
	TRENTON CITY	1793	19454	25835	30325	.	.	.	.	.	0.000	48.4
	WASHINGTON TWP.	542	241	7340	2482	2.940	.507	.781	.489	1.409	1.403	29.5
	WEST WINDSOR TWP.	542	506	7340	5547	5.346	4.195	2.948	4.800	4.163	4.365	29.5
MIDDLESEX												
	CARTERET BORO.	1409	1569	15810	6606	.	.	.	.	.	0.000	46.0
	CRANBURY TWP.	647	265	3720	892	1.635	.946	1.039	.821	1.207	1.165	37.6
	DUNELLEN BORO.	523	1024	7804	2447	.006	.257	.658	.198	.307	.287	34.4
	EAST BRUNSWICK TWP.	1302	797	12043	15448	.984	4.160	4.581	4.292	3.242	3.286	43.1
	EDISON TWP.	523	2530	7804	32872	2.844	12.438	6.479	13.251	7.254	7.525	34.4
	HELMETTA BORO.	647	120	3720	463	.092	.050	.351	.027	.164	.156	37.6
	HIGHLAND PARK BORO.	1302	2113	12043	5847	.059	.348	.790	.291	.399	.380	43.1
	JAMESBURG BORO.	647	421	3720	2034	.034	.134	.511	.135	.226	.227	37.6
	METUCHEN BORO.	523	1150	7804	4964	.086	.878	1.547	.832	.837	.822	34.4
	MIDDLESEX BORO.	523	781	7804	4785	.235	.920	1.173	.693	.776	.700	34.4
	MILLTOWN BORO.	1302	543	12043	2543	.054	.280	1.071	.227	.469	.451	43.1
	MONROE TWP.	647	483	3720	9889	12.031	1.947	1.444	2.115	5.141	5.197	37.6
	NEW BRUNSWICK CITY	1302	5925	12043	12762	.	.	.	.	.	0.000	43.1
	NORTH BRUNSWICK TWP.	1302	934	12043	12100	1.818	3.729	2.642	3.352	2.730	2.604	43.1
	OLD BRIDGE TWP.	647	1320	3720	20591	6.530	1.354	3.723	1.326	3.869	3.859	37.6
	PERTH AMBOY CITY	1409	6915	15810	14354	.	.	.	.	.	0.000	46.0
	PISCATAWAY TWP.	523	1659	7804	14376	3.179	7.026	3.134	6.338	4.447	4.217	34.4
	PLAINSBORO TWP.	647	265	3720	7326	2.064	3.103	1.528	3.810	2.232	2.467	37.6
	SAYREVILLE BORO.	1409	1402	15810	13087	2.965	2.346	2.322	2.022	2.544	2.436	46.0
	SOUTH AMBOY CITY	1409	1328	15810	2960	.116	.321	.438	.249	.292	.268	46.0
	SOUTH BRUNSWICK TWP.	647	589	3720	9866	7.445	6.338	2.688	7.600	5.490	5.911	37.6
	SOUTH PLAINFIELD BOR	523	661	7804	6821	.700	4.243	1.781	3.704	2.241	2.062	34.4
	SOUTH RIVER BORO.	1302	1731	12043	5127	.086	.329	.620	.281	.345	.329	43.1

	SPOTSWOOD BORO.	647	257	3720	2991	.035	.245	.668	.208	.316	.303	37.6
	WOODBRIDGE TWP.	1409	4595	15810	34085	2.090	11.644	5.306	11.045	6.347	6.147	46.0
MONMOUTH												
	ABERDEEN TWP.	423	555	8798	6035	.272	1.087	1.660	.951	1.006	.961	31.5
	ALLENHURST BORO.	731	216	13980	299	.006	.128	.573	.123	.236	.234	42.5
	ALLENTOWN BORO.	757	187	5476	671	.000	.069	.513	.106	.194	.207	27.0
	ASBURY PARK CITY	731	2989	13980	6925	.	.	.	.	.	0.000	42.5
	ATL. HIGHLANDS BORO.	423	713	8798	1791	.029	.258	.649	.234	.312	.304	31.5
	AVON BY THE SEA BORO	731	488	13980	1006	.009	.154	.326	.146	.163	.161	42.5
	BELMAR BORO.	731	1073	13980	2780	.037	.555	.371	.496	.321	.301	42.5
	BRADLEY BEACH BORO.	731	868	13980	2051	.009	.209	.278	.230	.165	.172	42.5
	BRIELLE BORO.	731	242	13980	1785	.084	.555	.884	.602	.508	.523	42.5
	COLTS NECK TWP.	757	274	5476	2738	.080	.356	1.818	.307	.752	.735	27.0
	DEAL BORO.	731	181	13980	467	.052	.113	.506	.109	.224	.222	42.5
	EATONTOWN BORO.	531	531	9889	5585	.715	4.013	.854	4.135	1.861	1.901	39.8
	ENGLISHTOWN BORO.	757	134	5476	453	.061	.109	.409	.168	.193	.213	27.0
	FAIR HAVEN BORO.	531	590	9889	1903	.035	.217	1.015	.216	.422	.422	39.8
	FARMINGDALE BORO.	757	122	5476	581	.006	.148	.372	.155	.175	.177	27.0
	FREEHOLD BORO.	757	1383	5476	3899	.034	.934	.812	.866	.593	.571	27.0
	FREEHOLD TWP.	757	450	5476	8607	5.413	2.739	2.786	2.816	3.646	3.672	27.0
	HAZLET TWP.	423	321	8798	7309	.239	1.198	1.932	1.132	1.123	1.101	31.5
	HIGHLANDS BORO.	423	664	8798	2356	.017	.296	.361	.282	.225	.220	31.5
	HOLMDEL TWP.	423	175	8798	3533	1.464	3.671	2.455	3.088	2.530	2.336	31.5
	HOWELL TWP.	757	1280	5476	13357	5.259	1.949	2.870	2.080	3.359	3.403	27.0
	INTERLAKEN BORO.	731	198	13980	380	.014	0.000	.645	0.000	.220	.220	42.5
	KEANSBURG BORO.	423	1294	8798	3878	.	.	.	.	.	0.000	31.5
	KEYPORT BORO.	423	1186	8798	3235	.031	.535	.403	.392	.323	.275	31.5
	LITTLE SILVER BORO.	531	278	9889	2048	.222	.400	1.253	.406	.625	.627	39.8
	LOCH ARBOUR VILLAGE	731	92	13980	139	.008	.018	.552	.015	.193	.191	42.5
	LONG BRANCH CITY	531	4233	9889	11651	.	.	.	.	.	0.000	39.8
	MANALAPAN TWP.	757	473	5476	8920	5.119	1.449	2.812	1.706	3.126	3.212	27.0
	MANASQUAN BORO.	731	702	13980	2262	.065	.568	.563	.490	.399	.373	42.5
	MARLBORO TWP.	757	328	5476	8579	5.622	1.340	3.602	1.473	3.521	3.565	27.0
	MATAWAN BORO.	423	444	8798	3594	.048	.512	.999	.485	.520	.510	31.5
	MIDDLETOWN TWP.	423	2808	8798	23379	2.971	6.043	5.783	7.414	4.932	5.389	31.5
	MILLSTONE TWP.	757	362	5476	1648	.016	.256	.936	.395	.403	.449	27.0
	MONMOUTH BEACH BORO.	531	250	9889	1557	.038	.129	.966	.139	.378	.381	39.8
	NEPTUNE TWP.	731	2847	13980	10574	.	.	.	.	.	0.000	42.5
	NEPTUNE CITY BORO.	731	502	13980	2154	.006	.443	.359	.384	.269	.250	42.5
	OCEAN TWP.	731	1119	13980	9575	1.419	2.529	2.090	2.324	2.013	1.945	42.5
	OCEANPORT BORO.	531	317	9889	2114	.391	.683	1.005	.348	.693	.582	39.8
	RED BANK BORO.	531	1831	9889	4688	.010	1.848	.756	1.828	.871	.865	39.8
	ROOSEVELT BORO.	757	128	5476	330	0.000	.017	.582	.017	.200	.200	27.0
	RUMSON BORO.	531	754	9889	2423	.758	.440	1.354	.450	.851	.854	39.8
	SEA BRIGHT BORO.	531	209	9889	931	0.000	.353	.467	.274	.273	.247	39.8
	SEA GIRT BORO.	731	203	13980	881	.103	.185	.791	.187	.360	.360	42.5
	SHREWSBURY BORO.	531	124	9889	1107	.187	1.317	.945	2.032	.816	1.054	39.8
	SHREWSBURY TWP.	531	75	9889	509	0.000	0.000	.203	0.000	.068	.068	39.8
	SOUTH BELMAR BORO.	731	199	13980	675	.002	.094	.222	.099	.106	.108	42.5
	SPRING LAKE BORO.	731	644	13980	1392	.073	.461	.838	.458	.457	.456	42.5
	SPRING LAKE HGTS BOR	731	326	13980	2608	.113	.396	.533	.419	.347	.355	42.5
	TINTON FALLS BORO.	531	282	9889	4650	3.470	1.683	1.452	1.537	2.201	2.153	39.8
	UNION BEACH BORO.	423	638	8798	2001	.136	.340	.519	.286	.332	.313	31.5
	UPPER FREEHOLD TWP.	757	355	5476	1117	.002	.146	.777	.133	.308	.304	27.0
	WALL TWP.	731	1091	13980	7558	7.359	3.478	1.693	3.717	4.177	4.256	42.5
	WEST LONG BRANCH BOR	531	417	9889	2514	.153	.779	.854	.713	.595	.573	39.8

MORRIS											
	BOONTON TOWN	213	1314	5306	3163	.099	.449	.619	.452	.389	.390	23.8
	BOONTON TWP.	213	146	5306	1278	.005	.072	.648	.015	.242	.223	23.8
	BUTLER BORO.	444	749	6103	2732	.136	.367	.700	.335	.401	.390	29.5
	CHATHAM BORO.	357	1010	8275	3123	.376	.636	1.065	.652	.692	.698	24.4
	CHATHAM TWP.	357	351	8275	3680	1.264	.210	1.573	.196	1.016	1.011	24.4
	CHESTER BORO.	975	136	6713	459	0.000	.404	.438	.431	.281	.290	28.7
	CHESTER TWP.	975	256	6713	1980	.027	.158	1.244	.167	.476	.479	28.7
	DENVILLE TWP.	444	1019	6103	4984	7.276	.979	1.365	1.030	3.207	3.224	29.5
	DOVER TOWN	975	2287	6713	5220	.255	.819	.639	.880	.571	.591	28.7
	EAST HANOVER TWP.	213	251	5306	3142	3.401	2.925	1.135	3.039	2.487	2.525	23.8
	FLORHAM PARK BORO.	357	240	8275	2992	4.549	2.928	1.200	2.873	2.892	2.874	24.4
	HANOVER TWP.	213	421	5306	3887	5.491	4.052	1.180	3.773	3.574	3.482	23.8
	HARDING TWP.	357	309	8275	1406	.029	.340	1.443	.348	.604	.607	24.4
	JEFFERSON TWP.	444	932	6103	6547	.005	.308	1.196	.290	.503	.497	29.5
	KINNELON BORO.	444	220	6103	2860	.969	.165	1.343	.154	.826	.822	29.5
	LINCOLN PARK BORO.	444	435	6103	4003	1.378	.511	.991	.550	.960	.973	29.5
	MADISON BORO.	357	1518	8275	5490	.502	1.212	1.339	1.265	1.018	1.035	24.4
	MENDHAM BORO.	357	288	8275	1755	0.000	.275	1.153	.335	.476	.496	24.4
	MENDHAM TWP.	357	220	8275	1648	.002	.060	1.522	.050	.528	.525	24.4
	MINE HILL TWP.	975	288	6713	1235	1.616	.067	.492	.087	.725	.732	28.7
	MONTVILLE TWP.	213	727	5306	5068	3.752	1.677	1.928	1.808	2.453	2.496	23.8
	MORRIS TWP.	357	1031	8275	7314	4.283	3.383	2.506	3.863	3.391	3.551	24.4
	MORRIS PLAINS BORO.	357	426	8275	1963	.502	1.476	.878	1.596	.952	.992	24.4
	MORRISTOWN TOWN	357	2211	8275	6787	.394	3.070	.953	3.547	1.472	1.631	24.4
	MOUNTAIN LAKES BORO.	213	467	5306	1254	1.158	.289	1.452	.362	.966	.991	23.8
	MOUNT ARLINGTON BORO	975	194	6713	1320	0.000	.119	.433	.155	.184	.196	28.7
	MOUNT OLIVE TWP.	975	986	6713	8434	.002	1.193	1.296	1.637	.830	.978	28.7
	NETCONG BORO.	975	389	6713	1337	0.000	.123	.310	.107	.144	.139	28.7
	PAR-TROY HILLS TWP.	213	1980	5306	18686	9.547	9.547	3.060	11.485	7.385	8.031	23.8
	PASSAIC TWP.	357	672	8275	2817	.000	.273	1.114	.187	.463	.434	24.4
	PEQUANNOCK TWP.	444	517	6103	4354	2.386	.558	1.086	.469	1.343	1.314	29.5
	RANDOLPH TWP.	975	532	6713	7215	5.776	.937	2.021	1.039	2.912	2.945	28.7
	RIVERDALE BORO.	444	225	6103	866	1.568	.385	.349	.434	.767	.783	29.5
	ROCKAWAY BORO.	444	622	6103	2338	.465	.551	.560	.528	.525	.518	29.5
	ROCKAWAY TWP.	444	699	6103	7100	4.466	1.779	1.638	1.486	2.628	2.530	29.5
	ROXBURY TWP.	975	885	6713	6714	4.178	1.128	1.603	1.124	2.303	2.302	28.7
	VICTORY GARDENS BORO	975	88	6713	496	.005	.010	.188	.002	.068	.065	28.7
	WASHINGTON TWP.	975	672	6713	5167	0.000	.293	1.725	.305	.673	.677	28.7
	WHARTON BORO.	444	686	6103	2085	1.223	.300	.495	.219	.673	.646	29.5
OCEAN												
	BARNEGAT TWP.	570	357	6808	4377	1.838	.252	.704	.257	.931	.933	53.3
	BARNEGAT LIGHT BORO.	570	35	6808	346	0.000	.210	.297	.212	.169	.170	53.3
	BAY HEAD BORO.	557	226	7368	549	.047	.195	.639	.187	.294	.291	46.4
	BEACH HAVEN BORO.	570	171	6808	677	0.000	.527	.208	.426	.245	.211	53.3
	BEACHWOOD BORO.	570	397	6808	3224	.259	.116	.731	.112	.369	.367	53.3
	BERKELEY TWP.	570	640	6808	19083	3.341	1.086	.342	1.675	1.590	1.786	53.3
	BRICK TWP.	557	1320	7368	26502	1.198	3.507	3.514	3.617	2.740	2.776	46.4
	DOVER TWP.	557	1377	7368	28872	5.433	7.190	4.217	6.398	5.614	5.349	46.4
	EAGLESWOOD TWP.	570	183	6808	560	0.000	.152	.199	.169	.117	.122	53.3
	HARVEY CEDARS BORO.	570	39	6808	183	0.000	.070	.243	.047	.105	.097	53.3
	ISLAND HEIGHTS BORO.	557	188	7368	574	.052	.077	.366	.065	.165	.161	46.4
	JACKSON TWP.	570	973	6808	11794	12.914	1.773	2.276	1.862	5.654	5.684	53.3
	LACEY TWP.	570	499	6808	8579	1.331	1.570	1.221	1.566	1.374	1.373	53.3
	LAKEHURST BORO.	570	273	6808	1049	.068	.142	.143	.159	.117	.123	53.3
	LAKEWOOD TWP.	557	2256	7368	17207	.	.	.	.	.	0.000	46.4
	LAVALLETTE BORO.	557	153	7368	1125	0.000	.208	.249	.320	.152	.190	46.4
	LITTLE EGG HARBOR TW	570	383	6808	5342	0.000	.370	.679	.388	.350	.356	53.3
	LONG BEACH TWP.	570	189	6808	1726	0.000	.645	.295	.392	.314	.229	53.3
	MANCHESTER TWP.	570	431	6808	20023	3.032	.767	.300	.637	1.366	1.323	53.3
	MANTOLOKING BORO.	557	55	7368	172	0.000	.050	.641	.055	.231	.232	46.4
	OCEAN TWP.	570	222	6808	2216	1.373	.242	.304	.251	.640	.643	53.3
	OCEAN GATE BORO.	570	244	6808	883	.012	.024	.159	.022	.065	.064	53.3
	PINE BEACH BORO.	570	126	6808	771	.038	.039	.378	.024	.152	.147	53.3

	PLUMSTED TWP.	570	380	6808	2187	.013	.123	.597	.119	.244	.243	53.3
	POINT PLEASANT BORO.	557	590	7368	7251	.062	1.103	1.288	1.116	.818	.822	46.4
	PT PLEASANT BEACH BO	557	674	7368	2130	.076	1.352	.414	2.086	.614	.859	46.4
	SEASIDE HEIGHTS BORO	557	280	7368	1072	0.000	.744	.021	.510	.255	.177	46.4
	SEASIDE PARK BORO.	557	249	7368	854	0.000	.338	.247	.271	.195	.173	46.4
	SHIP BOTTOM BORO.	570	148	6808	678	0.000	.443	.166	.353	.203	.173	53.3
	SOUTH TOMS RIVER BOR	570	153	6808	1097	.094	.129	.292	.097	.171	.161	53.3
	STAFFORD TWP.	570	585	6808	5499	2.662	1.166	.575	1.253	1.468	1.497	53.3
	SURF CITY BORO.	570	79	6808	690	0.000	.292	.144	.270	.145	.138	53.3
	TUCKERTON BORO.	570	301	6808	1312	0.000	.134	.170	.117	.101	.096	53.3
PASSAIC												
	BLOOMINGDALE BORO.	755	587	12245	2789	3.388	.114	.652	.092	1.384	1.377	29.2
	CLIFTON CITY	1969	8770	19507	29174	1.419	7.102	2.998	6.769	3.840	3.729	51.8
	HALEDON BORO.	755	911	12245	2536	.201	.216	.350	.161	.256	.238	29.2
	HAWTHORNE BORO.	755	2277	12245	6865	.412	.815	.973	.649	.733	.678	29.2
	LITTLE FALLS TWP.	755	1030	12245	4273	.820	.764	.737	.858	.774	.805	29.2
	NORTH HALEDON BORO.	755	517	12245	2548	1.268	.125	.672	.119	.688	.686	29.2
	PASSAIC CITY	1969	10737	19507	18727	.	.	.	.	.	0.000	51.8
	PATERSON CITY	3714	22560	22560	43743	.	.	.	.	.	0.000	63.3
	POMPTON LAKES BORO.	755	613	12245	4003	1.547	.336	.809	.307	.897	.887	29.2
	PROSPECT PARK BORO.	755	1064	12245	1795	0.000	.095	.286	.087	.127	.125	29.2
	RINGWOOD BORO.	755	475	12245	4056	.017	.132	1.118	.114	.422	.416	29.2
	TOTOWA BORO.	755	718	12245	3491	2.529	2.252	.676	2.331	1.819	1.845	29.2
	WANAQUE BORO.	755	666	12245	3197	7.482	.203	.682	.157	2.789	2.774	29.2
	WAYNE TWP.	755	1283	12245	15974	14.166	6.076	3.297	6.542	7.846	8.002	29.2
	WEST MILFORD TWP.	755	1609	12245	8680	.011	.388	1.636	.322	.679	.657	29.2
	WEST PATERSON BORO.	755	495	12245	4316	2.265	.883	.741	.961	1.296	1.322	29.2
SALEM												
	ALLOWAY TWP.	1105	375	15825	959	0.000	.037	1.241	.027	.426	.423	41.5
	CARNEYS POINT TWP.	1105	716	15825	3156	6.737	.549	2.114	.549	3.133	3.133	41.5
	ELMER BORO.	1105	307	15825	545	0.000	.110	.751	.094	.287	.282	41.5
	ELSINBORO TWP.	1105	198	15825	490	0.000	.028	.958	.046	.329	.335	41.5
	LOWER ALLOWAYS CR TW	1105	290	15825	663	0.000	.708	.980	.503	.563	.494	41.5
	MANNINGTON TWP.	1105	206	15825	527	0.000	.362	.816	.355	.393	.390	41.5
	OLDMANS TWP.	1105	233	15825	571	6.405	.382	1.031	.283	2.606	2.573	41.5
	PENNS GROVE BORO.	1105	820	15825	1896	.	.	.	.	.	0.000	41.5
	PENNSVILLE TWP.	1105	1070	15825	5310	5.292	3.061	3.602	2.445	3.985	3.780	41.5
	PILESGROVE TWP.	1105	272	15825	1090	.000	.163	1.764	.134	.642	.633	41.5
	PITTSGROVE TWP.	1105	672	15825	2733	.002	.335	1.840	.360	.726	.734	41.5
	QUINTON TWP.	1105	287	15825	952	0.000	.087	.766	.060	.285	.276	41.5
	SALEM CITY	1105	1252	15825	2585	.	.	.	.	.	0.000	41.5
	UPPER PITTSGROVE TWP	1105	347	15825	1073	0.000	.126	1.167	.107	.431	.425	41.5
	WOODSTOWN BORO.	1105	500	15825	1276	0.000	.190	1.107	.182	.432	.429	41.5
SOMERSET												
	BEDMINSTER TWP.	673	321	7780	3629	.172	1.579	1.738	1.532	1.163	1.148	30.8
	BERNARDS TWP.	673	599	7780	6599	4.412	2.820	3.157	2.139	3.463	3.236	30.8
	BERNARDSVILLE BORO.	673	605	7780	2485	.389	.590	1.659	.593	.879	.880	30.8
	BOUND BROOK BORO.	673	1502	7780	3699	.085	.308	.455	.172	.283	.237	30.8
	BRANCHBURG TWP.	277	272	6230	3907	2.978	1.257	2.098	1.185	2.111	2.087	32.0
	BRIDGEWATER TWP.	673	1087	7780	11563	6.299	5.648	4.142	5.731	5.363	5.390	30.8
	FAR HILLS BORO.	673	116	7780	251	.001	.098	.623	.111	.241	.245	30.8
	FRANKLIN TWP.	277	1414	6230	16763	4.558	5.946	4.039	7.259	4.848	5.285	32.0
	GREEN BROOK TWP.	673	180	7780	1447	.997	.658	.977	.666	.877	.880	30.8
	HILLSBOROUGH TWP.	277	663	6230	10780	7.040	1.157	3.416	1.147	3.871	3.868	32.0
	MANVILLE BORO.	277	812	6230	4152	.075	.459	.521	.258	.352	.285	32.0
	MILLSTONE BORO.	277	48	6230	170	.102	.011	.541	.010	.218	.218	32.0
	MONTGOMERY TWP.	277	303	6230	3216	3.728	1.345	2.134	1.247	2.402	2.370	32.0

	NORTH PLAINFIELD BOR	673	2294	7780	7333	.041	.559	1.118	.474	.573	.544	30.8
	PEAPACK GLADSTONE BO	673	325	7780	784	0.000	1.272	.852	1.104	.708	.652	30.8
	RARITAN BORO.	277	777	6230	2305	.339	1.130	.419	.953	.629	.570	32.0
	ROCKY HILL BORO.	277	90	6230	281	.111	.030	.644	.024	.261	.259	32.0
	SOMERVILLE BORO.	277	1417	6230	4557	.092	1.019	.670	.889	.594	.551	32.0
	SOUTH BOUND BROOK BO	277	435	6230	1617	.001	.087	.443	.065	.177	.170	32.0
	WARREN TWP.	673	552	7780	3633	6.164	2.350	2.237	3.133	3.583	3.844	30.8
	WATCHUNG BORO.	673	198	7780	1764	1.537	1.065	1.780	1.044	1.461	1.454	30.8
SUSSEX												
	ANDOVER BORO.	810	139	9373	269	0.000	.042	.180	.041	.074	.074	31.3
	ANDOVER TWP.	810	285	9373	1799	0.000	.223	.598	.212	.274	.270	31.3
	BRANCHVILLE BORO.	810	178	9373	364	0.000	.151	.192	.147	.114	.113	31.3
	BYRAM TWP.	810	385	9373	2792	0.000	.124	.809	.140	.311	.317	31.3
	FRANKFORD TWP.	810	507	9373	1768	0.000	.128	.521	.148	.216	.223	31.3
	FRANKLIN BORO.	810	661	9373	1906	0.000	.197	.310	.193	.169	.168	31.3
	FREDON TWP.	810	166	9373	946	0.000	.040	.509	.041	.183	.183	31.3
	GREEN TWP.	810	158	9373	887	0.000	.037	.499	.037	.179	.179	31.3
	HAMBURG BORO.	810	223	9373	993	0.000	.086	.340	.069	.142	.136	31.3
	HAMPTON TWP.	810	187	9373	1695	0.000	.180	.463	.202	.215	.222	31.3
	HARDYSTON TWP.	810	273	9373	2008	0.000	.117	.493	.105	.203	.199	31.3
	HOPATCONG BORO.	810	865	9373	5655	0.000	.105	1.013	.108	.373	.374	31.3
	LAFAYETTE TWP.	810	207	9373	668	0.000	.186	.426	.221	.204	.216	31.3
	MONTAGUE TWP.	810	194	9373	1061	0.000	.080	.272	.063	.117	.111	31.3
	NEWTON TOWN	810	1084	9373	3032	0.000	.334	.315	.329	.216	.214	31.3
	OGDENSBURG BORO.	810	199	9373	907	0.000	.040	.354	-.039	.131	.105	31.3
	SANDYSTON TWP.	810	224	9373	691	0.000	.040	.220	.037	.087	.086	31.3
	SPARTA TWP.	810	760	9373	5469	0.000	.364	1.483	.379	.616	.621	31.3
	STANHOPE BORO.	810	283	9373	1336	0.000	.052	.429	.041	.161	.157	31.3
	STILLWATER TWP.	810	474	9373	1537	0.000	.037	.441	.035	.160	.159	31.3
	SUSSEX BORO.	810	407	9373	880	0.000	.082	.104	.089	.062	.064	31.3
	VERNON TWP.	810	918	9373	7258	0.000	.561	1.344	.494	.635	.612	31.3
	WALPACK TWP.	810	22	9373	37	0.000	.003	.001	.004	.001	.001	31.3
	WANTAGE TWP.	810	575	9373	3125	0.000	.229	.655	.261	.295	.306	31.3
UNION												
	BERKELEY HEIGHTS TWP	565	329	11555	3874	1.094	2.752	1.612	2.880	1.819	1.862	32.9
	CLARK TWP.	470	429	10892	5508	.815	1.034	1.097	.854	.982	.922	28.8
	CRANFORD TWP.	470	2620	10892	8144	.505	1.490	1.709	1.174	1.234	1.129	28.8
	ELIZABETH CITY	1659	19331	19331	38889	.	.	.	.	.	0.000	59.8
	FANWOOD BORO.	565	428	11555	2454	.004	.156	.893	.158	.351	.352	32.9
	GARWOOD BORO.	470	520	10892	1666	.016	.391	.368	.327	.258	.237	28.8
	HILLSIDE TWP.	434	2644	14263	7077	.	.	.	.	.	0.000	38.8
	KENILWORTH BORO.	434	423	14263	2763	.620	1.489	.450	1.415	.853	.828	38.8
	LINDEN CITY.	434	3311	14263	14352	2.701	7.564	1.201	4.665	3.822	2.856	38.8
	MOUNTAINSIDE BORO.	470	221	10892	2395	1.551	.867	1.196	.738	1.205	1.162	28.8
	NEW PROVIDENCE BORO.	565	485	11555	4248	.409	1.213	1.308	1.093	.977	.937	32.9
	PLAINFIELD CITY	565	6670	11555	15065	.	.	.	.	.	0.000	32.9
	RAHWAY CITY	470	2707	10892	9581	.294	1.766	1.139	1.674	1.067	1.036	28.8
	ROSELLE BORO.	434	2392	14263	7585	.	.	.	.	.	0.000	38.8
	ROSELLE PARK BORO.	434	1852	14263	5057	.007	.299	.788	.251	.365	.349	38.8
	SCOTCH PLAINS TWP.	565	918	11555	7650	2.893	.618	1.810	.543	1.774	1.749	32.9
	SPRINGFIELD TWP.	470	663	10892	5778	1.694	1.622	1.079	1.435	1.465	1.403	28.8
	SUMMIT CITY	565	2726	11555	7643	.732	2.015	2.217	2.018	1.654	1.655	32.9
	UNION TWP.	434	3641	14263	18877	.892	4.556	2.254	4.413	2.568	2.520	38.8
	WESTFIELD TOWN	470	3650	10892	10256	.470	1.241	2.835	1.244	1.515	1.516	28.8
	WINFIELD TWP.	470	82	10892	691	.005	.003	.100	.003	.036	.036	28.8
WARREN												
	ALLAMUCHY TWP.	2979	175	21228	1557	0.000	.057	.634	.047	.230	.227	40.3
	ALPHA BORO.	2979	389	21228	971	.180	.095	.197	.097	.157	.158	40.3
	BELVIDERE TOWN	2979	518	21228	1038	0.000	.188	.203	.163	.130	.122	40.3
	BLAIRSTOWN TWP.	2979	417	21228	1852	0.000	.173	.607	.166	.260	.258	40.3
	FRANKLIN TWP.	2979	384	21228	848	0.000	.069	.373	.062	.148	.145	40.3
	FRELINGHUYSEN TWP.	2979	226	21228	625	0.000	.028	.346	.016	.125	.121	40.3

GREENWICH TWP.	2979	317	21228	669	.131	.131	.302	.158	.188	.197	40.3
HACKETTSTOWN TOWN	2979	844	21228	3030	0.000	.636	.458	.660	.364	.373	40.3
HARDWICK TWP.	2979	134	21228	406	0.000	.021	.295	.029	.105	.108	40.3
HARMONY TWP.	2979	314	21228	960	.360	.649	.334	1.001	.448	.565	40.3
HOPE TWP.	2979	197	21228	621	0.000	.031	.411	.034	.148	.148	40.3
INDEPENDENCE TWP.	2979	283	21228	1499	0.000	.062	.425	.060	.163	.162	40.3
KNOWLTON TWP.	2979	345	21228	907	0.000	.084	.294	.090	.126	.128	40.3
LIBERTY TWP.	2979	222	21228	878	0.000	.024	.404	.025	.143	.143	40.3
LOPATCONG TWP.	2979	399	21228	2026	1.799	.303	.304	.351	.802	.818	40.3
MANSFIELD TWP.	2979	376	21228	2849	0.000	.180	.455	.167	.212	.207	40.3
OXFORD TWP.	2979	326	21228	690	0.000	.051	.215	.051	.089	.089	40.3
PAHAQUARRY TWP.	2979	6	21228	9	0.000	0.000	.092	0.000	.031	.031	40.3
PHILLIPSBURG TOWN	2979	3186	21228	6183	.	.	.	.	.	0.000	40.3
POHATCONG TWP.	2979	426	21228	1323	.309	.212	.324	.256	.282	.296	40.3
WASHINGTON BORO.	2979	954	21228	2637	0.000	.281	.355	.240	.212	.198	40.3
WASHINGTON TWP.	2979	408	21228	1875	0.000	.161	.618	.180	.260	.266	40.3
WHITE TWP.	2979	396	21228	1337	0.000	.459	.330	.290	.263	.207	40.3

EXHIBIT 2

BASE DATA FOR MUNICIPAL HOUSING NEED CALCULATION BY REGION

Exhibit 2
BASE DATA BY HOUSING REGION

COAH Region	COLUMN A Percent Deficient	COLUMN B Excess Deficient Housing Units	COLUMN C 1993-1999 Regional Prospective Need	COLUMN D 1993-1999 Filtering Projections	COLUMN E 1990 Multifamily (5 Units or More) Unit Total	COLUMN F 1990 Pre-1940 Units
Northeast	.0290	7,002	4,787	4,895	193,286	255,434
Northwest	.0250	5,306	1,033	4,535	156,893	206,403
West Central	.0180	1,477	8,654	2,830	70,199	61,647
East Central	.0120	1,329	14,424	3,550	74,459	93,848
Southwest	.0150	1,751	8,993	2,994	63,582	80,208
South-Southwest	.0220	676	4,236	1,382	41,231	58,521
New Jersey		17,542	42,127	20,185	599,650	756,061

COAH Region	COLUMN G 1993-1999 Conversion Projections	COLUMN H 1990 2-4 Family Unit Totals	COLUMN I 1993-1999 Spontaneous Rehabilitation Projections	COLUMN J 1989 Regional Household Income Floor ($)	COLUMN K 1989 Weighted Regional Income Differences ($)	COLUMN L 1989 Unweighted Regional Income Differences ($)
Northeast	2,649	218,392	710	20,515	19,234,394,000	4,393,888
Northwest	2,229	150,817	597	23,705	16,299,646,900	3,698,545
West Central	930	44,103	249	31,008	8,828,753,140	1,835,119
East Central	886	45,844	237	22,719	11,539,122,100	2,526,644
Southwest	881	27,265	236	19,015	10,120,912,300	2,557,328
South-Southwest	775	40,576	207	18,343	3,422,312,000	1,234,261
New Jersey	8,351	526,997	2,237	—	69,445,140,000	16,245,786

EXHIBIT 3

Agency Note: COAH is replacing the orginally proposed Exhibit 3 at 25 N.J.R. 1174 through 1181 with the following Exhibit. The original Exhibit 3 not reproposed is **not** reproduced in brackets herein.

BASE DATA FOR MUNICIPAL HOUSING NEED CALCULATION BY MUNICIPALITY

(Part II)

EXHIBIT 3
NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
BASE DATA FOR MUNICIPAL LOW & MODERATE INCOME
HOUSING NEED CALCULATION
3-FEB-93

COUNTY	NAME	ADJUSTED PRIOR CYCLE PROSPECTIVE NEED (1)	AVERAGE DEMOLITIONS 1988-1990 (2)	1990 MULTI-FAMILY UNITS (3)	1990 PRE-1940 UNITS (4)	1990 2-4 FAMILY UNITS (5)	1993 MEDIAN HSLD. INCOME (6)	REDUCTION (1987-1993) (7)	PRIOR-CYCLE CREDITS (8)
	JOHNSONVILLE	248	5.00	2719	272	490	55927	439	101
ATLANTIC									
	ABSECON CITY	66	1.67	154	495	121	46696	0	0
	ATLANTIC CITY	1538	71.00	10725	7942	3945	22340	0	0
	BRIGANTINE CITY	74	23.00	1690	425	1870	39588	0	0
	BUENA BORO.	29	.67	87	416	350	30335	0	0
	BUENA VISTA TWP.	1	.33	6	420	64	31123	0	0
	CORBIN CITY	2	.67	0	41	7	35291	0	0
	EGG HARBOR TWP.	327	8.00	1096	568	304	41353	0	0
	EGG HARBOR CITY	18	.33	229	724	345	31794	0	0
	ESTELL MANOR CITY	2	.67	0	74	3	45834	0	0
	FOLSOM BORO.	0	0.00	0	51	8	44038	0	0
	GALLOWAY TWP.	103	0.00	1813	745	370	46138	221	0
	HAMILTON TWP.	113	4.00	948	632	241	44759	0	0
	HAMMONTON TOWN	146	3.67	494	1392	624	37895	0	0
	LINWOOD CITY	64	0.00	103	363	82	60618	0	0
	LONGPORT BORO.	27	8.33	241	197	61	37910	0	0
	MARGATE CITY	58	10.00	1396	1235	726	44714	0	0
	MULLICA TWP.	5	1.67	5	253	36	40438	0	0
	NORTHFIELD CITY	104	3.33	65	531	62	49086	0	0
	PLEASANTVILLE CITY	0	10.00	1585	1566	988	33041	0	0
	PORT REPUBLIC CITY	0	0.00	0	103	12	50366	0	0
	SOMERS POINT CITY	79	3.33	1781	420	454	34972	0	0
	VENTNOR CITY	34	11.67	1610	2791	1870	36432	0	0
	WEYMOUTH TWP.	1	.33	45	150	26	37840	0	0
BERGEN									
	ALLENDALE BORO.	24	.33	8	537	87	86197	111	0
	ALPINE BORO.	18	1.67	0	95	8	116964	0	0
	BERGENFIELD BORO.	32	3.00	1356	2320	1444	50284	0	0
	BOGOTA BORO.	9	0.00	460	1773	523	50677	0	0
	CARLSTADT BORO.	66	5.67	136	875	1303	43408	0	0
	CLIFFSIDE PARK BORO.	50	19.33	4445	3180	3307	44660	0	0
	CLOSTER BORO.	27	6.33	15	654	219	68810	0	0
	CRESSKILL BORO.	17	2.33	42	531	113	66319	0	0
	DEMAREST BORO.	14	2.00	2	340	41	74966	0	0
	DUMONT BORO.	13	0.00	714	1842	923	53654	0	0
	EAST RUTHERFORD BORO	23	.67	920	1405	1744	37306	0	0
	EDGEWATER BORO.	13	1.33	1435	816	734	48496	41	0
	ELMWOOD PARK BORO.	24	5.00	663	1026	2629	42073	0	0
	EMERSON BORO.	25	1.00	16	288	115	67559	0	0
	ENGLEWOOD CITY	53	1.00	2606	3211	1536	51434	0	0
	ENGLEWOOD CLIFFS BOR	51	14.67	14	88	40	91805	0	0
	FAIR LAWN BORO.	55	1.67	633	2396	1483	54624	0	0
	FAIRVIEW BORO.	20	6.67	1144	1713	2488	36131	0	0
	FORT LEE BORO.	128	22.00	11080	1567	2345	51034	0	0

	FRANKLIN LAKES BORO.	62	7.67	0	239	42	111091	0	0
	GARFIELD CITY	0	4.67	1394	5521	7538	34814	0	0
	GLEN ROCK BORO.	30	2.00	87	1388	103	72574	0	0
	HACKENSACK CITY	143	26.33	11174	3701	2575	42874	0	0
	HARRINGTON PARK BORO	13	.33	6	375	43	83282	0	0
	HASBROUCK HEIGHTS BO	25	.67	710	1528	732	49139	0	0
	HAWORTH BORO.	11	.67	0	315	8	79235	0	0
	HILLSDALE BORO.	24	2.33	150	785	149	68243	0	0
	HOHOKUS BORO.	10	.33	5	428	49	98957	0	0
	LEONIA BORO.	7	0.00	679	1370	557	56908	0	10
	LITTLE FERRY BORO.	14	2.33	1646	611	1198	49395	0	0
	LODI BORO.	0	8.33	1985	1932	4782	36642	0	0
	LYNDHURST TWP.	37	2.67	854	3109	3472	45100	0	0
	MAHWAH TWP.	7	6.00	1623	856	354	62115	368	0
	MAYWOOD BORO.	15	.33	377	1108	843	50160	0	0
	MIDLAND PARK BORO.	18	1.33	189	1089	438	56354	0	0
	MONTVALE BORO.	55	3.00	221	236	179	77299	0	0
	MOONACHIE BORO.	25	0.00	6	122	138	42300	0	0
	NEW MILFORD BORO.	12	0.00	706	851	1547	49060	0	0
	NORTH ARLINGTON BORO	14	3.00	1139	2000	2459	43376	0	0
	NORTHVALE BORO.	32	1.67	2	296	243	62210	0	0
	NORWOOD BORO.	19	5.00	120	301	116	70213	119	0
	OAKLAND BORO.	48	3.67	20	273	89	69722	222	0
	OLD TAPPAN BORO.	21	0.00	6	119	27	82909	95	0
	ORADELL BORO.	22	0.00	132	695	105	82856	0	0
	PALISADES PARK BORO.	15	1.00	1902	1571	2448	39621	0	0
	PARAMUS BORO.	185	0.00	2	602	399	64894	697	0
	PARK RIDGE BORO.	27	4.33	300	597	373	65758	33	36
	RAMSEY BORO.	59	7.33	496	789	333	72149	202	0
	RIDGEFIELD BORO.	13	3.00	418	1169	1803	47827	0	0
	RIDGEFIELD PK VILLAG	15	.67	1322	2780	1670	46710	0	40
	RIDGEWOOD VILLAGE	69	2.33	774	3776	750	82743	0	137
	RIVER EDGE BORO.	20	2.00	377	693	663	57339	0	0
	RIVER VALE TWP.	22	0.00	253	188	105	73125	0	0
	ROCHELLE PARK TWP.	21	.67	218	646	228	46144	9	0
	ROCKLEIGH BORO.	9	0.00	0	14	0	80543	11	0
	RUTHERFORD BORO.	68	5.67	1550	3734	1566	51149	0	0
	SADDLE BROOK TWP.	29	.33	540	514	944	50690	0	0
	SADDLE RIVER BORO.	24	6.00	1	155	3	149228	0	0
	SOUTH HACKENSACK TWP	10	.67	0	157	450	43835	0	0
	TEANECK TWP.	57	4.00	1992	5428	870	62258	0	0
	TENAFLY BORO.	43	6.00	381	1852	451	75616	0	0
	TETERBORO BORO.	63	0.00	0	3	2	69990	0	0
	UPPER SADDLE RIV BOR	45	6.00	2	131	13	103620	117	0
	WALDWICK BORO.	19	1.67	3	493	293	64924	0	0
	WALLINGTON BORO.	20	5.00	1259	1474	2488	35565	0	0
	WASHINGTON TWP.	16	1.00	14	106	33	74847	0	0
	WESTWOOD BORO.	27	2.67	868	1365	698	51553	0	0
	WOODCLIFF LAKE BORO.	34	3.67	0	231	35	97537	0	0
	WOOD-RIDGE BORO.	8	1.67	362	1392	464	56684	0	0
	WYCKOFF TWP.	45	1.00	9	768	184	83495	232	0
BURLINGTON									
	BASS RIVER TWP.	1	.33	1	196	8	35100	0	0
	BEVERLY CITY	20	0.00	28	643	223	33333	0	0
	BORDENTOWN CITY	12	1.67	276	1091	425	42625	0	0
	BORDENTOWN TWP.	75	1.00	562	218	160	48804	175	0
	BURLINGTON CITY	45	6.33	512	1834	450	32789	0	100
	BURLINGTON TWP.	208	2.67	1566	535	333	43580	0	0
	CHESTERFIELD TWP.	24	.33	0	287	36	56270	0	0
	CINNAMINSON TWP.	149	.67	90	483	63	56242	0	0
	DELANCO TWP.	17	.33	23	577	150	40660	35	0
	DELRAN TWP.	100	1.33	905	448	186	51230	0	0
	EASTAMPTON TWP.	16	0.00	352	103	222	46882	0	0
	EDGEWATER PARK TWP.	14	.33	1148	338	244	45413	0	0
	EVESHAM TWP.	240	3.33	2521	242	424	56844	0	0
	FIELDSBORO BORO.	2	.67	0	113	16	42625	0	0
	FLORENCE TWP.	79	.33	479	1776	332	41540	144	0
	HAINESPORT TWP.	38	1.33	0	282	28	41974	0	0
	LUMBERTON TWP.	28	3.33	890	281	74	45056	0	0
	MANSFIELD TWP.	42	0.00	6	291	35	41412	89	0
	MAPLE SHADE TWP.	51	2.00	4006	1025	785	36250	0	0
	MEDFORD TWP.	181	3.33	713	627	185	65817	0	0
	MEDFORD LAKES BORO.	17	0.00	0	168	7	67220	0	0
	MOORESTOWN TWP.	311	.33	567	1850	370	60317	648	16
	MOUNT HOLLY TWP.	0	2.33	351	1449	409	36880	53	0
	MOUNT LAUREL TWP.	248	5.00	2719	272	490	55927	839	0
	NEW HANOVER TWP.	0	0.00	72	71	204	33931	0	0
	NORTH HANOVER TWP.	1	.33	638	246	163	32364	0	0
	PALMYRA BORO.	28	1.00	460	1312	354	41167	0	0
	PEMBERTON BORO.	2	1.00	92	237	97	35621	0	0
	PEMBERTON TWP.	0	6.00	859	651	413	39006	0	0
	RIVERSIDE TWP.	8	0.00	281	1726	528	34890	0	0
	RIVERTON BORO.	5	0.00	92	769	170	49533	0	0

	SHAMONG TWP.	24	2.00	0	88	15	60903	0	0
	SOUTHAMPTON TWP.	40	1.00	1	465	39	35113	112	0
	SPRINGFIELD TWP.	23	1.33	25	245	41	49662	43	0
	TABERNACLE TWP.	37	1.33	2	101	28	60536	0	0
	WASHINGTON TWP.	1	.33	1	107	9	37715	0	0
	WESTAMPTON TWP.	53	2.00	104	90	16	57182	0	0
	WILLINGBORO TWP.	123	2.67	39	67	12	51833	0	0
	WOODLAND TWP.	0	0.00	0	68	27	45178	0	0
	WRIGHTSTOWN BORO.	9	4.00	395	157	112	24288	0	0
CAMDEN									
	AUDUBON BORO.	8	0.00	454	2061	532	40627	0	0
	AUDUBON PARK BORO.	2	0.00	0	39	5	27015	0	0
	BARRINGTON BORO.	2	.67	495	548	296	40080	0	0
	BELLMAWR BORO.	59	0.00	743	377	232	38376	0	0
	BERLIN BORO.	87	0.00	36	335	284	44251	174	0
	BERLIN TWP.	27	3.33	173	277	82	42145	0	0
	BROOKLAWN BORO.	12	.33	49	491	45	34547	0	0
	CAMDEN CITY	0	57.67	4357	12673	3310	19125	0	0
	CHERRY HILL TWP.	987	1.67	3734	868	761	59875	0	0
	CHESILHURST BORO.	8	0.00	0	47	16	36062	0	0
	CLEMENTON BORO.	27	.33	657	677	153	33309	0	0
	COLLINGSWOOD BORO.	33	2.67	1850	3604	1318	36329	0	0
	GIBBSBORO BORO.	47	.67	6	135	20	52250	100	0
	GLOUCESTER TWP.	168	5.00	4001	1059	958	45346	0	338
	GLOUCESTER CITY	0	4.00	532	2871	486	31898	0	0
	HADDON TWP.	31	1.33	1200	2017	676	39836	0	0
	HADDONFIELD BORO.	127	1.33	277	2748	424	62243	0	0
	HADDON HEIGHTS BORO.	18	.33	308	1608	421	43099	0	0
	HI-NELLA BORO.	1	0.00	363	38	22	27872	0	0
	LAUREL SPRINGS BORO.	9	0.00	137	393	107	41447	0	0
	LAWNSIDE BORO.	11	0.00	111	111	79	34834	35	0
	LINDENWOLD BORO.	57	9.00	4317	509	517	34972	0	0
	MAGNOLIA BORO.	16	.67	356	427	98	35628	0	0
	MERCHANTVILLE BORO.	7	.67	296	1087	325	38079	0	0
	MOUNT EPHRAIM BORO.	21	0.00	132	426	185	39214	0	0
	OAKLYN BORO.	6	.33	313	956	278	36156	0	0
	PENNSAUKEN TWP.	0	3.33	999	3159	1155	39707	0	0
	PINE HILL BORO.	21	1.33	1437	463	180	36497	0	0
	PINE VALLEY BORO.	5	0.00	0	12	0	86535	0	0
	RUNNEMEDE BORO.	29	2.00	772	500	258	36313	13	0
	SOMERDALE BORO.	69	.33	403	239	126	38344	0	0
	STRATFORD BORO.	42	0.00	726	263	91	45259	0	0
	TAVISTOCK BORO.	4	0.00	0	0	0	165001	0	0
	VOORHEES TWP.	186	6.33	3146	284	201	56847	0	0
	WATERFORD TWP.	42	.67	43	521	148	48040	0	0
	WINSLOW TWP.	127	7.00	1170	873	325	43908	0	404
	WOODLYNNE BORO.	2	0.00	22	472	163	29160	0	0
CAPE MAY									
	AVALON BORO.	123	38.00	290	564	929	40807	0	0
	CAPE MAY CITY	47	1.33	761	1187	715	30316	0	0
	CAPE MAY POINT BORO.	17	5.33	2	210	85	25437	0	0
	DENNIS TWP.	152	2.00	2	375	17	46346	0	0
	LOWER TWP.	188	14.33	464	1283	265	29335	0	0
	MIDDLE TWP.	312	1.67	86	1019	324	33576	0	0
	NORTH WILDWOOD CITY	83	21.67	1023	1695	2634	24873	0	0
	OCEAN CITY CITY	280	97.33	2176	4158	8601	35220	0	0
	SEA ISLE CITY CITY	77	24.00	833	604	2035	35440	0	0
	STONE HARBOR BORO.	72	22.67	402	495	737	39755	0	0
	UPPER TWP.	133	.67	1	493	244	49458	0	0
	WEST CAPE MAY BORO.	5	0.00	6	349	139	26788	0	0
	WEST WILDWOOD BORO.	18	6.00	20	141	240	22734	0	0
	WILDWOOD CITY	0	75.33	2032	2631	2368	18452	0	0
	WILDWOOD CREST BORO.	39	7.33	718	975	1858	32675	0	0
	WOODBINE BORO.	31	1.00	102	196	69	25793	0	0
CUMBERLAND									
	BRIDGETON CITY	0	0.00	1118	2923	1094	24087	0	0
	COMMERCIAL TWP.	16	5.33	3	495	51	30937	0	0
	DEERFIELD TWP.	28	.67	1	313	58	33474	0	0
	DOWNE TWP.	2	.67	0	356	15	29118	0	0
	FAIRFIELD TWP.	16	1.33	2	343	42	29496	0	0
	GREENWICH TWP.	2	.67	1	189	5	34834	0	0
	HOPEWELL TWP.	21	0.00	3	346	59	42746	0	0
	LAWRENCE TWP.	0	0.00	8	364	23	34637	0	0
	MAURICE RIVER TWP.	5	1.67	3	383	40	33702	0	0
	MILLVILLE CITY	0	6.33	1707	3054	1257	34393	216	0

	SHILOH BORO.	0	0.00	0	120	10	32875	0	0
	STOW CREEK TWP.	0	0.00	0	161	8	40944	0	0
	UPPER DEERFIELD TWP.	43	0.00	265	361	63	39985	0	0
	VINELAND CITY	0	13.67	2718	3921	2079	33806	0	0
ESSEX									
	BELLEVILLE TWP.	0	5.00	3576	4803	4772	42358	0	0
	BLOOMFIELD TWP.	0	2.33	3966	9278	6931	43804	0	0
	CALDWELL BORO. TWP.	19	0.00	1226	1368	644	51038	0	0
	CEDAR GROVE TWP.	39	.67	565	578	393	61010	0	67
	EAST ORANGE CITY	0	15.33	15025	10046	8021	29491	0	0
	ESSEX FELLS TWP.	11	.33	1	329	13	111182	0	0
	FAIRFIELD TWP.	157	2.00	5	208	72	70876	0	0
	GLEN RIDGE BORO. TWP	17	.33	202	1887	107	83403	25	0
	IRVINGTON TOWN	0	22.00	8823	7137	10683	33582	0	0
	LIVINGSTON TWP.	200	.33	15	848	61	81841	0	0
	MAPLEWOOD TWP.	50	1.33	508	5329	1581	63325	11	0
	MILLBURN TWP.	141	2.00	632	2792	547	91602	0	0
	MONTCLAIR TWP.	2	1.00	3875	9627	3668	57686	0	110
	NEWARK CITY	0	237.00	43615	36014	43398	23815	0	0
	NORTH CALDWELL TWP.	23	1.00	3	212	36	101317	0	0
	NUTLEY TWP.	63	1.00	2342	4438	2000	47489	0	0
	ORANGE CITY TWP.	0	10.67	5664	3673	3669	30031	0	0
	ROSELAND BORO.	90	.33	307	228	72	65919	162	0
	SOUTH ORANGE VILL TW	64	2.00	1089	3316	476	70772	53	0
	VERONA TWP.	37	.33	1521	1988	540	60773	0	0
	WEST CALDWELL TWP.	97	18.00	227	727	119	72512	0	0
	WEST ORANGE TWP.	167	2.33	2220	4906	2936	54755	0	0
GLOUCESTER									
	CLAYTON BORO.	38	3.67	213	501	174	34528	0	0
	DEPTFORD TWP.	226	14.33	1454	752	254	42075	0	150
	EAST GREENWICH TWP.	53	0.00	25	462	97	53006	163	0
	ELK TWP.	39	.33	0	284	36	37623	0	0
	FRANKLIN TWP.	13	5.00	59	742	145	40732	0	0
	GLASSBORO BORO.	0	2.00	1296	951	668	37640	0	0
	GREENWICH TWP.	73	0.00	12	436	129	42875	0	0
	HARRISON TWP.	33	2.67	192	458	79	49972	93	0
	LOGAN TWP.	126	1.00	5	299	33	49463	0	0
	MANTUA TWP.	92	1.67	112	811	104	47125	217	0
	MONROE TWP.	164	13.67	839	986	375	39161	0	0
	NATIONAL PARK BORO.	12	1.00	8	399	99	36557	0	0
	NEWFIELD BORO.	0	0.00	2	224	51	40382	0	0
	PAULSBORO BORO.	0	1.33	172	1273	440	25650	0	0
	PITMAN BORO.	23	1.33	278	1709	470	44150	12	0
	SOUTH HARRISON TWP.	0	0.00	0	126	18	47682	0	0
	SWEDESBORO BORO.	17	0.00	8	546	138	34406	0	0
	WASHINGTON TWP.	173	1.33	1724	350	225	56653	0	0
	WENONAH BORO.	6	0.00	11	410	64	57934	0	0
	WEST DEPTFORD TWP.	113	2.00	1821	663	330	42251	204	0
	WESTVILLE BORO.	27	.33	290	765	339	34826	0	0
	WOODBURY CITY	0	2.67	655	1941	777	31892	0	62
	WOODBURY HEIGHTS BOR	20	.33	15	289	52	52635	0	0
	WOOLWICH TWP.	49	.67	0	134	8	44647	0	0
HUDSON									
	BAYONNE CITY	0	15.00	7353	13219	14398	35149	0	0
	EAST NEWARK BORO.	2	0.00	62	341	562	34222	0	0
	GUTTENBERG TOWN	33	6.00	2709	929	1314	44638	0	0
	HARRISON TOWN	16	4.33	1148	2135	3231	37366	0	0
	HOBOKEN CITY	0	9.00	11329	11000	5163	38360	0	0
	JERSEY CITY	0	125.67	39547	46091	37932	31959	0	0
	KEARNY TOWN	6	2.33	2253	7369	6940	41624	0	0
	NORTH BERGEN TWP.	0	32.33	8552	7675	8243	36837	0	0
	SECAUCUS TOWN	157	2.33	1250	1258	2189	56995	634	0
	UNION CITY	0	1.33	11090	11173	9394	28220	0	0
	WEEHAWKEN TWP.	0	0.00	2300	3964	2635	38188	0	0
	WEST NEW YORK TOWN	0	.33	9329	6632	4958	28997	0	0
HUNTERDON									
	ALEXANDRIA TWP.	0	0.00	4	293	38	58915	0	0
	BETHLEHEM TWP.	10	0.00	0	193	18	66621	0	0
	BLOOMSBURY BORO.	8	.67	16	217	37	44868	0	0
	CALIFON BORO.	0	0.00	8	166	28	62294	0	0
	CLINTON TOWN	23	.33	105	298	135	58136	64	0
	CLINTON TWP.	91	3.00	329	436	138	74710	0	0
	DELAWARE TWP.	0	0.00	13	615	73	62479	0	0
	EAST AMWELL TWP.	3	1.33	22	443	87	66800	0	0
	FLEMINGTON BORO.	45	0.00	579	790	571	38687	0	0
	FRANKLIN TWP.	9	0.00	1	308	51	61692	14	0
	FRENCHTOWN BORO.	0	0.00	73	391	142	44496	0	0

	GLEN GARDNER BORO.	0	0.00	280	182	86	53693	0	0
	HAMPTON BORO.	0	0.00	81	270	120	44481	0	0
	HIGH BRIDGE BORO.	15	0.00	40	535	167	53976	19	0
	HOLLAND TWP.	0	0.00	10	283	66	49692	0	0
	KINGWOOD TWP.	1	.33	3	390	92	54949	0	0
	LAMBERTVILLE CITY	0	0.00	174	1379	346	43879	0	0
	LEBANON BORO.	8	.33	13	186	76	57713	0	0
	LEBANON TWP.	0	0.00	3	458	99	58040	0	0
	MILFORD BORO.	0	0.00	29	238	116	44631	0	0
	RARITAN TWP.	141	1.00	328	421	168	67676	358	0
	READINGTON TWP.	91	1.00	240	702	184	68803	183	0
	STOCKTON BORO.	0	0.00	4	145	49	43683	0	0
	TEWKSBURY TWP.	28	0.00	1	426	23	95745	57	0
	UNION TWP.	0	0.00	183	186	70	65846	7	0
	WEST AMWELL TWP.	0	0.00	10	230	45	52021	0	0
MERCER									
	EAST WINDSOR TWP.	169	1.33	3468	180	524	54834	0	0
	EWING TWP.	164	2.67	2149	1810	772	47510	0	0
	HAMILTON TWP.	284	7.00	5905	5933	2425	46390	0	0
	HIGHTSTOWN BORO.	21	1.00	639	790	284	50129	0	0
	HOPEWELL BORO.	0	.33	12	468	180	53453	0	0
	HOPEWELL TWP.	86	1.00	36	733	97	72074	200	0
	LAWRENCE TWP.	362	2.67	1866	1222	624	56138	623	161
	PENNINGTON BORO.	0	0.00	39	439	68	70603	0	0
	PRINCETON BORO.	236	1.00	818	1949	671	47401	3	0
	PRINCETON TWP.	108	2.00	738	828	541	68517	217	0
	TRENTON CITY	0	45.33	6403	20094	6251	28291	0	0
	WASHINGTON TWP.	90	.67	470	232	57	49855	152	51
	WEST WINDSOR TWP.	259	2.00	1318	432	122	84598	569	0
MIDDLESEX									
	CARTERET BORO.	0	5.00	312	1540	1806	44295	0	0
	CRANBURY TWP.	93	4.33	9	341	63	72395	143	0
	DUNELLEN BORO.	4	0.00	151	1253	672	48812	0	0
	EAST BRUNSWICK TWP.	391	1.33	2216	639	491	64646	723	0
	EDISON TWP.	525	.67	9597	1661	1758	55082	324	0
	HELMETTA BORO.	14	1.00	151	147	15	47082	0	0
	HIGHLAND PARK BORO.	27	1.67	2262	2413	1452	43563	0	0
	JAMESBURG BORO.	7	.33	346	388	375	46128	0	0
	METUCHEN BORO.	55	1.67	457	1350	485	58549	82	1
	MIDDLESEX BORO.	71	.67	609	856	484	52407	0	0
	MILLTOWN BORO.	34	.67	52	644	317	59424	0	0
	MONROE TWP.	75	.67	682	433	1111	46406	127	0
	NEW BRUNSWICK CITY	0	8.33	4230	5082	5081	31118	0	0
	NORTH BRUNSWICK TWP.	244	3.67	3458	647	1100	54890	489	0
	OLD BRIDGE TWP.	213	6.33	5194	871	1430	52230	152	203
	PERTH AMBOY CITY	0	3.67	3574	5904	6358	31215	0	0
	PISCATAWAY TWP.	420	7.00	3348	1273	1096	55496	623	109
	PLAINSBORO TWP.	88	4.33	4850	128	434	51606	247	0
	SAYREVILLE BORO.	127	1.33	2820	1482	936	50663	0	0
	SOUTH AMBOY CITY	17	0.00	260	1617	845	41726	0	0
	SOUTH BRUNSWICK TWP.	305	4.00	1876	533	369	59735	575	94
	SOUTH PLAINFIELD BOR	173	6.00	10	748	422	56318	375	0
	SOUTH RIVER BORO.	20	0.00	485	2013	1036	41798	0	0
	SPOTSWOOD BORO.	31	1.00	408	230	96	47244	0	0
	WOODBRIDGE TWP.	618	11.67	7235	4568	2986	50068	0	0
MONMOUTH									
	ABERDEEN TWP.	152	3.00	881	521	342	55493	237	0
	ALLENHURST BORO.	14	1.33	25	315	43	60071	0	0
	ALLENTOWN BORO.	1	.67	88	214	42	51820	0	0
	ASBURY PARK CITY	0	5.33	3892	2731	1773	22829	0	0
	ATL. HIGHLANDS BORO.	62	0.00	341	823	188	49175	0	0
	AVON BY THE SEA BORO	14	0.00	188	822	178	39263	0	0
	BELMAR BORO.	62	5.67	974	1802	746	34834	0	0
	BRADLEY BEACH BORO.	28	6.67	846	1481	521	33373	0	0
	BRIELLE BORO.	83	1.33	24	336	255	58833	0	0
	COLTS NECK TWP.	103	1.67	12	247	52	82631	149	0
	DEAL BORO.	25	.33	50	423	45	53625	0	0
	EATONTOWN BORO.	296	.33	2327	464	657	40550	0	0
	ENGLISHTOWN BORO.	36	0.00	7	155	81	47819	0	0
	FAIR HAVEN BORO.	73	1.67	3	708	21	62972	0	0
	FARMINGDALE BORO.	0	0.00	192	141	75	44516	0	0
	FREEHOLD BORO.	141	6.33	818	1454	573	44360	0	0
	FREEHOLD TWP.	488	7.00	1099	352	246	64632	923	0
	HAZLET TWP.	246	2.33	392	278	135	55752	0	0
	HIGHLANDS BORO.	29	.33	840	772	396	35600	0	0
	HOLMDEL TWP.	391	4.33	11	164	34	92372	626	0
	HOWELL TWP.	427	12.33	436	1007	276	52703	827	0
	INTERLAKEN BORO.	8	0.00	0	244	0	63411	0	0
	KEANSBURG BORO.	0	10.00	577	1382	815	34946	0	0

	KEYPORT BORO.	14	2.00	1088	1327	530	34767	0	0
	LITTLE SILVER BORO.	104	.33	33	350	45	70709	0	0
	LOCH ARBOUR VILLAGE	2	0.00	6	129	2	61146	0	0
	LONG BRANCH CITY	0	9.67	5109	4556	2793	33762	0	0
	MANALAPAN TWP.	241	7.00	1429	378	160	63831	765	0
	MANASQUAN BORO.	107	2.33	96	1173	359	43242	0	0
	MARLBORO TWP.	455	6.67	155	242	89	77043	670	0
	MATAWAN BORO.	103	3.67	1131	530	389	50763	0	0
	MIDDLETOWN TWP.	828	6.33	2186	3221	726	59458	0	0
	MILLSTONE TWP.	7	4.33	1	313	22	62320	6	0
	MONMOUTH BEACH BORO.	36	1.67	793	336	87	64585	0	0
	NEPTUNE TWP.	0	2.33	1733	3602	1489	41702	0	0
	NEPTUNE CITY BORO.	22	.67	628	545	201	36127	0	0
	OCEAN TWP.	672	1.00	2725	1216	400	51573	0	0
	OCEANPORT BORO.	65	.33	119	395	94	60637	0	0
	RED BANK BORO.	339	17.67	1600	2039	1108	40567	0	0
	ROOSEVELT BORO.	0	0.00	3	153	15	60204	0	0
	RUMSON BORO.	130	6.00	2	967	69	70370	0	0
	SEA BRIGHT BORO.	18	.67	483	294	151	46995	0	0
	SEA GIRT BORO.	51	4.33	22	395	19	64525	0	0
	SHREWSBURY BORO.	116	0.00	2	151	6	69214	0	0
	SHREWSBURY TWP.	10	0.00	212	52	49	34907	0	0
	SOUTH BELMAR BORO.	17	2.00	75	401	101	35281	0	0
	SPRING LAKE BORO.	71	2.00	49	1057	94	60708	0	0
	SPRING LAKE HGTS BOR	50	.33	715	431	162	40766	0	0
	TINTON FALLS BORO.	296	4.33	617	283	174	57187	550	0
	UNION BEACH BORO.	41	1.33	1	678	105	42819	0	0
	UPPER FREEHOLD TWP.	0	.33	2	338	61	60840	0	0
	WALL TWP.	415	8.67	556	1281	213	50931	722	0
	WEST LONG BRANCH BOR	139	.67	128	482	157	52177	0	0
MORRIS									
	BOONTON TOWN	16	.33	300	1525	909	49454	0	0
	BOONTON TWP.	7	0.00	0	191	17	66084	23	0
	BUTLER BORO.	8	.33	287	860	480	55462	0	0
	CHATHAM BORO.	41	6.33	291	1253	317	68342	23	0
	CHATHAM TWP.	39	.33	853	369	99	83157	89	0
	CHESTER BORO.	0	0.00	15	169	33	61803	3	0
	CHESTER TWP.	2	1.00	7	235	27	90750	0	0
	DENVILLE TWP.	123	6.33	271	1146	150	65696	388	0
	DOVER TOWN	22	0.00	796	2197	1380	42704	0	0
	EAST HANOVER TWP.	106	.33	5	270	38	71078	266	0
	FLORHAM PARK BORO.	143	2.33	43	273	100	75295	280	0
	HANOVER TWP.	132	2.33	53	441	126	66757	245	0
	HARDING TWP.	46	1.00	3	372	16	114515	0	0
	JEFFERSON TWP.	35	7.33	168	823	244	53778	0	0
	KINNELON BORO.	22	0.00	1	237	16	83029	81	0
	LINCOLN PARK BORO.	29	3.33	866	476	227	59159	100	0
	MADISON BORO.	59	2.33	840	1764	875	62126	0	0
	MENDHAM BORO.	0	0.00	48	340	114	89560	0	16
	MENDHAM TWP.	10	0.00	5	260	27	113186	18	0
	MINE HILL TWP.	17	1.00	23	313	62	56321	76	0
	MONTVILLE TWP.	111	3.33	206	755	134	82307	280	0
	MORRIS TWP.	99	5.00	731	1251	492	81536	283	0
	MORRIS PLAINS BORO.	90	.67	178	526	62	71243	0	0
	MORRISTOWN TOWN	225	2.00	2531	2464	1970	47023	0	0
	MOUNTAIN LAKES BORO.	23	0.00	0	568	8	119335	0	0
	MOUNT ARLINGTON BORO	9	1.67	216	238	116	51665	0	0
	MOUNT OLIVE TWP.	61	4.00	3435	823	411	50411	182	0
	NETCONG BORO.	3	0.00	418	466	239	43604	0	0
	PAR-TROY HILLS TWP.	339	2.33	6928	1312	791	55522	497	230
	PASSAIC TWP.	44	0.00	99	757	229	73358	85	0
	PEQUANNOCK TWP.	60	.33	207	586	197	60428	166	0
	RANDOLPH TWP.	108	2.33	1314	432	569	70843	221	106
	RIVERDALE BORO.	13	0.00	11	245	130	49775	59	0
	ROCKAWAY BORO.	24	1.00	359	720	287	51413	0	0
	ROCKAWAY TWP.	178	22.67	662	717	264	62384	412	0
	ROXBURY TWP.	114	4.67	111	953	374	63232	375	0
	VICTORY GARDENS BORO	2	0.00	207	27	79	39875	0	0
	WASHINGTON TWP.	30	2.33	247	652	142	75410	149	4
	WHARTON BORO.	17	.33	198	811	545	49720	43	0
OCEAN									
	BARNEGAT TWP.	173	3.67	16	224	130	40116	0	0
	BARNEGAT LIGHT BORO.	38	6.33	39	72	187	41750	0	0
	BAY HEAD BORO.	22	1.67	18	569	55	60580	0	0
	BEACH HAVEN BORO.	44	6.00	333	555	681	34508	0	0
	BEACHWOOD BORO.	60	2.67	11	340	71	44642	0	0
	BERKELEY TWP.	327	7.33	506	431	108	25331	0	0
	BRICK TWP.	537	19.33	2566	1122	659	42616	0	0
	DOVER TWP.	1319	57.00	2819	1152	953	44774	835	0
	EAGLESWOOD TWP.	10	2.67	3	169	17	34448	0	0
	HARVEY CEDARS BORO.	19	3.67	1	96	140	39359	0	0

	ISLAND HEIGHTS BORO.	10	0.00	25	288	15	44229	0	0
	JACKSON TWP.	344	11.67	734	596	336	49159	0	0
	LACEY TWP.	345	6.33	17	355	55	41137	0	0
	LAKEHURST BORO.	48	1.67	37	245	160	29872	0	0
	LAKEWOOD TWP.	0	7.33	4005	1263	1768	32132	0	0
	LAVALLETTE BORO.	60	4.33	128	503	597	34899	0	0
	LITTLE EGG HARBOR TW	131	5.00	275	132	82	37357	0	0
	LONG BEACH TWP.	45	2.67	92	482	2193	34952	0	0
	MANCHESTER TWP.	218	5.00	625	155	2837	24914	0	0
	MANTOLOKING BORO.	22	1.00	2	186	4	66780	0	0
	OCEAN TWP.	123	4.00	28	231	19	33923	0	0
	OCEAN GATE BORO.	8	.33	23	350	103	31134	0	0
	PINE BEACH BORO.	21	0.00	2	180	39	43450	0	0
	PLUMSTED TWP.	7	2.67	35	281	174	44879	0	0
	POINT PLEASANT BORO.	215	10.67	582	682	480	44878	0	0
	PT PLEASANT BEACH BO	64	2.33	462	1078	429	38279	0	0
	SEASIDE HEIGHTS BORO	23	0.00	827	529	1094	23782	0	0
	SEASIDE PARK BORO.	36	6.67	276	910	692	35903	0	0
	SHIP BOTTOM BORO.	46	4.67	120	513	558	32125	0	0
	SOUTH TOMS RIVER BOR	27	.33	43	58	15	37149	0	0
	STAFFORD TWP.	301	8.00	54	378	307	34858	0	0
	SURF CITY BORO.	27	4.67	2	185	823	30810	0	0
	TUCKERTON BORO.	49	4.00	170	277	83	30603	0	0
PASSAIC									
	BLOOMINGDALE BORO.	16	1.67	379	631	341	54237	117	0
	CLIFTON CITY	174	6.00	4040	10012	10950	43895	0	0
	HALEDON BORO.	4	0.00	244	1033	1481	39684	0	0
	HAWTHORNE BORO.	26	2.00	536	2696	2519	47420	0	0
	LITTLE FALLS TWP.	32	4.00	902	1196	776	49467	0	0
	NORTH HALEDON BORO.	17	.67	68	536	276	57188	0	0
	PASSAIC CITY	0	12.00	8891	8923	6935	29336	0	0
	PATERSON CITY	0	56.00	12435	17518	23879	29656	0	0
	POMPTON LAKES BORO.	18	.33	801	679	347	53750	0	0
	PROSPECT PARK BORO.	1	0.00	10	1275	1435	39316	0	0
	RINGWOOD BORO.	3	1.33	2	536	48	66029	0	0
	TOTOWA BORO.	44	1.67	79	858	795	50940	0	0
	WANAQUE BORO.	13	2.00	85	742	550	52991	0	0
	WAYNE TWP.	231	18.33	1572	1357	740	65219	0	0
	WEST MILFORD TWP.	27	2.67	166	1376	220	58007	0	0
	WEST PATERSON BORO.	18	3.33	876	547	1253	49426	0	0
SALEM									
	ALLOWAY TWP.	0	0.00	0	343	38	42718	0	0
	CARNEYS POINT TWP.	47	2.33	605	826	210	38933	0	0
	ELMER BORO.	1	.67	2	369	105	36584	0	0
	ELSINBORO TWP.	9	.67	0	226	14	42363	0	0
	LOWER ALLOWAYS CR TW	2	.67	0	284	10	40628	0	0
	MANNINGTON TWP.	1	.33	1	189	15	38375	0	0
	OLDMANS TWP.	56	1.00	1	219	31	43030	0	0
	PENNS GROVE BORO.	0	8.00	353	693	365	23573	0	0
	PENNSVILLE TWP.	54	4.67	586	1041	289	41827	0	0
	PILESGROVE TWP.	4	1.33	22	278	39	51005	0	0
	PITTSGROVE TWP.	23	1.33	6	518	32	38196	0	0
	QUINTON TWP.	2	.67	9	233	37	33444	0	0
	SALEM CITY	0	0.00	616	1110	473	18810	0	0
	UPPER PITTSGROVE TWP	5	1.67	1	385	31	40120	0	0
	WOODSTOWN BORO.	0	.33	209	569	254	37299	0	0
SOMERSET									
	BEDMINSTER TWP.	67	1.33	903	369	153	68799	177	0
	BERNARDS TWP.	216	.67	909	644	336	77000	475	0
	BERNARDSVILLE BORO.	50	3.00	102	733	257	75522	82	0
	BOUND BROOK BORO.	4	2.33	437	1653	1418	40795	0	0
	BRANCHBURG TWP.	93	2.00	55	290	106	74616	197	0
	BRIDGEWATER TWP.	220	1.33	1047	1076	510	69886	493	0
	FAR HILLS BORO.	13	1.00	4	137	35	61806	20	0
	FRANKLIN TWP.	362	7.00	3735	1145	1085	58630	492	182
	GREEN BROOK TWP.	63	1.33	0	202	31	64304	154	0
	HILLSBOROUGH TWP.	116	5.00	1587	559	323	64976	182	0
	MANVILLE BORO.	2	1.00	182	859	1213	41430	0	0
	MILLSTONE BORO.	0	0.00	0	59	17	58616	0	0
	MONTGOMERY TWP.	63	6.33	163	331	85	80827	315	0
	NORTH PLAINFIELD BOR	35	.33	2084	2555	1754	46062	0	13
	PEAPACK GLADSTONE BO	23	1.00	30	402	128	66082	28	9
	RARITAN BORO.	55	1.00	97	905	866	42671	75	0
	ROCKY HILL BORO.	1	.33	10	111	35	62498	0	0
	SOMERVILLE BORO.	170	3.00	1412	1408	959	43634	10	0
	SOUTH BOUND BROOK BO	4	.67	288	429	400	45460	0	0
	WARREN TWP.	161	3.67	7	606	97	79606	333	0
	WATCHUNG BORO.	59	2.00	6	232	52	87042	123	0

SUSSEX

	ANDOVER BORO.	0	0.00	32	168	49	40734	0	0
	ANDOVER TWP.	26	.67	140	244	52	59749	0	0
	BRANCHVILLE BORO.	1	.67	35	215	58	41164	0	0
	BYRAM TWP.	0	0.00	14	440	42	62371	0	0
	FRANKFORD TWP.	6	3.00	7	400	57	55000	0	0
	FRANKLIN BORO.	0	0.00	161	772	259	40305	0	0
	FREDON TWP.	9	.33	0	165	35	63936	0	0
	GREEN TWP.	0	0.00	0	148	21	64038	0	0
	HAMBURG BORO.	2	1.00	169	224	127	49041	0	0
	HAMPTON TWP.	17	1.33	3	172	21	51814	0	0
	HARDYSTON TWP.	0	0.00	240	219	46	51163	0	0
	HOPATCONG BORO.	26	13.00	24	652	143	53023	0	0
	LAFAYETTE TWP.	2	1.00	0	188	50	60819	0	0
	MONTAGUE TWP.	0	.33	145	173	137	42797	0	0
	NEWTON TOWN	27	.67	842	1340	579	35996	41	0
	OGDENSBURG BORO.	1	.33	27	227	87	51190	0	0
	SANDYSTON TWP.	2	1.00	1	232	17	41156	0	0
	SPARTA TWP.	6	3.33	24	961	268	69335	17	0
	STANHOPE BORO.	0	.33	90	286	157	52731	0	0
	STILLWATER TWP.	0	0.00	37	421	43	51693	0	0
	SUSSEX BORO.	0	.33	314	455	245	29590	0	0
	VERNON TWP.	4	1.67	905	622	149	56086	0	0
	WALPACK TWP.	0	0.00	0	31	0	20625	0	0
	WANTAGE TWP.	3	1.33	105	445	112	52165	0	0

UNION

	BERKELEY HEIGHTS TWP	70	.67	8	375	73	82634	190	0
	CLARK TWP.	51	.67	771	434	251	55104	23	0
	CRANFORD TWP.	114	3.67	655	3128	990	59916	0	0
	ELIZABETH CITY	0	25.33	15326	16862	16971	30394	0	0
	FANWOOD BORO.	24	1.33	5	532	79	66739	0	0
	GARWOOD BORO.	17	.67	86	643	693	45208	0	0
	HILLSIDE TWP.	0	1.67	327	2882	2372	45306	0	0
	KENILWORTH BORO.	39	1.00	8	453	591	43971	0	0
	LINDEN CITY.	99	6.67	2200	3438	5002	39502	0	0
	MOUNTAINSIDE BORO.	49	0.00	4	245	23	82092	0	0
	NEW PROVIDENCE BORO.	91	.33	421	499	474	68662	65	0
	PLAINFIELD CITY	0	5.00	3740	5872	4230	42309	0	153
	RAHWAY CITY	80	4.00	1807	3002	1921	44854	0	0
	ROSELLE BORO.	0	4.33	1685	2450	1713	44474	0	0
	ROSELLE PARK BORO.	16	.33	1356	2057	982	47701	0	0
	SCOTCH PLAINS TWP.	88	4.33	689	1015	528	64013	218	0
	SPRINGFIELD TWP.	80	0.00	1118	754	706	53512	0	0
	SUMMIT CITY	121	5.33	1423	3296	1074	73110	0	0
	UNION TWP.	157	11.00	1457	4235	3899	46931	94	233
	WESTFIELD TOWN	98	4.00	672	4480	1179	73436	0	0
	WINFIELD TWP.	1	0.00	4	72	488	31682	0	0

WARREN

	ALLAMUCHY TWP.	1	.33	72	135	60	61926	0	0
	ALPHA BORO.	10	0.00	109	475	117	37938	0	0
	BELVIDERE TOWN	0	0.00	139	554	173	38052	0	0
	BLAIRSTOWN TWP.	0	0.00	5	362	148	57511	0	0
	FRANKLIN TWP.	5	0.00	0	391	51	51802	7	0
	FRELINGHUYSEN TWP.	0	0.00	0	223	27	51938	0	0
	GREENWICH TWP.	32	0.00	1	333	72	47936	56	0
	HACKETTSTOWN TOWN	66	.33	775	952	445	43238	0	0
	HARDWICK TWP.	0	0.00	0	118	9	49912	0	0
	HARMONY TWP.	18	.67	0	357	40	47905	36	21
	HOPE TWP.	0	0.00	0	208	17	57314	0	0
	INDEPENDENCE TWP.	8	0.00	260	272	107	49775	0	40
	KNOWLTON TWP.	8	.33	3	327	45	45375	0	0
	LIBERTY TWP.	0	0.00	12	214	39	53801	0	0
	LOPATCONG TWP.	18	0.00	477	368	69	39895	22	40
	MANSFIELD TWP.	12	1.33	1173	303	134	43850	0	0
	OXFORD TWP.	0	0.00	19	325	56	40810	0	18
	PAHAQUARRY TWP.	0	0.00	0	26	4	33459	0	0
	PHILLIPSBURG TOWN	0	.33	855	3780	1270	30018	0	0
	POHATCONG TWP.	33	0.00	7	439	65	44620	0	0
	WASHINGTON BORO.	11	0.00	666	1176	479	40153	0	9
	WASHINGTON TWP.	35	.33	51	402	63	57942	91	0
	WHITE TWP.	3	1.33	167	390	53	44924	0	0

TECHNICAL APPENDIX B

Estimating Undeveloped Land in New Jersey Using Thematic Mapper Satellite Data, 1990 Census Data and the TIGER Files

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Introduction

The Council on Affordable Housing (COAH) has been required to develop fair share housing allocations for low and moderate income families for municipalities state-wide. The development of these allocations is based upon a number of factors including the amount of undeveloped land available within each region.

The conversion of land in New Jersey from undeveloped to developed status is a complex, dynamic process. Traditional methods of estimating land cover that rely on extensive field survey and mapping and the manual interpretation of aerial photography are both extremely expensive and time consuming. Developing reliable state-wide estimates of land cover, including land categorized as developed or undeveloped, in an extremely short time frame required the use of automated and computerized techniques.

Given these constraints, the Cook College Remote Sensing Center (CCRSC), Rutgers University, served as a consultant to COAH to develop these state-wide estimates. A number of types of digital information were used in this process. The analysis relied upon a combination of image processing and geographic information system (GIS) techniques to generate estimates of the amount of undeveloped and developed land present in the state of New Jersey. Simply put, geographic information systems are: computer hardware and software systems that allow the efficient, rapid development of a spatial data base and that permit the analysis of this information in an objective, automated manner.

Overview of the Methods Used in the Analysis

As stated above, image processing and GIS techniques were used to generate land cover estimates for the state of New Jersey. The ERDAS image processing and ARC/INFO and GRASS GIS software packages were used in the development of the data base and subsequent analysis. The following represents an overview of the methods that were used and provides a description of key terms and concepts. A more extensive, technical description of the process is provided in the **Methods and Procedures** section of this report.

The GIS data base that was developed for this analysis contained the following data layers:

(1) Landsat Thematic Mapper digital data providing 30 meter coverage of the entire state;

(2) US Department of Commerce 1990 Census of Population and Housing information and the associate digital TIGER files;

(3) Municipal, county, and state digital boundary files obtained from the NJ DEPE;

(4) Planning area digital boundary files obtained from the State Planning Commission; and

(5) Pineland Management Area digital boundary files obtained from the NJ DEPE.

Satellite digital information has been used extensively in this country and throughout the world to monitor the environment in a cost effective, timely fashion. Landsat data has been used for a number of applications, including: identification and monitoring of agricultural crops, forest monitoring and disease detection, coastal zone monitoring, and for the generation of land cover information. Satellite data is the only spatial data providing complete coverage of New Jersey that is collected in a regular, systematic manner and that can be used in an unbiased way to generate consistent land cover information.

Landsat Thematic Mapper (TM) satellite data was selected by COAH as the best available information for the development of the fundamental land cover data layer for the GIS data base used in this analysis. TM data is acquired by a U.S. satellite system operated under the control of the EOSAT Corporation and is available in digital format. The digital data consists of spectral information that represent the amount of light (i.e. electromagnetic energy) reflected from a portion of the earth's surface in 6 narrow spectral bands and a 7th channel or band that represents radiated heat.

This spectral information is collected for pixels having a 30 meter ground resolution, with the exception of the thermal channel which has a 120 meter ground resolution. Thus, the satellite data used in this analysis has an inherent spatial resolution of 30 meters; however, each 30 meter pixel is classified into a land cover class based upon its spectral signature.

The processing of Landsat TM data to yield a thematic land cover map required a number of steps. The digital data was first formatted to provide coverage of the entire state and then processed to generate a desired classification map. The classification map produced through this process aggregates land cover into two classes—undeveloped and developed. Undeveloped land was defined for the purpose of this study as land presently vacant, being forested, open, or in an agricultural use. Developed land was defined as land that is either presently developed or land that may comprise a surface water body.

It is important to understand that the information derived from the TM satellite data represents land cover estimates and not land use estimates. The crucial difference between these two concepts relates to the inherent use of satellite data to generate land cover information (eg. existing land cover, such as forest, grassland, built-up, or water classes) and not land use information (eg. existing commercial land uses, such as a shopping center, versus an office building complex, or a manufacturing complex). Implicit in this distinction is the fact that the roof of a large commercial building may have the same spectral signature as that of the roof of an industrial plant, manufacturing facility, or warehouse. Consequently, the machine processing of the satellite data cannot be used to make these types of distinctions between land cover types at this level of analysis.

This distinction is of great importance in interpreting the results of this analysis. One of the problems associated with generating land cover estimates for New Jersey was the discrimination of residentially developed land from undeveloped land. This problem was most apparent in urban and suburban areas where either street tree and residential landscape plantings have created a landscape that has essentially a closed forest canopy or where residential housing units have been constructed in forested areas and the forest canopy remains substantially intact.

Given the 30 meter spatial resolution of the TM data, these areas would have been subject to misclassification as being forested or undeveloped if this were the only information available. This problem was addressed through the use of the 1990 census data and the TIGER files to identify areas that, although they may appear forested or undeveloped based upon their spectral properties as determined using TM data alone, can be considered to be developed based upon the density of housing units present. A more complete description of the processing of the census data and the use of the TIGER file spatial information is provided below.

Following the generation of a land cover data layer using the TM digital satellite data and a housing density data layer derived from the 1990 US Census data and associated TIGER files, the GRASS GIS software was used to determine the amount of developed and undeveloped land present state-wide. The tables that were developed provide estimates by county and by municipality and were cross classified by both the State Planning Commission's Planning Areas and the COAH housing regions. The results represent repeatable, unbiased estimates of undeveloped land throughout the state and multi-county regions.

Methods and Procedures

Landsat TM Image Processing

In order to generate land cover estimates for New Jersey, relatively cloud free Landsat Thematic Mapper (TM) data was required. The Thematic Mapper sensor onboard the LANDSAT platform acquired three cloud free images for Path 14, Rows 31, 32, and 33 on March 17, 1991. These scenes were acquired from EOSAT and provided data for the entire state. The ERDAS image processing and GIS software package was used for the satellite image processing and classification procedures.

Digital data providing complete coverage of the state was extracted from the delivered computer compatible tapes (CCTs) and stored in ERDAS format. The entire digital satellite data set for New Jersey had an approximate size of 300 Megabytes (Mbs), which would have been difficult to process as one file. A decision was made to divide the state into upper and lower regions to facilitate storage and processing. This division also corresponded to the approximate physiographic boundaries for the state with the upper region covering the Highlands, Ridge and Valley, and Piedmont provinces to the north, and the lower region

covering the Coastal Plain to the south. It was also felt that this division would aid in the determination of land cover classes, since vegetation and landscape types vary significantly between these groups of provinces.

The upper and lower subsets were created through the merger of the three corresponding scenes. Thematic Mapper scenes contain a certain amount of overlap to assure that continuous coverage of a specific geographic area is potentially available for analysis. To accomplish this edge-matching, the file coordinates in the images were changed so that the northern and southern edges of each scene corresponded to the edge or edges of the adjacent scene. An ERDAS utility was then used to patch the files together and remove areas of overlap which produced two seamless subsets.

Display of the upper image revealed that snow cover was present at higher elevations. Visual interpretation of the snow covered areas in the imagery, as well as an examination of existing maps and orthophotography, revealed that many of these areas were primarily forested, but this observation had to be verified using digital data. The Center image library contained cloud free Thematic Mapper imagery that was collected on August 15, 1988. It was determined that this data would be acceptable for generating the land cover for areas covered by snow in the March 17, 1991 imagery.

In order to eliminate the snow covered areas in the 1991 imagery and substitute the data from the 1988 imagery, a file was created that served as a mask for both data sets. The 1991 scene was displayed on the graphics device, and the analyst, using an ERDAS utility, visually interpreted the spatial distribution of the snow covered areas, digitized the boundaries directly on the screen, and then stored these results in a vector file format. The 1988 data was then coregistered to the 1991 data, so that file sizes between the two scenes would be identical and have matching pixel coordinates. Since the digitized snow boundaries were stored in vector format, this file was converted to a raster file for use as a mask for each data set. This mask was then used to cut out and eliminate the snow covered areas in the 1991 scene, which were then replaced with the corresponding data from the 1988 image.

A classification was performed independently on each of the three data sets: the masked upper region of the 1991 scene, the masked "replacement" portion of the 1988 imagery, and the lower region of the 1991 scene. Through an iterative process, the number of clusters, or training samples, that were derived from each data set varied between 50 and 100. These cluters were then input into a maximum-likelihood classification algorithm. The land cover types that each of the classes represented were then determined using a combination of visual interpretation of the satellite image as well as 7½ minute quadrangle maps and orthophotography. Each class was collapsed into one of six possible land cover types for this application: forest, nonforest vegetation, developed, bare or barren, water, and cloud.

An accuracy assessment was then developed for each of the classified data sets. An ERDAS utility was used to generate 100 random points for each file, which were then displayed on top of the corresponding image. The land cover category for each random point was then interpreted using the raw digital image and the associated aerial and orthophotography. The results of the interpretation from each of the three files were combined and then compared to the results obtained from the computer classification in the form of an error matrix.

Analysis of the results indicated that the classification produced a map having an overall accuracy of approximately 86 percent. Within each land cover class the results varied from 100 percent for the barren and water categories to 78 percent for the built-up/developed category, 81 percent for the vegetated non-forested category, and 88 percent for the forested category.

Analysis of the US 1990 Census Data and Use of the TIGER Files

The definitional problems of land cover versus land use were described above and in this project were most readily apparent when mapping residentially developed land. Residential land is frequently a mixture of different land cover types (i.e. forest, agriculture, and built-up categories). When the spatial resolution (i.e. pixel size) of the digital information that is being used to produce a land cover classification is relatively course (i.e. 30 meters), the fine scale combination of intermixed land cover types common to a residential neighborhood produces a mixed spectral response, and makes different types of residential land difficult to detect using satellite data alone.

The U.S. Census Bureau released the post-census TIGER files and the congressional redistricting (PL94-171) data early in 1991. The PL94-171 data contained the total number of persons and housing units for each census block. By linking these two data items and their spatial distribution, the CCRSC processed and developed in a georeferenced, digital format, a file containing the population and housing unit densities for each census block for the state of New Jersey. This file was then used to develop a housing density data layer or mask that was used to map areas having a housing density greater than a specific density threshold. In order to develop a suitable masking file using the housing density information available from the census data, housing density masks having densities of 0.5 units per acre (i.e. 1 unit per 2 acres), 1 unit per acre, and 2 units per acre were created and evaluated.

Selection of the Housing Density Mask Threshold

Selection of an appropriate threshold residential housing density for this study involved an evaluation of the use of a range of housing densities. As indicated above, the TIGER files and the 1990 census block data were used to calculate housing density by block for the entire state at densities of 0.5, 1, and 2 units per acre. The effectiveness of these housing density thresholds was evaluated for municipalities throughout the state. As an illustration of the methods that were developed, the results obtained for Highland Park and Piscataway Township, Middlesex County, are discussed below.

Highland Park is a typical, relatively small (i.e. 1,236 acre), older suburban community retaining little undeveloped land, but one having a relatively high population and housing density. Residential landscaping and street tree plantings have over time created a community that from the perspective of space and using the information available from the Thematic Mapper satellite system appears substantially forested. Piscataway Township, in contrast, is a relatively larger (i.e. 12,185 acres), developing municipality containing a greater diversity of land use activities including residential areas of varying housing density, commercial areas, agricultural land, forested land, and a portion of the Rutgers University campus.

Table 1, Developed versus Undeveloped Land Cover Estimates Using Housing Density Information, provides a summary of the results of this analysis. The results clearly indicate that the TM digital data, if used alone, would result in an under estimation of the amount of land classified as being developed in residential areas where tree cover is an important component of the spectral information that is recorded by the satellite. In contrast, the results indicate that census data can be effectively used to derive residential housing density information that can greatly reduce this potential problem of misclassification.

The results (see Table 1) indicate that the undeveloped land cover estimates derived from the TM data are significantly reduced through the use of the housing density information. In the case of Highland Park, the percentage of land classified as being undeveloped decreases from 31.9 percent when using the TM information to a low of 6.8 percent when using the 0.5 unit per acre density mask. This pattern is repeated for Piscataway where the estimated percentage of undeveloped land decreases from 56.8 percent when using the TM information to a low of 37.1 percent when the 0.5 unit per acre density mask is used.

The results reflect the degree to which Highland Park is in fact a highly developed community with little land remaining for potential development and within which residential development has taken place at a relatively high density. In contrast, the results for Piscataway reflect a different pattern of development within this community and the existence of a significant amount of undeveloped land even when housing density information is used to improve the accuracy of the estimate of remaining undeveloped land. After examining the data for these and other municipalities, it was decided that the 0.5 unit per acre density threshold yielded the most accurate estimates of undeveloped land.

Processing of the Remaining Digital Boundary Files

Digital boundary files for municipalities or minor civil divisions (MCDs), the term used for municipalities in New Jersey by the US Census, counties, and the state were obtained from the NJ Department of Environmental Protection and Energy (DEPE). These files were used to maintain consistency with existing estimates of the total amount of land within the State, counties, and MCDs. The vector boundary files were converted to raster format as an additional data layer in the GIS data base used to develop the estimates of land cover.

Digital boundary files for the state planning areas were obtained from the State Planning Commission and converted from vector to raster format and also added as a data layer to the GIS data base. Digital boundary files for the Pinelands management areas were obtained from the Pinelands Commission for land within the Pinelands region and converted from vector to raster format.

Calculation of Adjusted Developed and Undeveloped Land

Following the processing of the TM digital data, the 1990 US Census data and TIGER files, the MCD, county, and state boundary files, the state planning region boundary files, and the Pineland management area boundary files; the GIS data base required to estimate developed and undeveloped land was completed. Following the development of this data base, the GRASS GIS software package was used to calculate the amount of developed and undeveloped land within each MCD by planning area. The results were output in machine readable format and used in the calculation of housing allocation numbers by COAH and its consultants.

Summary and Conclusions

Estimates of developed and undeveloped land were calculated for New Jersey using land cover information derived from Landsat TM digital data. Further refinement of the estimates of undeveloped land was accomplished through the use of the 1990 US Census data to eliminate land that could be characterized as developed based upon existing housing density at the block level.

The estimates that were derived through this process were designed to be consistent state-wide estimates that could be used to establish reasonable regional shares within each housing region for each New Jersey municipality. It is believed that the resulting estimates are the best available and the data created represent a valuable planning tool for government, non-profit, and private sector entities at the state, county, and local levels.

Table 1. Developed versus Undeveloped Land Cover Estimates Using Housing Density Information.

	Municipality			
	Highland Park		Piscataway	
	acres	% total	acres	% total
TM land cover				
undeveloped	394	31.9%	6,921	56.8%
developed	842	68.1%	5,264	43.2%
TM with a 2 unit/acre mask				
undeveloped	200	16.2%	6,009	49.3%
developed	1,036	83.8%	6,176	50.7%
TM with 1 unit/acre mask				
undeveloped	91	7.4%	5,309	43.6%
developed	1,145	92.6%	6,876	56.4%
TM with 0.5 unit/acre mask				
undeveloped	85	6.8%	4,515	37.1%
developed	1,151	93.2%	7,670	62.9%
Total land cover	1,236	100.0%	12,185	100.0%

Note: The TM land cover estimates include the total acreage of land classified as vacant using the digital satellite data.

APPENDIX C

STRUCTURAL CONDITIONS SURVEY

The Council on Affordable Housing (COAH) has estimated the number of substandard housing units occupied by low and moderate income households in each municipality, by employing census data. This estimate is called the municipal indigenous need. COAH recognizes that its estimates may be high or low. Therefore, COAH has devised a survey for any party in COAH's process to present data to COAH that may be used to alter the census-generated indigenous need estimates.

The survey requires an exterior inspection to determine if a housing unit is substandard. It then provides for the use of census data to estimate the number of substandard units occupied by low or moderate income households.

In developing the exterior survey, COAH has divided the exterior structure of a building into seven components: (1) foundation; (2) rails, steps, stairs, porch; (3) siding and walls; (4) windows and doors; (5) eaves, soffets, gutters, leaders; (6) roof and chimney; and (7) fire escape. The foundation, siding and walls and roof and chimney are considered major systems. The remaining components are considered minor systems. Each system is to be ranked as good/excellent or fair/poor. Definitions are provided to guide the exterior inspection in Appendix A.

If one major system is determined to be fair/poor, the structure and all housing units within it are considered substandard. If two or more minor systems are determined to be fair/poor, the structure and all, the units within the structure are considered substandard.

The survey can be conducted from the street, and, in most cases, there will be no need to step on to the property. A view of the front of the structure, its two sides (one side of it is semi-detached) and a portion of the roof should provide sufficient information to complete the survey.

The Structural Conditions Survey shall be performed by individuals who are licensed to perform building and/or housing inspections who have received training from COAH on the implementation of the survey. Additional COAH training may be substituted for a building and/or housing inspection license. COAH will offer training periodically on how to conduct this survey.

There may be some areas of a municipality which can be excluded from the survey. Subdivisions constructed after 1980, areas of very expensive homes, and neighborhoods that the local housing/building inspector believes are trouble free are examples of such areas. All surveys submitted to COAH will be checked by COAH staff with special attention paid to areas of the municipality not surveyed.

The exterior survey should yield an estimate of substandard units within the municipality. To estimate the number of substandard units occupied by low and moderate income households, the Council will rely on census information that is available from the Public Use Micro-Data Sample (PUMS). This data allows COAH to match household income to the census information COAH uses to estimate the indigenous need. The census has divided New Jersey into over 50 PUMS areas. Therefore, the data are sensitive to the different housing stocks found within the State.

As an example, let us assume that a municipality performs the exterior survey and finds 100 substandard units. Let us also assume that the PUMS data indicates that 82 percent of substandard units (within the geographic area defined by the PUMS) are occupied by low and moderate income households. Therefore, the survey results indicate that 82 low or moderate income households are living in substandard housing units.

DEFINITIONS FOR STRUCTURAL CONDITIONS

The following relates to structural components of a residential building. Refer to the attached diagram for component identification.

Excellent to Good—The condition of the component is like new or requires standard maintenance.

Examples:

Foundation—The component may need minor re-pointing and/or paint or the removal of shrubs or vines to protect it from deterioration.

Handrails, Steps, Stairs, Porch—A component or components may need paint and/or re-nailing or tightening.

Siding and Walls—The components may need light scraping and painting and/or re-nailing of loose siding.

Windows and Doors—The components may need light scraping and painting and appear to be operational.

Eaves, Soffets, Gutters, Leaders—The components may need light scraping and painting. Gutters may need realignment. Leaders may need re-attachment.

Roof and Chimney—No immediate repair is needed on the roof. The chimney is straight but may need minor re-pointing.

Fire Escape—The component may need scraping and painting and is properly functioning.

Fair to Poor—The condition of the component requires immediate maintenance, repair or replacement. Further deterioration may adversely affect other exterior and/or interior components.

Examples:

Foundation—The component needs re-pointing, replacement of some stones, brick or blocks or some rebuilding due to: loose, broken or missing bricks or block; missing mortar; excessive cracks in the masonry*; deterioration of masonry surface; pargeting pulling away; sinking; or being out-of-plumb.

Handrails, Steps, Stairs, Porch—The components need replacement of boards, risers, joists, rafters, and/or beams, etc. due to: sagging; broken or unsound supports; a sinking or structurally unsound foundation; broken, missing or rotted boards; missing or unsound railings or balusters; broken or missing trim; missing mortar in the masonry or the masonry being generally deteriorated; excessive cracks in the masonry*; or worn steps.

Siding and Walls

Brick—The component needs re-pointing, spot replacement, re-construction, etc. due to: sagging; bowing; being out-of-plumb; excessive cracks in the masonry*; missing bricks or missing mortar.

Stucco—The component needs patching, spot replacement, or re-construction and painting due to deteriorated surface, cracks, holes, water damage, or bowing.

Wood—The component needs patching, spot replacement, or re-construction and painting due to sagging, bowing, being out-of-plumb, rot, water damage, loose boards, cracked or broken boards.

Siding—The component needs spot, area or total replacement due to broken or missing siding.

Windows and Doors and Related Trim (Exclusive of Storm Doors and Windows)

Windows—The component needs putty or new glass. Other indicators of a fair/poor component include: missing or broken trim; missing or broken sill; a frame or sash out of square; rotted wood; and/or inoperable windows.

Doors—Indicators of a fair/poor door include: broken glass; a frame out of square; missing or broken trims; interior grade doors being used as exterior doors; rotted wood.

Eaves, Soffets, Gutters, Leaders—Indicators of a fair/poor component include: broken or hanging sections; holes, rot leakage and/or missing sections; significant deterioration; or animal infestation.

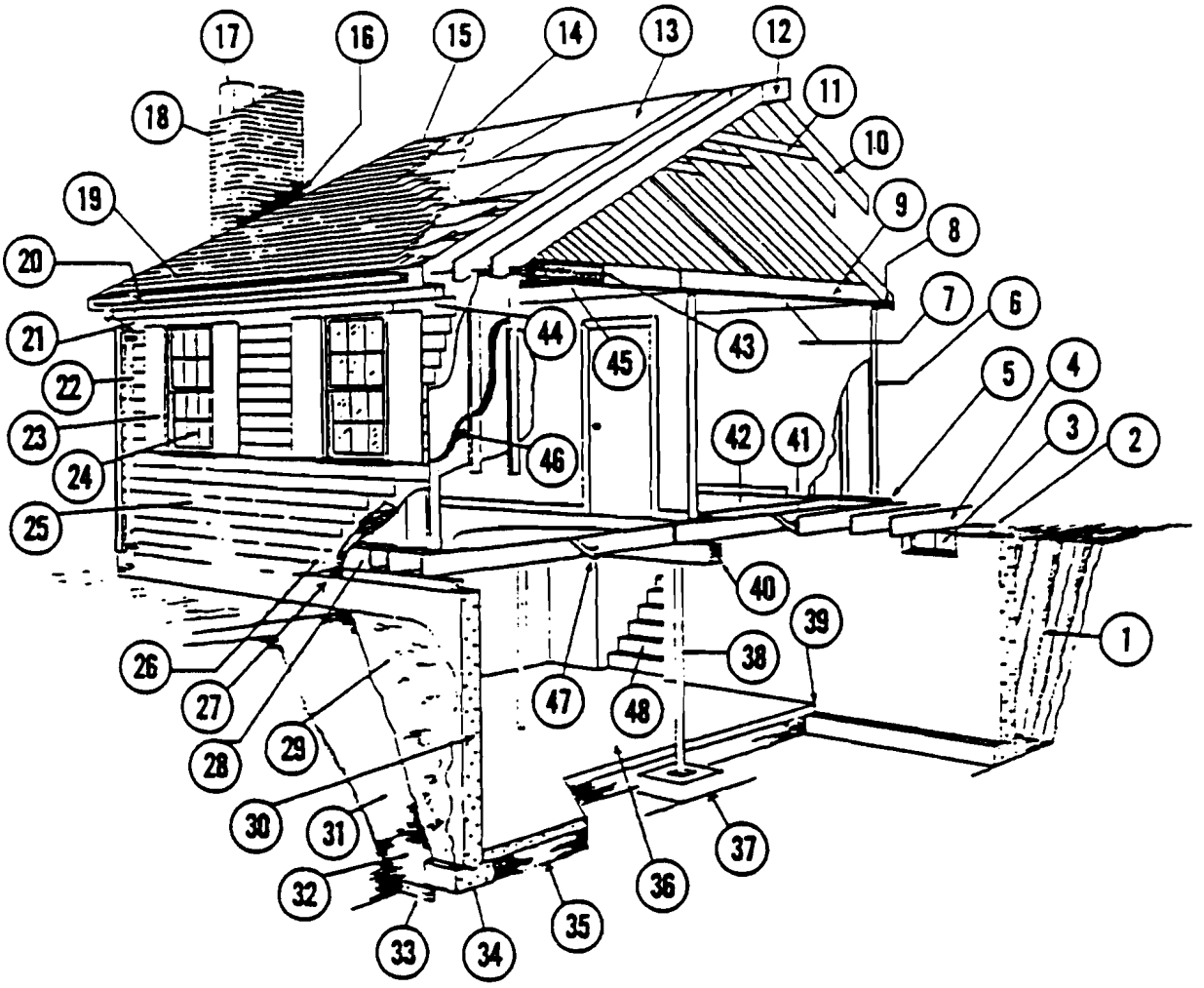
Roof and Chimney

Roof—The component needs moderate scattered shingle replacement, area replacement or total replacement due to: sagging; exposed paper or sheathing; hole(s); curling of shingles; blistering of rolled roofing; cracked shingles; missing shingles; rusted metal roof; and/or leakage.

Chimney—The component needs partial or total reconstruction due to: sinking; being out-of-plumb; excessive cracks*; loose, broken or missing bricks; missing mortar; deteriorated surface and/or lack of a flue.

Fire Escape—The component needs significant physical repairs or replacement and/or is not fully operational.

*Excessive cracks can mean multiple cracks affecting structural integrity or a crack or cracks as wide as ¼ inch.



RESIDENTIAL BUILDING COMPONENTS

1. EXCAVATION
2. SILL PLATE
3. BASEMENT WINDOW
4. FLOOR JOIST
5. SHOE PLATE
6. STUDS
7. DRYWALL
8. PLATE
9. CEILING JOISTS
10. RAFTERS
11. COLLAR TIES
12. RIDGE RAFTER
13. ROOF SHEATHING
14. ROOF FELT
15. RIDGE SHINGLES
16. FLASHING
17. FLUE LINING
18. CHIMNEY
19. ROOF SHINGLES
20. GUTTER
21. FACIA
22. DOWNSPOUT
23. SHUTTER
24. WINDOW
25. WALL SHINGLES
26. BUILDING PAPER
27. WALL SHEATHING
28. FIRE STOP
29. DAMPPROOFING
30. FOUNDATION WALL
31. BACKFILL
32. DRAINAGE STONE
33. DRAINAGE TILE
34. WALL FOOTING
35. GRAVEL
36. CONCRETE SLAB
37. COLUMN FOOTING
38. PIPE COLUMN
39. EXPANSION JOINT
40. GIRDER
41. SUB-FLOOR
42. FINISH FLOOR
43. ATTIC INSULATION
44. SOFFIT
45. CEILING STRAPPING
46. WALL INSULATION
47. CROSS BRIDGING
48. BULKHEAD STAIRS

STRUCTURAL CONDITIONS SURVEY DATE:

RATE COMPONENT: GOOD/EXCELLENT = O

FAIR/POOR = X

SURVEYOR:

STREET:	COMPONENTS										DEFICIENT "STRUCTURE" MARK "YES" OR "NO"	COMMENTS
				ONE "X" AND STRUCTURE IS DEFICIENT			TWO "X"S AND STRUCTURE IS DEFICIENT					
ADDRESS	BLOCK	LOT	NUMBER OF DWELLING UNITS	FOUNDATION	SIDING AND WALLS	ROOF AND CHIMNEY	WINDOWS AND DOORS	EAVES/SOFFETS GUTTERS/LEADS	RAILS/STAIRS STEPS/PORCH	FIRE ESCAPE		

TECHNICAL APPENDIX D

The Cost of Providing Infrastructure

Application: The Cost of Providing Infrastructure

September 4, 1986

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Appendix 1: Data Sources

Appendix 2: Data Definitions

I. Purpose

The purpose of this study is to provide an approach to the development of **financial evaluation forms** to be used by the Council on Affordable Housing and the Department of Community Affairs. This form will provide the necessary data to review whether necessary capital expenditures to support proposed inclusionary housing development obligations would result in "prohibitive costs" to the respective local jurisdictions.

Study Approach

The approach taken to accomplish the study's objective is to first present the theoretical background and analytical approaches that have been used to measure prohibitive costs from the perspective of a community's financial capacity. The infrastructure costs are limited to **water and sewer systems only**.

Section III presents the data requirements needed to measure prohibitive cost and a discussion of indicators that provide a perspective on municipal and financial conditions and status.

Section IV includes a series of worksheets that make up the financial evaluation form. These worksheets provide information on municipal taxes, demographic and statistical data employed to calculate indicators of economic vitality, revenues/expenditures, income data on water and sewer enterprise funds, rates charged to users of each water and sewer service system, wastewater system costs, and costs per household.

Section V presents comparative data on which to make an evaluation of prohibitive costs against generally accepted industry standards. These standards are drawn from Moody's Investors Service selected indicators of Municipal Performance for 1985.

II. Assumptions and Suggested Analytical Approach

The service area and the type of financing, general obligation, revenue bond, special district or tax increment financing will have a direct bearing on who bears the burden of the system costs. A general obligation bond or a revenue bond supported by general property taxes or user charges from an entire jurisdiction has the broadest distribution of cost impacts. An improvement district or tax increment financing district with assessment or "impact fees" levied directly against the properties who benefit from the new system costs has more narrow cost distribution effects. The boundaries of the service area and the method of revenue generation to pay for the project financing must be explicitly defined.

A municipality's ability to pay for the new infrastructure will depend on a judgment as to whether or not its indicators of financial condition indicate "fiscal stress" will result from the added community expenditure. These indicators are objective in nature as described in Section III below and should be judged against the standards of the financial and debt ratios presented in Section V. Generally, a community with poor financial and debt ratios that are below the median ratios are strong candidates for a jurisdiction likely to experience "prohibitive costs" from the new infrastructure. These are generally communities with the lowest investment grade or below investment grade ratings from national rating agencies (Moody's, Standard & Poor's and Fitch).

Many tax-exempt municipal bonds and notes are given ratings to indicate their degree of creditworthiness security from risk or default. Three major national rating agencies analyze the municipal authorities issuing bonds. They are Moody's Investors Service, Standard & Poor's Corporation, and Fitch Investors Service. (Moody's and Standard & Poor's also will rate short-term issues.) Small issues of municipal bonds and notes are often sold without a credit rating.

Creditworthiness	Moody's	Standard & Poor's and Fitch
Prime (highest quality debt)	Aaa	AAA
Excellent	Aa	AA
Good	A	A
Average	Baa	BBB
Fair	Ba	BB
Poor	B	—
Marginal	Caa	B
Default	C	D

Bonds rated between prime and average are considered "investment grade" by banks and conservative investors. Those rated below average are considered "speculative" by the same investors.

In addition, Standard & Poor's has added plus and minus signs to the ratings of certain securities in order to differentiate between stronger and weaker credit ratings. This was done because there were so many bonds in each category. Similarly, Moody's adds a number one to the ratings of bonds that possess the strongest bonds in a category. For example, the strongest bonds in the Aa category are rated Aa1, the strongest bonds in the A category are rated A1, and the strongest bonds in the Baa category are rated Baa1.

Consistency of Standards

It is recommended that the same standards of "prohibitive costs" be used by the Council on Affordable Housing, Local Finance Board, and Department of Environmental Protection in their evaluation of each community.

Limitations

The limitations of these suggested approaches are the difficulties in synthesizing the municipal indicators into a single decision on prohibitive cost. These limitations can be overcome with more sophisticated analysis by developing a **prohibitive cost index**, perhaps with the technique of multiple discriminant analysis of the indicators. This approach groups indicators into common dimensions of municipal financial capability which can then be classified according to high, average or low strength.*

*See Karen M. Seidel "Oregon Municipal Fiscal Indicators," Bureau of Governmental Research and Service, University of Oregon, October 1983.

III. Data Requirements

Accurate data is fundamental to accurate analysis. The selected indicators are based on techniques by credit and municipal analysts for evaluating municipal financial condition.

In some cases, a particular data item may be simply unavailable or inappropriate, in which case it should be left out. In all cases, however, it is important that data be consistent during the period under examination. If accounting or recording procedures change from one fiscal year to another, adjustments should be made so that each year's data are comparable.

Data Requirements

The data needed for analysis fall into four general categories:

- expenditure elements,
- tax base elements,
- revenue elements, and
- demographics elements.

The analysis of financial conditions is based on an examination of the trends and behavior of key indicators over time. Data are collected for the most recent five-year period for which information is complete.

Data will usually be obtained from annual financial reports and other accounting or reporting statements. A list of suggested sources appears in the Appendix.

A. Economic and Social Factors

Economic and social factors are of primary importance in assessing the creditworthiness of a jurisdiction. A strong economic base should

enable an issuer to overcome some weakness in debt, legal and financial factors and to maintain a sound credit position. On the other hand, a weak or declining economy will demand that an issuer exert the utmost care in debt and financial management to protect creditworthiness. A strong credit usually shows greater than average economic diversity, wealth, and growth. Measures of economic base include total personal income, income per capita, population changes, and changes in per capita income.

Wealth

A wealthy economic base will be indicated by above-average per capita property values, personal income and wholesale and retail sales. Negative aspects here would be a high or rapidly growing proportion of the population at or below the poverty level or on welfare rolls.

Growth

A strong credit also requires a growing economic base, although not all growth is necessarily viewed as favorable. Extremely rapid growth based heavily upon speculative factors may lead to excessive build-up of debt and/or taxes which could prove unsupportable over the long run. While growth is not always a favorable sign, a decline in economic resources is viewed as a negative factor since it would be highly unusual for such a decline to be offset by a tapering of demands on the tax base. Growth rates in population should approximate the state and national averages.

Population

Population is a fundamental indicator of economic growth. Growth in population is associated with increases in retail sales and with growth in consumer-related jobs. Population increases attributable to migration are often additionally associated with construction and durable manufacturing job expansion as well as service sector expansion, particularly the components of business service, government and tourist recreation. Growth at faster rates than the national average indicates an increasing share of the U.S. market. Similarly, population growth exceeding regional rates indicates economic shifts within the region.

Personal income

Personal income is a powerful indicator of economic strength and viewed over time can reveal strong basic trends. Income is also a major fiscal resource of state governments and, therefore, is the standard against which debt and taxes are compared. If income is rising more rapidly than in the nation and/or region as a whole, shifts in economic base composition are a strong possibility. Growth in composition can be expected as can growth in government revenues from sales and income taxes.

Per Capita Income

Per capita income below the national average can be both favorable and unfavorable. Low incomes are associated with low quality public education and, consequently, low skilled labor. Low level and limited scope of government services and a low debt burden also are associated with low per capita income.

Total Nonagricultural Employment

Total employment is a powerful analytic tool, but nonagricultural employment is more useful for comparison. Relatively high growth in nonagricultural jobs is a favorable sign.

B. **Debt Management**

Debt factors have always played a prominent role in municipal credit both because of inherent importance and because debt figures are quantifiable measures which make inter-city comparisons easier than for other factors. Three key ratios traditionally used in the industry attempt to establish the size of a unit's debt, the burden this places upon resources, and the relationship between the servicing of this debt and the unit's overall revenues. In turn, each ratio can be viewed from three aspects in an attempt to weigh its importance in the unit's credit picture: (1) the absolute level of the ratio at that point in time as compared with traditional guidelines; (2) the level of the ratio as compared with ratios of similar types of local units; and (3) the trend of that ratio within the unit being reviewed. Three additional ratios explored in evaluating an issuer's debt management policies relate to the rate of debt retirement, the level of bond anticipation note debt and the level of the unfunded pension liability. Two other items which do not readily lend themselves to quantitative analysis but should be considered in debt analysis are (1) authorized debt and projected debt needs and (2) other significant unfunded debts and contingent liabilities such as leases.

Debt Per Capita

This ratio attempts to establish the size of the unit's debt. It is measured by dividing the unit's overall net debt by its population. Overall net debt is the total tax-supported debt of the issuer as well as its proportionate share of the debt of other governments which may tax residents of that community. When this ratio reaches $1,000 or above, debt is considered as sizeable.

Debt/Estimated Full Value

This ratio attempts to establish the burden which debt places upon resources, and is generally calculated by dividing the unit's net debt by the estimated market value of its real property. A debt burden of 3 percent or below is generally considered low. One between 3 percent and 10 percent is moderate. When the burden reaches or exceeds 10 percent, it is considered heavy and must be closely examined to determine that it will not become unmanageable in the future. The heavier the burden, the closer the attention that must be paid to the trend of that burden, the issuer's physical plant and future borrowing plans.

Debt Service/Revenues

This ratio's purpose is to indicate the flexibility that the locality will have to meet debt service (and other fixed charges although they are not directly part of the ratio) if revenues were to decline. A ratio of 10 percent or less indicates that ample flexibility should exist to meet debt service. If the ratio exceeds this level, it may be explained by a rapid debt retirement schedule or a unit in which capital expenditures are unusually large in relation to operating expenditures. If neither is true, then the higher that ratio becomes, the more concern there is about the unit's ability to meet fixed charges if an economic downturn or some other unforeseen circumstances depress revenues.

Direct Debt Due in Ten Years

This measure indicates the amount of the issuer's long-term debt which matures in ten years. Debt to finance a project should not extend beyond the expected useful life of the project. While each issuer's schedule must be viewed in terms of the types of long-term improvements being financed, it is generally true that the more rapid recapture of debt incurring capacity places the issuer in a more flexible position. Any issuer which has less than one-third of its long-term debt maturing in ten years must be carefully reviewed as to the appropriateness of such a slow retirement schedule.

C. **Financial Management**

A healthy credit is marked by a consistently and realistically balanced budget as reflected in the unit's income and expense statements, a cash surplus (cash and investments exceeding current liabilities) at the last balance sheet date, and maintenance of a manageable level of short-term operating debt. Other factors considered include the unit's tax burden, level of tax collections, reliability of its revenue structure and growth rate of its expenditures. A one-year deficit or drop in property tax collections may not be of particular concern if its origin is external (a national recession) and is resolved in a satisfactory manner and time period. However, if deficits persist over good and bad times, their causes must be examined closely.

Taxes

Taxes are the largest source of government revenues and we are developing data to measure **tax burden** or the ratio of taxes from own sources to personal income. (Adjusted personal income excludes welfare transfer payments from state and local texes.) Tax burden reveals the extent to which current levels of general revenue (excluding intergovernmental revenue) limit the private use of personal income. High tax burden is viewed as a disincentive to private investment and can be an indication of excessive government programs in the face of an unhealthy private economic sector. This measure should be studied along with the component data for revenues and personal income.

Ratios used in evaluating financial management may be categorized under two areas: operating statement and balance sheet data and tax ratios.

Average Annual Increase in Expenditures

One of the most telling indicators is how rapidly an issuer's budget is growing. An increase in expenditures which exceeds growth in the tax

base substantially over a period of time will ususally indicate future credit problems.

Direct Expenditures

Direct expenditures are particularly revealing of the extent of government participation in the economy. If expenditures are increasing more than revenues from own sources and Federal aid, increasing reliance on debt and/or accounting gimmicks is a possibility. Rising per capita expenditures may indicate broader scope and higher quality public services, increasing welfare burdens and/or rising public employee compensation. Below average expenditures that show a sudden surge may indicate a shift to an urban economy characterized by high-skilled industries. Per capita figures facilitate comparisons among jurisdictions and within a state over time.

Comparatively high levels of expenditures should be associated with broader, better services, and some attention should be paid to apparent adequacy and delivery efficiency—or lack thereof.

Operating Surplus (Deficit) Revenues

From the income and expense statement, it is ascertained whether revenues exceeded expenditures (operating surplus) or expenditures exceeded revenues (operating deficit). An operating surplus is considered favorable or comfortable. A large surplus is not necessarily looked for, as a particularly large one may even have negative connotations as to budgeting practices. An operating deficit of more than 5 percent of revenues is of concern and must be further examined in terms of past year's performance, the reason for it (internal or external), and the plans to resolve it.

Accumulated Surplus (Deficit) Revenues

From the balance sheet, the issuer's solvency is evaluating by measuring accumulated surplus or deficit. Generally, a surplus of any size may be considered satisfactory, though a substantial decline from the prior year is deserving of further attention as to its implications for future budgets. Investigate the source of any deficit that has been allowed to accumulate in excess of 10 percent of one year's revenues and examine the issuer's ability and plans to eliminate it.

Effective Property Tax Rebate

The effective property tax rate is an overall rate taking into account not only the property tax rate of the issuer but also those of all its overlapping tax jurisdictions. The effective property tax rate is the tax rate on true or market property, thus allowing for comparisons with other units. A problem exists in using this indicator due to the diversity in revenue structures. However, it is useful in comparing like units within a specific state.

Tax Delinquency Ratios

The property tax collection record is important because some issuers depend heavily upon property taxes; for virtually all issuers, the tax is the budget-balancer; and, because it is one of the best measures of willingness to pay. Two ratios are primarily utilized. The first measures the collections from the current year's levy against the gross levy for that year. The second measures current collections and collections from prior years combined against the current levy.

IV. **Financial Evaluation Forms**

A series of worksheets are presented with instructions on how to fill them out. The eight worksheets are based on the indicators of financial condition as follows:

- **Worksheet #1**—Behavior of Municipal Tax Base and Tax Revenues
- **Worksheet #2**—Expenditure Information
- **Worksheet #3**—Demographic and Statistical Information
- **Worksheet #4**—Water and Sewer Enterprise Fund Information
- **Worksheet #5**—Water and Sewer Rates
- **Worksheet #6**—Total Estimated Annual Local Wastewater System Costs
- **Worksheet #7**—Annual Costs per Household
- **Worksheet #8**—Bond Rating and Debt History

These forms are drawn from various publications of the Government Finance Research Center, Washington, DC.* Computer software is available at nominal cost to process and analyze these data. A data base should be created over time to facilitate comparative analysis between the subject municipality and New Jersey averages for each of the data measurements.

*See Government Finance Research Center, GOVRATIO User's Manual, July 1984 and U.S. EPA, Office of Water Programs, Financial Capability Guidebook, March 1984.

Worksheet #1

Since many local governments are substantially supported by property tax revenues, Worksheet #1 is designed to track the behavior of the tax base and tax revenues, and to provide an indication of the jurisdiction's tax flexibility.

Property Taxes Levied (14) and Property Taxes Receivable (15) should be readily available in the government's Combined Statement of Revenues, Expenditures, and Changes in Fund Balance. Assessed Value (16), Assessment Ratio (17) as a percent, and Full Market Value (18) should be available from the Assessor's Office.

If your government uses different tax levies for different classes of property, you may choose either to use the data for only the largest class of property in terms of revenue or you may calculate average or weighted average data. If you select either approach on the worksheet, identify the method used to ensure that data in subsequent years is comparable.

Worksheet #1
Tax Information (A)

Item Number	Description	Amount ($) 19__	19__	19__	19__	19__
14.	Property Tax Levy					
	Source Documents					
15.	Property Taxes Receivable					
	Source Documents					
16.	Assessed Value					
	Source Documents					
17.	Assessment Ratio	%	%	%	%	%
	Source Documents					
18.	Full Market Value					
	Source Documents					

Instructions:

1. Enter the total for the amount of property taxes levied or billed for each year.
2. For each year, enter the amount of property taxes outstanding at year's end (i.e., the amount uncollected for the year of the levy).
3. Enter the Assessed Value of Taxable Real Property.
4. Enter the Assessment Ratio as a percent.
5. Enter the estimated full (or true) market value of taxable property.
6. Make a note of the document name and page number from which you gathered the data. This will serve as a reference if you need to verify the information and also will help ensure consistent information in gathering data to update the analysis in future years.

NOTES: If the Assessed Value or Full Market Value is $1,000,000,000 or more, enter the amount in $1000's.

For the Assessment Ratio, if you have different ratios for different classes of property, use an estimated average ratio.

Worksheet #2

Worksheet #2 also examines trends in the **character** of expenditures across all programs. Data for aggregate Capital Outlays (39), Debt Service (40), Short-Term Interest (41), and Fringe Benefits (42) may be found in the government's Combined Statement of Revenues, Expenditures, and Changes in Fund Balance. These amounts are compared with Total Expenditures actually incurred (43).

Worksheet #2
Expenditure Information (B)

Item Number	Expenditure Type	Actual Expenditures by Type 19__	19__	19__	19__	19__
39.	Capital Outlays					
	Source Documents					
40.	Debt Service					
	Source Documents					
41.	Short-Term Interest					
	Source Documents					
42.	Total Expenditures					
	Source Documents					

Instructions:

1. For each year, obtain the total capital expenditures for all funds except enterprise funds. Enter these amounts in the "Capital Outlays" line.
2. For each year, obtain the total of all debt service (principal and interest) payments from all governmental funds (exclude revenue bond debt service funds). Enter these amounts for Item 35, Debt Service.
3. Similarly, for all funds except enterprise-type funds, obtain the total interest paid on short-term loans; enter the amount for each year in Item 36.
4. Obtain the total expenditures on fringe benefits from all funds except enterprise funds and enter for Item 37.

Worksheet #3

This worksheet is used to assemble demographic and statistical data employed to calculate indicators of economic vitality. If the value of Building Permits (66) and Business Licenses (67) is not available, the raw number of permits and licenses issued may be used. Population (68) and Per Capital Income (69) may be available from a local, regional, or state planning agency; a local bank; or an economic development agency. The Consumer Price Index (70) is available from the U.S. Bureau of Labor Statistics.

Worksheet #3
Demographic and Statistical Information

Item Number	Description	19__	19__	19__	19__	19__
66.	Building Permits					
	Source Document					
67.	Business Licenses					
	Source Document					
68.	Population					
	Source Document					
69.	Per Capita Income	$	$	$	$	$
	Source Document					
70.	CPI					
	Source Document	U.S. Bureau of Labor Statistics—Annual Handbook of Labor Statistics				
71.	Municipal Employees					
	Source Document					
72.	Non-Agricultural Total Employment					

Instructions:

1. For Item 66, enter number of building permits issued during each year.
2. For Item 67, enter number of business licenses issued each year.
3. For Item 68, enter estimated population for each year.
4. Enter estimated per capita income for each year for Item 69.
5. Enter Consumer Price Index each year for Item 70.
6. For Item 71, enter the number of full-time equivalent employees each year.
7. For Item 72, enter the covered employment figures drawn from New Jersey Covered Employment, NJ Department of Labor.

Worksheet #4

This worksheet is used to collect income data on water and sewer funds your jurisdiction may operate. Enterprise funds are those established by a government to account for operations in a manner similar to a private business, where it is the intent to recover the costs of a service or facility through user charges. Common enterprise activities include utilities (such as water and sewer services), parking facilities, airports, and transit systems.

The names of the water and sewer enterprise funds chosen should be entered in the left-hand column of the worksheet. The net income for each year for each of the selected enterprise funds is entered in the appropriate column on the worksheet. Generally, net income is the difference between revenues and expenses and is intended to indicate the degree to which the enterprise is self-supporting. However, some services subsidized by the general government may include "transfers in" in the calculation of gross revenue; and some profitable services may include "transfers out" in the calculation of gross expenses. To ensure that enterprise net income figures are a comparable and accurate reflection of enterprise activity, interfund transfers, unless they represent payments or receipts for services provided (for example, for shared overhead), should be eliminated from the calculation of net income.

The "Source Department" area provides space for you to note a reference to the document (and perhaps the page number) from which the data were taken (such as Annual Audit Report; Sewer Enterprise Statement of Revenues, Expenses, and Changes in Retained Earnings; etc.).

Worksheet #4
Enterprise Fund Information (A)

Item Number	Enterprise Fund Name	Enterprise Fund (Net) Income ($) 19__	19__	19__	19__	19__
1.	Fund					
2.	Fund					
3.	Fund					
4.	Fund					
5.	Fund					

Source Documents: 19___ _____
19___ _____
19___ _____
19___ _____
19___ _____

Instructions:

1. Fill in the names of up to five enterprise funds (such as water, parking, airport, sewer, etc.).
2. Enter the (net) income amount for each fund for each year.
3. Make a note of the document name, and page number, from which you gathered the data. This will serve as a reference if you need to verify the information and also will help ensure consistent information in gathering data to update the analysis in future years.

NOTE: Enterprise funds are those that are established to account for operations that are financed and operated in a manner similar to a business enterprise — where it is often the intent to finance the operation largely through user charges. (Net) Income is the difference between revenues and expenses. (Do not include transfers.)

Worksheet #5

This worksheet is used to collect data on the rates charged to users of each Enterprise Fund service identified in Worksheet #4. Rates will be found in ordinances or rate schedules and the units on which the rates are charged should be noted in the "Unit Description" column (such as per 100 gallons, 1,000 cubic feet, hour, etc.). If the rate unit changes from one year to the next, a conversion will be necessary to ensure that all rates for any given Enterprise Fund are comparable from year to year. If the rate structure is complex or varies from year to year an average charge per customer may be calculated to provide a comparable figure.

Worksheet #5

Enterprise Fund Information (B)

Item Number	Enterprise Fund Name	Unit Description	Enterprise Fund Rates ($) 19__	19__	19__	19__	19__
6.							
7.							
8.							
9							
10.							

Source Documents:
19____ _____
19____ _____
19____ _____
19____ _____
19____ _____

Instructions:

1. Enter the names of the enterprise funds shown in Worksheet #1.
2. In the "Units" column, for each fund, describe the units on which the rates are based.
3. Make a note of the document name, and page number, from which you gathered the data. This will serve as a reference if you need to verify the information and also will help ensure consistent information in gathering data to update the analysis in future years.

NOTE: If the charges are based on a complex rate structure, use an average rate per customer or per unit. Note this in the "Unit" column.

Worksheet #6

C. TOTAL ESTIMATED ANNUAL LOCAL WASTEWATER TREATMENT SYSTEM COSTS

- Existing Annual Operation, Maintenance, and Replacement Costs $_____ (326)
- Discontinued Annual Operation Maintenance, and Replacement Costs to be Discontinued as a Result of Proposed Project $_____ (327)
- Net Existing Annual Operation, Maintenance, and Replacement Costs (Net) (326-327) $_____ (328)
- Existing Annual Debt Service $_____ (329)
- Estimated Annual Operation, Maintenance, and Replacement Costs of Proposed Facilities (215) $_____ (330)
- Estimated Annual Debt Service and Other Required Expenses for Proposed Facilities (325) $_____ (331)
- Total Estimated Annual Local Wastewater Treatment System Costs (328 + 329 + 330 + 331) $_____ (332)

Worksheet #7
Annual Costs Per Household

- Total Estimated Annual Wastewater Treatment System Costs (332) $_____ (400)
- Nonresidential Share of Total Annual Wastewater Treatment System Costs $_____ (401)
- Residential Share of Total Annual Wastewater Treatment System Costs (400 – 401) $_____ (402)
- Number of Households _____ (403)
- Annual Wastewater Treatment System Cost Per Household (402 ÷ 401) $_____ (404)
- Other Annual Costs Per Household (Identify)
  _____
  _____
  _____ $_____ (405)
- Total Annual Costs Per Household (404 + 405) $_____ (406)

Worksheet #8

Purpose of Worksheet #8

The purpose of this worksheet is to profile and summarize the community's debt position, including the proposed project.

Worksheet #8
Sections A and B
Bond Rating and Debt History

A. BOND RATINGS

- **Community's Most Recent General Obligation Bond Rating** _____ Rating _____ Date of Rating (500)
- **Community's Most Recent Revenue Bond Rating** _____ Rating _____ Date of Rating (501)

B. DEBT

	Outstanding	+ This Project	= Total	
• General Obligation Bonds	_____	_____	_____	(502)
• Revenue Bonds	_____	_____	_____	(503)
• Gross Direct Debt			_____	(504)
• Direct Net Debt	_____	_____	_____	(505)
• Overlapping Net Debt	_____	_____	_____	(506)
• Overall Net Debt			_____	(507)
• Other Debt	_____		_____	(508)
• New Debt for Other Capital Improvements			_____	(509)

General Instructions

This worksheet is divided into four sections, each providing background information related to the community's debt history. The sections cover bond ratings, outstanding debt, debt repayment, and debt limits.

Instructions for Section A

Line 500. Give the community's most recent general obligation bonds rating and the date of the rating.

Line 501. Give the community's (or its wastewater utility's) most recent revenue bond rating and the date of the rating.

Enter this information on the Supplemental Information Sheet (Exhibit VII). If the community has never had a rating, enter N/A as not applicable.

Instructions for Section B

Line 502. Give the amount of general obligation debt outstanding, and any new debt for the proposed project. General obligation bonds are those for whose payment the full faith and credit of the issuer has been pledged and are payable most commonly from real property taxes and other general revenues. Include here any general obligation bonds secured by earmarked revenues that flow outside the general fund (double-barreled bonds).

Line 503. Give the amount of revenue bonds outstanding, including any new debt for the proposed facilities.

Line 504. Gross direct debt is the total amount of general obligation and revenue bonds outstanding. (Lines 502 plus 503)

Line 505. Direct net debt is gross direct debt (line 504) less debt that is self-supporting (revenue bonds) and double-barreled bonds.

Line 506. Overlapping net debt is the community's proportionate share of tax-supported debt of local government units located wholly or in part within the limits of a community which must be borne by property or persons in that community's boundaries.

Line 507. Overall net debt is the sum of direct net debt and overlapping debt. (Lines 505 and 506)

Line 508. Three important debt "obligations" that should be considered in evaluating a community's debt load are outstanding leases, unfunded pension liabilities, and notes having a maturity greater than one year. Insert here the amount of other debt the community has outstanding.

Line 509. Give an estimate of the amount of future planned debt for other planned capital improvements your community is contemplating. Include any outstanding bond anticipation notes (BANs) here.

V. **Standards: Comparative Analysis**

This section presents a set of standards on key debt and financial ratios which judge the potentiality for "prohibitive costs," selected indicators of municipal performance based on Moody's Medians, and methods for affordability screening based on household costs.

A. **Key Financial and Debt Ratios**

Financial Ratios

	Favorable	Comfortable	Fair	Poor
Average Annual Increase of Expenditures*	Under 8%	8%-10%	12%-15%	Over 15%
Operating Surplus (Deficit)/Revenues	S	S	(D) 0-5%	(D) Over 5%
Accumulated Surplus (Deficit)/Revenues	S	S	(D) 0-10%	(D) Over 10%
Current Tax Delinquency	0-2%	2%-4%	4%-6%	Over 6%
Total Tax Delinquency	-0-	0-1½%	1½%-3%	Over 3%
Effective Property Tax Rate	0-2%	2%-3%	3%-4½%	Over 5½%

*Should not be out of line with the national inflation rate.

Debt Ratios

	Favorable	Comfortable	Fair	Poor
Gross Debt Per Capita	$0-500	$500-900	$900-1,200	Over $1,200
Gross Debt/Estimated Full Value	0-3%	3%-7%	7%-10%	Over 10%
Debt Service/Revenues	0-10%	10%-15%	15%-20%	Over 20%
Direct Debt Due in Ten Years	Over 66⅔%	50%-66⅔%	33⅓%-50%	Under 33⅓%

B. **Moody's Medians**

Moody's Ratios: 1985

	New Jersey Rank	New Jersey Amount	U.S. Median
Net Tax-Supported Debt Per Capita	15	$ 388	$ 258
Debt as Percent of Estimated Full Valuation	17	1.5	1.1
Net Tax-Supported Debt as a Percent of Personal Income	22	2.8	2.4
Estimated Full Valuation Per Capita	17	25,868	22,904
1983 Personal Income Per Capita	3	14,122	11,284

City and County Debt Medians

The magnitude and the burden of debt are two measures crucial to an evaluation of debt position. As a starting approach, a method for calculating net debt has been developed which allows for comparability among local governments© across the United States. This net debt figure is then applied to population and tax base data. By using the population data and presenting net debt on a per capita basis, a meaningful measure of the relative size of the debt is provided.

Cities

Net Debt Per Capita [1]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
500,000 and over	$559	$271	$ 857	$ 2,004
300,000 to 499,999	406	215	718	1,659
200,000 to 299,999	539	291	706	1,206
100,000 to 199,999	362	85	554	5,211
50,000 to 99,999	369	59	658	3,199
25,000 to 49,999	384	10	689	4,135
10,000 to 24,999	533	134	713	5,843
Under 10,000	792	151	1,064	15,907

Ratio of Net Debt to E.F.V. (%) [3]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
1,000,000 and over	0.4	0.03	4.2	4.1
250,000 to 999,999	0.6	0.7	2.5	5.2
100,000 to 249,999	0.4	0.6	2.5	5.5
Under 100,000	0.7	0.4	2.1	12.2

[1] Cities and counties included in these observations have been grouped according to 1980 U.S. Census population.

[2] Estimated full value (E.F.V.) refers to the "true" or "fair" market value of all taxable property within the boundaries of the unit of government. Users of this data must be aware of the significant variations that exist in methods and quality of property assessment from state to state and even among municipal governments within a given state. Definitions of "taxable property" also vary across the country as does the dependability of equalization ratios.

Counties

Net Debt Per Capita [1]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
1,000,000 and over	$139	$168	$1,049	$ 1,981
250,000 to 999,999	158	275	607	2,071
100,000 to 249,999	96	150	580	1,379
Under 100,000	196	96	488	156,271

[1] Direct net debt figures are derived from observations of city and county governments only and do not include school districts or special districts.

[2] Net debt is defined as a governmental unit's gross debt less sinking funds and other offsets of monies in hand for principal redemption. Bonds fully supported from enterprise revenues and short-term operating debt. Direct net debt refers to the net debt incurred directly in the name of a specific city or county. Overall net debt further includes the net debt of overlapping and/or underlying units of government apportioned in accordance with property valuation.

As a measure of a government's burden of debt, a ratio is calculated between its net debt and the estimated full value of taxable property. The estimated full value serves as a direct measure of local government wealth and, therefore, is reflective of the government's capacity to service public debt. Taxable valuation is utilized as a wealth measure because it tends to be up-to-date and readily available for all sizes of municipal government.

Ratio of Net Debt to E.F.V. (%) [3]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
500,000 and over	1.6	0.9	4.2	8.9
300,000 to 499,999	2.3	1.1	3.1	10.4
200,000 to 299,999	2.2	1.6	2.6	9.0
100,000 to 199,999	1.6	0.3	2.5	9.3
50,000 to 99,999	1.7	1.0	2.8	16.1
25,000 to 49,999	1.8	0.1	2.9	15.0
10,000 to 24,999	2.1	0.2	3.3	24.5
Under 10,000	2.4	0.1	3.6	20.0

Enterprise Performance Medians

The following medians, derived during calendar 1984, convey various measures of performance and earning capability which are common to revenue-producing enterprises. These medians are valuable in assessing an enterprise's financial strengths and weaknesses relative to other similar enterprises.

Ratios derived from the income statement provide measures of profitability (operating ratio and net take-down) and debt-servicing capacity (coverage and safety margins). Coverage levels demonstrate both current and prospective debt repayment ability while safety margins denote additional levels of protection. The debt ratio, which is calculated from the balance sheet, signifies the enterprise's reliance on debt financing and its capacity to support additional debt.

The medians are intended as broad indicators. Significant deviation from the median is not necessarily an indicator of credit quality and may, in fact, highlight a significant event or unusual characteristic of the enterprise (i.e., start-up operation, system expansion or restructuring, abnormal weather).

Municipal Enterprise Medians

	Electric Distrib. Systems	Electric Gen. and Trans.	Water	Sewer	Airport
Operating ratio (%)	83.9	76.0	65.0	66.8	53.2
Net take-down (%)	18.3	26.6	41.0	43.7	50.6
Interest coverage (x)	4.55	2.61	4.00	3.03	3.49
Debt svc. coverage (x)	4.18	2.02	2.52	2.39	2.42
Debt svc. safety margin (%)	14.0	13.7	24.3	23.5	26.7
Debt ratio (%)	44.1	60.5	28.7	19.3	43.2

	Bridge, Tunnel, and Expressway	Turnpike
Operating ratio (%)	32.2	45.8
Net take-down (%)	73.1	56.1
Interest coverage (x)	4.97	10.6
Interest safety margin (%)	43.0	53.1
Bonds retired (%)	23.1	80.8

Municipal Enterprise Definitions (Continued)

Income Statement Components and Ratios

Gross revenue and income:	Operating revenues plus non-operating revenue.
Operating and maintenance expenses:	Operating and maintenance expenses net of depreciation, amortization, and interest requirements
Net revenues:	Gross revenue and income less operating and maintenance expenses.
Operating ratio (%):	Operating and maintenance expenses divided by total operating revenues
Net take-down (%):	Net revenues divided by gross revenue and income
Interest coverage (x):	Net revenues divided by interest requirements for year
Interest safety margin (%):	Net revenues less interest requirements for year divided by gross revenue and income
Debt service coverage (x):	Net revenues divided by principal plus interest requirements for year.
Debt service safety margin (%):	Net revenues less principal and interest requirements for year divided by gross revenue and income.
Peak debt service coverage by historical net revenues (x):	Net revenues divided by estimated maximum annual principal and interest requirements on all outstanding debt and the bonds to be issued
Peak debt service coverage by projected net revenues (x):	Projected net revenues for the first full fiscal year following completion of the capital project financed from the new bonds divided by estimated maximum annual principal and interest requirements on all outstanding debt and the bonds to be issued

APPENDIX 1

Data Sources

The necessary data will be available from several different sources. A list of typical source documents is given below:

- annual financial report (audit) for each year
- adopted budget for each year
- official statement for recent bond issues
- municipal rate ordinances
- annual report of pension system
- local or state planning documents
- census department reports (for population, income, etc.)
- handbook for labor statistics (CPI)
- sections of state code governing tax or revenue limitations

APPENDIX 2

DATA DEFINITIONS*

ACCOUNTING PERIOD. A period at the end of which and for which financial statements are prepared.

ACCOUNTING PROCEDURES. All processes that discover, record, classify, and summarize financial information to produce financial reports and to provide internal control.

ACCOUNTING SYSTEM. The total structure of records and procedures that discover, record, classify, summarize and report information on the financial position and results of operations of a government or any of its funds, fund types, balanced account groups, or organizational components.

ACCOUNTS PAYABLE. A liability account reflecting amounts on open account owing to private persons or organizations for goods and services furnished by a government (but not including amounts due from other funds of the same government or to other governments).

ACCOUNTS RECEIVABLE. An asset account reflecting amounts owing on open account from private persons or organizations for goods and services furnished by a government (but not including amounts due from other funds of the same government). Although taxes and special assessments receivable are covered by this term, they should be recorded and reported separately in Taxes Receivable and Special Assessments Receivable accounts, respectively.

ACCRUAL BASIS. The basis of accounting under which transactions are recognized when they occur, regardless of the timing of related cash flows.

ACCRUED EXPENSES. Expenses incurred but not due until a later date.

ACCUMULATED DEPRECIATION. A valuation account to record the accumulation of periodic credits made to record the expiration of the estimated service life of fixed assets.

ADVANCE REFUNDING BONDS. Bonds issued to refund an outstanding bond issue prior to the data on which the outstanding bonds become due or callable. Proceeds of the advance refunding bonds are deposited in escrow with a fiduciary, invested in U.S. Treasury Bonds or other authorized securities, and used to redeem the underlying bonds at maturity or call date and to pay interest on the bonds being refunded or the advance refunding bonds.

ASSESS. To value property officially for the purpose of taxation.

ASSESSED VALUATION. A valuation set upon real estate or other property by a government as a basis for levying taxes.

ASSESSMENT. (1) The process of making the official valuation of property for purposes of taxation. (2) The valuation placed upon property as a result of this process.

ASSESSMENT ROLE. In the case of real property, the official list containing the legal description of each parcel of property and its assessed valuation. The name and address of the last known owner are also usually shown. In the case of personal property, the assessment roll is the official list containing the name and address of the owner, a description of the personal property, and its assessed value.

ASSETS. Resources owned or held by a government that have monetary value.

AUDIT. A methodical examination of utilization of resources. It concludes in a written report of its findings. An audit is a test of management's accounting system to detemine the extent to which internal accounting controls are both available and being used.

AUDIT PROGRAM. A detailed outline of work to be done and procedures to be followed in any given audit.

AUDIT REPORT. The report prepared by an auditor covering the audit or investigation made by him. As a rule, the report should include (a) a statement of the scope of the audit; (b) explanatory comments (if any) concerning exceptions by the auditor as to application of generally accepted auditing standards; (c) opinions; (d) explanatory comments (if any) concerning verification procedures; (e) financial statements and schedules; and (f) sometimes statistical tables, supplementary comments, and recommendations. The auditor's signature follows item (c) or (d).

AUDITOR'S OPINION. A statement signed by an auditor in which he or she states that he or she has examined the financial statement in accordance with generally accepted auditing standards (with exceptions, if any) and in which he or she expresses an opinion on some or all of the constituent funds and balanced account groups of the government as inappropriate.

BALANCE SHEET. The basic financial statement that discloses the assets, liabilities, and equities of an entity at a specified date in conformity with GAAP.

BASIC FINANCIAL STATEMENTS. Those financial statements including notes thereto, that are necessary for a fair presentation of the financial position and results of operations of an entity in conformity with GAAP. Under Statement 1, basic financial statements include a balance sheet, an "all inclusive" operating statement, and (for proprietary funds, Pension Trust Funds, and Nonexpendable Trust Funds) a statement of changes in financial position.

BETTERMENT. An addition made to, or change made in, a fixed asset that is expected to prolong its life or to increase its efficiency over and above that arising from maintenance, and the cost of which is therefore

*These definitions are from U.S. EPA, Office of Water Programs, Financial Capability Guidebook, March 1984.

added to the book value of the asset. The term is sometimes applied to sidewalks, sewers, and highways.

BOND. A written promise to pay a specified sum of money called the face value or principal amount, at a specified date or dates in the future, called the maturity date(s), together with periodic interest at a specified rate. The difference between a note and bond is that the latter runs for a longer period of time and requires greater legal formality.

BOND ANTICIPATION NOTES. Short-term, interest-bearing notes issued by a government in anticipation of bonds to be issued at a later date. The notes are retired from proceeds of the bond issue to which they are related.

BOND DISCOUNT. The excess of the face value of a bond over the price for which it is acquired or sold. The price does not include accrued interest at the date of acquisiton or sale.

BOND FUND. A fund formerly used to account for the proceeds of general obligation bond issues. Such proceeds are now accounted for in a Capital Projects Fund.

BOND ORDINANCE OR RESOLUTION. An ordinance or resolution authorizing a bond issue.

BOND PREMIUM. The excess of the price at which a bond is acquired or sold over its face value. The price does not include accrued interest at the date of acquisition or sale.

BONDED DEBT. That portion of indebtedness represented by outstanding bonds.

BONDS AUTHORIZED AND UNISSUED. Bonds that have been legally authorized but not issued and which can be issued and sold without further authorization. This term must not be confused with the term "margin of borrowing power" or "legal debt margin," either one of which represents the difference between the legal debt limit of a government and the debt outstanding against it.

BONDS ISSUED. Bonds sold.

CALLABLE BOND. A type of bond that permits the issuer to pay the obligation before the stated maturity date by giving notice of redemption in a manner specified in the bond contract.

CAPITAL OUTLAY. Expenditures that result in the acquisition of or addition to fixed assets.

CAPITAL PROJECTS FUND. A fund created to account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by proprietary funds, special assessment funds, and trust funds).

CASH. An asset account reflecting currency, coin, checks, postal and express money orders, and bankers' drafts on hand or on deposit with an official or agent designated as custodian of cash and bank deposits. All cash must be accounted for as a part of the fund to which it belongs. Any restrictions or limitations as to its availability must be indicated in the records and statements. It is not necessary, however, to have a separate bank account for each fund unless required by law.

CASH BASIS. A basis of accounting under which transactions are recognized only when cash changes hands.

CERTIFICATE OF CONFORMANCE IN FINANCIAL REPORTING PROGRAM. A voluntary program administered by GFOA to encourage governments to publish efficiently organized and easily readable CAFRs and to provide peer recognition and technical assistance to the finance officers preparing them.

COMPREHENSIVE ANNUAL FINANCIAL REPORT. (CAFR). The official annual report of a government. It includes five Combined Statements—Overview (the "liftable" GPFS) and basic financial statements for each individual fund and account group prepared in conformity with GAAP and organized into a financial reporting pyramid. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section. Every government should prepare and publish a CAFR as a matter of public record.

DEBT SERVICE FUND REQUIREMENTS. The amounts of revenue that must be provided for a debt service fund so that all principal and interest payments can be made in full on schedule.

DEBT SERVICE REQUIREMENT. The amount of money required to pay interest on outstanding debt, serial maturities of principal for serial bonds, and required contributions to accumulate monies for future retirement of term bonds.

DEPRECIATION. (1) Expiration in the service life of fixed assets, other than wasting assets (q.v.) attributable to wear and tear, deterioration, action of the physical elements, inadequacy, and obsolescence. (2) The portion of the cost of a fixed asset other than a wasting asset that is charged as an expense during a particular period. NOTE: In accounting for depreciation, the cost of a fixed asset, less any salvage value, is prorated over the estimated service life of such an asset, and each period is charged with a portion of such cost. Through this process, the entire cost of the asset is ultimately charged off as an expense.

DIRECT NET DEBT. Gross direct debt less debt that is self-supporting (revenue bonds) and double-barreled bonds (general obligation bonds secured by earmarked revenues that flow outside the general fund).

ENTERPRISE FUND. A fund established to account for operations (a) that are financed and operated in a manner similar to private business enterprises—where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes. Examples of Enterprise Funds are those for water, gas, electric utiliities, swimming pools, airports, parking garages, and transit systems.

ENTITY. The basic unit upon which accounting and/or financial reporting activites focus. The basic governmental legal and accounting entity is the individual fund and account group. Under NCGA Statement 1, governmental GAAP reporting entities include (1) Combined Statements—Overview (the "liftable" GPFS) and (2) financial statements of individual funds (which may be presented as columns on Combining Statements—By Fund Type, on physically separate individual fund statements, or both). The term "entity" is also sometimes used to describe the composition of "the government as a whole" (whether the library is part of the city or a separate government, whether the school system is part of the county or an independent special district, etc.).

EXPENDITURES. Decreases in net financial resources. Expenditures include current operating expenses that require the current of future use of net current assets, debt service, and capital outlays.

EXPENSES. Decreases in net total assets. Expenses represent the total cost of operations during a period regardless of the timing of related expenditures.

FAMILY. A family consists of a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption; all persons who are related to the householder are regarded as members of his or her family. Not all households contain families, because a household may be composed of a group of unrelated persons or one person living alone.

FULL FAITH AND CREDIT. A pledge of the general taxing power for the payment of debt obligations. Bonds carrying such pledges are referred to as general obligation bonds or full faith and credit bonds.

FUND. A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP). Uniform minimum standards of and guidelines to accounting and reporting. They govern the form and content of the basic financial statements of an entity. GAAP encompass the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. They include not only broad guidelines of general application, but also detailed practices and procedures. GAAP provides a standard by which to measure financial presentations.

GENERALLY ACCEPTED AUDITING STANDARDS (GAAS). Measures of the quality of the performance of auditing procedures and the objectives to be attained through their use. They are concerned with the auditor's professional qualities and with the judgment exercised in the performance of an audit. Generally accepted auditing standards have been prescribed by (1) American Institute of Certified Public Accountants (AICPA) and (2) U.S. General Accounting Office (GAO) in *Standards for Audit of Governmental Organizations, Programs, Activities, & Functions* (the "yellow" book).

GENERAL OBLIGATION BONDS. Bonds for the payment of which full faith and credit of the issuing government are pledged.

GROSS DIRECT DEBT. The total amount of **bonded** debt of a government (general obligation bonds plus revenue bonds).

HOUSEHOLD. A household consists of all the persons who occupy a housing unit. A house, an apartment, or other group of rooms, or a single room is regarded as a housing unit, when it is occupied or intended for occupancy as separate living quarters. A household includes the related family members and all the unrelated persons, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated persons sharing a housing unit as partners, is also counted as a household.

INDUSTRIAL REVENUE BONDS. Bonds issued by governments, the proceeds of which are used to construct facilities for a private business enterprise. Lease payments made by the business enterprise to the government are used to service the bonds. Such bonds may be in the form of general obligation bonds, combination bonds, or revenue bonds.

LEVY. (Verb) To impose taxes, special assessments, or service charges for the support of government activities. (Noun) The total amount of taxes, special assessments, or service charges imposed by a government.

LIABILITIES. Debt or other legal obligation arising out of transactions in the past that must be liquidated, renewed, or refunded at some future date. This term does not include encumbrances.

MEDIAN INCOME. The median income is the amount that divides the distribution into two equal groups, one having incomes above the median, and the other having incomes below the median.

MODIFIED ACCRUAL BASIS. A basis of accounting under which revenues are recognized when they become both "measurable" and "available to finance expenditures of the current period" and expenditures are recognized when the related fund liability is incurred.

MUNICIPAL IMPROVEMENT CERTIFICATES. Certificates issued in lieu of bonds for the financing of special improvements. As a rule, these certificates are placed in the contractor's hands for collection from the special assessment payers.

NET REVENUES AVAILABLE FOR DEBT SERVICE. Proprietary fund gross operating revenues less operating and maintenance expenses but exclusive of depreciation and bond interest. "Net revenue available for debt service" as thus defined is used to compute "coverage" on revenue bond issues. See Coverage. Under the laws of some states and the provisions of some revenue bond indentures, "net revenues available for debt service" for computation of revenue bond coverage must be computed on a cash basis rather than in conformity with GAAP.

NET INCOME. Proprietary fund excess of operating revenues, non-operating revenues, and operating transfers-in over operating expenses, non-operating expenses, and operating transfers-out.

NON-OPERATING EXPENSES. Proprietary fund expenses that are not directly related to the fund's primary service activities.

NON-OPERATING PROPERTIES. Properties that are owned by an enterprise fund but not used in the provision of the fund's primary service activities.

NON-OPERATING REVENUES. Proprietary fund revenues that are incidental to, or by-products of, the fund's primary service activities.

OFFICIAL STATEMENT. A legal document that summarizes all the salient features of the underlying documents and agreements that support a municipal bond offering. It is considered the disclosure document that presents information that is "material" to the offering. The official statement should contain what a reasonable investor would need to know in making a decision about the issue. Thus this document will usually include a description of the issuer, a description of the security of the bond, a summary of the principal financing documents, any feasibility studies that relate to the security, and any other "key information."

OVERALL NET DEBT. The sum of direct net debt and overlapping debt.

OVERLAPPING DEBT. The proportionate share of the debt of local governments located wholly or in part within the limits of the reporting government that must be borne by property within each government. Except for special assessment debt, the amount of debt of each unit applicable to the reporting unit is arrived at by (1) determining what percentage of the total assessed value of the overlapping jurisdiction lies within the limits of the reporting unit, and (2) applying this percentage to the total debt of the overlapping jurisdiction. Special assessment debt is allocated on the basis of the ratio of assessments receivable in each jurisdiction that will be used wholly or in part to pay off the debt to total assessments receivable which will be used wholly or in part for this purpose.

OPERATING INCOME. The excess of proprietary fund operating revenues over operating expenses.

OPERATING REVENUES. Proprietary fund revenues that are directly related to the fund's primary service activities. They consist primarily of user charges for services.

REVENUE BONDS. Bonds whose principal and interest are payable exclusively from earnings of an Enterprise Fund. In addition to a pledge of revenues, such bonds sometimes contain a mortgage on the enterprise fund property.

REVENUES. In general terms, money received in exchange for the delivery of goods and services. A more precise definition is the additions to assets, such as cash or accounts receivable, which: (1) do not increase any liability, such as a debt obligation; (2) do not represent a recovery of an expenditure, such as results from a return of defective purchased equipment; (3) do not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets, such as forgiveness of a debt; and (4) are not contributions made to fund business-like enterprises.

SERIAL ANNUITY BONDS. Serial bonds in which the annual installments of bond principal are so arranged that the combined payments for principal and interest are approximately the same each year.

SERIAL BONDS. Bonds whose principal is repaid in periodic installments over the life of the issue.

SINKING FUND. A fund established to account for the accumulation of resources for, and the payment of, the principal and interest of general long-term debt.

SPECIAL ASSESSMENT. A compulsory levy made against certain properties to defray part or all of the cost of a specific improvement or service deemed to benefit primarily those properties.

SPECIAL ASSESSMENT BONDS. Bonds payable from the proceeds of special assessments. If the bonds are payable only from the collections of special assessments, they are known as special assessment bonds. If, in addition to the assessments, the full faith and credit of the government are pledged, they are known as general obligation special assessment bonds.

SPECIAL ASSESSMENT FUND. A fund used to account for the financing of public improvements or services deemed to primarily benefit the properties against which special assessments are levied.

SPECIAL DISTRICT. An independent unit of local government organized to perform a single governmental function or a restricted number of related functions. Special districts usually have the power to incur debt and levy taxes; however, certain types of special districts are entirely dependent upon enterprise earnings and cannot impose taxes. Examples of special districts are water districts, drainage districts, flood control districts, hospital districts, fire protection districts, transit authorities, port authorities, and electric power authorities.

TECHNICAL APPENDIX E

Deed Restriction and Lien (New Construction - Sales Units)

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

AFFORDABLE HOUSING AGREEMENT

Prepared by: _____

A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This AGREEMENT is entered into on this _____ day of _____, _____ between _____ owner of the properties designated in Section II PROPERTY DESCRIPTION, hereafter "OWNER", and _____; hereafter "AUTHORITY", which Authority is an instrumentality of _____ *(referred to as the "MUNICIPALITY")*, both parties having agreed that the covenants, conditions and restrictions contained herein shall be imposed on the Affordable Housing unit described in Section II PROPERTY DESCRIPTION for a period of at least _____ years beginning on _____ and ending at the first non-exempt transfer of title after _____ unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c.222) hereinafter "Act", to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households for a minimum period of at least 6 years; and

WHEREAS, the Act establishes the Council on Affordable Housing (hereinafter "Council") to assist municipalities in determining a realistic opportunity for the planning and development of such affordable housing; and

WHEREAS, pursuant to the Act, the housing unit (units) described in Section II PROPERTY DESCRIPTION hereafter and/or an attached Exhibit A of this Agreement has (have) been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Agreement is to ensure that the described housing units(unit) remain(s) affordable to low and moderate income eligible households for that period of time described in Section III TERM OF RESTRICTION.

NOW, THEREFORE, it is the intent of this Agreement to ensure that the affordability controls are contained directly in the property deed for the premises and incorporated into and recorded with the property deed so as to bind the owner of the described premises and notify all future purchasers of the housing unit that the housing unit is encumbered with affordability controls; and by entering into this Agreement, the Owner of the described premises agrees to restrict the sale of the housing unit to low and moderate income eligible households at a maximum resale price determined by the Authority for the specified period of time.

I. DEFINITIONS

For purposes of this Agreement, the following terms shall be defined as follows:

"Affordable Housing" shall mean residential units that have been restricted for occupancy by Households whose total Gross Annual Income is measured at less than 80% of the median income level established by an authorized income guideline for geographic region and family size.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency established by L. 1983, c.530 (C. 55:14K-1 et seq.).

"Agreement" shall mean this written Affordable Housing Agreement between the Authority and the owner of an Affordable Housing unit which places restrictions on Affordable Housing units so that they remain affordable to and occupied by Low and Moderate Income-Eligible Households for the period of time specified in this agreement.

"Assessments" shall mean all taxes, levies or charges, both public and private, including those charges by any condominium, cooperative or homeowner's association as the applicable case may be, imposed upon the Affordable Housing unit.

"Authority" shall mean the administrative organization designated by municipal ordinance for the purpose of monitoring the occupancy and resale restrictions contained in this Affordable Housing Agreement. The Authority shall serve as an instrument of the municipality in exercising the municipal rights to the collection of funds as contained in this Agreement.

"Base Price" shall mean the initial sales price of a unit produced for or designated as owner-occupied Affordable Housing.

"Council" shall mean the Council on Affordable Housing (COAH) established pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Certified Household" shall mean any eligible Household whose estimated total Gross Annual Income has been verified, whose financial references have been approved and who has received written certification as a Low or Moderate Income-Eligible Household from the Authority.

"Department" shall mean the New Jersey State Department of Community Affairs.

"Exempt Transaction" shall mean the following "non-sales" title transactions: (1) Transfer of ownership between husband and wife; (2) Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation (but not including sales to third parties); (3) Transfer of ownership through an Executor's deed to a Class A Beneficiary; and, (4) Transfer of ownership by court order. All other title transfers shall be deemed non-exempt.

"Fair Market Price" shall mean the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"First Purchase Money Mortgage" shall mean the most senior mortgage lien to secure repayment of funds for the purchase of an Affordable Housing unit providing that such mortgage is not in excess of the applicable maximum allowable resale price and is payable to a valid First Purchase Money Mortgagee.

"First Purchase Money Mortgagee" shall mean an institu-

tional lender or investor, licensed or regulated by the Federal or a State government or any agency thereof, which is the holder and/or assigns of the First Money Mortgage.

"Foreclosure" shall mean the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

"Gross Annual Income" shall mean the total amount of all sources of a Household's income including, but not limited to salary, wages, interest, tips, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on those sources of income reported to the Internal Revenue Service (IRS) and/or that can be utilized for the purpose of mortgage approval.

"Hardship Waiver" shall mean an approval by the Authority to sell an affordable unit to a household that exceeds the income eligibility criteria after the Owner has demonstrated that no Certified Household has signed an agreement to purchase the unit. The Owner shall have marketed the unit for 90 days after a Notice of Intent to Sell has been received by the Authority and the Authority shall have 30 days thereafter to approve a Hardship Waiver. The Hardship Waiver shall permit a low income unit to be sold to a moderate income household or a moderate income unit to be sold to a household whose income is at 80% or above the applicable median income guide. The Hardship Waiver is only valid for a single sale.

"Household" shall mean the person or persons occupying a housing unit.

"Index" shall mean the measured percentage of change in the median income for a Household of four by geographic region using the income guideline approved for use by Council.

"Low Income Household" shall mean a Household whose total Gross Annual Income is equal to 50% or less of the median gross income figure established by geographic region and household size using the income guideline approved for use by Council.

"Moderate Income Household" shall mean a Household whose total Gross Annual Income is equal to more than 50% but less than 80% of the median gross income established by geographic region and household size using the income guideline approved for use by Council.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular Affordable Housing unit. For purposes of the initial sales or rentals of any Affordable Housing unit, Owner shall include the developer/owner of such Affordable Housing units. Owner shall not include any co-signer or co-borrower on any First Purchase Money Mortgage unless such co-signer or co-borrower is also a named title holder of record of such Affordable Housing unit.

"Price Differential" shall mean the total amount of the restricted sales price that exceeds the maximum restricted resale price as calculated by the Index after reasonable real estate broker fees have been deducted. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Authority at the time a Notice of Intent to Sell has been received from the Owner.

"Primary Residence" shall mean the unit wherein a Certified Household maintains continuing residence for no less than nine months of each calendar year.

"Purchaser" shall mean a Certified Household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

"Repayment" shall mean the Owner's obligation to the municipality for payment of 95% of the price differential between the maximum allowable resale price and the fair market selling price which has accrued to the Affordable unit during the restricted period of resale at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Repayment Mortgage" shall mean the second mortgage document signed by the Owner that is given to the municipality as security for the payment due under the Repayment Note.

"Repayment Note" shall mean the second mortgage note signed by the Owner that requires the repayment to the municipality of 95% of the price differential which has accrued to the low or moderate income unit during the period of resale controls at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Resale Price" shall mean the Base Price of a unit designated as owner-occupied affordable housing as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

"Total Monthly Housing Costs" shall mean the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal, interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance.

II. PROPERTY DESCRIPTION

This agreement applies to the Owner's interest in the real property commonly known as:

Block _____ Lot _____
Municipality _____
County _____ # of Bedrooms _____
Complete Street Address and Unit Number:
_____
City _____
State _____ Zip _____

If additional Affordable Housing units are to be covered by this Agreement, a description of each additional unit is attached as Exhibit A and is incorporated herein.

III. TERM OF RESTRICTION

A. The terms, restrictions and covenants of this Affordable Housing Agreement shall begin on the later of the date a Certificate of Occupancy is issued or the date on which closing and transfer of title takes place for initial ownership.

B. The terms, restrictions and covenants of this Affordable Housing Agreement shall terminate upon the occurence of either of the following events:

1. At the first non-exempt sale after 10 (ten) years from the beginning date established pursuant to Paragraph A above for units located in municipalities receiving State Aid pursuant to P.L. 1978, L.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b); or at the first non-exempt sale after 20 (twenty) years from the beginning date established pursuant to Paragraph A above for units located in all other municipalities; or

2. The date upon which the event set forth in Section IX **FORECLOSURE** herein shall occur.

C. The terms, restrictions and covenants of this Affordable Housing Agreement may be extended by municipal resolution as provided for in N.J.A.C. [5:92.1 et seq] 5:93. Such municipal resolution shall provide for a period of extended restrictions

and shall be effective upon filing with the Council and the Authority. The municipal resolution shall specify the extended time period by providing for a revised ending date. An amendment to the Affordable Housing Agreement shall be filed with the recording office of the county in which the Affordable Housing unit or units is/are located.

D. At the first non-exempt title transaction after the established ending date, the Authority shall execute a document in recordable form evidencing that the Affordable Housing unit has been released from the restrictions of this Affordable Housing Agreement.

IV. RESTRICTIONS

A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located. However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.

B. The Owner shall not sell the Affordable Housing unit to anyone other than a Purchaser who has been certified utilizing the income verification procedures established by the Authority to determine qualified Low and Moderate Income-Eligible Households.

C. An Owner wishing to enter a transaction that will terminate controls as specified heretofore in Section III TERM OF RESTRICTION shall be obligated to provide a Notice of Intent to Sell to the Authority and the Council. An option to buy the unit at the maximum restricted sales price as calculated by the Index shall be made available to the Municipality, the Department, the Agency, or a qualified non-profit organization as determined by the Council for a period of ninety (90) days from the date of delivery of the Notice of Intent to Sell. The option to buy shall be by certified mail and shall be effective on the date of mailing to the Owner.

1. If the option to buy is not exercised within ninety (90) days pursuant to Paragraph C above, the Owner may elect to sell the unit to a certified income-eligible household at the maximum restricted sales price as calculated by the Index provided the unit continues to be restricted by an Affordable Housing Agreement and a Repayment Note for a period of up to [twenty (20) years] **thirty (30) years**.

2. Alternately, the Owner may also elect to sell to any purchaser at a fair market price. In this event, the Owner shall be obligated to pay the municipality 95% of the Price Differential generated at the time of closing and transfer of title of the Affordable Housing unit after restrictions have ended as specified heretofore in Section III TERM OF RESTRICTION.

3. If the Owner does not sell the unit within one (1) year of the date of delivery of the Notice of Intent to Sell, the option to buy shall be restored to the municipality and subsequently to the Department, the Agency or a Non-Profit approved by the Council. The Owner shall then be required to submit a new Notice of Intent to Sell the affordable unit to the Authority.

D. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and requirements duly promulgated by the Council (N.J.A.C. [5:92-1 et seq.] 5:93), the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by Low and Moderate Income-Eligible Households throughout the duration of this Agreement.

V. REQUIREMENTS

A. This Agreement shall be recorded with the recording office of the county in which the Affordable Housing unit or units are located. The Agreement shall be filed no earlier than the recording of an applicable Master Deed and no later than the closing date of the initial sale.

B. When a single Agreement is used to govern more than one Affordable Housing unit, the Agreement shall contain a description of each Affordable Housing unit governed by the Agreement as described in Section II PROPERTY DESCRIPTION and/or Exhibit A of the Agreement and an ending date to be imposed on the unit as described in Section III TERM OF RESTRICTION of the Agreement.

C. A Repayment Mortgage and a Repayment Note shall be executed between the Owner and the municipality wherein the unit(s) is(are) located at the time of closing and transfer of title to any purchaser of an Affordable Housing Unit. The Repayment Mortgage shall provide for the repayment of 95% of the Price Differential at the first non-exempt transfer of title after the ending date of restrictions as specified in Section III TERM OF RESTRICTION. The Repayment Mortgage shall be recorded with the records office of the County in which the unit is located.

VI. DEEDS OF CONVEYANCE AND LEASE PROVISIONS

All Deeds of Conveyance and Contracts to Purchase from all Owners to Certified Purchasers of Affordable Housing units shall include the following clause in a conspicuous place.

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT [dated _____] which is filed **concurrently with this deed** in the Office of the County Clerk of _____ County and is also on file with the Authority".

Any Master Deed that includes an Affordable Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the Master Deed that differentiates the affordable unit from all other units covered in the Master Deed.

VII. COVENANTS RUNNING WITH LAND

The provisions of this Affordable Housing Agreement shall constitute covenants running with the land with respect to each Affordable Housing unit affected hereby, and shall bind all Purchasers and Owners of each Affordable Housing unit, their heirs, assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns for the duration of this Agreement as set forth herein.

VIII. OWNER RESPONSIBILITIES

In addition to fully complying with the terms and provisions of this Affordable Housing Agreement, the Owner acknowledges the following responsibilities:

A. Affordable Housing units shall at all times remain the Primary Residence of the Owner. The Owner shall not rent any Affordable Housing unit to any party whether or not that party qualifies as a Low or Moderate Income household without prior written approval from the Authority.

B. All home improvements made to an Affordable Housing Unit shall be at the Owner's expense except that expenditures for any alteration that allows a unit to be resold to a larger household size because of an increased capacity for occupancy shall be considered for a recalculation of Base Price. Owners must obtain prior approval for such alteration from the Authority to qualify for this recalculation.

C. The Owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

D. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, both public and private, assessed against such unit, or any part thereof, as and when the same become due.

E. Owners of Affordable Housing units shall notify the Authority in writing no less than ninety (90) days prior to any proposed sale of an intent to sell the property. Owners shall not execute any purchase agreement, convey title or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Authority.

F. An Owner shall request referrals of eligible households from pre-established referral lists maintained by the Authority.

G. If the Authority does not refer [an eligible] a certified household within sixty (60) days of the Notice of Intent to Sell the unit or no Agreement to Purchase the unit has been executed, the Owner may propose a Contract to Purchase the unit to an income eligible household not referred through the Authority. The proposed Purchaser must complete all required Household Eligibility forms and submit Gross Annual Income Information for verification to the Authority for written certification as an eligible sales transaction.

H. At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was originally restricted (e.g. refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. Other items of property may be sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the Base Price may be made a condition of the unit resale provided the price has been approved by the Authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The Owner and the Purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at Resale.

I. The Owner shall not permit any lien, other than the First Purchase Money Mortgage, second mortgages approved by the Authority and liens of the Authority to attach and remain on the property for more than sixty (60) days.

J. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the Owner, in addition to paying any assessments required by the Master Deed of the Condominium or By-laws of an Association, shall further fully comply with all of the terms, covenants or conditions of said Master Deed or By-Laws, as well as fully comply with all terms, conditions and restrictions of this Affordable Housing Agreement.

K. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. [5:92-1 et seq.] 5:93), for determining that a resale transaction is qualified for a Certificate of Exemption. The Owner shall notify the Authority in writing of any proposed Exempt Transaction and supply the necessary documentation to qualify for a Certificate of Exemption. An Exempt Transaction does not terminate the resale restrictions or existing liens and is not considered a certified sales transaction in calculating subsequent resale prices. A Certificate of Exemption shall be filed with the deed at the time of title transfer.

L. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. [5:92-1 et seq.] 5:93), for determining that a resale transaction is qualified for a Hardship Waiver. The Owner may submit a written request for a Hardship Waiver. If no Certified Household has executed an agreement to purchase within ninety (90) days of notification of an approved resale price and referral of potential purchasers. Prior to issuing a Hardship Waiver, the Municipality shall have 30 days in which to sign an agreement to purchase the unit at the approved resale price and subsequently rent or convey it to a Certified Household. The Municipality may transfer this option to the Department, the Agency, or a qualified non-profit organization as determined by the Council. For approval of a Hardship Waiver, an Owner must document efforts to sell the unit to an income eligible household. If the waiver is granted, the Owner may offer a low income unit to a moderate income household or a moderate income unit to a household whose income exceeds 80% of the applicable median income guide. The Hardship Waiver shall be recorded with the deed at the time of closin and is only valid for the designated deed at the time of closing and is only valid for the designated resale transaction. It does not affect the resale price. All future resales are subject to all restrictions stated herein.

M. The Owner shall be obligated to pay a reasonable service fee to the Authority at the time of closing and transfer of title in the amount specified by the Authority at the time a restricted resale price has been determined after receipt of a Notice of Intent to Sell. Such fee shall not be included in the calculation of the maximum resale price.

IX. FORECLOSURE

The terms and restrictions of this Agreement shall be subordinate only to the First Purchase Money Mortgage lien on the Affordable Housing property and in no way shall impair the First Purchase Money Mortgagee's ability to exercise the contract remedies available to it in the event of any default of such mortgage as such remedies are set forth in the First Purchase Money Mortgage documents for the Affordable Housing unit.

Any Affordable Housing owner-occupied property that is acquired by a First Purchase Money Mortgagee by Deed in lieu of Foreclosure, or by a Purchaser at a Foreclosure sale conducted by the holder of the First Purchase Money Mortgagee shall be permanently released from the restrictions and covenants of this Affordable Housing Agreement. All resale restrictions shall cease to be effective as of the date of transfer of title pursuant to Foreclosure with regard to the First Purchase Money Mortgagee, a lender in the secondary mortgage market including but not limited to the FNMA, Federal Home Loan Mortgage Corporation, GNMA, or an entity acting on their behalf and all subsequent purchasers, Owners and mortgagees of that particular Affordable Housing unit (except for the defaulting mortgagor, who shall be forever subject to the resale restrictions of this Agreement with respect to the Affordable Housing unit owned by such defaulting mortgagor at time of the Foreclosure sale).

Upon a judgment of Foreclosure, the Authority shall execute a document to be recorded in the county recording office as evidence that such Affordable Housing unit has been forever released from the restrictions of this Agreement. Execution of foreclosure sales by any other class of creditor or mortgagee shall not result in a release of the Affordable Housing unit from the provisions and restrictions of this Agreement.

In the event of a Foreclosure sale by the First Purchase

Mortgagee, the defaulting mortgagor shall be personally obligated to pay to the Authority any excess funds generated from such Foreclosure sale. For purposes of this agreement, excess funds shall be the total amount paid to the sheriff by reason of the Foreclosure sale in excess of the greater of (1) the maximum permissable Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale pursuant to the rules and guidelines of the Authority and (2) the amount required to pay and satisfy the First Money mortgage, including the costs of Foreclosure plus any second mortgages approved by the Authority in accordance with this Agreement. The amount of excess funds shall also include all payments to any junior creditors out of the Foreclosure sale proceeds even if such were to the exclusion of the defaulting mortgagor.

The Authority is hereby given a first priority lien, second only to the First Purchase Money Mortgagee and any taxes or public assessments by a duly authorized governmental body, equal to the full amount of such excess funds. This obligation of the defaulting mortgagor to pay the full amount of excess funds to the Authority shall be deemed to be a personal obligation of the Owner of record at time of the Foreclosure sale surviving such sale. The Authority shall be empowered to enforce the obligation of the defaulting mortgagor in any appropriate court of law or equity as though same were a personal contractual obligation of the defaulting mortgagor. Neither the First Purchase Money Mortgagee nor the purchaser at the Foreclosure sale shall be responsible or liable to the Authority for any portion of this excess.

No part of the excess funds, however, shall be part of the defaulting mortgagor's equity.

The defaulting mortgagor's equity shall be determined to be the difference between the maximum permitted Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale as calculated in accordance with this Agreement and the total of the following sums: First Purchase Money Mortgage, prior liens, costs of Foreclosure, assessments, property taxes, and other liens which may have been attached against the unit prior to Foreclosure, provided such total is less than the maximum permitted Resale Price.

If there are Owner's equity sums to which the defaulting mortgagor is properly entitled, such sums shall be turned over to the defaulting mortgagor or placed in an escrow account for the defaulting mortgagor if the defaulting mortgagor cannot be located. The First Purchase Money Mortgagee shall hold such funds in escrow for a period of two years or until such earlier time as the defaulting mortgagor shall make a claim for such. At the end of two years, if unclaimed, such funds, including any accrued interest, shall become the property of the Authority to the exclusion of any other creditors who may have claims against the defaulting mortgagor.

Nothing shall preclude the municipality wherein the Affordable Housing unit is located from acquiring an affordable property prior to foreclosure sale at the approved maximum Resale price and holding, renting or conveying it to a Certified Household if such right is exercised within 90 days after the property is listed for sale and all outstanding obligations to the First Purchase Money Mortgagee are satisfied.

X. VIOLATION, DEFAULTS AND REMEDIES

In the event of a threatened breach of any of the terms of this Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties to this Agreement that a breach will cause irreparable harm to the Authority, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low and moderate income housing. Upon the occurrence of a breach of any of the terms of the Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under the mortgage, recoupment of any funds from a sale in violation of the Agreement, injunctive relief to prevent further violation of the Agreement, entry on the premises, and specific performance.

XI. RIGHT TO ASSIGN

The Authority may assign from time to time its rights, and delegate its obligations hereunder without the consent of the Owner. Upon such assignment, the Authority, its successors or assigns shall provide written notice to the Owner.

XII. INTERPRETATION OF THIS AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid financial speculation or circumvention of the purposes of the Fair Housing Act for the duration of this Agreement and to ensure, to the greatest extent possible, that the purchase price, mortgage payments and rents of designated Affordable Housing units remain affordable to Low and Moderate Income-Eligible Households as defined herein.

XIII. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested as follows:

To the Owner:

At the address of the property stated in Section II PROPERTY DESCRIPTION hereof.

To the Authority:

At the address stated below:

Attention:

Or such other address that the Authority, Owner, or municipality may subsequently designate in writing and mail to the other parties.

XIV. SUPERIORITY OF AGREEMENT

Owner warrants that no other Agreement with provisions contradictory of, or in opposition to, the provisions hereof has been or will be executed, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations between and among the Owner, the Authority, and their respective successors.

XV. SEVERABILITY

It is the intention of all parties that the provisions of this instrument are severable so that if any provisions, conditions, covenants or restrictions thereof shall be invalid or void under any applicable federal, state or local law, the remainder shall be unaffected thereby.

In the event that any provision, condition, covenant or restriction hereof, is at the time of recording of this instrument, void, voidable or unenforceable as being contrary to any applicable

federal, state or local law, both parties, their successors and assigns, and all persons claiming by, through or under them covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability or unenforceability, shall be deemed to apply retrospectively to this instrument thereby operating to validate the provisions of this instrument which otherwise might be invalid and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein described as fully as if they had been in effect at the time of the execution of this instrument.

XVI. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of New Jersey.

XVII. OWNER'S CERTIFICATION

The Owner certifies that all information provided in order to qualify as the owner of the property or to purchase the property is true and correct as of the date of the signing of this Agreement.

XVIII. AGREEMENT

The Owner and the Authority hereby agree that all Affordable Housing units described herein shall be marketed, sold, and occupied in accordance with the provisions of this Agreement. Neither the Owner nor the Authority shall amend or alter the provisions of this Agreement without first obtaining the approval of the other party except as described in Section III, Paragraph C, TERM OF RESTRICTION. Any such approved amendments or modifications of this Agreement shall be in writing and shall contain proof of approval from the other parties and shall not be effective unless and until recorded with the County Clerk for the County in which the Affordable Housing units are situated.

XVIX. ACKNOWLEDGEMENT

Owner acknowledges receipt of a true copy of this Agreement.

Dated: _____

By: _____
Signature *(Owner)*

_____
Signature *(Co-Owner)*

STATE OF NEW JERSEY)

)ss

COUNTY OF)

BE IT REMEMBERED, that on this _____ day of _____ , 199__ , before me, the subscriber, _____ personally appeared _____ who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Owner (Co-Owner) named in the within instrument; that is the Affordable Housing Agreement of the described Property; that the execution, as well as the making of this instrument, has been duly authorized and is the voluntary act and deed of said Owner.

Sworn to and subscribed before me, _____ the date aforesaid.

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

REPAYMENT MORTGAGE
Contains Deed Restrictions

MORTGAGE IS SUBORDINATE TO A FIRST PURCHASE MONEY MORTGAGE OR REFINANCING

Prepared by: _____

This Mortgage made on _____, 19___ between _____
(referred to as "Borrower") and _____ *(referred to as the "Authority").*
which Authority is an instrumentality of _____ *(referred to as the "Municipality")*

REPAYMENT MORTGAGE NOTE

In consideration of value received by the Borrower in connection with the Property (described below) purchased by the Borrower, the Borrower has signed a note dated _____. The Borrower promises to pay the amounts due under the Note and to abide by all promises contained in the Note.

MORTGAGE AS SECURITY

This Mortgage is given to the Authority as security for the payment due and the performance of all promises under the Note. The Borrower mortgages the real estate owned by the Borrower described as follows (referred to as the "Property"):

All of the land located in the _____ of _____
County of _____ and State of New Jersey, specifically described as follows:
Street Address: _____
City: _____ Zip: _____ Block No.: _____ Lot No.: _____
Also more particularly described as:

Together with:

1. All buildings and other improvement that now are or will be located on the Property.
2. All fixtures, equipment and personal property that now are or will be attached to or used with the land, buildings and improvements of or on the Property.
3. All rights which the Borrower now has or will acquire with regard to the Property.

BORROWERS ACKNOWLEDGEMENTS

1. The Borrower acknowledges and understands that:

a) Municipalities within the State of New Jersey are required under the Fair Housing Act and regulations adopted under the authority of the Act to provide for their fair share of housing that is affordable to households of low and moderate income; and

b) The Property which is subject to this Mortgage has been designated as housing which must remain affordable to low and moderate income households for at least thirty years unless a shorter time period is authorized in accordance with rules established by any agency having jurisdiction (the "restricted period"); and

c) To ensure that such housing, including this Property, remains affordable to low and moderate income households during the restricted period, an Affordable Housing Agreement has been executed by the Borrower that constitutes covenants running with the land with respect to the Property and the Municipality has adopted procedures and restrictions governing the resale of the Property and ; and

d) The Authority to which the Property is mortgaged has been designated by the Municipality to administer the procedures and restrictions governing such housing.

2. The Borrower also acknowledges and understands that the Property has been purchased at a restricted sales price that is less than the fair market value of the Property.

BORROWER'S PROMISES

In consideration for the value received in connection with the purchase of the Property at a restricted sales price, the Borrower agrees as follows:

1. The Borrower will comply with all of the terms of the Note and this Mortgage which includes:

a) Within the restricted period starting with the date the Borrower obtained title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds the maximum allowable resale price as established by the Authority. In the event of breach of this promise, Borrower hereby assigns all proceeds in excess of the maximum allowable resale price to the Authority, said assignment to be in addition to any and all rights and remedies the Authority has upon default.

b) At the first non-exempt transfer of title of the Property after the ending date of the restricted period, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period to the Authority.

2. The Borrower warrants title to the premises *(N.J.S.A. 46:9-2)*. This means the Borrower owns the Property and will defend its ownership against all claims.

3. The Borrower shall pay all liens, taxes, assessments and other governmental charges made against the Property when due. The Borrower will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

4. The Borrower shall keep the Property in good repair, neither damaging nor abandoning it. The Borrower will allow the Authority to inspect the Property upon reasonable notice.

5. The Borrower shall use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

CONTROLS ON AFFORDABILITY

The procedures and restrictions governing resale of the Property have been established pursuant to the Fair Housing Act and the regulations adopted under the authority of the Act, (all collectively referred to as "Controls on Affordability"). Reference is made to the Controls on Affordability for the procedure in calculating the

maximum allowable resale price, the method of repayment described in item 1(b) of the section entitled "Borrower's Promises", and the definition of a "restricted sale" for purposes of determining when the Affordability Controls are applicable, and the determination of the restricted period of time.

RIGHTS GIVEN TO LENDER

The Borrower, by mortgaging the Property to the Authority, gives the Authority those rights stated in this Mortgage, all rights the law gives to lenders, who hold mortgages, and also all rights the law gives to the Authority and/or Municipality under the Affordability Controls. The rights given to the Authority and the restrictions upon the Property are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Borrower and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and Mortgage, the Authority will cancel this Mortgage at its expense.

DEFAULT

The Authority may declare the Borrower in default on the Note and this Mortgage if:

1. The Borrower fails to comply with the provisions of the Affordable Housing Agreement;
2. The Borrower fails to make any payment required by the Note and this Mortgage;
3. The Borrower fails to keep any other promise made in this Mortgage;
4. The ownership of the Property is changed for any reason without compliance with the terms of the Note and Mortgage;
5. The holder of any lien on the Property starts foreclosure proceedings; or
6. Bankruptcy, insolvency or receivership are started by or against any of the Borrowers.

AUTHORITY'S RIGHTS UPON DEFAULT

If the Authority declares that the Note and this Mortgage are in default, the Authority shall have, subject to the rights of the First Mortgagee, all rights given by law or set forth in this Mortgage.

NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON NOTICE TO THE OTHER PARTY.

NO WAIVER BY AUTHORITY

The Authority may exercise any right under this Mortgage or under any law, even if the Authority has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. The Authority does not waive its right to declare the Borrower is in default by making
payments or incurring expense on behalf of the Borrower.

EACH PERSON LIABLE

This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Authority may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

SUBORDINATE MORTGAGE

The lien on this Mortgage is inferior to and subject to the terms and provisions of the First Purchase Money Mortgage executed contemporaneously herewith or any subsequent refinancing.

NO ORAL CHANGES

This Mortgage can only be changed by an agreement in writing signed by both the Borrower and the Authority.

SIGNATURES

The Borrower agrees to the terms of this Mortgage by signing below.

ACKNOWLEDGEMENT

Borrower acknowledges receipt of a true copy of this mortgage at no charge.

Dated: _____

ATTEST: _____ By: _____
Signature *(Borrower)*

_____
Signature *(Co-Borrower)*

STATE OF NEW JERSEY)
)ss
COUNTY OF)

BE IT REMEMBERED, that on this _____ day of _____, 19___, before me, the subscriber, _____ personally appeared _____ who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Borrower (Co-Borrower) named in the within instrument; that is the Repayment Mortgage for the described Property; that the execution, as well as the making of this instrument, has been duly authorized and is the voluntary act and deed of said Owner.

Sworn to and subscribed before me, _____
the date aforesaid.

0293w 5/91

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

REPAYMENT MORTGAGE NOTE

_____ ,199— _____, New Jersey

FOR VALUE RECEIVED _____ (referred to as the "Borrower") promises to pay to _____ (referred to as the "Authority") an instrumentality of _____ (the "Municipality") the amounts specified in this Note and promises to abide by the terms contained below.

REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Borrower is giving the Authority a Repayment Mortgage , dated _____. The Repayment Mortgage covers real estate (the "Property") owned by the Borrower, the legal description of such real estate being contained in the Repayment Mortgage . This mortgage is subordinate to the first mortgage executed contemporaneously herewith or any subsequent financing.

BORROWERS PROMISE TO PAY AND OTHER TERMS

1. The Property is subject to terms, restrictions and conditions that prohibit its sale at a fair market price for an established period of time. Within the restricted period, starting with the date the Borrower obtains title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds a maximum allowable resale price established by the Authority.
   a. All proceeds received during the restricted period in excess of the restricted amount shall be paid to the Authority.
   b. At the first non-exempt sale of the Property after restrictions have ended, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period of resale (the "Price Differential") to the Authority.
2. The amount due and payable to the Authority shall be calculated as follows:

FAIR MARKET PRICE less MAXIMUM ALLOWABLE RESALE PRICE
equals
PRICE DIFFERENTIAL

BORROWER'S PROCEEDS
equals
MAXIMUM ALLOWABLE RESALE PRICE plus 5% OF PRICE DIFFERENTIAL

AMOUNT OF NOTE
equals
FAIR MARKET PRICE less BORROWER'S PROCEEDS

WAIVER OF FORMAL ACTS

The Borrower waives its right to require the Authority to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

RESPONSIBILITY UNDER NOTE

All Borrowers signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this Note. The Authority may enforce this Note against any one or more of the Borrowers or against all Borrowers together.

SIGNATURES

The Borrower agrees to the terms of this Note by signing below.

WITNESSED:

_____ _____ L.S.

_____ L.S.

0229ew 5/91

TECHNICAL APPENDIX F

State Planning Commission Memorandum of Understanding and Flow Charts

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING, dated the 27th day of October, 1992, by and between the New Jersey State Planning Commission (the Commission) and the New Jersey Council on Affordable Housing (the Council).

WHEREAS, the New Jesey Supreme Court determined, in its Mt. Laurel decisions, that every municipality has a Constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families; and

WHEREAS, in 1985, the New Jersey legislature enacted the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*) in response to the Mt. Laurel decisions, and created the Council on Affordable Housing as the entity having primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State; and

WHEREAS, in 1985, also in response to the Mt. Laurel decisions, the New Jersey legislature enacted the State Planning Act (N.J.S.A. 52:18A-196 *et seq.*) to replace the State Development Guide Plan with a State Development and Redevelopment Plan (State Plan) to be used as a tool for assessing suitable locations for infrastructure, housing, economic growth and conservation; and

WHEREAS, both the State Planning Act and the Fair Housing Act recognize (1) the interdependence of planning for infrastructure and planning for low and moderate income housing; (2) the importance of maximizing the use of existing infrastructure in determining suitable locations for development, and (3) the importance to comprehensive planning of the phasing of infrastructure development with inclusionary development; and

WHEREAS, on June 12, 1992 the State Planning Commission adopted the first State Development and Redevelopment Plan pursuant to the State Planning Act; and

WHEREAS, the Resource Planning and Management System, which establishes planning areas consisting of centers and their environs, is the preferred mechanism of the State Plan to effectuate the State Planning Act's mandates to provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions, and to identify areas for growth, agriculture, open space conservation and other appropriate designations; and

WHEREAS, in accordance with the Fair Housing Act, which specifically requires the Council to make adjustments to municipal present and prospective fair share of regional housing needs when the pattern of development is contrary to the planning designations in the State Plan, the Council will be promulgating administrative rules that utilize the Resource Planning and Management Structure and Statewide Policies with respect to municipal certification of housing elements and the handling of requests for site specific relief that are directed to the Council from the Courts; and

WHEREAS, it is mutually beneficial to the Council and to the Commission to enter into this Memorandum of Understanding to develop a cooperative planning process that will enable the Council to meet its constitutional and legislative mandates to develop a planning and financing mechanism for low and moderate income housing that is in accordance with regional considerations and sound planning concepts, and that will ensure that the Commission maintains, revises and sees implemented a State Plan that promotes a distribution of low and moderate income housing throughout New Jersey in locations and patterns that are consistent with the goals of the State Planning Act; and

WHEREAS, the cooperative planning process developed pursuant to this Memorandum of Understanding will advance coordinated and comprehensive planning in the State, will result in greater predictability in planning with respect to meeting the mandates of the Council and the Commission, and will thereby benefit State agencies, counties, municipalities and the public interest.

NOW, THEREFORE, in consideration of the promises contained in this Memoradum of Understanding, the Commission and the Council hereby agree to the following Basic Principles:

1. Both the Commission and the Council will share all available information useful or necessary to achieving the objectives of this Memorandum of Understanding. The Commission will direct the Office of State Planning to provide to the Council in a timely manner, such reports or recommendations that are necessary for the Council to carry out its responsibilities.

2. A cooperative planning process will be established and maintained between the Council and the Commission that will advance coordinated and comprehensive planning in the State, will result in greater predictability in planning with respect to meeting the mandates of the Council and the Commission, and will thereby benefit State agencies, counties, municipalities and the public interest.

3. The State Plan's Resource Planning and Management Map (RPMM), which includes planning areas, identified centers, designated centers, environs and critical environmental/historic sites, provides the Council with a framework for allocating housing need and locating sites based on considerations of infrastructure availability, environmental sensitivity, and historic preservation.

4. All planning areas can accommodate growth and therefore can accommodate a commensurate housing obligation, in a manner consistent with the goals, objectives and policies of the State Plan.

5. Centers are the preferred mechanism for accommodating growth and inclusionary developments in each planning area, in a manner consistent with the goals, objectives and policies of the State Plan.

6. As provided for in the State Planning Rules (N.J.A.C. 17:32-8) immediately after adoption of the State Plan the Commission will accept petitions to have identified centers receive designation. When determining community development boundaries for a center, the Commission will take into consideration the State Plan's housing policies and objectives, including those respecting low and moderate income housing.

7. The Commission accepts the Council's definition pursuant to N.J.A.C. 5:92-1, of developable, available, approvable and suitable sites and realistic development potential, and the Council accepts the Commission's definitions, pursuant to the State Plan, of urban and community infrastructure, centers and environs, identified and designated centers and critical environmental/historic sites.

8. The Council will use the State Plan to allocate regional housing need based on planning areas within each municipality.

9. County planning entities will be invited to assist municipalities, the Council and the Commission in identifying Centers on a voluntary basis.

10. Municipalities that are consistent with the State Plan's goals, objectives and policies, and that petition the Council within two years of filing a housing element with the Council, will receive the benefit of maximum flexibility with respect to Council certification. Municipalities that are not consistent with the State Plan's goals objectives and policies, and that do not petition the Council for certification within two years of filing with the Council a housing element consistent with the State Plan's policies and objectives, may expose themselves to actions by the Council and Commission with respect to identifying and designating centers and site specific relief to objectors.

IN WITNESS WHEREOF, the Commission and the Council have caused this Memorandum of Understanding to be duly executed by their authorized representatives on the date first above written.

NEW JERSEY STATE PLANNING COMMISSION

by: _____

Title: _____

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

by: _____

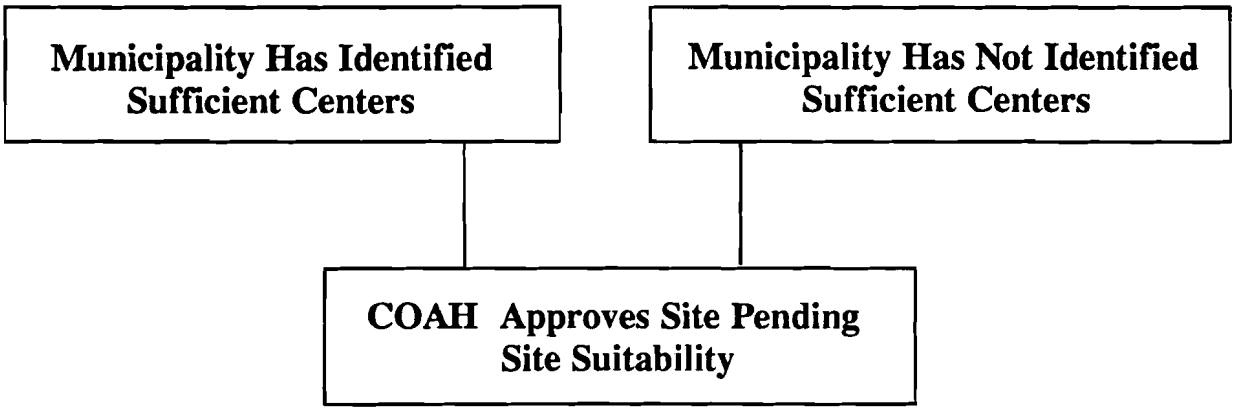
Title: _____

COAH REVIEW OF MUNICIPAL HOUSING ELEMENTS

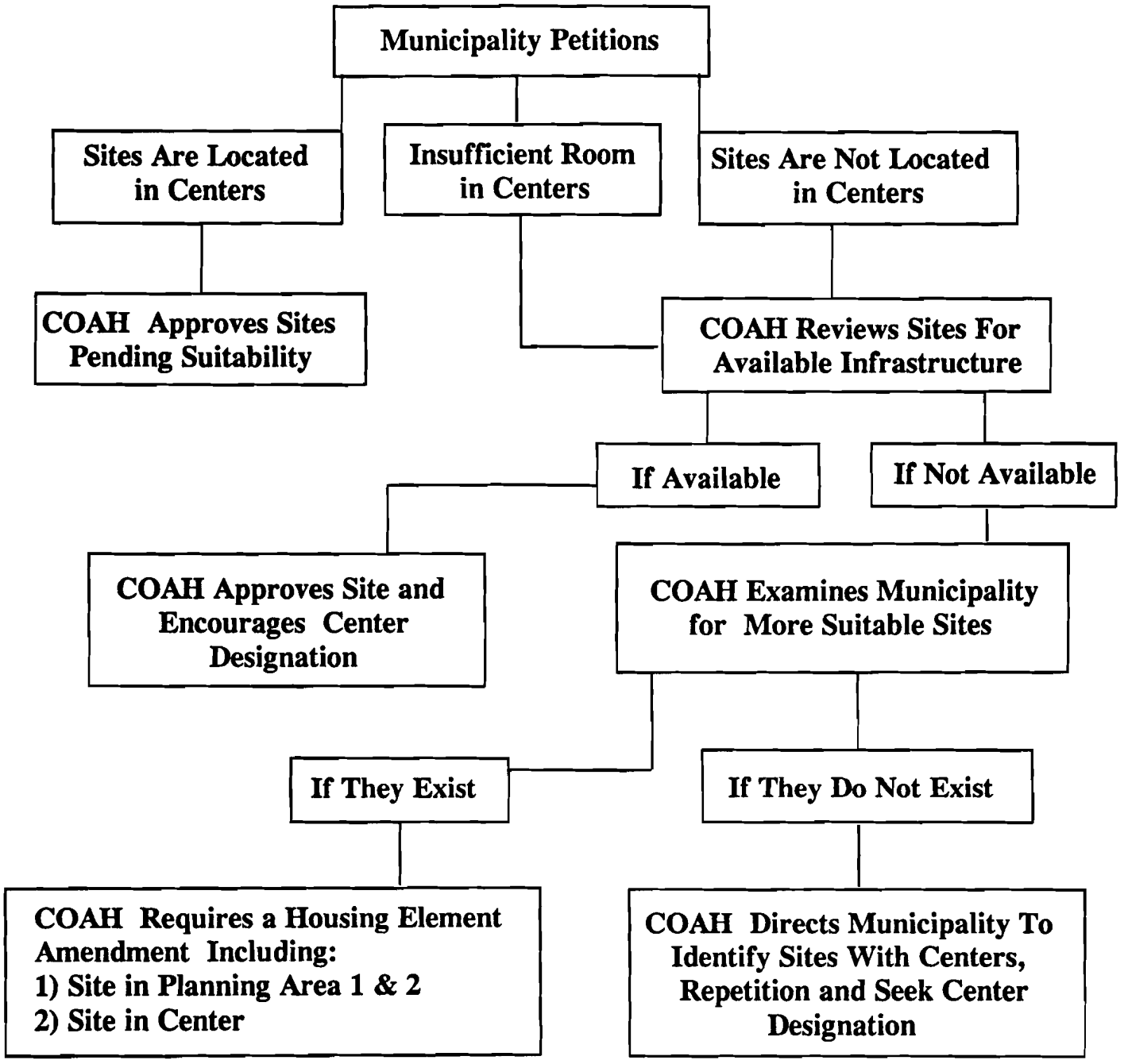
BASED ON SDRP

All Charts Must Be Reviewed Within The Context of N.J.A.C. 5:93-5.4

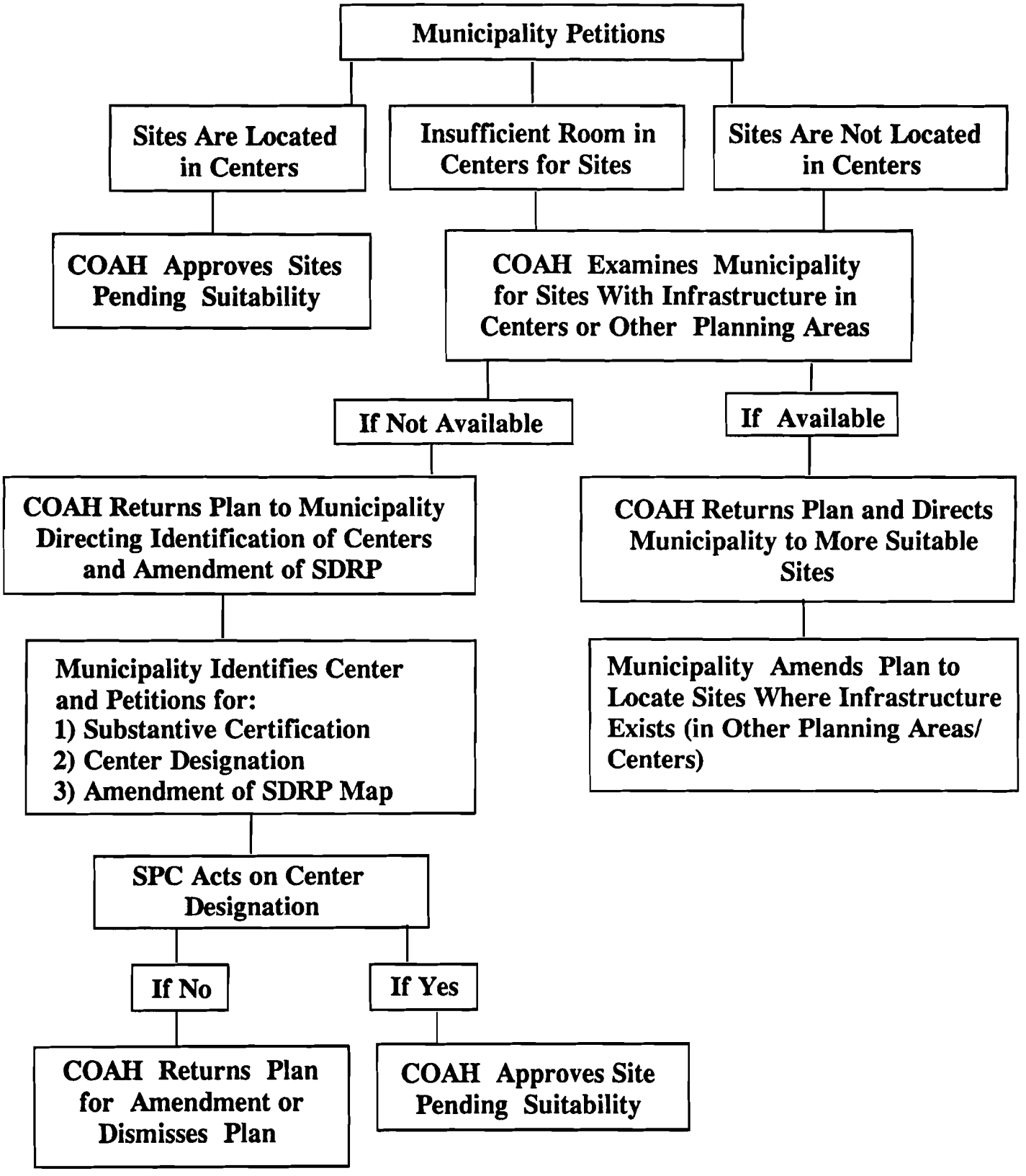
SITE REVIEW IN PLANNING AREAS 1 & 2



SITE REVIEW IN PLANNING AREA 3



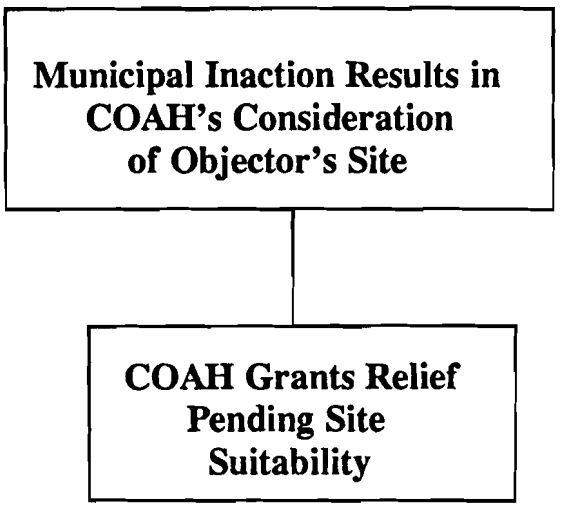
SITE REVIEW IN PLANNING AREAS 4 & 5



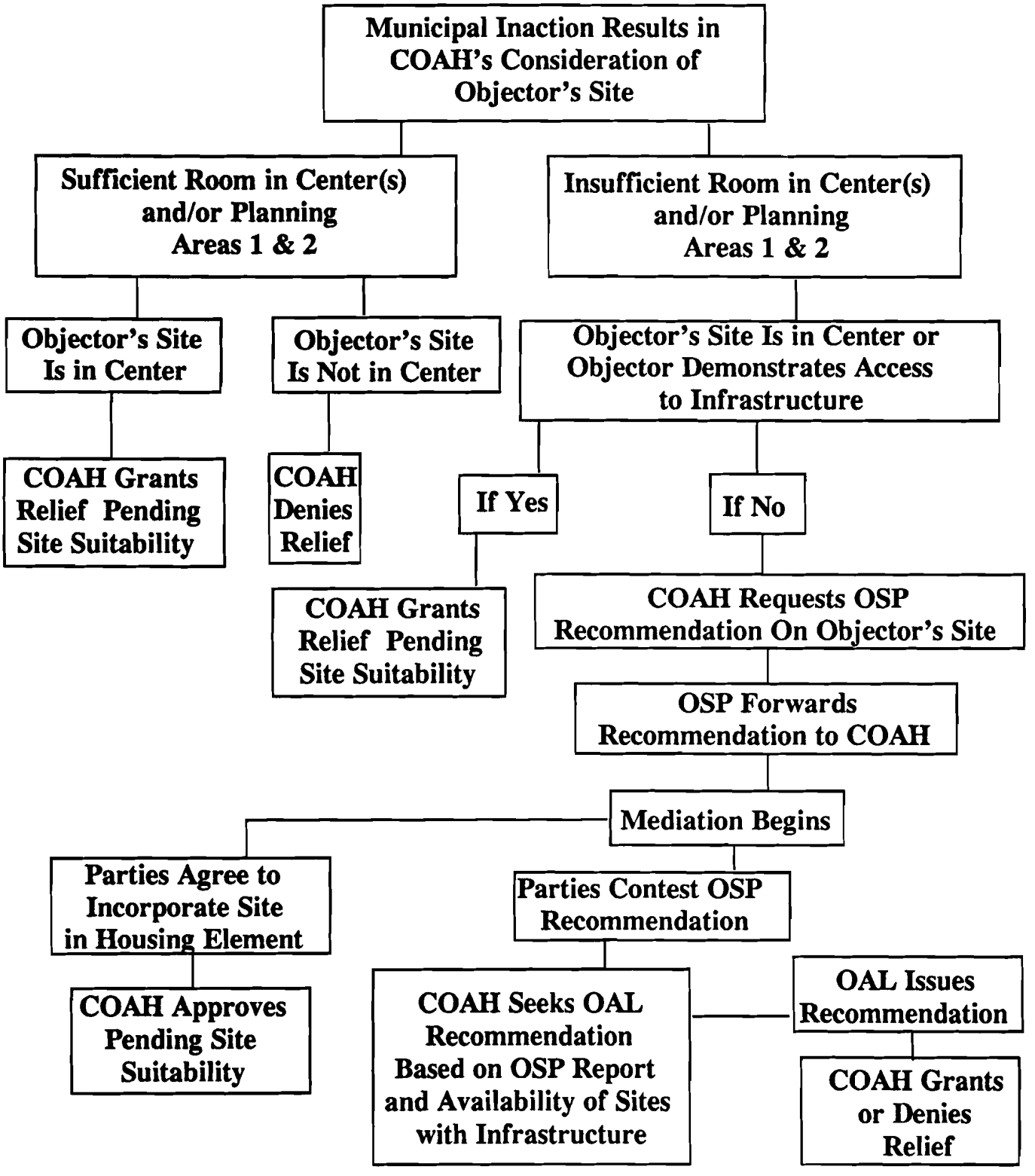
COAH PROCESS OF GRANTING RELIEF TO OBJECTORS BASED ON SDRP

All Charts Must Be Reviewed Within The Context of N.J.A.C. 5:93-13

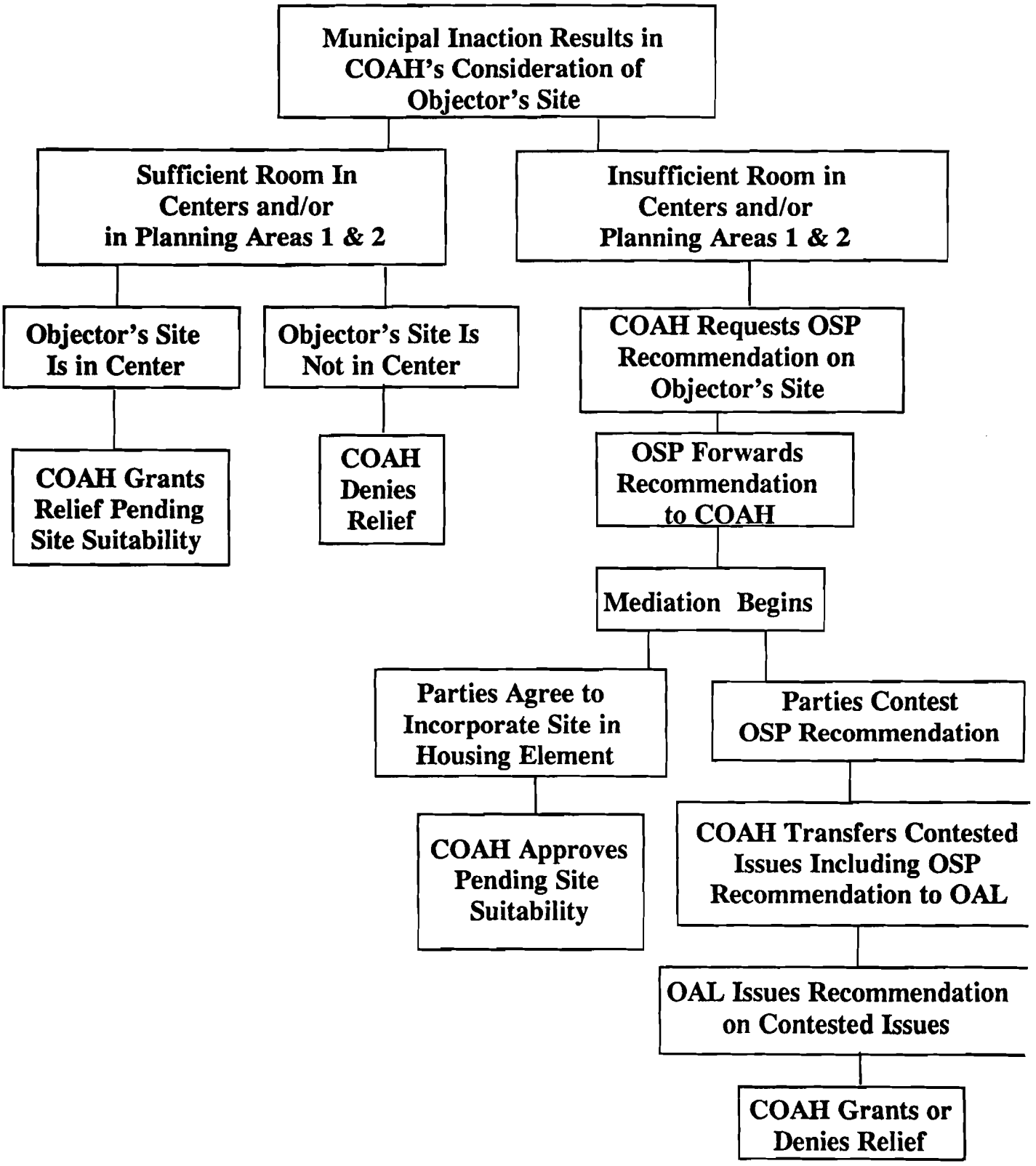
OBJECTOR RELIEF IN PLANNING AREAS 1 & 2



OBJECTOR RELIEF IN PLANNING AREA 3



OBJECTOR RELIEF IN PLANNING AREAS 4 & 5



APPENDIX G

REGIONAL CONTRIBUTION AGREEMENT COUNTY REVIEW CHECKLIST

The Fair Housing Act permits a municipality to transfer up to 50 percent of its low and moderate income housing obligation to a willing receiving municipality. The terms of this Regional Contribution Agreement (RCA) transfer are determined by individual negotiations between willing sending and receiving municipalities within the same housing region.

Recognizing the need for sound comprehensive regional planning, the Act refers the RCA to the county of the receiving municipality for review and for submittal of its comments and recommendations to COAH. The Act indicates that this review shall be performed by the county planning board or other designated agency and that in its review, the county "shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan and the State development and redevelopment plan." The results of this review and the county recommendation are to be **by resolution** of the county planning board. At a minimum, the following language is to be incorporated into the resolution, if the recommendation is positive:

WHEREAS, directed by the New Jersey Council on Affordable Housing, the (receiving) County Planning Board has reviewed this proposal; and

WHEREAS, the staff of the (receiving) County Planning Board has examined the Master Plan and Zoning Ordinances of the (sending) municipality and (receiving) municipality; the Master Plan of (receiving) County and the State Development Guide Plan; and

WHEREAS, after duly examining all the above cited plans, the staff of the (receiving) County Planning Board has found that the proposed Regional Contribution Agreement is in accordance with sound, comprehensive regional planning; that the (receiving) municipality and the proposed RCA housing locations therein offer convenient access to employment opportunities; and that the proposed RCA housing would have access to public transportation;

NOW, THEREFORE BE IT RESOLVED that the (receiving) County Planning Board recommends approval of the proposed Regional Contribution Agreement between the (sending) municipality and the (receiving) municipality; and

BE IT FURTHER RESOLVED that the (receiving) County Planning Board recommends that the New Jersey Council on Affordable Housing approve the proposed Regional Contribution Agreement.

If negative, please develop appropriate language.

In order to conduct this review, the **sending** municipality must forward the following documents to the receiving municipality's county planning board:

1. Master Plan of Sending Municipality.
2. Zoning Ordinances of Sending Municipality.
3. Housing Element of Sending Municipality.
4. Transportation Element of Sending Municipality.
5. 208 Plan of Sending Municipality.
6. Other Regional Plans, if applicable.
7. Regional Contribution Agreement Project Plan.

If both sender and receiver are in the same county, then all necessary documents are on file except the RCA Project Plan. In that instance, only a formal review request letter and the RCA Project Plan need be forwarded.

The Act permits COAH to establish time limits for county review and, since COAH views expedient review of RCAs as crucial, it has imposed a 45 day limit for the county to complete its review. COAH may provide a 15 day extension if the county requests such an extension for legitimate reasons. The 45 days begin when the sending municipality forwards all the necessary documents as a complete package to the receiving municipality's county planning board with a request for review and recommendation. COAH should be copied on the transmittal letter only. If the county is unable to complete its review within the allotted time, or if there is no county planning board or designated county agency, COAH shall perform the required review.

To facilitate county review, COAH has developed a four section checklist which is attached. The checklist is to be completed as part of the county review process and forwarded with the resolution to COAH. When both the County Planning Board and NJ Housing and Mortgage Finance Agency feasibility reviews are completed, the RCA will be presented to COAH for action.

SECTION I: ACCESS TO EMPLOYMENT OPPORTUNITIES

A. Does the proposed agreement provide realistic housing opportunities within convenient access to employment opportunities?

Housing Site(s) Proposed:

	Location	Site #	Yes	No
1. Receiving Munic.	_____	_____	A.___	___
	_____	_____	B.___	___
	_____	_____	C.___	___
	Location	Site #		
2. Sending Munic.	_____	_____	A.___	___
	_____	_____	B.___	___
	_____	_____	C.___	___

BRIEFLY EXPLAIN ACCESS FOR EACH SITE ON SEPARATE SHEET
INCLUDE SITE #

B. Is the proposed housing served by available transit?

Housing Site(s) Proposed:
If yes, check type(s) of service

1. Receiving Munic. Location	#	Yes	Munic	Inter-Municipal County	Inter-Co	No
_____	___	A.___	___	___	___	___
_____	___	B.___	___	___	___	___
_____	___	C.___	___	___	___	___
2. Sending Munic. Location	**#**					
_____	___	A.___	___	___	___	___
_____	___	B.___	___	___	___	___
_____	___	C.___	___	___	___	___

IF TRANSIT POSSIBLE, BRIEFLY EXPLAIN TRANSIT FOR EACH SITE ON SEPARATE SHEET

SECTION II: CURRENTLY ADOPTED AND/OR OFFICIAL LAND USE ELEMENT CONSISTENCY REVIEW (ATTACH RELEVANT PAGES OF DOCUMENTS CITED BELOW)

	Check One: Complies In Whole	Complies In Part (Explain)	Conflicts In Whole
A.1. Receiving Munic. (a) Master Plan Of: _____; Adopted:	___	_____	_____

Brief Explanation (attach additional sheets as necessary)

_____

_____

_____

(b) Zoning Ordinance	Complies In Whole	Complies In Part (Explain)	Conflicts In Whole
Of: _____; Adopted:	___	_____	_____

Brief Explanation (attach additional sheets as necessary)

_____

_____

_____

2. Sending Munic.

(a) Master Plan Of:	Complies In Whole	Part (Explain)	Conflicts In Whole*
_____:Adopted:	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

(b) Zoning Ordinance	Complies In Whole	Part (Explain)	Conflicts In Whole
Of: _____; Adopted:	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

C. Are there any future plans to serve the proposed housing with transit?

		Yes	No
1. Receiving Munic.	A.	___	___
	B.	___	___
	C.	___	___
2. Sending Munic.	A.	___	___
	B.	___	___
	C.	___	___

IF TRANSIT POSSIBLE, BRIEFLY EXPLAIN TRANSIT FOR EACH SITE ON SEPARATE SHEET

	Complies In Whole	Part (Explain)	Conflicts In Whole
D.1. Receiving County Land Use Element Of: _____County; Adopted: _____	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

	Complies In Whole	Part (Explain)	Conflicts In Whole
C.1. Other Regional Plan Land Use Element(s) * Affecting;	____	_____	_____

(a) Receiving Munic.

_____:Adopted: _____

Brief Explanation (attach additional sheets as necessary)

	Complies In Whole	Part (Explain)	Conflicts In Whole
D.1. State Development Redevelopment Plan (S.D.R.P.) **			
(a) Receiving Munic.	____	_____	_____
(b) Sending Munic.	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

* For example, is site(s) consistent with Hackensack Meadowland Development Commission's Adopted Land Use Element

** Use official State Development Guide Plan until S.D.R.P. is adopted.

SECTION III: CURRENTLY ADOPTED TRANSPORTATION PLAN AND/OR PROGRAM ELEMENT CONSISTENCY REVIEW

1. Are there transportation or transit plans at any level of government which would positively or negatively affect the proposed housing and/or the proposed housing sites?

1. Within Sending Munic.

2. Within Receiving Munic.

CERTIFICATION: There are currently no transportation plans to build roadway that may invalidate sites.

(ATTACH RELEVANT PAGES OF DOCUMENT)

A. Is the proposed housing consistent with the 208 plan?

	Housing Site(s) Proposed Location	Site #	Check One Yes	No
1. Within Receiving Munic.			A.___	___
			B.___	___
			C.___	___

ATTACH ADDITIONAL SHEETS IF NECESSARY TO COMPLETE ABOVE QUESTION

This review is certified by the undersigned as representing a true and accurate statement of fact.

Based on this review, it is found that the following sites are:

1. Within Receiving Munic. Housing Site(s) Proposed Location	Site #	In Keeping With Sound Regional Comprehensive Planning	Not in Keeping With Sound Regional Comprehensive Planning
		A._____	_____
		B._____	_____
		C._____	_____

2. Within Sending Munic. Location	Site #		
		A._____	_____
		B._____	_____
		C._____	_____

CERTIFIED BY: _____

DATED: _____

TYPE NAME: _____

TITLE: _____

REPRESENTING _____

PROFESSIONAL LICENSE #:(as applicable)_____

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

General Provisions
Confidential Information
Proposed Amendments: N.J.A.C. 19:40-4.1, 4.2 and 4.8

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63c, 69a, 74d, 74e, 74f and 74h.
Proposal Number: PRN 1993-662.

Submit written comments by January 19, 1994 to:
Dennis Daly, Assistant General Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Section 74 of the Casino Control Act ("the Act"), N.J.S.A. 5:12-1 et seq., and Casino Control Commission ("Commission") regulations thereunder, N.J.A.C. 19:40-4, set forth standards for the public disclosure of information and data furnished to or obtained by Commission or the Division of Gaming Enforcement ("Division"). The proposed amendments also provide standards and procedures for determining whether information or data is to be considered confidential.

N.J.A.C. 19:40-4.2(a) specifies information and data that is presumed to be confidential and which will not be released except upon order of the Commission. Under the current rules, this category includes internal controls specified in subsection 99a of the Act, the earnings and revenue of any applicant, licensee or registrant, and information pertaining to an applicant's criminal and family background. The amendment would, in addition, include any trade secrets and other proprietary commercial information; any data in a petition, complaint, patron complaint or related document that would identify a casino patron; in a patron complaint, the name of the complainant and any comments made by a Commission member or staffperson; and the contents of any petition for confidential status and the information and data for which confidential status is sought, unless and until the petition is finally denied.

The amendment to N.J.A.C. 19:40-4.2(b) provides that any information or data that is not presumptively confidential will be presumed to be public information and, unless a petition for confidential status has been filed or the Commission determines otherwise on its own initiative, will be released or disclosed to any person upon request. Moreover, any documents received or considered in a public proceeding conducted by the Commission or by the Office of Administrative Law, or by any hearing officer on behalf of the Commission, is also presumed to be public information. Materials that cannot readily be duplicated, such as audio or video recordings, would be made available for review in the Commission's offices, by appointment.

The amendment to N.J.A.C. 19:40-4.2(d) also provides standards and procedures whereby any person may petition for disclosure of information that is deemed presumptively confidential. Likewise, the proposed amendment to N.J.A.C. 19:40-4.2(e) provides standards and procedures for petitions requesting confidential treatment of information that is deemed to be public information.

Procedures for the processing and determination of such petitions by the Commission are outlined in proposed N.J.A.C. 19:40-4.2(f). As proposed, General Counsel of the Commission will evaluate the petition and any responses thereto, and will issue a written decision. General Counsel will consider, where applicable, the factors specified in proposed N.J.A.C. 19:40-4.2(g), including: constitutional, statutory and regulatory standards relating to confidentiality and public disclosure; relevant case law; the extent to which disclosure is necessary to foster public confidence in the integrity of the regulatory process or to explain the basis for any Commission determination; the confidential interests involved; whether the subject matter likely to become part of the record in a contested case; the extent to which the subject matter is otherwise publicly available; the extent to which financial stability is at issue; exporting and disclosure obligation under securities law and other public policy considerations.

Either party may, within three working days, file a written request for Commission review of such decision. If a timely request for review is filed, any information for which confidential status is asserted will not be released or disclosed until the Commission evaluates the petition. The time restrictions may be extended or constricted to meet the exigencies of the case. Moreover, the chair may impose any restrictions or conditions required to expedite the process where the filing of a petition for confidential status interferes with the orderly processing of any proceeding.

Finally, the proposed amendments to N.J.A.C. 19:41-4.2 make clear that the new rules do not limit the Commission's authority to refuse to release or disclose any information or data where confidential treatment is necessary or appropriate to further the policies of the Act or regulations thereunder. Neither do the new rules require the Commission to notify persons identified in any document filed with the Commission prior to public disclosure.

The proposal would amend N.J.A.C. 19:40-4.1 to define terms utilized in the new provisions, and would also amend N.J.A.C. 19:40-4.8 to refer to the release or disclosure of information pursuant to a Commission order in accordance with N.J.A.C. 19:40-4.2.

Social Impact

The proposed amendments provide detailed standards and procedures for determining whether information or data furnished to or obtained by the Commission or Division should be treated as confidential. As such, the amendments should benefit licensees, registrants, applicants and other persons involved in investigations, hearings, petitions or other matters before the Commission by ensuring the adequate safeguarding of confidential information and preventing the negligent or unauthorized disclosure of confidential information. Similarly, the promulgation of standards and procedures can be expected to benefit those interested persons who seek disclosure of materials appropriate for public access. The amendments should also benefit the regulatory agencies by establishing guidelines for making these types of determinations.

Economic Impact

The proposed amendments are not anticipated to have any substantial economic impact. However, to the extent that the new standards and procedures add certainty and consistency to the determination of confidential status, both the regulatory agencies and petitioners should benefit from efficient and expedient resolution of such matters.

Regulatory Flexibility Analysis

The standards and procedures in the proposed amendments are generally applicable to all information furnished to or obtained by the Commission or Division. It is possible that determinations under the new provisions will involve a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., for example, an enterprise licensed as a casino service industry. Nonetheless, the rules in N.J.A.C. 19:40-4 must be consistently applied in all cases in order to ensure procedural fairness to all parties. An exemption for small businesses is therefore not feasible.

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

19:40-4.1 Definitions

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

. . .

"Complaint" means any written request for action against an applicant, licensee or registrant filed with the Commission pursuant to N.J.S.A. 5:12-108, 109 or 129.

"Confidential information" means any information [of] **or** data, furnished to or obtained by the Commission or Division from any source, which is considered confidential pursuant to the provisions of N.J.S.A. [5:12-74(d) and (e)] **5:12-74d and 74e,** or which is otherwise confidential pursuant to applicable statutory provisions, judicial decision or rule of court.

"Patron complaint" means any document filed by or on behalf of a member of the public with the Commission pursuant to N.J.S.A. 5:12-63f, the purpose of which is to call attention to an incident, event or circumstance occurring within or relating to a licensed casino or simulcasting facility.

"Petition" means any written request for formal agency action by the Commission including, without limitation, petitions for declaratory rulings pursuant to N.J.A.C. 19:42-9.1, petitions for rulemaking pursuant to N.J.A.C. 19:40-3.6, and petitions for exclusion filed by the Division pursuant to N.J.S.A. 5:12-71, N.J.A.C. 19:42-4 and N.J.A.C. 19:48.

"Related document" means any document or exhibit filed in support of or in opposition to a petition, complaint or patron complaint.

...

19:40-4.2 Determination of confidential status

(a) Except as **otherwise** provided by N.J.S.A. [5:12-74(h)] **5:12-74h or (b)2 below**, all information and data furnished to or obtained by the Commission or Division which relates to the [internal controls specified in N.J.S.A. 5:12-99(a), or to the earnings or revenue of any applicant, registrant or licensee, or which pertains to an applicant's criminal record, family or background,] **following** shall be presumed to be confidential and shall not be released or disclosed to any person except in accordance with the provisions of [this subchapter.] **N.J.A.C. 19:40-4.8:**

1. The internal controls required in N.J.S.A. 5:12-99a and N.J.A.C. 19:45;

2. The earnings and revenue of any applicant, licensee or registrant, including, without limitation, financial projections and draft disclosure and transactional documents;

3. Any trade secrets or other proprietary commercial information;

4. The criminal record, family or background of any applicant, licensee or registrant;

5. In any petition, complaint, patron complaint or related document, the name or any data which would permit the identification of any casino patron;

6. In a patron complaint, the name and address of the complainant, and any comments or evaluation of the complaint made by any member of the Commission or its staff; and

7. The contents of any petition for determination of confidential status filed pursuant to (e) below and the information or data for which confidential status is sought, unless and until such petition is finally denied.

(b) The following shall be presumed to be public information and shall be released or disclosed to any person upon request, unless a petition for confidential status has been filed under (e) below:

1. Any information or data that is not presumptively confidential pursuant to (a) above unless the Commission determines, pursuant to (i) below, that the information data shall not be released;

2. Any document received in evidence or otherwise considered at any public proceeding conducted by or on behalf of the Commission; provided, however, that any audio or video recording or other material that cannot readily be duplicated need only be made available for review in the offices of the Commission by appointment; and

3. The license status of any applicant, licensee or registrant and the place of employment of any licensee or registrant, provided that such licensee or registrant is employed by a casino licensee.

[(b)](c) Any question concerning whether [or not] a specific item of information or data within the possession of the Commission or Division is **subject to (a) or (b) above, or is** deemed to be confidential information under [N.J.S.A. 5:12-74(d) and (e), or] any other applicable statutory provision, judicial decision or rule of court, shall be submitted to the Commission [or its designee] **in accordance with this section** for determination [or referral to appropriate authorities].

(d) Any person who seeks disclosure of any information or data deemed presumptively confidential pursuant to (a) above may file a petition for public release of confidential information. The petition shall:

1. Identify, with as much precision as possible, the document or other material containing the information or data for which release or disclosure is sought;

2. Cite the factor or factors included in (g) below upon which reliance is placed for release of the information or data; and

3. Advance reasons or argument as to why the information or data should be released.

(e) Any person who seeks confidential status for any information or data that is deemed presumptively public pursuant to (b) above may petition for confidential status. A petition for confidential status may be filed at any time and shall:

1. Identify the document or material which contains the asserted-ly confidential information or data;

2. Specify those parts of the document or material for which confidential status is asserted;

3. Cite the factor or factors included in (g) below upon which reliance is placed for the claim of confidentiality;

4. Advance reasons or argument as to why each specific part of the document is confidential under the cited authority and not otherwise subject to release under N.J.A.C. 19:40-4.8(a)1; and

5. Include as an exhibit two edited copies of the document or material from which the assertedly confidential information or data has been deleted or blacked out. The edited copies shall clearly indicate where information has been omitted and shall be available for immediate release or disclosure to any person upon request.

(f) A petition for public release or for confidential status shall be processed as follows:

1. General Counsel shall determine whether the petition is in substantial compliance with the requirements of (d) or (e) above. If it is determined that the petition is not in substantial compliance, the petitioner shall be notified in writing as to any deficiencies. The petitioner shall have five working days from the date of receipt of such notice to file an amended petition which corrects the noted deficiencies. Should the petitioner fail to file an amended petition within five days, or should the amended petition fail to correct the noted deficiencies, General Counsel may notify the petitioner in accordance with the provisions of (f)4 below that the petition has been denied.

2. The Division, and any other party the Commission shall permit to respond, shall have five business days from the filing of a completed petition or amended petition, as the case may be, to file a response to the petition.

3. General Counsel shall evaluate the petition in accordance with the standards set forth in (g) below, and shall thereafter promulgate a written decision on the petition for public release or confidential status, which shall be served upon the petitioner and, if appropriate, the Division and any other party permitted to respond to the petition. Any party may request a review of the decision of General Counsel by the Commission by filing a written request therefor within three business days of the date of receipt of the decision. A request for Commission review shall:

i. Specify those parts of the petition or related document for which confidential status is still asserted;

ii. Explain any objections to the decision of General Counsel; and

iii. Advance reasons or argument in support of the positions taken pursuant to (f)3i and ii above.

4. If no timely request for Commission review of the decision of General Counsel is filed, any information determined not to be confidential shall be released or disclosed to any person upon request. If a timely request for review is filed, any information for which confidential status is still asserted shall not be released or disclosed to any person until the Commission evaluates the petition in accordance with the standards set forth in (g) below. If the Commission determines that any information for which confidential status is sought is not confidential, such information shall be released or disclosed to any person upon request.

(g) In evaluating a petition for public release or for confidential status:

1. In any proceeding governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq., the provisions of N.J.A.C. 1:1-14.1(b) and (c) shall apply.

2. In determining whether section 74 of the Act requires that information or data be given confidential status, the following factors shall, to the extent applicable, be considered:

i. Constitutional, statutory and regulatory standards relating to confidentiality of information, including without limitation, N.J.S.A. 10:4-1 et seq., N.J.S.A. 5:12-74 and N.J.A.C. 1:1-14.1(b) and (c);

ii. Constitutional, statutory and regulatory standards relating to public disclosure or public availability of information including, without limitation, N.J.S.A. 47:1A-1 et seq.;

iii. Relevant case law;

iv. The extent to which disclosure of the information is necessary to foster public confidence in the integrity of the regulatory process, or to explain the basis for any Commission determination;

v. The privacy or confidentiality interests involved;

vi. Whether the subject matter of the petition is or is likely to become part of the record in a contested case;

vii. The extent to which the subject matter of the petition is otherwise publicly available;

viii. In cases involving financial information, the extent to which financial stability is directly at issue in a matter pending before the Commission;

ix. The reporting and disclosure obligations of a public company under state or federal securities laws; and

x. Other pertinent public policy considerations.

(h) The Chair may extend or constrict any time frames contained in (f) above as the exigencies of the case may require. If the normal schedule for consideration of a petition for confidential status shall have the effect of interfering with the orderly processing of any proceeding in which the information or data for which confidential status is sought is relevant to any determination by the Commission, the Chair may, in addition, impose any restrictions or conditions designed to expedite the consideration of such petition.

(i) Nothing in this section shall be deemed to limit the authority of the Commission to refuse to release or disclose any information or data, whether or not a petition for confidential status is filed regarding that information or data, where confidential treatment is necessary or appropriate to further the policies of the Act and the regulations promulgated thereunder. Nothing in this section shall be deemed to require the Commission to notify any person that he or she is named or otherwise identified in any petition, complaint, patron complaint or related document filed with the Commission.

19:40-4.8 Release; notice

(a) Confidential information within the possession of the Commission or Division shall not be released or disclosed in whole or in part to any person, except:

1.-3. (No change.)

4. Upon presentation of proper identification, to the applicant, registrant or licensee who furnished the confidential information to the Commission or Division; [or]

5. Upon presentation of a duly executed and notarized release authorization by the applicant, registrant, or licensee who furnished the confidential information, to any person making a written request for specifically identified confidential information[.]; **or**

6. Upon order of the Commission in accordance with N.J.A.C. 19:40-4.2.

(b) If confidential information is released or otherwise disclosed to any person under any circumstances other than those identified in (a)3 through [(5)] **5** above, written notice of such release or disclosure shall be given to any applicant, registrant or licensee affected, unless notice would otherwise imperil the integrity of casino operations in this State. To the extent known, the notice shall include:

1.-3. (No change.)

(c) (No change.)

(a)

CASINO CONTROL COMMISSION

Casino Licensees
Operation Certificate

Proposed Amendments: N.J.A.C. 19:40-1.2; 19:41-1.4; 19:43-6.2, 9.1, 10.1 and 14.1; 19:45-1.3, 1.10, 1.11, 1.14, 1.32 and 1.34; 19:46-1.10, 1.16, 1.19 and 1.20; and 19:47-2.5, 2.6 and 5.2
Proposed New Rules: N.J.A.C. 19:43-7 and 19:47-8.5

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

Authority: N.J.S.A. 5:12-35, 63(c), 69, 70(f), (h), (i) and (j), 96, 99, 100, 104, 106, 119, 121 and 194.

Proposal Number: PRN 1993-663.

Submit written comments by January 19, 1994 to:

Leonard J. DiGiacomo
Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

A casino licensee must obtain an operation certificate prior to opening and operating a casino for actual gaming. Historically, the Commission has imposed several standard conditions upon the granting of those operation certificates. Because these conditions are routinely imposed on all casino licensees, they satisfy the definition of a rule, N.J.S.A. 52:14B-2, and are being proposed for codification as such.

For instance, new definitions are added to N.J.A.C. 19:40-1.2 for terms that are used throughout the standard conditions, such as access badge, casino licensee, count room, establishment, gaming guide, hard count room, restricted areas, security podium and soft count room. The definition of operation certificate is also being amended to address the advent of casino simulcasting.

The proposed amendments to N.J.A.C. 19:41-1.4, 19:43-9.1 and 19:43-10.1, and the new rule found at N.J.A.C. 19:43-7.8, codify the standard conditions that obligate a casino licensee to maintain a system for controlling access to restricted areas.

N.J.A.C. 19:43-6.2 establishes the requirements for an approved casino hotel. The proposed amendments to that section will codify the additional requirements previously imposed by the standard conditions regarding Commission and Division of Gaming Enforcement (Division) office space in the complex, emergency exits and detention facilities.

Additionally, the Commission is proposing for publication several new rules to be included in N.J.A.C. 19:43-7 on casino licensees. Those new rules codify the standards that a casino licensee must meet and the procedures that it must follow in order to obtain an initial or amended operation certificate.

The proposed amendments to N.J.A.C. 19:43-14.1 add a cross reference to the new rule on gaming guides, and also make clear that the Commission's rules governing a casino licensee's advertising do not apply to any signs or other directional devices that identify the location of authorized games or the locations from which simulcast wagers may be made.

The standard conditions obligate casino licensees to maintain a system that ensures the security of the casino and the casino simulcasting facility during normal operations as well as during emergencies. The proposed amendments to N.J.A.C. 19:45-1.3 codify those security requirements.

N.J.A.C. 19:45-1.10 establishes the requirements for a casino licensee's closed circuit television (CCTV) system. The standard conditions contain additional requirements regarding a casino licensee's maintenance of adequate CCTV equipment and supplies as well as its responsibility for timely complying with requests from the Commission and the Division for access to the CCTV system, for recording activities capable of being monitored and for maintaining any video or audio records. The proposed amendments to N.J.A.C. 19:45-1.10 codify those requirements.

N.J.A.C. 19:45-1.11(b)1 and 7 set forth a non-exhaustive list of the responsibilities of a casino licensee's surveillance and security departments, respectively. The proposed amendments to those sections codify

the standard conditions that require surveillance department members to timely notify their supervisors, the Commission and the Division when they detect and start recording persons in the establishment who are suspected of engaging in illegal activities, and that require security department members to detain those individuals suspected of illegal activities, provided that they do so consistently with *State* v. *Sanders,* 185 *N.J. Super.* 258 (App. Div. 1982).

The proposed amendments also codify in N.J.A.C. 19:45-1.14, 1.32 and 1.34 the standard conditions regarding alarm and other security devices for the cashiers' cage and its ancillary areas, and for the count rooms and the slot booths.

The standard conditions require discard racks on blackjack tables to be designed to provide a dealer, when the cards are shuffled at the end of a shoe and at other times set forth in the regulations, with a relatively reliable means of determining that no cards are missing from the decks of cards being used in the dealing shoe at the table. The proposed amendments to N.J.A.C. 19:46-1.10 and N.J.A.C. 19:47-2.6 codify those conditions.

The proposed amendment to N.J.A.C. 19:46-1.16 codifies the standard condition that requires casino licensees to make readily available to the Commission or the Division any device that is used to ensure that the dice are in a condition to assure fair play and otherwise conform to the Act and the rules of the Commission.

Dealing shoes at blackjack tables are required to have a mark on their side that aids a dealer in estimating where to insert the cut card in the deck after the cards have been shuffled. The proposed amendments to N.J.A.C. 19:46-1.19 and 19:47-2.5 codify that standard condition.

The proposed amendments to N.J.A.C. 19:46-1.20 require a casino licensee, prior to using any gaming equipment, to submit each piece of equipment to the Commission for approval after consulting with the Division on the review and inspection of the equipment. Those proposed amendments also codify the standard condition that requires a casino licensee to deliver to the Division any gaming equipment that the licensee has confiscated based on its reasonable suspicion that the equipment has been tampered with, and to deliver to the Division any device that the licensee has confiscated based on its reasonable suspicion that the device was present in the casino or casino simulcasting facility in violation of the act or the rules of the Commission.

N.J.A.C. 19:47-5.2 is proposed to be amended to codify the standard condition regarding a casino licensee's obligation to notify patrons that only one-half of certain wagers made at double zero roulette are lost whenever the winning number is "0" or "00."

N.J.A.C. 19:47-8.5 is a proposed new rule that codifies the standard condition requiring casino licensees to make available to patrons gaming guides that have been approved by the Commission.

Social Impact

The Commission does not anticipate that the proposed new rules and amendments will have any social impact on anyone other than casino licensees. The Commission anticipates that the social impact on each such licensee will be minimal because each licensee has already obtained and presently holds a valid operation certificate, and the proposed new rules and amendments are merely intended to codify existing practices and requirements with which these licensees should be fully familiar.

The substantive requirements reflected in these codified conditions are significant, however, in their contribution to the strict regulation of casino gaming, simulcast wagering and the persons involved therein consistent with the policies set forth in N.J.S.A. 5:12-1b and the overall goals of the Act.

Economic Impact

The Commission anticipates that any economic impact from the proposed new rules and amendments will be nominal because the requirements established already exist under conditions that have been imposed at the time the Commission granted operation certificates to the various casino licensees.

Of course, that existing structure does have economic consequences. For example, many of the rules in question require that casino licensees notify the regulators of certain events for which the casino licensees may incur costs in transmitting the information, and for which the regulators may incur incidental review costs. Casino licensees may also incur costs as a result of the rules that require them to maintain space and equipment within their facilities for the use of the Commission and the Division. However, under the rules as proposed, the Commission anticipates that these and any other costs incurred will be no greater than the costs that are currently incurred to comply with the standard conditions. Moreover, any economic impact that may result from these rules is justified given that the rules are necessary for the Commission to maintain the strict control of the casino industry as required by the Legislature.

Regulatory Flexibility Statement

No regulatory flexibility analysis is required because the proposed new rules and amendments will only affect the operation of New Jersey casino licensees, none of which is a "small business" as defined in 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]):

19:40-1.2 Definitions

All words and terms which are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) are used in [these rules and regulations] **the rules of the Commission** as defined in that Act. The following words and terms, when used in [these] **the** rules [and regulations] **of the Commission** shall have the following meanings, unless the context clearly indicates otherwise.

"Access badge" is defined in N.J.A.C. 19:41-1.4(b).

...

"Casino licensee" or "licensed casino" means the holder of any license, issued pursuant to the Casino Control Act, that authorizes the ownership or operation of a casino and, if applicable, of a casino simulcasting facility.

...

"Count room" is defined in N.J.A.C. 19:45-1.32.

...

"Establishment" means [any premises wherein or whereon any gaming is done] **a casino hotel complex, meeting the requirements of the Casino Control Act, wherein gaming or simulcast wagering is conducted or gaming devices are used in connection with gaming.**

...

"Gaming guide" is defined in N.J.A.C. 19:47-8.5.

...

"Hard count room" is defined in N.J.A.C. 19:45-1.32.

...

"Operation certificate" means a certificate issued by the Commission which certifies that operation of a casino **and, if applicable, of a casino simulcasting facility** conforms to the requirements of the Act and applicable regulations [and that its personnel and procedures are efficient and prepared to entertain the public].

...

"Restricted areas" or "restricted casino areas" means the cashier's cage, the soft count room, the hard count room, the slot booths and runway areas, the interior of table game pits, the surveillance room and catwalk areas, the slot machine repair room and any other area specifically designated by the Commission as restricted elsewhere in the rules of the Commission in a casino licensee's operation certificate.

...

"Security podium" is defined in N.J.A.C. 19:41-1.4(g)(5).

...

"Soft count room" is defined in N.J.A.C. 19:45-1.32.

...

19:41-1.4 Employee license credentials **and access badges**; display; temporary credentials; obligation to obtain renewed credentials

(a) Each casino key employee and casino employee shall wear in a conspicuous manner his or her employee license credential issued by the Commission at all times while employed in the casino room, the casino simulcasting facility or a restricted [casino] area including, without limitation, the casino and casino simulcasting facility floors, the cashiers' cage and satellite cages, the count rooms, the catwalk areas and the surveillance room.

(b) Each employee of a casino licensee shall wear in a conspicuous manner a badge or similar form of identification (an "access badge") as required pursuant to his or her employer's internal controls submitted in accordance with N.J.A.C. 19:43-9.1(a)8 for purposes of identifying the restricted areas in the

employer's establishment to which that employee may obtain access in the course of the performance of his or her normal duties.

[(b)](c) No casino licensee shall permit any [casino key employee or casino employee] **of its employees** to work in the casino room, the casino simulcasting facility or [a] **any other** restricted [casino] area unless the employee is wearing his or her [license credential] **access badge** as required by this section **and, in the case of any casino key employee or casino employee, also is wearing his or her license credential as required by this section.**

[(c)](d) Notwithstanding (a) [and (b)] **through (c)** above, the Chairman may, upon written request by a casino licensee and **upon** a showing of good cause, exempt certain [position] **positions,** titles or persons from the requirements of this section. The Chairman may delegate the authority to make such determinations to the Director of the Division of Licensing.

[(d)](e) Each casino licensee shall provide each casino key employee and casino employee required to wear a Commission license credential **and access badge** pursuant to this section with a license holder, which shall contain the name of the casino hotel facility and shall permit the prominent display of the information contained on the license credential **and access badge.** Thirty days prior to the use of any such license holder, a casino licensee shall submit a prototype to the Commission along with a narrative description of the proposed manner in which employees will be required to wear such holder.

[(e)](f) A temporary license credential may be issued by the casino security department of a casino licensee to a casino key employee or casino employee who does not have the license credential **or access badge** on his or her person, or whose license credential **or access badge** has been lost or destroyed, to enable the employee to enter the casino room, the casino simulcasting facility or [a] **any other** restricted [casino] area to perform employment duties, if the casino security department:

1.-2. (No change.)

3. Verifies that the employee is authorized to obtain access to the restricted areas in which he or she will be working while in possession of the temporary license credential;

[3.]**4.** Confirms the above employment, **access** and licensure information with the supervisor of the employee;

Recodify 4. as **5.** (No change in text.)

[5.]**6.** Immediately notifies the Commission inspection booth in writing that a temporary license credential has been issued, which notice shall include:

i. (No change.)

ii. A list of the restricted areas to which the employee may obtain access while wearing the credential;

Recodify existing ii.-iii. as **iii.-iv.** (No change in text.)

[(f)](g) A temporary license credential issued pursuant to [(e)](f) above shall:

1. Contain the following information:

i. The name and license number of the employee to whom it was issued, **and the restricted areas to which the employee is permitted access while wearing the credential;**

ii. (No change.)

iii. A conspicuous statement printed on the face thereof which provides that the credential is void 24 hours after the time of its issuance;

Recodify existing iii.-iv. as **iv.-v.** (No change in text.)

2. [Indicate on its face in a conspicuous manner that the temporary credential is] **Be** void 24 hours after the time of its issuance; [and

3. Be returned to the casino security department by the employee to whom it was issued no later than the end of the work shift of the employee]

3. Be worn in a conspicuous manner by the employee to whom it is issued;

4. Be sequentially numbered; and

5. Be stored in the offices of the casino security department adjacent to the casino floor (the "security podium") and distributed by that department from that location in accordance with the casino licensee's internal controls submitted to and approved by the Commission in accordance with N.J.A.C. 19:43-9.1(a)8.

Recodify (g) as **(h)** (No change in text.)

[(h)](i) Any holder of a Commission license credential **or an access badge** shall promptly report the loss or destruction of [a]:

1. A Commission license credential to the [License Division of the] Commission[, and] **through its Division of Licensing; and**

2. An access badge to the casino security department of the casino licensee by which such holder is employed.

(j) As soon as possible following the loss or destruction of a license credential or an access badge, the person to whom the license credential or access badge was originally issued shall apply:

1. To the Commission for a replacement license credential [as soon as possible]**; and**

2. To the casino licensee's security department for a replacement access badge.

19:43-6.2 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] **rules** of the Commission, such approved hotel:

1.-6. (No change.)

7. Contains a closed circuit television **(CCTV)** system **approved by the Commission**;

8. Contains specifically designated and secure areas for the inspection, repair and storage of gaming equipment **which, in the case of each slot machine repair room, shall include, at a minimum:**

i. CCTV coverage of the room; and

ii. An alarm device, approved by the Commission, that is connected to each door to the room and that audibly signals, at a minimum, the security podium whenever a door to the room is opened;

9. (No change.)

10. Conforms with the provisions relating to barrier-free design for providing facilities for the physically handicapped in public buildings; [and]

11. Contains facilities suitable for all family, cabaret and pub entertainment requirements;

12. Has each emergency exit from the casino floor or, if applicable, from the casino simulcasting facility, equipped with:

i. Metal doors covering such exits with a locking mechanism which permits each such door to be opened only from inside the casino or casino simulcasting facility without using a key;

ii. An audible alarm system, approved by the Commission, that produces a loud warning sound, discernible in the vicinity of the exit, whenever the emergency door is opened and that can only be deactivated and reset by a key maintained and controlled by the casino security department; and

iii. An electrical system, approved by the Commission, which audibly and visually notifies the Division at its offices in the approved hotel whenever each emergency door is opened;

13. Contains adequate enclosed facilities which the casino licensee shall maintain for the detention of individuals taken into custody by its security department, the Division or any authorized law enforcement agency, which facilities shall include, at a minimum, the following:

i. Separate detention areas for male and female detainees;

ii. A metal door with a one-way mirror;

iii. A bench or other sitting apparatus which is permanently affixed to the enclosed facility and to which the person in custody can be handcuffed with as little discomfort to that person as is reasonably possible under the circumstances.

iv. Adequate lighting and a fire extinguisher, each of which is inaccessible to the person in custody; and

v. A secured toilet facility that provides reasonable privacy and safety;

14. Contains suitable space, equipment, partitions and supplies, adequately maintained by the casino licensee, to meet the Com-

mission's continuing needs at the facility, including, at a minimum, the following:

i. A booth and interview room adjacent to the casino floor for the Commission's inspectors to perform their responsibilities effectively, which shall include monitors in the inspection booth that are capable of receiving the signal generated by each camera approved for use as part of the casino licensee's CCTV system;

ii. Adequate parking spaces in the approved hotel, or in lots or a parking garage ancillary thereto, which are clearly marked for Commission use only;

iii. Adequate computer equipment, both at the inspection booth and in the office of the Commission's principal inspector, to meet the Commission's continuing data-processing and related needs; and

iv. Such other facilities and office space elsewhere in the approved hotel as the Commission shall direct during the course of performing audit, compliance or other reviews at the approved hotel; and

15. Contains suitable space, equipment, partitions and supplies, adequately maintained by the casino licensee, to meet the Division's continuing needs at the approved hotel in order for the Division to perform its duties and responsibilities effectively, including, at a minimum, the following:

i. A direct telephone line between the Division's office in the approved hotel and the monitoring rooms required by N.J.A.C. 19:45-1.10 and the casino licensee's security podium;

ii. Adequate parking spaces in the approved hotel, or in lots or a parking garage ancillary thereto, which are clearly marked for Division use only; and

iii. Such other facilities and office space elsewhere in the approved hotel as the Division shall require during the course of performing audit, compliance or other reviews at the approved hotel.

SUBCHAPTER 7. OPERATION CERTIFICATE [(RESERVED)]

19:43-7.1 Operation certificate; standards for issuance

(a) Except for the test period pursuant to N.J.A.C. 19:43-7.2, each casino licensee responsible for the operation of a casino and a related casino simulcasting facility, if any, shall obtain an operation certificate prior to opening such casino or casino simulcasting facility to the public, and prior to conducting:

1. Gaming in such casino; or

2. Simulcast wagering or any gaming permitted in such casino simulcasting facility.

(b) To obtain an operation certificate, each casino licensee shall establish to the satisfaction of the Commission that:

1. The casino and, if applicable, the casino simulcasting facility comply in all respects with the applicable requirements of the Act and the rules of the Commission;

2. The casino licensee has implemented necessary management controls and security precautions for the efficient operation of the casino and any applicable casino simulcasting facility;

3. The casino and simulcasting personnel are properly trained and licensed for the efficient performance of their respective responsibilities; and

4. The casino and casino simulcasting facility are prepared in all respects to receive and entertain the public.

(c) Each operation certificate granted by the Commission to a casino licensee shall include, at a minimum, the following information:

1. A statement that such casino licensee has complied with N.J.S.A. 5:12-96a and with (b) above;

2. A list itemizing the authorized games, by category and number, that are permitted in the casino and, if applicable, the casino simulcasting facility; and

3. A list of those areas, not otherwise enumerated explicitly in N.J.S.A. 5:12-43.1 or elsewhere in the rules of the Commission, which the Commission has specifically designated as a restricted area.

19:43-7.2 Operation certificate; test period

(a) Prior to the issuance of an operation certificate for its casino and casino simulcasting facility, if any, each casino licensee shall successfully complete an evaluation or test period in accordance with such terms and conditions as are reasonably calculated to allow the Commission to assess the licensee's entitlement to the issuance of such certificate.

(b) The evaluation or test period shall commence on such date and at such time as the Commission shall establish, and shall continue thereafter until further order of the Commission.

(c) Whenever the Commission delegates to one or more of its members the authority to evaluate a casino licensee's successful completion of a test period, the member or members, acting jointly, shall be authorized to do any of the following unless the full Commission has otherwise reserved that authority to itself:

1. Establish the original length of time and the hours during which such test shall be conducted;

2. Terminate, restrict, limit, extend or otherwise modify such test period or the hours thereof;

3. Upon determining that the casino licensee has successfully completed the test period, establish the effective date of the operation certificate and the scope of the casino licensee's authority to conduct gaming and, if applicable, simulcast wagering thereunder; and

4. Order the casino licensee to take whatever actions are necessary to preserve the policies of the Act and to assure an effective evaluation of the casino licensee during such test period including, among other things, permitting, limiting, restricting or prohibiting the casino licensee from:

i. Accepting coin at the slot machines or currency at the table games during all or any part of such period; and

ii. Allowing the count rooms to process cash.

19:43-7.3 Operation certificate; blueprints of the casino floor, casino simulcasting facility and any other restricted areas

(a) Prior to the issuance of an operation certificate and the commencement of gaming or simulcast wagering, each casino licensee shall obtain Commission approval for the final blueprints of its casino floor, casino simulcasting facility, if any, and any other restricted areas.

(b) Each blueprint required by (a) above shall be filed with the Commission and served on the Division, shall be drawn to one-eighth inch scale, shall be certified by an architect licensed to practice in New Jersey and shall depict, at a minimum, the location of the following:

1. The casino floor and any casino simulcasting facility, including, at a minimum, the following information associated therewith:

i. A grid which is consecutively numbered to show the unique location of each pit and each table game therein, and of each slot machine, bill changer, automated coupon redemption machine, credit voucher machine and self-service pari-mutuel machine (each such number to be known as a location number), and which divides the space on the casino floor on which slot machines are permitted into consecutively numbered or lettered zones (each a zone number or letter); and

ii. For the casino room and the casino simulcasting facility, if any, the proposed total square footage of each and a clear delineation of the respective perimeter of each;

2. Each gaming pit, noting its pit location number;

3. Each table game, noting its pit and table game location number;

4. Each CCTV camera, noting its type and number;

5. Each slot booth, noting its number;

6. Each cashier's cage and its component offices and areas;

7. Each separate master coin bank;

8. Each window at the cashiers' cage, noting its number;

9. Each count room;

10. Each slot machine, noting its location number and zone;

11. Each bill changer, noting its location number;

12. Each slot stool authorized for use, noting its number, if any;

13. Each automated coupon redemption machine, noting its location number;

14. Each satellite cage and its component offices and areas;

15. Each coin vault;

16. Each area approved for the storage of gaming chips or plaques pursuant to N.J.A.C. 19:46-1.6(c)3 or (d)3;

17. Each room or area approved for the storage of dice or playing cards;

18. Each other room or area that is accessible directly from the casino floor;

19. For those establishments with a casino simulcasting facility:

i. Each simulcast counter and any ancillary simulcast counter, along with their component offices, areas and equipment required by N.J.A.C. 19:45-1.14A(b) or (d);

ii. Each credit voucher machine, noting its location number; and

iii. Each self-service pari-mutuel machine, noting its location number; and

20. Each other area or room designated by the Commission.

(c) Each casino licensee, after obtaining Commission approval of its final blueprints, shall not commence gaming or simulcast wagering until a copy of such blueprints has been delivered to, and receipt thereof acknowledged by an authorized person at, each of the following:

1. The Commission's inspection booth in the establishment;

2. The office of the Commission's principal inspector in the establishment;

3. The Operations Unit of the Commission's Division of Compliance;

4. The Division's office in the establishment;

5. The Division's Casino Operation Section in Atlantic City;

6. The casino licensee's security podium; and

7. The casino licensee's monitoring rooms required by N.J.A.C. 19:45-1.10.

19:43-7.4 Operation certificate; master lists of approved slot machines and table games

(a) Prior to the issuance of an operation certificate and the commencement of gaming or simulcast wagering, each casino licensee shall file with the Commission, at the office of the Commission's principal inspector in the establishment, and serve on the Division, at its office in the establishment, a comprehensive list of the table games in its casino and casino simulcasting facility, if any (the Table Games Master List), and similarly shall file and serve a list of the slot machines in its casino (the Slot Machine Master List).

(b) At a minimum, each Slot Machine Master List shall list each slot machine consecutively by location number and shall contain the following information:

1. The date on which the list was prepared;

2. A description of each slot machine by:

i. Asset, model and serial number;

ii. Computer program number;

iii. Denomination; and

iv. Manufacturer and machine type, noting with particularity whether the machine is a high-boy, has a bill changer attached, or is a progressive machine;

3. The location at which each slot stool is installed;

4. A cross reference for each slot machine by zone and serial number; and

5. Such other information as the Commission may require.

(c) At a minimum, each Table Game Master List shall contain the following information:

1. The date on which the list was prepared;

2. A description of each table by:

i. Type of authorized game;

ii. Location number; and

iii. Serial and table number; and

3. Such other information as the Commission may require.

(d) Each casino licensee, after obtaining permission to alter, modify or reconfigure its casino floor or casino simulcasting facility and the authorized games therein, shall file and serve, in accordance with (a) above, updated master lists of its table games and slot machines to reflect the changes that the Commission has approved.

19:43-7.5 Operation certificate; effective date; duration

(a) Upon the successful completion of the test period, the Commission shall establish the effective date of each operation certificate and the scope of the casino licensee's authority to conduct gaming and, if applicable, simulcast wagering thereunder.

(b) Subject to the Commission's authority to revoke, suspend, limit or otherwise alter an operation certificate in accordance with the terms of the Act and the rules of the Commission, each such certificate, once issued, shall remain in full force and effect indefinitely under such terms and conditions as the Commission may impose, and shall not be altered, modified or amended except in accordance with the Act and the rules of the Commission.

(c) The continued effectiveness of each such certificate shall be a prerequisite for the casino or casino simulcasting facility to which it applies to remain open to the public for the conduct of gaming or simulcast wagering.

19:43-7.6 Operation certificate; amendment to conform to approved alterations

(a) Each casino licensee shall file with the Commission and serve on the Division, in a manner and in a format prescribed by the Commission, each proposed physical alteration to its casino or casino simulcasting facility which relates to the continued effectiveness of its original operation certificate and any approved amendments thereto, including, without limitation, a change to any of the following:

1. The number of authorized games to be played in the casino and casino simulcasting facility, if any;

2. The configuration or floor plan of the casino or casino simulcasting facility; and

3. Any other restricted area.

(b) Within three business days of a casino licensee filing a change governed by (a) above, the Commission and the Division shall review such change for compliance with the Act and the rules of the Commission. Unless the Commission notifies the casino licensee in writing that the change is disapproved, the casino licensee, after obtaining all approvals required by Federal, State or local government officials and providing a copy or other acceptable written evidence of such approvals to the Commission and the Division, may begin implementing such change upon the earlier of the following:

1. The expiration of such three-day period; or

2. Receipt of written Commission approval for the change.

(c) Each casino licensee, upon final completion of any proposed change to its facility governed by (a) above, shall notify the Commission and the Division thereof by filing, at a minimum, a revised blueprint in the manner prescribed by N.J.A.C. 19:43-7.3(c). Each such blueprint shall be in a format consistent with N.J.A.C. 19:43-7.3 and, in addition to depicting the change that is made to the applicable items enumerated in N.J.A.C. 19:43-7.3(b), shall include the following:

1. A comparison showing:

i. The authorized square footage of the casino room and any applicable casino simulcasting facility in effect immediately prior to initiating any change for which approval is sought; and

ii. The change made to such square footage after giving effect to the proposal for which approval is sought;

2. A clear delineation of the change, if any, made to the perimeter of the casino room and of the casino simulcasting facility, if any; and

3. A narrative from the architect who is certifying the blueprints that clearly describes the change being made by the proposal, noting with particularity any such change to the perimeter of the casino floor or of the casino simulcasting facility.

(d) The Commission and the Division shall inspect the physical change depicted on the blueprint to ensure that it conforms to the previously submitted plans for such proposed change and any properly filed amendments thereto. Following such inspection, the Commission shall notify the casino licensee in writing as to which physical change is approved and which is rejected, whereupon the operation certificate shall be amended to conform to the inspected and approved physical change.

(e) For purposes of this subchapter, a "business day" shall be a calendar day other than:

i. A Saturday or Sunday; or

ii. Any day on which the Commission's main offices are closed because of Federal, State or local holiday, inclement weather, or like circumstance.

19:43-7.7 Operation certificate; temporary amendments for alternate pit configurations

(a) Except as otherwise provided in this section, each casino licensee shall configure the pits in its casino or casino simulcasting facility strictly in accordance with the blueprints provided to the Commission and the Division at the time the operation certificate originally was issued.

(b) Each casino licensee may temporarily reconfigure, for an initial period not to exceed 30 days, one or more pits by filing an alternate configuration for each such pit with the Commission and the Division at least three business days prior to implementing such alternate configuration. Within that three-day period the Commission shall notify the casino licensee whether the alternate configuration is approved.

(c) The Commission shall issue a temporary certificate of operation authorizing, for an initial period of no more than 30 days, each approved alternate pit configuration. Each such alternate pit shall not exceed the dimensions approved for the pit that existed immediately prior to the reconfiguration.

(d) Each casino licensee, upon application in accordance with this section, may obtain one extension of no more than 30 days for each temporary certificate of operation issued hereunder.

(e) Each casino licensee shall obtain any other changes to the configuration of the pits in its casino and casino simulcasting facility, if any, in accordance with N.J.A.C. 19:43-7.6.

(f) Each pit operating under an approved configuration shall have an electrical system, approved by the Commission, which enables a pit clerk or a pit supervisor to transmit a signal that is audibly and visually reproduced in each of the following locations whenever there is an emergency in the pit:

1. The monitoring rooms required by N.J.A.C. 19:45-1.10;

2. The casino security department; and

3. The Division's office in the casino hotel.

19:43-7.8 Access to restricted areas

(a) No casino licensee shall permit any person to have access to any restricted area, including the casino room and any applicable casino simulcasting facility, unless such access is consistent with the policies of the Act and is obtained in accordance with such procedures as are set forth in the Act or the rules of the Commission.

(b) Notwithstanding (a) above, each member of the public, during or incident to gaming or simulcast wagering activity as a player, shall have unfettered access to the areas of each casino and casino simulcasting facility that are designed to be used by players during, or incident to, such activity, except that any such member shall be denied access thereto if otherwise provided in the Act or the rules of the Commission, including, but not limited to, the following:

1. Persons excluded or excludable under N.J.S.A. 5:12-71 and N.J.A.C. 19:48;

2. Employees of casino licensees prohibited from wagering at any game or on casino simulcasting under N.J.S.A. 5:12-100n and N.J.A.C. 19:55-2.8;

3. Underage persons prohibited from gaming and simulcast wagering under N.J.S.A. 5:12-119a and N.J.A.C. 19:42-5.9;

4. Persons seeking to play the game of blackjack to whom the provisions of N.J.A.C. 19:47-2.3(j) apply; and

5. Players required by a casino licensee to leave the game of poker under N.J.A.C. 19:47-14.16.

(c) Nothing in this section shall limit the authority of Commission members or employees and Division employees or agents from obtaining access to restricted areas during the performance of their respective duties and responsibilities in accordance with the Act and the rules of the Commission.

19:43-9.1 Employee internal controls submission

(a) Each casino licensee or applicant shall, pursuant to N.J.S.A. 5:12-99, submit an original and three copies to the Commission of a description of its internal procedures and administrative and accounting controls concerning employee licensing requirements. Unless otherwise directed by the Commission, an initial submission shall be made at least 60 days prior to the projected date of issuance of a certificate of operation. Each such submission shall be prepared and maintained in a format provided by the Commission; shall contain narrative and, where appropriate, diagrammatic representations of the internal control system to be utilized by the casino licensee or applicant, and shall address, without limitation, the following employee licensing requirements:

1.-5. (No change.)

6. Procedures used to assure the timely renewal of employee licenses; [and]

7. Procedures for the use of license credential holders; **and**

8. Procedures and a control plan for readily identifying each employee of a casino licensee who is permitted, during the normal course of performing his or her duties or during emergencies, to have access to one or more restricted areas, and for issuing temporary license credentials and plenary access badges.

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

19:43-10.1 Vendor internal controls submission

(a) Each casino licensee or applicant shall, pursuant to N.J.S.A. 5:12-99, submit an original and three copies to the commission of a description of its internal procedures and administrative and accounting controls concerning compliance with the vendor licensing and approval requirements of N.J.S.A. 5:12-92 and 104b. Unless otherwise directed by the Commission, an initial submission shall be made at least 60 days prior to the commencement of purchasing operations by the casino licensee or applicant. Each such submission shall be prepared and maintained in a format provided by the Commission; shall contain narrative descriptions of the internal control system to be utilized by the casino licensee or applicant, and shall address, without limitation, the following vendor licensing and approval requirements:

1.-5. (No change.)

6. Procedures governing [the issuance of] temporary [casino] access credentials **that identify those vendors, including construction contractors, who are authorized, along with their employees, to have access to the casino, the casino simulcasting facility or any other restricted area during the course of performing any work on the site of the establishment pursuant to the terms of an agreement with a casino licensee;**

7.-8. (No change.)

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

19:43-14.1 Applicability of advertising regulations

(a) (No change.)

(b) The following notices and communications shall not be deemed advertisements for purposes of this chapter, but shall be subject to any review and approval by the Commission otherwise required by the Act or by regulation:

1. Any [signage,] **sign,** notice, or other information required to be provided by the Act or by regulation, including, without limitation, the following:

i.-ii. (No change.)

iii. [Printed gaming guides containing information about the rules of the games, payoffs of winning wagers and odds, in accordance with section 100(f) of the Act] **Gaming guides approved pursuant to N.J.A.C. 19:47-8.5;**

iv.-v. (No change.)

2. Any [signage] **signs** or other directional devices contained in a casino or casino simulcasting facility for the purpose of identifying the location of [approved] **authorized** games **or the locations from which simulcast wagers may be made**; and

3. (No change.)

19:45-1.3 Licensee's system of internal controls

(a) Each casino licensee shall submit to the Commission and Division a description of its system of internal procedures and

administrative and accounting controls in accordance with section 99 of the Act. Such submission shall be made at least 60 days before gaming operations are to commence, unless otherwise directed by the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the licensee and shall include, without limitation, the following:

1. Administrative controls which include, without limitation, the procedures and records that are concerned with the decision making processes leading to management's authorization of transactions; [and]

2. Accounting controls which have as their primary objectives the safeguarding of assets and the reliability of financial records and are consequently designed to provide reasonable assurance that:

i.-iii. (No change.)

iv. The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences; **and**

3. Procedures and controls for ensuring, through the use of the casino security department, that the casino and casino simulcasting facility are constantly secure during normal operations and any emergencies due to malfunctioning equipment, loss of power, any natural disaster or any other cause.

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

19:45-1.10 Closed circuit television system[:]; surveillance department control; surveillance department restrictions

(a) Each casino licensee shall install in its establishment a closed circuit television **(CCTV)** system according to specifications herein and shall provide **timely** access, on the licensee's premises, to the system or its signal by the Commission [and/or] **or the** Division **upon request. Each casino licensee, and each member of its surveillance department, shall timely comply with a request from the Commission or the Division for the licensee to perform, at a minimum, any of the following:**

1. Display on the monitors in the monitoring room or the Commission inspection booth any event capable of being monitored on the CCTV system; and

2. Make a video and, if applicable, audio recording of, and take a still photograph of, any event capable of being monitored on the CCTV system.

i. The casino licensee shall preserve and store each such recording or photograph in accordance with the directions of the Commission or the Division.

ii. The Commission and the Division shall have unfettered access to each recording or photograph and, upon the request of either, the casino licensee and its personnel shall be denied access thereto.

(b) The closed circuit television system shall include, but need not be limited to, the following:

1. Light sensitive cameras with zoom, scan, and tilt capabilities to effectively and clandestinely monitor in detail and from various vantage points, the following:

i.-ii. (No change.)

iii. The operations conducted at and in the cashiers' cage **and each office and area ancillary thereto;**

iv.-x. (No change.)

2. Video units [with time and date insertion capabilities] for taping [what is being viewed] **the closed-circuit signal produced** by any camera of the system. **At a minimum, each such unit shall be:**

i. Capable of superimposing the time and date of the recording on each video tape used with the unit; and

ii. Equipped with a meter, counter or other device that enables an operator of the unit to identify the point on such tape at which a particular event was recorded;

3. Audio capability in the soft count room; [and]

4. One or more monitoring rooms in the establishment which [shall be in use at all times by the employees or agents of], **through** the surveillance department [of] **employees or agents assigned thereto by** the **casino** licensee [assigned to], **shall constantly** monitor the activities in the casino [and], **the** casino simulcasting facility and [to be] **elsewhere in the establishment where CCTV coverage is available, and which:**

i. May be used as necessary by the inspectors and agents of the Commission and Division[.]; **and**

ii. Each such room shall contain, as required by the Commission, adequate equipment and supplies for the effective performance of the activities to be conducted therein; and

5. (No change.)

(c) (No change.)

(d) [The] **Each** casino licensee shall [be required to] maintain a surveillance log of all surveillance activities in the monitor room. The log shall be maintained by monitor room personnel and shall [include, at] **be stored securely, in a manner approved by the Commission, within the surveillance department in accordance with the retention schedule set forth in N.J.A.C. 19:45-1.8(c)2iii. At** a minimum, the following **information shall be recorded in a surveillance log:**

1. Date and time [of] **each** surveillance **commenced;**

2. [Persons initiating] **The name and license credential number of each person who initiates, performs, or supervises the** surveillance;

3. Reason for surveillance**, including the name, if known, alias or description of each individual being monitored, and a brief description of the activity in which the person being monitoring is engaging;**

4. The times at which each video or audio tape recording is commenced and terminated;

5. The time at which each suspected criminal offense is observed, along with a notation of the reading on the meter, counter or device required by (c)2ii above that identifies the point on the video tape at which such offense was recorded;

Recodify existing 4. and 5. as **6.-7.** (No change in text.)

[6.]**8.** [Record] **A complete description of the time, date and, if known, the cause** of any equipment or camera malfunctions**, and the time at which the security department was apprised of the malfunction.**

(e)-(h) (No change.)

(i) Each casino licensee shall prominently display a notice in each of its monitoring rooms that advises those present in the room that a casino licensee and its employees are obligated to cooperate with the Commission and the Division, and which notes with particularity those items enumerated in (a) above.

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-vii. (No change.)

viii. The detection of the presence in the establishment of any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, or of any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119a;

Recodify viii. as **ix.** (No change in text.)

[ix.]**x.** [The] **Providing timely** notification [of] **to** appropriate supervisors, the Commission, and the Division upon [the detection and taping] **detecting, and also upon commencing video or audio recording of, any person who is engaging in or attempting to engage in, or who is reasonably suspected** of cheating, theft, embezzlement, or other illegal activities**, including those activities prohibited in Article 9 of the Act;** [and]

xi. Providing timely notification to appropriate supervisors, the Commission and the Division upon detecting, and also upon commencing video or audio recording of, any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, or any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119a; and

Recodify x. as **xii.** (No change in text.)

2.-6. (No change.)

7. A security department supervised by a casino key employee holding a license endorsed with the position of director of security. The security department shall be responsible for the overall security of the establishment including, without limitation, the following:

i.-v. (No change.)

vi. The detainment [for] **of each individual as to whom there is** probable cause [of persons that may be involved in illegal acts] **to believe that he or she has engaged in or is engaging in conduct that violates N.J.S.A. 5:12-113 through 116, inclusive,** for the purpose of notifying law enforcement or Commission authorities;

vii. The control and maintenance of a system for the issuance of [Temporary Access Badges] **temporary license credentials, employee access badges and vendor access credentials;**

viii. The recordation of any and all unusual occurrences within the casino and casino simulcasting facility for which the assignment of a security department employee is made. Each incident, without regard to materiality, shall be assigned a sequential number and, at a minimum, the following information shall be recorded in indelible ink in a bound, laboratory-type notebook from which pages cannot be removed and each side of each page of which is sequentially numbered:

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

(6) The security department employee assigned[.];

ix. The communication in writing to the supervisor of the credit department of accurate and verifiable information which may be relevant in determining a patron's credit worthiness;

x. The identification and removal of any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, or of any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119a; and

xi. The performance of all duties and responsibilities in accordance with the procedures and controls submitted and approved pursuant to N.J.A.C. 19:45-1.3(a)(3).

8.-10. (No change.)

(c)-(f) (No change.)

19:45-1.14 Cashier's cage; satellite cages; master coin bank; coin vaults

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

(c) The cage shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein; such design and construction shall be, at a minimum, as effective as the following:

1. (No change.)

2. Manually triggered silent alarm systems **for the cage, its ancillary office space and any related casino vault, which systems shall be** connected directly to the monitoring rooms of the closed circuit television system, the security department office, and the Division office;

3.-4. (No change.)

(d)-(h) (No change.)

19:45-1.32 Count rooms; characteristics

(a) [Each] **Except as provided in (d) below, each** casino licensee shall have immediately adjacent to the cashier's cage a room, **to be known as the "count room,"** specifically designated, **designed and used** for counting the contents of drop boxes [and], slot cash storage boxes, **slot drop buckets and slot drop boxes** [which shall be known as the "count room"].

(b) The count room shall be designed and constructed to provide maximum security for the materials housed therein and for the activities conducted therein[, to include, at a minimum,]. **Each casino licensee shall design and construct a count room with, at a minimum,** the following **security measures:**

1. A metal door **installed on each entrance and exit;**

2. Each entrance and exit door shall be equipped with [two]:

i. Two separate locks [securing the interior of the count room, the keys to which shall be];

ii. An alarm device, approved by the Commission, which audibly signals the monitoring rooms required by N.J.A.C. 19:45-1.10, the casino security department and the Division's office in the approved hotel whenever a door to the count room is opened at times other than those times for which the casino licensee has provided prior notice pursuant to N.J.A.C. 19:45-1.33(b) or 1.43(b); and

iii. A light system, approved by the Commission, which illuminates one or more lights in the monitoring rooms required by N.J.A.C. 19:45-1.10, in the Division's office in the approved hotel, at each count room door, and at such other locations as the Commission may require, for purposes of maintaining constant surveillance on whether each count room door is open or closed;

3. Each lock required by (b)2i above shall be controlled by a key which is different from [each other and from the]:

i. The key to the other lock on that door;

ii. The keys to the locks securing the contents of [the] **each** drop box [and], slot cash storage box, and [one key] **slot drop box; and**

iii. The keys to the locks of each slot drop bucket compartment;

4. The key to one of the locks required by (b)2i above shall be maintained and controlled by the **casino** security department in a secure area within the **casino** security department, access to which may be gained only by a security supervisor, and **the key to** the other [key] **lock shall be** maintained and controlled by a Commission inspector; **and**

[2.] **5. The casino** security department shall establish a sign-out procedure for all keys removed from the security department[; and

3. An alarm device connected to the entrance of the count room in such a manner as to cause a signaling to the monitors of the closed circuit television system and to the Division's office in the establishment whenever a door to the count room is opened].

(c) (No change.)

(d) [The count room designated for counting] **Each casino licensee may count** the contents of slot drop buckets and slot drop boxes [, if] **in** a different room, **to be known as the "hard count room,"** from that used for counting the contents of drop boxes and slot cash storage boxes, **in which event the latter room shall be known as the "soft count room." In all other respects the hard count room** shall [meet all] **comply with the** requirements [contained in (a) through (c) above] **of this section,** except [for the requirements concerning audio capabilities] **that the hard count room need not contain the audio equipment required by (c)2i and (c)2iii above.** In addition, the **hard count** room shall contain:

1. A fixed-door type or hand-held metal detector to inspect all persons exiting the **hard** count room; and

2. [A] **In addition to the light system required by (b)2iii above, a separate** light system or other device approved by the Commission which shall provide a continuous visual signal at the count room door, the Commission booth and such other locations as the Commission may require whenever any access door to the count room is open while the system is activated. [The] **Such** light system or device shall **be in operation only upon activation by a Commission inspector pursuant to N.J.A.C. 19:45-1.43(i)8ii and, during such operation, shall:**

i. [Maintain the] **Provide to the designated locations a continuous** visual signal **whenever any door to such room is opened and** until the system is reset or deactivated; and

ii. Be [designed so as to permit its activation, deactivation or resetting] **deactivated or reset** only by a Commission inspector.

19:45-1.34 Slot booths

(a) (No change.)

(b) [The] **Each** slot booth shall be designed and constructed to provide at all times maximum security for the materials housed therein and for the activities performed therein. **At a minimum, each slot cashier window shall be equipped with an electrical system, approved by the Commission, which enables a slot cashier or other**

authorized person in the booth to transmit a signal that is audibly and visually reproduced in each of the following locations whenever an emergency exists:

1. The monitoring rooms required by N.J.A.C. 19:45-1.10;

2. The casino security department of the casino licensee; and

3. The Division's office in the casino hotel.

19:46-1.10 Blackjack table; card reader device; physical characteristics; inspections

(a)-(h) (No change.)

(i) In order to collect the cards at the conclusion of a round of play as required by N.J.A.C. 19:47-2.6(i) and at such other times as provided in the rules of the Commission, each blackjack table shall have a discard rack securely attached to the top of the dealer's side of the table immediately in front of or to the right of the dealer. The height of each discard rack shall equal the height of the cards, stacked one on top of the other, contained in the total number of decks that are to be used in the dealing shoe at that table; provided, however, that a taller discard rack may be used if such rack has a distinct and clearly visible mark on its side to show the exact height for a stack of cards equal to the total number of cards contained in the number of decks to be used in the dealing shoe at that table. Whenever a double shoe is used at a blackjack table, the same number of decks shall be used in each side of the double shoe, and the height and marking requirements as set forth above for that table's discard rack shall be determined from the number of decks used in one side of the shoe.

19:46-1.16 Dice; receipt; storage; inspections and removal from use

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

(e) All dice shall be inspected and distributed to the gaming tables in accordance with one of the following applicable alternatives:

1. Alternative No. 1: Distribution to and inspection at craps or sic bo tables:

i. (No change.)

ii. At the time of receipt, a [box person] **boxperson** at each craps table and the floorperson at each sic bo table, **in order to ensure that the dice conform to the Act and the rules of the Commission and are otherwise in a condition to assure fair play,** shall, in the presence of the dealer, inspect the dice given to him or her with a micrometer or any other approved instrument which performs the same function, **a** balancing caliper, **a** steel set square and **a** magnet, which instruments shall be kept in a compartment at each craps table or pit stand[, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play] **and shall be at all times readily available for use by the Commission or the Division upon request of either;**

iii.-iv. (No change.)

2. Alternative No. 2: Distribution to and inspection at the pit stand:

i.-ii. (No change.)

iii. [The] **To ensure that the dice conform to the Act and the rules of the Commission and are otherwise in a condition to assure fair play, the** dice shall be inspected with a micrometer or any other approved instrument which performs the same function, **a** balancing caliper, **a** steel set square and **a** magnet, which instruments shall be kept at the pit stand[, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play] **and shall be at all times readily available for use by the Commission or the Division upon request of either.** The inspection shall be performed on a flat surface which allows the dice inspection to be observed through closed circuit television cameras and by any persons in the immediate vicinity of the pit stand.

iv. (No change.)

v. The pit boss shall place extra sets of dice for dice reserve in the pit stand[.], **as follows:**

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

3. Alternative No. 3: Inspection in primary storage area and distribution to tables:

i. (No change.)

ii. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, **a** balancing caliper, **a** steel set square and **a** magnet to [assure] **ensure** that the dice conform to [Commission standards] **the Act and the rules of the Commission** and are otherwise in a condition to assure fair play. These instruments shall be maintained in the storage area **and shall be at all times readily available for use by the Commission or the Division upon request of either.**

iii.-vi. (No change.)

vii. A micrometer or any other approved instrument which performs the same function, **a** balancing caliper, **a** steel set square and **a** magnet shall also be maintained in a locked compartment in each pit stand, **and each such instrument shall be at all times readily available for use by the Commission or the Division upon request of either.**

viii. (No change.)

(f)-(l) (No change.)

19:46-1.19 Dealing shoes

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

(d) [A] **Each** dealing shoe shall be designed and constructed [to contain any feature] **with such features as** the Commission may require to maintain the integrity of the game [and] **at which such shoe is used. Such features shall include,** at a minimum, [shall adhere to] the following [specifications]:

1. (No change.)

2. The sides of the shoe below the base plate shall be transparent or have a transparent sealed cutout; [and]

3. A stop underneath the top of the face plate shall preclude the next card to be dealt from being moved upwards for more than one-eighth inch distance; **and**

4. Each dealing shoe used in blackjack shall have a mark on the side of the shoe that enables the dealer, after aligning the stack of cards against the shoe in accordance with N.J.A.C. 19:47-2.5(d), to insert the cutting card in such stack so that approximately one quarter of the stack is behind the cutting card.

(e) A baccarat dealing shoe, in addition to meeting the requirements of (d)**1 through 3** above, shall also adhere to the following specifications:

1.-3. (No change.)

(f)-(g) (No change.)

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

(a) [The Commission] **Each casino licensee** shall [have the discretion] **submit** to **the Commission, for its** review [and approve all]**, inspection and approval after consultation with the Division, each piece of** gaming and simulcast wagering equipment, and **any** other [devices used] **related device, prior to its use, whether initially or following any modification thereto or replacement or movement thereof,** in a casino, casino simulcasting facility or hub facility [as to quality, design, integrity, fairness, honesty and suitability]. **Each such item,** including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, **count room equipment and** counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices, card reader devices, data processing equipment, **slot machines and slot bases (see N.J.A.C. 19:41-9.6(b) and 19:46-1.28),** pari-mutuel machines, self-service pari-mutuel machines, **credit voucher machines** and totalisators, **shall be subject to review, inspection and approval for, at a minimum, quality, design, integrity, fairness, honesty and suitability.**

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

(d) Each casino licensee that has confiscated any item enumerated in (c) above on the reasonable suspicion that such item has been altered or tampered with, or that has confiscated any item enumerated in N.J.A.C. 19:47-8.1 or in Article 9 of the Act on the reasonable suspicion that such item was present in the casino or casino simulcasting facility in violation of the Act or the rules of the Commission, shall preserve such item in the state it was in when so confiscated and shall deliver such item to the Division as soon as possible. A casino licensee's right, if any, to confiscate such items

shall exist, if at all, independently of this subsection based on statute, regulation or common law as may elsewhere be provided, and no separate right to confiscate is created hereby. Notwithstanding the foregoing, each casino licensee that has confiscated any such item, whether by such right or under color thereof, nevertheless has a duty to preserve and deliver such item in accordance with this subsection.

19:47-2.5 Shuffle and cut of the cards

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

(d) Once the cutting card has been inserted by the player, the dealer shall take all cards in front of the cutting card and place them to the back of the stack [after which the dealer]. **The dealer shall then take the entire stack of cards that was just shuffled and align them along the side of the dealing shoe which has the mark required by N.J.A.C. 19:46-1.19(d)4. Thereafter, the dealer** shall insert the cutting card in **the stack at** a position at least approximately one-quarter of the way in from the back of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play. If the "Bart Carter Shuffle" is utilized, the dealer shall not re-insert the cut card after the stack has been cut by the players.

(e)-(h) (No change.)

19:47-2.6 Procedure for dealing cards

(a)-(k) (No change.)

(l) Whenever the cutting card is reached in the deal of the cards, the dealer shall continue dealing the cards until that round of play is completed after which [he] **the dealer** shall [reshuffle]:

1. Collect the cards as provided in (i) above;

2. Prepare to shuffle the cards, as follows:

i. Whenever a single dealing shoe is used, the dealer shall remove the cards remaining in the shoe and place them in the discard rack to ensure that no cards are missing; or

ii. Whenever a double shoe is used, the dealer shall remove the cards remaining in the side of the shoe from which the cutting card was drawn and the cards, if any, that were put in a separate segregated area for the discards from that side of the double shoe, after which the dealer shall place those cards face down in the discard rack in order to ensure that no cards are missing; and then

3. Shuffle the cards. If a double shoe is utilized, the shuffle of the cards shall be limited to the side of the shoe [in] **from** which the cutting card [appeared] **was drawn**.

(m)-(o) (No change.)

19:47-5.2 Roulette; payout odds

(a) No casino licensee, [his] **its** employees or agents shall pay off winning wagers at the game of roulette at less than the odds listed below:

(No change.)

(b) When roulette is played on a double zero wheel and the roulette ball comes to rest around the wheel in a compartment marked zero (0) or double zero (00), wagers on red, black, odd, even, 1 to 18, and 19 to 36 shall not be lost but each player having such a wager shall surrender half the amount on such bet and remove the remaining half. **Each casino licensee offering double zero roulette shall provide notice of this rule pursuant to N.J.A.C. 19:47-8.3.**

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

19:47-8.5 Patron access to the rules of the games; gaming guides

(a) Each casino licensee shall maintain at its security podium a printed copy of the complete text of the rules of all authorized games and all other information required to be made available to the public pursuant to N.J.S.A. 5:12-100f. This information shall be made available to the public for inspection upon request.

(b) Each casino licensee shall make available to patrons upon request an abridged version of the information required to be made available by N.J.S.A. 5:12-100f. Each such version, to be known as a "gaming guide," may be produced in a printed, video or other format approved by the Commission.

(c) No gaming guide shall be issued, displayed or distributed by a casino licensee unless and until a sample thereof has been submitted to and approved by the Commission. No casino licensee shall issue, display or distribute any gaming guide that is materially different from the approved sample thereof.

(d) Prior to issuing, distributing or displaying a gaming guide that is materially different from the approved sample thereof, each casino licensee shall submit and obtain Commission approval for a sample of the complete guide which contains the material changes.

(e) Each casino licensee may display an approved gaming guide at any location in its establishment. Pursuant to N.J.A.C. 19:43-14.1, each such display does not constitute advertising, nor does such display constitute the contract with or the use or employment of a barker for purposes of N.J.S.A. 5:12-100(l).

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs
Nature and Exchange of Gaming Chips, Slot Tokens and Plaques
Procedure for Accepting Cash and Coupons at Gaming Tables
Rules of the Games; Wagers; Gaming Equipment
Proposed Amendments: N.J.A.C. 19:45-1.1, 1.8, 1.16, 1.18 and 1.46; 19:46-1.4 and 1.5; 19:47-2.3, 2.17, 3.2, 6.5, 7.2, 10.5 and 11.7; and 19:51-1.1

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

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(f), 99 and 100.

Proposal Number: PRN 1993-659.

Submit written comments by January 19, 1994 to:

Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

Casino licensees have long been permitted to conduct promotional programs which offer coupons redeemable for complimentary coin and slot machine tokens. Recent amendments to the Commission's regulations now permit casino licensees to offer coupons which can be exchanged for gaming chips as well, thus expanding their marketing and promotional efforts to table games. See 24 N.J.R. 4243(a) and 25 N.J.R. 717(a).

These proposed amendments, which were first suggested by Trump Castle Hotel and Casino, would further extend the use of promotional coupons at table games by permitting the use of "match play" coupons in certain authorized games. As defined in N.J.A.C. 19:45-1.1, a match play coupon would have a fixed value, and would be used by a patron in conjunction with a wager of the same amount as the coupon. If the wager wins, the face value of the coupon would be included in the total amount of the patron's bet when determining the payoff of the bet, which would be paid at the game's required payoff odds.

For example, a $10.00 match play coupon could be used at a blackjack table when accompanied by a player's own $10.00 wager. If the $20.00 wager wins, the player would be left with his or her original $10.00 chip, and would receive a $20.00 even money payoff on the $20.00 bet, for a total of $30.00. If the player wins with a standard blackjack, which is paid at odds of 3 to 2 pursuant to N.J.A.C. 19:47-2.3(f), the player would be left with the original $10.00 chip and would be paid $30.00 on the $20.00 bet, for a total of $40.00. Note that the patron never receives the value of the coupon itself; by comparison, on a routine $20.00 all-cash bet, a winning player would be left with a total of $40.00. Regardless of whether the wager wins or loses, the match play coupon would be deposited in the table's drop box, and would be included as gross revenue. See N.J.A.C. 19:45-1.18(b)4.

A "match play coupon", defined at N.J.A.C. 19:45-1.1, would still be considered to be a coupon, and would therefore be included in the definition of "coupon" in N.J.A.C. 19:45-1.1 as well. As such, it would also be subject to all existing requirements for coupons, including the retention requirements in N.J.A.C. 19:45-1.8 and the reporting requirements and controls in N.J.A.C. 19:45-1.46. However, because of the special nature of a match play coupon, as noted below, it would also be subject to several additional requirements.

Commission regulations presently require that only gaming chips and plaques may be used to wager at table games. See N.J.A.C. 19:46-1.5. Although coupons have been widely used as promotional devices by casino licensees, the coupons have always been required to be exchanged for coin, slot tokens or gaming chips. Under the proposed match play coupon concept, the coupon itself would be wagered. Accordingly, N.J.A.C. 19:46-1.5 would be amended to permit wagering with match play coupons. This type of coupon would also be considered gaming equipment, and would have to be approved by the Commission prior to use on the casino floor. See N.J.A.C. 19:51-1.1 and N.J.A.C. 19:45-1.46(i).

As noted in N.J.A.C. 19:45-1.46(j), match play coupons would only be permitted to be used at table games which use individual betting areas, such as blackjack, red dog and baccarat, and could not be used in games such as craps or roulette, where they might cause confusion or endanger the security or integrity of the game. Similarly, because a match play coupon represents the house's money, N.J.A.C. 19:45-1.46(j) would permit the use of a match play coupon only in table games where patrons are wagering against the house. Thus, a match play coupon could not be used in an authorized game in which patrons wager against each other, such as poker, which is presently being operated on a test basis pursuant to sections 5 and 69(e) of the Casino Control Act. This proposal would amend N.J.A.C. 19:47-2.3, 2.17, 3.2, 6.5, 7.2, 10.5, and 11.7 to permit the use of a match play coupon in the authorized games which meet the above requirements.

Social Impact

The proposed amendments would offer casino licensees an additional marketing tool for certain table games, which may promote and stimulate additional interest in the table games at which a match play coupon could be used.

Economic Impact

Match play coupons would enable casino licensees to offer a promotional coupon at less expense than the traditional coupons which are exchanged for coin, slot tokens or gaming chips. This is so because, as noted above, the patron never receives the face value of the coupon. If a wager using a match play coupon loses, the coupon becomes part of the casino licensee's drop and would be included in the calculation of its gross revenue. If the wager wins, the payout would, as noted above, be calculated by including the face value of the coupon in the wager, but the payout would not include the value of the coupon itself.

The new coupon could also have a favorable economic impact upon casino patrons, since it allows a player to make a larger wager with no additional financial risk, but would result in an increased payout if the wager wins.

However, the overall economic impact of the proposal is not known at this time, since it is not possible to predict whether match play coupons will actually generate additional patron interest and additional revenues, and whether the expense of operating such a promotion will justify any additional revenues which the promotion may generate.

Regulatory Flexibility Statement

The proposed amendments will affect only 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, a regulatory flexibility analysis is not required.

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

19:45-1.1 Definitions

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

...

"Coupon" means a document which is issued in accordance with the coupon redemption and complimentary distribution programs in N.J.A.C. 19:45-1.46(a), **and includes a match play coupon.**

...

"Match play coupon" means a coupon with a fixed, stated value that is issued, utilized and redeemed pursuant to N.J.A.C. 19:45-1.18 and 1.46, and the stated value of which, when presented by a patron with gaming chips which are equal in value to the stated value of the coupon, is included in the amount of the patron's wager in determining the payout on any winning bet at an authorized game.

...

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

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

(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.-5. (No change.)

6. 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, slot tokens, gaming chips or plaques or simulcasting wagers, **or match play coupons,** including unused, voided and redeemed coupons;

ii.-xii. (No change.)

7.-8. (No change.)

(d)-(i) (No change.)

19:45-1.16 Drop boxes and slot cash storage boxes

(a) Each gaming table in a casino or casino simulcasting facility shall have attached to it a secure metal container known as a "drop box" in which shall be deposited all cash, coupons exchanged at the gaming table for gaming chips and plaques, **match play coupons,** issuance copies of Counter Checks exchanged at the gaming table for gaming chips and plaques, duplicate Fill and Credit Slips, Requests for Credit forms, Requests for Fill forms, and Table Inventory forms. Each drop box shall have:

1.-5. (No change.)

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

19:45-1.18 Procedure for accepting cash and coupons at gaming tables

(a) (No change.)

(b) Whenever a match play coupon and an equivalent amount of gaming chips are presented as a wager by a patron, pursuant to N.J.A.C. 19:45-1.46(j)6, at an authorized game in which a match play coupon may be used:

1. The coupon shall be placed underneath the gaming chips in the patron's betting area, in such a way that the type and value of the coupon is visible at all times;

2. Only one match play coupon may be used with the wager;

3. If the wager wins, it shall be paid in accordance with the terms and conditions of the coupon; and

4. Whether the wager wins or loses, the coupon shall be deposited by the dealer into the drop box attached to the gaming table at the time the winning wager is paid or the losing wager is collected.

[(b)](c) A casino licensee may, in its discretion, require [the] **a** coupon to be cancelled upon acceptance by the dealer or boxperson, in a manner approved by the Commission, so as to preclude its subsequent use.

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a) For the purposes of this chapter, a complimentary distribution program is a contest or promotion pursuant to which complimentary services or items are provided directly or indirectly by a casino licensee to the public without regard to the identity or gaming activity of the individual recipients. The procedures contained in (c) through (n) below shall apply to casino licensees offering coupon redemption complimentary distribution programs which entitle patrons to **use match play coupons or to** redeem coupons for complimentary cash,

(gaming chips,) slot tokens (or simulcast wagers) issued in connection with bus (and other complimentary distribution) programs. No **match play coupons,** complimentary cash, (gaming chips) or slot tokens may be distributed, (or complimentary simulcast wagers accepted,) by a casino licensee under any coupon redemption complimentary distribution program that does not comply with the requirements of this section.

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

(i) A coupon redeemable for gaming chips **and a match play coupon** [shall be redeemed only at a gaming table, and only by dealers or boxpersons, who shall accept the coupon in exchange for the stated amount of gaming chips and shall deposit the coupon into a drop box upon acceptance, in accordance with N.J.A.C. 19:45-1.18. All such coupons] shall be designed and printed so that the denomination **and type** of the coupon is clearly visible from the closed circuit television system when accepted **or being wagered** at a gaming table and **when** deposited in a drop box. **A match play coupon shall contain an area designated for the placement thereon of the required gaming chips, which area shall be located on the coupon so as not to obscure or interfere with visibility of the type and denomination of the coupon. No casino licensee shall issue or use a match play coupon for gaming purposes until a sample coupon has been submitted to and approved by the Commission.**

(j) Coupons shall be redeemed in the following manner:

1. (No change.)

Recodify existing 2. and 3. as **i. and ii.** (No change in text.)

Recodify existing 4. as **2.** (No change in text.)

3. A coupon redeemable for gaming chips shall be redeemed only at a gaming table and only by a dealer or boxperson, who shall, in accordance with N.J.A.C. 19:45-1.18, accept the coupon in exchange for the stated amount of gaming chips and shall deposit the coupon into the drop box upon acceptance.

4. A match play coupon shall be redeemed only at a gaming table which offers an authorized game in which patrons wager only against the house and which has an individual betting area for each player on the gaming table layout. Such a coupon shall be redeemed only by a dealer, and only if accompanied by the proper amount of gaming chips required by the coupon. The dealer shall, in accordance with N.J.A.C. 19:45-1.18, accept the coupon as part of the patron's wager and deposit the coupon into the drop box after the wager is won or lost.

(k)-(l) (No change.)

(m) Each casino licensee shall:

1. File a quarterly report for all programs regulated by (a) above, which shall list, by type of coupon, the total number of coupons used, the total number of coupons redeemed, the total value of the complimentary cash, gaming chips, slot tokens, **match play coupons** or simulcast wagers given to patrons in redemption of coupons and any liability to patrons remaining on unredeemed coupons; and

2. (No change.)

(n) (No change.)

(o) In addition to the reports required in (m) above, the casino licensee shall accumulate both the dollar amount of and the number of persons redeeming coupons pursuant to (a) above, and the dollar amount of and the number of persons receiving complimentary items or services pursuant to (b) above, and shall include this information on the quarterly complimentary report required by N.J.A.C. 19:45-1.9. Complimentary items or services, including **match play coupons,** gaming chips, slot tokens and simulcast wagers, distributed through programs regulated by this section shall not be subject to the daily complimentary reporting requirements imposed pursuant to N.J.A.C. 19:45-1.9.

19:46-1.4 Submission of gaming chips [and] , plaques **and match play coupons** for review and approval

[Each] **A** casino licensee shall submit to the Commission a sample of each denomination of gaming plaque [and] , a sample of each value and non-value chip in its primary and secondary sets, **and a sample of each match play coupon,** and shall not utilize such chips [or] , plaques **or coupons** for gaming purposes until approved by the chairman.

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques, **and match play coupons**

(a) All wagering on authorized games in a casino or casino simulcasting facility shall be conducted with gaming chips or plaques; provided however, that slot tokens or coins shall be permitted for use in slot machines or simulcast wagering **and match play coupons shall be permitted for use in wagering at authorized games in accordance with N.J.A.C. 19:45-1.18 and 19:45-1.46.** Gaming chips previously issued by a casino licensee which are not in active use by that casino licensee shall not be used for wagering at authorized table games or casino simulcasting, and shall not be accepted nor exchanged for any purpose at a gaming table or a casino simulcast counter. Such chips shall only be redeemed at the cashiers' cage pursuant to (f) below.

(b)-(k) (No change.)

19:47-2.3 Wagers

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

(d) All wagers at blackjack shall be made by placing gaming chips or plaques **and, if applicable, a match play coupon** on the appropriate areas of the blackjack layout, except that verbal wagers accompanied by cash may be accepted provided that they are confirmed by the dealer and casino supervisor and that such cash is expeditiously converted into gaming chips or plaques in accordance with [the regulations governing the acceptance and conversion of such instruments] **N.J.A.C. 19:45-1.18.**

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

19:47-2.17 Permissible additional wager

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

(f) An additional wager shall be made by placing gaming chips or plaques **and, if applicable, a match play coupon** on the appropriate area of the blackjack layout, except that a verbal wager accompanied by cash may be accepted provided that it is confirmed by the dealer and casino supervisor at the table prior to the first card being dealt to any player and such cash is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(g)-(i) (No change.)

19:47-3.2 Wagers

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

(c) All wagers at Baccarat-Punto Banco shall be made by placing gaming chips or plaques **and, if applicable, a match play coupon** on the appropriate areas of the Baccarat-Punto Banco layout, except that verbal wagers accompanied by cash may be accepted provided that they are confirmed by the dealer and casino supervisor at the table and such cash is expeditiously converted into gaming chips or plaques in accordance with [the regulations governing the acceptance and conversion of such instruments] **N.J.A.C. 19:45-1.18.**

(d) (No change.)

19:47-6.5 Procedures for each round of play; wagers; payouts

(a) (No change.)

(b) All wagers at red dog shall be made by placing gaming chips or plaques **and, if applicable, a match play coupon** on the appropriate area of the red dog layout, except that a verbal wager accompanied by cash may be accepted provided that it is confirmed by the dealer and casino supervisor at the table prior to the first card being dealt and such cash is expeditiously converted into gaming chips or plaques in accordance with N.J.A.C. 19:45-1.18.

(c)-(k) (No change.)

19:47-7.2 Wagers

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

(c) All wagers at minibaccarat shall be made by placing gaming chips or plaques **and, if applicable, a match play coupon** on the appropriate areas of the minibaccarat layout except that verbal wagers accompanied by cash may be accepted provided they are confirmed by the dealer and casino supervisor at the table, and such cash is expeditiously converted into gaming chips or plaques in accordance with [the regulations governing the acceptance and conversion of such instruments] **N.J.A.C. 19:45-1.18.**

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

19:47-10.5 Wagers

(a) All wagers at pai gow shall be made by placing gaming chips or plaques **and, if applicable, a match play coupon** on the appropriate betting area of the pai gow layout. A verbal wager accompanied by cash shall not be accepted at the game of pai gow.

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

19:47-11.7 Wagers

(a) All wagers at pai gow poker shall be made by placing gaming chips or plaques **and, if applicable, a match play coupon** on the appropriate betting area of the pai gow poker layout. A verbal wager accompanied by cash shall not be accepted at the game of pai gow poker.

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

19:51-1.1 Definitions

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

"Gaming equipment" means any mechanical, electrical or electronic contrivance or machine used in connection with gaming or any game and includes, without limitation, roulette wheels, roulette tables, big six wheels, craps tables, tables for card games, layouts, slot machines, cards, dice, chips, plaques, **match play coupons,** card dealing shoes, drop boxes, and other devices, machines, equipment, items or articles determined by the Commission to be so utilized in gaming as to require licensing of the manufacturers, distributors or services or as to require Commission approval in order to contribute to the integrity of the gaming industry or to facilitate the operation of the Commission or the Division.

...

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Records Retention

Proposed Amendments: N.J.A.C. 19:45-1.8

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

Authority: N.J.S.A. 5:12-63c, 69e and 96e.

Proposal Number: PRN 1993-658.

Submit written comments by January 19, 1994 to:

Mary S. LaMantia, Senior Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Casino Control Commission ("Commission") rules set forth standards and procedures for records storage and destruction, including a retention schedule for the various types of books, records and documents maintained by casino licensees. N.J.A.C. 19:45-1.8. The proposed amendments reflect an ongoing effort to refine and update the records retention and destruction process based upon the experience of the regulatory agencies and the casino industry in implementing N.J.A.C. 19:45-1.8.

Survey questionnaires regarding service in the casino hotel, now subject to the general three-year retention period for marketing records, would be retained for six months under the proposed amendment. Emergency drop box approval forms would be maintained for one year. Three-year retention would extend to coin tags, if the information therein is duplicative of that in another document, and mailroom records.

The amendments add a new category for documents that are not subject to any minimum retention requirement, but which may not be destroyed until the casino licensee has complied with the notice requirements at N.J.A.C. 19:45-1.8(f) and (g). This category will apply to any original book, record or document that has been copied and stored on a microfilm, microfiche or other media system approved by the Commission, and to any form required by Commission regulations which is blank or unused. Forms not required by Commission regulations that are blank or unused, as well as unsolicited employment applications, would be added to the list of records that can be destroyed at any time without notice.

Proposed amendments to N.J.A.C. 19:45-1.8(e) retain the requirement that a casino licensee obtain Commission approval of a microfilm, microfiche or other media system for the copying and storage of records, but eliminate the need to petition for approval each time records are copied and stored on such a system.

Finally, the amendments would allow a casino licensee to petition the Commission for relief from the codified retention schedule for good cause shown. This additional degree of flexibility should prove useful in many circumstances. For example, a record that does not fall under any specified category must be retained for five years under the present rules, N.J.A.C. 19:45-1.8(c)2iii, but there may be no apparent investigatory or regulatory justification for prohibiting destruction at an earlier date. Likewise, a particular record may fall under a broad, general category of documents yet merit a lesser retention period.

Social Impact

Codification of the records retention schedule simplifies and expedites the records retention and destruction process and thus benefits both the casino industry and the regulatory agencies. The proposed amendments continue to improve upon this system by eliminating unnecessarily lengthy records retention periods, and likewise by eliminating the need to petition for approval for each record to be stored on an approved microfilm, microfiche or other media system.

Economic Impact

The proposed amendments should minimize costs incurred by the casino industry by avoiding unnecessarily lengthy records retention periods. The amendments should also save time and expense for both casino licensees and the regulatory agencies by eliminating individual petitions for approval to store documents on an approved microfilm, microfiche or other media system.

Regulatory Flexibility Statement

The proposed amendments affect only the operations of casino licensees, none of which qualify as a small business under 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) All original books, records and documents pertaining to the casino licensee's operations and approved hotel shall be:

1.-4. (No change.)

5. Destroyed only after:

i. Expiration of the minimum retention period specified in (c) below, **except that the Commission may, upon the written petition of any casino licensee and for good cause shown, permit such destruction at an earlier date**; and

ii. (No change.)

(b) (No change.)

(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.-2. (No change.)

3. The following original books, records and documents shall be retained by a casino licensee for a minimum of three years:

i.-viii. (No change.)

ix. Credit union records; [and]

x. Mailroom records;

xi. Coin tags, provided that the information contained thereon is duplicative or less than that recorded on another document; and

[x.]**xii.** 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 one year:

i.-ii. (No change.)

iii. Card and dice transaction and inventory reports; [and]

iv. Returned check aging reports, except for year-end reports[.];

v. Emergency drop box approval forms; and

[5.]**vi.** With the exception of cashed pari-mutuel tickets and credit vouchers, the original books, records and documents related to the revenues and expenses of casino simulcasting, including, but not limited to, all reports generated by the totalisator and all records maintained in accordance with N.J.A.C. 19:45-1.2(c)10, shall be retained by a casino licensee or a hub facility for a minimum of one year.

[6.]**5.** The following original books, records and documents shall be retained by a casino licensee for a minimum of six months:

i.-x. (No change.)

xi. Surveillance employee duty logs, VCR/tape logs, and equipment malfunction reports; [and]

[xi.]**xii.** Zeroed-out countercheck envelopes[.]; **and**

xiii. Survey questionnaires regarding service in the casino hotel.

[7.]**6.** (No change in text.)

7. The following original books, records and documents do not have to be retained by a casino licensee for any minimum period of time, but may be destroyed only upon notice in accordance with (f) and (g) below:

i. Any form required by Commission rules that is blank or unused, unless otherwise specified by this section;

ii. Any original book, record or document that has been copied and stored on a microfilm, microfiche or other media system approved by the Commission.

8. 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.-xiv. (No change.)

xv. Unsolicited resumes or letters requesting employment; [and]

xvi. Register tapes, provided that the information contained thereon is duplicative or less than that recorded on another document retained in accordance with (c)3 above[.]; **and**

xvii. Any form not required by the Commission regulations that is blank or unused, unless otherwise specified by this section.

(d) (No change.)

(e) A casino licensee may petition the Commission [at any time for permission to copy and store original books, records and documents on] **for approval of** a microfilm, microfiche or other suitable media system [approved by the Commission] **for the copying and storage of original books, records and documents**. [A microfilm, microfiche or other media] **Such a** system shall be approved if it contains the following elements to the satisfaction of the Commission:

1.-4. (No change.)

(f)-(i) (No change.)

(a)

CASINO CONTROL COMMISSION

Poker
Gaming Schools
Accounting and Internal Controls
Gaming Equipment
Rules of the Games

Reproposed New Rules: N.J.A.C. 19:46-1.13E and 19:47-14

Reproposed Amendments: N.J.A.C. 19:44-8.3, 19:45-1.1, 1.2, 1.11, 1.12, 1.20 and 1.33 and 19:46-1.17 and 1.18

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

Authority: N.J.S.A. 5:12-5, 69(a), 70(f), (j), 99 and 100(e).

Proposal Number: PRN 1993-660.

Submit written comments by January 19, 1994 to:

Barbara A. Mattie, Chief Analyst
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

On April 21, 1993, the Casino Control Commission proposed new rules and amendments intended to govern the implementation of the game of poker, which were published in the June 7, 1993 New Jersey Register at 25 N.J.R. 2236(a). The Commission determined pursuant to N.J.S.A. 5:12-5 that poker constitutes a game which is compatible with the public interest, subject to the Commission ultimately finding that poker is suitable for casino use after an appropriate test period. The rules are being reproposed in response to public comments, as described below, and observations made during the test period. The actual rules of the game are set forth in N.J.A.C. 19:47-14.1 through 14.19.

Briefly, poker shall be played with a single deck of 52 cards. The dealer or house shall not participate in the actual playing or outcome of the game. The casino shall provide a table, a deck of cards and a dealer to facilitate the game. The casinos may offer any or all of the following types of poker: seven card stud high; high-low split and high-low split eight or better; hold 'em high; omaha high and high-low split eight or better; five card draw high and low; and five card stud high.

The dealer shall wash, shuffle and cut the cards. The dealer shall then deal the appropriate number of cards either face up or face down depending on the type of poker being offered. Dealing from the hand, the dealer shall deal all cards in a clockwise rotation starting with the position to the left of the dealer.

As the cards are dealt, players shall make a decision to check, raise or fold. Each player wagers on the cards that the player holds in his or her hand. At the completion of play, the dealer shall award the pot to the winning player or players pursuant to the rankings set forth in N.J.A.C. 19:47-14.3 or to the last remaining player if all other players have folded.

Since the casino does not participate in the outcome of the game, the casino shall derive its revenue by extracting a commission known as the "rake." N.J.A.C. 19:47-14.14 permits the casinos to use one or more of the following types of rake: (1) a percentage of sums wagered on the pot; (2) a flat fee based on certain predetermined dollar levels contained within the pot; and (3) time charges expressed as an hourly fee.

N.J.A.C. 19:47-14.15 addresses the handling of irregularities and N.J.A.C. 19:47-14.18 addresses the use of a waiting list for vacant seats at the poker tables. N.J.A.C. 19:47-14.19 requires casinos to maintain projections of poker revenue. The reproposal clarifies the procedures for raising the table minimums pursuant to N.J.A.C. 19:47-14.17. The reproposal includes a definition of "table stakes" along with the other definitions at N.J.A.C. 19:47-14.1.

The Division of Gaming Enforcement filed comments objecting to the level of supervision set forth in N.J.A.C. 19:45-1.12. The reproposal permits one floorperson for eight poker tables or 10 tables if no floorperson assigned to poker in a casino licensee has any responsibilities for seating players. The original proposal has also been changed to reflect the Division's request for immediate notification if a casino licensee takes action pursuant to N.J.A.C. 19:47-14.16. One other comment was received from a Mr. Dean S. Nalbone requesting that the maximum allowable rake be five percent instead of 10 percent. This comment was not accepted. The standard rake for poker in other gaming jurisdictions is 10 percent.

N.J.A.C. 19:45-1.11(g) has been revised to permit the poker unit to report to the casino manager or to a casino key employee in a direct reporting line. Minor wording changes have been made to N.J.A.C. 19:45-1.12(b)7.

N.J.A.C. 19:45-1.1. defines the meaning of poker revenue (rake) and N.J.A.C. 19:45-1.20 addresses its placement into the table inventory container. Proposed new rule N.J.A.C. 19:46-1.13E addresses the requirements for the poker table. N.J.A.C. 19:46-1.17 addresses the use of plastic cards which are distinguishable from other cards used in that casino. N.J.A.C. 19:46-1.18 addresses the procedures for the distribution of poker cards to the table, the reuse of plastic poker cards, the insertion of replacement cards into a deck and the daily inspection requirements. The reproposal permits a floorperson to add replacement cards, distribute cards and inspect cards for reuse after 12 times.

Please note that this reproposal supersedes the prior proposal. Accordingly, any comments received in response to the prior proposal will not be considered in connection with this reproposal, unless they are specifically resubmitted during the present comment period. Additional comment from any other interested parties is also permissible.

Social Impact

The reproposed new rules and amendments are not anticipated to have any social impact independent of that created by the statutory authorization of a game which is compatible with the public interest. The reproposed rules do not reflect any social judgements made by the Commission. It is anticipated that the implementation of the new game may generate patron interest in the game, but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City as a result of the introduction of poker.

Economic Impact

Implementation of any new game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs will presumably be offset by the increased casino revenues generated by the new game. Moreover, to the extent that the new game does generate increased casino revenues, senior and disabled citizens of New Jersey will benefit from the additional tax revenues which will be collected. As noted above, however, any attempt to quantify the effects of the introduction of poker on casino revenue would be highly speculative at this time. The proposed amendments and new rules may require the regulatory agencies to incur some costs in preparing to regulate the game. However, these costs are necessary to introduce and test the game of poker.

Regulatory Flexibility Statement

The reproposed amendments and new rules affect casino licensees and casino employees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. However, the proposed amendment to N.J.A.C. 19:44-8.3 establishes a minimum requirement of hours of training that must be given by gaming schools in training for dealing poker. Some of these schools may be small businesses. However, no need for differing standards based on business size are being offered because the requirements are not so burdensome and are necessary for uniform performance of those being trained.

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

19:44-8.3 Minimum hours

(a) Any training or instruction designed to prepare a student for employment as a dealer shall satisfy the following minimum requirements:

1. For a student being trained to deal a first game the following minimum hours of training and instruction shall be required:

i.-iv. (No change.)

v. 270 hours to deal pai gow; [and]

vi. 180 hours to deal pai gow poker[.]; **and**

viii. 140 hours to deal poker.

2. For a student being trained to deal a second or subsequent game the following minimum hours of training and instruction shall be required:

i. For a student certified to deal blackjack:

(1)-(4) (No change.)

(5) 210 hours to deal pai gow; [and]

(6) 95 hours to deal pai gow poker[.]; **and**

(7) 80 hours to deal poker.

ii. For a student certified to deal roulette:

(1)-(4) (No change.)

(5) 110 hours to deal pai gow poker[.]; **and**

(6) 95 hours to deal poker.

iii. For a student [trained] **certified** to deal craps:

(1)-(3) (No change.)

(4) 210 hours to deal pai gow; [and]

(5) 110 hours to deal pai gow poker[.]; **and**

(6) 95 hours to deal poker.

iv. For a student certified to deal baccarat:

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

(6) 210 hours to deal pai gow; [and]

(7) 95 hours to deal pai gow poker[.]; **and**

(8) 80 hours to deal poker.

v. (No change.)

(b) (No change.)

19:45-1.1 Definitions

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

...

"Casino supervisor" means a person employed in the operation of a casino or of the authorized games in a casino simulcasting facility in a supervisory capacity or empowered to make discretionary decisions which regulate casino operations, including but not limited to, [boxmen, floormen,] **boxpersons, floorpersons,** pit bosses, **poker shift supervisors,** casino shift managers, the assistant casino manager, and the casino manager.

...

"Master Game Report (Stiff Sheet)" means a record of the computation of the win or loss **or, for the game of poker, the poker revenue,** for each gaming table, each game, and each shift.

...

"Poker revenue" means the total amount of rake charged to patrons at the poker tables pursuant to N.J.A.C. 19:47-14.14. The poker revenue is determined by adding the amount of cash, coupons, the amount recorded on the Closer, the totals of amounts recorded on the Credits and issuance copies of Counter Checks removed from a drop box, and substracting the amount on the Opener and the total of amounts recorded on Fills removed from a drop box.

...

"Rake" is defined in N.J.A.C. 19:47-14.1.

...

"Table game win or loss" means the amount of gaming chips and plaques and cash won from patrons at gaming tables **other than poker tables** less the amount of gaming chips, plaques and coins won by patrons at gaming tables **other than poker tables**. The table game win or loss is determined by adding the amount of cash, coupons, the amount recorded on the Closer, the totals of amounts recorded on the Credits, and issuance copies of Counter Checks removed from a drop box, and subtracting the amount recorded on the Opener and the total of amounts recorded on Fills removed from a drop box.

...

19:45-1.2 Accounting records

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

(c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:

(1) (No change.)

2. Statistical game records to reflect drop and win amounts **or, for the game of poker, the poker revenue**, by table for each game, by each shift.

3.-10. (No change.)

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter and shall be responsible for the operation and conduct of the following games:

i.-viii. (No change.)

ix. Pai gow; [and]

x. Pai gow poker[.]; **and**

xi. Poker, except as otherwise authorized by (g) below.

5.-10. (No change.)

(c)-(f) (No change.)

(g) Notwithstanding the provisions of (b)4 above and N.J.A.C. 19:45-1.12, a casino licensee may operate and conduct the game of poker separately from the other table games. If a casino licensee elects to operate the game of poker as its own unit, the operation and conduct of poker shall be the responsibility of a casino key employee holding a license endorsement approved by the Commission. The supervisor of the poker unit shall report directly to the casino manager or to a casino key employee in a direct reporting line above the casino manager as approved by the Commission.

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, sic bo, big six, pai gow [and], pai gow poker **and poker** table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be the second level supervisor assigned the responsibility for directly supervising the operation and conduct of a craps game, and the first level supervisor assigned the responsibility for directly supervising the operation and conduct of a baccarat, blackjack, roulette, sic bo, minibaccarat, red dog, pai gow, pai gow poker [or], big six **or poker** game.

6. (No change.)

7. Poker shift supervisor shall be licensed as a casino key employee and shall be the supervisor assigned and present during a shift with the responsibility for directly supervising all activities related to the operation and conduct of poker. Nothing in this section shall be deemed to preclude the poker shift supervisor from having other responsibilities as may be approved by the Commission pursuant to the standards set forth in N.J.A.C. 19:45-1.11(a).

Recodify existing 7.-8. as **8.-9.** (No change in text.)

(c) Each casino licensee shall maintain the following standard levels of staffing:

1. (No change.)

2. One dealer shall be assigned to each blackjack, roulette, minibaccarat, sic bo, red dog, pai gow, pai gow poker [and], big six **and poker** table;

3.-4. (No change.)

5. One floorperson shall supervise:

i.-ii. (No change.)

iii. Not more than one baccarat or pai gow table[.]; **or**

iv. Not more than eight poker tables or, if no floorperson assigned to poker by a casino licensee has any responsibilities for seating players, not more than ten tables.

6. (No change.)

(d) Notwithstanding the provision of (c)5 above, if a casino licensee has six or less poker tables opened for gaming activity, no floorperson shall be required and the tables may be supervised by the poker shift supervisor. Once the casino licensee has opened seven or more poker tables for gaming activity, in addition to the poker shift supervisor required by (b)7 above, one floorperson shall be assigned pursuant to the provisions of c(5)iv above.

Recodify existing (d)-(i) as **(e)-(j)** (No change in text.)

19:45-1.20 Table inventories

(a) Whenever a gaming table in a casino or casino simulcasting facility is opened for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table inventory" and no casino licensee shall cause or permit gaming chips, coins or plaques to be added to, or removed from, such table inventory during the gaming day except:

1.-3. (No change.)

4. In conformity with the Fill and Credit Slip procedures described in N.J.A.C. 19:45-1.22 and 1.23; [and]

5. In conformity with N.J.A.C. 19:47-3.3 and 7.3, coin may be used for the purpose of marking baccarat vigorish[.]; **and**

6. In conformity with N.J.A.C. 19:47-14.14, the rake collected from patrons playing the game of poker shall always be placed in the table inventory container.

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

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

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

(h) Procedures and requirements for conducting the count shall be the following:

1.-7. (No change.)

8. As the contents of each drop box are counted, one count team member shall record on a Master Game Report or supporting documents, by game, table number, and shift, the following information:

i.-xiv. (No change.)

xv. The **table game** win or loss **or, for poker, the poker revenue**.

9.-13. (No change.)

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

19:46-1.13E Poker table; physical characteristics

(a) Poker shall be played on a table which is oval in shape and which has places for up to 11 players and a dealer. The design of each poker table shall be approved by the Commission after consultation with the Division. Each poker table shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game. The cloth or nylon covering for the poker table shall have contained thereon the name or trade name of the casino licensee in a manner approved by the Commission.

(b) Each poker layout shall be approved by the Commission and shall contain, at a minimum, a designated holding area located to the right of the dealer for the collection of the rake prior to final placement of the rake in the table inventory container.

(c) Each poker table shall have a designated area, in a location approved by the Commission, for the placement of at least one deck of cards. This area may be part of the table inventory container.

(d) Each poker table shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission.

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat, minibaccarat, pai gow poker, pokette [and], red dog **and poker** shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck. Notwithstanding the foregoing, decks of cards used to play pai gow poker shall include one additional card, a joker, which shall be identical in size and shape to every other card in such deck.

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

(f) The design to be placed on the backs of cards used by casino licensees shall **contain the name or trade name of the casino licensee and shall** be submitted to the [chairman] **Commission** for approval prior to use of such cards in gaming activity.

(g) Each deck of cards shall be packaged separately and shall contain a seal affixed to the opening of such package. **Notwithstanding this requirement, cards used at poker may be packaged and sealed in sets containing two decks of cards in accordance with the provisions of N.J.A.C. 19:47-14.2.**

(h) (No change.)

(i) In addition to satisfying the requirements of this section, the cards used by a casino licensee at poker must:

1. Be visually distinguishable from the cards used by that casino licensee to play any other table game; and

2. Be made of plastic.

(j) Each casino licensee which elects to offer the game of poker shall be required to have and use on a daily basis at least six visually distinguishable card backings for the cards to be used at the game of poker. These card backings may be distinguished, without limitation, by different logos, different colors or different design patterns.

19:46-1.18 Cards; receipt, storage, inspections, and removal from use

(a) When decks of cards are received for use in the casino or casino simulcasting facility from the manufacturer or distributor thereof, they shall be placed for storage in a locked cabinet in the cashiers' cage or within a primary or secondary storage area by at least two individuals, one of whom shall be from the casino department and the other from the casino security department. The cabinet or primary storage area shall be located in the cashiers' cage or in another secure place, the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus cards. Cards maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the cards have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission. **Nothing herein shall preclude a casino licensee from having a separate storage area for the cards to be used at the game of poker; provided, however, the location and physical characteristics of the separate storage area shall be approved by the Commission.**

(b) All primary [and], secondary **and poker** storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organizational hierarchy shall have access to the casino department key **for the primary and secondary storage areas and no person below the poker shift supervisor in the organizational hierarchy shall have access to the casino department key to the poker storage area**. Cards stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.

(c) Immediately prior to the commencement of each gaming day and at other times as may be necessary, the assistant shift manager or casino supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of decks of cards for that gaming day from a primary storage area**, and if applicable, the poker shift supervisor or supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of decks of cards to be used at poker for that gaming day from the poker storage area.**

(d) [The] **If removed from the primary storage area, the** assistant shift manager or casino supervisor thereof and the casino security officer who removed the decks shall distribute sufficient decks to **the poker shift supervisor and to** the pit boss **who shall then distribute the decks to the dealer at each table. If removed from the poker storage area, the decks shall be removed by the poker shift supervisor, in the presence of the casino security officer, and transported to the poker pit stand. Subsequently, the poker shift supervisor shall distribute the decks to the dealer at each poker table either directly or through the floorperson assigned to supervise the dealer. The distribution of the decks to the poker tables shall comply with the provisions of N.J.A.C. 19:47-14.2.**

1. [The pit boss shall then distribute the decks to the dealer at each table, and shall place] **The poker shift supervisor or pit boss shall place** extra decks for card reserve [in] **into** the pit stand.

2. Prior to distributing the decks to each table, the poker shift supervisor or floorperson shall examine each package to determine if any replacement cards are necessary pursuant to (n)5 below. If needed, the poker shift supervisor or floorperson shall place the appropriate replacement cards into the deck from the cards held in reserve at the pit stand. Upon insertion of the replacement cards into the deck, the poker shift supervisor or floorperson shall re-examine the front of each card and the back of each card to ensure a consistent shading pattern and to ensure that the condition of the deck with the inclusion of the replacement cards has sufficient quality in order to maintain the integrity of gaming at poker. If the integrity of gaming at poker would in any way be compromised by the use of the deck with the replacement cards, the entire deck of cards shall be placed in a sealed envelope or container, identified with the date and time and shall be signed by the poker shift supervisor. The poker shift supervisor shall maintain the envelope or container in a secure place within the pit stand until collection by a casino security officer.

[2.]**3.** Cards in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of **the poker shift supervisor or supervisor thereof or** the pit boss or casino supervisor thereof.

(e) With the exception of cards used to game at pokette, which are governed by the requirements of N.J.A.C. 19:47-12.3, prior to their use at a table, all decks shall be inspected by the dealer, and the inspection verified by a floorperson. Card inspection at the gaming table shall require each pack to be used to be sorted into sequence and into suit to assure that all cards are in the deck. The dealer shall also check the back of each card to assure that it is not flawed, scratched or marked in any way.

1. If, after checking the cards, the dealer finds that a card is unsuitable for use, a **poker shift supervisor or** casino supervisor shall bring a substitute card from the card reserve in the pit stand.

2. The unsuitable card shall be placed in a sealed envelope or container, identified by table number, date, and time and shall be signed by the dealer and [casino supervisor] **floorperson assigned to that table**. The **poker shift supervisor or** casino supervisor shall maintain the envelope or container in a secure place within the pit until collection by a casino security officer.

(f) (No change.)

(g) Any cards which have been opened and placed on a gaming table shall be changed at least every 24 hours. In addition:

1. (No change.)

2. Cards opened for use on a pai gow poker table and dealt from a dealing show shall be changed at least every eight hours; [and]

3. Cards opened for use on a pai gow poker table and dealt from the dealer's hand shall be changed at least every four hours[.]; **and**

4. Cards opened for use on a poker table shall be changed at least every four hours.

(h) Cards damaged during course of play shall be replaced by the dealer who shall request a **floorperson or supervisor thereof for the game of poker or** casino supervisor **for all other games** to bring cards in substitution from the pit stand.

1. The damaged cards shall be placed in a sealed envelope, identified by table number, date and time and shall be signed by the dealer and [casino supervisor] **the individual who brought the replacement card to the table.**

2. The **poker shift supervisor or** casino supervisor shall maintain the envelopes or containers in a secure place within the pit until collection by a casino security officer.

(i) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, the **floorperson or supervisor thereof for the game of poker or** casino supervisor **for all other games** shall collect all used cards.

1. These cards shall be placed in a sealed envelope or container. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the dealer and [casino supervisor] **floorperson assigned to the table.**

2. The **poker shift supervisor or** casino supervisor shall maintain the envelopes or containers in a secure place within the pit until collection by a casino security officer.

(j) (No change.)

(k) All extra decks in card reserve with broken seals shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by **the floorperson or supervisor thereof for poker and** the pit boss **for all other games.**

(l) (No change.)

(m) At the end of each gaming day or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and at such other times as may be necessary, an assistant shift manager or casino

supervisor thereof may collect all extra decks in card reserve. **If the casino maintains a separate storage area for poker cards, a poker shift supervisor or supervisor thereof may collect all extra decks in card reserve for the game of poker.** If collected, all sealed decks shall either be cancelled or destroyed or returned to the storage area.

(n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the casino security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. (No change.)

2. The casino licensee shall also inspect:

i.-ii. (No change.)

iii. All cards used for pai gow poker; [and]

iv. All cards used for pokette, which must be inspected by sorting the cards sequentially by suit[.]; **and**

vi. All cards used for poker.

3. The procedures for inspecting all decks required to be inspected under this subsection, with the exception of pokette cards, shall, at a minimum, include:

i. (No change.)

ii. The inspection of the backs with an ultraviolet light; [and]

iii. The inspection of the sides of the cards for crimps, bends, cuts and shaving[.]; **and**

iv. The inspection of the front and back of all plastic cards for consistent shading and coloring.

4. If, during the inspection procedures required in (n)3 above, one or more plastic cards in a deck are determined to be unsuitable for continued use, those cards shall be placed in a sealed envelope or container and a three-part Card Discrepancy Report shall be completed in accordance with n(9) below.

5. Upon completion of the inspection procedures required in (n)3 above, each deck of plastic cards which is determined suitable for continued use shall be placed in sequential order, repackaged and returned to the primary or poker storage area for subsequent use. If a deck has any missing cards pursuant to n(4) above, the individual who repackages the cards shall indicate the need for the appropriate replacement card(s) in a manner approved by the Commission.

6. The casino licensee shall develop internal control procedures for returning the repackaged cards to the storage area.

Recodify existing 4.-6. as **7.-9.** (No change in text.)

(o) (No change.)

(p) Where cards in an envelope or container are inspected and found to be without any indication of tampering marks, alterations, missing or additional cards or anything that might indicate unfair play, those cards **with the exception of plastic cards used at poker which are of sufficient quality for reuse,** shall within 48 hours of collection be destroyed or cancelled. Once released by the Commission and Division, the cards submitted as evidence shall immediately be destroyed or cancelled.

1.-3. (No change.)

(q) If a deck of plastic cards has been reused 12 or more times and the deck has been determined to be suitable for reuse by the individual performing the inspection procedures required by (n)3 above, before that deck may be reused at a poker table, the deck must be inspected by a poker shift supervisor or floorperson. A satisfactory inspection shall be documented by the poker shift supervisor or floorperson. If the poker shift supervisor or floorperson determines that the deck may not be reused, the deck shall be placed in a sealed envelope or container, with a label attached which identifies the date and time and shall be signed by the poker shift supervisor or floorperson. At the end of the gaming day or at such other times as may be necessary, said envelope or container shall be collected by a casino security officer and be returned to the casino security department for destruction or cancellation pursuant to (p) above.

SUBCHAPTER 14. POKER

19:47-14.1 Definitions

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

"All-in" means a player who has no funds remaining on the poker table to continue betting in a round of play but who still retains the right to contend for that portion of the pot in which the player has already placed a bet.

"Ante" means a predetermined wager which each player is required to make in some poker games prior to any cards being dealt in order to participate in the round of play.

"Bet" means an action by which a player places gaming chips or gaming plaques into the pot on any betting round.

"Betting round" means a complete wagering cycle in a hand of poker after all players have called, folded or gone all-in.

"Blind bet" means a mandatory wager in some poker games which only players sitting in specific betting positions at the poker table shall be required to place prior to looking at any cards.

"Burn card" means a card taken from the top of a deck which is discarded face down, which is not in play and the identity of which remains unknown.

"Button" means an object which is moved clockwise around the table to denote an imaginary dealer and thereby determine the betting and dealing sequence.

"Call" means a wager made in an amount equal to the immediately preceding wager.

"Check" means that a player waives the right to initiate the betting in a betting round but retains the right to act if another player initiates the betting.

"Common card" means, in any game of stud poker, a card which is dealt face upward if there are insufficient cards left in the deck to deal each player a card individually and which can be used by all players at the showdown.

"Community card" means any card which is dealt face upward and which can be used by all players to form their best hand.

"Cover card" means a yellow or green plastic card used during the cut process and then to conceal the bottom card of the deck.

"Draw" means, in any game of draw poker, an exchange by a player of cards held in his or her hand, after the initial round of betting, for an equal number of new cards from the deck.

"Fold" means the withdrawal of a player from a round of play by discarding his or her hand of cards during a betting round and refusing to equal a wager.

"Forced bet" means a wager which is required to start the wagering on the first betting round.

"Fouled hand" means a hand that either has an improper number of cards or has come into contact with other cards in such a way as to render it impossible to determine accurately which cards are contained in the hand.

"High" means a game of poker in which the highest ranking hand in accordance with N.J.A.C. 19:47-14.3 wins the pot.

"High-low split" means a form of poker in which there is a winner for both the highest and lowest ranking hands.

"High-low split eight or better" means a version of high-low split poker in which a winning low hand must satisfy an eligibility requirement.

"Hole card" means any card dealt to a player face down.

"Low" means a game of poker in which the highest ranking low hand in accordance with N.J.A.C. 19:47-14.3 wins the pot.

"Opening bet" means the first bet in a round of play.

"Pot" means the amount which is awarded to the winning player or players at the conclusion of a round of play and is equal to the total amount anted and bet by the players during the round of play, less any rake extracted pursuant N.J.A.C. 19:47-14.14.

"Protected hand" means a hand of cards which the player is physically holding or has placed under one or more gaming chips.

"Raise" means a bet in an amount greater than the immediately preceding bet in that betting round.

"Rake" means the amount of gaming chips, gaming plaques or coin collected by the dealer as poker revenue in accordance with 19:47-14.14.

"Round of play" means, for any game of poker, the process by which cards are dealt, bets are placed and the winner of the pot is determined and paid in accordance with the rules of this subchapter.

"Showdown" means the action of revealing the hands of each player in order to determine who shall win the pot.

"Side pot" means a separate pot formed when one or more players are all-in.

"Stub" means the remaining portion of the deck after all cards in a round of play have been dealt.

"Suit" means one of the four categories of cards, that is, diamond, spade, club or heart.

"Table stakes" means the currency, gaming chips and gaming plaques on the table is in play and a player may not subtract from his or her currency, gaming chips or gaming plaques at any time during ongoing play.

"Up-card" means, in a game of stud poker, any card dealt to a player face up.

19:47-14.2 Cards; number of decks

(a) Poker shall be played with one deck of cards with backs of the same color and design and one additional solid yellow or green cover card. Two decks of cards shall be maintained for use at each poker table at all times. Each deck maintained at the poker table shall be visually distinguishable in some manner from the other deck. While one deck is in use, the other deck shall be stored in a designated area pursuant to N.J.A.C. 19:46-1.13E.

(b) Each deck of cards maintained at the poker table may be rotated in and out of play; provided, however, that no deck of cards shall be used at the table for more than two hours without the dealer or floorperson placing the 52 cards into suit and sequence. All decks opened for use on a poker table shall be changed at least every four hours.

(c) Each gaming day, decks of cards with distinguishable card backings as required by N.J.A.C. 19:46-1.17(j) shall be distributed among all open poker tables in a manner determined by the poker shift supervisor or supervisor thereof. The distribution of decks among tables shall consider, at a minimum, the table limits, the location of the table and the type of poker available at each table and shall be intended to ensure the integrity of gaming at poker.

19:47-14.3 Poker rankings

(a) The rank of the cards used in all types of poker other than low poker, for the determination of winning hands, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, nine, eight, seven, six, five, four, three and two. All suits shall be considered equal in rank. Notwithstanding the foregoing, an ace may be used to complete a "straight flush" or a "straight" formed with a two, three, four and five.

(b) The permissible high poker hands as determined by the holding of a full five card hand, in order of highest to lowest rank, shall be:

1. "Royal flush" is a hand consisting of an ace, king, queen, jack and ten of the same suit;

2. "Straight flush" is a hand consisting of five cards of the same suit in consecutive ranking, with king, queen, jack, 10 and nine being the highest ranking straight flush and ace, two, three, four and five being the lowest ranking straight flush;

3. "Four-of-a-kind" is a hand consisting of four cards of the same rank regardless of suit, with four aces being the highest ranking four-of-a-kind and four twos being the lowest ranking four-of-a-kind;

4. "Full house" is a hand consisting of "three-of-a-kind" and a "pair," with three aces and two kings being the highest ranking full house and three twos and two threes being the lowest ranking full house;

5. "Flush" is a hand consisting of five cards of the same suit;

6. "Straight" is a hand consisting of five cards of consecutive rank, regardless of suit, with an ace, king, queen, jack and 10 being the highest ranking straight and an ace, two, three, four and five being the lowest ranking straight; provided, however, that an ace may not be combined with any other sequence of cards for purposes of determining a winning hand (e.g., queen, king, ace, two, three);

7. "Three-of-a-kind" is a hand consisting of three cards of the same rank regardless of suit, with three aces being the highest ranking three-of-a-kind and three twos being the lowest ranking three-of-a-kind;

8. "Two pairs" is a hand consisting of two "pairs," with two aces and two kings being the highest ranking two pair and two threes and two twos being the lowest ranking two pair; and

9. "One pair" is a hand consisting of two cards of the same rank, regardless of suit, with two aces being the highest ranking pair and two twos being the lowest ranking pair.

(c) When comparing two hands which are of identical poker hand rank pursuant to the provisions of this section, or which contain none of the poker hands authorized herein, the hand which contains the highest ranking card as provided in (a) above or (d) below, whichever is applicable, which is not contained in the other hand shall be considered the higher ranking hand. If the hands are of identical rank after the application of this subsection, the hands shall be considered tied and the pot shall be equally divided among the players with the tied hands.

(d) The rank of the cards used in low poker, for the determination of winning hands, in order of highest to lowest rank, shall be: ace, two, three, four, five, six, seven, eight, nine, 10, jack, queen and king. All suits shall be considered equal in rank.

(e) The ranking of a low poker hand as determined by the holding of a full five card hand shall be the opposite of the rankings for a high poker hand as set forth in (b) above; provided, however, that straights and flushes shall not be considered for purposes of determining a winning hand at low poker.

(f) In all games of poker, a five card hand shall be ranked according to the cards actually contained therein and not by the player's opinion or statement of its value.

19:47-14.4 Opening the table for gaming

(a) After receiving two decks of cards at the table, in accordance with N.J.A.C. 19:46-1.18 and N.J.A.C. 19:47-14.2, the dealer shall sort and inspect the cards and the floorperson or supervisor thereof shall verify the inspection as required by N.J.A.C. 19:46-1.18.

(b) Following the inspection of the cards by the dealer and the verification by the floorperson or supervisor thereof, the cards shall be spread out face up on the table for visual inspection by the first two players to be seated at the table. The cards shall be spread out according to suit and in sequence.

(c) Immediately prior to the commencement of play and not before a minimum of two players are afforded an opportunity to visually inspect the cards from each deck at the table, each deck shall be separately turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Each deck of cards shall be shuffled in accordance with N.J.A.C. 19:47-14.5. One of the decks shall be cut in accordance with N.J.A.C. 19:47-14.5 and the other deck shall be maintained pursuant to N.J.A.C. 19:46-1.13E for subsequent use pursuant to N.J.A.C. 19:47-14.2. In the alternative, a casino licensee may wash, shuffle and cut only the deck intended for immediate use and maintain the other deck pursuant to N.J.A.C. 19:46-1.13E. Upon rotation pursuant to N.J.A.C. 19:47-14.2, the other deck shall be washed, shuffled and cut in accordance with the requirements herein and N.J.A.C. 19:47-14.5.

19:47-14.5 Shuffle and cut of the cards

(a) Immediately prior to commencement of play and after the completion of each round of play, the dealer shall shuffle all cards so that they are randomly intermixed.

(b) After the cards have been shuffled and placed on the table in front of the dealer, the dealer shall, using one hand, cut the deck by taking a stack of at least 10 cards from the top of the deck and place them on top of the cover card. The dealer shall then place the cards remaining in the deck on top of the stack of cards which were cut. The cover card shall always be placed in front of the deck of cards prior to the cut of the cards by the dealer.

(c) If there is no gaming activity at the poker table, each deck of cards at the table shall be spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once at least two players have arrived at the table. After the first two players are afforded an opportunity to visually inspect both of the decks, the procedures required by N.J.A.C. 19:47-14.4(c) shall be completed for one deck and the remaining deck shall be maintained pursuant to N.J.A.C. 19:46-1.13E.

19:47-14.6 Poker overview; general dealing procedures for all types of poker

(a) Poker shall be conducted in a separate and distinct area of the casino floor or the casino simulcasting facility approved by the Commission.

(b) Poker shall be played by a minimum of two players and a maximum of 11 players. Poker shall be dealt by a dealer at a poker table. For all types of poker set forth in N.J.A.C. 19:47-14.8, the dealer shall not participate in the playing or outcome of the game in any way except as otherwise authorized in this subchapter.

(c) A player shall wager on the cards that the player holds in his or her hand. All bets by a player shall be placed by the dealer in the designated area of the table known as the pot. A player may be required to ante or place a blind bet prior to the receipt of any cards. After each round of cards is dealt, a betting round shall be conducted. Each player shall decide whether to continue contending for the pot by calling or raising the bet of the other players.

(d) The object of the game shall be for a player to win the pot either by making a bet that no other player elects to call, or by having the hand of highest rank at the showdown in accordance with the provisions of N.J.A.C. 19:47-14.3. If two or more players are still in contention for a pot after all cards have been dealt and the final betting round has been completed, there shall be a showdown among the players still in contention to determine which player has the hand of highest rank. Based on the type of poker being played, the winning player may be the player who holds the highest ranking high poker hand, the highest ranking low poker hand or both the highest ranking high and low poker hands.

(e) The following procedures shall be utilized by the dealer when dealing the game of poker:

1. The dealer shall choose the hand in which he or she will hold the cards. Once the dealer has chosen a hand, the dealer must use that hand whenever holding the cards. The cards held by the dealer shall, at all times, be held in front of the dealer, as level as possible and over the poker table. If during a round of play, the deck must be set down to handle a transaction, the dealer shall place a marker button on top of the deck until the transaction has been completed.

2. The dealer shall verbalize or physically indicate the action which is occurring at the poker table with regard to the conduct of the game and instruct each player as to his or her various turns to act and options.

3. All burn cards required by this subchapter shall be kept separate from the pile of discarded cards.

4. The dealer shall be required to count the stub, at least once every 15 minutes, in order to determine that the correct number of cards are present. If this count reveals an incorrect number of cards, the deck shall be removed from the table in accordance with N.J.A.C. 19:46-1.18(n).

5. At the completion of a round of play, the dealer shall award the pot to the winning player or players after a showdown or to the last remaining player if all other players have folded. Prior to pushing the pot to the winner and collecting the winning hand, the dealer shall first collect the cards from all losing players.

6. All side pots shall be awarded before the dealer awards the pot in the center of the poker table.

7. All discarded hands shall be counted by the dealer to determine that the proper number of cards have been returned.

8. The dealer shall collect the rake in accordance with N.J.A.C. 19:47-14.14.

19:47-14.7 Wagers

(a) Only players who are seated at the poker table may be permitted to receive cards and participate in each betting round.

(b) Depending upon the particular type of poker game being dealt, a player may be required to:

1. Place an ante prior to receiving any cards;

2. Place a predetermined blind bet prior to receiving any cards; or

3. Place a forced bet to initiate a betting round based on that player's up-card.

(c) A player may only participate in the wagering during a round of play with the gaming chips, gaming plaques or currency which were already on the poker table in front of the player when the round of play commenced.

1. A player may only add to his or her gaming chips, gaming plaques or currency between rounds of play and may not remove any of his or her gaming chips, gaming plaques or currency from the poker table at any time during ongoing play pursuant to the definition of table stakes as set forth in N.J.A.C. 19:47-14.1.

2. Currency which is available for use by a player pursuant to the requirements of this section may be utilized to initiate, call or raise a bet if such currency is expeditiously converted into gaming chips or gaming plaques by the dealer in accordance with the regulations governing the acceptance and conversion of such instruments.

3. In order to participate in a round of play, a player shall be required to have an amount of gaming chips, gaming plaques or currency available on the poker table prior to the start of the round of play which is sufficient to make any bet required by (b) above and at least one bet at the posted table minimum.

4. A player who satisfies the requirements of (c)3 above but who depletes his or her funds on the poker table prior to the completion of a round of play shall be deemed to be "all-in."

i. An "all-in" player shall retain financial interest in the outcome of the round of play, but shall only be eligible to win the amount of the pot to which he or she contributed;

ii. An "all-in" player shall continue to receive any cards to which he or she would normally be entitled; and

iii. Betting shall continue unimpeded among the other players by generating a separate secondary pot which only those players shall be eligible to win.

(d) A verbal statement of "fold," "check," "call," "raise," or an announcement of a specific size wager by a player, assuming it is within the rules of the poker game being played and the minimum and maximum wager limits for the poker table, shall be binding on the player if it is that player's turn to act.

(e) A player who announces a bet or raise of a certain amount but places a different amount of gaming chips or gaming plaques in the pot shall be required to correct his or her bet or raise to the announced amount in accordance with the instructions of the dealer.

(f) A player shall be considered to have placed a bet if the player:

1. Pushes gaming chips or gaming plaques forward to indicate the intent of placing a bet;

2. Releases gaming chips or gaming plaques into the pot; or

3. Releases gaming chips or gaming plaques at a sufficient distance from the player and towards the pot to make it obvious that it is intended as a bet.

(g) A player shall not be permitted to make a bet and thereafter attempt to increase the amount of that bet.

1. If the player wishes to add additional gaming chips or gaming plaques to the bet, the player must indicate at the time the bet is being made that the bet is not yet complete.

2. A player who puts the proper amount of gaming chips or gaming plaques into the pot to call a bet, without indicating his or her intention to raise, may not thereafter raise the previous bet.

3. Subject to the posted table wagering limits, a player who announces "raise" may continue to bet gaming chips or gaming plaques until both of his or her hands come to rest in front of the pot.

(h) It shall be the dealer's responsibility to ensure that no player touches any of the gaming chips or gaming plaques once placed into the pot.

(i) Unless a raise has been verbally announced by that player, a player who puts into the pot a single gaming chip that is larger than required is assumed to have only called the preceding bet and to be awaiting change from the dealer.

(j) Unless specifically posted to the contrary, a player shall be permitted to raise after he or she has previously checked in a betting round.

19:47-14.8 Types of permissible poker games

(a) A casino licensee may offer the following types of poker games:

1. Seven-card stud (high, high-low split and high-low split eight or better);
2. Hold 'Em (high);
3. Omaha (high, high-low split eight or better);
4. Five-card draw (high and low); and
5. Five-card stud (high).

(b) No casino licensee shall offer or permit the playing of any poker game in its casino room or casino simulcasting facility which is not authorized by this subchapter.

19:47-14.9 Seven-card stud poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of seven-card stud high, seven-card stud high-low split or seven-card stud high-low split eight or better poker offered in its casino room or casino simulcasting facility.

(b) Each poker table shall be restricted to a maximum of eight players as determined by the casino licensee. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.A.C. 19:47-8.3.

(c) Starting with the first player to the left of the dealer and continuing in a clockwise rotation around the poker table, the dealer shall deal two rounds of cards face down and one round of cards face up to each player.

(d) Once each player has received three cards in accordance with (c) above, the first betting round shall commence by comparing the up-card of each player. For the purposes of this subsection only, in the event that two or more up-cards are of the same rank, the up-cards shall then be ranked by suit, with the highest to lowest ranked suits in order as follows: spades, hearts, diamonds, clubs. Betting shall be commenced by:

1. For high poker, the player with the lowest ranked up-card;
2. For high-low split poker, the player with the highest ranked up-card. For this purpose, an ace shall be considered ranked below a two; and
3. For high-low split eight or better poker, the player with the lowest ranked up-card. For this purpose, an ace shall be considered the highest ranking card.

(e) Following the placement of the forced bet required by (d) above, each subsequent player may, proceeding in a clockwise rotation from the player who placed the forced bet, fold, call or raise the bet. After the last player has responded to the most recent bet, the betting round shall be considered complete.

(f) Upon completion of the first betting round, the dealer shall burn the top card of the deck and then, starting with the first remaining player to his or her left, deal a fourth card face up to each player who has not folded. The next betting round shall commence as follows:

1. The player with the highest ranking poker hand showing shall be required to bet or check; or
2. If the highest ranking poker hand showing is held by two or more players, the player closest to the left of the dealer shall be required to bet or check.

(g) Following the initial bet or check required by (f) above, each subsequent player, proceeding in a clockwise rotation, may fold, call, raise or, if the preceding players have not made a bet, check. Each player may check until a bet has been made. Once a bet has been made, the next player in a clockwise rotation may fold, call or raise. After the last player has responded to the most recent bet, the betting round shall be considered complete.

(h) The dealer shall then deal two additional rounds of cards face up and one round of cards face down to each player who has not folded, with each such round followed by a betting round conducted in accordance with the provisions of (f) and (g) above. Prior to each round of cards being dealt, the dealer shall burn the top card of the deck. If insufficient cards remain in the deck to give each remaining player a seventh and final card, the top card of the deck shall be burned and a common card shall be dealt face up in the center of the table. If there is one or less cards remaining in the deck, the dealer shall shuffle the burn cards, burn a card and then deal the common card.

(i) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. Each player remaining in the game shall form a five card poker hand from the seven cards which he or she was dealt. This five card hand shall constitute the poker hand of that player at the showdown. The winner of the pot shall be:

1. In high poker, the player with the highest ranking five card high hand;
2. In high-low split poker or high-low split eight or better poker, the player with the highest ranking five card high hand and the player with the highest ranking five card low poker hand, subject to the provisions of (j) below, who shall divide the pot equally.

i. If a pot cannot be divided equally, the excess amount, which shall not exceed $1.00, shall be given to the player with the highest ranking high hand.

ii. If a tie exists between two or more players for the highest ranking high hand, the high hand share of the pot shall be divided equally among the tied players. If the high hand share of the pot cannot be divided equally among the tied players, the excess, which shall not exceed $1.00, shall be given to the player with the highest ranking high poker card by suit.

iii. If a tie exists between two or more players for the highest ranking low hand, the low hand share of the pot shall be divided equally among the tied players. If the low hand share of the pot cannot be divided equally among the tied players, the excess, which shall not exceed $1.00, shall be given to the player with the lowest ranking low poker card by suit.

iv. For purposes of this subsection, the cards shall be ranked by suit with the highest to lowest ranked suit in order as follows: spades, hearts, diamonds and clubs.

(j) In seven-card stud high-low split eight or better poker, a winning low hand may not contain any pairs or a nine, 10, jack, queen or king. This defines the qualifying clause known as "eight or better." In the event that none of the hands of the remaining players satisfies this requirement, the entire pot shall be awarded to the player with the highest ranking high hand.

(k) In seven-card stud high-low split poker and seven card stud high-low split eight or better poker, the player may form two different hands of five cards each out of the player's seven available cards, enabling that player to contend for both the high hand and low hand share of the pot. A player may use the same five card grouping to make a high poker hand and a low poker hand. For example:

1. A hand consisting of a two, three, four, five and six would qualify as a straight for purposes of the high hand and as a high ranking low hand; or
2. A hand consisting of five cards of the same suit, none higher than an eight, would qualify as a flush for purposes of the high hand and as a high ranking low hand.

(l) In seven-card stud high-low split poker and seven-card stud high-low split eight or better poker, an ace may be used concurrently as a low card to satisfy a low hand and as a high card to satisfy a high hand.

19:47-14.10 Hold 'em poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of hold 'em high poker offered in its casino room or casino simulcasting facility. Hold 'em poker shall be played to determine a winning high hand only.

(b) Each poker table shall be restricted to a maximum of eleven players. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.A.C. 19:47-8.3.

(c) The order in which the cards shall be dealt and the order in which players shall be required or have the option to bet shall be determined as follows:

1. A flat disk called the "button" shall be used to indicate an imaginary dealer;

2. At the commencement of play, the button shall be placed in front of the first player to the right of the dealer; and

3. Thereafter, the button shall rotate around the table in a clockwise manner after each round of play.

(d) The player to the immediate left of the button shall be required to initiate the first betting round by placing a blind bet in accordance with the posted table requirements. A casino licensee may require additional blind bets to be made immediately subsequent to the initial blind bet. The amount and number of all blind bets required by the casino licensee shall be posted on a sign in accordance with N.J.A.C. 19:47-8.3.

(e) Starting with the player to the immediate left of the button and continuing in a clockwise rotation around the poker table, the dealer shall deal two rounds of cards face down to each player, with the player with the button being the last player to receive a card each time.

(f) Following the placement of the blind bet(s), each player shall in turn, in a clockwise rotation around the poker table, either fold, call or raise the bet. The option to raise shall also apply to the player who made the blind bet(s). After the last player has responded to the most recent bet, the betting round shall be considered complete.

(g) The dealer shall then burn the top card of the deck and proceed to deal three community cards face up in the center of the table. The next betting round shall commence with the option to bet or check belonging to the first player to the left of the button who has not folded. Each subsequent player may, in clockwise rotation, fold, call, raise the bet or, if preceding players have not made a bet, make an opening bet or check. The betting round shall be considered complete when each player has either folded or called in response to the most recent bet.

(h) Upon completion of the betting round required by (g) above, the dealer shall again burn the top card of the deck and then deal a fourth community card face up in the center of the table. The next betting round shall be commenced and completed in accordance with the requirements of (g) above.

(i) Upon completion of the betting round required by (h) above, the dealer shall again burn the top card of the deck and then deal a fifth and final community card face up in the center of the table. The final betting round shall be commenced and completed in accordance with the requirements of (g) above.

(j) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. Each player remaining in the game shall form his or her highest ranking five card high poker hand by using, in any combination, his or her own two cards and the five community cards available on the table. The winner of the pot shall be the player with the highest ranking five card high poker hand. If the highest ranking five card high poker hand that each of the remaining players can form is comprised of the five community cards, all players remaining in the round of play shall share equally in the pot.

19:47-14.11 Omaha poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of omaha high and omaha high-low split eight or better poker offered in its casino room or casino simulcasting facility.

(b) Each poker table shall be restricted to a maximum of ten players. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.AC. 19:47-8.3.

(c) The order in which the cards shall be dealt and the order in which players shall be required or have the option to bet shall be determined in accordance with the procedures governing the use of a button as set forth in N.J.A.C. 19:47-14.10(c).

(d) Starting with the player to the immediate left of the button and continuing in a clockwise rotation around the poker table, the dealer shall deal four rounds of cards face down to each player with the player with the button being the last player to receive a card each time.

(e) After each player is dealt four cards face down, an initial blind bet and all subsequent dealing and betting rounds shall be completed in accordance with the provisions of N.J.A.C. 19:47-14.10(d) through (i).

(f) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. Each player remaining in the game shall form a five card poker hand by using two of the four cards dealt to the player and three of the five community cards. This five card hand shall constitute the poker hand of the player at the showdown. The winner of the pot shall be:

1. In high poker, the player with the highest ranking five card high poker hand; or

2. In high-low split eight or better poker, the player with the highest ranking five card high poker hand and the player with the highest ranking five card low poker hand, subject to the provisions of (g) below, who shall divide the pot equally.

i. If a pot cannot be divided equally, the excess amount, which shall not exceed $1.00, shall be given to the player with the highest ranking high hand.

ii. If a tie exists between two or more players for the highest ranking high hand, the high hand share of the pot shall be divided equally among the tied players. If the high hand share of the pot cannot be divided equally amoung the tied players, the excess, which shall not exceed $1.00, shall be given to the player with the highest ranking high poker card by suit.

iii. If a tie exists between two or more players for the highest ranking low hand, the low hand share of the pot shall be divided equally among the tied players. If the low hand share of the pot cannot be divided equally among the tied players, the excess, which shall not exceed $1.00, shall be given to the player with the lowest ranking low poker card by suit.

iv. For purposes of this subsection, the cards shall be ranked by suit with the highest to lowest rank suit in order as follows: spades, hearts, diamonds and clubs.

(g) In omaha high-low split eight or better poker, the eligibility requirements of N.J.A.C 19:47-14.9(j) must be satisfied. In the event that none of the hands of the remaining players satisfies this requirement, the entire pot shall be awarded to the player with the highest ranking high poker hand.

(h) The following rules shall only apply in omaha high-low split eight or better poker:

1. A player may form two different hands of five cards each, enabling that player to contend for both the high hand and low hand share of the pot; provided, however, that the distribution of cards contained in each hand shall comply with (f) above;

2. A player may use the same five card grouping to make a high hand and a low hand; and

3. An ace may be used concurrently as a low card to satisfy a low hand and as a high card to satisfy a high hand.

19:47-14.12 Five-card draw poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of five-card draw high and five-card draw low poker offered in its casino room or casino simulcasting facility.

(b) Each poker table shall be restricted to a maximum of eight players. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.A.C. 19:47-8.3.

(c) The order in which the cards shall be dealt and the order in which players shall be required or have the option to bet shall be determined in accordance with the procedures governing the use of a button as set forth in N.J.A.C. 19:47-14.10(c).

(d) Starting with the player to the immediate left of the button and continuing in a clockwise rotation around the poker table, the dealer shall deal five rounds of cards face down to each player with the player with the button being the last player to receive a card each time.

(e) After each player has been dealt five cards face down, an initial betting round shall be completed in accordance with the provisions of N.J.A.C 19:47-14.10(d) and (f).

(f) After completion of the initial betting round, each player remaining in the round of play, starting with the player to the immediate left of the button and continuing in a clockwise rotation around the poker table, shall have an opportunity to draw new cards. This process shall be accomplished one player at a time. Each player may keep his or her original hand or discard as many cards as he or she chooses. Each discarded card shall be replaced by the dealer with a new card dealt from the deck as follows:

1. Prior to the first player receiving any new cards, the dealer shall burn the top card of the deck; and

2. If insufficient cards remain in the deck for each player remaining in the round of play to draw new cards, the discard pile shall be reshuffled and used for this purpose; provided, however, that the cards to be discarded by a player who has not yet requested new cards shall not be included as part of the reshuffled cards.

(g) The final betting round shall commence with the option to bet or check belonging to the first player to the left of the button who has not folded. Each subsequent player may, in clockwise rotation, fold, call, raise the bet or, if preceding players have not made a bet, make an opening bet or check. The final betting round shall be considered complete when the last player has responded to the most recent bet.

(h) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. The winner of the pot shall be:

1. In high poker, the player with the highest ranking five card high hand; and

2. In low poker, the player with the highest ranking five card low hand.

19:47-14.13 Five-card stud poker; procedures for dealing of cards; completion of each round of play

(a) Each casino licensee shall be required to observe the procedures set forth in this section for each game of five-card stud high poker offered in its casino room or casino simulcasting facility. Five-card stud shall be played to determine a winning high hand only.

(b) Each poker table shall be restricted to a maximum of eight players. Each player who elects to participate in a round of play may be required to place an ante. The rule governing the placement of an ante and the amount of the ante, if any, shall be posted on a sign at each poker table in accordance with N.J.A.C. 19:47-8.3.

(c) Starting with the first player to the left of the dealer and continuing in a clockwise rotation around the poker table, the dealer shall deal one round of cards face down and one round of cards face up to each player.

(d) Once each player has received two cards in accordance with (c) above, the first betting round shall commence by comparing the up-card of each player. The player with the lowest ranked up-card, which shall be determined by suit in accordance with the provisions of N.J.A.C. 19:47-14.9(d) if two or more players have an up-card of the same rank, shall be required to make a forced bet.

(e) Following the forced bet, each subsequent player may, proceeding in a clockwise rotation from the player who placed the forced bet, fold, call or raise the bet. After the last player has responded to the most recent bet, the betting round shall be considered complete.

(f) Upon completion of the first betting round, the dealer shall burn the top card of the deck and then deal another round of cards face up to each player who has not folded. The next betting round shall be commenced by the player with the highest ranking high poker hand showing. If two or more hands are of equal rank, the player closest to the left of the dealer shall be required to bet. The betting round shall be completed in accordance with the procedures in (e) above.

(g) The dealer shall then deal two additional rounds of cards face up to each player who has not folded, with each such round followed by a betting round conducted in accordance with the provisions of (f) above. Prior to each round of cards being dealt, the dealer shall burn the top card of the deck.

(h) If more than one player remains in the round of play after the final betting round has been completed, a showdown shall be used to determine the winner of the pot. The winner of the pot shall be the player with the highest ranking five card high poker hand.

19:47-14.14 Poker revenue

(a) The casino licensee shall derive its poker revenue at all poker tables by extracting a commission known as the "rake." Each casino licensee shall submit to the Commission in its Rules of the Games Submission:

1. The types of rake utilized;

2. The methodology used for calculating the rake; and

3. The amount of maximum permissible rake.

(b) Each casino licensee shall use one or more of the following procedures in determining and extracting the rake:

1. A straight percentage rake, pursuant to which:

i. A fee, not to exceed 10 percent of all sums bet in the betting round, shall be extracted from a pot and any side pots;

ii. The amount to be raked shall be calculated and extracted from the pot and any side pots after the conclusion of a betting round and placed into the designated rake area pursuant to N.J.A.C. 19:46-1.13E as play progresses; and

iii. Upon completion of a round of play, the rake shall be immediately placed by the dealer into the table inventory container.

2. A rake which shall be taken in incremental amounts, pursuant to which:

i. Assessments of predetermined amounts shall be extracted from the pot and any side pots as certain predetermined dollar levels have been achieved;

ii. Upon collection, the amount to be raked shall be placed into the designated rake area pursuant to N.J.A.C. 19:46-1.13E; and

iii. Upon completion of a round of play, the rake shall be immediately placed by the dealer into the table inventory container.

3. A rake based on time charges, pursuant to which:

i. Assessments may be imposed on a "per-player" basis or on a "per-table" basis. If taken on a "per-player" basis, inactive players seated at the table shall also be assessed;

ii. Time charges shall be expressed as an hourly fee based on the particular minimum and maximum wagering limits at a game;

iii. Time charges may be assessed fractionally every 20 or 30 minutes as determined by the casino licensee;

iv. Time charges once assessed shall be placed by the dealer into the designated rake area pursuant to N.J.A.C. 19:46-1.13E; and

v. Upon verification by a floorperson or supervisor thereof of the time charges collected, the rake shall be immediately placed by the dealer into the table inventory container.

(c) A sign describing the type and amount of rake to be collected pursuant to (b) above shall be posted at each poker table in accordance with the requirements of N.J.A.C. 19:47-8.3.

(d) An uncalled final bet shall not be considered part of the pot for purposes of calculating the amount of rake pursuant to methods (b)1 and 2 above.

(e) Once the dealer has extracted the rake and the pot and any side pots have been collected by the winning player or players, no additional rake shall be taken by the casino licensee.

19:47-14.15 General operating rules for all types of poker; handling of irregularities

(a) It shall be the responsibility of each player to ensure that his or her hand has lost to the other hands at the table before discarding the hand.

(b) In all disputes in which a ruling, interpretation, clarification or intervention is required, the decision of the poker shift supervisor shall be final.

(c) Each player shall be required to keep all cards dealt to the player in full view of the dealer at all times. The dealer shall ensure compliance with this requirement.

(d) At the showdown, a winning hand must be clearly displayed in its entirety and properly identified. The player initiating the final wager shall be the first player to show his or her hand at the showdown; all other players who have not folded shall then reveal their hands in a clockwise rotation. Any player holding a losing hand may concede his or her rights to the pot and discard the hand; provided, however, that the casino licensee may require the disclosure of any discarded hands.

(e) If any player folds after making a forced bet or blind bet or on a round of checking, that player's position shall continue to receive a card until there is a subsequent wager at the table.

(f) Misdeals shall cause all the cards to be returned to the dealer for a reshuffle. The following errors shall be cause for a misdeal:

1. Failure to shuffle and cut the cards in accordance with N.J.A.C. 19:47-14.5;

2. Dealing to an incorrect starting position if the error has been detected prior to two players voluntarily placing wagers into the pot;

3. If more than one card is found face-up in the deck; and

4. Failure to deal to an eligible seated player, if the error has been detected prior to two or more players voluntarily placing wagers into the pot.

(g) If one or more cards are mistakenly dealt to an ineligible player, only those cards dealt to that player shall be discarded and the round of play shall be continued.

(h) If at any time during a round of play, missing cards are discovered or additional cards are found, the round of play shall be called dead, all gaming chips and gaming plaques in the pot shall be returned to the appropriate player and the deck shall be placed pursuant to the procedures outlined in N.J.A.C. 19:46-1.18.

(i) A card found face upwards in the deck shall not be used in the game and shall be placed with the pile of discarded cards.

(j) A player who fails to take reasonable means to protect his or her hand shall have no redress if his or her hand becomes a fouled hand or the dealer accidentally collects the hand.

1. Hole cards in a game of stud poker shall be considered protected for purposes of fouling a hand.

2. If a protected hand comes into contact with discarded cards, every effort shall be made to reconstruct the hand and complete the round of play.

3. A player who has a protected hand collected by the dealer or fouled by discarded cards shall be entitled to a refund from the pot of all monies that he or she put in the pot if the player has been a victim of and not a contributor to the error.

4. A player who leaves the table without comment and has an unprotected hand shall be assumed to have no interest in the pot, and his or her cards shall be collected and discarded.

(k) Verbal statements which are clearly audible by and directed to the dealer shall always have precedence over actions and gestures and are considered binding on the player whose turn it is to act.

1. A player shall be deemed to have folded if, when faced with calling a wager, he or she:

i. Discards his or her hand face-down towards the pile of discarded cards or the pot; or

ii. Turns face-down his or her up-cards in a game of stud poker.

2. If a player is obligated to place a wager by virtue of a verbal statement or forced betting situation, throwing away his or her cards does not relieve the player of that obligation.

(l) If a player's first or second hole card is accidentally turned face-up in the dealing process, the third card shall be dealt face-down. If both hole cards are accidentally turned face-up, the dealer shall collect the two cards, call the player's hand dead and return the player's ante, if applicable.

(m) If a card is accidentally dealt off the table, it shall not be used in that round of play and shall be placed with the pile of discarded cards after a thorough examination by the dealer.

(n) If any of the face-down cards in the games of Hold 'em or omaha are accidentally turned face-up in the dealing process, the dealer shall exchange the exposed card with a card from the top of the deck and place the exposed card with the pile of discarded cards.

(o) Nothing herein shall preclude a casino licensee from clarifying and supplementing the above irregularities through its internal control procedures, as submitted to the Commission for review and approval.

19:47-14.16 Conduct of players

(a) Each player in a poker game shall play the game solely to improve his or her chance of winning and shall take no action to improve another player's chance of winning. No player may communicate any information to another player which could assist the other player in any manner respecting the outcome of a poker game.

(b) A casino licensee which has reasonable cause to believe that a player has acted or is acting in violation of (a) above shall require the player to leave the game and shall notify the Commission and Division as expeditiously as possible.

(c) Any casino licensee which takes action under (b) above in good faith shall not be liable civilly to such person.

19:47-14.17 Minimum and maximum wagers

Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each poker table, except that, if all patrons at a poker table agree to increase the minimum wager at the table, the provisions of N.J.A.C. 19:47-8.3(b) need not be followed. Such sign shall also include any restrictions with regard to the maximum number of raises that may be permitted for any round of betting.

19:47-14.18 Waiting list

A casino licensee may maintain a list of players who have requested to be seated at a particular type of poker table. All vacant seats shall be filled on a first come first served basis. The casino licensee shall be permitted to announce only those seating vacancies for which an individual has been placed on a waiting list.

19:47-14.19 Projected poker revenue

Each casino licensee offering the game of poker shall maintain a manual or computerized record of projected poker revenue for each table by gaming day. A copy of the daily projections shall be forwarded to the casino accounting department, on a daily basis, for comparison with the figures recorded on the Master Game Report. Any significant variances between the projection and the figures on the Master Game Report shall be immediately reported to a supervisor of the poker unit, the casino controller and the Commission.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Commercial Fertilizer and Soil Conditioners

Adopted New Rules: N.J.A.C. 2:69

Proposed: October 4, 1993 at 25 N.J.R. 4544(a).
Adopted: November 24, 1993 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: November 24, 1993 as R.1993 d.688, **without change.**

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

Effective Date: December 20, 1993.
Expiration Date: December 20, 1998.

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

N.J.A.C. 2:69 expired November 7, 1993 pursuant to Executive Order No. 66(1978). The rules are therefore being readopted as new rules at this time and with amendments which had been proposed thereto (see N.J.A.C. 1:30-4.4(f)).

Full text of the rules readopted as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:69.

Full text of the adopted amendments follows:

2:69-1.7 General methodology for sampling and laboratory analyses

(a) The Department of Agriculture adopts as a rule and incorporates herein by reference the general methods for sampling and laboratory analyses set forth in the 15th (1990) edition of the Official Publication of the Association of Analytical Chemists, Inc., as amended and supplemented.

(b) A copy of the 15th (1990) edition of the official methods of the Association of Official Analytical Chemists (AOAC) is on file in the Director's Office, Division of Regulatory Services, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may be procured by writing to AOAC, Fulfillment Coordinator, 2200 Wilson Boulevard, Arlington, Virginia 22201-3301.

2:69-1.8 General rules regarding fertilizers

(a) The Department of Agriculture adopts as a rule and herein incorporates by reference each annual edition, in turn, of the Official Publication of the Association of American Plant Food Control Officials, Inc.

(b) A copy of the current edition of the Official Publication of the American Plant Food Control Officials is on file in the Director's Office, Division of Regulatory Services, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625. Copies may be procured by writing to Joel M. Padmore, North Carolina Department of Agriculture, 4000 Reedy Creek Road, Raleigh, NC 27607.

2:69-1.10 Penalties

When an official analysis shows that a commercial fertilizer or soil conditioner is deficient in one or more of its guaranteed secondary or micro nutrients beyond the investigational allowance as established by N.J.A.C. 2:69-1.3 a penalty of $20.00 shall be assessed by the State Chemist against the licensee plus $5.00 per ton or fraction thereof. All penalties assessed under this regulation shall be pro-rated to the purchaser(s), or to a consumer(s) who thereafter received possession of a lot represented by the sample analyzed, within 60 days after the date of notice from the State Chemist to the licensee. Receipts shall be obtained and forwarded promptly to the State Chemist by the licensee. If the purchaser(s) or consumer(s) cannot be found, the amount of the penalty shall be paid to the State Treasurer.

(b)

DIVISION OF REGULATORY SERVICES

New Jersey Commercial Fertilizer and Soil Conditioners

Plant Food Nutrient Values

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

Proposed: August 16, 1993 at 25 N.J.R. 3585(a).
Adopted: October 25, 1993 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: October 28, 1993 as R.1993 d.600, **without change.**

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

Effective Date: December 20, 1993.
Expiration Date: December 20, 1998.

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

Full text of the adopted amendments follows:

2:69-1.11 Commercial values

(a) (No change.)

(b) These values shall be effective from September 24, 1993 through June 30, 1994.

BANKING

(c)

DIVISION OF REGULATORY AFFAIRS

Capital

Adopted New Rule: N.J.A.C. 3:4-1.6

Proposed: October 4, 1993 at 25 N.J.R. 4545(a).
Adopted: November 17, 1993 by Jeff Connor, Commissioner, Department of Banking.
Filed: November 23, 1993 as R.1993 d.661, **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. 17:1-8.1; 17:9A-17.1 Note; and 17:16M-9.

Effective Date: December 20, 1993.
Expiration Date: August 17, 1997.

Summary of Public Comments and Agency Responses:

The Department received a comment from Samuel J. Damiano, President of the New Jersey Council of Savings Institutions. The Department upon adoption has made a minor substantive change in response to this comment.

The rule as proposed permitted a depository institution with a capital ratio in excess of two percent to convert as an interim step toward a merger or acquisition with another institution so long as the resulting institution had a ratio of Tier 1 Capital to total assets of at least four percent. The statutes regarding charter conversions require that the resulting institution satisfy all capital maintenance requirements. N.J.S.A. 17:9A-17.4; N.J.S.A. 17:16M-4. The current Tier 1 capital requirement is four percent, N.J.A.C. 3:4-1.2. The comment suggested that it would be more appropriate to require that the resulting institution satisfy all capital requirements, rather than requiring that it have a four percent capital ratio. This would ensure that any future changes in the Tier 1 capital requirement would automatically also be effective as a requirement for charter conversions, as required by the above statutes. In response to this comment, the rule is changed on adoption to require that the resulting institution satisfy all capital maintenance requirements.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

3:4-1.6 Capital for interim conversion

(a) Notwithstanding any rule to the contrary, a depository institution with a ratio of Tier 1 capital to assets in excess of two percent shall be deemed to be adequately capitalized to qualify for a conversion to a bank, savings bank, capital stock savings bank, capital stock association or mutual association pursuant to N.J.S.A. 17:9A-17.1 et seq and/or N.J.S.A. 17:16M-1 et seq., provided that:

1. The conversion is an interim step toward a merger or acquisition with another institution; and

2. After the merger or acquisition, the resulting depository institution will *[have a ratio of Tier 1 capital to total assets of at least four percent]* ***satisfy all capital maintenance requirements***.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Subcodes

Adopted Amendments: N.J.A.C. 5:23-2.6, 2.14, 2.23, 3.2, 3.4, 3.8A, 3.11A, 3.14, 3.15, 3.16, 3.17, 3.18, 3.20, 3.21, 4.3A, 4A.8, 4A.11 and 12.2

Proposed: September 7, 1993 at 25 N.J.R. 3891(a).
Adopted: November 16, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.
Filed: November 23, 1993 as R.1993 d.662, **with technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3) **and with the proposed deletion of N.J.A.C. 5:23-3.4(g) and the repeal of N.J.A.C. 5:23-3.20A not adopted at this time, but still pending.**

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

Effective Date: December 20, 1993.
Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:

Comments were received from the following individuals and organizations:

Robert Lemmon, Chairman, U.C.C. Building Subcode Committee; Russell Bauer, Chairman, U.C.C. Elevator Subcode Committee; Andy Cattano, Director, Technical Services, New Jersey Builders Association; Charles A. Spitz, AIA, CSI; Martin Santini, AIA, APA, First Vice President, AIA/New Jersey; Robert F. DeSantis, AIA, Kaplan, Gaunt, DeSantis; Ronald P. Bertone, AIA, PP, Bertone-Sclare Associates; Richard M. Stokes, Esq., Manager, Government Affairs, Atlantic Electric; Richard Fryling, Jr., General Solicitor, Public Service Electric & Gas Company; and Scott L. Guibord, General Attorney, Jersey Power & Light Company.

COMMENT: In N.J.A.C. 5:23-3.2(d)4, the terms "area" and "height" should be reversed, since section 503.0 of the model code refers to "height and area," not "area and height."

RESPONSE: The terms "area" and "height" as used in N.J.A.C. 5:23-3.2(d)4 refer to the physical characteristics of the building, not to the title of section 503.0. The order in which the words are used is therefore of no significance.

COMMENT: In N.J.A.C. 5:23-3.2(d)5, reference should be made to section 1006.5 of the model code rather than to section 1006.0, since section 1006.5 is the section being amended.

RESPONSE: The text being amended is indeed in section 1006.5, which is a subsection of section 1006.0. The Department prefers to reference sections in as general a manner as possible in order to minimize the need for future revisions of N.J.A.C. 5:23 due to revisions in the model code.

COMMENT: In N.J.A.C. 5:23-3.14(b)2xix, reference should be made to N.J.A.C. 5:23-7.6 rather than to N.J.A.C. 5:23-7, since it is in N.J.A.C. 5:23-7.6 that the definition referred to is contained.

RESPONSE: This change has been made on adoption.

COMMENT: N.J.A.C. 5:23-3.14(b)11iv should provide that special inspections are required for Class I structures **or** when requested by the building subcode official.

RESPONSE: The word "or" was inadvertently omitted and is being added on adoption.

COMMENT: In N.J.A.C. 5:23-3.21(b)2vi, the bracket after "four or more risers" should have been placed after "three or more risers."

RESPONSE: This error is being corrected on adoption.

COMMENT: Although the mechanical section of the CABO One and Two-Family Dwelling Code is being adopted, no plan review or inspection responsibilities are delineated.

RESPONSE: This issue will be addressed in a separate proposal.

COMMENT: Section 3008.0 of the building subcode should be enforced by the elevator subcode official.

RESPONSE: Responsibility for the enforcement of this section has been assigned to the building subcode official because the section deals with maintenance of the fire-resistive integrity of building openings in according with section 7 of the building subcode. The elevator subcode official is responsible for the enforcement of the detailed provisions related to hoistway doors and hardware contained in ANSI A17.1, including those that are exempt in section 3008.0.

COMMENT: Sections 3010.5 and 2010.5 of the building subcode should not be included within the jurisdiction of the elevator subcode official.

RESPONSE: The correct citation is 3010.3, not 2010.5. Section 3010.0 of the building subcode deals with the installation of conveyors, which is an example of a special project that requires a determination by the appropriate subcode official and the construction official as to whether or not there exists a need for special technical services, in accordance with N.J.A.C. 5:23-2.19. In the Department's judgment, the elevator subcode official can most appropriately advise the construction official in matters related to machinery guards and safeties for conveyors.

COMMENT: Plan review functions of article 620 of the electrical subcode should be jointly enforced by the elevator and electrical subcode officials in all buildings.

RESPONSE: Installation of elevator devices not accessible to the general public in Use Groups R-3 or R-4, or in exempt R-2 structures, is another example of a special project that requires a determination by the appropriate subcode official as to the need for special technical services. Installation of elevator devices not accessible to the public in these structures is not covered by N.J.A.C. 5:23-12, the elevator safety subcode, and such installation is therefore within the jurisdiction of the electrical subcode official.

COMMENT: A closed parenthesis is missing in N.J.A.C. 5:23-3.4(c)5.

RESPONSE: This error is being corrected by deleting the exception and listing the sections that are not excepted.

COMMENT: N.J.A.C. 5:23-3.15(b)14i, as proposed, would eliminate a traditional and practical method of foundation drainage, involving the installation of foundation drainage systems on the interior side of the foundation or footings, that is permitted by the National Standard Plumbing Code, but not by the BOCA National Building Code/1993 or the CABO One and Two-Family Dwelling Code/1992. Prohibition of this method would also conflict with the radon hazard subcode. These installations should remain within the jurisdiction of the plumbing subcode official, and not be made the responsibility of the building subcode official.

RESPONSE: Overall, the foundation drain requirements of the building subcode are more comprehensive than those of the model plumbing code and allow more options to the builder. One of the two had to be chosen in order to avoid a conflict between codes and it was for this reason that the building subcode was chosen. The Department will further investigate the effect of this provision on the radon hazard subcode.

COMMENT: The term and definition of "construction documents" should not be deleted. It is the accepted term in the construction industry for what were formerly referred to as "plans and specifications." The deletion of the term and definition will make many sections of the building subcode unclear.

RESPONSE: The term and definition are being retained.

COMMENT: The proposed N.J.A.C. 5:23-3.16(b)1i, which would eliminate from the Uniform Construction Code the National Electrical Code's exemption for outdoor utility lighting on private property, should not be adopted. The reasons given by the three utilities that submitted comments are as follows:

Such installations are installed, owned, operated and maintained by electric utilities and connected to their distribution systems. Pursuant to Board of Regulatory Commissioners (BRC) requirements, these installations are performed in accordance with applicable requirements of the

National Electrical Code (NEC), the National Electrical Safety Code (NESC) and standard utility practice. These installations are not hazardous. They are no different from similar installations on public property.

The only reason this proposal is being made is as a response to pressure from electrical contractors who seek to regulate competition by subjecting utilities to the same permitting and inspection requirements that contractors are subject to when they do this type of work.

The NEC is intended to apply to privately owned, controlled, maintained and readily accessible installations on the customer's side of the meter, while the NESC was written for, and applies to, utility installations. DCA has no basis to reject the NEC's exemption of utility installations from its provisions and no authority to override the determination by the BRC that utilities need only comply with those provisions of the NEC that are applicable.

N.J.S.A. 48:2-13 assigns sole jurisdiction over public utilities and their equipment and facilities to the BRC. The customer's load side of the meter is the clear demarcation point between DCA and BRC jurisdiction. Where, as in this case, there is no meter, there is no DCA jurisdiction.

DCA has no authority to amend a model code in the manner proposed. This change was considered, and rejected, by the model code organization.

The proposed amendment would impose added costs on the utilities, which would have to be passed on to customers, without any corresponding public benefit. It would also necessitate retraining of employees to follow NEC requirements that are at variance with those of the NESC and standard utility practice and could result in a reduction of the program, which would adversely affect customers' safety at night. Sudden adoption of new work practices could create risks for utility employees. The added inspection requirements would be burdensome to local enforcing agencies.

RESPONSE: P.L. 1983, c.496, section 5 (N.J.S.A. 52:27D-123.1) provides that "any law or regulation to the contrary notwithstanding, the structure, design, construction, maintenance and use of all buildings and structures to be erected and the alteration, renovation, rehabilitation, repair, maintenance, removal, or demolition of all buildings or structures already erected shall be regulated pursuant to the "State Uniform Construction Code Act," P.L. 1975, c.217 (C.52:27D-119 et seq.)." "Structure" is defined, in N.J.S.A. 52:27D-121, as "a combination of materials to form a construction for occupancy, use, or ornamentation, whether installed on, above, or below the surface of a parcel of land; provided, the word 'structure' shall be construed when used herein as though followed by the words 'or part or parts thereof and all equipment therein' unless the context clearly requires a different meaning." Neither of these provisions makes any distinction between structures owned by, or work done by, a public utility and structures owned by, or work done by, others. The jurisdiction of the Board of Regulatory Commissioners cited by the commenters was established by P.L. 1946, c.219. To the extent of any inconsistency, the later statute, P.L.1983, c.496, governs and DCA therefore has jurisdiction over structures used in site lighting of private property that are owned by public utilities.

The provision of the National Electrical Code that is being amended is an administrative provision that, unlike provisions that establish technical requirements, is subject to modification by administrative rule. An administrative provision of a model code cannot, therefore, limit the authority of DCA under the State Uniform Construction Code Act. Furthermore, it is a jurisdictional provision that cannot be construed as limiting the statutory jurisdiction of the Department under the State Uniform Construction Code Act.

The Department is satisfied that its understanding that the National Electrical Code is indeed applicable to utility-owned site lighting installations is shared by the model code organization subcommittee on this portion of the National Electrical Code and that there is therefore no sound technical reason why the code should not be enforced accordingly. The fact that utility interests have, thus far, succeeded in voting down proposals to clarify the text of the code should not prevent the Department from exercising its own authority to make this amendment for purposes of enforcement in New Jersey.

It is necessary as a practical matter that electric utilities function in a monopoly capacity within a given service area, subject to such regulation as is necessary to ensure that the exclusive authority to distribute electric power is exercised in a fair and reasonable manner. The installment of site lighting on private property, however, is not within the scope of this monopoly; it involves the use, not the distribution, of electric power and it is work that may also be legally performed by contractors that are not public utilities. Since the State Uniform Construction Code Act makes the same codes and standards applicable to construction work regardless of whom it is done by, the Department believes that the electrical contractors who have complained about being subject to permit and code requirements, with which the utilities with whom they competd do not comply, are entirely correct. Where utilities compete with other companies outside the scope of their monopoly, the playing field should be level.

If the costs and requirements complained of are reasonable when applied to a non-utility contractor, and the Department believes that they are, they do not become unreasonable when applied to a utility performing the same work. Any such costs should be considered part of the cost of installation, as is the case when the work is done by non-utility contractors, and not passed on to the customers of the utility in its power distribution monopoly capacity. If tariffs have to be revised to take account of this change, then that is what should be done. Local enforcing agencies should be able to handle any increased load if there is increased fee revenue to pay the cost, as there should be if fees are collected equally for utility and non-utility installations.

Agency Note: The Department is reserving action on the proposed repeal of N.J.A.C. 5:23-3.20A, the indoor air quality subcode, and the related N.J.A.C. 5:23-3.4(g). Additional information is required concerning effect of any such change on energy use. Once this information has been received and evaluated, the Department will either adopt this portion of the proposal or withdraw it.

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

5:23-2.6 Change in use group

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

(c) Part change in use: If a portion of the structure is changed to a new use group, and that portion is separated from the remainder of the structure with the required vertical and horizontal fire separation assemblies complying with the fire resistance rating in the building subcode, then only the construction involved in the change shall be made to conform fully to the requirements for the new use group, while the existing portion shall be made to comply only with the means of egress requirements of the regulations.

5:23-2.14 Construction permits when required

(a) (No change.)

(b) The following are exceptions from (a) above:

1.-3. (No change.)

4. Permit requirements for tents and membraned structures shall be as set forth in N.J.A.C. 5:23-3.14(b)16i. A temporary greenhouse meeting the criteria set forth in N.J.A.C. 5:23-3.14(b)16i(4) shall not require a permit except as otherwise provided in N.J.A.C. 5:23-3.14(b)16i(5).

5. (No change.)

(c)-(f) (No change.)

5:23-2.23 Certificate of Occupancy requirements

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

(g) Contents of certificate: When a building or structure is entitled thereto, the construction official shall issue a certificate of occupancy within 10 business days after written application therefor.

1. The certificate shall certify the purpose for which the building or structure may be used in its several parts.

2. The certificate of occupancy shall specify: the use group(s), in accordance with the provisions of the building subcode; the maximum live load on all floors as prescribed in the building subcode; the occupancy load in the building and all parts thereof as defined in the building subcode; and any special stipulations and conditions of the construction permit.

3. The construction official shall affix his signature to the certificate and, by so doing, shall certify that the building or structure has been approved for occupancy by all applicable subcode officials in accordance with the provisions of N.J.A.C. 5:23-3.

(h)-(l) (No change.)

5:23-3.2 Matters covered; exceptions

(a) (No change.)

(b) Rules concerning exceptions in health care facilities are as follows:

1. Construction and alteration of health care facilities shall be in accordance with this code and the standards imposed by the State Department of Health. The Department specifically adopts the "Guidelines for Construction and Equipment of Hospital and Medical Facilities" 1992-93 edition or current edition (American Institute of Architects Committee on Architecture for Health), as amended by N.J.A.C. 8:43G, as the uniform code of the State in all matters regulated by sections specified herein. In order to avoid conflict, section 503.3 of the building subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities.

2. The Department of Health may adopt licensing standards for the physical plant and environment of health care facilities that supplement this code and the "Guidelines for Construction and Equipment of Hospital and Medical Facilities," although these standards may not be in conflict with these codes.

3. The publication "Guidelines for Construction and Equipment of Hospital and Medical Facilities" is available from The American Institute of Architects Press, 1735 New York Ave., N.W., Washington, D.C. 20006.

(c) (No change.)

(d) Commercial farm buildings shall be constructed in accordance with the following criteria:

1.-3. (No change.)

4. Construction, height and allowable area requirements for commercial farm buildings and structures shall be for one of the types of construction specified in the building subcode and shall not exceed the area or height limitations of Table 503.

i. (No change.)

5. Unlimited area farm buildings exempted under (d)4i above shall meet the following additional relaxed requirements in lieu of those requirements in Chapter 10, Means of Egress, of the BOCA National Building Code:

i. In lieu of the requirements of Section 1006.0, the maximum distance of travel from any point in the building to an exit shall not exceed 150 feet;

ii. In lieu of the requirements of Section 1010.0, one exit is required for each 15,000 square feet of floor area and fraction thereof;

iii. In lieu of the requirements of Section 1023.0, exit signs must be posted. Exit signs are not required to be illuminated;

iv. In lieu of the requirements of section 1008.0, occupancy is limited to 30 people;

v. Lightning protection of the type required for the structure by NFiPA 780, fire extinguishers and "no smoking" signs shall be provided;

vi. (No change.)

5:23-3.4 Responsibility

(a) Responsibility for ***the*** enforcement of specific provisions of the building subcode shall be as follows:

1. Plan review functions of sections 402.0 through 406.0, 408.0 through 420.0; Chapters 7, 8, and 10; sections 1506.0, 1511.0, 2603.0; section 2114.0, and Chapter 28; sections 3006.0 through 3011.0 for elevator devices not accessible to the general public in structures classified as Use Groups R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, and 3103.0, 3104.0, 3106.0, 3305.0 and 3406.0 shall be enforced jointly by the building subcode official and the fire protection subcode official.

i. Plan review functions of sections 3006.0 through 3011.0 for elevator devices in any Use Group other than R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, and for elevator devices that are accessible to the general public in structures classified as Use Groups R-2, R-3 or R-4, shall be enforced jointly by the building, elevator, and fire protection subcode officials.

2. Plan review functions of sections 407.0 and 421.0 shall be enforced exclusively by the building subcode official.

3. Plan review sections of Chapter 9 shall be enforced exclusively by the fire protection subcode official.

4. Construction inspection functions of sections 402.0 through 402.9, 402.14 through 402.15.1, 402.15.3 through 421.0; Chapters 7, 8, and 10; and sections 1506.0, 1511.0, 2114.0, 2603.0, 3007.1, 3007.2, 3007.4 through 3007.7, 3008.0, 3010.1 through 3010.2.1, 3010.2.3, 3010.4, 3011.1, 3011.2, 3103.0 and 3104.0 shall be enforced exclusively by the building subcode official.

5. Construction inspection functions of sections 402.10 through 402.13 and section 402.15.2, Chapter 9 and Chapter 28; and sections 3007.3, 3010.2.2, 3011.2.1, 3011.2.2 and 3305.0 shall be enforced exclusively by the fire protection subcode official.

6. Construction inspection functions of sections 3006.0, 3009.0, ***3010.3 and*** 3010.5 *[and 2010.5]* shall be enforced exclusively by the elevator subcode official.

7. Section 3004.2 shall be enforced exclusively by the elevator subcode official.

8.-9. (No change.)

(b) (No change.)

(c) Responsibility for the enforcement of specific provisions of the electrical subcode shall be as follows:

1. (No change.)

2. Plan review functions of article 620 for elevator devices not accessible to the general public in structures classified as Use Group R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, shall be enforced by the electrical subcode official.

i. Plan review functions of article 620 for elevator devices in any Use Group other than R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, and for elevator devices that are accessible to the general public in structures classified as Use Groups R-2, R-3 or R-4, shall be enforced jointly by the elevator and electrical subcode officials.

Recodify existing 2. as 3. (No change in text.)

4. Construction inspection functions of article 620 for entire parts A, B, E and H, and of part C (except section 620-22), part D (except section 620-38), section 620-51(b) of Part F, part J (except section 620-85), and part K (except section 620-101(b), for elevator devices in any Use Group other than R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public shall be enforced exclusively by the elevator subcode official.

i. For elevator devices not accessible to the general public in structures classified as Use Group R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, construction inspection functions of article 620 in its entirety shall be the sole responsibility of the electrical subcode official.

5. Construction inspection functions of sections 620-22, 620-38 (for electrical equipment and materials only), ***sections 620-51 and 620-51(a) of*** part F *[(except section 620-51(b)]*, entire part G, Section 620-85 and section 620-101(b), shall be enforced exclusively by the electrical subcode official.

Recodify existing 3.-4. as 6.-7. (No change in text.)

(d) (No change.)

(e) Responsibility for enforcement of specific provisions of the energy subcode shall be as follows:

1. Chapters 3 and 4 shall be enforced exclusively by the building subcode official.

2. Chapter 5 shall be enforced exclusively by the plumbing subcode official.

3. Chapter 6 and standard LEM-1 shall be enforced exclusively by the electrical subcode official.

4. Plan review and construction inspection functions for structures submitted under Chapter 7 shall be reserved to the respective subcode officials as delineated above.

5. (No change.)

(f) Responsibility for enforcement of specific provisions of the mechanical subcode shall be as follows:

1. Chapters 3, 12 and 14 and sections M-901.0, M-903.3, M-905.1, M-905.3, M-905.4, M-908.0 and M-910.0: Plan review functions shall be enforced jointly by the building and fire protection subcode officials. Construction inspection functions shall be enforced exclusively by the Building subcode official.

2. Chapters 4, 5, and 10: Plan review and construction inspection functions shall be enforced exclusively by the fire protection subcode official.

3. Chapters 6, 7, 8 and 13 and sections M-903.1, M-903.2, M-903.4 through M-903.9, M-904.0, M-905.2, M-906.0, M-909.0, M-911.0 and M-912.0: Plan review and construction inspection functions shall be enforced exclusively by the plumbing subcode official.

4. Chapter 11: Plan review functions shall be enforced jointly by the building and fire protection subcode officials; construction inspection functions shall be enforced exclusively by the fire protection subcode official.

5. Chapter 15: Plan review functions shall be enforced by the Department of Community Affairs, and construction inspection functions shall be enforced by the fire protection subcode official.

6. Chapter 16: Plan review and construction inspection functions shall be enforced exclusively by the building subcode official.

7. Chapter 18: Plan review functions shall be enforced jointly by the building and plumbing subcode officials; construction inspection functions shall be enforced by the plumbing subcode official.

(g)-(j) (No change.)

5:23-3.8A Products violating the Code

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

(c) Any person who, having received a notice of violation pursuant to this section, continues to sell or offer for retail sale products specified in such notice, shall be deemed to be knowingly selling or offering the product for sale in violation of the Code and shall be subject to penalty as provided by statute, in accordance with the procedures set forth in N.J.A.C. 5:23-2.31.

(d) The Commissioner has determined that the following materials and supplies are not in conformance with the State Uniform Construction Code:

1. Building materials and supplies:

i. Wood paneling being used as an interior finish not in conformance with section 803.2 of the building subcode. This section specifies that finish shall be classified in accordance with ASTM E84;

ii. Carpeting used as an interior floor finish material not in conformance with section 805.2 of the building subcode. This section specifies that interior floor finish shall be classified in accordance with ASTM E648; and

2. (No change.)

3. Plumbing materials/supplies:

i.-iv. (No change.)

v. Water closets requiring in excess of an average of 1.6 gallons per flush, that either have a manufacturer's date stamp of July 1, 1991 or later or were not purchased by the distributor prior to July 1, 1991.

4. (No change.)

5:23-3.11A Enforcement activities reserved to other State agencies

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

(e) The State Department of Education, or the municipal code enforcing agency providing construction code plan approval, shall be responsible for enforcing the following Uniform Construction Code enhancements in public school buildings:

1.-4. (No change.)

5. An automatic fire detection system shall be installed in all new buildings of use group E (educational), as designated in the BOCA National Building Code/93 Section 917.4.1 and in accordance with applicable National Fire Protection Association standards. The system shall utilize:

i. Combination fixed-temperature and Rate of Rise devices in classrooms and other spaces not covered in (e)5ii below;

ii.-iv. (No change.)

6. Manual fire alarm boxes, in addition to BOCA/93 Section 917.5 requirements as amended, shall be provided in the natural path of escape from fire, near each exterior door from the corridor, kitchen, heater room and other exterior exits that are required to serve 50 or more persons. Additional fire alarm boxes shall be located in the main office, stage, at each stairway entrance from a corridor or place of assembly and near one exterior exit in each section of a place of assembly. It shall not be necessary to traverse more than 200 feet of unobstructed horizontal distance on the same floor in order to reach a fire alarm box.

7.-8. (No change.)

5:23-3.14 Building subcode

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

1. Pursuant to authority of P.L.1975, c.217, the Commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the "BOCA National Building Code/1993," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the building subcode for New Jersey subject to the modifications stated in (b) below.

i. (No change.)

ii. "The BOCA National Building Code/1993," including all subsequent revisions and amendments thereto, may be known and cited as the "building subcode."

2. Any references to the mechanical code, plumbing code, CABO One and Two Family Dwelling Code, CABO A117.1 standard (including reference to chapter 11) or NFiPA 70 (including reference to Chapter 27) listed in Chapter 35 shall be considered a reference to the appropriate adopted mechanical, plumbing, one and two family dwelling or electrical subcode referenced in N.J.A.C. 5:23-3 or to the barrier-free subcode, N.J.A.C. 5:23-7, as appropriate.

(b) The following chapters of the building subcode are modified as follows:

1. Chapter 1 of the building subcode, entitled "Administration," is deleted in its entirety.

2. The following amendments are made to Chapter 2 of the building subcode, entitled "Definitions," section 202.0 general definitions:

i. The term and definition of "Additions" is deleted;

ii. The definition of the term "Approved" is amended to delete the phrase "or other authority";

iii. The phrase and definition of "Approved material, equipment and methods" is deleted;

iv. The term and definition of "Approved rules" is deleted;

v. The definition of the term "Building" is deleted and replaced by the definition at N.J.A.C. 5:23-1.4;

vi. The term and definition of "Building, existing" is deleted;

vii. The term and definition of "Building line" is deleted;

viii. The term and definition of "Building service equipment" is deleted and replaced by the term and definition of "equipment" at N.J.A.C. 5:23-1.4;

ix. The definition of the term "Code official" is deleted and is redefined herein and throughout the subcode as the "building subcode official" as defined in N.J.A.C. 5:23-1.4 unless indicated otherwise;

[x. The term and definition of "Construction documents" is deleted;]

*[xi.]***xi.*** The term and definition of "Equipment, existing" is deleted;

*[xii.]***xii.*** The term and definition of "Facility" is deleted;

*[xiii.]***xiii.*** The terms and definitions of "hereafter" and "heretofore" are deleted;

*[xiv.]***xiv.*** The term and definition of "Jurisdiction" is deleted;

*[xv.]***xv.*** The term and definition of "Occupancy, change of" is deleted;

*[xvi.]***xvi.*** The definition of "Owner" is deleted and replaced by the definition at N.J.A.C. 5:23-1.4;

*[xvii.]***xvii.*** The term and definition of "Permit" is deleted;

*[xviii.]***xviii.*** The term and definition of "Person" is deleted;

*[xix.]***xix.*** The *[reference for]* ***definition of*** "Physically Disabled Person" is deleted and replaced with the definition of "Physically Handicapped" at N.J.A.C. 5:23-*[7]*****6***;

*[xx.]***xx.*** The term and definition of "Repair" is deleted;

*[xxi.]**xx.* The term and reference for "Site" is deleted;
*[xxii.]**xxi.* The definition of the term "Structure" is replaced by the definition at N.J.A.C. 5:23-1.4;
*[xxiii.]**xxii.* The term and definition "Structure, existing" is deleted;
*[xxiv.]**xxiii.* The term and reference for "Technically Infeasible" is deleted;
*[xxv.]**xxiv.* The term and definition of "Writing" is deleted;
*[xxvi.]**xxv.* The term and definition of "Zoning" is deleted.

3. The following amendment is made to Chapter 3 of the building subcode entitled "Use or Occupancy."

i. Section 310.6 is amended to delete the phrase "not more than three stories in height."

4. The following amendments are made to Chapter 4 of the building subcode, entitled "Special Use and Occupancy":

i. Section 415.1 is amended to replace the phrase "authority having jurisdiction" with the term "construction official";

ii. Section 416.11 is deleted;

iii. Section 420.0 is amended to replace the terms "Mobile Units," "Unit" and "Units" with the terms "Manufactured Homes," "Home" and "Homes" respectively;

iv. Sections 420.1 and 420.2 are deleted in their entirety;

v. Section 421.3 is amended to replace the term "code official" with the term "construction official";

vi. Section 421.6 is amended to end with the phrase "in accordance with the plumbing subcode";

vii. Section 421.6.1 is deleted;

viii. Section 421.6.2 is amended to end with the phrase "in accordance with the plumbing subcode";

ix. Section 421.9.3 is amended to replace the term "governing body" with the term "construction official."

5. The following amendment is made to Chapter 8 of the building subcode, entitled "Interior Finishes":

i. Sections 805.2.1 and 807.2.2 are amended to replace the term "code official" with the term "fire protection subcode official."

6. The following amendments are made to Chapter 9 of the building subcode, entitled "Fire Protection Systems":

i. References to the term "code official" shall be replaced with the term "fire protection subcode official."

ii. Section 901.4 is deleted in its entirety;

iii. Section 903.1 is amended to replace the term "department" with the phrase "enforcement agency responsible for plan review," and in the note, to replace the word "Since" with the term "If";

iv. Section 916.0 is amended to replace the phrase "administrative authority of the jurisdiction" with the term "fire protection subcode official";

7. The following amendment is made to Chapter 10 entitled "Means of Egress":

i. Section 1001.2 is amended to replace the phrase "Article 1 for modification of this code or by adoption of approved rules" with the regulations at "N.J.A.C. 5:23-2";

8. The following amendments are made to Chapter 11 of the building subcode, entitled "Accessibility":

i. Chapter 11 is deleted in its entirety and replaced with the accessibility requirements contained in N.J.A.C. 5:23-7.

9. The following amendment is made to Chapter 13 entitled "Energy Conservation":

i. Chapter 13 is deleted in its entirety.

10. The following amendment is made to Chapter 15 of the building subcode, entitled "Roofs and Roof Structures":

i. Section 1512.1 is amended to delete the sentence "The repair*[s]* .... for new roofing."

11. The following amendments are made to Chapter 17 of the building subcode, entitled "Structural Tests and Inspections":

i. Section 1701.2 is amended to replace the term "approved rules" with the word "regulations";

ii. Section 1702.1, the definition of the term "approved agency" is amended to add the words "by the code official or other authority having jurisdiction in accordance with the regulations" after the word "approved";

iii. Section 1702.1, the definition and the term "Inspection, special" are deleted;

iv. Section 1705.1 is amended to add the words "for Class 1 structures **or*** when requested by the building subcode official" after the words "special inspections" on lines 1 and 2;

v. Section 1705.1.1 is deleted in its entirety and replaced with the sentence: "Permit applications shall be made in accordance with N.J.A.C. 5:23-2.15";

vi. Section 1705.2 is amended to add the sentence: "Building elements fabricated off site shall be approved in accordance with N.J.A.C. 5:23-4.26";

vii. Section 1705.3.1 is deleted in its entirety;

viii. Section 1707.1 is amended to replace the phrase "approved rules" with the word "regulations," and to replace the phrase "Section 106.0" with the phrase "the regulations."

12. The following amendment is made to Chapter 27 of the building subcode, entitled "Electric Wiring, Equipment and Systems":

i. Chapter 27 is deleted in its entirety.

13. The following amendments are made to Chapter 28 of the building subcode, entitled "Mechanical Systems":

i. Section 2803.0 is deleted in its entirety;

ii. Section 2811.0 is deleted in its entirety;

14. The following amendment is made to Chapter 29 of the building subcode, entitled "Plumbing Systems":

i. Chapter 29 is deleted in its entirety.

15. The following amendments are made to Chapter 30 of the building subcode, entitled "Elevators and Conveying Systems":

i. Section 3001.1 is amended to delete the phrase "Except as otherwise provided by statute" in the first line, to add the phrase "and where applicable, of N.J.A.C. 5:23-12" after the word "Chapter" in the second line, to delete the phrase "and amusement devices" in the second sentence and to replace the term "code official" with the term "construction official" in the second sentence;

ii. Section 3001.2 is amended to substitute the term "this code" for "these rules" and to add the following sentence: "However any education, experience or training requirements included or cited in reference standards shall not be binding in this State.";

iii. Section 3003.0 is deleted in its entirety except section 3003.3;

iv. Section 3004.1 is amended to delete the words "and maintenance" and substitute in lieu thereof "inspection and," and to delete the words "and periodic inspections";

v. Section 3004.2 is amended to add the words "inspection and" after the word "Acceptance" in the title and after the words "All such" in the seventh line; to delete the words "this code" in the first sentence and substitute in lieu thereof "these rules"; and to replace the term "code official" with the term "appropriate subcode official";

vi. Sections 3004.3 and 3004.4 are deleted in their entirety;

vii. Section 3004.5.2 is amended to delete the words "and amusement devices" and to add the word "and" after the word "freight lifts" in this section;

viii. Section 3004.5.4 is amended to replace the term "code official" with the term "construction official";

ix. Section 3005.0 is deleted in its entirety with the exception of section 3005.4 which is amended to replace the term "code official" with the term "construction official";

x. Section 3009.0 is amended to delete the words "Signals and" after the word "Emergency" in the title;

xi. Section 3010.2.2 is amended to replace the term "code official" with the term "fire protection subcode official";

xii. Section 3012.2 is deleted;

xiii. Section 3012.4 is amended to replace the term "code official with the term "construction official";

xiv. Section 3012.5 is amended to replace the term "code official with the term "construction official";

xv. Section 3013.0 is deleted in its entirety.

16. The following amendments are made to Chapter 31 of the building subcode, entitled "Special Construction":

i. Section 3104.1.1 is deleted in its entirety and replaced by the following language:

(1) Temporary structures: A construction permit is required for the erection, operation or maintenance of all temporary structures (excluding tents and tensioned membrane structures) covering an area in excess of 120 square feet, including all connecting areas or spaces with a common means of egress or entrance, or which are used or intended to be used for gatherings of 10 or more persons;

(2) Tents with appurtenances: A construction permit is required for the erection, operation or maintenance of all tents or tensioned membrane structures of any size if they contain appurtenances such as platforms or electrical equipment;

(3) Tents without appurtenances: No permit is required for the erection, operation or maintenance of any tent or tensioned membrane structure without appurtenances if the tent or structure is no more than 900 square feet in area and no more than 30 feet in any dimension (excluding canopies), whether it is one unit or composed of multiple units. Tents used exclusively for recreational camping purposes shall be exempt from the above requirements.

(4) A temporary greenhouse, also called a "hoophouse" or "polyhouse," used exclusively for the production or storage of live plants, shall be exempt from the permit requirements of the Uniform Construction Code if it meets the following criteria:

(A) There is no permanent anchoring system or foundation;

(B) There is no storage, temporary or otherwise, of solvents, fertilizers, gases, or other chemical or flammable materials;

(C) The structure is no wider than 31 feet and there is an unobstructed path of no greater length than 150 feet from any point to a door or fully accessible wall area; and

(D) The covering of the structure is of a material no greater than six mils (152.4 micrometers) in thickness, conforming to N.F.P.A. 701 standard, that yields approximately four pounds of maximum impact resistance to provide egress through the wall.

(5) The provisions of (b)16i(4) above notwithstanding, if a temporary greenhouse contains any device subject to the electrical subcode or any mechanical equipment subject to the mechanical subcode, then a permit shall be required for the system or fixture only. If the temporary greenhouse is connected to a potable water system, a permit shall be required for the backflow prevention devices only;

ii. Section 3104.6 is amended to replace the term "code official" with the term "construction official";

iii. Section 3106.5 is amended to replace the term "authorities" with "authorities having jurisdiction";

iv. Section 3108.5 is amended to add the phrase "to comply with the requirements of the electrical subcode" after the word "grounded."

17. The following amendments are made to Chapter 32 of the building subcode, entitled "Construction in the Public Right of Way":

i. Section 3202.5 is deleted in its entirety.

ii. Section 3205.1 is amended to replace the term "code official" on line 1 with the term "construction official".

18. The following amendments are made to Chapter 33 of the building subcode, entitled "Sitework, Demolition and Construction":

i. Section 3302.1 is amended to replace the term "code official" on line 3 with the term "construction official";

ii. Section 3309.2 is amended to delete the words "and the construction and extension of soil and vent stacks and the location of window openings shall comply with the provisions of section 2908.3" and replace them with the following language:

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

iii. Section 3310.3 is amended to replace the term "code official" on lines 1 and 4 with the term "construction official".

19. The following amendment is made to Chapter 34 entitled "Existing Structures":

i. Chapter 34 is deleted with the exception of section 3406.0, which is amended to replace the term "code official" with the term "construction official";

20. The following amendments are made to Chapter 35 of the building subcode, entitled "Referenced Standards":

i.-iii. (No change.)

5:23-3.15 Plumbing subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the Model Code of the National Association of Plumbing-Heating-Cooling Contractors, known as "The National Standard Plumbing Code/1993", including all subsequent revisions and amendments thereto, as the plumbing subcode for New Jersey.

i. Copies of this code may be obtained from the sponsor at: NAPHCC, P.O. Box 6808, Falls Church, VA 22046.

2. "The National Standard Plumbing Code/1993", including all subsequent revisions and amendments thereto, may be known and cited as "the plumbing subcode."

(b) The following pages, chapters, sections, or appendices of the plumbing subcode are amended as follows:

1. (No change.)

2. The section entitled "Administration," comprising sections ADM 1.1 through ADM 1.13, is deleted in its entirety.

3. Chapter 1 of the plumbing subcode, entitled "Definitions," is amended as follows:

i.-vi. (No change.)

vii. The definition of and the term "nuisance" is deleted.

4. Chapter 2 of the plumbing subcode, entitled "General Regulations," is amended as follows:

i. (No change.)

ii. Section 2.4.3 is amended to delete the phrase "or is approved by the administrative authority as having a desirable and accepted function and is of ultimate benefit to the proper and continuing function of the plumbing system."

iii.-vi. (No change.)

vii. Section 2.19.1 is amended to delete the blank and the words "feet of any property line of the premises, or other."

viii. Section 2.19.2 is amended to delete the words "the Health Department or other agency having jurisdiction" and substitute in lieu thereof "The New Jersey Department of Environmental Protection and Energy."

Recodify existing viii. as ix. (No change in text.)

5. Chapter 3 of the plumbing subcode, entitled "Materials," is amended as follows:

i.-iv. (No change.)

v. Section 3.11.1 is amended to delete the phrase "approved by the Administrative authority".

vi. Section 3.11.2 is amended to delete the phrase "except as may be otherwise authorized by the administrative authority".

vii. (No change.)

Recodify existing 5.-6. as 6.-7. (No change in text.)

8. Chapter 6 of the plumbing subcode, entitled "Interceptors," is amended as follows:

i. (No change.)

ii. Section 6.3.2b is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "required" on line 4.

iii. Section 6.4.4 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "approval" on line 2.

9. Chapter 7 of the plumbing subcode, entitled "Plumbing Fixtures," is amended as follows:

i. Section 7.2.1 is amended to read "Water closets either flush tank, flushometer tank or flushometer valve operated shall be designed, manufactured and installed to be operable and adequately flushed with an average of 1.6 gallons or less of water per flushing cycle, when tested at any one test pressure in accordance with listed standards. Only pressurized (not gravity flow) water closets are acceptable for commercial uses. Commercial uses are A, E, B and M uses with an occupancy with more than two water closets connected to the building sewer."

(1) Exception: Installation of water closets bearing a manufacturer's date stamp indicating a date of manufacture prior to July 1, 1991 and requiring an amount in excess of 1.6 gallons per flush shall be permitted.

ii. Section 7.2.2 is amended to insert the number "1" in the blank provided.

iii. Section 7.2.3.1 is amended to insert the number "2.2" in the blank provided.

iv. Section 7.2.3.2 is amended to insert the number ".25" in the blank provided.

v. Section 7.2.4 is amended to insert the number "2.2" in the blank provided.

vi. Section 7.2.5 is amended to insert the number "2.5" in the blank provided.

Recodify existing i.-iii. as vii.-ix. (No change in text.)

x. Note to Tables 7.24.1A, 7.24.1B, 7.24.1C, 7.24.1D and 7.24.1E is amended to delete the words "for handicap requirements see local, state, or national codes" in the second sentence.

Recodify existing v. as xi. (No change in text.)

10. Chapter 9 of the plumbing subcode, entitled "Indirect Waste Piping and Special Waste," is amended as follows:

i. (No change.)

ii. Section 9.3.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on lines 3 and 4.

iii. Section 9.7.2 is amended to delete the phrase "submitted to, and accepted by," on line 7 and in lieu thereof, substitute the phrase "approved in accordance with N.J.A.C. 5:23-3.3."

11. Chapter 10 of the plumbing subcode, entitled "Water Supply and Distribution," is amended as follows:

i.-vi. (No change.)

vii. Section 10.8.1 is amended to add the phrase "as required by the authority having jurisdiction" after the word "practice" on line 4.

viii. (No change.)

Recodify existing 11.-12. as 12.-13. (No change in text.)

14. Chapter 13 of the plumbing subcode, entitled "Storm Drains," is amended as follows:

i. Section 13.1.5a is amended to read "subsoil drains shall be provided in accordance with the building subcode".

ii. Section 13.9.1 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "authority" on line 5.

15. Chapter 14 of the plumbing subcode, entitled "Medical Care Facility Plumbing Equipment," is amended as follows:

i. Section 14.25.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 4.

16. Chapter 16 of the plumbing subcode, entitled "Regulations governing individual sewage disposal systems for homes and other establishments where public sewage systems are not available" and comprising sections 16.1 through 16.12.1.13, is deleted in its entirety.

Note: Existing standards of the Department of Environmental Protection and Energy and boards of health with respect to individual on-site sewage disposal systems remain in effect.

17. Chapter 17 of the plumbing subcode, entitled "Potable water supply system" and comprising sections 17.1 through 17.15.2 is deleted in its entirety.

Note: Existing standards of the Department of Environmental Protection and Energy and boards of health with respect to individual on-site water supply systems remain in effect.

Recodify existing 17. as 18. (No change in text.)

19. (No change.)

5:23-3.16 Electrical subcode

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

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the Model Code of the National Fire Protection Association known as "The National Electrical Code/1993," including all subsequent revisions and amendments thereto, as the electrical subcode for New Jersey.

i. (No change.)

2. The National Electrical Code/1993, including all subsequent revisions and amendments thereto, may be known and cited as "the electrical subcode."

(b) The following chapters or articles of the electrical subcode are amended as follows:

1. Article 90 of the electrical subcode, entitled "Introduction," is amended as follows:

i. Section 90-2(b)(5) is amended to delete the term "(FPN):" in the seventh line and add the words "the installation of utilization equipment and its associated wiring on private property (see section 90-2(a)(1) for installations covered) and" after the words "this Code cover" in the tenth line.

Recodify existing i. as ii. (No change in text.)

2. (No change.)

3. Chapter 3 of the electrical subcode, entitled "Wiring Methods and Materials," is amended as follows:

i. Section 300-4(a)(1) is amended to delete the wording from "so that the edge . . ." on line three through ". . . cannot be maintained" on line five and in lieu thereof substitute "as required by the building subcode where the distance between the edge of the hole to the nearest edge of the wood member is less than 1¼ inches (31.8 mm)."

4. Chapter 5 of the electrical subcode, entitled "Special Occupancies," is amended as follows:

i. Exception to the section 500-3(a)(4), section 514-5(b) and section 514-5(c) are amended to delete the phrase "authority having jurisdiction" and substitute in lieu thereof the phrase "fire protection subcode officials."

ii. Part B of Article 550, entitled "Mobile Homes," comprising sections 550-5 through 550-15 is deleted in its entirety with the exception of section 550-5 which shall be retained.

(1) Exception—Part B is retained in its entirety in the case of mobile homes undergoing repair or alteration work.

Recodify existing ii. as iii. (No change in text.)

5:23-3.17 Fire protection subcode

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

1. Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the following portions of the building, electrical and mechanical subcodes, to the extent delineated in N.J.A.C. 5:23-3.4, as the fire protection subcode for New Jersey.

i. BOCA National Building Code/1993 of the Building Officials and Code Administrators International Inc. (N.J.A.C. 5:23-3.14):

(1) Chapter 4—Special Use and Occupancy;

(2) Chapter 7—Fireresistant Materials and Construction;

(3) Chapter 8—Interior Finishes;

(4) Chapter 9—Fire Protection Systems;

(5) Chapter 10—Means of Egress;

(6) Sections 1506.0 and 1511.0 of Chapter 15—Roofs and Roof Structures;

(7) Section 2114.0 of Chapter 21—Masonry;

(8) Sections 2603.0 through 2605.0 of Chapter 26—Plastic;

(9) Section 3106.0 of Chapter 31—Special Construction;

(10) Section 3305.0 of Chapter 33—Site Work, Demolition and Construction;

(11) Section 3406.0 of Chapter 34—Existing Structures.

ii. National Electrical Code/1993 of the National Fire Protection Association (N.J.A.C. 5:23-3.16).

(1)-(4) (No change.)

iii. BOCA National Mechanical Code/1993 of the Building Officials and Code Administrators International Inc. (N.J.A.C. 5:23-3.20):

(1) Chapter 4—Mechanical Equipment;

(2) Chapter 5—Kitchen Exhaust Equipment;

(3) Chapter 9—Flammable and Combustible Liquid Storage and Piping Systems;

(4) Chapter 10—Combustion Air;

(5) Chapter 12—Chimneys and Vents;

(6) Chapter 14—Fireplaces, Solid Fuel-Burning and Gas Accessory Appliances.

2. (No change.)

(b) (No change.)

5:23-3.18 Energy Subcode

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

1. Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the BOCA National Energy Conservation Code/1993, including all subsequent revisions and amendments thereto, as well as the Illuminating Engineering Society's standard known as LEM-1, 1982,

"IES Recommended Procedure for Lighting Power Limit Determination," including all subsequent revisions and amendments thereto, as the energy subcode for New Jersey.

i. Copies of the BOCA National Energy Conservation Code/1993 may be obtained from the sponsor at BOCA, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60477-5795.

ii. Copies of LEM-1, 1982, "IES Recommended Procedure for Lighting Power Limit Determination," may be obtained from the sponsor at IES, 345 East 47th Street, New York, New York 10017.

iii. (No change.)

2. Any reference to the building code, mechanical code, or plumbing code listed in Chapter 8 shall be considered a reference to the appropriate adopted building, mechanical, or plumbing subcode in N.J.A.C. 5:23-3.

(b) The following chapters of the energy subcode are amended as follows:

1. The following amendments are made to Chapter 1 of the energy subcode entitled "Scope and Application":

i. Section E-101.1 is deleted in its entirety.

ii. Section E-101.3 is amended to delete the last sentence.

2. Chapter 2 of the energy subcode, entitled "Definitions," Section E-201—General Definitions, is amended to add the following definitions.

i.-xvii. (No change.)

Recodify existing xix.-xxvii. as xviii.-xxvi. (No change in text.)

3. The following amendments are made to Chapter 3 of the energy subcode entitled "Building Envelope":

i. Section E-302.1 is amended to delete the words "or the CABO Model Energy Code" and to add the words "In all municipalities of the State of New Jersey, thermal transmittance values shall be determined using the figure of 5,500 annual Fahrenheit heating degree days".

4. The following amendments are made to Chapter 4 of the energy subcode entitled "Heating, Ventilating and Air Conditioning Systems and Equipment":

i. Delete section E-402.1.1 and substitute the words "Design temperatures shall be as follows: Winter 14°F.; Summer DB 90°F.; Summer WB 76°F.".

5. The following amendments are made to Chapter 5 of the energy subcode entitled "Plumbing Systems":

i. Delete section E-503.0.

6. The folloiwng amendment is made to Chapter 6 of the energy subcode entitled "Electrical Systems":

i. In Section E-602.2, add the words "In buildings of Use Group R-2 which are under a condominium or cooperative form of ownership only, electrical energy use by the occupants of each dwelling unit may be determined by means of checkmetering rather than by use of a separate meter owned by the electric utility for each dwelling unit."

7. The following amendments are made to Chapter 7 of the energy subcode entitled "Alternative Systems":

i. Section E-701.1 is amended to delete the words "this code" on lines 3 and 6 and, in lieu thereof, substitute "the energy subcode."

8. The following amendment is made to Chapter 8 of the energy subcode entitled "Referenced Standards";

i. Delete the subheading CABO and all titles listed below the subheading.

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

(c) (No change.)

5:23-3.20 Mechanical subcode

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

1. Pursuant to authority P.L. 1975, c.217, the Commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc. known as the "BOCA National Mechanical Code/1993", including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the Mechanical Subcode for New Jersey subject to the modifications stated in (b) below.

i. Copies of this code may be obtained from the sponsor at: BOCA International, 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795.

ii. The "BOCA National Mechanical Code/1993," including all subsequent revisions and amendments thereto, may be known and cited as the "mechanical subcode."

2. Any references to the building code, plumbing code, or NFiPA 70 listed in Chapter 21 shall be considered a reference to the appropriate adopted building, plumbing, or electrical subcode in N.J.A.C. 5:23-3.

(b) The following chapters, sections or pages of the BOCA National Mechanical Code/1993 are amended as follows:

1. Chapter 1 of the mechanical subcode, entitled "Administration and Enforcement," is deleted in its entirety.

2. Chapter 2 of the mechanical subcode, entitled "Definitions," is amended as follows:

i. Section M-201.3 is amended to delete the words "codes listed in Chapter 21" on line 3, and in lieu thereof, substitute "subcodes."

ii.-iii. (No change.)

iv. The definition of the term "building" is deleted and the definition found in N.J.A.C. 5:23-1.4 is substituted;

Recodify existing iv. as v. (No change in text.)

vi. The definition of the term "code official" is deleted in its entirety, and the following language is substituted: "For the purpose of the mechanical subcode, the term "code official" shall mean the appropriate subcode official as designated in N.J.A.C. 5:23-3.4."

vii. The definition of the term "structure" is deleted and the definition found in N.J.A.C. 5:23-1.4 is substituted.

3. Chapter 4 of the mechanical subcode, entitled "Mechanical Equipment," is amended as follows:

i. Section M-403.1 is amended to delete "Section M-107.0" on line 3, and, to substitute in lieu thereof, "N.J.A.C. 5:23-3.7."

4. Chapter 5 of the mechanical subcode, entitled "Kitchen Exhaust Equipment," is amended as follows:

i. Section M-509.0, "Test and Cleaning Schedule" is deleted.

5. Chapter 9 of the mechanical subcode, entitled "Flammable and Combustible Liquid Storage and Piping Systems," is amended as follows:

i. Section M-901.1 is amended to add the words "For those systems that are subject to the Department of Environmental Protection and Energy's Underground Storage Tank Systems rules, N.J.A.C. 7:14B, the requirements of this article that conflict with the DEPE rules shall be inapplicable."

6. Chapter 15 of the mechanical subcode, entitled "Incinerators and Crematories," is amended as follows:

i. Section M-1501.2 is deleted in its entirety.

7. Chapter 17 of the mechanical subcode, entitled "Air Quality" is deleted in its entirety.

8. Chapter 19 of the mechanical subcode, entitled "Energy Conservation" is deleted in its entirety.

9. Chapter 20 of the mechanical subcode, entitled "Boilers and Pressure Vessels, Maintenance and Inspection," is deleted in its entirety, with the exception of section M-2001.2.

10. The following amendments are made to Chapter 21 of the mechanical subcode, entitled "Referenced Standards":

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

(1) Energy Conservation in New Building Design—with Addendum 90A-a-1987.

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

(1) BOCA National Building Code.

(2) BOCA National Plumbing Code.

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

(1) National Electrical Code.

5:23-3.20A Indoor air quality subcode

(No change.)

5:23-3.21 One and two family dwelling subcode

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

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the model code of the Council of American Building Officials known as "The CABO One and Two Family Dwelling Code/1992", including all subsequent revisions and amendments thereto, as the one and two family dwelling subcode for New Jersey, subject to the modifications stated in (b) below.

i. (No change.)

(b) The following articles or sections of the one and two family dwelling subcode are modified as follows:

1. Chapter 1 entitled "Administrative" is amended as follows:

i. (No change.)

ii. Section R-103 is deleted and the following substituted in lieu thereof: "The provisions of this code apply only to the construction, alteration, repair or increase in size of detached one or two family dwellings of use group R-4 (including single family townhouses), of type 5B construction not more than 2 stories or 35 feet in height and 4,800 square feet in area per floor, and not located in areas prone to flooding. Dwellings to be erected in areas identified as prone to flooding by the most recent Flood Insurance Rate Map published by the Federal Emergency Management Agency shall be constructed in conformity with the building subcode, and the option to use the one and two-family dwelling subcode as an alternative to the building subcode shall not apply.

iii. Sections R-104 through R-117 are deleted.

iv. Section R-118 is amended to change the definitions as follows:

(1)-(4) (No change)

2. Chapter 2 entitled "Building Planning" is amended as follows:

i. Section R-201.2 is amended to modify Table R-201.2 to read as follows:

Table No. R-201.2
CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

Roof Live Load (lbs./sq. ft.)	Roof Snow Load (lbs./sq. ft.)	Wind Pressure (lbs./sq. ft.)	Seismic Condition by Zone	Subject to Damage from		Subject to Damage from	
				Weathering	Frost Line Depth	Termite	Decay
20 See note 1	20 See notes 1, 4	see Appendix A and notes 5, 6, 7.	See note 3	Severe See note 2	2'-6" (Southern Area) 3'-0" (Northern Area) See notes 2, 4	Yes	Yes

Notes:

1. Roof live and snow loads are not additive.
2. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy structural requirements of this code. The grade of masonry units shall be determined from ASTM C34, C55, C62, C73, C90, C129, C145, C216, or C652 listed in Section S-26.201. The frost line depth may require deeper footings than indicated in Figure R-303.
3. New Jersey is divided into two zones: Zone 1 consists of Monmouth and Burlington Counties and all counties to the south. Zone 2 consists of Mercer and Middlesex Counties and all counties to the North (see N.J.A.C. 5:23-9.4).
4. The enforcing agency having jurisdiction may establish values other than the ones listed for "roof snow load", and "frost line depth" if warranted by documented local climatic and geographic conditions.
5. Wind speed for Atlantic, Cape May, Monmouth and Ocean counties, and Bass River, Washington, Woodland townships in Burlington County shall be 90 mph.
6. Wind speed for Bergen, Camden, Cumberland, Essex, Gloucester, Hudson, Mercer, Middlesex, Morris, Passaic, Salem, Somerset, Union, and Burlington (except for Bass River, Washington and Woodland townships) counties shall be 80 mph.
7. Wind speed for Hunterdon, Warren and Sussex counties shall be 70 mph.

ii. (No change.)

iii. Section R-203.5 "Required heating" is deleted.

iv. Section R-209.1—Opening Protection—Delete and substitute in lieu thereof the following: "Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid core wood doors not less than 1¾ inches in thickness or approved equivalent. The sills of all door openings between garages and adjacent interior spaces shall be raised not less than 4 inches above the garage floor."

Recodify existing iv. as v. (No change in text.)

vi. Section R-212*,* under the second exception in the second line, delete "8½ inches" and substitute in lieu thereof, "8 inches"; *[and substitute in lieu thereof, "three or more risers";]*

vii. Section R-214.1 "Handrails": Delete paragraph 2 and replace with the following text: "All stairway handrails shall have a circular cross section with an outside diameter of at least 1¼ inches and not greater than 2 inches, or approved rails of equivalent graspability;

viii. Section R-215.1 "Smoke detectors required": Delete this section and replace with the following text: "Single or multiple station smoke detectors shall be installed and maintained at the following locations:

(1) In the immediate vicinity of the bedrooms;

(2) In all bedrooms; and

(3) In each story within a dwelling unit including basements. All detectors shall be interconnected such that the activation of one alarm will activate all the alarms in the individual unit. When the installation is complete, each detector, and all interconnecting wiring for multiple station detectors, shall be subject to acceptable testing in accordance with section 919.6 of the building subcode. All detectors shall be approved and listed and shall be installed in accordance with section 919.1 of the building subcode.

EXCEPTION: In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke detector installed on the upper level shall suffice for the adjacent lower level, provided that the lower level is less than one full story below the upper level.

ix. Section R-215.2 is amended to delete the words from "or in buildings" to the end of paragraph;

Recodify existing viii. as x. (No change in text.)

3. Chapter 3, entitled "Foundations," is amended as follows:

i. (No change.)

ii. From Section R-304.1 Concrete and Masonry: delete the exception;

iii. Add new section R-312 "Pile Foundations," reading as follows: "Where buildings are constructed under the scope of this subcode that utilize pile foundations, Chapter 18 of the building subcode shall apply."

4. Chapter 4, entitled "Wall Construction," is amended as follows:

i. (No change.)

ii. From Section R-404.3.1 Unreinforced Masonry: delete the second paragraph of the exception.

iii. From Section R-404.3.2 Reinforced Masonry: delete the exception.

5. Chapter 6, entitled "Floors," is amended as follows:

i. (No change.)

6. Chapter 7, entitled "Roof Ceiling Construction", is amended as follows:

i. (No change.)

7. Chapter 8, entitled, "Roof Coverings", is amended as follows:
i. (No change.)
ii. In Section R-801.3 Roof Covering Materials: On line eight delete the phrase "in areas . . . 3 feet" and replace with the phrase: "when the edge of the roof is less than 6 feet from the property line";
iii. Add a new section R-810 "Reroofing," reading as follows: Where an existing roof is replaced or recovered under the scope of this subcode, the provisions of the building subcode, section 1512.0, as amended, shall apply.
8. Chapter 9, entitled "Chimneys and Fireplaces", is amended as follows:
i. (No change.)
ii. Section R-902 is amended to add the sentence "Factory built chimneys shall conform to U.L. 103 and be installed in accordance with their listing."
Recodify existing ii.-iii. as iii.-iv. (No change in text.)
v. Section R-903.7, in the second and fourth lines, change "2 inches" to "4 inches" and add the sentence "The minimum clearance to combustibles from the exterior surface of the smoke chamber shall be 2 inches";
Recodify existing v.-vi. as vi.-vii. (No change in text.)
9. Part IV—Mechanical, is amended as follows:
i. Section M-1001: Delete the words "Section R-108" and in lieu thereof insert "N.J.A.C. 5:23-3.6 and 3.7";
ii. Section M-1002.2: At the end of the section, add "Solid fuel burning room heaters shall be tested and labeled in accordance with UL 1482";
iii. Section M-1008 "Existing Mechanical Systems" is deleted;
iv. Section M-1009 "Inspections" is deleted;
v. Section M-1304.3 is amended to delete the words "conform to the requirements of part V of this code" and substitute in lieu thereof "conform to the requirements of the plumbing subcode";
vi. Section 1304.4 is amended to delete the words "Section P-2402" and substitute in lieu thereof "the plumbing subcode";
vii. Section M-1905 is amended to delete the words "Section P-2408" and substitute in lieu thereof "the plumbing subcode";
10.-11. (No change.)

5:23-4.3A Enforcing agency classification
(a)-(c) (No change.)
(d) Enforcing agencies shall be permitted to perform plan review activities in accordance with the agency classification for the use groups listed in the following schedule (keyed to section 302.1 of the building subcode):
1. Class 3 agencies:
i.-iv. (No change.)
v. Use Group R-3 as permitted in the building subcode and including accessory private garages (section 407.0), radio and television antennae (section 3108.0) and swimming pools (section 421.0).
2. Class 2 agencies:
i.-x. (No change.)
xi. Use group H (paint spray booths, section 419.2.1 only);
xii.-xx. (No change.)
3.-4. (No change.)
(e)-(f) (No change.)

5:23-4A.8 Approvals of building systems and compliance assurance programs
(a) Approved evaluation agencies shall be permitted to approve building systems and compliance assurance programs for the following types of industrialized/modular buildings and building components, including, without limitation, the factory built portions of the buildings of the Use groups listed in the Class 3 agency schedule set forth at N.J.A.C. 5:23-4.3A(d)1.
1.-10. (No change.)
(b)-(d) (No change.)

5:23-4A.11 Enforcing agency procedures and inspections
(a) Enforcing agencies shall issue construction permits for certified industrialized/modular buildings prior to installation, and shall not withhold issuance of construction permits for buildings containing certified building components that in all other respects comply with all applicable construction codes, provided that any industrialized/modular building or building component that the Department finds does not comply with this chapter shall be brought into compliance before installation. An application to an enforcing agency for a construction permit shall, when requested, in addition to any other requirements, contain:
1.-2. (No change.)
3. Detailed plans prepared by an architect or engineer licensed pursuant to law in the State of New Jersey for any site-built construction related to the installation of the industrialized/modular buildings or building components. All elements of the certified industrialized/modular buildings or building components that are not described or included in the approved building system documentation shall be subject to review, inspection and approval by the local enforcement agency. The plans for all on-site construction required in connection with the proper setup and erection of the certified industrialized/modular buildings or building component shall include, without limitation, foundation system, basement or crawl space, external utility systems, hook-ups and connections of various modules (boxes) and/or components. The review and approval of such plans shall be completed by:
i. (No change.)
ii. The local enforcement agency for the types of industrialized/modular buildings and building components listed in N.J.A.C. 5:23-4A.8(a) provided the agency is classified in accordance with N.J.A.C. 5:23-4.3A and its classification meets the level of the specific project; and
4. (No change.)
(b)-(h) (No change.)

5:23-12.2 Referenced standards
(a) Periodic, routine and acceptance tests and inspections, if applicable, shall be required on all new and existing power elevators, escalators, dumbwaiters, moving walks, wheelchair lifts, manlifts and stairway chairlifts in accordance with the most recent edition of ASME A17.1 referenced in the building subcode. This subsection shall not apply to elevators in structures in Use Groups R-3 or R-4, or to any elevator located wholly within a dwelling unit in an R-2 structure that is not accessible to the general public.
(b)-(f) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Minor Work

Adopted Amendment: N.J.A.C. 5:23-2.17A

Proposed: October 4, 1993 at 25 N.J.R. 4546(a).
Adopted: November 16, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.
Filed: November 23, 1993 as R.1993 d.663, **without change.**

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

Effective Date: December 20, 1993.
Expiration Date: February 3, 1998.

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

Full text of the adoption follows:

5:23-2.17A Minor work
(a)-(b) (No change.)
(c) Minor work:
1. Minor work shall mean and include the construction or total replacement of any porch or stoop which does not provide structural support for any roof or portion of a building; the construction or alteration of any rooms within an existing one or two family dwell-

ing, provided that no structural members are altered in any way; the removal and replacement of more than 25 percent of the exterior siding of a one or two-family dwelling;

2.-4. (No change.)

(d) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Municipal Fees; Annual Permits
Adopted Amendment: N.J.A.C. 5:23-4.18

Proposed: October 4, 1993 at 25 N.J.R. 4548(a).
Adopted: November 16, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.
Filed: November 23, 1993 as R.1993 d.665, **without change.**

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

Effective Date: December 20, 1993.
Expiration Date: February 3, 1998.

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

Full text of the adoption follows:

5:23-4.18 Standards for municipal fees

(a) General:

1.-4. (No change.)

5. Prior to the issuance of the annual permit, a training registration fee of $140.00 per subcode shall be submitted by the applicant to the municipal construction official, who shall forward the fee to the Department of Community Affairs, Bureau of Technical Assistance, Training Section along with a copy of the construction permit (Form F-170C). Checks shall be made payable to "Treasurer, State of New Jersey."

(b)-(k) (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction and Changes
Regulations Governing Rooming and Boarding Houses
New Jersey State Housing Code
N.J.A.C. 5:27-1.3, 1.4, 1.6, 2.1 and 12.2 and 5:28 Foreword

Take notice that the Department of Community Affairs has requested, and the Office of Administrative Law has agreed to permit, an administrative correction and administrative changes as follows:

In N.J.A.C. 5:27-1.3(c)1, the reference to the Bureau of Fire Safety is changed to its current successor entity, the Division of Fire Safety.

In N.J.A.C. 5:27-1.4, the obviously inappropriate phrase "may be contained" is corrected as "may be continued."

The references in N.J.A.C. 5:27-1.6(c)1, 2 and 3 to "(c)5 below" are changed to "(c)6 below" due to the recodification of the original paragraph (c)5 as (c)6 effective June 4, 1990 (see 22 N.J.R. 912(a) and 1720(b)).

In N.J.A.C. 5:27-2.1 and 12.2(b) and (c), references to "HFA" and "New Jersey Housing Finance Agency" are changed to reflect the Agency's current title, New Jersey Housing and Mortgage Finance Agency (HMFA).

In the Foreword to N.J.A.C. 5:28, "and to be in compliance with N.J.A.C. 8:51" is deleted, as the Department has become aware that there is no longer any such chapter concerning housing codes requirements enforced by local health agencies.

This notice of administrative correction and changes is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected and changed rules follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

5:27-1.3 Administration and enforcement

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

(c) The local enforcing agency, as the term is defined in N.J.A.C. 5:18, authorized to enforce the Uniform Fire Code in each municipality is hereby designated as the agent of the Bureau for the purpose of inspecting existing buildings in order to enforce all provisions of the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., and the Uniform Fire Code, N.J.A.C. 5:18, applicable to rooming and boarding houses.

1. If, in the course of inspecting any rooming or boarding house, any inspector performing inspections for the Bureau finds any condition which is, or appears to be, in violation of the Uniform Fire Code, the inspector shall promptly give notice of such condition to the Bureau, which shall notify the [Bureau] **Division** of Fire Safety.

2.-4. (No change.)

5:27-1.4 Continuation of lawful existing use

The lawful occupancy and use of any rooming or boarding house existing on the effective date of the act may be [contained] **continued** unless a change is required by the provisions of this chapter and unless it is owned or operated by a person who has not obtained a license from the Bureau on or before December 31, 1980.

5:27-1.6 Licenses

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

(c) The annual fees for licenses shall be as follows:

1. Class A license: $80.00 plus the amount determined in accordance with [(c)5](c)**6** below;

2. Class B license: $90.00 plus the amount determined in accordance with [(c)5](c)**6** below;

3. Class C or Class D license: $100.00 plus the amount determined in accordance with [(c)5](c)**6** below;

5.-7. (No change.)

(d)-(m) (No change.)

5:27-2.1 Definitions

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

. . .

"HMFA" means the New Jersey Housing **and Mortgage** Finance Agency.

. . .

5:27-12.2 Rental assistance agreements

(a) (No change.)

(b) The agreement shall provide that payment of the rental assistance funds shall be made by the Bureau directly to the HMFA, for credit to the owner's loan account.

(c) Pursuant to statute, the agreement shall require that the owner remit to the Bureau, upon demand by the Bureau, an amount equal to any rental assistance payment made by the Bureau on behalf of any resident having an income in excess of the maximum amount established by the HMFA at any time during the period of time covered by the rental assistance payment.

(d)-(g) (No change.)

CHAPTER 28
NEW JERSEY STATE HOUSING CODE

FOREWORD

The New Jersey State Housing Code (1980 Revision) was adopted by the Department of Community Affairs pursuant to authority of N.J.S.A. 2A:42-76. It is available for adoption by reference, pursuant to N.J.S.A. 40:49-5.1, by municipalities seeking to implement N.J.S.A. 2A:42-74 et seq. and N.J.S.A. 2A:42-85 et seq. [and to be in compliance with N.J.A.C. 8:51.] It is not enforced by the Department of Community Affairs.

CORRECTIONS

(a)

THE COMMISSIONER

Keep Separate Status

Forms; Procedures for Tracking Transfers of Inmates in Keep Separate Status

Adopted Amendment: N.J.A.C. 10A:3-1.4

Adopted New Rule: N.J.A.C. 10A:3-2.3

Proposed: October 18, 1993 at 25 N.J.R. 4702(a).
Adopted: November 22, 1993 by Richard A. Seidl, Acting Commissioner, Department of Corrections.
Filed: November 24, 1993 as R.1993 d.679, **without change.**

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

Effective Date: December 20, 1993.
Expiration Date: September 16, 1996.

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

Full text of the adoption follows:

10A:3-1.4 Forms

(a) The following forms related to Security and Control shall be reproduced by each facility from originals that are available by contacting the Standards Development Unit:

1.-7. (No change.)
8. 173-III Transfer of Keep Separate Status Inmate
9. 285-I Request for Polygraph Examination.

10A:3-2.3 Procedures for tracking transfers of inmates in keep separate status

(a) The Inter-Institutional Classification Committee (I.I.C.C.) or Special Classification Committee (S.C.C.) shall authorize the transfer of an inmate in keep separate status to another correctional facility when such transfer is warranted and appropriate. Emergency transfer procedures shall be followed in accordance with N.J.A.C. 10A:9-6.5 or 7.5.

(b) Prior to the transfer of any inmate in keep separate status, the Senior Classification Officer shall:

1. Confirm the current location via the Department of Corrections' computerized Offender Based Correctional Information System (O.B.C.I.S.) of the other correlated keep separate status inmate(s);

2. Complete Form 173-III Transfer of Keep Separate Status Inmate who is to be transferred;

3. Advise by telephone and FAX a copy of Form 173-III to each correctional facility(s) housing the other correlated keep separate status inmate(s); and

4. Forward, within three days, a hard copy of Form 173-III to each correctional facility(s) housing the other correlated keep separate status inmate(s).

(c) The original Form 173-III, along with supporting documentation shall be filed in the chronological section of the transferred inmate's classification folder and shall be attached to Form 173-I. A copy of Form 173-III shall be added to the chronological section of each correlated inmate's classification folder, and shall be attached to Form 173-I.

(d) The Computerized Inmate Progress Notes shall be updated with the information recorded on Form 173-III.

Recodify existing N.J.A.C. 10A:3-2.3 and 2.4 as N.J.A.C. 10A:3-2.4 and 2.5 (No change in text.)

INSURANCE

(b)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Unfair Claims Settlement Practices

Written Notice by Insurers of Payment of Third-Party Claims

Adopted New Rule: N.J.A.C. 11:2-17.11

Proposed: September 7, 1993 at 25 N.J.R. 3921(a).
Adopted: November 23, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: November 24, 1993 as R.1993 d.681, **without change.**

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:29B-1 et seq.; and 17B:30-1 et seq.

Effective Date: December 20, 1993.
Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

The Department received a total of seven comments on the reproposed rules from the following: New Jersey Association of Mutual Insurance Companies, Prudential Property and Casualty Insurance Company (PRUPAC-NJ), International Fidelity Insurance Company, Allstate Insurance Company, American Insurance Association, Motor Club of America Insurance Companies, and the Health Care and Princeton Insurance Companies.

COMMENT: Some of the commenters questioned the appropriateness of burdening the insurance industry with the responsibility of policing attorneys, rather than placing that responsibility on the State or members of the legal profession. A few commenters suggested as alternatives that the State consider criminal sanctions and strict license revocation procedures.

RESPONSE: The Department believes that this rule will be an effective deterrent, before the fact, for the specific type of attorney misconduct addressed by the rule at negligible cost to insurers. The Department does not intend this rule to replace other methods of checking attorney misconduct. Moreover, criminal sanctions and strict license revocation procedures are methods that are already in place for dealing with attorney misconduct after the fact.

COMMENT: Some of the comments concerned the cost and burden placed on insurers in complying with the rule's notice requirement. One commenter stated that the rule is not cost effective, and the triggering amount for compliance with the rule's notice requirement should be $10,000. Other commenters stated that the rule is ultra vires and arbitrary and capricious if the Department has not calculated the insurer's cost in complying with the rule.

RESPONSE: While the Department recognizes that these rules impose new costs on insurers which are not directly offset by savings to those same insurers, the Department cannot agree that the rule's notice requirement is not cost-effective. The rule's requirement that insurers send an additional notice of payment directly to third-party claimants at the same time payment of their claims is sent to their attorneys or other representatives cannot be characterized as overly burdensome to insurers since the cost involved is negligible. On the other hand, the benefits resulting from the rule's notice requirement are significant. This rule will deter attorney misappropriation of client funds.

The Department disagrees with the comment that the rule's triggering amount should be increased to $10,000. In response to comments received on the Department's original proposal of this rule, the Department on reproposal reconsidered its position concerning the claim amount that would trigger the rule's notice requirement, and increased that amount from $1,000 as originally proposed to $5,000. This change was made in order to lessen any economic burden that may be placed on insurers to comply with the rule, and to allow for consistency with New York's regulation (N.Y. Comp. Codes R. & Regs. title xi, §216.9 (1988)), thereby enabling insurers transacting business in both states to follow the same requirement concerning third-party claims notices.

COMMENT: A few commenters stated that the rule is not necessary considering the minimal instances where lawyers victimize their clients

by misappropriating client funds, and that the New Jersey Supreme Court has already provided a mechanism to reimburse clients victimized by attorney misconduct.

RESPONSE: It is the Department's position that even if the number of cases of attorney misappropriation of client funds are few, this rule will deter this type of misconduct before the fact at minimal cost or burden to insurers. On the other hand, avenues of relief such as the Clients' Security Fund, a civil action for conversion of funds, or a client-initiated disciplinary action against the attorney through the State Disciplinary Review Board require the already-victimized client to bear the additional burden of initiating these proceedings and waiting indefinitely for their conclusion, while still not receiving any guarantee of reimbursement. The purpose of this rule is to alleviate the necessity for third-party claimants to become involved in any of these avenues of recovery by deterring at the outset the potential for attorneys to misappropriate funds belonging to their third-party claimant clients.

COMMENT: One commenter stated that the rule's notice requirements are contrary to the insurer's goal of achieving the fair settlement of claims as expeditiously as possible.

RESPONSE: The Department disagrees. The rule's requirement that an insurer provide written notice of payment to a claimant at the same time it provides payment to the claimant's representative will not interfere with an insurer's expeditious settlement of a claim, but will, rather, enhance fair settlement practices by ensuring that the claimants themselves are made aware of the settlement and deterring any possible instance of attorney misappropriation of client funds.

COMMENT: One commenter stated that the rule's notice requirement should not apply in cases where a client's name appears on a settlement check because the client's endorsement would be required on the check, and the client would be provided with sufficient opportunity to review the particulars of payment of the claim.

RESPONSE: The Department disagrees. The appearance of a client's name on a settlement check is not necessarily a guarantee that the client will be made aware of the check's existence by his or her attorney or that the attorney will not attempt to misappropriate those funds.

COMMENT: One commenter which insures medical practitioners against malpractice claims stated that settlement of such claims can take years to complete, and that the insurer may not have the claimant's current mailing address for mailing notice of settlement of the claim.

RESPONSE: The rule merely requires that an insurer mail the notice to the claimant by regular mail at the claimant's last known address.

Full text of the adoption follows:

11:2-17.11 Written notice by insurers of payment of third-party claims

(a) Upon payment of $5,000 or more in settlement of any third-party liability claim, where the claimant is a natural person, the insurer or its representative (including the insurer's attorney) shall mail to the third-party claimant written notice of payment at the same time payment is made to the third-party claimant's attorney or other representative.

(b) The written notice referred to in (a) above shall be mailed to the claimant by regular mail at the claimant's last known address, and shall include at least the following information:

1. The amount of the payment;
2. The party or parties to whom the check is made payable;
3. The party to whom the check was mailed; and
4. The address of the party to whom the check was mailed.

(c) Nothing in (a) above shall create, or be construed to create, a cause of action for any person or entity, other than the Department of Insurance, against the insurer or its representative based upon a failure to serve such notice, or the defective service of such notice. Nothing in (a) above shall establish, or be construed to establish, a defense for any party to any cause of action based upon a failure by the insurer or its representative to serve such notice, or the defective service of such notice.

Recodify existing N.J.A.C. 11:2-17.11 through 17.14 as 17.12 through 17.15 (No change in text.)

(a)

DIVISION OF PROPERTY/CASUALTY

Notice of Administrative Corrections Producer Assignment Program Appointment; Duration and Terms of Producer Assignment N.J.A.C. 11:3-42.12 and 42.17

Take notice that the Department of Insurance has discovered that certain references to provisions of N.J.S.A. 17:22-6.14a in N.J.A.C. 11:3-42.12 and 42.17 are in error.

N.J.A.C. 11:3-42.12(b) describes permitted actions under a provision referenced as N.J.S.A. 17:22-6.14a(1)e, which does not exist. The permitted actions are described under N.J.S.A. 17:22-6.14a(e). This same mis-reference occurs in N.J.A.C. 11:3-42.17(c).

The concluding reference in N.J.A.C. 11:3-42.17(b)1 to the non-existent N.J.S.A. 17:22-6.14a(1)(d) should be to N.J.S.A. 17:22-6.14a(d) and (l) which govern appointment termination.

The reference in N.J.A.C. 11:3-42.17(c) to N.J.S.A. 17:22-6.14a(i), which concerns insurance contract renewal, should be to N.J.S.A. 17:22-6.14a(l) which deals with agent termination.

This notice of administrative correction is published in accordance with 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]):

11:3-42.12 Appointment

(a) (No change.)

(b) Pursuant to N.J.S.A. 17:22-6.14a[(1)e](**e**), an insurer may use an insurance marketing system that provides for its agents to be compensated on a salary basis without compensation or provides for its agents to represent the company exclusively. Such an insurer may utilize this system for producers assigned to it under this Program or may appoint such producers as independent agents.

11:3-42.17 Duration and terms of producer assignment

(a) (No change.)

(b) At the conclusion of the two-year period, the producer and the insurer shall negotiate in good faith to do one of the following:

1. Irrespective of the marketing system customarily used by the insurer, appoint the producer as an independent agent, the termination of which appointment is governed by N.J.S.A. 17:22-6.14a[(1)](d) **and (l)**;

2.-3. (No change.)

(c) If the insurer and the producer cannot reach an agreement under (b) above, the producer shall be deemed a terminated agent who is subject to the provisions of N.J.S.A. 17:6.14a(d) and [(i)](**l**), notwithstanding N.J.S.A. 17:22-6.14a[(1)e](**e**) or mode of appointment of the producer under this Program (that is, exclusive agent or independent agent).

(b)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM

Relief from Obligations Imposed by the Individual Health Insurance Reform Act

Adopted New Rules: N.J.A.C. 11:20-11

Proposed: October 4, 1993 at 25 N.J.R. 4559(a).

Adopted: November 10, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: November 19, 1993 as R.1993 d.654, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:1C-6(e) and 17B:27A-2 et seq.

Effective Date: December 20, 1993.

Expiration Date: August 13, 1998.

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

Summary of Agency-Initiated Changes:
N.J.A.C. 11:20-11.4(a)1iii is revised to conform to the codification of N.J.A.C. 11:2-27 as amended (cite of N.J.A.C. 11:2-27.4(a)1 to 28 revised to read N.J.A.C. 11:2-27.3(a)1 to 29); and N.J.A.C. 11:20-11.4(a)10 is revised to correct a printing error ("relief" changed to "relied"). The reference to the effective date of this subchapter in the definition of "financially impaired" is changed to "December 20, 1993."

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 11. RELIEF FROM OBLIGATIONS IMPOSED BY THE INDIVIDUAL HEALTH INSURANCE REFORM ACT

11:20-11.1 Purpose and scope

(a) This subchapter establishes the informational and procedural requirements for members requesting relief from obligations to pay assessments pursuant to N.J.S.A. 17B:27A-12 or 17B:27A-13 (including assessments for IHC Program losses and administrative expenses), or to offer coverage or accept applications to provide a standard health benefits plan to eligible persons, pursuant to N.J.S.A. 17B:27A-8.

(b) This subchapter applies to all members of the IHC Program.

11:20-11.2 Definitions

(a) Words and terms defined at N.J.S.A. 17B:27A-2 and N.J.A.C. 11:20-1, when used in this subchapter, shall have the meanings as defined therein, unless more specifically defined in (b) below or unless the context clearly indicates otherwise.

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

"Applicant" means the member seeking a deferral of its obligation to pay assessments or a waiver of its obligation to offer coverage and accept applications pursuant to N.J.S.A. 17B:27A-2 et seq.

"Financially impaired" means a member which, after *[the effective date of this subchapter]* ***December 20, 1993***, is not insolvent, but is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations, or a member which is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

"Relief" means a deferral of obligations imposed pursuant to N.J.S.A. 17B:27A-12 and 17B:27A-13, or a waiver of obligations pursuant to N.J.S.A. 17B:27A-8, as applicable.

11:20-11.3 Application procedures and filing format

(a) Any member seeking relief may submit such request to the Department at any time, except that requests for relief from payment of assessments pursuant to N.J.S.A. 17B:27A-12a(3) or 17B:27A-13 shall be submitted to the Department no later than 15 days following the due date of payment of the assessment.

(b) All requests outlined in this subchapter shall be accompanied by a statement averring a need for relief from the obligation(s), as the case may be, including supporting documentation as set forth in N.J.A.C. 11:20-11.4, and shall specify the statutory and regulatory basis for such relief. A single filing may request relief from more than one obligation, but shall specify each obligation from which relief is sought.

(c) Each request shall be in loose leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the exhibits set forth in N.J.A.C. 11:20-11.4. The loose leaf sheets used in the request shall be eight and one-half inches wide and 11 inches long and punched for two-ring or three-ring binders, as appropriate.

(d) All members requesting relief pursuant to this subchapter shall submit five copies of each request in the format set forth in (c) above.

(e) If a request fails to materially comply with the filing format and information requirements set forth in N.J.A.C. 11:20-11.4 and this section, the Department shall notify the member that its request for relief is deficient and is denied on such grounds. The notice shall also set forth any information or other action required to cure the deficiency(s). If the member intends to pursue its request, the member shall submit the additional information specified or otherwise submit a filing in accordance with the format requirements specified in this section within 15 days of receipt of the Department's notice of deficiency. Failure to submit within 15 days the information necessary in the proper format to cure the deficiency shall result in the member's request being denied.

(f) All requests for relief or other information required pursuant to this subchapter shall be filed with the Department at the following address:

IHC Program
Request for Relief
New Jersey Department of Insurance
Division of Financial Solvency
20 West State Street
CN-325
Trenton, NJ 08625

11:20-11.4 Informational filing requirements

(a) When requesting relief from obligations imposed pursuant to N.J.S.A. 17B:27A-4, 17B:27A-12 or 17B:27A-13, the applicant shall provide with its request the following information in a clear, concise and complete manner:

1. A cover letter stating:

i. The name of the applicant;

ii. The form of relief and, if a deferral of less than the full amount, specific amount/percentage of relief which the applicant is requesting;

iii. A statement of facts relied upon as the basis under which relief is sought, including the specific factor(s) upon which the Commissioner may find that the member is or would be placed in a financially impaired position as set forth in N.J.A.C. 11:2-*[27.4]* ***27.3***(a)1 to *[28]****29***; and

iv. The name, title, telephone number and telefax number of a contact person familiar with the filing to whom the Department may direct any additional questions;

2. A detailed explanation, with supporting documentation, of the projected effect that fulfillment of the obligation would have on the immediate and long term financial condition of the applicant unless relief is granted as requested;

3. The most recent financial examination report, whether conducted by the applicant's state of domicile or other state;

4. A statement addressing whether the applicant is planning to modify its method of doing business in any way including, but not limited to, new acquisitions or new restructuring;

5. If the applicant is a member of a holding company system, the following shall be provided:

i. A list of all members of the holding company system;

ii. A list of all intercompany transactions for the period beginning January 1 in the year of the filing to the date of the quarterly statement immediately preceding the date of the filing, in the format set forth in the statutory annual statement filed by the applicant; and

iii. A copy of the registration statement filed pursuant to N.J.S.A. 17:27A-3 and the applicant's organizational chart;

6. An actuarial opinion attesting to the adequacy of reserves specifically for all accident and health lines of business, and for all lines of business which the applicant transacts, in the format of and satisfying all requirements for the actuarial opinion and memorandum required to be submitted as a part of the annual statement filed by the applicant;

i. If the applicant is a health maintenance organization, the applicant shall obtain and file an actuarial opinion which complies with the requirements set forth in (a)6 above;

7. A report signed by the attesting actuary referred in (a)6 above, which includes, in summary form if necessary, all data utilized, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;

8. A copy of the annual statement of the applicant, including all accompanying exhibits, filed with this State immediately preceding the date of the relief filing;

9. Copies of all quarterly statements for the period beginning January 1 in the year of the filing to the quarterly statement immediately preceding the date of the filing;

10. Except for requests for relief from the obligation to pay assessments pursuant to N.J.S.A. 17B:27A-13, three year financial projections beginning with the calendar year of the date of the filing assuming relief is granted and assuming relied is denied. The projections shall include, in summary form if necessary, all data utilized, and a complete explanation of methods and assumptions utilized and *[relief]* **relied** upon by the applicant in making the projections. The projections shall include results for the applicant's operations worldwide by line of business and for the applicant's operations in New Jersey only for individual health benefits plans issued pursuant to N.J.S.A. 17B:27A-2 et seq. The projections shall assume the same rate of assessment as in the first year for the subsequent years, and shall include projections of the applicant's operating results containing the information and in the format set forth in the following:

i. For life and health insurers, the balance sheet and summary of operations exhibits of the statutory annual statement filed by the insurer;

ii. For property and casualty insurers, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the insurer;

iii. For health service corporations, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the health service corporation; and

iv. For health maintenance organizations, the balance sheet and statement of revenue, expenses and net worth of the annual statement filed by the health maintenance organization;

11. A description of any relief from obligations imposed by this State or any other state granted or in effect within the preceding 12 months, and the basis upon which such relief was granted;

12. A non-refundable filing fee of $1,000, unless the applicant is in rehabilitation or conservation at the time of filing pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the applicant's state of domicile; and

13. Any other information the Commissioner may deem relevant to the consideration of the request.

(b) An applicant asserting that the Department's review of its request be evaluated on a particular basis (that is, pre-pooled, post-pooled, consolidated or unconsolidated), shall submit a written statement which sets forth the specific reasons, with supporting documentation, if any, for which it believes evaluation on a particular basis is appropriate to that applicant, and the specific reasons, with supporting documentation, if any, for which evaluation on other bases would be inappropriate.

(c) All filings shall be accompanied by the following certification signed by the chief financial officer of the applicant: "I _____ certify that the attached filing complies with all requirements set forth in N.J.A.C. 11:20-11 and that all of the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of the applicant."

11:20-11.5 Confidentiality of request for relief

(a) All data or information contained in the request for relief filed pursuant to this subchapter shall be confidential and shall not be subject to public disclosure or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., except for the following items, but only upon written, specified request and following 10 days written notice by the Department to the member/applicant:

1. N.J.A.C. 11:20-11.4(a)1i and ii—cover letter with name of applicant and describing relief sought;

2. N.J.A.C. 11:20-11.4(a)1iv—name, title, telephone number and telefax number of person familiar with the filing;

3. N.J.A.C. 11:20-11.4(a)3—most recent financial examination report;

4. N.J.A.C. 11:20-11.4(a)5i and ii—list of members of holding company system and intercompany transactions for period preceding date of filing;

5. N.J.A.C. 11:20-11.4(a)8—annual statement filed immediately preceding date of filing;

6. N.J.A.C. 11:20-11.4(a)12—non-refundable filing fee; and

7. N.J.A.C. 11:20-11.4(a)13—additional information required by the Commissioner to evaluate a particular filing.

11:20-11.6 Disposition of request for relief

(a) When the Commissioner determines pursuant to N.J.S.A. 17B:27A-8 or 17B:27A-12a(3), as applicable, that the member is or would be placed in a financially impaired condition through fulfillment of a coverage or assessment obligation or obligations, the Commissioner shall notify the member that its duty to fulfill the applicable obligation shall be waived, or deferred in whole or in part, as appropriate. If the Commissioner defers in whole or in part a member's obligation to pay assessments pursuant to N.J.S.A. 17B:27A-12a(3) or 17B:27A-13, the member shall remain liable to the IHC Program for the amount deferred.

(b) The Commissioner shall find that a member is or would be financially impaired if:

1. The member has been placed in rehabilitation or conservation pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the member's state of domicile;

2. The Commissioner finds that the member is in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27; or

3. The Commissioner finds that fulfillment of the obligation(s) from which relief is sought would place the member in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27.

(c) Any waiver or deferral from a particular obligation granted by the Commissioner pursuant to this subchapter shall be for a specified period as set forth in the notice granting the request, but shall not exceed 12 months from the date of the notice. Any member seeking to continue a waiver or deferral shall file a separate request for relief in accordance with this subchapter no later than 45 days prior to the expiration of the waiver or deferral period set forth in the original notification granting the request. Such a request shall also include a detailed explanation of all actions the applicant has taken and intends to take to cure the financial impairment. Failure to file a properly completed request for relief within the time prescribed shall result in the expiration of the waiver or deferral at the expiration of the period set forth in the original notification granting the request. Nothing herein shall be construed as limiting or prohibiting any member from applying for relief at any time in accordance with this subchapter.

(d) If the Commissioner grants a request for a deferral of payment of an assessment, the terms of the deferral shall include the requirement that the member shall pay to the Board an additional amount representing the loss to the Board of the time value of the assessment for the period of the deferral.

1. In calculating the additional amount to be paid, the member shall use the annual interest rate on one-year U.S. Treasury bills as of the date the assessment was due and payable.

2. In calculating the additional amount to be paid, the period of deferral shall begin on the date that payment of the assessment was due and payable and end on the date the amount deferred is paid to the Board.

3. The payment of the additional amount set forth in (d) above shall be in lieu of payment by the member of any interest or penalty on the amount deferred, which otherwise may be required under any other rule.

4. The requirement to pay an additional amount as provided in (d) above shall not apply when the reason for granting the deferral is that the member is in rehabilitation or conservation.

11:20-11.7 Hearings

(a) If the Commissioner denies a member's request for relief made pursuant to this subchapter, or if the member objects to the terms of the relief granted, the member may request a hearing on the Commissioner's determination within seven days from the date of receipt of such determination as follows:

1. A request for a hearing shall be in writing and shall include:

i. The name, address, and daytime telephone number of a contact person familiar with the matter;

ii. A copy of the Commissioner's determination;
iii. A statement requesting a hearing; and
iv. A concise statement describing the basis for which the member believes that the Commissioner's findings of fact are erroneous.

2. The Commissioner may, after receipt of a properly completed request for a hearing, provide for an informal conference between the member and such personnel of the Department as the Commissioner may direct, to determine whether there are material issues of fact in dispute.

3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

i. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

ii. In a matter which has been determined to be a contested case, if the Commissioner finds that there are no good-faith disputed issues of material facts and the matter may be decided on the documents filed, the Commissioner may notify the applicant in writing as to the final disposition of the matter.

11:20-11.8 Notice to the IHC Program

Members requesting relief pursuant to this subchapter shall concurrently provide notice of all such requests to the IHC Program through the Interim Administrator or Administrator, as appropriate. Members shall also provide notice to the IHC Program of all dispositions of such requests by the Commissioner, within 15 days of such disposition.

11:20-11.9 Exceptions for health maintenance organizations due to lack of capacity

(a) Any member health maintenance organization (HMO) asserting that it is not required to offer coverage or accept applications pursuant to the requirements of the Act because it does not have the capacity to enroll additional members, pursuant to N.J.S.A. 17B:27A-8a, shall file the following information with the Commissioner:

1. A cover letter stating:

i. The name of the member HMO;

ii. A statement that the member is not required to offer coverage or accept applications pursuant to the Act because it does not have the capacity in its facilities to enroll additional members, and the basis for that assertion, with supporting documentation, certified by the president or duly authorized officer of the member;

iii. The number of the member's current individual and group members, listed by provider and classified by the provider's specialty, which shall be updated annually each year the member asserts a waiver pursuant to N.J.S.A. 17B:27A-8a; and

iv. A certification signed by the president or duly authorized officer that the member shall not offer coverage to or accept any new group members, pursuant to N.J.S.A. 17B:27A-8a. Individual additions to existing groups shall not be considered new group members.

(b) The member shall concurrently file the information required pursuant to (a) above with the IHC Program.

11:20-11.10 Other actions by the Commissioner

Nothing in this subchapter shall be construed as limiting the Commissioner's authority to take such action with respect to insurers, health service corporations or health maintenance organizations as may be authorized by law, including, but not limited to, placing an insurer, health service corporation or health maintenance organization in rehabilitation, liquidation or conservation pursuant to N.J.S.A. 17B:32-31 et seq.

11:20-11.11 Penalties

Failure to comply with this subchapter, including all notice requirements set forth herein, may result in the denial of relief requested and imposition of penalties as authorized by law, including any actions that may be taken by the Board pursuant to N.J.S.A. 17B:27A-2 et seq. and the IHC Program Plan of Operation, including, but not limited to, imposition of an interest penalty for assessments due from the member and a recommendation by the Board to remove the member's authority to issue any health benefits plans in this State.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Contracts

Debarment from Contracting: Conflict of Interest

Readoption with Amendments: N.J.A.C. 12:3-1

Proposed: October 18, 1993 at 25 N.J.R. 4716(a).
Adopted: November 24, 1993 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: November 24, 1993 as R.1993 d.680, **without change.**

Authority: N.J.S.A. 34:1-20; 34:11-56.37; and the Governor's Executive Orders No. 34(1976) and No. 189(1988).

Effective Date: November 24, 1993, Readoption;
December 20, 1993, Amendments.
Expiration Date: November 24, 1998.

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. 12:3.

Full text of the adopted amendments follows:

12:3-1.3 Cause and conditions for debarment

(a) The Commissioner may debar a person from contracting with the Department or any agency within the control or jurisdiction of the Department for a definitely stated period of time for the violation of any labor law including but not limited to wage and hour, minimum wage, discrimination in wages and child labor laws and the prohibition against conflict set forth at N.J.A.C. 12:3-1.6.

(b) (No change.)

(c) The Commissioner may consider the following factors as material in each decision to debar:

1.-7. (No change.)
8. Failure to provide goods and/or services; and
9. Failure to comply with contract specifications.

(d) A violation of any labor law or the prohibition against conflict of interest shall be determined by the Commissioner. In the event an appeal taken from such determination results in a reversal, the debarment shall be removed unless the Commissioner determines that another cause for debarment exists.

COMMERCE AND ECONOMIC DEVELOPMENT

(b)

URBAN ENTERPRISE ZONE AUTHORITY

Urban Enterprise Zone Authority Policies

Readoption with Amendments: N.J.A.C. 12A:121

Proposed: October 4, 1993 at 25 N.J.R. 4582(a).
Adopted: November 4, 1993 by Urban Enterprise Zone Authority, James N. Albers, Chairman Designate.
Filed: November 15, 1993 as R.1993 d.645, **without change.**

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

Effective Date: November 15, 1993, Readoption;
December 20, 1993, Amendments.
Expiration Date: November 15, 1998.

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. 12A:121.

Full text of the adopted amendments follows:

12A:121-1.5 Time for zone boundary revisions

(a) A municipality in which a zone is located may apply for a boundary revision five years or more after the original designation date.

(b) No subsequent application for a zone boundary revision may be made for at least five years after the date the UEZA approves a prior zone boundary revision.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
Advertising
Adopted Amendment: N.J.A.C. 13:30-8.6

Proposed: July 6, 1993 at 25 N.J.R. 2823(a).
Adopted: October 6, 1993 by the State Board of Dentistry, Marvin A. Gross, D.D.S., President.
Filed: November 17, 1993 as R.1993 d.651, **without change.**

Authority: N.J.S.A. 45:6-3.

Effective Date: December 20, 1993.
Expiration Date: March 12, 1995.

The State Board of Dentistry afforded all interested parties an opportunity to comment on the proposed amendment, N.J.A.C. 13:30-8.6, relating to professional advertising.

The official comment period ended on August 4, 1993.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 6, 1993 at 25 N.J.R. 2823(a). Announcements were also forwarded to: Newark Star Ledger, Trenton Times, Asbury Park Press, Courier Post, Bergen Record, New Jersey Dental Association, New Jersey Hospital Association, New Jersey Dental Assistant Association, American Dental Hygiene Association, New Jersey Department of Health, and to other interested individuals and organizations.

A full record of this opportunity to be heard can be inspected by contacting the Board of Dentistry, 124 Halsey Street, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The Board of Dentistry received five comments from interested parties during the official 30-day comment period.

Comments were received from the New Jersey Dental Association; the American Association of Orthodontists; Richard B. Kaplan, D.D.S.; the American College of Prosthodontists—New Jersey Section; and the New Jersey Association of Orthodontists. A summary of the comments received and the Board's responses follows:

COMMENT: Testimonial advertising is inherently misleading. In view of the fact that no two patients are alike, the inherent suggestion of a testimonial advertisement that the testimonial giver's experience is typical or that the same result may be achieved is misleading. Both lay and expert testimonials should be prohibited in dental professional advertising.

RESPONSE: The Board of Dentistry's current regulation governing the use of testimonials in professional advertising at N.J.A.C. 13:30-8.6(c)5 permits personal testimonials except those which attest to the technical quality or technical competence of a service or treatment offered by a dentist. The Board's reproposed amendment to the regulation now will permit expert testimonial advertising and provides explicit parameters within which both lay and expert testimonial advertising may be utilized by a licensee. The Board has addressed what may be considered misleading aspects of testimonial advertising by requiring in this amendment that the testimonial giver have personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. Lay testimonials continue to be prohibited from containing technical matter beyond the testimonial giver's competence to comment upon, and expert testimonials may be rendered only by an individual who possesses specialized expertise sufficient to render the testimonial. Furthermore, the advertiser must be able to substantiate any objective statements of fact which appear in the testimonial, and the payment of any form of compensation for the testimonial must be disclosed in the advertisement.

The New Jersey Supreme Court Committee on Attorney Advertising recently issued an opinion permitting testimonial advertising. *Opinion 15,* 133 *N.J.L.J.* 1370 (April 5, 1993), 2 *N.J.L.* 588 (April 12, 1993). The Opinion stated that although testimonial advertising may create unjustified expectations in some cases, the technique is not inherently misleading. The fact that there may be isolated cases where the technique is abused does not justify a total prohibition on this mode of protected commercial speech. Rather, the Opinion provided that less restrictive and more precise means for regulating potential abuses were possible through the utilization of a disclaimer.

COMMENT: This amendment will create a growing number of complaints to the Board of Dentistry concerning professional advertising which will create an administrative burden.

RESPONSE: The Board recognizes that permitting an area of professional advertising which previously was prohibited may cause additional complaints to be submitted for the Board's review. However, this is the Board's responsibility and it must handle these complaints in the course of its business in the same manner as any other complaints which are received in the Board office.

COMMENT: The Board will be creating a new category of asset for a dental practice which may be called "celebrity patients." New Jersey dentists will be competing for celebrity patients who are sports figures or movie stars or recognized specialists and experts in the State.

RESPONSE: Pursuant to the Board's current regulation licensees have been able to utilize celebrity testimonial advertising. The only prohibition was that such testimonials could not attest to the technical competence or skill of the dentist. The new proposal actually contains a more specific framework within which such advertising may be utilized in order to avoid any potential for abuse.

COMMENT: The original proposed amendment to N.J.A.C. 13:30-8.6 contained a new provision concerning testimonial advertising in addition to other amendments. The other amendments were adopted and published in the New Jersey Register pursuant to a Notice of Adoption while this provision concerning testimonials was reproposed separately because it contained a substantive change. This is a procedural impropriety in that the entire proposal should have been republished including those sections which the Board previously voted to adopt.

RESPONSE: The rule for agency rulemaking at N.J.A.C. 1:30-4.3 requires a new notice of proposed rule and public opportunity to be heard when an agency determines to make changes in the proposed rule which are so substantial that the changes effectively destroy the value of the original notice. However, this rule does not require a new notice of the entire original proposed rule. The Board may adopt part of the proposal and repropose that part which contains the substantial change. The implementation of the adopted sections of the advertising rule is not affected by this reproposal. The reproposal of only that portion which is being amended further is an administrative determination representative of standard practice and procedure.

Full text of the adoption follows:

13:30-8.6 Professional advertising

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

(c) A licensee who engages in the use of advertising which contains the following shall be deemed to be engaged in professional misconduct:

1.-4. (No change.)

Recodify existing 6.-9. as 5.-8. (No change in text.)

(d)-(l) (No change.)

(m) An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon. An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the

rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and the failure to do so, if required by the Board, may be deemed professional misconduct. Where an advertiser directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a legible and readable manner in any advertisement in the following language or its substantial equivalent:

COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
Patient Records
Adopted Repeal and New Rule: N.J.A.C. 13:30-8.7

Adopted: October 10, 1993 by the State Board of Dentistry, Marvin A. Gross, D.D.S., President.

Filed: November 17, 1993 as R.1993 d.650, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:6-3 and 45:6-19.4.

Effective Date: December 20, 1993.

Expiration Date: March 12, 1995.

The State Board of Dentistry afforded all interested parties an opportunity to comment on the proposed repeal and new rule, N.J.A.C. 13:30-8.7, relating to patient records.

The official comment period ended on June 2, 1993.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on May 3, 1993 at 25 N.J.R. 1833(a). Announcements were also forwarded to: Newark Star Ledger, Trenton Times, Asbury Park Press, Courier Post, Bergen Record, New Jersey Dental Association, New Jersey Hospital Association, New Jersey Dental Assistant Association, American Dental Hygiene Association, New Jersey Department of Health, and to other interested individuals and organizations.

A full record of this opportunity to be heard can be inspected by contacting the Board of Dentistry, 124 Halsey Street, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The Board of Dentistry received three comments from interested parties during the official 30-day comment period.

Comments were received from the New Jersey Dental Association; John Paul Dizzia, Esq.; and Kevin M. Heaney, D.D.S. A summary of the comments received and the Board's responses follows:

COMMENT: Paragraph (a)8 requires that copies of all insurance claim forms, pre-determinations and payment vouchers be maintained as part of complete financial records. Compliance with this rule will be burdensome for the licensee, and at least in the case of pre-determination forms, is duplicative of other insurance claim forms or meaningless if the treatment plan is modified.

RESPONSE: The Board agrees that the pre-determination forms need not be maintained by the licensee as part of complete financial records. If the treatment is rendered it will be indicated on the insurance claim form of actual treatment rendered. If the treatment is not rendered or if the treatment plan is changed, then maintenance of the pre-determination form will not add any meaningful information to the patient's financial records. Accordingly, the requirement of maintaining pre-determination forms has been deleted.

COMMENT: Many dental offices now submit insurance claims electronically in order to eliminate the need for hard copies.

RESPONSE: Hard copies still must be maintained in accordance with this rule, and electronically submitted claims should not be erased. This is necessary so that the Board may conduct a proper investigation in the event there is an allegation of insurance fraud.

COMMENT: Paragraph (e)5 requires a licensee who ceases to engage in practice to conspicuously post a notice on the premises of the procedure for the retrieval of records among other requirements. Sometimes this is not possible if, for example, a licensee has rented a dental office, and the landlord has leased the facility to another tenant.

RESPONSE: The Board agrees that the intent of the regulation is to post a notice in circumstances where this additional type of notice can reasonably be accomplished. Obviously, the licensee cannot be expected to post a notice in a location where he has no authority to do so. In order to allay any concerns about this requirement, the Board has added the words "when possible" to the requirement.

COMMENT: Subsection (b) requires that patient records, including all radiographs and diagnostic models, must be maintained for at least seven years from the date of the last entry. Diagnostic models take up a great deal of space and maintaining them for seven years is not warranted.

RESPONSE: The Board agrees that maintaining diagnostic models for seven years may not be necessary or add significantly to the patient record. Accordingly, the Board has agreed to reduce the period during which diagnostic models must be maintained from seven years to three years.

COMMENT: Paragraph (d)1 permits the Board to demand original patient records. A dentist should never permit original records to be removed from his office because they may be needed for civil litigation or they could be lost during the course of an investigation.

RESPONSE: N.J.S.A. 45:1-18 sets forth the investigative powers of the Board including the authority to issue a subpoena in order to compel the production of books, records or papers. Such authority includes the right to demand the originals of such records. Original records often are the best evidence for the purpose of conducting an investigation because they are the most legible, and nothing is lost or made illegible through the photocopying process. In addition, since the recipient of a subpoena need not produce the records until some future return date, he or she has an ample opportunity to copy them in order to maintain a record. As a practical matter the Board often will be satisfied with the production of photocopies and advises the licensee when such is the case. However, in certain circumstances only the original records will be sufficient for the purposes of conducting a reliable investigation.

COMMENT: The Board's proposed rule suggests that it may demand patient records regardless of whether a complaint has been filed by or on behalf of a patient and without notifying the patient that his or her records may be acquired and reviewed by the Board. In such a case the Board should be required to obtain the patient's consent prior to revealing the records.

RESPONSE: An investigation by the Board of Dentistry to determine whether dental treatment has been rendered within acceptable standards of care is conducted for the protection of the dentist's patients, both current and potential. When the Board has reason to believe that there is adequate cause to conduct an investigation into the treatment of a patient, the records are relevant and material to such an investigation. The Board should not have to wait until there is actual patient harm before it can investigate and take action in regard to the conduct of a licensee. Further, if the Board could only conduct an investigation with patient consent, any and all schemes for fraudulent billing, drug diversion, and excessive or unnecessary treatment could be permitted to continue without Board intervention. Clearly, the Board's efforts cannot be made subject to the control of those being investigated.

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

13:30-8.7 Patient records

(a) A contemporaneous, permanent patient record shall be prepared and maintained by a licensee for each person seeking or receiving dental services, regardless of whether any treatment is actually rendered or whether any fee is charged. Licensees also shall maintain records relating to charges made to patients and third party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Such records shall include, as a minimum:

1. The name, address, and date of birth of the patient and, if a minor, the name of the parent or guardian;

2. The patient's medical history;

3. A record of results of a clinical examination where appropriate or an indication of the patient's chief complaint;

4. A treatment plan where appropriate;

5. The dates of each patient visit and a description of the treatment or services rendered at each visit;

6. A description of all radiographs taken and diagnostic models made properly identified with the patient's name and date;

7. The date and a description of any medications prescribed, dispensed or sold including the dosage or a copy of any written prescriptions;

8. Complete financial records, including an itemized statement of the amount billed to and received on the patient's account from the patient or a third party payor and copies of all insurance claim forms *[, pre-determinations,]* and payment vouchers; and

9. A record of any recommendations or referrals for treatment or consultation by a specialist, including those which were refused by the patient.

(b) Patient records, including all radiographs *[and diagnostic models]*, shall be maintained for at least seven years from the date of the last entry**, except that diagnostic models need be maintained only for three years***.

(c) Licensees shall provide patient records to the patient or the patient's authorized representative or another dentist in accordance with the following:

1. Upon receipt of a written request from a patient or the patient's authorized representative and within 14 days thereof, legible copies of the patient record including, if requested, duplicates of models and copies of radiographs, shall be furnished to the patient or an authorized representative or a dentist. "Authorized representative" means, but is not necessarily limited to, a person who has been designated by the patient or a court to exercise rights under this section. An authorized representative may be the patient's attorney or an agent of an insurance carrier 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. If the patient is a minor, a parent or guardian who has custody (whether sole or joint) will be deemed to be an authorized representative.

2. A licensee may require any unpaid balance for diagnostic services be paid prior to release of such records. Where treatment of a patient whose dental expenses are paid through Medicaid is discontinued by the dentist prior to completion of the treatment, no charge for the records shall be made or payment required.

3. 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 duplicating. 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 additional cost to the patient.

(d) Licensees shall maintain the confidentiality of patient records, except that:

1. The licensee shall release patient records as directed by the Board of Dentistry or the Office of the Attorney General, or by a Demand for Statement in Writing under Oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All radiographs, models, and reports maintained by the licensee, including those prepared by other dentists, also shall be provided. The costs of producing such records shall be borne by the licensee.

2. The licensee, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or who has been asked to provide treatment to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.

3. The licensee shall release information as required by law or regulation, such as the reporting of communicable diseases or gunshot wounds or suspected child abuse, etc., or when the patient's treatment is the subject of peer review.

(e) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than six months, the licensee or a designee shall:

1. Establish a procedure by which patients can obtain treatment records or agree to the transfer of those records to another licensee who is assuming the responsibilities of that practice;

2. If the practice will be unattended by another licensee, publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation;

3. File a notice of the established procedure for the retrieval of records with the Board of Dentistry;

4. Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation of practice providing information concerning the established procedure for retrieval of records; and

5. Conspicuously post a notice on the premises of the procedure for the retrieval of records ***when possible***.

(f) The provisions of this section shall not apply to situations where no patient-dentist relationship exists, such as where the professional services of a dentist are rendered at the behest of a third party for the purposes of examination and evaluation only or at the behest of the Board pursuant to N.J.A.C. 13:30-8.5 or in the course of any investigation.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Notice of Administrative Correction
Athletic Trainers
Fees
N.J.A.C. 13:35-10.8 and 10.9

Take notice that the Office of Administrative Law has discovered that adopted new rule N.J.A.C. 13:35-10.8, which references N.J.A.C. 13:35-6.13(a)8 as the fee schedule for athletic trainers (see 25 N.J.R. 265(a) and 4935(a)), was rendered inaccurate and unnecessary due to the subsequent proposal and prior adoption of the deletion of the referenced N.J.A.C. 13:35-6.13(a)8 and the adoption of new rule N.J.A.C. 13:35-10.9, setting forth athletic trainer registration fees (see 25 N.J.R. 1058(a) and 2487(a)). Therefore, through this notice of administrative correction published in accordance with N.J.A.C. 1:30-2.7, N.J.A.C. 13:35-10.8 is deleted and N.J.A.C. 13:35-10.9 recodified as 10.8.

Full text of the corrected rules follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

[13:35-10.8 Fees

The fee schedule for athletic trainers is determined by the Board and appears at N.J.A.C. 13:35-6.13(a)8.]

13:35-[10.9]**10.8** Fees

(a) (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF NURSING
Fees
Adopted Amendment: N.J.A.C. 13:37-12.1

Proposed: September 7, 1993 at 25 N.J.R. 3928(a).

Adopted: November 12, 1993 by the State Board of Nursing, Golden Bethune, President.

Filed: November 24, 1993 as R.1993 d.690, **without change but with N.J.A.C. 13:37-12.1(a)9 and 13:37-12.1(c) not adopted at this time.**

Authority: N.J.S.A. 45:11-24.

Effective Date: December 20, 1993.

Expiration Date: January 23, 1995.

The State Board of Nursing afforded all interested parties an opportunity to comment on the amendment to the Board's fee schedule, N.J.A.C. 13:37-12.1, as proposed in the New Jersey Register on September 7, 1993 at 25 N.J.R. 3928(a). The official comment period ended on October 7, 1993. Announcements of the opportunity to respond to the Board were also forwarded to the Star Ledger, the Trenton Times, the New Jersey State Nurses' Association, the New Jersey Hospital Association, the New Jersey League for Nursing and to other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Nursing, Post Office Box 45010, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board received 12 letters, all objecting to the amount of the nurse-practitioner biennial certification fee established in subsection (c). A list of commenters follows:

Dorothy D. Flemming, Executive Director, New Jersey State Nurses Association
Angela Malinoski, RN, MSN, Public Health Consultant, New Jersey Department of Health, Division of Family Health Services
University of Medicine & Dentistry of New Jersey, University Hospital:
Marilyn Toree, Administrator, Family Planning Project
Eileen McCutcheon, MSN, RNCS, Nurse Practitioner, Family Planning Project
Ada Banks, RNC, OB/GYN Nurse Practitioner
G. Gail Martin, RN, BGS, Project Manager, North Hudson Community Action Corporation, Family Planning and Maternity Clinic
Sheila A. Plungis, RN, MBA, Director of Clinical Services, Family Planning Services of Cumberland, Gloucester and Salem Counties
Christine Reynolds, RNC, Chairperson, Regulatory Affairs Committee, Family Planning Association of New Jersey
Linda Most, Executive Director, Family Planning Program of Ocean County, Inc.
Ann Mahan, RNC, OGNP, Project Director, Women's Health and Family Planning Center
Patti Breedlove, Executive Director, Planned Parenthood of Passaic County, Inc.
Andre Cazeau, Executive Director, Community Health Services, Atlantic City Medical Center

All of the commenters asked the Board to reexamine the cost of processing licensure and set fees that are based on accurate data. Citing statistics in the summer 1992 Board of Nursing Newsletter that there are 1,485 advanced practice nurses in New Jersey (311 nurse practitioners without a master's degree, 275 with a master's degree and 899 clinical specialists), the commenters argue that the Board's estimate of 250 is too low. The New Jersey State Nurses Association (the "Association") stated that about two percent of New Jersey's nurses are in advanced practice and gave a conservative estimate of 1,000 nurses expected to apply for advanced practice certification.

Based upon the commenters' requests, the Board has deferred final consideration of N.J.A.C. 13:37-12.1(c) pending additional research on the number of nurses who may be expected to apply for advanced practice certification.

The Association also argues that the fees are out of line with fees charged by other licensing boards, and two commenters stated that the proposed fees will be a financial hardship on the nurse practitioner when balanced against anticipated salaries of clinicians.

The Board points out that a comparison with fees charged by other Boards is not the controlling factor. All licensing boards within the scope of N.J.S.A. 45:1-3.2 are required to be self-funding; that is, operating costs must be met through licensing and other fees. Accordingly, each professional and occupational licensing board's expenses are allocated among that board's licensee class on a per capita basis. The biennial certification fee for nurse practitioners must be based upon the administrative costs in relation to the number of individuals who will seek certification and not upon considerations such as salaries or comparisons with other boards' fees. As stated, the Board will review its estimate of the number of nurse practitioners expected to apply for certification and, if appropriate, will amend the biennial certification fee accordingly.

The Board also points out that the biennial registration fees for a certified nurse midwife is $170.00.

Summary of Agency-Initiated Change:

At the open public session portion of its November 12, 1993 meeting, the Board voted to defer final consideration of the proposed $25.00 fee for change of name or address, N.J.A.C. 13:37-12.1(a)9. The Board stated that it wished to reconsider whether a lower fee would more appropriately reflect the Board's administrative costs of processing name or address changes.

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

13:37-12.1 Fee schedule

(a) The following fees shall be charged by the Board in connection with licensure of professional and practical nurses.

1. Application fee	$50.00
2. Initial license fee	
i. If paid during the first year of a biennial renewal period	50.00
ii. If paid during the second year of a biennial renewal period	25.00
3. Licensure by endorsement:	60.00
4. Verification for endorsement	30.00
5. Renewal of license (Biennial)	50.00
6. Late renewal of license (one to 30 days)	50.00
7. Reinstatement fee (after 30 days)	100.00
8. Duplicate license	25.00
9. *[Change of name or address	25.00]*
(Reserved)	
10. Written verification of licensure	15.00
11. Notary Fee	5.00
12. Record duplication	5.00
13. Copy of Nurse Practice Act	5.00
14. Copy of L.P.N. Standards of Practice	3.00

(b) The following fees shall be charged by the Board in connection with certification of homemaker-home health aides.

1. Application fee	$20.00
2. Program approval fee for each location at which course is offered (annual)	$100.00
3. Instructor's Manual	20.00
4. Student Manual	10.00
5. Initial certification fee	
i. If paid during the first year of a biennial renewal period	10.00
ii. If paid during the second year of a biennial renewal period	5.00
6. Renewal of certificate (Biennial)	10.00
7. Late renewal of certificate	10.00
8. Duplicate certificate	5.00
9. Certification by endorsement	10.00

(c) *[The following fees shall be charged by the Board in connection with certification of nurse practitioners:

1. Application fee	$100.00
2. Initial certification fee	
i. If paid during the first year of a biennial renewal period	200.00
ii. If paid during the second year of a biennial renewal period	100.00
3. Renewal of certification (biennial)	200.00
4. Certification by endorsement	200.00
5. Late renewal of certificate (one to 30 days)	50.00
6. Reinstatement fee (after 30 days)	100.00
7. Duplicate certificate	25.00]*
(Reserved)	

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF VETERINARY MEDICAL EXAMINERS
Examinations
Adopted Amendments: N.J.A.C. 13:44-1.2, 1.3, 1.4 and 2.9

Proposed: September 7, 1993 at 25 N.J.R. 3930(a).
Adopted: November 17, 1993 by the Board of Veterinary Medical Examiners, Thomas Sanquini, D.V.M., President.
Filed: November 24, 1993 as R.1993 d.683, **without change**.

Authority: N.J.S.A. 45:16-9.7.

Effective Date: December 20, 1993.
Expiration Date: August 7, 1994.

Summary of Public Comments and Agency Responses:
One comment was received during the 30-day comment period. The New Jersey Veterinary Medical Association (NJVMA) stated it strongly supports the proposal because it provides more defensible and equitable criteria for credentialing candidates. NJVMA also noted that by making New Jersey's NBE and CCT scoring criteria consistent with that accepted by other state licensing agencies, the proposal will eliminate confusion for candidates. The Board acknowledges and appreciates NJVMA's support for the proposal.

Full text of the adoption follows:

13:44-1.2 Examinations
(a) (No change.)
(b) As a prerequisite to taking the New Jersey Practical Examination, an applicant shall have attained a passing grade, as determined by the test sponsor, on the National Board Examination and the Clinical Competency Test within five years preceding application for the New Jersey Practical Examination.
(c)-(h) (No change.)

13:44-1.3 Licensure by waiver of examination
(a)-(b) (No change.)
(c) In addition, the applicant shall file an application for a review of credentials and submit:
1.-2. (No change.)
3. National Board Examination and Clinical Competency Test scores through Interstate Reporting Service.
4.-5. (No change.)
(d)-(e) (No change.)

13:44-1.4 Graduates of non-approved veterinary programs
(a) (No change.)
(b) The National Board Examination and Clinical Competency Test taken for the ECFVG Program may be used to fulfill the prerequisite for the State Practical Examination or the State Veterinary Jurisprudence Examination. However, for this purpose the results of the tests shall have been obtained within the five year period immediately preceding application.
(c)-(f) (No change.)

13:44-2.9 Temporary permits
(a) (No change.)
(b) A candidate who has filed an application for a review of credentials, and is waiting to take the next scheduled National Board Examination, Clinical Competency Test, the New Jersey Practical Examintion, or Veterinary Jurisprudence Examination, may apply to the Board for a temporary permit number 1 to be employed as an assistant under the responsible supervision of a qualified New Jersey licensed veterinarian, except that a person with National Board Examination and/or Clinical Competency Test scores which do not meet New Jersey standards shall not be eligible to make application.
(c)-(i) (No change.)

(b)

NEW JERSEY RACING COMMISSION
Thoroughbred Rules
Commission Employee/Appointees; Prohibited Affiliations with Permitted Racetrack
Adopted New Rule: N.J.A.C. 13:70-1.31

Proposed: September 20, 1993 at 25 N.J.R. 4458(b).
Adopted: November 22, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: November 24, 1993 as R.1993 d.684, **without change**.

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

Effective Date: December 20, 1993.
Expiration Date: January 25, 1995.

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

Full text of the adoption follows:

13:70-1.31 Commission employees/appointees; prohibited affiliations with permitted racetracks
No employee or appointee of the New Jersey Racing Commission shall provide any services to a permitted racetrack facility in this State, whether or not for compensation, where those services are outside the scope of his or her duties on behalf of the Commission.

(c)

NEW JERSEY RACING COMMISSION
Thoroughbred Rules
The Pick(N)
Adopted New Rule: N.J.A.C. 13:70-29.52

Proposed: October 4, 1993 at 25 N.J.R. 4585(b).
Adopted: November 22, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: November 24, 1993 as R.1993 d.685, **without change**.

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

Effective Date: December 20, 1993.
Expiration Date: January 25, 1995.

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

Full text of the adoption follows:

13:70-29.52 The Pick(N)
(a) The Pick(N) requires selection of the first place finishers in each of four or more consecutive races, with the letter (N) representing the number of such races. The association must obtain written approval from the Commission concerning the scheduling of Pick(N) events. Any changes to the approved Pick(N) format requires prior approval from the Commission.
(b) A carry-over, as is relevant to this section, is that percentage of the pool not paid out when no one successfully selects all winning horses in the Pick(N). The carry-over amount shall be added to the subsequent Pick(N) pool until distributed as a result of the successful selection of all winning horses.
(c) The Pick(N) pool shall be distributed under one of the following methods:
1. Method 1. Pick(N) with carry-over: The net Pick(N) pool and carry-over, if any, shall be distributed as a single price pool to those who selected the first place finisher in each of the Pick(N) contests, based on the official order of finish. If there are no such wagers, then 25 percent of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick(N) races; and the remaining 75 percent of the net pool shall be added to the carry-over.

2. Method 2. Pick(N) with minor pool and carry-over: The major share of the net Pick(N) pool (75 percent) and the carry-over, if any, shall be distributed to those who selected the first-place finisher in each of the Pick(N) contests, based on the official order of finish. The minor share of the net Pick(N) pool (25 percent) shall be distributed to those who selected the first-place finisher in the second greatest number of Pick(N) contests based on the official order of finish. If there are no such wagers selecting the first-place finisher of all Pick(N) contests, the minor share of the net Pick(N) pool (25 percent) shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick(N) contests based on the official order of finish and the major share (75 percent) shall be added to the carry-over.

(d) If there is a dead heat for first in any of the Pick(N) contests involving contestants representing the same betting interest, the Pick(N) pool shall be distributed as if no dead heat occurred. If there is a dead heat for first in any of the Pick(N) contests involving contestants representing two or more betting interests, the Pick(N) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the net Pick(N) pool.

(e) The Pick(N) pool shall be held entirely separate from all other pools and is not a parlay and is not part of a daily double, exacta, trifecta or other wagering pool.

(f) Pick(N) tickets shall be sold in not less than $1.00 denominations and only from machines capable of issuing four or more numbers.

(g) Those horses constituting an entry or a field as defined within the rules and regulations of the Commission shall race in any Pick(N) race as a single wagering interest for the purpose of Pick(N) parimutuel pool calculations and payments to the public. A scratch after wagering has begun on any part of an entry or mutuel field in such a race shall be of no effect with respect to the status of such entry or field as a viable wagering interest.

(h) At any time after wagering begins on a Pick(N) pool should a horse, entire betting entry or mutuel field be scratched or declared a non-starter in any Pick(N) race, no further tickets selecting such horse betting entry or mutuel field shall be issued, and wagers upon such horse betting entry or mutuel field, for purposes of the Pick(N) pool shall be deemed wagers upon the horse, betting entry or mutuel field upon which the most money has been wagered in the win pool at the close of win pool betting for such race. In the event of a money tie, the tied horse, betting entry or mutuel field with the most inside post position shall be designated.

(i) The Pick(N) pool shall not be cancelled based upon the number of race cancellations or races being declared no contest, unless the following is true, in which case all Pick(N) wagers for the individual performance shall be refunded:

1. Three or more races of a Pick 4 or Pick 5 are cancelled or declared no contest;

2. Four or more races of a Pick 6 or Pick 7 are cancelled or declared no contest;

3. Five or more races of a Pick 8 or Pick 9 are cancelled or declared no contest;

4. Six or more races of a Pick 10, Pick 11 or more races are cancelled or declared no contest.

(j) If, on the last day on which the system of wagering is conducted at a race meeting, no bettor selects the winning horse in those designated races, the total amount of the pool which exists on that day in connection with those races shall be paid to the bettor or bettors who selected the largest number of winning horses in those races.

(k) If, for any reason, the Pick(N) carry-over cannot be paid out on the last scheduled day of a race meeting, the carry-over shall be deposited in an interest bearing account approved by the Commission. The Pick(N) carry-over plus accrued interest shall then be added to the net Pick(N) pool on a race date determined by the Commission.

(l) An association, with the written approval of the Commission, may contribute funds to the net Pick(N) pool or the carry-over pool.

(m) Should circumstances occur which are not foreseen in this section, questions arising thereby shall be resolved with general parimutuel practice. Decisions regarding distribution of Pick(N) pools will be final.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Commission Employees/Appointees; Prohibited Affiliations with Permitted Racetrack

Adopted New Rule: N.J.A.C. 13:71-1.26

Proposed: September 20, 1993 at 25 N.J.R. 4459(a).
Adopted: November 22, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: November 24, 1993 as R.1993 d.686, **without change.**

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

Effective Date: December 20, 1993.
Expiration Date: January 25, 1995.

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

Full text of the adoption follows:

13:71-1.26 Commission employees/appointees; prohibited affiliations with permitted racetracks

No employee or appointee of the New Jersey Racing Commission shall provide any services to a permitted racetrack facility in this State, whether or not for compensation, where those services are outside the scope of his or her duties on behalf of the Commission.

(b)

DIVISION OF CRIMINAL JUSTICE

Administration of Victim and Witness Advocacy Fund

Readoption with Amendments: N.J.A.C. 13:78
Adopted New Rules: N.J.A.C. 13:78-2, 3 and 4

Proposed: October 18, 1993 at 25 N.J.R. 4721(a).
Adopted: November 19, 1993 by James F. Mulvihill, Director, Division of Criminal Justice.
Filed: November 24, 1993 as R.1993 d.687, **without change.**

Authority: N.J.S.A. 2C:43-3.1a(6)(c) and 52:4B-43.1.

Effective Date: November 24, 1993, Readoption;
December 20, 1993, Amendments.
Expiration Date: November 24, 1998.

Summary of Public Comments and Agency Responses:
This office received three written comments from the public in response to the proposed readoption and new rules. A summary of the comments and the agency responses follows:

COMMENT: Debra K. Donnelly, Director of Alternatives to Domestic Violence, Bergen County Department of Human Services, suggested that instead of the proposed auditing provisions which require a monthly reporting period, the proposed rules should be amended to require a quarterly report which would be less burdensome; that the definition of "direct services" should be more restrictive to include only appropriate agencies as eligible recipients; and that the proposed rules should address whether a recipient is entitled to more than one grant exceeding a $7000 maximum.

RESPONSE: The agency responded that the monthly reporting period is consistent with departmental policy to insure that grant awards are utilized as provided by law. A form provided by the Director will be designed to minimize administrative costs. The definition of "direct services" is consistent with the legislative intent permitting any qualified public entity or not-for-profit organization to apply for an award. Finally, the proposed rules do not address any limitation on the amount of awards. In the opinion of the agency, the suggestions do not require further amendment of the proposed readoption and new rules.

COMMENT: Barbara M. Price, Executive Director of the New Jersey Coalition for Battered Women, stated that the proposed auditing provision including the monthly reporting period would result in onerous administrative overhead, that the proposed rules should address whether a recipient is entitled to more than one grant exceeding a $7000 maximum, that the allocation of funds based on a formula which may take into account the population and crime rate of the county may place some programs in rural counties at a disadvantage, and that the rules should give priority to programs addressing domestic violence and sexual assault victims and witnesses.

RESPONSE: The agency responded that the monthly reporting period is consistent with departmental policy to insure that grant awards are utilized as provided by law. A form provided by the Director will be designed to minimize administrative costs. The proposed rules do not addess any limitation on the amount of awards. Consideration of a formula based on population and crime rate is the most objective method to address the complicated issue of allocating the limited funds with fairness. The proposed rules provide sufficient flexibility to give priority to programs in accordance with the legislative intent. In the opinion of the agency, the suggestions do not require further amendment of the proposed readoption and new rules.

COMMENT: Karen A. Spinner, Director of Public Education and Policy with the New Jersey Association on Correction, suggested that the provision in N.J.A.C. 13:78-5.3 on disbursement of moneys to other public entities is unnecessary, and that it suggests that there is a preference given to one type of public entity over another.

RESPONSE: The agency responded that the proposed rules utilize statutory distinctions and do not suggest any preference except as required by the enabling legislation. In the opinion of the agency, the suggestion does not require further amendment of the proposed readoption and new rules.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:78.

Full text of the adopted amendments follows:

CHAPTER 78
ADMINISTRATION OF VICTIM AND WITNESS ADVOCACY FUND

SUBCHAPTER 1. GENERAL PROVISIONS

13:78-1.1 Purpose

The rules in this chapter govern the administration of the Victim and Witness Advocacy Fund, created pursuant to P.L. 1979, c.396, §2 (N.J.S.A. 2C:43-3.1a(6)(c)), as amended by P.L. 1991, c.329, §3 and P.L. 1991, c.329, §20 (N.J.S.A. 52:4B-43.1). This Fund is legislatively mandated to support the State Office of Victim-Witness Advocacy and county Offices of Victim and Witness Advocacy with the development and provision of services to victims and witnesses of crimes, and for related administrative costs. The Director is also authorized to award moneys to qualified public entities and qualified not-for-profit organizations who provide specific direct services to victims and witnesses. Moneys distributed to public entities according to this chapter shall be used to implement the legislative mandates and the Attorney General Standards to Ensure the Rights of Crime Victims, promulgated pursuant to N.J.S.A. 52:4B-44.

13:78-1.2 Legal authority

The Director of the Division of Criminal Justice within the Department of Law and Public Safety is charged with the responsibility to establish rules deemed necessary to effectuate the purposes of the Fund under N.J.S.A. 2C:43-3.1a(6)(c) and 52:4B-43.1.

13:78-1.3 Scope

The rules contained in this chapter shall govern the award of moneys from the Victim and Witness Advocacy Fund to the county Offices of Victim and Witness Advocacy and other public entities pursuant to N.J.S.A. 52:4B-43.1b and shall govern the determination of eligibility of applicant public entities and applicant not-for-profit organizations as eligible and qualified to apply for awards to provide direct services to victims and witnesses of crimes pursuant to N.J.S.A. 52:4B-43.1c.

13:78-1.4 Definitions

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

"Act" means the provisions of N.J.S.A. 52:4B-43.1.

"Attorney General Standards" means the Attorney General Standards to Ensure the Rights of Crime Victims, N.J.S.A. 52:4B-44.

"Direct services" means the provision of assistance directly to victims and witnesses, including, but not limited to, one or more of the following as may be determined by the Director:

1. Shelter, food and clothing;
2. Medical and legal advocacy services;
3. 24-hour crisis response services and 24-hour hotlines;
4. Information and referral and community education;
5. Psychiatric treatment programs;
6. Expanded services for victim's families and significant others;
7. Short and long term counseling and support groups;
8. Emergency locksmith and carpentry services; or
9. Financial services.

"Director" means the Director of the Division of Criminal Justice.

"Fund" means the Victim and Witness Advocacy Fund as set forth at N.J.S.A. 2C:43-3.1.

"Not-for-profit organization" means any corporation or other organization organized under Title 15A of the New Jersey Revised Statutes or otherwise qualified for non-profit tax exemption providing direct services to victims or witnesses of crimes.

"Public entity" means any public corporation or political subdivision of this state or agency of local government of this state providing direct services to victims or witnesses of crimes.

"Qualified" means an entity or organization eligible, pursuant to N.J.S.A. 52:4B-43.1, to apply for moneys from the Victim and Witness Advocacy Fund.

"State Fiscal Year" or "SFY" means the fiscal year of the State of New Jersey, which begins on July 1 of a particular year and ends on June 30 of the following year.

"Victim" means a person who suffers personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person, or in the case of a homicide, the nearest relative of the homicide victim.

"Witness" means a person who suffers personal physical or psychological injury or incurs loss of or injury to personal or real property or requires services as a result of the prosecution's intent to call the person to testify in any criminal matter.

SUBCHAPTER 2. ELIGIBILITY—PUBLIC ENTITIES AND NOT-FOR-PROFIT ORGANIZATIONS

13:78-2.1 Eligibility criteria and applications

Eligibility of a qualified public entity or qualified not-for-profit organization, as an applicant, shall be determined annually upon the submission of qualifying criteria to the Director. Eligibility will be determined pursuant to the criteria set forth at N.J.S.A. 52:4B-43.1c. The burden of demonstrating eligibility shall be on the applicant. To be eligible an applicant must annually submit an eligibility application, with supporting documentation, on forms provided by the Director.

13:78-2.2 Notification of eligibility or ineligibility

Within 90 days of the close of the annual eligibility application due date, the Director shall notify each applicant which has submitted a timely application for eligibility, of its eligibility or ineligibility. In the case of ineligibility the notice shall set forth the reasons for such ineligibility.

13:78-2.3 Notice of appeal of notification of ineligibility

Any applicant receiving notice of ineligibility shall have 15 days from receipt of such notice to file an appeal with the Director and submit to the Director any additional written information on eligibility.

13:78-2.4 Determination of appeals

Within 45 days of the receipt of any additional information the Director shall review the appeal based on any written documentation

or written information submitted by an applicant appealing a notice of ineligibility. The Director shall make a decision in writing regarding the eligibility of the applicant and shall notify the applicant of the decision. The Director's decision shall be final.

13:78-2.5 Annual notice of application for eligibility

(a) In the New Jersey Register immediately following January 1 of each year, the Director will publish a notice to the public of the due date for receipt of annual eligibility applications under the provisions of N.J.S.A. 52:4B-43.1.

(b) Contemporaneously with the notice in (a) above, the Director will also notify qualified public entities and qualified not-for-profit organizations of the annual eligibility application due date, provided they have:

1. Previously received or applied for an award within the past two State Fiscal Years;

2. Made a written request to the Director to be given notice of the eligibility application; or

3. Are an organization deemed eligible pursuant to N.J.S.A. 52:4B-43.1d.

(c) The Director may also provide notice of the eligibility application due date through such other means as he or she may deem appropriate.

13:78-2.6 Notice of applicants determined to be eligible

The annual list of eligible qualified public entities and eligible qualified not-for-profit organizations, as determined by the Director, shall be published in the New Jersey Register.

SUBCHAPTER 3. APPLICATION FOR MONEYS BY ELIGIBLE QUALIFIED PUBLIC ENTITIES AND ELIGIBLE QUALIFIED NOT-FOR-PROFIT ORGANIZATIONS

13:78-3.1 Annual application for moneys

Each year, the Director shall provide application forms and information required to make application for moneys from the Victim and Witness Advocacy Fund to eligible qualified public entities and eligible qualified not-for-profit organizations. Application forms and related materials must be completed, in full, and returned to the Director no later than the due date as indicated on the application.

SUBCHAPTER 4. FUNDING OF AWARDS

13:78-4.1 Amount of moneys available for awards

(a) The amount of moneys available for awards each year is dependent upon the total amount collected and deposited into the Fund and designated by the State Treasurer as available for distribution.

(b) Moneys are available for expenditure during the State Fiscal Year (SFY) of award.

(c) Approved expenditures may be reimbursed retroactively to the beginning of the SFY, even though moneys may not be awarded until later in the SFY.

Agency Note: Subchapter 2 is recodified, with amendments, as subchapter 6.

SUBCHAPTER 5. ALLOCATION AND DISBURSEMENT FROM FUND

13:78-5.1 Allocation of moneys available from Victim and Witness Advocacy Fund

(a) Available moneys deposited in the Fund shall be allocated by the Director as follows:

1. Moneys first shall be allocated to provide complete funding for the State Office of Victim-Witness Advocacy within the Division of Criminal Justice, established pursuant to N.J.S.A. 52:4B-43, and shall be in an amount sufficient to provide for all staff salaries and any other necessary operational expenses.

2. After the allocation of moneys to the State Office of Victim-Witness Advocacy, moneys shall be allocated to the county Offices of Victim and Witness Advocacy based on a formula that may include a base amount, a county's population, crime rate, and number of cases reviewed by the prosecutor's office. The Director may allocate additional funding for special projects or other such purposes over and above the regular allocation.

3. After the allocation of moneys to the State Office of Victim-Witness Advocacy and the county Offices of Victim and Witness Advocacy, the Director may allocate moneys to eligible qualified public entities and eligible qualified not-for-profit organizations, and the allocation may be based on a formula which may take into account the population of the county in which the entity or organization provides direct services, and the crime rate in that county.

13:78-5.2 Disbursement of moneys to State and county Offices of Victim and Witness Advocacy

(a) The Director shall determine the amount required to fund the State Office of Victim-Witness Advocacy and authorize transfer of moneys for this purpose.

(b) In distributing moneys to the county Offices of Victim and Witness Advocacy within each county prosecutor's office, established pursuant to N.J.S.A. 52:4B-44b and 52:4B-45, the following procedures shall be followed:

1. Each county prosecutor shall provide the State Office of Victim-Witness Advocacy with an estimation of the costs to operate the county Office of Victim and Witness Advocacy, extracted to the extent possible from the overall budget to be submitted to the respective county governing body. These estimated figures shall be supplied on a form provided by the Director. The estimated budget request figures shall indicate the salary costs for the County Victim-Witness Coordinator and other personnel, as well as an approximation of other expenses such as supplies, equipment, motor vehicles, travel, training, and other operating expenses.

2. Each county prosecutor shall provide, to the Director, a detailed description of proposals and associated projected costs intended to enhance the basic provision of services to victims and witnesses, which would be provided from the Fund.

3. The Director, or Director's designee, shall review the funding application submitted by each county prosecutor. The Director may reject, in whole or in part, any funding application request deemed excessive or not integral to the implementation of the legislative mandates or the Attorney General Standards.

4. To ensure that moneys are available to be awarded to other public entities, pursuant to N.J.S.A. 52:4B-43.1b, and to eligible qualified public entities and eligible qualified not-for-profit organizations, pursuant to N.J.S.A. 52:4B-43.1c, the Director shall determine the appropriate amount for disbursement to each county prosecutor for contribution toward the provision of services for victims and witnesses in that county.

5. Moneys from the Fund may be withheld from a county until that county's governing body approves the county prosecutor's budget request for the county Office of Victim and Witness Advocacy, as was furnished in the application form previously submitted to the Director. If the county governing body appropriates an amount to the county prosecutor which differs from the original budget request, the prosecutor shall submit to the Director a revised funding application. In his or her discretion, the Director shall modify the disbursement authorized accordingly.

6. A committee designated by the Director shall review any funding application submitted by a county prosecutor for special projects or other such purposes other than the moneys awarded pursuant to N.J.S.A. 52:4B-44b and 52:4B-45, and shall make recommendations to the Director concerning the award of any additional moneys. The Director may allocate to a county prosecutor additional funding for special projects or other such purposes over and above the award granted pursuant to N.J.S.A. 52:4B-44b and 52:4B-45. A county prosecutor seeking such additional funding shall comply with application procedures specified for other public entities.

13:78-5.3 Disbursement of moneys to other public entities

After the allocation of moneys to the State Office of Victim-Witness Advocacy and county Offices of Victim-Witness Advocacy, a committee designated by the Director shall review any funding applications submitted by municipalities or other public entities, pursuant to N.J.S.A. 52:4B-43.1b, and make recommendations to the

Director concerning the award of any available moneys. The Director may distribute funds to municipalities or other public entities, pursuant to N.J.S.A. 52:4B-43.1b, and as deemed appropriate for the implementation of the legislative mandates and the Attorney General Standards.

13:78-5.4 Disbursement of moneys to eligible qualified public entities and eligible qualified not-for-profit organizations

(a) A committee designated by the Director shall review the funding application (N.J.A.C. 13:78-3) submitted by each eligible qualified public entity and each eligible qualified not-for-profit organization and shall make recommendations to the Director concerning the award of moneys.

(b) At the discretion of the Director, moneys may be awarded to eligible qualified public entities and eligible qualified not-for-profit organizations whose funding applications will satisfy the statutory criteria (N.J.S.A. 52:4B-43.1c) to establish or enhance direct services to victims and witnesses.

(c) Moneys from the Fund may be withheld by the Director from eligible qualified public entities and eligible qualified not-for-profit organizations until all fiscal reporting requirements are met.

13:78-5.5 Compliance with State and local laws

Any public entity, receiving moneys for victim and witness assistance or advocacy from the Fund under this chapter, shall comply with and follow State of New Jersey procurement practices and procedures pursuant to the "Local Public Contracts Law," N.J.S.A. 40A:11-1 et seq., and any other controlling State or local laws or ordinances.

13:78-5.6 Notification of awards

(a) County prosecutors, other public entities, eligible qualified public entities and eligible qualified not-for-profit organizations whose funding applications have been found, by the Director, to satisfy the statutory criteria concerning victim and witness assistance or advocacy will receive notification in the form of a letter.

(b) In a notification of an award, the Director will include a contract which must be executed and returned to the Director before any moneys can be disbursed.

(c) In addition, the Director will publish a public notice in the New Jersey Register listing all awards made for a particular SFY.

SUBCHAPTER 6. USE OF FUND DISTRIBUTIONS

13:78-6.1 Use of Victim and Witness Advocacy Fund by county Offices of Victim and Witness Advocacy or other public entities

Moneys from the Fund which are distributed to the county Offices of Victim-Witness Advocacy or other public entities shall be used to implement the legislative mandates and the Attorney General Standards and shall not supplant budgeted funding or any other available funding currently in existence. These moneys may be used to establish or enhance victim-witness waiting rooms, to hire and train personnel to provide services in accordance with the legislative mandates and the Attorney General Standards, to purchase computer equipment to maintain communications with victims and witnesses, or for such other purposes as the Director may authorize.

13:78-6.2 Use of Victim-Witness Advocacy Fund by eligible qualified public entities and eligible qualified not-for-profit organizations

Moneys from the Fund which are distributed pursuant to N.J.S.A. 52:4B-43.1c shall be used to establish or enhance direct services to victims and witnesses.

SUBCHAPTER 7. ACCOUNTING AND AUDIT

13:78-7.1 Accounting, reporting and audit

(a) Any county prosecutor, other public entity, or eligible qualified public entity which receives moneys from the Fund shall maintain a separate account in which such moneys shall be held, along with detailed records of all receipts, expenditures and unexpended balances. Each county prosecutor, other public entity, or eligible qualified public entity shall submit, to the Director, a monthly report, as well as an annual report at the end of each State Fiscal Year identifying separately all receipts, expenditures and unexpended balances of moneys received from the Fund. Any unexpended balances at the end of the SFY are subject to return to the State. For the purpose of uniformity the Director may prepare forms for these reports.

(b) Any eligible qualified not-for-profit organization which receives moneys from the Fund shall maintain detailed records which identify separately all receipts, expenditures and unexpended balances of moneys received from the Fund. Each eligible qualified not-for-profit organization shall submit, on forms provided by the Director, a monthly report, to the Director, as well as an annual report at the end of each State Fiscal Year. Any unexpended balances at the end of the State Fiscal Year are subject to return to the State.

(c) The State of New Jersey reserves the right to periodically audit any of the records referenced in this subchapter.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS
Teachers' Pension and Annuity Fund
Adopted New Rules: N.J.A.C. 17:3

Proposed: September 20, 1993 at 25 N.J.R. 4461(a).
Adopted: November 19, 1993 by Board of Trustees, Teachers' Pension and Annuity Fund, Regina Trauner, Secretary.
Filed: November 23, 1993 as R.1993 d.658, **without change**.

Authority: N.J.S.A. 18A:66-56 et seq.

Effective Date: December 20, 1993.
Expiration Date: December 20, 1998.

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

Full text of the expired rules adopted as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:3.

(b)

DIVISION OF PENSIONS AND BENEFITS
Consolidated Police and Firemen's Pension Fund
Adopted New Rules: N.J.A.C. 17:6

Proposed: September 7, 1993 at 25 N.J.R. 3946(a).
Adopted: November 10, 1993 by the Consolidated Police and Firemen's Pension Fund Commission, Wendy Jamison, Secretary.
Filed: November 23, 1993 as R.1993 d.659, **without change**.

Authority: N.J.S.A. 43:16-7.

Effective Date: December 20, 1993.
Expiration Date: December 20, 1998.

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

N.J.A.C. 17:6 expired on November 22, 1993, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), that chapter proposed for readoption with amendments is adopted herein as new rules.

Full text of the expired rules adopted herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:6.

Full text of the adopted amendments to the rules as proposed for readoption follows:

17:6-1.1 Commission meetings

(a) The commission shall meet on the second Wednesday of each month, unless a change is declared in order by the chairman at an

appropriate time, and subject to the exception of the annual meeting prescribed by N.J.S.A. 43:16-6.2.

(b) The presence of four commission members at the start of any meeting of the commission will be necessary in order to constitute a quorum of the commission. Such presence need not be actual physical presence but may, at the determination of the chairman that the circumstances warrant it, include the participation of any of the four commission members by telecommunications' connection.

17:6-1.3 Officers and committees

(a) The chairman of the commission will be elected by a majority vote of the members in attendance at the first meeting of each fiscal year, not less than four members to be present at such a meeting. The chairman of the board shall preside at all meetings he or she attends and in his or her absence another member selected by the majority of the members in attendance will preside for that single meeting.

(b) Upon recommendation of the Director of the Division of Pensions and Benefits, the commission will select from the staff of such Division a secretary and assistant secretary, the latter to serve in the absence of the secretary.

(c) The chairman will appoint such committees from the commission members as he or she deems necessary to facilitate the commission's operations. Such committee appointments will be for a one-year period, commencing each July 1.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
Claims for Refund

Adopted Amendment: N.J.A.C. 18:7-13.8

Proposed: May 3, 1993 at 25 N.J.R. 1842(a).
Adopted: November 22, 1993 by Leslie A. Thompson, Director, Division of Taxation.
Filed: November 23, 1993 as R.1993 d.660, **without change**.

Authority: N.J.S.A. 54:10A-27.

Effective Date: December 20, 1993.
Expiration Date: March 14, 1994.

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

Full text of the adoption follows:

18:7-13.8 Claims for refund; when allowed

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

Example 1: (No change.)

Example 2: One year after filing a CBT-100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer files an amended CBT-100 claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. If the refund application had been received after the two year limitation period had expired, it would not have been granted even if the taxpayer had complied with the proper 90 day notification period and even if the time for filing an 1120X federally had not elapsed. The two year statute is controlling. The application, however, will remain on file and be applicable to any offset procedures pursuant to N.J.S.A. 54:49-16. If the amended CBT-100 claiming a refund had not been filed within 90 days of filing the Form 1120X (see N.J.S.A. 54:10A-13), the refund would not be granted, regardless of whether the claim was received prior to the expiration of the applicable refund statute of limitation period.

Examples 3.-5. (No change.)

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Official Zoning Map

Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: August 2, 1993 at 25 N.J.R. 3429(a).
Adopted: November 15, 1993 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
Filed: November 18, 1993 as R.1993 d.653, **without change.**

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: December 20, 1993.
Expiration Date: March 29, 1998.

The adopted amendment to the Official Zoning Map of the Hackensack Meadowlands District consists of a change in the zoning designation of Block 286, Lots 38, 39 and 40 in Kearny from Special Use-3 (SU-3) Specially Planned Area to Light Industrial and Distribution "B".

Summary of Hearing Officer's Report and Recommendations:

A public hearing was held on August 18, 1993 at the Commission's Offices in Lyndhurst, chaired by HMDC's Director of Solid Waste and Engineering, Thomas Marturano and Ileana Kafrouni, Acting Depty Chief Engineer. The applicant appeared at the hearing. No members of the public attended. John Agnello, Esq. appeared on behalf of the applicant. In addition to the appearance by the applicants, testimony on behalf of the proposal was also offered by their employees and consultants, Mr. Gaby Newmark, President of G & S Motors, Mr. Walter S. Koroluk, real estate broker and Ms. Janice E. Talley, licensed professional planner. All supported the amendment as a more appropriate designation for the three lots. A copy of the transcript of the public hearing may be reviewed at or obtained from the HMDC, One DeKorte Park Plaza, Lyndhurst, New Jersey 07071.

The hearing officer did not make any recommendations.

Summary of Public Comments and Agency Responses:

The HMDC Staff received one telephone call from Ms. Elizabeth Kenny on behalf of Jeryl Industries inquiring about the request. She was told what the proposal entailed. She subsequently inspected the file in this matter. Ms. Kenny did not comment on the proposal.

Full text of the adoption follows:

19:4-6.28 Official Zoning Map

Change the zoning designation of Block 286, Lots 38, 39 and 40, in the Town of Kearny, from SU-3 Specially Planned Area to Light Industrial and Distribution "B."

(c)

CASINO CONTROL COMMISSION

Notice of Administrative Correction
Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs
N.J.A.C. 19:45-1.46

Take notice that the Casino Control Commission has discovered errors in the text of N.J.A.C. 19:45-1.46(a) and (m). The current text of subsection (a) does not include language adopted at 25 N.J.R. 348(b) and 717(a). Language adopted at 24 N.J.R. 4575(a) and 25 N.J.R. 717(a) in subsection (m) also does not appear in the current Code. The necessary revisions to these subsections to conform them to the adopted text are made through this notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7.

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

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a) For the purposes of this chapter, a complimentary distribution program is a contest or promotion pursuant to which complimentary services or items are provided directly or indirectly by a casino licensee to the public without regard to the identity or gaming activity of the individual recipients. The procedures contained in (c) through (n) below shall apply to casino licensees offering coupon redemption complimentary distribution programs which entitle patrons to redeem coupons for complimentary cash, **gaming chips,** slot tokens **or simulcast wagers** issued in connection with bus **and other complimentary distribution** programs. No complimentary cash, **gaming chips** or slot tokens may be distributed **or complimentary simulcast wagers accepted,** by a casino licensee under any coupon redemption complimentary distribution program that does not comply with the requirements of this section.

(b)-(l) (No change.)

(m) Each **casino** licensee shall [file a monthly report with the Commission and Division which shall include the following information]:

1. [For] **File a quarterly report for** all programs regulated by (a) above, [each casino licensee] **which** shall list, by type of coupon, the total number of coupons used, the total number of coupons redeemed, the total value of the complimentary cash, gaming chips, slot tokens or simulcast wagers given to patrons in redemption of coupons and any liability to patrons remaining on unredeemed coupons; and

2. (No change.)

(n)-(o) (No change.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Rules of the Games
Baccarat and Minibaccarat Tables; Physical Characteristics
Wagers
Payout Odds; Vigorish
Adopted Amendments: N.J.A.C. 19:46-1.12 and 19:47-7.2 and 7.3

Proposed: September 20, 1993 at 25 N.J.R. 4474(b).
Adopted: November 17, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: November 23, 1993 as R.1993 d.655, **without change.**

Authority: N.J.S.A. 5:12-69(a) and (c), 99(a) and 100(e).

Effective Date: December 20, 1993.
Expiration Dates: April 15, 1998, N.J.A.C. 19:46;
April 15, 1996, N.J.A.C. 19:47.

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

Full text of the adoption follows:

19:46-1.12 Baccarat and minibaccarat tables; physical characteristics

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

(c) Minibaccarat shall be played at a table having on one side places for the participants, and on the opposite side a place for the dealer.

1.-2. (No change.)

3. The following inscriptions shall appear on the cloth covering of the minibaccarat table:

i. Tie bets pay 8 to 1;

ii. Numbered areas that correspond to the seat numbers for the purpose of marking vigorish unless the casino licensee only charges vigorish in accordance with the provisions of N.J.A.C. 19:47-7.3(d), in which case the numbered areas are not required; and

iii. (No change.)

4.-6. (No change.)

19:47-7.2 Wagers

(a) The following wagers shall be permitted to be made by a participant at the game of minibaccarat:

1. A wager on the "Banker's Hand" which shall:

i.-ii. (No change.)

iii. Either be void or, if the casino licensee charges vigorish in accordance with the provisions of N.J.A.C. 19:47-7.3(d), be charged a vigorish equal to 25 percent of the wager, if the Point Count of the "Banker's Hand" and the "Player's Hand" are equal.

2.-3. (No change.)

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

19:47-7.3 Payout odds; vigorish

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

(c) A winning wager made on the "Banker's Hand" shall be paid off by a casino licensee at odds of 1 to 1. Except as otherwise provided in (d) below, the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to, in the casino licensee's discretion, either four or five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the vigorish to five cents or the next highest multiple of five cents. A casino licensee may collect the vigorish from a player at the time the winning payout is made or may defer it to a later time; provided, however, that all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe. The amount of any vigorish not collected at the time of the winning payouts shall be evidenced by the placing of a coin or marker button containing the amount of the vigorish owed in a rectangular space in front of the dealer on the layout imprinted with the number of the player owing such vigorish.

(d) A casino licensee may, in its discretion, charge every player at a minibaccarat table a vigorish equal to 25 percent of the player's wager on the "Banker's Hand" if the Point Counts of the "Banker's Hand" and the "Player's Hand" are equal. The vigorish authorized by this subsection shall be collected at the end of the round of play and prior to any cards being dealt for the next round of play. If a casino licensee elects to charge the vigorish authorized by this subsection, the vigorish otherwise required by (c) above shall not be collected.

(e) Each casino licensee shall provide notice of any change in the type of vigorish being charged or increase in the percentage of vigorish being charged at each minibaccarat table, in accordance with N.J.A.C. 19:47-8.3. The type and percentage of vigorish charged at a minibaccarat table shall apply to all players at that table.

(b)

CASINO CONTROL COMMISSION

Taxes
Computation of Tax
Adopted Amendment: N.J.A.C. 19:54-1.6

Proposed: September 20, 1993 at 25 N.J.R. 4475(a).
Adopted: November 22, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: November 23, 1993 as R.1993 d.656, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-24, 63c, 69a, 70e, 99 and 144.

Effective Date: December 20, 1993.
Expiration Date: December 15, 1994.

Summary of Public Comments and Agency Responses:

Comments were received from the Sands Hotel and Casino ("The Sands") and the Division of Gaming Enforcement ("Division").

COMMENT: The Division supports the concept of clarifying the methodology used by casino licensees in calculating the provision for uncollectible patron checks. However, the Division objects to a proposed

provision allowing the methodology to consider the experience of the collections manager, chief financial officer, or other expert. N.J.A.C. 19:54-1.6(b)3iv. The Division contends that this provision would codify a procedure found by the Commission to be "unreasonable" in *State v. Trump Plaza Associates, McCarthy & Henshaw* (CCC Dkt. No. 92-0681-VC).

RESPONSE: The amended rules are consistent with the above-cited decision. In that matter, the Commission found that the methodology utilized by the casino licensee was unreasonable in that no analysis of historical data was performed, and no specific or conclusive evidence was presented to correlate the conclusion reached with historical data or the experience of the person making the decision. Under the amended rules, the methodology must include consideration of historical data. Other factors may be considered only if "any resultant departures from historical data are contemporaneously documented," including the "correlation between the other factors and the adjusted amount." N.J.A.C. 19:54-1.6(b)3.

COMMENT: The Division also noted that N.J.A.C. 19:54-1.6(b)2 incorrectly refers to "uncollectible casino checks" rather than "uncollectible patron checks."

RESPONSE: This provision is corrected upon adoption.

COMMENT: The Sands stated that it does not object to the adoption of the proposed amendments.

RESPONSE: Accepted.

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

19:54-1.6 Computation of tax

(a) (No change.)

(b) The methodology used to determine the amount of the "Provision for Uncollectible Checks" shall be delineated in the casino operator's accounting and internal controls submission required by section 99 of the Act and N.J.A.C. 19:45-1.3.

1. The methodology shall include the consideration of historical data related to uncollectible checks. The data shall be derived from:

i. The casino operator's statistics;

ii. New Jersey casino industry statistics maintained by the casino operator; or

iii. New Jersey casino industry statistics provided to the casino operator by the Commission.

2. The methodology shall, at the discretion of the casino operator, focus on uncollectible *[casino]* ***patron*** checks as:

i. A percentage of credit issued;

ii. A percentage of casino receivables; or

iii. Multiple percentages applied to an aging of accounts receivable.

3. The methodology may consider other factors considered relevant by the casino operator provided that any resultant departures from the historical data are contemporaneously documented. The correlation between the other factors and the adjusted amount shall be included in the documentation. Such other factors may, without limitation, include:

i. Information related to specific obligors or groups of obligors;

ii. An appraisal of current economic conditions;

iii. A change in the character of the casino receivables;

iv. The experience of the collection manager, chief financial officer, or other expert; and

v. A change in collections policy.

4. On an annual basis, the Commission shall provide to the accounting department of each casino operator New Jersey casino industry statistics on uncollectible checks. The statistics will be based upon calendar year data and shall cover the most recent five year period. The following New Jersey casino industry statistics shall be provided for each of the five years and for the five year cumulative period:

i. Uncollectible checks as a percentage of credit issued;

ii. Uncollectible checks as a percentage of undeposited checks; and

iii. Uncollectible checks as a percentage of returned checks.

5. Each casino operator shall submit and obtain approval of the internal controls required by this section *[within 90 days of the effective date of this regulation]* ***by March 20, 1994***.

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

(a)

CASINO CONTROL COMMISSION

Temporary Adoption of New Rules and Amendments Accounting and Internal Controls; Gaming Equipment; Rules of the Games Keno

Authority: N.J.S.A. 5:12-69(e), 70(f) and 100(e).

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether various temporary amendments and new rules concerning the game of keno should be adopted on a permanent basis. The experiment shall be conducted in accordance with temporary rules which will be posted in each casino participating in the experiment and will also be available from the Commission upon request.

Specifically, the test would allow any casino licensee which wishes to participate in the experiment, and which meets all terms and conditions established by the Commission, to offer the game of keno to the public beginning on or about December 27, 1993. The experiment would continue for the maximum period of time authorized by N.J.S.A. 5:12-69(e), unless otherwise terminated by the Commission pursuant to the terms of the experiment.

Should the temporary amendments and new rules prove successful, the Commission will take the steps necessary to permanently adopt them in accordance with the Administrative Procedure Act and N.J.A.C. 1:30.

HUMAN SERVICES

(b)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Screening and Screening Outreach Programs

Adopted Amendments: N.J.A.C. 10:31-2.1, 2.2, 2.3 and 8.1

Adopted Repeals and New Rules: N.J.A.C. 10:31-1.4 and 9.1

Proposed: April 5, 1993 at 25 N.J.R. 1324(a).

Adopted: October 27, 1993 by William Waldman, Commissioner, Department of Human Services.

Filed: October 29, 1993 as R.1993 d.607, **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. 30:4-27.1 et seq., especially 30:4-27.5.

Effective Date: December 20, 1993.

Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:

The Department received public comments from the Department of the Public Advocate, the Mercer Alliance for the Mentally Ill and Jean Paashaus. Their comments and the Department's responses are provided below.

COMMENT: Jean Paashaus commented that the proposal should not delete the client's rights at N.J.A.C. 10:31-9.1.

RESPONSE: The enactment of detailed rights for users of screening programs in P.L. 1991 c.233 superseded the interim formulation of rights as provided at N.J.A.C. 10:31-9.1. The Department only intended N.J.A.C. 10:31-9.1 to provide an interim statement of rights until the legislative process appropriately established a statement of what those rights should be.

COMMENT: Jean Paashaus commented that P.L. 1991, c.233 should be amended to substitute the word "client," which is used in this regulatory proposal, for "patient."

RESPONSE: Without passing judgment on the merits of this suggestion, the Department points out that such an amendment lies outside its regulatory authority and would require the introduction of a bill in the Legislature.

COMMENT: The Mercer Alliance for the Mentally Ill expressed its support for the proposed amendments on waivers and patient rights, but commented that the proposed amendments in N.J.A.C. 10:31-8.1 regarding police involvement with screening activities are unnecessary because the present provisions work well. The proposed amendments will harm the mentally ill and their families because the proposed changes in roles for screeners and police are undesirable.

RESPONSE: In order to comply with the court remand in *In the Matter of the Appeal from the Adoption of Screening Center Regulations by the Department of Humans Services,* ___ *N.J. Super.* ___, Dkt. No. A-5857-88TI (App. Div. June 27, 1990), the Department must delete the rule the court found objectionable. However, the Department never intended that the misapplication of the rule, specifically that law enforcement officers transport persons involuntarily to a screening service based on nothing more than a screener's request to do so, be practiced by screeners. Therefore, the Department is not indicating that any current screening practices other than the unacceptable practice noted above needs to be changed. The Department has no reason to believe that this clarification should result in significant or widespread changes in screening practice throughout the State.

After the court decision, the Division of Mental Health and Hospitals informed the screening centers in writing of the decision, indicating which practices were unacceptable. The Department has received no recent indications that the screening centers are not complying with the court decision. This adoption merely reflects in the rules the understanding already communicated in writing to the screening centers.

COMMENT: The Public Advocate commented that the waiver provisions at N.J.A.C. 10:31-1.4 fail to provide to interested or affected parties any notice or opportunity to comment on specific waiver requests by screening programs to the Division. Specifically, the Public Advocate urged that the proposal be amended to require:

1. Posting of waiver requests and approved waivers at screening centers as notice to consumers of screening services;

2. Publishing a notice in the New Jersey Register of waiver requests or appeals which will alter the obligations and/or requirements of applicant agencies; and

3. Mailing an additional notice, and/or using other appropriate means of communication, to those groups likely to be significantly affected should a waiver or waiver appeal be granted.

RESPONSE: The Department accepts the comment to the extent that notice to parties likely to be affected by approved waivers and an opportunity to comment on the waiver request prior to its denial or granting would promote more fairness in these matters. However, the Department rejects the commenter's specific suggestions regarding what form that notice should take, as administratively overly burdensome and not necessary to achieve the fundamental goal of notice to effected parties and opportunity to comment.

Instead, the Department has added procedural language at N.J.A.C. 10:31-1.4 designed to afford greater notice and opportunity to comment without unduly delaying the decision making process and yet identifying the most effective means to comment.

Specifically, additional amendatory language has been added at N.J.A.C. 10:31-1.4(b)1 to require screening centers to copy their waiver requests to their county's mental health board, System Review Committee and locally active consumer and family organizations as determined by the board. Additionally, the copy shall indicate that the waiver request may be discussed at a future board meeting and include the name of the county mental health administrator and the Divisional representative to whom comments may be addressed and that the deadline for such comments shall be 30 days from the date of the waiver request.

COMMENT: The Public Advocate also commented that N.J.A.C. 10:31-8.1(b) inaccurately restates the respective responsibilities of screeners vis-a-vis the police as set out in the underlying statutory scheme and in so doing frustrates the legislative intent to limit police involvement and make more use of clinical judgment during screening services.

RESPONSE: The Department disagrees. In *In the Matter of the Appeal from the Adoption of Screening Center Regulations by the Department of Human Services, supra,* the Appellate Division of the Superior Court of New Jersey invalidated the provision at N.J.A.C. 10:31-8.1 which stated "Additionally, when situations are assessed by telephone by the screener as potentially dangerous, a law enforcement official may be requested to transport individuals who are unable or unwilling to come to the screening centers" and remanded the matter to the Department for repromulgation. That sentence has been deleted from these rules by the proposal and its replacement at N.J.A.C. 10:31-8.1(b) explicitly prohibits the possible misinterpretation which the court feared the sentence allowed.

Neither the court decision nor the underlying statutory language, however, forbid screeners to ever request law enforcement involvement in a situation when the screener has reasonable cause to believe that an individual may be in need of involuntary commitment. In such life-threatening or emergency situations, such additional involvement may be necessary for the safety of the individuals involved.

This rule is not intended, and should not be interpreted, to communicate that the law enforcement role should dominate the clinical screening role during the screening process. The rule merely reflects the reality that screening situations sometimes contain both clinical and public safety aspects and that those two roles may need to be appropriately coordinated.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

10:31-1.4 Waiver

(a) Under no circumstances will waiver of this subchapter in its entirety be allowed. If, in the judgment of the Division, sufficient contract funding from the Division is available to the designated screening center or emergency service to comply with all rules of this subchapter, the designated screening center or emergency service shall comply with all rules of this subchapter. If, however, in the judgment of the Division, sufficient contract funding from the Division is not available to the designated screening center or emergency service to comply with any rule of this subchapter, the Division may act to relax or waive, with or without conditions, such rule in the specific circumstances presented if the Division is satisfied that:

1. The rule is not mandated by any provision of N.J.S.A. 30:4-27.1 et seq.;

2. The provision of screening services in accordance with the purpose and procedures contained in N.J.S.A. 30:4-27.5 would not be compromised if the waiver was granted; and

3. No significant risk to the welfare and safety of individuals subject to screening services or the staff of designated screening centers or emergency services would result from the granting of the waiver.

(b) The following procedures will be employed regarding the request for and approval of waivers.

1. Whenever a screening center is requesting that a specific provision of this chapter be waived, it shall submit a written request to the appropriate Divisional Regional Office citing that provision and the basis for the waiver request. Waiver requests may be made at the time of the annual renewal of their contract or at the bi-annual designation of their status as a screening center. ***At the time a waiver request is sent to the Division, screening centers shall also send copies of their waiver requests to their county's Mental Health Board and Systems Review Committee, as well as any locally active, mental health family, consumer and advocacy organizations as determined by the county Mental Health Board. The copies shall indicate that the waiver request may be discussed at a future county Mental Health Board meeting and include the name of the county mental health administrator and Divisional representative to whom comments may be addressed and that the deadline for such comments shall be 30 days from the date of the waiver request.***

2. All waiver requests must be reviewed and approved by the appropriate Regional Assistant Director, who will review the proposed basis for the waiver and determine whether the request meets the standards set forth at (a) above.

3. Each grant of a waiver may be for a maximum time period of one year, subject to renewal upon request.

4. The Division shall communicate in writing to the screening center indicating which provisions, if any, have been waived, the expiration date of the waiver and any conditions or limitations which have been placed on the waiver.

5. Waiver denials by Regional Assistant Directors may be appealed to the Division Director upon request by the screening center. The screening center which originally requested the waiver and other interested parties may communicate their opinions about the appeal of the waiver denial to the Division Director prior to his decision. The Director shall uphold or reverse the original waiver denial by the Regional Assistant Director and communicate the decision to the screening center.

6. The Division shall maintain on file a copy of the waivers which have been granted and a copy of its response to all waiver requests. Copies of these materials shall be made available to the public upon request.

10:31-2.1 Functions of a screening center

(a) A screening center shall perform the following direct service functions:

1.-7. (No change.)

8. Provision of medication monitoring, which shall include medication on-site for the purpose of crisis stabilization. Medication shall be administered in accordance with P.L. 1991, c.233 and shall not be given to clients in non-emergency situations without their consent;

9.-10. (No change.)

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

10:31-2.2 Functions of an emergency service (ES)

(a) In addition to the designated screening center, a geographic area may include one or more ES's. All emergency services shall be affiliated by written agreement with the geographic area's designated screening center. Each ES shall provide all of the following services:

1. (No change.)

2. Provision and monitoring of medication on site for the purpose of crisis stabilization and provision for medication until this responsibility is transferred to another agency or service; medication shall be administered in accordance with P.L. 1991, c.233 and shall not be given to clients in non-emergency situations without their consent.

3.-6. (No change.)

(b) (No change.)

10:31-2.3 Screening process and procedures

(a) The screening process shall involve a thorough assessment of the client and his or her current situation to determine the meaning and implication of the presenting problem(s) and the nature and extent of efforts which have already been made. The screening center staff shall make every effort to gather information from the client's family and significant others to determine what the clinical needs of the client are and to determine what services are in the best interest of the client. The screening center staff, in conjunction with affiliated mental health care providers, shall advocate for services to meet client needs and encourage the system to respond flexibly. Throughout the screening process, medication shall not be given to clients in non-emergency situations without their consent.

(b)-(g) (No change.)

10:31-8.1 Transportation of clients

(a) A certified screener may request that a law enforcement officer transport an individual to a screening center if the screener has, as part of a screening outreach visit, evaluated the individual and signed a form prepared by the Division for the purpose, indicating that the individual may meet the commitment standard and requires further evaluation at the screening center.

(b) When a certified screener has reasonable cause to believe that an individual may be in need of involuntary commitment, the screener may also request that a law enforcement officer investigate the situation, but shall not state or imply to the officer that transport is being authorized by the screener. If, on the basis of personal observation, the law enforcement officer has reasonable cause to believe that the individual is in need of involuntary commitment, the individual shall be transported to the screening center by the law enforcement officer for further evaluation.

10:31-9.1 Client rights

P.L. 1991, c.233 establishes rights for certain clients receiving screening services including psychiatric emergency services provided in a general hospital unit pursuant to a written affiliation agreement with a screening service. These services shall be provided in compliance with those applicable statutory provisions.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospital Services Manual
Manual for Special Hospital Services
Reimbursement for Distinct Units in Hospitals; Reimbursement for Special Hospitals
Adopted Amendments: N.J.A.C. 10:52-1.9 and 1.13; and 10:53-1.1

Proposed: December 21, 1992 at 24 N.J.R. 4477(a).
Adopted: November 15, 1993 by William Waldman, Commissioner, Department of Human Services.
Filed: November 16, 1993 as R.1993 d.647, **without change.**

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b and c; 30:4D-12; 43 CFR 413; 42 CFR 447.272.

Effective Date: December 20, 1993.
Expiration Date: February 8, 1995, N.J.A.C. 10:52.
April 27, 1995, N.J.A.C. 10:53.

Summary of Public Comments and Agency Responses:

There were four comments submitted on the proposal. The commenters were: Runnells Specialized Hospital; St. Barnabas Medical Center; New Jersey Department of the Public Advocate; and the law firm of Cohen, Shapiro, Polisher, Shiekman and Cohen, on behalf of their client, Bergen Pines County Hospital.

COMMENT: Runnells Specialized Hospital questioned the need to continue to submit the SHARE cost report to Medicaid.

RESPONSE: The agency's response is that this report will no longer be needed. The HCFA 2552, already submitted by the facility, will be used to establish interim rates and for final settlement.

COMMENT: Saint Barnabas questioned the use of the TEFRA limitations, which they contend are inadequate to reflect actual inflation, and objected that there is not an appeal mechanism to adjust for case mix and intensity changes.

RESPONSE: The agency's response is that under Medicare principles of reimbursement, facilities can appeal their TEFRA base year, if the facility can demonstrate that there has been a change in the intensity and case mix of the clients served. Finally, Medicare principles do allow for an inflationary increase of base year costs to be applied in the determination of the TEFRA limitation.

COMMENT: The New Jersey Department of the Public Advocate contends that the proposal does not set forth the methodology to be used to establish rates under the proposal.

RESPONSE: The agency's response is that Medicare principles of reimbursement are set forth in Federal regulations, 42 CFR, Part 413 and Provider Reimbursement Manual HIM-15, as stated in the proposal Summary. The manual is published by the U.S. Department of Health and Human Services, Health Care Financing Administration. The Department's rules at N.J.A.C. 10:53-1.1 and N.J.A.C. 10:52-1.13(b) govern the methodology to be used for reimbursement.

COMMENT: The Public Advocate also questioned whether Medicare principles of reimbursement comply with Federal regulations concerning the adequacy of reimbursement systems.

RESPONSE: The Division responds that it is required by Federal regulations to assure that aggregate payments to hospitals for inpatient services do not exceed the amount that would have been paid under Medicare payment principles. The agency believes that the rules comply with Federal regulations concerning the adequacy of reimbursement systems.

COMMENT: The commenter representing Bergen Pines County Hospital (Bergen Pines) states that the proposed amendments changes

the reimbursement methodology for distinct units from a Diagnosis Related Group (DRG) methodology to Medicare principles.

RESPONSE: The agency's response is that the Division has never reimbursed distinct units using a DRG methodology. These units had been reimbursed on an interim basis using a SHARE per diem and received final settlement based upon Medicare principles of reimbursement.

COMMENT: Bergen Pines also states that only private psychiatric hospitals utilized Medicare principles for final settlement and that any attempt to make final settlement based upon Medicare principles violates Article I of the New Jersey Constitution, in that it would constitute a regulatory taking of property without due process of law.

RESPONSE: The agency's response is that historically, all non-DRG facilities were reimbursed on an interim basis using SHARE, and received final settlement based on Medicare principles of reimbursement. (See N.J.A.C. 10:53-1.1 and 10:52-1.13(b).) These rules simply change how the interim per diem is calculated. The facility will now receive an interim per diem based upon Medicare principles of reimbursement.

Full text of the adoption follows:

10:52-1.9 Special provisions related to payment

(a)-(h) (No change.)

(i) A distinct (excluded) unit of an acute care general hospital is reimbursed (including the interim rate and final settlement) in accordance with Medicare principles of reimbursement (see 42 CFR 413) and not through the Diagnosis Related Groups (DRG) reimbursement system (N.J.A.C. 8:31B) for inpatient care in acute care general hospitals.

10:52-1.13 Approved private psychiatric hospitals

(a) (No change.)

(b) These hospitals are reimbursed (including the interim rates and final settlement) in accordance with Medicare principles of reimbursement.

10:53-1.1 Definitions

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

. . .

"Approved special hospital" means a hospital that meets one of the following classifications listed below. In order to qualify as a provider in the New Jersey Medicaid program, each special hospital must meet the appropriate standards pertaining to the classification. The three classifications, and standards for participation, are:

1. Classification A (Acute or short term special hospitals) may be reimbursed if all following criteria are met:

i.-iii. (No change.)

iv. Be reimbursed (including the interim rate and final settlement) in accordance with Medicare principles of reimbursement (see 42 CFR 413). (See also a distinct (excluded) unit of an acute general hospital, N.J.A.C. 10:52-1.9(i)).

2. Classification B (Rehabilitation Hospitals) may be reimbursed if all following criteria are met:

i.-iv. (No change.)

v. Be reimbursed (including the interim rate and final settlement) in accordance with Medicare principles of reimbursement. (See also a distinct (excluded) unit of an acute general hospital, N.J.A.C. 10:52-1.9(i)).

3. (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

Refugee Resettlement Program: Eligibility Limitations

Adopted Amendments: N.J.A.C. 10:81-10.7 and 10.8

Proposed: September 7, 1993 at 25 N.J.R. 3919(a).

Adopted: November 15, 1993 by William Waldman, Commmissioner, Department of Human Services.

Filed: November 16, 1993 as R.1993 d.648, **without change.**

Authority: N.J.S.A. 44:10-3; 45 CFR 400 and 400.202.

Effective Date: December 20, 1993.

Expiration Date: August 24, 1994.

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

Full text of the adoption follows:

10:81-10.7 Eligibility

(a) (No change.)

(b) Eligibility limitations: Eligibility for assistance under RRP is limited to a total of eight months for AFDC-N and General Assistance type cases, and four months for AFDC-C and -F type cases. Pursuant to Sections 207 and 101(a)(42) and 1522(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C.) and 45 CFR 400.202, refugee assistance (both RCA/RMA) is limited by the extent of available Federal appropriations in any Federal fiscal year (FFY), and on data concerning refugee arrivals, eligibility and participation in RCA/RMA. Therefore, the State administered RCA/RMA program period of eligibility is dependent on the fixed Federal appropriation made available to the states for any given FFY, based on the aforementioned criteria. Eligibility periods for RCA and RMA are published periodically in the Federal Register. Subsequent updates to these eligibility periods in the Federal Register will be published as a public notice by the Department in the New Jersey Register, and this subsection revised accordingly as an administrative change.

1. (No change.)

2. Rules concerning GA (AFDC-N or GA) type cases are as follows:

i. For all GA and AFDC-N type applicants/recipients residing in the U.S. for eight months or less from their initial entry date or when parole status was first granted as identified on INS Form I-94, income and resources shall be treated in accordance with the standards and criteria applicable to AFDC-C or -F, except, that CWA's shall not apply the $30.00 and one-third earned income disregard. The assistance standard for applicants/recipients shall be the appropriate amount for the eligible family.

ii. During the eight month period, all eligible GA type cases will retain Medicaid eligibility.

(c)-(j) (No change.)

10:81-10.8 Medical assistance and medical expense spend-down

(a) Medical assistance: State eligibility standards for Title XIX shall apply to a refugee's eligibility for medical assistance except:

1.-4. (No change.)

5. All refugees who have been in the U.S. for eight months will no longer be eligible for medical or cash assistance under RRP. Any subsequent update to this eligibility period for medical or cash assistance under RRP will be published as public notice by the Department in the New Jersey Register (see N.J.A.C. 10:81-10.7(b)), and this paragaraph revised accordingly as an administrative change.

(b) (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

Review and Adjustment of Non-AFDC Child Support Orders

Adopted Amendments: N.J.A.C. 10:81-11.7 and 11.9

Proposed: July 6, 1993 at 25 N.J.R. 2816(a).
Adopted: November 15, 1993 by William Waldman, Commissioner, Department of Human Services.
Filed: November 16, 1993 as R.1993 d.649, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:10-3, Family Support Act of 1988 (Public Law 100-485), Section 103(c); 45 C.F.R. 303.8.

Effective Date: December 20, 1993.
Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

Comments were received from Mike Schuberth, concerned citizen.

COMMENT: Commenter inquired as to what would be the legal proceedings for the review and adjustment of orders for out-of-State cases. The commenter also inquired as to the available enforcement method and recommended that a time limit be set to complete the process, thus avoiding further complications caused by a dragged out process.

RESPONSE: The review and adjustment procedures for out-of-State cases are outlined in N.J.A.C. 10:81-11.21(b)4iii through 6ii, which appeared in the July 6, 1993 issue of the New Jersey Register, as a proposal, and in the December 6, 1993 issue on adopted new rule (see 25 N.J.R. 2818(a) and 5567(a).) As specified in that section, interstate cases should follow a 180 calendar day time frame for completing the review and adjustment process.

When it is determined that a review is needed in an out-of-State case and New Jersey is the initiating state, a request must be sent to the responding state within 20 calendar days of receipt of sufficient information to conduct a review. The laws and procedures of the responding state are then followed.

When New Jersey is the responding state, a determination as to whether or not the review will be conducted must be made within 15 calendar days of receipt of a request for review from another state. If it is determined that a review is necessary, the case will follow the same procedures as intra-state cases.

When New Jersey is the initiating state, the public assistance case will be reviewed by the county welfare agency, and the non-public assistance case will be reviewed by the responding state. However, when New Jersey is the responding state, the non-public assistance case will be reviewed by the State Office of Child Support and Paternity Programs and the public assistance case will be reviewed by the CWA. N.J.A.C. 10:81-11.7(b) has been amended to clarify this issue. N.J.A.C. 10:81-11.7(b) has also been amended by making reference to N.J.A.C. 10:81-11.21 since that section provides information on time frames and the responsibilities of the initiating and responding states.

COMMENT: A mandatory rule should be established on both Federal and State levels that will prevent anyone from hiding in other states to avoid their child support obligations.

RESPONSE: Mandatory rules regarding the location of absent parents and enforcement of orders for interstate cases are presently operational. In compliance with Federal regulations at 45 C.F.R. 302.36 and 303.7, New Jersey has established a central registry responsible for receiving, distributing and responding to inquiries on all incoming interstate IV-D cases. If the absent parent of an IV-D case that originated in New Jersey is determined to be in another state, that case is referred to the other state's central registry for action.

Interstate enforcement action includes filing a complaint under the Uniform Interstate Family Support Act, using long arm statutes, initiating an interstate income withholding and registering an order in the state in which the absent parent resides.

A state can also refer a case to another state for "location only" services, using a Child Support Enforcement Interstate Transmittal form, or using the "quick locate" procedures. If the transmittal form is used, the initiating state must send the transmittal form to the responding state's central registry and the responding state must adhere to interstate procedures as mandated under 45 C.F.R. 303.7. The "quick locate" procedure is utilized in those cases which information indicates that the absent parent may be in one of several states. The state in which the custodial parent resides may ask the other states to attempt to locate an absent parent or alleged father. At the state's option, these requests may be made directly to the other state's Parent Locator Service. However, these requests for "quick location" would not be considered an official interstate case.

Full text of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

10:81-11.7 Responsibilities of the State agency

(a) (No change.)

(b) Federal law mandates that the State must have a written and publicly available plan indicating how and when IV-D child support orders in effect in the State will be periodically reviewed and adjusted. Non-AFDC, IV-D child support orders ***and those interstate non-public assistance cases in which New Jersey is the responding state*** will be processed by the Office of Child Support and Paternity Programs (OCSPP) for review as provided for in this subsection. ***Interstate public assistance cases in which New Jersey is the initiating state will be processed by the county welfare agencies. Information with respect to the processing time frames and the responsibilities of the initiating and responding states regarding interstate cases is outlined at N.J.A.C. 10:81-11.21(b)4iii through 6ii.***

1. An adjustment is an upward or downward change in the amount of child support, based on the application of State guidelines under New Jersey Court Rule 5:6A for setting and adjusting child support awards, and/or a provision for the child's health care needs through health insurance coverage or other means.

2. Review means an objective evaluation of information, conducted by the OCSPP, making it necessary for application of New Jersey Child Support guidelines, Court Rule 5:6A, to determine:

i. The appropriate support award amount; and

ii. The need to provide for the child's health care needs in the order, through health insurance coverage or other means.

3. Case identification procedures are as follows:

i. Written notice will be given by the OCSPP, advising both parties to a current child support order of their right to request a review within 30 days of the date of the notice.

ii. Those requesting a review will be instructed to write to the OCSPP.

iii. Upon receipt of the request for review, the OCSPP will establish a file. Written notice will be issued to both parties advising that a review of their current order will commence 30 days from the date of the notice, or that no review will be conducted because the request was not made timely within 30 days of the receipt of the identification notice.

iv. A request for information will be mailed to the individual qualifying for a review. The case file will be referenced by obligor's last name, first name, obligee's name and ACSES case number.

v. Upon receiving return responses to initiate the review, qualified cases shall be processed by OCSPP, which shall:

(1) Verify parties' employment and income through an interface with the New Jersey Department of Labor (DOL);

(2) Cross reference the case on ACSES to determine if multiple cases exist (the amount of the obligor's court order(s) in other cases will be considered in accordance with the State guidelines);

(3) Generate employment letters to the last known employer and/or any new employer information received on the parties; and

(4) Generate postal verification letters to the last known address of the parties and/or any new address information received.

4. A case can be eliminated from the review process if it is found that:

i. The current order is less than three years old or a request for review has been determined frivolous by the OCSPP. A frivolous request would exist if any one of the following occurs:

(1) If either party's income has not increased or decreased by a minimum of 20 percent;

(2) If either party is temporarily out of work or temporarily injured and unable to work;

(3) The child(ren) for whom support is owed no longer resides with the custodial parent;

(4) If either party is incarcerated or institutionalized; or

(5) There is a good cause determination that the review of the case is not in the best interest of the child(ren).

ii. If a case has been eliminated from the review process, a notation shall be made in the file on the "Adjustment of Review Document," indicating the date of the review and the reason(s) for eliminating the case from the adjustment work list.

5. When all needed information is obtained, calculations using both parents' income and the New Jersey Child Support Guidelines, Court Rule 5:6A, will be formulated to determine the anticipated child support order. OCSPP will compare the amount to the current child support order.

6. No adjustment will be initiated if calculations determine the adjusted amount is not 20 percent over or under the current order.

i. A written notice will be issued to both parties advising that, as a result of the review, the case does not qualify for an adjustment; and if either party disagrees, he or she has 30 days to file a request for redetermination. The notice shall also advise the parties that a redetermination may be filed only if information on which the determination was made was incorrect or incomplete.

7. If calculations determine that the adjusted amount is 20 percent over or under the current order, or if medical support is not currently in the order, a notice of adjustment will be sent to both parties advising of the new amount as a result of the review. Both parties have 30 days to request a redetermination of the decision, or either party may file the appropriate application with the court.

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. Each county welfare agency is required to have attorneys, all of which hold a plenary license to practice law in this State, who are in good standing and maintain a bona fide office for the practice of law in this State, either on staff or under contract, sufficient to represent the CWA in child support enforcement matters in court as necessary.

1. Consent process: For all cases in which sufficient information is available to initiate proceedings for the purpose of establishing paternity and/or obtaining support and medical insurance, a consent order will be attempted in accordance with individual county procedures within 90 calendar days of location.

i. (No change.)

ii. Definition: The consent process is a conference between the plaintiff and the defendant before a Family Division Intake Officer, to agree to a specific amount of child support based on an approved support formula, as outlined in the New Jersey Child Support Guidelines, Court Rule 5:6A, to be paid through the appropriate probation department.

iii. (No change.)

2.-10. (No change.)

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

(l) 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.-3. (No change.)

4. Obtaining an order: Non-public assistance persons seeking support payments and medical insurance shall be referred to the county intake unit responsible for initiating consent conference.

i. Once an order has been established, non-AFDC cases will be processed for review and adjustment as outlined at (b) above.

5. (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Notice of Administrative Correction
Public Assistance Manual
Paternity Services for Non-Public Assistance Clients
Responbilities of the CWA/CSP Unit
N.J.A.C. 10:81-11.9

Take notice that the Division of Family Development has discovered an error in the current text of N.J.A.C. 10:81-11.9(d) and (d)2ii.

Amendments to paragraph (d) were proposed on July 6, 1992 at 24 N.J.R. 2327(a) and at 24 N.J.R. 2328(a). The former was adopted effective January 4, 1993 at 25 N.J.R. 115(a), and the latter at 25 N.J.R. 2589(b), effective June 7, 1993. However, in the incorporation of the later amendments into the New Jersey Administrative Code through the June 21, 1993 update, the earlier amendments were inadvertently omitted.

Amendments to subparagraph (d)2ii were proposed on April 2, 1990 at 22 N.J.R. 1053(a) and June 4, 1990 at 22 N.J.R. 1664(a). The "April" amendments were adopted effective August 6, 1990 at 22 N.J.R. 2318(a), and the "June" amendments were adopted effective November 5, 1990, at 22 N.J.R. 3373(a). However, in the incorporation of the later amendments into the New Jersey Administrative Code through the November 19, 1990 update, the earlier adopted amendments were inadvertently omitted.

Through this notice, published in accordance with N.J.A.C. 1:30-2.7, these errors are corrected.

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

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 calendar days of location. **Each county welfare agency is required to have attorneys, all of which hold a plenary license to practice law in this State, who are in good standing and maintain a bonafide office for the practice of law in this State, either on staff or under contract sufficient to represent the CWA in child support enforcement matters in court as necessary.**

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 90 calendar days of locating the alleged father.

i. (No change.)

ii. Payment for genetic test: **The CWA shall provide initial payment for paternity determinations in all AFDC and non-AFDC cases through any of the laboratories approved by the State. Although the CWA will provide initial payment, the** [The] CWA/CSP Unit shall have the court stipulate that the [defendent is responsible for payment of the genetic test] **cost for genetic testing be paid by either of the parties involved as determined by the practice of the court.** The only exceptions would be for the following reasons:

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

iii.-vi. (No change.)

3.-10. (No change.)

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

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual
Case Closing Criteria and Application Fee
Adopted New Rule: N.J.A.C. 10:81-11.16A
Adopted Amendments: N.J.A.C. 10:81-11.4 and 11.20

Proposed: March 1, 1993 at 25 N.J.R. 881(a).
Adopted: November 5, 1993 by William Waldman, Commissioner, Department of Human Services.
Filed: November 9, 1993, as R.1993 d.634, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45 C.F.R. 303.11 and N.J.S.A. 44:10-3.

Effective Date: December 20, 1993.
Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

Subsequent to the proposal of this new rule and amendments, this Department's Division of Family Development received clarification from the Department of Health and Human Services, Federal Office of Child Support and Enforcement (OCSE) with respect to N.J.A.C. 10:81-11.16A(e), specifically with the sentence which reads "Once the IV-D case is closed, the responsibility for monitoring and enforcing the obligation falls on the support recipient," OCSE has indicated that New Jersey Court Rule 5:7-4 directs that a support order or judgment entered in the State shall provide that payments be made through the probation department of the county in which the person to whom the award is made resides. Therefore, until the court either terminates the support obligation or the obligation ends by virtue of emancipation of the minor child or the court amends the support order to command the obligor to pay directly to the custodial parent, the probation division must maintain the overall responsibility to enforce and monitor the case. In these instances, it is noted that Federal Financial Participation is only available for those cases which are receiving services through the IV-D program.

N.J.A.C. 10:81-11.16A(e) has been revised to clarify that the closing of a case means only the termination of IV-D services and that no Federal Financial Participation is available to that case. However, until the court terminates the support obligation or the obligation ends by virtue of emancipation of the minor child or the court amends the support order to command the obligor to pay directly, the probation division must maintain overall responsibility to enforce and monitor the case.

After further agency review of the proposed new rule and amendments, N.J.A.C. 10:81-11.16A has been revised to clarify which cases are eligible to receive IV-D services. The Department has added a new subsection (a) to list which cases are considered IV-D cases; that is, those cases in which there has been an assignment of rights to support to the State under AFDC, DYFS or Medicaid regulations; or those for which an application for IV-D services has been filed and an application fee paid. This clarification is in accordance with 45 CFR 306.50 and 306.51. The following comments were received from Richard P. Williams, counsel to the Bergen County Board of Social Services.

COMMENT: A number of the provisions are in direct contravention of the requirement that child support payments become judgments by operation of law, having the force and effect of other judgments. If a case is closed and removed from the Automated Child Support Enforcement System (ACSES), which is the official system for the docketing of child support judgments in New Jersey, there will be no longer be an enforceable judgment.

RESPONSE: Once a case is closed, IV-D services are terminated but the probation division is still responsible for monitoring and enforcing the judgment. Currently, a procedure is being developed for the file transfer of information to the Clerk of the Superior Court, where judgment information will be recorded. However, there is an interim procedure in place by which the Office of Child Support and Paternity Programs (OCSPP) will forward to the Administrative Office of the Courts (AOC) that information which the AOC has determined necessary to maintain judgments after the case is closed.

COMMENT: Assigning a case a low priority, which would prevent documents from being generated, prevent submission to different interfaces and limit the manpower expended would have the same economic impact as closing a case while at the same time maintaining the integrity of the judgment system.

RESPONSE: Even if such a system modification were made, the maintenance of case records on ACSES also accrues a cost. Although Federal Financial Participation is available for open IV-D cases, the OCSPP has determined that maintaining these low potential cases on the system is a frivolous expenditure. However, even when a case is closed, in IV-D terms, the judgment remains intact. A judgment on a closed case is subject to collection by the same mechanism as any other judgment through the court.

COMMENT: The definition of "unenforceable" at N.J.A.C. 10:81-11.16A(a)2i does not meet the requirements of unenforceable under State law. Only a court of law may make that determination. The fact that four years may have passed without any successful collection having taken place is no reason to take a case off the ACSES system. There are untold numbers of cases which have achieved collections after eight, 10 or even 15 years of inactivity. At the very least, such cases should continue to be submitted for Federal tax offset. If the case is taken off the ACSES system, this opportunity will be lost forever.

RESPONSE: N.J.A.C. 10:81-11.16A(a)2i has been recodified and amended to reflect that an unenforceable order will be determined in a court of law. As State law can be case law as well as statutory law, the reference made in this paragraph will pertain to the law as interpreted by a judge. In addition, as stated previously, the closing of a case does not terminate the order and it is still probation's responsibility to enforce.

COMMENT: At N.J.A.C. 10:81-11.16A(a)3, the fact that an obligor under a court order is deceased and there has been no collection for at least 18 months and no further action against the estate can be taken, is no reason to close the case. The case, however, can be closed on ACSES as long as a judgment is in the Superior Court Clerk's Office. Judgments have a life of 20 years and estates are often probated after a long period of time.

RESPONSE: Judgments on closed cases are filed with the Clerk of the Superior Court and are the responsibility of the probation divsions to monitor and enforce, unless terminated by the court. The 20 year life of a judgment is not affected by an IV-D case closing.

COMMENT: At N.J.A.C. 10:81-11.16A(a)5, if there is a support order or arrears due to a welfare agency or to an individual obligee, the case should not be taken off the ACSES system. In order to maintain the judgment and an order that continuing support which remains unpaid becomes a judgment, the case must continue on the ACSES system.

RESPONSE: ACSES is not a judgment system. Closing an IV-D case does not affect the support order or any judgments established under the court order. It simply relieves IV-D of the responsibility for enforcement and monitoring of the case. However, if after an Aid to Families with Dependent Children case is IV-D closed and a judgment is satisfied, the case will be reopened on ACSES to reflect the collection, the money will be processed through the system and the case will then be closed again. N.J.A.C. 10:81-11.16A(e) has been modified to clarify this issue.

COMMENT: At N.J.A.C. 10:81-11.16A(a)6, incarceration for a voluntary criminal act is not a reason under the law to close a case and excuse such an obligor from his or her support obligation. Continuing support orders must remain on the ACSES system so that judgments are docketed in the clerk's office. To remove such an order from the ACSES system removes the entry of a judgment and violates Federal and State law and regulations.

RESPONSE: The closing of an IV-D case when an obligor cannot pay support for the duration of the child's minority because the obligor is incarcerated does not excuse him or her from the obligation. It just relieves the IV-D agency from monitoring the order for that case. The order, however, is still in effect.

COMMENT: N.J.A.C. 10:81-11.16A(b) seems to place the responsibility for enforcement on the obligee or the county welfare agency.

RESPONSE: New Jersey Court Rule 5:7-4 directs that a support order or judgment entered in the State shall provide payments to the probation division of the county in which the person to whom the award is made resides. Therefore, it is the responsibility of the probation division to enforce and monitor the case. N.J.A.C. 10:81-11.16A(e) has been modified to clarify this issue.

COMMENT: At N.J.A.C. 10:81-11.16A(c), since a judgment is good for 20 years, that is the period of time that the IV-D agency should retain case records on cases which have had a support order at any time

RESPONSE: As stated above in a prior response, ACSES is not a judgment system and it is not the responsibility of the IV-D agency to retain information on cases which are IV-D closed. In addition, the closing of an IV-D case does not affect the life of the judgment.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[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 days of the IV-D referral.

i.-iv. (No change.)

v. Continuing IV-D services for families that lose AFDC eligibility: the IV-D agency is required to pay all amounts collected representing support to the family. A IV-D agency may not recover costs from either parent.

(1) (No change.)

(2) The application for non-AFDC services will require a $6.00 fee on all cases where an application is filed.

10:81-11.16A Closing criteria for IV-D cases

(a) All IV-D cases are subject to the case closing criteria set forth in this section. IV-D cases are those cases in which there has been an assignment of rights to support to the State under AFDC (45 C.F.R. 232.11), DYFS (Social Security Act, Section 471(a)17) or Medicaid (42 C.F.R. 433.146) or an application for IV-D services has been filed and an application fee has been paid.

*[(a)]***(b)*** In order to be eligible for closure, a IV-D case must meet at least one of the following criteria:

1. In the case of a child who has reached the age of majority, there is no longer a current support order, and arrearages are $150.00 or less or unenforceable *[under State law]* ***as determined in a court of law***;

2. In the case of a child who has not reached the age of majority, there is no longer a current support order, and arrearages are $150.00 or less or unenforceable *[under State law] ***as determined in a court of law***;

*[i. As used in (a)1 and 2 above, an unenforceable order must meet all of the following criteria:

(1) The case has been submitted for tax offset unsuccessfully for four years;

(2) Non-custodial parent has been unable to be located for four years;

(3) No current order is in effect; and

(4) No collections have been received for four years;]*

3. The non-custodial parent or putative father is deceased and there has been no support collection for at least 18 months and no further action including a levy against the estate can be taken;

4. Paternity cannot be established because:

i. The child is at least 18 years old and action to establish paternity is barred by a statute of limitation;

ii. A genetic test or a court administrative process has excluded the putative father and no other putative father can be identified; or

iii. The IV-D agency has determined that it would not be in the best interest of the child to establish paternity;

5. The location of the non-custodial parent remains unknown. Regular attempts using multiple sources over a period of three years for welfare-owned cases and over a period of four years for probation-owned cases have been continuously unsuccessful;

6. The non-custodial parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential and there has been no collection for at least 18 months.

i. When the non-custodial parent is institutionalized, and there has been no collection for at least 18 months, a thorough investigation to ascertain if he or she has any assets shall be completed. The institution should also be contacted to determine a release date. A determination must also be made that no income or assets are available to the non-custodial parent which could be levied or attached for support;

7. The non-custodial parent is a citizen of, and has lived in, a foreign country for at least two years; does not work for the federal government or a company headquarters or offices in the United States; and has no reachable domestic income or assets; the State has been unable to establish reciprocity with the country; and there has been no support collection for at least 18 months;

8. The IV-D agency has provided location-only services requested by the custodial parent, legal guardian, attorney or agency of a child who is not receiving aid under Title IV-A of the Act;

9. The non-AFDC custodial parent requests closure of a case and there is no assignment to the State of medical support or of arrearages which accrued under a support order. The closing of a case at the custodial parent's request is subject to the court's approval;

10. There has been a finding of good cause and the State or local IV-A, IV-E, or Medicaid agency has determined that support enforcement may not proceed without risk or harm to the child or caretaker relative;

11. In a non-AFDC case receiving IV-D services, the IV-D agency is unable to contact the custodial parent within a six-month period despite attempts by both telephone and at least one registered letter; or

12. In a non-AFDC case receiving IV-D services, the IV-D agency documents the circumstances of the custodial parent's non-cooperation and an action by the custodial parent is essential for the next step in providing IV-D services.

*[(b)]***(c)*** In those cases meeting any of the criteria in (a)1 through 7 and (a)11 and 12 above, the custodial parent must be notified, in writing, 60 calendar days prior to closure of the case of the intent to close the case. The case must be kept open if the custodial parent supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of any order.

1. If the case is closed, the custodial parent may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order.

*[(c)]***(d)*** The IV-D agency must retain all records for cases closed for a minimum of three years.

*[(d)]***(e)*** If the IV-D agency has complied with the State's case closing criteria, as outlined at (a) through (c) above, the State may close a case regardless of a support order or the amount of arrearages owed.

*[(e)]***(f)*** Case closure does not affect the support order or arrearages which have accrued under the order; it only means that services under the IV-D program will no longer be provided ***and no Federal Financial Participation is available for those cases***. The support order remains in effect and arrearages continue to accrue for the life of the order. These arrearages are judgments by operation of law and subject to enforcement. *[Once the IV-D case is closed, the responsibility for monitoring and enforcing the obligation falls on the support recipient.]* ***Until the court terminates the support obligation or the obligation ends by virtue of emancipation of the minor child or the court amends the support order to command the obligor to pay directly, the probation department must***

maintain overall responsibility to enforce and monitor the case. However, if after an AFDC case is IV-D closed and a judgment is satisfied, the case will be reopened on ACSES to reflect the collection, the money will be processed through the system, and the case will then be closed again.*

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(l)1 regarding Form CSP-111, Application for Non-Public Assistance Child Support and Paternity Services.

(b) Each non-AFDC applicant shall pay an application fee in the amount of $6.00.

1. (No change.)

(c) The $6.00 fee shall be deposited in the Administration Account as an offset against CSP administrative costs.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF PARKS AND FORESTRY

State Park Service Code

Adopted Amendments: N.J.A.C. 7:2-2.20, 3.6, 6.4, 8.4, 8.6, 10.2, 16.5, 17.1, 17.3, 17.4 and 17.5

Proposed: July 6, 1993 at 25 N.J.R. 2799(b).

Adopted: November 20, 1993 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Filed: November 23, 1993 as R.1993 d.657, **without change**.

Authority: N.J.S.A. 13:1B-15.100 et seq. and 13:1L-1 et seq.

DEPE Docket Number: 37-93-06.

Effective Date: December 20, 1993.

Expiration Date: October 7, 1996.

Summary of Public Comments and Agency Responses:

The following persons submitted comments during the comment period with respect to the proposed amendments herein adopted:

Jay and Mari Otto, Executive Directors, New Jersey Campground Owners Association

1. COMMENT: The New Jersey Campground Owners Association expressed concern that the Department's analysis of the proposal at N.J.A.C. 7:2-17.5(d) allowing the Department to reduce fees for State park services and facilities fails to consider the economic impact such fee reduction could have on businesses providing the same or similar services in the area of the State facility. If the fees for State park services were decreased for cabins or campground rentals in order to increase public use, such a decrease could pull users away from privately operated facilities that may be able to compete since they have to pay property taxes and other operational costs not paid by the State.

RESPONSE: The Department acknowledges the concerns raised by the commenter. However, the Department has determined that the proposal at N.J.A.C. 7:2-17.5(d) allowing the Department to reduce fees for State park services is necessary in order to assure its continued ability to achieve its statutory mandate to make recreational activities available to all segments of the public.

In establishing the State Park Service Fees at N.J.A.C. 7:2-17, the Department's discretion is limited by the requirement at law that fees for services provided by governmental agencies should not exceed the agency's cost in providing the service and by the specific requirements of the statute governing the administration of State parks. The Department administers State parks pursuant to the State Park and Forestry Resources Act, N.J.S.A. 13:1L-1 et seq. In N.J.S.A. 13:1L-5 of the act, the Legislature expressly directs the Department to provide recreational activities and programs within State parks for the benefit of "..., all segments of the State's population". The term "recreational activities" is defined at N.J.S.A. 13:1L-3(d) as including camping. In implementation of the Act, the Department provides camping facilities of a type and at a fee reasonably calculated to achieve its statutory obligation to make recreational activities available to all segments of the public.

Full text of the adopted amendments follows:

7:2-2.20 Swimming/bathing areas

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

(c) A person under the age of 12 years shall not be admitted to the swimming pool at Liberty State Park unless the person is accompanied by a person 18 years of age or older.

(d)-(i) (No change.)

7:2-3.6 Motor vehicle speed limits

(a) (No change.)

(b) A person shall not travel by motor vehicle on unimproved (dirt, gravel or sand) roadways at a speed greater than 20 miles per hour unless otherwise posted higher or lower.

7:2-6.4 Time limits: overnight camping

(a) In order to afford the public the greater possible use of the State Park Service camping system, continuous occupancy by the same persons or equipment of any camping site is limited as follows:

1. A person or persons shall not occupy a campsite for more than 14 consecutive nights.

2. A person or persons who have occupied a campsite for an initial 14 night limit shall not re-register until seven calendar nights have elapsed.

3. Additional camping shall be permitted in intervals up to, but no more than, seven nights at a time with a minimum of seven calendar nights out-time required between each occupancy.

4. The total maximum camping nights in any calendar year shall not exceed 40 nights.

7:2-7.2 Overnight facilities reservation procedures

(a) All applications for reservations of cabins and camp shelters shall be submitted on forms available from the State Park Service. Applications shall be accepted if postmarked or received after January 2nd of the year in which the facilities are to be used. Reservations shall not be made by telephone.

(b) Applications shall be acted upon on a first-come first-serve basis or a lottery system of selection, if the demand dictates. All applications received after this process is completed shall be acted upon as received.

(c)-(k) (No change.)

7:2-8.4 Sailboats and ice sailboats mast height on the Round Valley, Spruce Run and Monksville Recreation Reservoirs

A person shall not operate a sailboat or ice sailboat with a mast height of greater than 30 feet from the water line on the Round Valley, Spruce Run and Monksville Recreation Reservoirs.

7:2-8.6 Boating near bathing areas

(a) (No change.)

(b) A person shall not operate human powered slow moving watercraft such as rowboats, pedal boats, canoes, surfboards, or any other water borne mechanisms meeting this definition within 50 feet of a designated bathing area.

7:2-10.2 Reservations—golf course

(a) Golf course play is on a first-come, first-serve basis only, except as provided in (b) below.

(b) Tournament reservations shall be made 30 days in advance and are not effective until confirmed in writing by issuance of a special use permit by the State Park Service.

1.-3. (No change.)

7:2-16.5 Island Beach State Park

(a) Island Beach State Park shall be closed to all persons, excepting MSFV permit holders surf fishermen and Barnegat Bay water-

fowl hunters between 8:00 P.M. and 8:00 A.M. from April 1 through October 31 and betwen 8:00 P.M. and 5:00 A.M. from November 1 through March 31 annually.

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

7:2-17.1 Day use fees for services and facilities provided by the State Park Service

(a) Except as provided in (i) below, daily parking fees for automobiles at designated State parks, for the period beginning with Memorial Day weekend and ending on Labor Day inclusive, are as follows:

AREA	WEEKDAYS	WEEKENDS AND HOLIDAYS
1. Allaire	$4.00	$5.00
2. Atsion	$5.00	$7.00

Recodify existing 4.-21. as 3.-20. (No change in text.)

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

(e) The daily or annual walk-in and bicycle fee for persons 12 years old and above at designated State parks, forests and recreation areas is as follows:

1. AREA	DAILY FEE	ANNUAL WALK-IN AND BICYCLE PASS
i. Atsion	$1.00	$35.00

Recodify existing iii.-vii. as ii.-vi. (No change in text.)

2. An annual walk-in and bicycle pass purchased at one of the State parks, forests and recreation areas listed in (e)1 above shall be honored for walk-in and bicycle admittance at any of the designated State Parks, forests and recreation areas.

(f)-(k) (No change.)

(l) Except when parking fees are in effect pursuant to (a) and (c) above, a fee of $1.00 for each person age 12 and over shall be charged for admission to the High Point Monument.

(m) (No change.)

(n) The daily fee per person for admission to the Barnegat Lighthouse will be $1.00 for each person age 12 and over for the period beginning Memorial Day weekend and ending on Labor Day.

7:2-17.3 Miscellaneous fees for services when and where provided by the State Park Service

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

(e) Miscellaneous fees for services provided by the State Park Service at Liberty State Park are as follows:

Service	Fee
1. Fee for use of Interpretive Center	$40.00/hour for each State Park Service employee assigned
2. Fee for use of Terminal Building for a day or part of a day longer than four hours	$1,000/day for each event
3. Fee for use of Terminal Building for a half day (four hours or less)	$500.00/half day for each event
4. Boat docking fee for one arrival and one departure	$250.00
5. Fee for use of North or South Field	$250.00/event

7:2-17.4 Fees for services provided by the State Park Service at State marinas

(a) Fees for services provided by the State Park Service at the Forked River State Marina are as follows:

1. (No change.)

2. Transient berthholder fee:

Vessel Size	Daily	Monthly
i. Forty feet and under	$0.75/foot length overall	$15.00/foot length overall;
ii. Forty-one feet and longer	$1.00/foot length overall	$20.00/foot length overall; and

iii. T-Head and dockside fee equal to corresponding berth size rate; and

3. (No change.)

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

7:2-17.5 Adjustment of fees for services and facilities provided by the State Park Service

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

(d) The Department may establish fees for services and facilities that are lower than the fees set forth in N.J.A.C. 7:2-17.1, 17.2, 17.3 and 17.4 for said services or facilities by publishing a fee reduction notice in the New Jersey Register. The fee reduction shall be based on a determination by the Department that the fee reduction is necessary to encourage public access to and use of the service and facilities provided by the State Park Service and will not result in a reduction of the services and facilities available to the public. The reduced fees shall be effective upon publication of the fee reduction notice in the New Jersey Register.

(e) Fees for services and facilities provided by the State Park Service that have been reduced in accordance with (d) above may be increased in any amount by the Department upon publication of a notice of increase in the New Jersey Register provided the fee is not increased above the fee set forth in N.J.A.C. 7:2-17.1, 17.2, 17.3 or 17.4 for the service or facility.

Recodify existing (d)-(f) as (f)-(h) (No change in text.)

(a)

ENVIRONMENTAL REGULATION—LAND USE REGULATION PROGRAM

Freshwater Wetlands Protection Act Rules Definition of Project

Adopted Amendments: N.J.A.C. 7:7A-1.4 and 2.7

Proposed: April 19, 1993 at 25 N.J.R. 1642(a).

Adopted: November 10, 1993 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Filed: November 16, 1993 as R.1993 d.646, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:9B-1 et seq. (P.L. 1987, c.156).

DEPE Docket Number: 22-93-03.

Effective Date: December 20, 1993.

Expiration Date: March 16, 1997.

Summary of Hearing Officer's Recommendations and Agency Response:

On April 19, 1993, the Department of Environmental Protection and Energy (Department) proposed amendments to N.J.A.C. 7:7A. The Department held a public hearing concerning the amendments on May 12, 1993 in Trenton, New Jersey. The Department accepted written comments through May 19, 1993.

Ernest P. Hahn, the Department's Land Use Regulation Program Administrator, served as the hearing officer at the public hearing. Tim Dillingham of the Sierra Club attended the hearing but did not give testimony. Administrator Hahn recommended that the Department adopt the rule. The Department agrees with the recommendation.

Interested parties may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

Janis Hoagland
Office of Legal Affairs
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

Two persons submitted written comments on the proposed amendments, as follows:

1. COMMENT: A project means that there are buildings and infrastructure on a site plan or an application. If there is not a plan, there is not a project. A mere subdivision does not assume a plan. In the

examples given in the proposed amendment, there really is no difference between examples (2) and (4). In example (2), there is no project until there is a plan; the five conforming residential lots may be subdivided with no intent to build. In example (4), the case of subdivision for purposes of a bequest, likewise there is no plan and thus no project to be exempted. In neither case should there be an exemption. We would still urge a single definition of project (Richard P. Kane, New Jersey Audubon Society).

RESPONSE: The Department does not agree that a project only exists in those cases where buildings and infrastructure are shown on a site plan or application for site plan or subdivision approval. The amount of information that an applicant must show on a plat varies greatly depending on whether the applicant is seeking approval for a subdivision or a site plan and on the specific requirements of a particular township. While site plan requirements are specific, the requirements for subdivision applications vary greatly, and are not necessarily indicative of the amount of time or money an applicant has invested in a particular project. Therefore, to limit the exemption to those cases where buildings and infrastructure are shown on a plan would severely restrict the exemption for projects which have received subdivision approvals, in contravention of the exemption provisions of the Freshwater Wetlands Protection Act (Act) set forth at N.J.S.A. 13:9B-4(d)1 and 2. Therefore, the Department has separated the definition of project into two parts, site plan and subdivision approvals, to recognize the inherent differences between these two types of approvals.

The Department does not agree that dividing a tract of property into five conforming building lots, as described in example (2), is the same as dividing property only so that the resulting lot(s) can sometime in the future be bequeathed to one's heirs, as described in example (4). The person who divides property into conforming residential building lots has made an investment in future development on those lots in accordance with a known planning scheme. However, when land is divided only so that portions of it can be bequeathed at some point in the future, there is no development scheme necessarily associated with the subdivision, only a conveyance scheme; neither the deviser of the lots nor the persons who will inherit them have made an investment in development of the lots. Therefore, there is no on-going development or "project" to be protected or completed under the exemption provision. The exemption provisions apply to "projects" with approvals, and do not apply to property. Exempting lands which have been divided only so that they can ultimately be bequeathed is contrary to this concept.

Though there is a valid distinction between examples (2) and (4), the Department does not intend example (4) to automatically preclude an exemption whenever a bequest is involved. Instead, as stated in example (4), an exemption will be precluded only in those instances where property has been divided only for the purpose of bequeathing it at some point in the future. If the property has been divided for other additional reasons, and those reasons include the pursuit of a known development plan, example (4) will not be applicable to that development plan since the example pertains only to instances where the **sole** purpose of the land division is to effect a future bequest of the property.

2. COMMENT: The Association of New Jersey Environmental Commissions (ANJEC) supports most of the proposed amendment defining "project." The clarifications provided in the proposal are useful (Abigail Fair, Association of New Jersey Environmental Commissions).

RESPONSE: The Department acknowledges this comment in support of the proposed amendment.

3. COMMENT: Further clarification is absolutely essential to establish standards for determining substantial or insubstantial investment in planning or development. If firm standards are not established, the Department's staff will be confronted with judgment calls that will delay decisions. The Pinelands Commission has developed standards for hardship waivers that could provide an excellent model for such standards (Abigail Fair, Association of New Jersey Environmental Commissions).

RESPONSE: The Department believes that the Freshwater Wetlands Protection Act (Act) includes the grandfather clause at N.J.S.A. 13:9B-4 because the Legislature sought to protect the investment of time and money associated with certain types of municipal approvals, namely subdivision and site plan approvals. However, it has become apparent that the level of detail associated with a "project" is often a function of specific township requirements and does not necessarily reflect substantial investment in planning or development. Therefore, the Department has sought to define "project" using examples, which cannot be all-inclusive. As it reviews each case, the Department will add to its body of knowledge so that exemption determinations will be made in a consistent and timely manner.

The Department does not believe the Pinelands Commission hardship standards can be incorporated into the process for determining exemption status under the Act. The Pinelands Commission criteria evaluate, among other things, the length of time an applicant has owned a parcel, the size and location of the parcel, the specific land use being proposed, and the effect of that use on the surrounding area. While these are important factors to be considered during permit review, the Act does not provide for consideration of such factors when determining exemption status. Rather, the exemption provisions focus on the receipt of prior subdivision or site plan approval for a project, and not on the project's potential impacts.

Summary of Agency-Initiated Changes:

The Department has recodified the example section within the definition of "project" to clarify that the examples are intended to apply to part 2 of the definition, inclusive, and not only to part 2, subparagraph ii. While this intent is evident from the sentence preceding the examples, the codification should resolve any potential ambiguity regarding the examples' applicability.

The Department has also recodified, on adoption, the final part of the definition which describes when an exemption has been "used up." While the paragraph as proposed clearly applies to all development determined to be exempt by the Department, the recodification clarifies and reflects that intent.

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

7:7A-1.4 Definitions

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

. . .

"Project" means the following:

1. For an exemption under N.J.A.C. 7:7A-2.7(d) based on the application for or the grant of preliminary site plan approval, "project" means all buildings, structures, pavements, and other improvements specifically depicted on the site plans referenced in the resolution approving the site plan.

2. For an exemption under N.J.A.C. 7:7A-2.7(d) based on the application for or the grant of preliminary subdivision approval, "project" means:

i. Where subdivision approval is the last stage of municipal review before the owner/applicant may apply for a building permit to begin construction, the "project" is the development of the subdivision consistent with the lot coverage, use, and density restrictions of the zoning ordinance in effect at the subdivision approval; or

ii. Where site plan approval is required prior to construction, "project" means the proposed economic development, whether commercial, industrial or residential, intended to be constructed on that portion of a tract of land that is the focus of the qualifying approval. Although "project" is not limited to specific structures shown on the subdivision plans, it is limited to development on those portions of a tract of land that were the focus of the qualifying subdivision application or approval. Development on other lands, such as development on the remainder of a larger tract or on a contiguous property in common ownership, are not included within a "project."

In order to determine if an applicant qualifies for an exemption under this definition, the Department will determine the existence of a proposed economic development at the time of the subdivision application. Because the purpose of the exemption is to protect that degree of investment in planning and development that the preliminary site plan or subdivision application normally represents, where the subdivision is merely a division of land and no substantial investment was made in planning or development, there can be no exempted project. Therefore, an application for the subdivision of lands simply for future development, yet to be planned, or simply for resale shall not qualify for an exemption. To determine the existence of a proposed economic development and to determine which portion of a tract was the focus of subdivision approval or

application, the Department will examine the resolution granting approval and any documentation submitted with the application, including, but not limited to, drainage, engineering, traffic, utility, landscaping, soil and environmental plans and reports as well as the subdivision plan. In cases where the above information is unclear, the Department may consider money spent or obligated on engineering and design in the preparation of the subdivision application to determine if a substantial investment has been made in an economic development. Money spent or obligated for the initial purchase, carrying costs, or legal services will not be considered in determining the existence of a proposed economic development.

iii. The following are examples of how the Department will determine the "project" exempted on the basis of the application for or grant of preliminary subdivision approval:

(1) Where a project was to be developed in three sections but a complete application for preliminary approval was submitted, accepted and subsequently approved for only one section, only the development planned for that section is exempt and the development envisioned for sections two and three is not exempt. This is not altered by the fact that some depiction of that future development on the remainder of the parcel might be required by a local planning board in concept or sketch form.

(2) Where an entire parcel is subdivided into five conforming residential lots, the residential development planned on all five lots is exempt. However, where the focus of the subdivision application and approval is on less than the entire tract of land, which lesser portion is divided into five single family house lots, and the remainder of the tract is left as a bulk parcel for further subdivision or other planning board approval, only development on the five lots is exempt. It is irrelevant that the configuration of the remainder lot has been changed by the subdivision or that the remainder lot has been renumbered.

(3) Where the land to be divided for a commercial industrial park straddles two townships and the developer received approval to subdivide the land in township A and sold the unsubdivided portion in township B to another developer, only the development on the land in township A could be considered the subject of township A's subdivision approval. Therefore, only the development on the land in township A is exempt. It is irrelevant that the original developer had, from the start, contemplated a commercial industrial park for the property in both townships or that the office building contemplated on the land in township B did not require further subdivision.

(4) Where land is divided for the sole purpose of bequeathing it sometime in the future to one's children to be developed as they wish, no economic development was contemplated when the application was made or approval granted. After the land passes to the children and one of them decides to build, that development is not exempt. The purpose of the exemption is to protect that degree of investment in planning and development that the preliminary site plan or subdivision application normally represents. Where the subdivision is merely a division of land and no investment was made in the planning or development, there can be no exempted project.

(5) Where land is subdivided but requires further subdivision, other than de *[minimus]* ***minimis*** changes for road right of ways or other infrastructure, before the applicant can proceed to the next step of municipal approval (either building permits or site plan approvals), there is no evidence of intended economic development at the time of initial subdivision application or approval, because the proposed economic development only comes into being with the subsequent, untimely subdivision. Therefore, there is no basis for exemption.

3. For all development determined to be exempt by the Department, it should be noted that once the development is constructed, the exempted "project" has been built. If, for example, the owner of a commercial building decides afterward that it is necessary to construct an addition, and goes back to the municipal authority for a new or amended site plan or subdivision approval, the exemption has been "used up" and the addition is subject to the permitting requirements of the Act. Similarly, for residential approvals, once the houses and any accessory structures planned along with the house (for example, detached garages, barns, storage sheds, pools) are constructed, the exemption has been exhausted and any later additions or structural improvements are subject to the permitting requirements of the Act. Note that if there is an interruption of more than one year before construction of an accessory structure claimed to have been planned along with the house, there is a rebuttable presumption that the structure constitutes a later addition and will require a permit. See also N.J.A.C. 7:7A-2.7(e)1 and 2 for changes that void exemptions for projects still in the local approval process.

...

7:7A-2.7 Activities exempted from permit requirement

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

(d) Subject to the limitations of this section, the following are exempt from the requirements of the Act until the State assumes the Federal 404 program. These activities may need Federal 404 permits and/or a WQC:

1. Projects (as defined in N.J.A.C. 7:7A-1.4) for which preliminary site plan or subdivision applications have received formal preliminary approvals from local authorities pursuant to the "Municipal Land Use Law," N.J.S.A. 40:55D-1 et seq., prior to July 1, 1988 provided those approvals remain valid under the Municipal Land Use Law. This excludes approvals which were given prior to the August 1, 1976 effective date of the Municipal Land Use Law. To qualify for an exemption under this N.J.A.C. 7:7A-2.7(d)1, a project must have received preliminary approval (as defined in N.J.S.A. 40:55D-6) of a subdivision or site plan. Sketch plat approval, a classification determination, or any other types of approvals referred to in the Municipal Land Use Law (e.g., building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this N.J.A.C. 7:7A-2.7(d)1.

2. Projects (as defined in N.J.A.C. 7:7A-1.4) for which preliminary site plan or subdivision applications as the term is used in N.J.S.A. 40:55D-1 et seq.) have been submitted to the local authorities prior to June 8, 1987 and subsequently approved. If a project meets all criteria under this subsection to qualify for an exemption, except that the project has not yet received municipal approval, the Department will issue a letter certifying that the qualifying application was filed prior to June 8, 1987 and the project will receive an exemption upon receipt of preliminary approval from the municipality. To qualify for an exemption under this N.J.A.C. 7:7A-2.7(d)2, an application for preliminary approval must have been in proper form, must have been accompanied by all plans, data and information called for by the local land use ordinance and by statute for either a subdivision or site plan, as the case may be, and thus must have been in fact complete prior to June 8, 1987. An application for sketch plat approval, classification determination, or any of the other types of approvals referred to in the Municipal Land Use Law (e.g., building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this N.J.A.C. 7:7A-2.7(d)2;

3. (No change.)

(e)-(i) (No change.)

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Notice of Administrative Correction Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System Operations and Maintenance Expense Component Debt Service Cost Component

N.J.A.C. 7:11-4.3 and 4.4

Take notice that the New Jersey Water Supply Authority has discovered an error in the current text of N.J.A.C. 7:11-4.4(b). The Debt Service rate adopted operative July 1, 1993 was stated in the proposal summary and Economic Impact as "$772.82" (see 24 N.J.R. 4474(a)).

This rate was specified as "$772.82" in notices of the proposed rate sent to Manasquan Reservoir Water Supply System customers in December, 1992 and was so stated during the prepublic hearing and public hearing on the proposal. This rate was also stated as "$772.82" in the Summary of Hearing Officer's Recommendations and Agency Response in the notice of adoption (see 25 N.J.R. 2269(a), 2270), and such rate was adopted by the Authority. However, the amended rate appearing in the rule text in the original notice of proposal (PRN 1992-526) and subsequently published as the proposed and adopted rate was, through typographic error, "$777.82." Given the numerous clear indications of what the correct rate was, that rate is incorporated into the rule through this notice of administrative correction, pursuant to N.J.A.C. 1:30-2.7.

In addition, the Office of Administrative Law has discovered an error in the Effective Date for the operations and maintenance expense component set forth in N.J.A.C. 7:11-4.3(c). As proposed and adopted (see 24 N.J.R. 4474(a) and 25 N.J.R. 2269(a)), the date "July 1, 1992" was amended as "July 1, 1993." However, this amendment was not incorporated into the Code rule text subsequent to the adoption. That error is corrected through this notice.

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

7:11-4.3 Operations and maintenance expense component
(a)-(b) (No change.)
(c) Operations and Maintenance Expense Component:

Effective Date	Rate/Million Gallons (based upon a 16.097 mg per day sales base)
July 1, [1992] **1993**	$323.93

7:11-4.4 Debt service cost component
(a) (No change.)
(b) The following Debt Service rates apply to all water purchasers who entered into a water purchase contract before July 1, 1990, the date upon which the Authority commenced operation of the Manasquan Reservoir System (Initial Water Purchase Contract) and began to make uninterruptible service available to the purchasers ("System Operation Date").

Period	Rate/Million Gallons
7/1/93 to 1/31/94 (Coverage 115 percent)	$740.40
2/1/94 to 6/30/94 (Coverage 120 percent)	[$777.82] **$772.82**

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

(a)

POLICY AND PLANNING/OFFICE OF AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution from Oxides of Nitrogen

Adopted New Rules: N.J.A.C. 7:27-19
Adopted Amendments: N.J.A.C. 7:27A-3.5 and 3.10

Proposed: February 16, 1993 at 25 N.J.R. 631(a).
Adopted: November 15, 1993 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.
Filed: November 24, 1993 as R.1993 d.682, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-9, and 26:2C-1 et seq., in particular 26:2C-9(c) and 19.

DEPE Docket Number: 04-93-01.
Effective Date: December 20, 1993.
Operative Date: January 23, 1994.
Expiration Date: Exempt, N.J.A.C. 7:27
December 4, 1994, N.J.A.C. 7:27A

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (the Department) has adopted new rules at N.J.A.C. 7:27-19, entitled "Control and Prohibition of Air Pollution from Oxides of Nitrogen," hereinafter referred to as "subchapter 19," to reduce the formation of ground-level ozone due to emissions from equipment and source operations which releases oxides of nitrogen (NO_x) to the atmosphere. The major stationary sources of NO_x to be subject to these amendments and new rules include utility, large industrial and commercial boilers; stationary gas turbines; stationary internal combustion engines; and other types of large combustion equipment. The Department has also adopted related amendments to N.J.A.C. 7:27A-3, Civil Administrative Penalties and Requests for Adjudicatory Hearings (the Penalty Code).

Public hearings were held on March 18, 1993, at Rowan College Student Center, Glassboro, New Jersey, and March 19, 1993, at the Board of Regulatory Commissioners, 2 Gateway Center, Newark, New Jersey, to provide interested parties the opportunity to comment on the proposed rule and amendments. The comment period closed on March 25, 1993. The Department received written testimony from 29 persons. Six persons presented both oral and written comments, and five persons presented only oral testimony at the public hearings. The commenters were as follows:

1. Robert Baldisserotto, Hoffmann-LaRoche
2. Robert Bassette, Council of Industrial Boiler Owners
3. Neale Bedrock, Lowenstein, Sandler, Kohl, Fisher and Boylan
4. Robert Blanchard, Babcox and Wilcox/Cohen Company
5. Joel Bluestein, Gas-based NO_x Control Information Center
6. Arnold Cohen, Ironbound Committee Against Toxic Waste
7. Raymond Conner, Manufacturers of Emission Controls Association
8. Robert Cutler, Powerhouse Equipment & Engineering
9. Guy Dietrich, MacAndrews & Forbes Company
10. Dr. Richard Dunk, Jersey Central Power & Light
11. Robert Elegante, Wheaton Industries
12. Lisa Fleming, City of Vineland
13. R.M. Ivory-Moore, Mobil Oil Corporation/Mobil Chemical
14. James Klickovich, Atlantic Electric
15. Diane Krell, Merck & Co.
16. Peter Maciejewski, General Motors Environmental & Energy
17. Bradley Martin, DuPont Chemicals
18. John Maxwell, New Jersey Petroleum Council
19. Robert McKinstry, Ballard, Spahr, Andrews & Ingersoll
20. Megan Milford, Waste Management of North America-East Group
21. Don Porter, Texas Eastern Transmission Corporation
22. Anthony Reitano, Herold and Haines
23. Robert Russell, Conservation Law Foundation
24. Dr. William Ryan, Medical Society of New Jersey
25. James Shissias, Public Service Electric and Gas
26. Conrad Simon, USEPA/Air & Waste Management Division
27. Robert Suozzo, IAG Air Permitting Taskforce
28. Charles Tantillo, Stockton State College
29. Patricia Townsend, South Jersey Work on Waste
30. David Van Derveer, Aqualon Company
31. Dr. Michael Wax, Institute of Clean Air Companies
32. Robert Welsh, American Gas Association/Interstate Natural Gas Association of America Task Group
33. Walter Wenner, Kimble Glass, Inc.
34. Lauren Zinsky, Garden State Paper Company

The following is a summary of the comments received on the proposed new rule and amendments, and the Department's responses. The number(s) in parentheses after each comment corresponds to the commenter numbers above.

General

1. COMMENT: Several commenters stated that the Department should be complimented for its efforts during the last year-and-a-half to provide all interested parties the opportunity for input to the process of developing regulations which are expected to have significant impacts on the regulated community and ultimately on the citizens of New Jersey. The commenter stated that the Department's willingness to include the concepts of an emissions averaging plan, and for recognizing in the regulations the seasonal aspects of ozone formation, should be especially acknowledged. In addition, other strong points included both (1) the Department's decision to require emissions limitations for utility boilers

that are close to the August 12, 1992 limits recommended by the Northeast States for Coordinated Air Use Management (NESCAUM); and (2) its requirements that all major sources track and report emissions through the use of continuous emissions monitors. The commenter stated that they strongly support the continuation of open and frank dialogue between the Department and all interested parties for as long and as often as it takes to achieve our shared goal of ozone attainment, within the scheduled deadlines, in the most cost-effective manner. (10, 12, 23, 24, 25)

RESPONSE: The Department believes that a solely cost-based RACT standard is inadequate to fairly and effectively implement RACT. Because the actual cost for the installation of RACT will vary greatly from source to source, even within a category, no one cost has been specified above which a technology can be dismissed as not meeting the definition of RACT. Instead, provisions have been included in the rule which state the criteria which should be used to determine if a specific control scenario constitutes RACT.

2. COMMENT: The commenter requested additional data regarding the costs of continuous emissions monitors, but did appreciate the Department's inclusion in the economic impact statement of helpful estimates, such as the initial costs and annual operating costs of continuous emission monitoring systems (for example, $50,000-75,000 and $10,000-15,000, respectively, for utility boilers). (27)

RESPONSE: It is speculative to estimate installation costs because such costs are very facility specific, and depend on such factors as existing access and the degree of stack testing necessary. Operating costs also vary greatly depending on the type of audits performed and routine maintenance.

3. COMMENT: The commenter questioned if a facility that has a piece of equipment which is "grandfathered" from the Department's air pollution control permit and certificate program, and whose emissions would comply with the requirements of this subchapter without any alteration, is required to apply for a Permit to Construct and/or Certificate to Operate. (3)

RESPONSE: A source which is grandfathered from the provisions of N.J.A.C. 7:27-8 need not apply for a Permit to Construct and/or Certificate to Operate provided that no alteration is made to the equipment in order to meet the applicable requirements of N.J.A.C. 7:27 or for other purposes.

4. COMMENT: One commenter stated that any type of control for Oxides of Nitrogen (NO_x) which is determined to be applicable to a particular source or source type should be required only during the ozone season. The commenter stated that requiring control beyond the ozone season provides little benefit in terms of the success of the ozone attainment goals, could jeopardize other attainment goals (for example, achievement of the national ambient air quality standard (NAAQS) for carbon monoxide), and would be overly costly and burdensome by requiring the annual operation of expensive-to-maintain control equipment and causing unnecessary wear on this equipment. (14)

RESPONSE: There are several benefits to requiring the use of NO_x controls outside of the ozone season. Reductions in the total amount of NO_x emitted into the atmosphere, even during the winter period, have environmental benefits other than helping to attain the NAAQS for ozone. Such benefits include a lessening of the damages caused by acid rain, a reduction in the amount of nitrogen compounds deposited into lakes and streams, and improvements in visibility. For this reason, the Federal Clean Air Act mandates that RACT be applied throughout the year.

5. COMMENT: The commenter stated that whether a facility is a major NO_x source is determined by its potential to emit on an annual basis. However, the commenter added that, because many industrial boilers are used on a seasonal basis (for example, industrial boilers used primarily to generate building heat when ambient temperatures are relatively cold), the application of traditional RACT could have little to no benefit in reducing high ozone concentrations and helping the area attain the ozone NAAQS. The commenter stated that from a policy standpoint, RACT for NO_x should apply only to sources that contribute to high ozone concentrations. Therefore, alternative approaches to control are being considered by the United States Environmental Protection Agency (EPA). According to the commenter, current thinking is to define RACT as a set of two emission rates, one for the ozone season and the other for the non-ozone season as follows:

a. For the ozone season, EPA guidance recommends establishing an emission limit of 0.40 pounds NO_x per million British Thermal Units (BTUs), which would require the use of clean fuels or other controls; and

b. For the non-ozone season set RACT at the uncontrolled level.

The commenter stated that this approach is similar to the Volatile Organic Compounds (VOC) policies which allow "no control" in the non-ozone season, but require control in the ozone season; that is, the provisions for cutback asphalt and afterburners. (26)

RESPONSE: As stated above in the response to Comment 4, there are substantial benefits to controlling NO_x in the non-ozone season. In addition, in N.J.A.C. 7:27-19.4(b), this rule allows seasonal "fuel switching" for utility boilers where a cleaner fuel, such as natural gas, is burned during the ozone season and the unit may switch back the "historic" fuel for some or all of the non-ozone season. The Department plans to propose an amendment to N.J.A.C. 7:27-19 to extend this option to other sources.

Under a fuel-switching program, a long-term emissions averaging approach is used to calculate annual emissions of NO_x. The annual emissions must be less than or equal to annual emissions that would result from compliance with the presumptive NO_x RACT emissions rates. During the ozone season, however, 24-hour averaging time is used to determine compliance with short-term emissions limits requirements. In short, RACT must be applied year round, but more stringent measures and incentives to reduce emissions more during the summer ozone season are included in these rules.

6. COMMENT: One commenter stated that the next-to-last sentence in the 6th paragraph of the Summary concerning to N.J.A.C. 7:27-19.3 should be changed to read "... state-of-the-art of that specific control technique for that type of boiler." (26)

RESPONSE: The Department agrees with this comment and believes the rule's provisions convey this intent.

7. COMMENT: One commenter stated that the Department should consider interstate trading of emission credits consistent with the principles for an interstate offset program suggested by the Ozone Transport Commission (OTC) for the Ozone Transport Region. (25)

RESPONSE: The Department has been and will continue to work in cooperation with the Ozone Transport Commission (OTC) in developing an interstate trading policy for NO_x. The Department will consider revising the provisions of N.J.A.C. 7:27-18, Emission Offset Rules, after any such policy is issued.

8. COMMENT: One commenter stated that the final rule should emphasize that any measurement technique must be a replicable emission quantification procedure; that is, two people, working independently, would obtain the same result. (26)

RESPONSE: The Department believes that the requirements set forth at N.J.A.C. 7:27-19.18 are sufficient to ensure any monitoring or testing technique approved under the rule will be replicable.

9. COMMENT: One commenter recommended that the phrase "or an alternative monitoring system" be incorporated at appropriate locations in this subchapter following "continuous emissions monitoring system." (32)

RESPONSE: The Department agrees, and has added appropriate provisions at N.J.A.C. 7:27-19.18 which specify that alternatives to a continuous emission monitoring system are acceptable provided they are consistent with EPA's Enhanced Monitoring Program guidance. These provisions also state that any such alternative must be as reliable an indicator of compliance as a continuous emission monitor would be for a particular facility for the alternative to be acceptable to the Department.

10. COMMENT: Two commenters stated that all combustion sources regulated under subchapter 19 that use a gaseous "primary" fuel, and only burn liquid fuel as a backup or emergency fuel, should not be subject to the liquid fuel NO_x emission limits of this subchapter. The commenter added that, considering their infrequent use and low overall NO_x emission potential, the cost of NO_x controls for emergency liquid usage is far in excess of the benefits. (15, 27)

RESPONSE: The Department intends to propose a future amendment to the rule at N.J.A.C. 7:27-19, which exempts sources which burn natural gas as the primary fuel from the emission limits specified for liquid fuels provided that (1) the liquid fuel is only used when natural gas is not available, and (2) the liquid fuel is not used for more than 500 hours per year.

11. COMMENT: One commenter stated that the minimum rated heat input cited in the 11th paragraph of the Summary's discussion of N.J.A.C. 7:27-19.7 as 100 BTUs per hour should be 100 million BTUs (MMBTUs) per hour.

RESPONSE: The commenter is correct in this regard. The reference should be 100 million BTUs per hour, not 100 BTUs per hour.

12. COMMENT: One commenter stated that the Department must recognize that existing sources are very different from new sources. Existing equipment is older and may lack the technological and control improvements of new equipment. Therefore, when improvements can be economically incorporated into existing equipment, performance cannot be expected to increase to that of the new equipment, nor will performance be the same among existing equipment of different manufacture, model, and age. (32)

RESPONSE: The Department is aware of the differences between new and existing equipment and has taken these differences into account when specifying emission limits for various types of sources regulated under this subchapter. The rule also includes provisions which allow for the determination of an alternative NO_x emission limit for sources which have unique characteristics which make the emission limits specified in the rule unattainable using RACT.

13. COMMENT: Two commenters recommended that RACT be applied consistently to incinerators and boilers at major and non-major facilities. (15, 27)

RESPONSE: The rule requires the application of RACT technology based on the size of the source operation. However, provisions have been included in the rule which allow any source at a non-major facility to be exempted from the rule, which is consistent with the intent of the RACT requirements of the Clean Air Act.

14. COMMENT: Two commenters stated that owners of equipment which will be shut down prior to the RACT compliance date of May 31, 1995, should not be required to complete applications for RACT installations. The commenters added that requiring such applications would waste both the applicants' and the Department's time. (15, 27)

RESPONSE: The Department agrees with this comment and has added a provision at N.J.A.C. 7:27-19.3(f) to address the shutdown of equipment prior to the May 31, 1995 compliance date.

15. COMMENT: The commenter stated that there is a limited amount of time before the NO_x RACT rules take effect and that this time period may be insufficient to enable the development of reburn technology. The commenter added that there is also a limited period during the year when a plant's operations allow shutdown for retrofitting. The commenter added that the four United States facilities using natural gas reburn technology installed this equipment during the facility's normal shutdown period. (5)

RESPONSE: The Department recognizes both of these facts, but has no authority to change the May 31, 1995 deadline for the installation of RACT technology as the Clean Air Act at Section 182(b)(2) requires implementation no later than May 31, 1995. However, where it is justified, the Department may establish phased in requirements, so that measures that represent RACT as of May 31, 1995, shall be installed by that deadline and other measures shall be required by a later date.

16. COMMENT: The commenter stated that low capacity units with continuous emissions monitors installed should be allowed additional flexibility in meeting the alternative monitoring plan requirements. The commenter presented a hypothetical situation where an individual unit could exceed the short-term emission limits but the source could still be achieving NO_x RACT. The commenter stated that under this situation, the source would not be required to shut down the first unit and operate another unit that may emit greater amounts of NO_x (but would do so legally). The commenter suggested that exceptions should be included in the final requirements to address this issue. (12)

RESPONSE: The intent of the emissions averaging provisions rule is to have each source continuously comply with a specified alternative maximum allowable emission rate. The probable range of operation of each unit should be considered in proposing the alternative maximum allowable NO_x emission rate for each averaging unit when developing the facility's Emissions Averaging Plan.

17. COMMENT: One commenter stated that any facility-specific NO_x emission limits, other alternative NO_x emission limits or control plans, and any alternative test methods must generally be approved by EPA as a State Implementation Plan (SIP) revision. (26)

RESPONSE: The Department understands that any facility-specific NO_x emission limits or control plan must be submitted to EPA as a revision to the SIP. Prior approval in writing by EPA of an alternative test method should, however, be sufficient.

18. COMMENT: One commenter stated that the "reasonable" component of the term Reasonably Available Control Technology (RACT) should be consistently applied and can only be achieved if the Department adopts "maximum" costs, measured in cost per unit of NO_x removal, for different categories of affected sources. The commenter stated that the Department's application of "maximum" costs in the Summary of the proposed rules is inconsistent.

RESPONSE: In developing the rules, the Department has declined to establish a specific cost for a given amount of NO_x reductions as a limit to RACT. Such a rigid test for RACT is inappropriate for several reasons. First, a minor difference in the costs of using the same technology in two different facilities or in the cost of two different technologies could be the basis for completely different results when the test is applied to the two facilities or two technologies. There would be no rational basis for the difference in these results. Second, the test would be applied to cost estimates. The inevitable variation in estimates could again bring results with no rationale basis. Third, the use of the word "reasonably" in the term means that it is intended to yield fair and appropriate results tailored to specific circumstances and the results to be achieved. A rigid test would not serve this purpose. The Department is, however, collecting information on the cost of NO_x control ($/ton) and would welcome such information for possibly establishing a $/ton definition of RACT in the future.

19. COMMENT: One commenter stated that he was disappointed that the resulting proposed rules include requirements that, while appearing to give flexibility, are actually quite burdensome in their effect. The commenter stated that the Department, in attempting to fulfill its duty to be protective of the environment, has taken a conservative approach in its treatment of many of the individual requirements contained in the rules. The commenter stated that the restrictive nature of the requirements is compounded so as to yield a difficult situation for the regulated community. (12)

RESPONSE: The Department believes these rules retain a large degree of flexibility. In allowing that flexibility, the Department has had to weigh not only the interests of the regulated community in greater flexibility, but also the concerns of the environmental community for greater oversight and restriction on the activities of regulated sources to assure that air contaminant emissions are reduced in New Jersey. The Department believes that the rule, as adopted, appropriately balance these two opposing perspectives.

20. COMMENT: One commenter stated that the Department should incorporate the maximum degree of flexibility into the final NO_x rules. The commenter added that a good deal of flexibility has already been incorporated in the proposed rules, but that additional flexibility is needed. (25)

RESPONSE: In response to this and other comments, the final rule has incorporated some minor modifications which enhance the flexibility of the requirements. Two examples of enhanced flexibility are the allowance for alternatives to CEMs at N.J.A.C. 7:27-19.18(b) and a provision at N.J.A.C. 7:27-19.3(a) for a 60-day extension for submitting permit applications required to comply with the rule. The Department will propose amendments in the near future which will add additional flexibility for sources to achieve the emissions limits.

21. COMMENT: The commenter applauded the care which has been taken in the attempt to balance a concern for the environment and financial reality. (31)

RESPONSE: The Department appreciates this comment in support of the rules.

22. COMMENT: The commenter stated that he supports the enactment of the proposed rules so as to establish the most stringent standards in order to control NO_x emissions and requested that the standard apply to all point sources for NO_x. (29)

RESPONSE: The rule currently only apply to major sources of NO_x within the State. However, in order to attain the NAAQS for ozone, the Department may need to enact additional rules in the future which will apply these, or other emission limits, to smaller sources of NO_x, including sources at facilities which are not major facilities.

23. COMMENT: Several commenters supported the Department's efforts to coordinate regulations with neighboring states, and stated that the Department should continue developing regulations in concert with these states and regions. (15, 17, 27)

RESPONSE: The Department agrees with these commenters and will continue to work with the surrounding states in developing long range strategies to attain the NAAQS for ozone.

24. COMMENT: One commenter stated that there is convincing scientific and clinical evidence regarding the severe health effects of ozone on pulmonary functioning and other aspects of the respiratory system. The commenter added that these adverse effects are particularly

significant in certain vulnerable populations, including children, the elderly, and people with asthma, viral lung infections, or other respiratory diseases. (24)

RESPONSE: The Department is aware of the health effects associated with exposure to ozone. They are the principal reason the rules were adopted.

25. COMMENT: One commenter stated that the piecemeal release of air pollution control requirements has created problems for facilities using older boilers. The uncertainty of what the future requirements for CO_2 and SO_2 will be make it difficult to determine a cost-effective approach for meeting the proposed NO_x requirements. (9)

RESPONSE: The Department recognizes the concerns raised by the commenter. However, the Department is bound by Federal law to propose NO_x RACT standards at this time. Also, additional requirements are not interpreted for SO_2, other than the Federal acid rain requirements which have already been specified. Reductions of CO_2 emissions to reduce global warming is a long term concern, not expected to result in short term requirements on existing boilers.

N.J.A.C. 7:27-19.1 Definitions

26. COMMENT: One commenter recommended the following addition to the definitions: "Alternative Monitoring System" means any stationary or portable measurement technique that provides direct measurement of emissions of a specified pollutant(s) or that provides indirect measurements of a parameter(s) that can be accurately correlated to emissions of a specified polluant(s), and that is approved by the Department. (32)

RESPONSE: The Department agrees with the approach of allowing alternatives to continuous emission monitors and has included provisions in the rule at N.J.A.C. 7:27-19.18 allowing for the use of alternative monitoring techniques. Such alternatives must be as reliable at indicating compliance as a continuous emissions monitoring system for a particular facility for the alternative to be acceptable to the Department. Given this approach, including a definition of the term "alternative monitoring system" is not necessary.

27. COMMENT: One commenter suggested the following addition to the definitions: "Calendar day" means from twelve o'clock midnight to twelve o'clock midnight each day. (25)

RESPONSE: The Department agrees and has added a definition at N.J.A.C. 7:27-19.1 to clarify the meaning of the phrase when used within these rules.

28. COMMENT: One commenter suggested adding the following to the definitions in this rule: "Co-firing" means combusting two or more fossil fuels simultaneously within a given utility boiler or stationary gas turbine. (25)

RESPONSE: The Department feels that this definition is not necessary, as there exists a common sense understanding and usage of the term.

29. COMMENT: One commenter suggested adding the following definition in this rule: "Commercially available" means technology which has been demonstrated within the United States and is currently available for purchase from manufacturers. (25)

RESPONSE: The Department has not included this definition in the rule since it may limit the types of technologies which could be employed to comply with the rules. Language is set forth under N.J.A.C. 7:27-19.13 which specifies the types of technology required to be examined in any RACT determination.

30. COMMENT: One commenter stated that the definition of "electric generating utility" should include municipal electric utilities and suggested adding the following to the definition for "electric generating utility": ". . . or any person who would be subject to such regulation were it not for that person's status as a municipality." (12)

RESPONSE: The Department agrees and has added this clause to the definition. This will allow municipal utilities to take advantage of the catastrophic failure provisions included at N.J.A.C. 7:27-19.6(j).

31. COMMENT: One commenter stated that the definition of "emergency generator" should be expanded to include emergency steam generators (boilers). The commenter stated that boilers that are permitted for emergency use only, and are restricted to operating less than 500 hours per year and which do not have the potential to emit more than 25 tons of NO_x annually, should not be subject to N.J.A.C. 7:27-19. (1)

RESPONSE: The Department agrees that the definition was unduly narrow, and has modified the definition of emergency generator so that the term also applies to steam generators. Pursuant to N.J.A.C. 7:27-19.2(d), boilers used on an emergency basis would not be subject to this subchapter, provided they meet the same restrictions as the exempted internal combustion engines. These restrictions are that the boiler must not be operated for more than 500 hours in any 12-month period nor have the potential to emit greater than 25 tons of NO_x per year within 500 hours of operation. Further, the boiler could only be used when the normal supply of steam is unavailable due to circumstances beyond the control of the owner or operator. Such circumstances would include failure of the main boiler, but do not include use of the emergency boiler if the main boiler has been shut down for routine maintenance during the ozone season.

32. COMMENT: One commenter questioned the definition of "facility." The commenter's organization has two adjacent operations that are treated as separate on a corporate level and have separate New Jersey I.D. numbers. The commenter questioned if these facilities would be treated as one facility under these proposed rules. (13)

RESPONSE: Adjacent or contiguous operations that are owned by or are under the operational control of the same person, as defined at N.J.A.C. 7:27-19.1, would be considered one facility under the definition found in the rules. Individuals must consider this definition in determiing whether their operations and applicable corporate structures meet the definition of facility.

33. COMMENT: EPA stated that the definition of "Federally enforceable" should be reworded, to indicate that New Jersey should maintain the list of federally enforceable requirements without including Parts 70 or 71, and then add a separate line stating that "all the federally enforceable requirements will be determined by Part 70 or 71 when the facility is operating pursuant to the operating permit issued pursuant to Part 70 and 71." In addition, the reference to NESHAP in this definition is outdated and New Jersey should revise this definition to refer to any requirement established and enforceable pursuant to section 112 of the Act. The commenter also stated that item 5 under the definition is not Federally enforceable. (26)

RESPONSE: The definition of "Federally enforceable" set forth herein is the comprehensive definition of the term the Department is proposing to use throughout N.J.A.C. 7:27, including in the operating permit rules. The definition of "NESHAP" in these rules is the definition used in several subchapters within N.J.A.C. 7:27. Therefore, it has retained the references to Part 70 and 71 in the definition. The Department intends to investigate how this definition is outdated. Then, the Department in future rulemaking will propose a revised definition for inclusion in each subchapter where this term is used.

The Department believes that preconstruction permits issued by the Department are Federally enforceable because these permits are issued pursuant to N.J.A.C. 7:27-8, which is part of New Jersey's SIP. These permits are an essential part of the determination of a source operation's potential to emit, because they establish allowable emission rates, maximum hours of operation per year, and various other conditions and limitations on operation. EPA has enforced conditions of several preconstruction permits issued by the Department pursuant to N.J.A.C. 7:27-8 in the past. Similarly, since orders issued by the Department are enforcement of the Department's rules incorporated in New Jersey's SIP, the Department believes that orders are also Federally enforceable.

In addition to the comment given above, the Department has received other, sometimes conflicting, interpretations of the issue of how "Federally enforceable" should be defined from various EPA staff persons. Departmental staff are currently discussing this issue with EPA in order to resolve this matter. The Department also understands that EPA is developing clarification of the national guidance on this issue, although such clarification is not final at this time. Once this issue is clarified, the Department will reuse the definition, shall this be needed, in further rulemaking.

34. COMMENT: One commenter stated that the Department should revise the definition of "lean-burn stationary internal combustion engines" as those engines which operate at air-to-fuel ratios fuel-lean of stoichiometric and cannot operate with an exhaust oxygen concentration less than one percent. The commenter stated that the four percent value contained in the proposed rules is in conflict with the generally accepted differentiation by industry and by the agencies that have experience in regulating these types of engines (for example, California Air Resources Board (CARB, EPA)). (26, 32)

RESPONSE: The Department has accepted this recommendation and has changed this definition accordingly. This change is consistent with the values specified in EPA's Alternative Control Technology (ACT) guidance document for internal combustion engines.

35. COMMENT: One commenter suggested the following addition to the definitions: "Maximum allowable emission rate" means the maximum amount of an air contaminant which may be emitted into the outdoor air [at any instant in time or] during any prescribed interval of time **not less than 24 hours**. (25)

RESPONSE: The Department has not changed this definition. The recommended change would have required all sources to have continuous emissions monitors installed to verify the emissions over a 24-hour period, or to have all source emissions testing be conducted for a continuous 24-hour period. The Department has specified averaging times for all emission limits in the rule and will use those times for determining emission rates.

36. COMMENT: One commenter suggested the following addition to the definitions: "Maximum emergency generation" means a contingency mode of operation necessary to prevent interruptions in electric service. Maximum emergency generation is the last increment of power generation available prior to voltage reductions and service interruptions. Units can only operate at maximum emergency generation when required by load dispatchers to meet critical deficiencies within the utility grid. (25)

RESPONSE: The Department intends to propose an amendment to N.J.A.C. 7:27-19 in the near future which would exempt an electric generating utility from the compliance provisions of the averaging system on days when the utility grid has declared a maximum emergency generation alert.

37. COMMENT: One commenter suggested the following revision to the definitions: "Maximum gross heat input rate" means the maximum amount of fuel a combustion source [is able to] **will** combust in a given period as specified by the [manufacturer] **owner or operator** of the [steam generating unit] **combustion source**. This term is expressed in **million** BTU per [hour] **day**, based on the higher heating value of the fuel. (25)

RESPONSE: The Department has accepted the recommendation to revise this definition to include combustion sources other than steam generating units. However, the Department has not made the other changes recommended. These other changes would create an undue burden on both the Department and the regulated community. Sources would have to enter into Federally enforceable agreements with the Department limiting the gross heat input on a daily basis in order for this definition to work.

38. COMMENT: Two commenters stated that the meaning of "operative" should be defined. One commenter suggested the following definition: "Operative" refers to the initiation of the time period for submission of the regulated industry's compliance plan, not permit application(s). (13, 18)

RESPONSE: The term "operative" is not used in the final rules. It was only included in the proposal to show the intended time period referenced. In the adopted rule, all references to this term have been replaced with the actual operative date of this subchapter.

39. COMMENT: One commenter suggested the addition of "owner or operator" to the definitions, using the following: "Owner or operator" means any person who owns or who operates, controls, or supervises in any way affected equipment, or a facility of which affected equipment is a part, and shall include, but not be limited to, any holding company, operating company, utility system, or plant manager of an affected equipment or affected facility. Further, the commenter recommended a definition based on 40 CFR 72, or recommended the use of the term "person" as an alternative. (25)

RESPONSE: The Department does not consider it necessary to include a specific definition of "owner or operator" and prefers to rely upon the common meaning of those terms so as to be most inclusive of various organizational structures of the regulated community. In addition, use of the term "person" in lieu of "owner or operator" each time the latter term appears in the rule text would not avoid reference to ownership or operational control as "person" alone would not sufficiently describe the relationship of that person to the requirement in each applicable provision. The Department has therefore decided not to add the definition and will not substitute the term "person" for "owner or operator."

40. COMMENT: One commenter suggested the following addition to the definitions: "Ozone season" means the period from May 15 to September 15 each year. (25)

RESPONSE: Time periods have been included in these rules where necessary to indicate when certain provisions apply. The term "ozone season" has not been used in the rules because it is not needed to make clear the requirements of these rules. Furthermore, the specific dates delineating ozones seasons appropriately vary in different regulatory contexts.

41. COMMENT: One commenter suggested the following addition to the definitions: "Peaking" means producing energy intermittently on a demand basis. (25)

RESPONSE: Inclusion of this definition as suggested would inappropriately limit the applicability of the rules. Therefore, this definition has not been included in the adopted rules.

42. COMMENT: One commenter suggested the following addition to the definitions: "RACT" means the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility. (25)

RESPONSE: The term "RACT" is not used within the text of the rule, and therefore, no definition of the term needs to be included in the rules. The criteria of technological and economic feasibility have been vital to establish specified RACT emission limits. Also, these criteria have been included in the provisions for alternative RACT limits.

43. COMMENT: One commenter suggested the following addition to the definitions: "Retire" means to permanently remove a utility boiler or stationary gas turbine from service. (25)

RESPONSE: The Department has not used the term "retire" in these rules. Therefore, inclusion of such a definition is not needed.

44. COMMENT: One commenter suggested the following revision to the definitions: "Repowering" means the replacement of the steam generator in a steam generating unit, **or the replacement of a stationary gas turbine in a simple-cycle or combined-cycle gas turbine generating unit, which incorporates advances in the art of air pollution control for the kind and amount of air contaminant emitted.** (25)

RESPONSE: The Department will be proposing a more comprehensive definition of "repowering" in future amendments to these rules and intends to include gas turbines within this rule change.

45. COMMENT: Two commenters stated that "rich-burn engines" should be defined as those that operate at near-stoichiometric or fuel-rich air-to-fuel ratios and can be adjusted to operate with an exhaust oxygen content of one percent or less. One commenter further stated that the value of four percent contained in the proposed rules is in conflict with the generally accepted differentiation by industry and by the agencies that have experience in regulating these types of engines (for example, CARB, EPA). (26, 32)

RESPONSE: The Department has changed this definition to be consistent with EPA's definition.

46. COMMENT: One commenter stated that tableware glass is not covered by the proposed definitions for commercial container glass, specialty container glass, or borosilicate glass. The commenter then proposed a definition for tableware glass as follows: " 'Tableware glass' means clear, colored or opaque glass made by specific recipes which is formed into glasses, dishes, bowls, or other tableware and accessories such as apothecary jars." This distinction is based on the difference in the recipes and operating conditions required to produce commercial container glass and to produce tableware glasses. The commenter requested confirmation that none of the three glass furnace processes defined in the proposed rules apply to or cover tableware glass. (22)

RESPONSE: The rule does not directly address glass manufacturing furnaces used to make tableware or flat glass. However, these types of glass manufacturing furnaces would be subject to N.J.A.C. 7:27-19.13 if they exceed the potential emmisions specified at N.J.A.C. 7:27-19.2(c).

47. COMMENT: Several commenters stated that the definition of "utility boiler" should be limited to electric generating utilities. Two commenters stated that the definition of "utility boiler" is confusing since some industrial boilers generate some electricity from their steam. The commenters asserted that these small size industrial boilers should not be considered a "utility boiler" since they tend to be smaller than utility boilers and they do not sell their electricity commercially. The commenters suggested that the definition of utility boiler be changed to the following: " 'utility boiler' means any steam generating unit, all or some of the steam from which is used for generating electricity for commercial sale." (15, 27, 30)

RESPONSE: The Department has revised this definition to include both the clarification that the boiler must be owned by an electric generating utility and the phrase "... for commercial use," as the commenter recommends. This should serve to clearly delineate the differences between the two types of boilers as they are regulated in these rules.

48. COMMENT: Another commenter stated that "institutional" should be added to "utility ... boilers." (26)

RESPONSE: The Department has clarified the definition of "utility boiler." The rule distinguishes only utility and non-utility boilers, and applies regardless of the boilers location, whether it be industrial, commercial or institutional.

N.J.A.C. 7:27-19.2 Purpose, scope and applicability

49. COMMENT: One commenter stated that N.J.A.C. 7:27-19.2 should be amended to exempt from the provisions of the final rule any permitted landfills utilizing stationary flares or cogeneration plants to control methane gas. (20)

RESPONSE: The Department cannot exempt any major source from RACT requirements. However, the rules do include provisions for determining alternative maximum allowable emission rates which would allow a facility, if appropriate, to address case specific issues associated with NO_x reductions.

50. COMMENT: One commenter stated that N.J.A.C. 7:27-19.2 should be amended to exempt stationary gas turbines used for peaking which operate less than 200 hours per year. This would be similar to the provision for emergency generators which restrict their operations to less than 500 hours per year. The commenter cited the following reasons for such an exemption:

1. The high cost of installing control technology on units which operate for only a small number of hours each year;
2. Exempting these units would not jeopardize attainment of the ozone NAAQS:
3. Other states, such as California, Delaware, Texas, Virginia, and Massachusetts already allow such an exemption;
4. Other states, such as Michigan, Ohio, and Wisconsin are considering exempting peaking units;
5. Exempting these turbines would allow for the more timely implementation of RACT; and
6. The resources expended to implement RACT on these units could be better used to obtain reductions elsewhere.

Further, the commenter suggested the following change to the rule language to address these issues:

"(g) Notwithstanding the provisions of (b) and (c) above, any peaking unit operated less than 200 hours during any consecutive twelve (12) month period, is not subject to this subchapter."

The commenter further added that this exemption should be permanently withdrawn if a peaking unit exceeds the 200 hour per year limit. (25)

RESPONSE: The Department spent a significant amount of time working with utility industry representatives during the development of these rules. During those meetings, the Department was made aware of the concerns addressed in this comment. However, the Department has not exempted peaking turbines because emissions from these units produce a significant portion of summer day NO_x emissions. Peaking turbines tend to operate on the hottest days of the year, when electric demand is high and conditions are optimal for the formation of ozone.

Alternatives were included in the rules, however, which will enable owners and operators to avoid having to install controls on some peaking turbines. The rules allow emissions averaging as a compliance alternative to the emission limits. The rules also include provisions which exempt a turbine from installing controls where there is no RACT technology available. This could apply to some peaking turbines. Finally, the Department will propose an amendment to this subchapter in the near future which extends the repowering option to all sources subject to these rules including stationary gas turbines.

51. COMMENT: Several commenters stated that, because NO_x RACT does not exist for certain processes and pieces of equipment in the petroleum industry, the Department should add the following to N.J.A.C. 7:27-19.2:

"(g) The following types of equipment and processes are exempted from the provisions of this subchapter:

1. Catalytic cracking units;
2. Fluid cokers;
3. Refinery waste gas incinerators;
4. Refinery flares;
5. Refinery thermal oxidizers;
6. Waste gas fired units such as CO boilers which burn catalytic cracking regeneration of gas;
7. Refinery process heaters less than 350 million BTU; and
8. Vapor recovery units in loading petroleum products." (13, 18, 27)

RESPONSE: As these operations may be significant sources of NO_x, it would be inappropriate for the Department to exempt these sources from the provisions of the rules. RACT for these sources will be determined on a case-by-case basis pursuant to N.J.A.C. 7:27-19.13.

52. COMMENT: One commenter questioned if facilities with NO_x emissions of less than 25 tons per year and which have the equipment listed at N.J.A.C. 7:27-19.2(b) are subject to this subchapter. (3)

RESPONSE: All equipment listed in N.J.A.C. 7:27-19.2(b), if the equipment has the potential to emit at least 10 tons per year of NO_x, is subject to the provisions of the rules unless the owner or operator of the facility obtains an exemption pursuant to N.J.A.C. 7:27-19.2(f). This exemption requires potential emissions less than 137 pounds per day, as well as 25 tons per year.

53. COMMENT: One commenter stated that N.J.A.C. 7:27-19.2(d) should be expanded to include all combustion sources proposed for regulation in subchapter 19 that use gaseous fuel as a "primary" fuel, and only burn liquid fuels as a backup or emergency fuel (usually during utility natural gas curtailment). The commenter feels those sources which use liquid fuels on an occasional emergency basis should not be subject to the liquid fuel NO_x emission limits of this subchapter. This exemption should also be made contingent upon an enforceable limitation or condition restricting liquid fuel combustion to less than 500 hours during any consecutive 12 month period, and which does not have the potential to emit more than 25 tons of NO_x during its annual period of liquid fuel combustion. The commenter added that the cost of NO_x controls for combustion sources during emergency liquid fuel usage is not reasonable considering the infrequent use and low overall NO_x emission potential. (1)

RESPONSE: The Department agrees with a substantial portion of the comment and intends to propose in the near future such a provision exempting emergency use of liquid fuel from the liquid fuel NO_x emission limits in the applicable sections of the rules. Sources will not be exempt from the rules entirely, as they must still meet the emission limits specified for the combustion of natural gas. Sources will not be required to meet the limitations specified for liquid fuels under the following conditions; (1) liquid fuels are used for less than 500 hours per year; (2) the boiler does not have the potential to emit greater than 25 tons of NO_x per year if it were to combust the liquid fuel for 500 hours; and (3) the liquid fuels are used only when natural gas is not available due to circumstances beyond the control of the owner or operator of the boiler.

The need to employ this exemption should be fairly infrequent during the summer months, since most natural gas curtailments occur during the winter. The Department will review this exemption for any particular source to ensure that the owner or operator of the source is complying with the intent of this provision, and not using this exemption to avoid installing controls for oil firing.

54. COMMENT: One commenter stated that N.J.A.C. 7:27-19.2(b) does not include glass manufacturing furnaces producing flat glass or tableware glass. The commenter requested the creation of a new category for any glass manufacturing furnace producing primarily "Tableware glass" having a maximum potential production rate of at least five tons of glass per day. (22)

RESPONSE: At the time the Department was developing these rules, the Department did not find any information regarding the control of NO_x emissions from glass furnaces making tableware or flat glass. Therefore, rather than propose a limit which might be unattainable, the Department did not propose any emission limits for these furnaces. The lack of an explicit mention under N.J.A.C. 7:27-19.2(b) means that the source would be regulated under N.J.A.C. 7:27-19.2(c) and 19.13. A facility-specific NO_x emission limit would need to be established for any glass manufacturing furnace with the potential to emit more than 10 tons of NO_x per year.

55. COMMENT: One commenter stated that N.J.A.C. 7:27-19.2(b) makes no reference to stoker boilers in the proposed rules. (2)

RESPONSE: During the development of the rule proposal, the Department determined that it had insufficient information relating to the emissions from stoker boilers to determine a RACT level which would be appropriate for all boilers of this type, nor are there any known operational stoker boilers in New Jersey. Therefore, no specific standards or requirements were included in the rule for stoker boilers. As a consequence, such boilers, if any, are subject to the generic requirements of N.J.A.C. 7:27-19.2(c) and 19.13.

56. COMMENT: Several commenters questioned why the 10 ton per year NO_x emissions cutoff specified at N.J.A.C. 7:27-19.2(c) for equip-

ment or source operations is different from the 25 ton per year cutoff for sources in the Clean Air Act Amendments (CAAA). These commenters also suggested that the emissions cutoff level be raised to 25 tons per year per unit to be consistent with the CAAA. (14, 15, 26, 27)

RESPONSE: The 25 tons per year standard in the CAA is used to distinguish which facilities are "major" facilities. The CAA requires all major facilities to be subject to RACT requirements. At a major facility, the specification of 10 tons per year of NO_x from a source operation limits the scope of the facility-specific NO_x control plan required under N.J.A.C. 7:27-19.13. Without this cutoff, a major NO_x facility would have to examine all sources of NO_x within the facility, regardless of the source's potential to emit. The Department felt that this was an unreasonable burden to place on the regulated community. Therefore, the Department specified a 10 tons per year per unit de minimus level to limit the scope of the RACT analysis.

Some of the confusion regarding this issue is due to the use of the term "source." EPA uses the term "source" to mean an entire facility, while the Department uses the term to refer to a source operation within a facility. If the 10 year de minimus level is applied to an emission unit, there is no inconsistency between the Clean Air Act and N.J.A.C. 7:27-19.2(c).

57. COMMENT: One commenter stated that N.J.A.C. 7:27-19.2(d) should be amended to include an exemption for both the emergency and temporary use of non-utility boilers. The emergency use exemption should be similar to the exemption created for the emergency use of internal combustion engines and should apply to non-utility boilers with a maximum gross heat input rate less than 100 million BTU per hour used to provide steam while the facility's primary steam source is inoperable. The temporary use of non-utility boilers typically occurs in response to cold weather. "Temporary" should be defined as a period not to exceed six months within a given calendar year. The exemption could also be structured to exclude such temporary uses during the ozone season, May 15 through September 15. The commenter recommended that this temporary use of a non-utility boiler with a maximum gross heat input rate of less than 100 million BTU per hour under these conditions should be exempted. (8)

RESPONSE: The Department agrees, in part, with the point raised by the commenter. The Department has amended the definition of an emergency generator to apply to all combustion sources. The same provisions used in the rule to exempt internal combustion engines now apply to steam boilers and combustion turbines as well.

58. COMMENT: One commenter requested that the rule be modified to acknowledge those units which are primarily operated for heating purposes during the non-ozone season. Specifically, N.J.A.C. 7:27-19.2(f)1 and 2 should be modified to require that a facility have either the potential to emit less than 25 tons per year or less than 137 pounds per day from May 15 to September 15. Alternatively, the commenter requested that the Department address the applicability of N.J.A.C. 7:27-19.13(2) for defining a site-specific alternate NO_x RACT for these heating units. The commenter stated that to require units which do not contribute to ozone formation to install additional control equipment, is an unnecessary, costly burden with no environmental benefit. (16)

RESPONSE: In order for a facility to be exempted from the rule, it must meet both the 25 tons per year test and the 137 pounds per day test. The Clean Air Act requires any facility which has the potential to emit greater than 25 tons of NO_x per year to install RACT controls regardless of when those emissions occur. The modification suggested by the commenter could exempt sources which have the potential to emit greater than 25 tons of NO_x per year. This would be in direct conflict with the provisions of the Clean Air Act.

Site-specific NO_x plans need only address those sources within a facility which have not been specifically addressed elsehwere in the rule. For example, a boiler used for space heating has already been addressed in the rule (at N.J.A.C. 7:27-19.7) and need not be re-examined in a facility specific analysis, even if it is less than the 20 million BTU per hour cutoff rate.

59. COMMENT: Two commenters questioned the need to request an exemption for equipment or source operation listed in N.J.A.C. 7:27-19.2(b) if they meet the criteria specified at N.J.A.C. 7:27-19.2(f)1 and 2. The commenters stated that if a facility meets both criteria, it should be exempted without need to file for an exemption under N.J.A.C. 7:27-19.2(f). The commenters suggested that the requirement for requesting an exemption and receiving approval from the Department be deleted. (15, 27)

RESPONSE: The need for Departmental approval of the exemption was included as an aid to both the regulated community and the Department. Without the requirement for requesting and receiving an exemption, a facility could not be certain that it was exempt from the provisions of the rules. Further, the facility would have to demonstrate that it was exempt from the rules any time an inspector from the Department or the EPA made a request for such a demonstration. Requiring approval from the Department means that the facility need only make the demonstration once and will then have a definite statement that the facility is exempt from the rule unless the facility is altered to make it subject to the rules.

60. COMMENT: One commenter stated that, because the goal of the proposed rules is to address ozone non-attainment, the 137-pounds-per-day cutoff for NO_x emissions at N.J.A.C. 7:27-19.2(f)2 should be increased to 406 pounds per day. The commenter stated that this increase is derived by dividing 25 tons per year by the number of days in the ozone season. (14)

RESPONSE: The Department chose the 137-pounds-per-day cutoff because most of the sources which the Department intends to regulate are operated year-around, and the 25 tons per year potential to emit is defined on an annual basis. The Department also used the 137-pounds-per-day cutoff in recognition of the benefits of controlling NO_x outside of the ozone season.

The 137-pounds-per-day cutoff is derived by dividing 25 tons per year by the number of calendar days in a year. Exempting seasonal or irregularly operated sources with a potential to emit between 137 and 406 pounds per day would allow such sources to contribute to ozone formation to a greater degree than year around sources, without subjecting them to the requirements of the Subchapter. The Department has determined therefore that such differential treatment of seasonal or irregularly operated sources would be inappropriate.

61. COMMENT: One commenter stated that the calculation of the 137-pounds-per-day NO_x limitation at N.J.A.C. 7:27-19.2(f)2 provides no flexibility for equipment which does not operate full-time, and showed no technical basis for the application of a daily emission limit to a source during the ozone season. The commenter believes that there is no scientific basis to show that an individual source with the potential to emit 137 pounds per day of NO_x could adversely affect attainment of the NAAQS for ozone. The commenter stated that under requirements of Title I of the CAAA, it should be sufficient to demonstrate that a source's potential to emit NO_x is less than 25 tons per year in order to obtain an exemption from N.J.A.C. 7:27-19 under N.J.A.C. 7:27-19.2(f). The commenter recommended that N.J.A.C. 7:27-19.2(f)2 be eliminated. (25)

RESPONSE: The Department used the 137-pounds-per-day cutoff to ensure applicability of the rule was equivalent for seasonal operations and irregularly operated sources. This would, for example, cause peaking units at electric generating utilities to be subject to the rules. While such sources may only operate for less than five percent of the year, they contribute a significant portion of the summer day NO_x inventory.

N.J.A.C. 7:27-19.3 General provisions

62. COMMENT: One commenter stated that the Department should develop an "administratively complete" procedure for permit applications submitted pursuant to N.J.A.C. 7:27-19.3. This procedure should allow construction plans to proceed while applications are being reviewed and approved for "cookbook" RACT applications. The commenter believes that this would reduce the difficulty in determining the feasible alternatives for the proposed RACT levels, and reduce the time needed to prepare the permit application. (21)

RESPONSE: The Department has included a provision in the rule which requires that the Department notify any applicant when a submittal for approval is "administratively complete." This determination triggers the start of the time period within which the Department must review the permit application. However, construction of a new source or alteration cannot begin prior to approval of the permit application.

63. COMMENT: The commenter believes that the timing for NO_x RACT should be coordinated with the filing of facility-wide operating permits. Since elements of NO_x RACT overlap with operating permit requirements, the commenter suggested that the Department coordinate the submittal of permit applications for compliance with N.J.A.C. 7:27-19 with the submittal of operating permit applications under N.J.A.C. 7:27-22 by allowing affected facilities up to one year after the operative date of N.J.A.C. 7:27-19 to submit permit applications. The commenter stated that, presuming N.J.A.C. 7:27-19 becomes operative June or July,

1993, permit applications would then be due by June or July, 1994, and coincide with the anticipated time frame for submittal of operating permit applications.

A second commenter expressed concern that the procedure for obtaining operating permits has not been proposed. (25, 34)

RESPONSE: The permits required under N.J.A.C. 7:27-19.3 are preconstruction permits issued under N.J.A.C. 7:27-8. Preconstruction permits are also required at facilities subject to the operating permits program. When preconstruction permits for NO_x RACT compliance are obtained prior to application for an operating permit the conditions of the preconstruction permit will be "rolled into" the operating permit.

The procedure for obtaining operating permits is presented in proposed N.J.A.C. 7:27-22 which was published in the New Jersey Register on September 7, 1993 at 25 N.J.R. 3963(a). Facilities would be required to submit operating permit applications in accordance with the schedule outlined in N.J.A.C. 7:27-22.5(c). The schedule establishes different deadlines for different types of industries, dependent on the industry's Standard Industrial Classification (SIC) Codes.

64. COMMENT: The commenter requested that the Department identify those portions of the Air Pollution Control Act, or any other relevant statute, that the Department has based its decision to impose joint and several liability for owners and operators at N.J.A.C. 7:27-19.3(a). (3)

RESPONSE: The Department has based the requirements of N.J.A.C. 7:27-19.3(a) on several of its enabling statutes. First, under the Air Pollution Control Act (ACPA), N.J.S.A. 26:2C-1 et seq., the Department has broad authority to "formulate and promulgate, amend and repeal codes and rules and regulations preventing, controlling and prohibiting air pollution throughout the State or in such territories of the State as shall be affected thereby. . . ." N.J.S.A. 26:2C-8. In addition, the APCA grants to the Department extensive powers of enforcement, inspection, and prosecution for violations of the APCA and its implementing regulations. N.J.S.A. 26:2C-14, 26:2C-19. Furthermore, under its general enabling authority at N.J.S.A. 13:1D-9, the Department is mandated to formulate policies for the conservation of natural resources, the promotion of environmental protection and the prevention of pollution in the environment.

65. COMMENT: The commenter stated that, because N.J.A.C. 7:27-19.3(b) requires that any control equipment must be installed and operational by May, 1995, permit applications must receive timely action by the Department in order for this deadline to be met. The commenter therefore recommended that the final rule should guarantee permit applicants a finding of permit approval or denial within a certain period of time. (14)

RESPONSE: The Department has included a provision in the final rule which states that the Department shall issue a finding regarding any permit or application submitted pursuant to this subchapter within six months of declaring that the application is "administratively complete." The Department requires this amount of time to allow for the review of complex permits which it receives; however, it is anticipated that typical NO_x RACT permits, involving low NO_x burners, will be decided within three months.

66. COMMENT: Two commenters stated that the implementation of RACT by all affected existing sources by May 31, 1995, as required by N.J.A.C. 7:27-19.3(b), is not realistic or practical given the number of sequential activities required (submission and approval of an emission control plan; evaluation of proposals and bids for equipment; design, manufacture, delivery, installation, and testing of equipment). The commenter stated that there is not enough time for these activities to occur for much of the existing equipment because of the extensive design alterations or new designs required along with custom manufacture of control devices. The commenter added that changes in processes and in process equipment may also be required for existing equipment. The commenter stated that, although complete compliance is not possible, almost all sources will be able to have begun the process of compliance by the specified date. The commenter suggested that the Department follow EPA guidance in its notice, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I" (57 FR 55620; November 25, 1992) (the commenter supplied the relevant portion of this notice with the comments). The commenter recommended that N.J.A.C. 7:27-19.3(b) be revised as follows:

(b) The emission limitations specified in this subchapter become operative on May 31, 1995, or as soon as practicable thereafter, except as provided in N.J.A.C. 7:27-19.4(c) and 19.10(d). (32)

A second commenter recommended that the compliance date of May 31, 1995 specified in N.J.A.C. 7:27-19.3(b) and throughout the rule should be extended to May 31, 1996. (1)

RESPONSE: The Department does not have the authority to extend the May 31, 1995 deadline. This deadline is established in the Clean Air Act Amendments (CAAA). Consistent with EPA guidance, the Department may allow later phasing-in of certain controls after May 31, 1995 on a source-specific basis as part of an alternative RACT plan, if it is determined that requiring installation of such controls by May 31, 1995 does not represent RACT.

67. COMMENT: One commenter stated that the state-of-the-art analysis requirements of N.J.A.C. 7:27-19.3(c) are inappropriate for the majority of cases. The commenter recommended that the source supply a statement that it has conducted a reasonable investigation and has concluded that its proposed measures incorporate current advances in the art of air pollution control. (19)

RESPONSE: The state-of-the-art requirements at N.J.A.C. 7:27-19.3(c) are included to clarify the scope of the state-of-the-art analysis required by N.J.A.C. 7:27-8. All permits submitted to the Department, regardless of the reason for submission, must demonstrate advances in the art of air pollution control. N.J.A.C. 7:27-19.3(c) limits the application of the state-of-the-art analysis to air pollution control technology which meets the RACT limits specified in N.J.A.C. 7:27-19.

68. COMMENT: Various commenters stated that the three-month time frame proposed for permit submittals at N.J.A.C. 7:27-19.3(d) is unachievable. The commenters indicated the following reasons for this:

1. Many facilities must complete stack testing to determine "actual" NO_x emission rates (25);
2. Facilities will need to conduct detailed engineering studies to determine the appropriate technology to install (25);
3. Three months is not long enough to conduct any state-of-the-art analysis or modeling which may be required (25);
4. Three months is an insufficient amount of time to develop a system-wide approach to NO_x reductions (25);
5. The Department's permit review staff will be severely strained by the large number of submittals required (25); and
6. Several technologies (for example, low-NO_x combustors and LOE technology) are still in the experimental stages (25);

The commenters offered the following suggestions for changing N.J.A.C. 7:27-19.3(d):

1. Allow one year for permit submittal (25);
2. Allow 18 months for permit submittal (1, 15, 30, 33);
3. Allow for a phased-in approach, requiring the larger sources to submit permits first (15, 27); and
4. Allow for six month extensions of the 3-month deadline upon request, provided that the May 31, 1995 deadline for installation of RACT technology can still be achieved. (33)

Further, several commenters recommended the following language changes to implement these suggestions (15, 27):

(d) The owner or operator of any facility, equipment or source operation subject to this subchapter shall apply for all permits for all equipment and control apparatus necessary for compliance with this subchapter as listed below:

Utility boilers—three months after the operative date
Non-utility boilers—one year after the operative date
All other sources—15 months after the operative date under 19.2(b)

One commenter recommended the following change to N.J.A.C. 7:27-19.3(d) (12):

(d) "By [date which is three months after the operative date], the owner or operator of any facility, equipment or source operation subject to this subchapter shall submit:

1. a plan showing how each source is expected to comply with the requirements of this subchapter, including a list of approvals required from the Department and the dates on which applications for those approvals will be submitted; and

2. all permit applications for equipment and/or control apparatus identified as necessary under the submitted plan. Plan submittals and/or applications for permits required under this subsection, or revisions thereto, which are received after the date indicated above will not be considered in violation of this provision if the Department determines that the cause for the submittal or revision could not have been reasonably anticipated by that date, and if the submittal is made within 60 days of the time that such cause is, or could have reasonably been, known to exist."

RESPONSE: The Department has reviewed this section of the rules and determined that the three-month time frame, in addition to the two months time from the adoption to the operative date of the rules, for submittal of permits is sufficient in most cases. However, the Department does realize that not all regulated facilities may be able to submit the required documents on time. To this end, the Department has revised N.J.A.C. 7:27-19.3 by adding a new subsection, N.J.A.C. 7:27-19.3(e) which allows for a 60-day extension to this deadline. This extension would be granted, upon written request, provided that the facility will still be able to install RACT before the May 31, 1995 deadline specified in the rule. These extensions may be renewed, provided the May 31, 1995 deadline can still be met.

69. COMMENT: Two commenters stated that the compliance schedule/time frame specified at N.J.A.C. 7:27-19.3(d) will create undue burdens on industry, especially the petroleum industry. The commenters proposed the following addition to the general provisions and stated that this schedule would not significantly impact the State's plan to delay compliance for smaller sources, and would avoid the premature shutdown of units prior to scheduled turnarounds:

(e) A petroleum refinery subject to this subchapter shall comply with the requirements on the earlier of the following:

1. The first date after May 31, 1995, on which the Refinery scheduled turnaround is completed; or

2. Four (4) years from rule promulgation. (13, 18)

RESPONSE: The Department agrees with the approach that allows the installation of control technology during the normal shutdown of a source. Such provisions have been included for glass manufacturing furnaces. However, the Department lacked specific data to justify categorically extending this option to other sources. The installation of control technology after the May 31, 1995 deadline may be granted on a case-by-case basis as part of an alternative RACT plan, if it is demonstrated that compliance by May 31, 1995 does not represent RACT.

70. COMMENT: Two commenters stated that N.J.A.C. 7:27-19.3(d) should be deleted because facilities complying with N.J.A.C. 7:27-19.13 must submit both the compliance plans and permit applications within the same time frame. The commenters stated that it is not reasonable to expect or require industry to apply for permits prior to the Department approving the compliance plans. (13, 18)

RESPONSE: Only sources which will be petitioning the Department for facility-specific NO_x emission rates will be complying with N.J.A.C. 7:27-19.13. Ideally, compliance plans and permit applications should be submitted and reviewed together.

71. COMMENT: One commenter stated that the provisions for determining late permit submittals under N.J.A.C. 7:27-19.3(d) are overly broad because they apply to any future submittal. Such future submittals may include those which are only found to be necessary following the Department's disapproval of an averaging plan, alternative emission limit application, shutdown approval or a demonstration that a particular unit is not operating as initially projected. This deadline also applies to permits required of repowering units under N.J.A.C. 7:27-19.4(c). (12)

RESPONSE: The Department agrees that the proposed language could be interpreted to apply to units in future submittals. Therefore, the Department has revised the language at N.J.A.C. 7:27-19.3(d) and added subsection (f) to indicate that the permit submittal for any source which was in operation prior to the operative date of the rule submit the required permits within three months of the operative date of the rule. Source operations in future submittals would not be subject to this provision, but would be required to have obtained the necessary permit prior to the construction, installation and operation of the source.

N.J.A.C. 7:27-19.4 Utility boilers

72. COMMENT: One commenter stated that "institutional" should be added to "utility ... boilers" in the sixth paragraph of the Summary on N.J.A.C. 7:27-19.4. (26)

RESPONSE: The rule requirements distinguish only between utility and non-utility boilers, regardless of the type of facility which operates them.

73. COMMENT: One commenter suggested the following change in the third sentence in the 7th paragraph of the Summary on N.J.A.C. 7:27-19.4: "For coal-fired boilers, the cost effectiveness of ... $270.00-1,600 (per ton of NO_x removed)." (26)

RESPONSE: At the time of publication of the proposal, the costs cited in the preamble for retrofitting with low-NO_x burners were current. The Department agrees that these costs have decreased based on more recent data.

74. COMMENT: One commenter questioned the "reasonableness" of the Selective Catalytic Reduction (SCR) requirements for utility boilers (based on the NESCAUM and EPA information) and stated that the cost data are outdated. The commenter stated that actual quotes for SCR retrofits for utility boilers are much lower than those given in the NESCAUM/EPA report, and that the commenter's estimate of these costs are one-quarter to one-half that given in the report, with commensurately lower capital recovery charges and, thus, annual operating costs. The commenter added that the NO_x removal cost effectiveness of SCR would be more reasonable than expected given the NESCAUM/EPA report. (31)

RESPONSE: The original limits proposed were based on information available at the time, namely the EPA guidance document titled "Evaluation and Costing of NO_x Controls for Existing Utility Boilers in the NESCAUM Region." The Department does not require the installation of SCR at this time. However, the rules do not preclude a facility from installing this type of technology, if it so desires.

75. COMMENT: One commenter stated that the Department should not establish RACT for cyclone boilers based upon an Acurex Report but should follow the guidance of the U.S. Congress and EPA in determining that RACT is not available for these boilers. (14)

RESPONSE: The Department can not exempt any source which has the potential to emit greater than 25 tons of NO_x per year from RACT requirements. Several technologies have been identified which meet the definition of RACT for cyclone boilers. Among these are natural gas reburning, selective non-catalytic reduction (SNCR) and fuel switching.

76. COMMENT: The commenter stated that the seasonal use of natural gas for any existing utility boiler or combustion turbine should be considered as NO_x RACT for that source. (14)

RESPONSE: The Department intends to extend fuel switching to natural gas as an option for compliance for sources which use other fuel types in a future amendment to these rules. However, a source which has always burned natural gas will not thereby be considered in compliance with RACT. In the adopted rule, language has been added at N.J.A.C. 7:27-19.4(b) to make this clear. If there is technology available which could further reduce NO_x emissions to the RACT limits for gas combustion, then the owner or operator of that source must install that technology.

77. COMMENT: Several commenters suggested the combustion of natural gas on a seasonal basis as a means of complying with RACT requirements. The following comments and recommendations were submitted:

1. The NO_x emissions from boilers combusting natural gas will be much lower than the emission from these same boilers had they complied with the RACT emission limit (5);

2. Combustion of natural gas also reduces the emissions of air toxics, SO_2, CO_2 and particulates (5);

3. Switching to natural gas provides significant environmental benefits for many dry-bottom coal-burning boilers (5);

4. Seasonal combustion of natural gas should be made available to all types of coal- and oil-fired boilers because of the more reasonable cost of obtaining the reductions (5, 32);

5. The emission limits for coal or oil firing should be met on a calendar-year basis, but that the limits specified in Table 1 should be met on a calendar-day average basis between May 1 and September 30 (5, 32);

6. The utilities, rate payers and environment would all benefit by allowing a wider application of seasonal fuel switching (5);

7. The base year for determining eligibility for fuel switching should be 1990 (32);

8. The cost effectiveness of fuel switching is apparent for both large and small units, and may be greater for smaller units than for larger ones (5);

9. The use of natural gas on a seasonal basis now could provide a bridge to a likely second phase of NO_x reductions in the Northeast, while still obtaining significant NO_x reductions by 1995 (5);

10. The natural gas pipeline connections established under a fuel-switching program provide a basis for further NO_x reductions in the future using reburn technology (5); and

11. The EPA is preparing to endorse fuel switching as a method of complying with RACT. (5)

One commenter also suggested the following change to N.J.A.C. 7:27-19.4(b) to allow the wider application of seasonal fuel switching:

1. The unit must meet the conventional coal RACT level on an average annual basis.

2. During the ozone season when gas is used, the coal RACT limit must be met on a 30-day average basis (i.e., a boiler owner could over-control NO_x in the summer, when gas is used, to offset higher winter NO_x emissions and in most cases would not have to use complex or costly combustion modifications to comply). (5)

RESPONSE: The Department agrees with the commenters regarding the benefits of expanding fuel switching to natural gas to sources other than wet-bottom, wall-fired utility boilers. The Department will propose an amendment to this rule in the near future, expanding this option to other sources. Any seasonal use of natural gas must be consistent with EPA's guidance dated July 1993 Fuel Switching to meet the Reasonably Available Control Technology (RACT) Requirements for Nitrogen Oxides (NO_x). This policy requires that the source more than meet the RACT level, during the ozone season and the source must also comply with the RACT emission limit on an annual basis. Consistent with EPA's guidance, under a fuel switching option, annual emissions of NO_x must be less than or equal to annual emissions that would result from continuous compliance with presumptive NO_x RACT.

78. COMMENT: Several commenters submitted comments regarding the emission limits contained in Table 1 of N.J.A.C. 7:27-19.4(a). The commenters stated the following:

1. The maximum allowable emission rate of 0.60 lb/MMBTU for wet-bottom coal-fired cyclone boilers is unrealistically low and could be virtually unattainable. The commenter further stated that the reburn technology which this emission limit was based on may not be applicable to the commenter's boilers due to physical constraints or lack of a sufficient supply of natural gas (14);

2. The emission limits for tangentially and face-fired boilers are not consistent with Title IV of the CAAA and this rule should be no more stringent that the limits specified under Title IV (14);

3. The emission limits specified in the table are not achievable by one of the commenter's opposed fired boilers and a separate emission rate should be specified for opposed-fired boilers due to their unique characteristics (25); and

4. The lack of a specific emission limit for opposed-fired boilers precludes the use of the averaging scheme for one of the commenter's boilers (25);

The commenters then recommended the following changes to Table 1 of N.J.A.C. 7:27-19.4(a):

1. A new category should be added to the table for opposed-fired boilers and the face-fired category should be changed to wall-fired since these two firing methods result in widely differing emission rates. This approach would be consistent with the intent of the rule (25);

2. The maximum allowable emission rate for opposed-fired coal-burning utility boilers should be set at 0.63 lb/MMBTU (25);

3. The maximum allowable emission rate for tangentially-fired, dry-bottom coal-burning utility boilers should be changed to 0.45 lb/MMBTU (26);

4. The maximum allowable emission rate for face-fired, dry-bottom coal-burning utility boilers should be changed to 0.55 lb/MMBTU (26); and

5. The oil/gas limits should be set higher than the gas only limit. The commenter recommended a value of 0.25 lb/MMBTU (26).

RESPONSE: The Department based the emission limits contained in Table 1 at N.J.A.C. 7:27-19.4(a) on the EPA Alternative Control Technology (ACT) document for utility boilers. The emission rates in the table are based on the average of the range for each boiler type specified. However, the Department does realize that unique boiler configurations and site-specific factors may make the emissions limits unattainable using RACT. Therefore, the Department has included provisions in the rule (N.J.A.C. 7:27-19.13) which enable facilities, under certain circumstances, to obtain alternative RACT emission limits for those sources which are unable to comply with the emission limits set forth in Table 1. This procedure should allow all sources in the State to comply with the rule in the most reasonable way possible.

Furthermore, the provisions of N.J.A.C. 7:27-19.6 allow for the averaging of multiple units together, thereby enabling a facility to comply with the rules in a number of different ways. Sources which have obtained alternative maximum allowable emission rates under N.J.A.C. 7:27-19.13 will be allowed to include these units in the averaging scenario if they are able to emit less than the alternative maximum allowable emission rate specified under N.J.A.C. 7:27-19.13. However, in doing this the facility must employ some technology or measure which is beyond the scope of RACT.

In developing these rules, the Department used all the data available to it at the time. The Department relied mostly on the EPA ACT document cited above. During the development of these rules, EPA proposed NO_x emission limits, under Title IV of the Clean Air Act Amendments, which set NO_x emission limits for dry-bottom coal, oil and gas fired utility boilers. While those limits may be appropriate to lessen the impact of acid rain, lower limits were necessary to address the tropospheric ozone problem on an annual basis. The lower limits are appropriate, also, where an emissions averaging approach is used, as in the adopted rules. The Department selected emissions rates which were an average of the range of emission rates achievable using low NO_x burners. Therefore, the Department did not use the limits set under Title IV as the RACT limits for this rule.

79. COMMENT: Several commenters stated that averaging times do not appear to be specified for the emissions limits set forth in N.J.A.C. 7:27-19.4(a). The commenters recommended that:

1. The Department follow the NESCAUM recommendations for one-hour averaging of oil and natural gas fired units since continuous emissions monitoring systems will enable the Department to develop a better picture of the relation between NO_x emissions and ozone events, and that the fluctuation in emissions from oil and gas-fired units is less than those from coal-fired units (23, 26);

2. The Department modify Table 1 to indicate that the emissions apply to a calendar-day average since this will reduce the burden on the regulated community in determining compliance (25).

RESPONSE: The averaging times for the emission rates in Table 1 of N.J.A.C. 7:27-19.4(a) vary depending upon the method used to demonstrate compliance. This is described in N.J.A.C. 7:27-19.15. If a continuous emissions monitoring system is used, then the averaging period is one calendar day. If a continuous emissions monitoring system is not used, the emissions limits apply to the average of three one-hour stack tests.

80. COMMENT: One commenter indicated that State rules allowing fuel switching at N.J.A.C. 7:27-19.4(b) would probably be approvable by EPA if they meet the following requirements:

1. Annual NO_x emission reductions under a fuel-switching program should be greater than or equal to annual emissions reductions under traditional RACT.

2. Where the costs of fuel switching are less than the costs of traditional RACT, the cost difference in determining the RACT equivalence should be included. Thus, where costs of fuel switching are lower than traditional RACT, greater emission reductions than traditional RACT should be required.

3. The fuel-switching rule should include a maximum emission rate applicable during the ozone season which is at least as stringent as the traditional RACT emission rate. This provision is needed since the annual emissions cap by itself may not be adequate for a program aimed at achieving the peak one-hour daily ozone maximum concentration. (26)

RESPONSE: The Department intends to propose a new section, as an amendment to these rules, which would extend the fuel switching option to all sources. This section, as does the adopted fuel switching provision for utility boilers, will require compliance with short-term (ozone season) and long-term (annual) emissions limits that are at least as stringent as the presumptive RACT limit. The fuel switching provisions would be consistent with EPA's July 30, 1993 guidance memorandum "Fuel Switching to Meet the Reasonably Available Control Technology (RACT) Requirements for Nitrogen Oxides (NO_x)."

81. COMMENT: Several commenters stated that 1.0 lb/MMBTU emission limit cited in the Summary on N.J.A.C. 7:27-19.4(b) and the 1.5 lb/MMBTU limit at N.J.A.C. 7:27-19.4(b)5 for wet-bottom boilers seem high when compared to the limits for gas-fired utility boilers in other regulations. The commenters further noted that:

1. The uncontrolled NO_x emission rate for gas-fired utility boilers is 0.25 to 0.3 lb/MMBTU and questioned if the difference between the 1.0 lb/MMBTU required by the rule and the 0.3 could be used in any averaging scenario (26);

2. Any yearly average emission limit should be lower than a daily, weekly or monthly average emission limit (26);

3. The annual NO_x emission limit of 1.5 lb/MMBTU should be tightened to prevent emission increases during the winter months. The commenter noted that add-on controls, such as SNCR, would be required year-around (23); and

4. Any technology which is capable of meeting the emission limits specified in the rule at a cost of less than $2,000 to $2,500 per ton of NO_x removed, should be required for RACT. (23)

RESPONSE: It appears that the commenters misunderstood the reason for specifying the emission limits at N.J.A.C. 7:27-19.4(b). The boiler for which this section of the rule was developed is a wet-bottom, coal-fired boiler. The boiler's uncontrolled NO_x emissions are 2.0 lb/MMBTU, much higher than the average wet-bottom boiler. Since the boiler is a wet-bottom boiler, the only technologies applicable are fuel switching, SNCR, SCR and natural gas reburn. Data were presented to the Department during the development of this rule which indicated that fuel switching made the most sense for reducing the emissions from this boiler type. However, this unit would only be capable of meeting the 1.0 lb/MMBTU limit while burning natural gas due to physical constraints on boiler operation. During other times of the year (October through March), the boiler would continue to burn coal and emit 2.0 lb/MMBTU. The 1.5 lb/MMBTU annual average was set to establish a minimum limit on the time frame during which natural gas is used. This approach yields a 50 percent reduction in NO_x emissions during the ozone season and a 25 percent reduction in NO_x emissions on an annual basis.

82. COMMENT: The commenter requested that the time period of May 1 through September 30 in N.J.A.C. 7:27-19.4(b)4i be made consistent with the "ozone season" (May 15 through September 15) used in other sections of the proposed rules. The additional expense incurred by this extended period requiring fuel switching is excessive and has no rational basis. (25)

RESPONSE: The time period required for fuel switching will be amended in future proposed amendments to these rules to be consistent with federal EPA guidance, which requires a longer, rather than shorter, period of gas use.

83. COMMENT: One commenter stated that requirements at N.J.A.C. 7:27-19.4(b) for fuel switching to gas during the ozone season needlessly limit operating flexibility and requested that wet-bottom, face-fired utility boilers burning coal be allowed to co-fire natural gas and coal, or employ an alternative NO_x emission control technology during the ozone season, as long as the one lb/MMBTU calendar day average NO_x emission limit established in the proposed N.J.A.C. 7:27-19.4(b)4ii is not exceeded. (25)

RESPONSE: By deleting the adjective "only" in N.J.A.C. 7:27-19.4(b)4i, the Department has clarified the provisions regarding the seasonal combustion of natural gas to indicate that the RACT emission limit must be met, but the exclusive use of a particular fuel is not required.

84. COMMENT: The commenter stated that the NO_x emission rate for utility boilers at N.J.A.C. 7:27-19.4(b)5 should be an average "daily" rate over the calendar year. The commenter recommended that this section be changed to read: "For every calendar year beginning in 1995, operate the utility boiler so that the daily average NO_x emission rate ...." (26)

RESPONSE: The Department disagrees. Specifying the emission limit as an annual daily average would make compliance with the limits extremely hard to achieve, and is not required by EPA's draft fuel switching policy. Rather, the rate should be specified as an annual average, since no controls is a possible option during the non-ozone season.

85. COMMENT: One commenter stated that the term "shut down" in N.J.A.C. 7:27-19.4(c) should be replaced with "retire," and that an appropriate definition for the term "retire" should be added to N.J.A.C. 7:27-19.1. (25)

RESPONSE: The term "shutdown" has been deleted at N.J.A.C. 7:27-19.4(c). The Department has not, however, replaced the deleted term with "retire." The Department intends, rather, to propose provisions for shutdown or retired units in its forthcoming proposal of amendments to the subchapter. If facility plans to shutdown, by May 15, 1995, it may indicate so, along with a proposed schedule, in its permit application.

86. COMMENT: One commenter stated that the April 30, 1999 date referenced at N.J.A.C. 7:27-19.4(c) does not agree with the May 15, 1999 date mentioned in the Summary on N.J.A.C. 7:27-19.4. (25)

RESPONSE: The Department has corrected this oversight and changed the April 30, 1999 date contained in the rule to May 15, 1999 as stated in the proposed Summary.

87. COMMENT: One commenter stated that the Department should not provide an absolute exemption from its 1995 RACT requirement to owners that elect to repower or shut down their boilers by 1999, as allowed at N.J.A.C. 7:27-19.4(c). Instead, the Department should require these boilers to satisfy RACT or alternative RACT, taking into account the shortened life span of the existing unit and any applicable RACT technology. The commenter suggested that there may well exist technologies and strategies (for example, fuel switching) that would be considered cost-effective. (23)

RESPONSE: The Department intends to propose an amendment to this rule extending the repowering option to all sources with the limitation that the source must submit a proposal of interim RACT for approval by the Department.

88. COMMENT: Two commenters stated that the exception at N.J.A.C. 7:27-19.4(c), whereby a utility boiler which will be shut down or repowered before April 30, 1999, may choose not to comply with the emission limitations if the owner or operator: (1) completes annual adjustments of the combustion process, (2) enters into an enforceable agreement, and (3) obtains the Department's written approval, should be expanded to allow the same flexibility for non-utility boilers and miscellaneous sources covered under N.J.A.C. 7:27-19.13. The commenters stated that it is not economically feasible for a source to install RACT controls on a unit that will be shut down or reconstructed in the near future. The commenters suggested that the Department allow facilities that plan to shut down a source operation prior to April 30, 1999 or plan to reconstruct a source operation and install NO_x control equivalent to BACT for new sources, to delay RACT installation if an enforceable commitment is made. The commenters suggested the following addition for N.J.A.C. 7:27-19.5(e), 19.7(e) and 19.13(p):

In lieu of complying with the emission limits set forth in this subchapter, the owner or operator of a non-utility boiler, stationary gas turbine or a source covered under 19.13 which is to be shut down, repowered, or reconstructed before April 30, 1999, may comply with the requirements of this subsection. The owner or operator electing to comply with this subsection shall satisfy all of the following requirements: (requirements from N.J.A.C. 7:27-19.4(c)) (15, 27)

Another commenter suggested that there is no basis for not extending the shutdown provisions to sources other than utility boilers. (30)

RESPONSE: The Department intends to revise the rules in future amendments to allow non-utility boilers and other sources to elect the repowering option. Consistent with EPA policy, however, these sources must determine what interim RACT is appropriate for that source for the time period before repowering. The start time period will be taken into consideration in approving what is interim RACT. Also, consistent with EPA policy, the shutdown of a unit without replacement, will not be eligible for a 1999 shutdown date.

89. COMMENT: The commenter stated that regarding the submittal of an application for approval of compliance for retirement and/or repowering of a utility boiler under N.J.A.C. 7:27-19.4(c), although it may be possible to submit a commitment for retirement/repowering, much of the information required by the proposed rule may not be available until a later date. The commenter contends that repower/replacement of an existing unit is a complicated process which involves in-depth study and evaluation, tasks that may not be possible to complete by July, 1994. The commenter adds that influences in market trends may necessitate changes in such plans if those plans are required to be submitted prematurely. The commenter suggested that the Department eliminate the requirement for the submissions of details concerning replacement power by July, 1994, and simply require the commitment to retire/repower from the source owner/operator. (14)

RESPONSE: Because the RACT requirements for boilers which will be repowered differ significantly from those which will not be repowered, it is important that an agreement with the Department to repower must be made in sufficient time prior to the May 31, 1995 Clean Air Act deadline for RACT implementation. The Department requires the submittal by July, 1994, in order to have adequate time to review a repowering proposal before permitting a utility to take advantage of this option.

90. COMMENT: One commenter stated that the Department should extend the "repowering exemption" at N.J.A.C. 7:27-19.4(c) until May 15, 2003. The commenter stated that a deadline of April 30, 1999 assumes that a second phase of NO_x controls will be required, that this finding is premature. The commenter asserted that the selection of a deadline for retirement or repowering should instead be based on an attainment demonstration deadline specific to New Jersey rather than the northeastern U.S. as a region. The commenter also stated that if the repowering option is extended, "dirtier" units may be repowered with a cleaner, more efficient unit in time to be included in the demonstration of attainment with the ozone NAAQS in 2005 or 2007. The commenter also stated that the extension of the repowering option would provide

utilities needed additional time to develop appropriate and effective repowering strategies which incorporate the most effective repowering technologies. (25)

RESPONSE: The Department realizes that extending the deadlines for filing for retiring/repowering utility boilers to a date after May 31, 1999 might encourage more utilities to take advantage of this option. However, as a member State of the Ozone Transport Commission (OTC), the Department is aware that, without timely reductions, most of the other states to the northeast of New Jersey would be unable to meet the NAAQS for Ozone by the CAA deadline of November 15, 1999. Connecticut, Rhode Island, Massachusetts and New Hampshire have been classified as serious non-attainment areas. New Jersey established a deadline of May 15, 1999 for repowering sources as part of the NO_x RACT rules, consistent with the OTC position. The Department will consider a similar repowering incentive with the proposal with rules to implement Phase NO_x reductions.

91. COMMENT: One commenter questioned the time period for the standard listed in Table 2 of N.J.A.C. 7:27-19.4(c). The commenter stated that the emission limits appear to be too low, and that the numbers should be close to those in Table 1 of N.J.A.C. 7:27-19.4(a) (26)

RESPONSE: The purpose of Table 2 is to specify maximum emission rates for utility boilers that have been repowered. The limits are consistent with current state-of-the-art emission limits for large boilers. The averaging period to be used varies depending upon the method used to demonstrate compliance, which are described in N.J.A.C. 7:27-19.15.

92. COMMENT: One commenter stated that it is premature to require the submittal of repowering applications under this section because the Department will probably not have submitted its ozone attainment demonstration SIP to EPA by the July 1, 1994 deadline, as specified at N.J.A.C. 7:27-19.4(c)4. In order to avoid uncertainty and encourage the development of successful repowering strategies, the commenter recommended that the date for submittal of repowering applications should be changed to "within 6 months after EPA approval of the Department's ozone attainment SIP." The commenter also recommended that the January 1, 1995 date specified in N.J.A.C. 7:27-19.4(c)2 should be changed to "within one year after the submittal of an application for approval of compliance under this subsection pursuant to N.J.A.C. 7:27-19.4(c)3." (25)

RESPONSE: The enforceable provision to repower the boiler pursuant to the RACT rule is required prior to the May 31, 1995 CAA deadline for installing RACT technology, not the November 15, 1994 date for submission of the ozone attainment SIP. Another repowering incentive may be included as part of the plan for the second phase of NO_x reduction to be specified in the 1994 SIP.

93. COMMENT: The commenter questioned if the Department will be able to approve combustion adjustment procedures under N.J.A.C. 7:27-19.4(c)4 given that techniques used to reduce NO_x emissions tend to increase emissions of VOC and CO. The commenter suggested that the references to VOC and CO be removed from this section or that the language be modified to read: "... minimize total emissions of NO_x **while reasonably limiting any collateral increases in** VOC and CO ... (25)

RESPONSE: The Department is aware of the trade-off between reductions in NO_x and increases in CO and VOC when adjusting the combustion process. The relationship between these pollutants was considered in developing the procedures at N.J.A.C. 7:27-19.16 to ensure large increases in VOC and CO would not occur as a result of the adjustment process.

94. COMMENT: One commenter suggested the following changes to N.J.A.C. 7:27-19.4(d):

(d) "... subject to this subchapter, with the exception of:

1. boilers exempted under (c) above; and

2. boilers having a maximum heat input less than 250 MM BTU or an historical capacity factor of less than five percent ... (12)

RESPONSE: Utility boilers of all patterns of use are significant emitters of NO_x in the Statewide inventory and on a regional Northeastern United States basis. The Department's strong interest in monitoring these emissions in an accurate and reliable manner warrants the requirement to install monitoring systems. However, the Department has incorporated provisions at N.J.A.C. 7:27-19.18 which allow for alternatives to continuous emissions monitoring systems in some cases.

N.J.A.C. 7:27-19.5 Stationary gas turbines

95. COMMENT: One commenter stated that in the 1st paragraph of the Economic Impact section for stationary gas turbines, the term "cost effectiveness" should be used. (26)

RESPONSE: The Department agrees with this comment. Because cost effectiveness is expressed as dollar per unit value, it is a more appropriate measure than total costs in assessing the economic impact of an environmental regulation aimed at reducing emissions of air pollutants.

96. COMMENT: One commenter stated that in the Summary to N.J.A.C. 7:27-19.5, the Department should cite cost effectiveness, not cost. (26)

RESPONSE: The Department agrees with this comment. Because cost effectiveness is expressed as dollar per unit value, it is a more appropriate measure than total costs in assessing the economic impact of an environmental regulation aimed at reducing emissions of air pollutants.

97. COMMENT: Two commenters stated that N.J.A.C. 7:27-19.5 should allow combustion turbines and internal combustion engines operated by utilities to be exempted from control device requirements if they will be retired or repowered prior to April 30, 1999. The commenter stated that these units are operated for only a finite number of hours annually, often below a few hundred hours per year. The commenter believes that the installation of controls for NO_x on such units would be extremely costly in terms of dollars per ton of NO_x removed. One commenter also requested that their comments on the deadlines for submitting retirement/repowering applications and entering into Federally enforceable agreements for utility boilers also be taken into consideration for gas turbines, should a retirement/repowering option be provided. (14, 25)

RESPONSE: The Department will propose an amended section of the rule in the near future to set forth the conditions under which turbines can be repowered. These sources would be required to propose to the Department what interim RACT is appropriate for their source, consistent with EPA's guidance. Shutdown without replacement is not likely to be included in this guidance.

98. COMMENT: Several commenters stated that since gas turbines utilize fixed air/fuel nozzles for combustion they cannot be adjusted as defined in N.J.A.C. 7:27-19.16. The commenters suggested that N.J.A.C. 7:27-19.5(c)6 should be replaced with a requirement for annual inspection and cleaning of the turbine fuel nozzles. (1, 15, 27)

RESPONSE: The Department agrees with this comment and has made the appropriate changes to N.J.A.C. 7:27-19.16(a)3.

99. COMMENT: One commenter stated that reducing NO_x emissions by reducing combustion temperatures is inconsistent with the original purpose behind installing flares and stationary gas turbines to control landfill gas emissions. These devices were originally permitted and designed for controlling off-site methane gas migration and changes to the destruction efficiency of these devices when controlling NO_x emissions may raise other safety and environmental concerns besides those addressed in the rule. The commenter recommended that the safety concerns of off-site methane gas migration require that its control be given priority over the many other constraints to be satisfied. (20)

RESPONSE: The Department concurs with the intent of this comment. However, landfill gas generation sites make up a small majority of the turbines located in the State, and emissions limits were specified which would apply to the majority of turbines. If the owner or operator of such a turbine feels that a turbine cannot meet the emission limits in the rule without compromising safety or causing other adverse environmental impacts, then the owner or operator of such a source may apply for an alternative emission limit under N.J.A.C. 7:27-19.13, which would address the safety and environmental concerns specific to the source operation.

100. COMMENT: Several commenters questioned the reasoning behind specifying separate limits for simple and combined cycle turbines. Two commenters stated that the Department has not justified the more stringent requirements for the more efficient (because of the defined heat recovery of these units), combined cycle gas turbine units specified at N.J.A.C. 7:27-19.5(b). One commenter stated that the additional NO_x emissions from the heat recovery steam generators may actually increase the NO_x emissions from these turbines. The commenters stated that these stricter regulations for more efficient operations discourage cogeneration. The commenters recommended that the same emission limits for simple cycle gas turbines be used for combined cycle gas turbines. (15, 27)

RESPONSE: The Department has specified stricter emission limits for combined cycle gas turbines for two reasons. First, the lower tempera-

ture of the final exhaust gas associated with these units allows more flexibility in the choice of a control technology. Secondly, since combined cycle units are more efficient, they tend to be operated more frequently, and therefore contribute a larger share of NO_x emissions during the ozone season than do the simple cycle turbines. Combined cycle units tend to be relatively newer units (than simple cycle gas turbines) that are easier to control the emissions from. Also, similar limits have been achieved in other parts of the country.

101. COMMENT: One commenter stated that the Department's cost estimates for installing pollution control on peaking gas turbines are severely understated. The commenter's data demonstrate that the projected costs of installing and operating Liquid Oil Emulsification (LOE) (costs are comparable to water injection) on peaking gas turbines range from $4,000 to $45,000 per ton of NO_x removed, based on current cost estimates and actual 1990 operating data. The commenter believes these control costs are disproportionately high when compared to control costs of other facilities within the utility industry. The commenter believes that the required capital to control these units could be more beneficially allocated elsewhere. (25)

RESPONSE: The Department is aware of the increased cost/benefit ratio of controlling turbines which do not operate for a large number of hours during the year. However, the hours per units is generated typically during the hot summer days with high ozone levels, so controlling these units is a necessary and effective ozone control measure. Also, costs can be reduced by averaging of these units with other units which operate more frequently. By installing better controls on the more frequently operated units, some peaking turbines can be left uncontrolled, provided sufficient emissions reductions have been obtained at other locations to offset these uncontrolled emissions. The provisions of N.J.A.C. 7:27-19.13 also allow for the setting of an alternative RACT limit for any source which can not meet the specified emissions limits using control technologies which satisfy RACT.

102. COMMENT: One commenter stated that the cost effectiveness of low-NO_x combustors is as high as $1,050/ton. (26)

RESPONSE: At the time the rule was proposed, the cost effectiveness cited in the Economic Impact reflected the information available to the Department. Specific units can run as high as the amount stated, which is a reasonable cost benefit ratio.

103. COMMENT: One commenter stated that the emission limits in Tables 3 and 4 of N.J.A.C. 7:27-19.5(a) and (b) should be expressed according to ISO conditions, and that this should be indicated on the tables. (10)

RESPONSE: Pounds per million BTUs emissions rates are independent of atmospheric conditions, and thus, it is unnecessary to specify ISO conditions in N.J.A.C. 7:27-19.5.

104. COMMENT: One commenter requested that the emission limits contained in Tables 3 and 4 of N.J.A.C. 7:27-19.5(a) and (b) be modified to reflect that the limits are applicable on a calendar-day basis. The commenter contends that the use of daily limits strike a reasonable balance between the Department's obligation to monitor emission sources and protect the environment and the commenter's desire to avoid difficult, costly and unnecessary reporting requirements. The commenter added that daily limits would also provide much-needed operational flexibility to companies in the State. (25, 26)

RESPONSE: The averaging period applied to the emission limits set forth in Tables 3 and 4 of N.J.A.C. 7:27-19.5(a) and (b) vary depending on the method used to demonstrate compliance with those limits. If the owner or operator of the source is demonstrating compliance through the use of a continuous emissions monitoring system, then the averaging period is one calendar day. However, if the owner or operator of the source is complying through the stack testing, then the emission rates apply to the average of three one-hour stack tests. The averaging times are protected for the cost methods and provide a reasonable balance of cost, operating flexibility and assurance of compliance. Procedures for demonstrating compliance are detailed in N.J.A.C. 7:27-19.15.

105. COMMENT: One commenter noted that NO_x emissions for gas turbines are usually given in parts per million at 15 percent Oxygen. (26)

RESPONSE: The emission limits were specified in terms of pounds of NO_x per MMBTU to facilitate their incorporation into the averaging schemes approved under N.J.A.C. 7:27-19.6.

106. COMMENT: One commenter stated that the NO_x emission limit for oil-only units at N.J.A.C. 7:27-19.5(a) should reflect NO_x reduction targets at levels which do not significantly increase CO. The commenter added that a 45 to 50 percent NO_x reduction should represent RACT for simple-cycle gas turbines because it would result in annual NO_x reductions greater than the Department's expectation of 500 tons per year from stationary gas turbines and would achieve this without appreciably increasing CO emissions. (25)

RESPONSE: In establishing the emission limits to be met, the Department considered CO emissions from combustion turbines associated with NO_x reductions and chose a NO_x emissions limit which would not cause significant increases in CO emissions.

107. COMMENT: One commenter stated that separate NO_x emission limits should be established at N.J.A.C. 7:27-19.5(a) for the three fuel firing configurations of simple-cycle combustion turbines operating in the State: dual-fuel (oil and/or gas), oil-only, and gas-only. The commenter believes that Table 3 of this section should establish separate emissions limits for each configuration. The commenter stated that it had limited data regarding the feasibility of achieving a 0.2 lb/MMBTU emission rate for gas-only units. The commenter stated that it had extensive data on Liquid Oil Emulsification (LOE) for dual-fuel units indicating that a level of 0.4 lb/MMBTU is achievable (the commenter supplied test data with the written comments) and would represent a NO_x reduction of approximately 45 to 50 percent with no significant increase in CO emissions. The commenter added that reductions beyond 50 percent result in significant increases in CO. The commenter also recommended 0.5 lb/MMBTU as the NO_x cutoff for oil-only units. (25)

RESPONSE: In this situation, a BTU weighted average would be used to calculate the maximum allowable emission rate. For example, if a turbine co-fired 75 percent and 25 percent oil, the maximum allowable emission rate would be 0.25 pounds of NO_x per million BTU.

108. COMMENT: Several commenters stated that because some gas turbines installed and permitted in New Jersey in the last eight years utilize a short flame length annular combustor with fuel nozzles that cannot facilitate water or steam injection, N.J.A.C. 7:27-19.5(c)2 should be revised as follows:

(c)2. The owner or operator establishes that water injection on the turbine is not possible due (1) to lack of a commercially available fuel nozzle that would facilitate water or steam injection, or (2) that there is an insufficient supply of water to the turbine suitable for NO_x emission control, due to either of the following circumstances beyond the control of the owner or operator:

i. A legally enforceable limit on the amount of water which the owner or operator's facility may use; or

ii. The need to provide for an alternate supply of water, because the existing supply is insufficiently filtered and de-ionized to be suitable for injection. (1, 15, 27)

RESPONSE: The Department agrees with this commenter and believes that the section, as worded, is sufficient to address the concerns of the commenters. Also, if a fuel nozzle for the type of unit which the facility operates is not available, then the turbine may obtain alternative RACT limits rather than those limits in N.J.A.C. 7:27-19.5. However, the Department has not included the "commercially available" term in this definition because this would discourage the use of new and innovative control technologies which may be more cost effective.

109. COMMENT: One commenter agrees with the Department's decision to provide an exemption at N.J.A.C. 7:27-19.5(c) for units such as aircraft derivative combustion turbines where a dry low-NO_x combustor is not commercially available and the use of a water/steam injection system is also not feasible due to difficult with a water supply. (14)

RESPONSE: The Department notes support for the provisions of this section.

110. COMMENT: One commenter suggested that the Department provide guidelines for sources attempting to obtain written approval from the Department regarding an insufficient supply of water for use in a water/steam injection system at a combustion turbine as allowed under N.J.A.C. 7:27-19.5(c)2.

RESPONSE: To extract groundwater from an aquifer (and also to install a well), a facility must obtain a permit from the Bureau of Water Allocation, Division of Public Policy and Planning. A withdrawal request may be denied because of public supply demands or other surface water overuse of the aquifer. (14)

111. COMMENT: One commenter questioned what criteria will be used to let turbines out of the steam injection requirement because of the lack of access to water under the provisions of N.J.A.C. 7:27-19.5(c). (26)

RESPONSE: The owner or operator must demonstrate that he was denied a water allocation permit from the Department or demonstrate unreasonable cost of obtaining the water based on the cost-benefit ratio

(in dollars per ton of NO_x removed). The owner or operator must explore reasonable alternatives, including available technology, to obtain suitable water for injection.

112. COMMENT: One commenter stated that N.J.A.C. 7:27-19.5(c)2 does not contain a provision for owners or operators of facilities seeking exemption from compliance with the NO_x limits in Tables 3 and 4 of N.J.A.C. 7:27-19.5(a) and (b) on the basis of excessive cost of obtaining a sufficient water supply for injection. The commenter requested that a new N.J.A.C. 7:27-19.5(c)2iii be added which reads:

iii. The cost of obtaining sufficient water suitable for injection is prohibitive. (25)

RESPONSE: The Department agrees with the intent of this comment. However, in lieu of providing the exemption in the format specified above, the Department will instead rely on the provisions of N.J.A.C. 7:27-19.13 which allow for the determination of an alternative RACT limit should a facility feel that it cannot comply with the emission limitations using a technology which meets the definition of RACT.

113. COMMENT: The commenter stated that text is apparently missing from N.J.A.C. 7:27-19.5(c)1 and suggested the following: "The owner or operator of a stationary gas turbine applies for and obtains . . ." (26)

RESPONSE: The Department has corrected this oversight in the final rule.

114. COMMENT: Several commenters raised concerns regarding the specification of a CO emission limit at N.J.A.C. 7:27-19.5(d). The commenters state:

1. Vendors are not willing to state expected CO levels after the installation of a water/steam injection system and that the vendors only state that CO levels will increase proportionally to NO_x reductions (14);

2. Since the attainment of the CO NAAQS is generally not a summertime problem, the specification of a CO limit in this rule is unnecessary (14);

3. The regulation of NO_x reductions only during the ozone season (where feasible) would help the Department ensure compliance with the NAAQS for both ozone and CO (14);

4. The rule should allow for increases in CO emissions when reducing NO_x emissions to the levels specified in the rule in order to allow optimization of the NO_x emission reductions (27);

5. Some existing turbines may not be achieving 50 ppm CO currently (15); and

6. Installing NO_x controls generally increases CO emission levels (15).

RESPONSE: The specification of a CO emission limit was originally included in the rule because these turbines have the potential to emit greater than 25 tons per year of VOC, and are therefore major sources of VOC under the Clean Air Act. The Department included the CO emission limit as a surrogate for VOC emission limits. During the drafting of this rule, all of the provisions which were applied to combustion sources for VOC RACT purposes were moved into N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution from Volatile Organic Compounds (see 25 N.J.R. 3339(a)). All references to a CO emission limit have been removed from this subchapter 19. Please refer to N.J.A.C. 7:27-16 for the CO emission limits which apply to these sources. These CO limits are expected to be adopted by January 15, 1994. Proposed N.J.A.C. 7:27-19.5(d) is deleted on adoption.

115. COMMENT: The commenter stated that the provisions of N.J.A.C. 7:27-19.5(d) amount to a CO emission limit in this rule, that there is no basis for such a limitation, and that the CO emission limit should be removed. The commenter stated that the 50 ppm CO limit is not achievable for the commenter's combustion turbines, and is not appropriate for existing sources. The commenter also stated that additional control of CO emissions from combustion turbines is also not warranted based on an understanding of the relative contribution of these sources to ambient CO concentrations (that is, stationary combustion sources are typically not significant contributors to ambient concentrations of CO). The commenter added that the most effective way to control increases in CO is to establish "reasonable" NO_x reductions (that is, NO_x reductions of 45 percent can be achieved without increasing CO). (25)

RESPONSE: As discussed in the responses above, the Department has removed all references to CO emission limits from this rule. The Department is aware that lowering NO_x emissions can lead to increases in CO emissions. The Department has taken this relationship into consideration in establishing the NO_x emission rates in this rule.

N.J.A.C. 7:27-19.6 Emissions averaging

116. COMMENT: One commenter stated that the deadline for submitting an averaging scheme should follow the deadline for individual permit applications, since approval of emissions rates is a key factor in proposing any averaging scheme. (14)

RESPONSE: The rule does not specify a time frame for the submission of the demonstration required under the averaging section. However, the demonstration required for this section may be submitted at the same time as the permits required for the subchapter. The permits and the averaging scheme may then be reviewed and approved as a package.

117. COMMENT: The commenter recommended that the proposed rules be revised to allow for the averaging of not only emission limits, but also, in the case of borosilicate recipe glass manufacturers, the percentage of reduction referenced in both N.J.A.C. 7:27-19.10(c)2i and ii. The commenter stated that this would treat all glass manufacturers equally. (33)

RESPONSE: The averaging provisions can be used to comply with the provisions of N.J.A.C. 7:27-19.10(c)2i and ii provided that the owner or operator of the glass furnace has reduced the emissions from other sources under his control sufficiently to offset the emission reductions required under N.J.A.C. 7:27-19.10(c)i and ii.

118. COMMENT: Many commenters submitted comments regarding the approach to the averaging system contained under N.J.A.C. 7:27-19.6. Most commenters recommended that the Department set a daily emission cap in lieu of the approach taken by N.J.A.C. 7:27-19.6. The commenters submitted the following reasons for this approach:

1. Setting a cap would streamline the entire NO_x RACT process, including permitting, operating and enforcement (14);

2. The averaging scheme, as proposed, is unclear and contains needless provisions which only serve to cause additional burden on the regulated community (14);

3. EPA's regulations for NO_x control under Title IV no longer require the setting of specific emission limits on individual units to be included in any averaging system (12);

4. The demonstration requiring the averaging of the NO_x emissions from each unit in the designated set on a daily basis is overly burdensome (14);

5. The emission limits in Table 1 of N.J.A.C. 7:27-19.4(a) should be used only to establish the cap under N.J.A.C. 7:27-19.6 and should not be used to determine maximum allowable emission rates for sources included in the designated set. (14)

6. The setting of a cap is consistent with the requirements of Title I of the Clean Air Act since the cap will aid the State in attaining the NAAQS for ozone (14); and

7. Historical actual production rate should be used to set any emissions cap (26).

The commenters also commented on the approach as currently proposed. They made the following suggestions:

1. Only a maximum limit for a designated averaging set as a whole should be considered rather than the proposed maximum allowable emission limits for each averaging unit in the designated set (10);

2. The enforceable limit for the designated set could be established by the same demonstration used to satisfy the equation expressed at N.J.A.C. 7:27-19.6(b)5, or the TPEE < TPAE equation (10);

3. Because ozone non-attainment is a regional problem, possible local adverse air quality impacts due to "high emitters" in the set would not unduly impact the entire region (10);

4. Eliminating the unit-by-unit maximum allowable emission rate limitation would provide additional operational flexibility, reduce administrative requirements for both the Department and the source owner, and achieve the desired air quality improvement (10);

5. The proposed averaging guidelines penalize a source for taking a "low emitting" unit off-line, which, while decreasing the emissions from the utility as a whole, would cause a violation of the averaging system (10);

6. The most efficient averaging plan would require an enforceable maximum limit for the designated set as a whole rather than establishing limits for each averaging unit (10);

7. Facilities should have the flexibility to operate individual units in excess of their maximum allowable emission rates so long as the actual emissions averaged over the appropriate time period (that is, daily or 30-day) are less than or equal to the applicable standard, thereby allowing the consideration of non-operational time in determining compliance (10);

8. The restrictions that were included in the proposed averaging plan discourage participation in such a plan (12);

9. The requirements for individual units to accept the maximum limit used in the demonstration equation as the enforceable limit are unneces-

sarily burdensome and create disincentives to environmentally-beneficial decision making (12);

10. The two-tiered approach would create technical violations where there is no detriment to the environment and would discourage the operation of well-controlled units at times when their capacity might be needed for the good of the general public (12);

11. Once it has been demonstrated that the designated set can comply with the system-wide average, operators should have the flexibility to operate them in any manner, as long as the system-wide average is complied with (12);

12. The two-tiered approach makes the plan more trouble than it is worth by compounding individual conservative approaches resulting in an overly-conservative plan (12);

13. The compliance demonstration requirements of N.J.A.C. 7:27-19.6(d)1 and 2 should be based on daily demonstrations of compliance, rather than the proposed establishment of higher and lower operational limits for the individual units (12); and

14. Additional flexibility in the source-specific emission limits required by N.J.A.C. 7:27-19.6(d)1 be included in the final regulations. This flexibility would allow operation of a source even if it exceeds the set limits of an averaging plan as long as the source's emissions are below the NO_X RACT limits (12).

The commenters then recommended the following changes to the language contained in N.J.A.C. 7:27-19.6 to accommodate their concerns:

1. N.J.A.C. 7:27-19.6(b)4: "The maximum NO_x emission rate, which the owner or operator proposes to assign each averaging unit, for the purposes of making the demonstration required by (b)5 below, expressed in pounds per million BTU." (12)

2. N.J.A.C. 7:27-19.6(c)1: "Each averaging unit can be reasonably expected to satisfy the maximum NO_x emission rate which the owner or operator proposed under (b)4 above for that averaging unit."

3. N.J.A.C. 7:27-19.6(c)3: This paragraph should be omitted, or required compliance with the applicable limits in this subchapter only, not limits "assigned" under N.J.A.C. 7:27-19.6(b)4. (12)

4. N.J.A.C. 7:27-19.6(d)1: This subsection should be omitted. (12)

5. N.J.A.C. 7:27-19.6(i): "... or from any averaging unit ..." should be omitted. (12)

6. N.J.A.C. 7:27-19.6(i): A new subsection should be inserted here which reads:

IMPORTANT

"If, at any time, the actual NO_x emissions from an averaging unit exceeds the maximum emission rate assigned for that unit under (b)4, the owner or operator shall notify the Department of such event at such time as quarterly reports under (h) are submitted. The Department reserves the right to request the owner or operator to resubmit an application for approval of an averaging plan under (b) if such action is deemed warranted by the significance, frequency or duration of such exceedances." (12)

RESPONSE: The Department spent a significant amount of time meeting with the workgroup in developing this section of the rules. The option of establishing a system-wide cap in lieu of the averaging system as proposed in the rule was discussed. However, this approach was not sufficiently enforceable. The averaging system, as proposed, will be enforceable because each unit can be checked for compliance by the state and the operators with a reasonable degree of effort.

Furthermore, EPA requires maximum allowable emission rate for each unit included in the averaging system. This avoids the emissions of excessively high levels of NO_x in one area which could lead to a localized exceedance of the NAAQS for NO_2. By maintaining control over the maximum allowable emission rate of each unit included in the averaging scenario, the Department can ensure such a situation would not occur. More importantly, the Department has the ability to determine within a reasonable time if a source is operating in compliance with all the rules and regulations. The lack of a specific maximum allowable emission rate for each unit in the designated set would make this impossible, since the only way to determine compliance would be to check the average for all units based on historical records, rather than direct observation of a unit's on site records.

The Department also felt that the establishemnt of a cap, or allowing units which did not operate to generate credits, could encourage sources which are complying through the averaging provisions to operate the unit under their control in a less environmentally-suitable manner. Typically, electric generating capacity is dispatched on an economic basis, which tends to encourage the units with the higher emissions to be operated more frequently, since they tend to be the cheapest units to operate. For instance, on a day when electric demand is low, the Department prefers that units which emit less NO_x be operated instead of units which emit more NO_x. The establishment of a cap would allow a facility not to operate the low emitting sources on these days. The Department prefers that the lower emitting unit be used more frequently.

119. COMMENT: Two commenters stated that the final rule should allow units that have been shut down to be included in the bubble calculations as zero-emission sources. (14, 33)

RESPONSE: Such an approach would be inconsistent with the intent of the goal of the rule which is to reduce the emissions of NO_x on a BTU-weighted basis encouraging energy efficient generation. This is also inconsistent with the concept of RACT which is to reasonably reduce emissions from operating sources.

120. COMMENT: The commenter stated that the Department should review and revise N.J.A.C. 7:27-19.6 to ensure that its provisions are applicable to, and usable by, other regulated source categories besides electric utility generators by allowing use of appropriate or applicable units of measure. (19)

RESPONSE: The Department feels that the section, as currently written, is usable by any source. The specification of maximum allowable emission rates, both by the regulated community and by the rule, can be converted from one unit to another (that is, ppm to lbs/MMBTU) and that this should enable any source to take advantage of the provisions of this section.

121. COMMENT: The commenter stated that the emissions averaging requirements of N.J.A.C. 7:27-19.6(e) should include provisions that would allow owners or operators of electric glass melting furnaces (and furnaces whose primary heat input is electricity) to average NO_x emissions between types of furnaces. Alternatively, the reductions in NO_x emissions for these units shuould be based on fossil fuel component of their energy production. (11)

RESPONSE: Provided that the change from fossil fuel firing to electric melt was done after 1990, the reductions in emissions from the change of energy source would be creditable under N.J.A.C. 7:27-19.6. Any changes which occurred before that time would not be creditable, since the source did not actually obtain any reductions in the time period regulated by the CAA. This is similar to the EPA policy on gas use on units which were fixed by oil and coal.

122. COMMENT: EPA stated that averaging across regions without considering differences in attainment/non-attainment designations and the generation of emission offsets under N.J.A.C. 7:27-19.6 is not factored into the averaging provisions. The commenter added that such averaging is extremely difficult to enforce on a real-time basis. (26)

RESPONSE: The averaging provisions of N.J.A.C. 7:27-19.6 do not generate offsets that could be used for new sources pursuant to N.J.A.C. 7:27-18. This section only allows for the averaging of emissions from several existing sources for compliance with RACT requirements. All of New Jersey, except for three counties, is a severe ozone non-attainment area. Consequently, New Jersey has elected to allow these averaging provisions to be used on a statewide basis. Emissions from any one unit can not, however, exceed the limits established pursuant to N.J.A.C. 7:27-19.6(b)4. The recordkeeping requirements at N.J.A.C. 7:27-19.6(g) have been established to facilitate enforcement.

123. COMMENT: One commenter stated that the Summary on N.J.A.C. 7:27-19.6 should be clarified to indicate that "actual emissions" instead of "total emissions" cannot be exceeded by the emissions of the units averaged together. The commenter questioned if applicable limit is applied to actual emission or "total peak estimated emissions" (TPEE). (26)

RESPONSE: The intent of N.J.A.C. 7:27-19.6 is to average the actual emissions from all sources included in the designated set. The compliance demonstration must show that the actual emissions from this set is less than the emissions would have been had each unit in the set complied with the source specific emission rates. The total peak estimated emissions are only used in the initial demonstration to the Department to make clear that the set is able to comply with the averaging scheme.

124. COMMENT: One commenter stated that a source currently covered by a permit with a Federally enforceable emission rate which is less than the emission rate defined as NO_x RACT in the proposed rule should be allowed to take credit for the difference between the existing Federally-enforceable emission rate and the NO_x RACT emission rate, and use that difference in an averaging plan approved under N.J.A.C. 7:27-19.6. (14)

RESPONSE: The Department concurs with this comment, and notes that the rule, as written, allows this.

125. COMMENT: EPA has stated that the provisions of N.J.A.C. 7:27-19.6 should be acceptable to EPA. (26)

RESPONSE: The Department agrees with this comment.

126. COMMENT: EPA raised two concerns regarding the integration of averaging plans and Federal requirements. The concerns raised were:

1. EPA should approve each averaging plan issued pursuant to N.J.A.C. 7:27-19.6 as an amendment to the State Implementation Plan; and

2. N.J.A.C. 7:27-19.6 contains no provision to ensure that major new and modified sources meet LAER or BACT (that is, there is no way to "emission average" out of LAER or BACT).

EPA further questioned if the intent of this section was to provide a blanket exemption from the Federal requirement for BACT, LAER, NSPS, NESHAPS or PSD requirements. (26)

RESPONSE: The Department feels that averaging plans approved under this section do not have to be incorporated into the State Implementation Plan because the averaging provisions are sufficiently limited and defined to give reproducible determination of compliance. The Department has already analyzed the impacts of allowing sources to average when the rule was proposed, and requiring each averaging plan to be incorporated into the SIP would place an undue administrative burden on the Department, EPA, and the regulated community.

The provisions at N.J.A.C. 7:27-19.6(a) only relieve a source from complying with the emission limits contained in N.J.A.C. 7:27-19. They do not relieve the source from the requirement to comply with emissions limitations in other subchapters of this chapter, Federal New Source Performance Standards, BACT and/or LAER requirements under N.J.A.C. 7:27-18, or any other emission limit which may apply to the source.

127. COMMENT: One commenter stated that N.J.A.C. 7:27-19.6(b) actually required both daily and hourly monitoring of emissions. The commenter requested that a daily demonstration time period be applied. (25)

RESPONSE: The language in this subsection has been revised to make it clear that the demonstration of compliance with the plan is to be done on a calendar day basis.

128. COMMENT: EPA recommended that the maximum emission capacity cited at N.J.A.C. 7:27-19.6(b) be changed to historic actual. EPA recommended using the following formula to calculate the sum, over all averaging units, of each units' product of historic actual production and RACT allowable emissions:

$$\text{Emission CAP} = \Sigma_{i=1-n} \text{RACT}_{\text{allowable}} \text{ X Production}_{\text{actual}}$$

Alternatively, the commenter also recommeded the following:

Another acceptable approach is to set up a program that ensures that the following constraint is met:

$\Sigma_{i=1/n}$ RACT allowable X Actual production ≥

$\Sigma_{i=1-n}$ Emission Factor$_i$ X Actual Production;

Where i = sources up to "n" sources that are included in trade.

The commenter stated that actual historical production figures should use the New Source Review definition of "Actual Emissions." (26)

RESPONSE: The Department believes that the method proposed in the rule at N.J.A.C. 7:27-19.6(d)2 is equivalent to the second option noted above. The sum of all actual emissions times the actual production is equivalent to the calculation of actual NO_x emissions from all sources included in the averaging scheme without limiting the method by which these emissions are calculated. The sum of all allowable emissions times actual production data is what the first sum is compared against.

129. COMMENT: Several commenters submitted comments regarding the demonstration required under N.J.A.C. 7:27-19.6(b) before an averaging plan can be approved. The commenters stated that, as worded, the provision incorrectly indicates that the demonstration must indicate that the averaging plan must be complied with on an hourly basis. (12) The commenters stated that this demonstration should require a demonstration that compliance can be achieved on a 24-hour basis and submitted the following recommendations for language changes to incorporate this concept:

N.J.A.C. 7:27-19.6(b)2—The maximum gross heat input rate of each averaging unit, expressed in **million** BTU per [hour] day. (25)

N.J.A.C. 7:27-19.6(b)4—The **daily average** maximum allowable NO_x emission rate which the owner or operator proposes to impose on each averaging unit, expressed in pounds per million BTU. (25)

N.J.A.C. 7:27-19.6(b)5—A demonstration that in operating at their **daily** maximum gross heat input rates, all of the averaging units together would satisfy the following equation:

TPEE ≥ TPAE

i. TPEE means total peak estimated emissions, and is equal to the sum of the peak **daily** estimated emissions for each averaging unit. The peak estimated emissions for each averaging unit equals the **daily average** maximum **allowable** emission rate set forth in (b)4 above for that averaging unit, multiplied by the **daily** maximum gross heat input rate listed in (b)2 above for that averaging unit; and

ii. TPAE means total peak allowable emissions, and is equal to the sum of the [total] peak **daily** allowable emissions for each averaging unit. The peak **daily** allowable emissions for each averaging unit equal the applicable NO_x emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9, or 19.10 for that averaging unit, multipled by the **daily** maximum gross heat input rate listed in (b)2 above for that averaging unit; (25)

RESPONSE: The Department agrees with the intent of the commenters. The Department has not made the changes recommended by the commenters, however, but instead clarified the provisions of N.J.A.C. 7:27-19.6(b) to clearly indicate the 24 hour time period over which the demonstration is required.

130. COMMENT: One commenter stated that the requirements of N.J.A.C. 7:27-19.6(c)4 are too broad because they require the determination of "any other environmental impact." The commenter stated that this term must be concisely defined or the passage deleted. The commenter believes the proposed language at N.J.A.C. 7:27-19.6(c)4 should be revised as follows:

(c)4 Emission from any averaging unit exceeding the applicable NO_x emissions limit under N.J.A.C. 7:27-19.4 or 19.5 will not cause or [materially] **significantly** contribute to an exceedance of the NAAQS for nitrogen dioxide. [or any other environmental impact inconsistent with the purposes of this chapter, the Air Pollution Control Act, N.J.S.A. 26:2(c)(1) et seq., or the Clean Air Act, 42 U.S.C. 7401 et seq.] (25)

RESPONSE: The Department has revised the wording of N.J.A.C. 7:27-19.6(c)4 to reference N.J.A.C. 7:27-18.4 which provides detail on determining a significant air quality impact analysis and has added the definition of the term "significant air quality impact" at N.J.A.C. 7:27-19.1. The reference to other State and Federal requirements is necessary to ensure that each unit will not violate other environmental standards.

131. COMMENT: EPA stated that N.J.A.C. 7:27-19.6(d)2 does not match the other constraints in the previous sections (that is, N.J.A.C. 7:27-19.6(c). EPA stated that this equation seems much closer to what might be approvable, but it is unclear how it relates to the other constraints. (26)

RESPONSE: The constraints at N.J.A.C. 7:27-19.6(c) are for the demonstration to the Department that the owner or operator of the sources covered under the averaging plan will be able to comply with that plan. The Department felt that this demonstration was necessary before allowing any owner or operator to take advantage of the provisions of this section. The provisions of N.J.A.C. 7:27-19.6(d)2 are the ones which are used to demonstrate compliance with the averaging plan after it has been approved by the Department.

132. COMMENT: Several commenters commented on the continuous emissions monitoring requirements contained in N.J.A.C. 7:27-19.6(e). Their comments were:

1. Alternatives for continuous emissions monitors, including parametric monitoring, should be allowed (12, 32);

2. Specific alternative emission limits for each unit should be allowed (surrogate operating patterns) as an alternative to continuous emissions monitors for those units (12);

3. The requirement for a continuous emissions monitors is too burdensome (3, 32); and

4. The availability of the emissions averaging program should not be dependent on incurring costs to implement continuous emissions monitors which are not otherwise required by the rule, that is glass melting furnaces relying on electricity as a primary energy source. Instead, the commenter believes that final regulations should allow owners and operators of sources not otherwise required to employ continuous emissions monitors to use reasonable alternative means for monitoring, projecting or calculating NO_x emissions as required under this section. (19)

Several commenters then recommended the following change to N.J.A.C. 7:27-19.6(e):

"The owner or operator of the designated set shall calculate the NO_x emissions of each averaging unit using data from a method based on knowledge of the process or other method acceptable to the Department or using data from a continuous emissions monitoring system. . . ." (13, 15, 18, 27, 32)

RESPONSE: The credibility of an emissions averaging approach depends on reliable and accurate data. The Department has determined therefore, that for emissions averaging programs, data should generally be obtained from a continuous emissions monitoring system. The provisions of N.J.A.C. 7:27-19.18 have, however, been modified to allow limited installation of alternatives to CEMs when such can provide sufficient data and are consistent with EPA's Enhanced Monitoring Guidance. The rules now state that peak daily heat input rate should be used. This term is identified in N.J.A.C. 7:27-19.6(b)5. Additionally, the term "peak daily heat input rate" and reference to N.J.A.C. 7:27-19.6(b)5 has replaced the term and reference "maximum heat input rate" and N.J.A.C. 7:27-19.6(b)2, respectively, in the adopted rule.

133. COMMENT: One commenter stated that at the end of the second sentence in N.J.A.C. 7:27-19.6(e), the reference to limited installation of continuous emission monitoring systems should indicate N.J.A.C. 7:27-19.18(e), **not** N.J.A.C. 7:27-19.18(d). (25)

RESPONSE: The commenter is correct, N.J.A.C. 7:27-19.18(e) contains the conditions for approval. This has been changed in the adopted rule.

134. COMMENT: One commenter stated that a 30-day block period should be used during the non-ozone season instead of the 30-day rolling average at N.J.A.C. 7:27-19.6(f)2 in order to be less burdensome for a source and provide equal rule effectiveness. (14)

RESPONSE: The Department specified a 30-day rolling average during the non-ozone season to be consistent with the requirements of the Title IV regulations which require that compliance be based on a 30-day rolling average period. A rolling average is a more stringent requirement than a block average, and State regulations cannot be less stringent than Federal regulations.

135. COMMENT: One commenter questioned how a source would obtain EPA approval for the format of its log book as required at N.J.A.C. 7:27-19.6(g). (3)

RESPONSE: The approval has been simplified upon adoption in that only the Department (and not EPA) has to approve the format of the log book.

136. COMMENT: EPA stated that some method of ensuring data accuracy for the information collected pursuant to N.J.A.C. 7:27-19.6(g) needs to be included. The EPA commenter also stated that it is unclear what the averaging time for the data or the frequency of data collection is. (26)

RESPONSE: The frequency of data collection is noted in N.J.A.C. 7:27-19.6(f)1 and 2. The accuracy of the information to be recorded is controlled under the constraints of N.J.A.C. 7:27-19.6(e) which requires the use of a continuous emissions monitoring system.

137. COMMENT: One commenter questioned if N.J.A.C. 7:27-19.6(h) would relieve a source of the reporting obligations contained in N.J.A.C. 7:27-1. (3)

RESPONSE: The quarterly reports required under N.J.A.C. 7:27-19.6(h) do not relieve a source from other reporting obligations. It is unclear what reporting obligations the commenter is referring to.

138. COMMENT: One commenter questioned if N.J.A.C. 7:27-19.6(i) was limited to owners or operators of electric generating utilities. (3)

RESPONSE: Yes, however, the definition of electric generating utilities has been revised upon adoption to include municipal electric generating facilities.

139. COMMENT: One commenter questioned if notice required at N.J.A.C. 7:27-19.6(i) must be sent only to the appropriate address listed at N.J.A.C. 7:27-19.6(l) or must it also be sent, within two days, to the address identified in N.J.A.C. 7:27-19.6(k). (3)

RESPONSE: The notification required under N.J.A.C. 7:27-19.6(i) need only be submitted to the appropriate address listed at N.J.A.C. 7:27-19.6(l).

140. COMMENT: One commenter supported provisions for catastrophic failure at N.J.A.C. 7:27-19.6(j), but stated that periods of planned maintenance outages should also be included so that compliance with the average is not jeopardized during planned maintenance outages. (14)

RESPONSE: The catastrophic failure section has not been expanded to cover routine outages since these occur during the non-ozone season when demand for electricity is at a minimum. This relatively low demand for electricity and the foreknowledge of the shutdown should allow the utility to comply with the 30-day non-ozone season averaging period with the remaining units under its control.

141. COMMENT: EPA stated that it is unclear how the provisions of N.J.A.C. 7:27-19.6(j) not allowing low emitting units to be closed and high emitting units to continue operation is enforceable for short term curtailments, and possibly also for long-term shutdowns. EPA also questioned that if this were enforceable, would it solve the problems of not having the low-emitting unit to offset higher emitting units? (26)

RESPONSE: The provisions of N.J.A.C. 7:27-19.6(j) are only for catastrophic circumstances that are sudden and reasonably unforeseeable beyond the utilities' control, and only for "low emitters," units for which the NO_x emission rate specified in the Emissions Averaging Plan are less than the applicable maximum allowable NO_x emission rate. It is anticipated that this provision would be used infrequently. The burdensome immediate notification that is required as well as the recordkeeping requirements are intended to prevent the use of this provision for planned outages. This provision is necessary to eliminate the conflict a utility would face during an unforseen event to continue operation or to shutdown rather than risk the severe criminal consequences of being out of compliance.

142. COMMENT: One commenter stated that in order to avoid overly-burdensome reporting, the final rule should allow facsimile or certified mail reporting of non-compliance instead of the proposed hand delivery of this information, as required by N.J.A.C. 7:27-19.6(j). (14)

RESPONSE: The wording in the rule requiring delivery of the notification was included to stress that the notice should be received by the Department, as opposed to sent to the Department, on the required date. The notification delivered under this section may be by facsimile or courier, at the discretion of the owner or operator of the source.

143. COMMENT: Two commenters stated that the report of non-compliance required by N.J.A.C. 7:27-19.6(j) should consist of a verbal notification within two days followed by a certified written report within 30 days. The commenters stated that this approach is needed because of the necessity to certify such a report of violation by at least a corporate vice-president. (15, 27)

RESPONSE: This subsection has been revised to require that a report of non-compliance consist of a written preliminary notice to the Department on the second full working day following the incident, followed by a statement certifying the information contained in the preliminary notice.

144. COMMENT: One commenter stated that they may be required to operate their units above their normal maximum power output rating (that is, beyond the normal maximum allowable NO_x emission rate imposed by the owner or operator upon each averaging unit). The commenter requested a limited exemption from the emission limitation for the set of units designated in the averaging plan if one or more of the designated units operates above their normal maximum power output rating. The commenter recommended the following language change to N.J.A.C. 7:27-19.6(k):

(k) An electric generating utility operating under the condition of maximum emergency generation may exempt certain units operating above the maximum normal power output rating from an averaging demonstration under N.J.A.C. 7:27-19.6 for the duration of the maximum emergency generation alert, provided that within two (2) working days, the utility shall deliver the following information to the Department:

i. A certification from the utility confirming the maximum emergency generation alert;

ii. A listing of any generating unit that operated above its maximum normal power output rating during the alert; and

iii. The duration of the maximum emergency generation. (25)

RESPONSE: The Department will propose an amendment to this rule to allow for an exemption from the averaging provisions during maximum emergency generation (MEG) alerts. The Department will include provisions which will limit the amount of times that a utility may take advantage of this provision without having to account for the emissions which are generated during these alerts.

N.J.A.C. 7:27-19.7 Non-utility boilers

145. COMMENT: Several commenters stated that any existing non-utility boiler with specific design or dimensional constraints that either prevents installation of low NO_x burners, flue gas recirculation or overfire air, or where such installations will result in costs exceeding $1500/ton of NO_x reduction should be exempt from the NO_x emission limits provided in Table 5 or 6 of N.J.A.C. 7:27-19.7(b) and (c). The commenters stated that these conditions should be documented to the

Department in the facility's compliance plan and the boilers should be subject to compliance under N.J.A.C. 7:27-19.7(a). Non-utility boilers are smaller than utility boilers and have fewer control options available. In particular, many non-utility boiler houses have no available space to allow external devices or allow major boiler modifications without incurring unreasonable costs (for example, combustion modifications that result in a longer flame length may be limited by the requirement to avoid flame contact against the boiler's walls). (1, 15, 27)

RESPONSE: The Department believes that the rates specified are attainable for most boilers. However, N.J.A.C. 7:27-19.13(a)2 has been included, which allows for the determination of an alternative maximum allowable emission rate if the owner or operator of a source demonstrate that it can not comply with the provisions of this subchapter using RACT. The Department refrained from specifying any dollar per ton number above which a technology is not considered to be RACT.

146. COMMENT: Two commenters stated that any boiler covered under N.J.A.C. 7:27-19.7 that has low NO_x burners installed in combination with overfire air or flue gas recirculation should be deemed to be operating in compliance with the emission rates provided in either Table 5 or 6, regardless of the results of stack testing completed under N.J.A.C. 7:27-19.17. The commenters stated that this clause is necessary because the nitrogen content of commercial fuel (a significant factor in the rate of NO_x formation) is variable, is currently not regulated by the Department, and can therefore not be controlled by the regulated industry. (1, 15, 27)

RESPONSE: The intent of the rule is to reduce air pollution. The spirit of the rule is not to specify a technology as meeting the requirements of RACT, but instead has specified an emission limitation which is deemed to be RACT. This is a more flexible concept of RACT which allows the consideration of costs of control technologies along with the expected emissions reductions. If the owner or operator of a source demonstrate that he is unable to comply with the emission limitations in this subchapter, provisions have been included at N.J.A.C. 7:27-19.13(a)2 which offer a means for obtaining an alternate RACT emission limit.

147. COMMENT: One commenter stated that the Department should revise N.J.A.C. 7:27-19.7 to specify that the use of natural gas with no additional controls, No. 2 fuel oil with a low-NO_x burner, and other liquid fuels with both low-NO_x burners and flue gas recirculation, should be defined as compliance with the RACT requirements for non-utility boilers. The commenter stated that since a technology equivalent has been defined in the rule as RACT, the installation of this equipment should insure that these requirements will be met. (16)

RESPONSE: Designating a technology standard as RACT is not consistent with the spirit of the rule. The varying nature of the sources regulated and the variations in efficiency of the technology installed make it difficult for the Department to predict the benefits of a rule which requires the installation of a specific technology. As several commenters have pointed out, No_x control technology costs are rapidly changing. Numerical limits are necessary to allow sources to use alternative technologies and to be able to trade any excess reductions by establishing a ceiling below which emission reductions are creditable for averaging.

148. COMMENT: The commenter stated that flue gas techniques other than flue gas recirculation may have some effect on the removal of NO_x in burners using Nos. 4, 5, and 6 fuel oils. The commenter added that for some burners, the use of 20 percent flue gas recirculation limit mentioned in the preamble to the rule may result in safety concerns. (4)

RESPONSE: The Department was aware of the potential impacts of specifying a minimum flue gas recirculation percentage, and therefore only specified emission limits. If the owner or operator of a boiler demonstrates that a particular boiler is unable to comply with the emission limits specified in this subchapter without incurring unreasonable costs or causing possible safety violations, then the owner or operator of such a boiler may obtain an alternative RACT emission rate under N.J.A.C. 7:27-19.13(a)2.

149. COMMENT: One commenter stated that the compliance costs for utility and non-utility boilers will be dissimilar because non-utility boilers are typically: (1) operated at lower utilization rates, and (2) significantly smaller units than utility boilers. (16)

RESPONSE: The Department has taken the size and utilization rate of boilers into account by providing an exemption from the requirements of subchapter 19 for any boiler which is located at a facility which has the potential to emit less than 25 tons of NO_x per year and 147 pounds of NO_x per day. If the boiler is located at a facility which emits greater than these de minimis levels, then the boiler must install RACT. The cost basis for non-utility boilers was taken from both the CARB RACT analysis and the EPA's ACT document for industrial, commerical and institutional boilers, and is consistent with both documents.

150. COMMENT: The commenter stated that the Department should be aware that US EPA is proposing in its draft Alternative Control Techniques (ACT) documents for industrial, commercial and institutional boilers less stringent emission limits than those in this regulation (for exapmle, coal, dry bottom, tangentially fired—0.45 lb/MMBTU; face-fired boilers—0.55 lb/MMBTU; natural gas, tangentially fired—0.2 lb/MMBTU; natural gas, face-fired boilers—0.3 lb/MMBTU). (26)

RESPONSE: The Department is currently reviewing the latest ACT document and will propose changes to the rule if appropriate.

151. COMMENT: One commenter expressed concern that stand-by boilers are to be held to the same performance standards as all other boilers. The commenter stated that the Department should recognize the high incremental cost of compliance for boilers which may be operated on a limited basis. Specifically, the commenter stated that a 0.28 lb/MMBTU hourly emission rate may be unachievable for some of their boilers using number 6 fuel oil (0.30 lb/MMBTU would be achievable), and requested clarification over the application for an alternative maximum limit under 19.13(a)2. (30)

RESPONSE: The Department has revised the definition of an emergency generator to include steam generators. The alteration of this definition will exempt any boilers which are used only when the normal source of steam for the facility has been rendered inoperable due to circumstances beyond the control of the owner or operator of the boiler. Such use must be limited to 500 hours per year through conditions on a permit.

152. COMMENT: One commenter requested that the Department incorporate additional flexibility into the regulations so that the impacts to "grandfathered" boilers would be minimized. Specifically, the commenter questioned if their permit could be revised so that their older boilers would not be required to meet the NO_x RACT requirements. The commenter's rationale for this request was that the facility did not operate these boilers above the 50 million BTU per hour threshold even though the design capacity of these boilers was above this threshold. (9)

RESPONSE: The Department must regulate sources based on their potential to emit. In order for these sources to be exempted from the provision of subchapter 19, the owner or operator of these boilers would have to obtain Federally-enforceable permit restrictions which limit their potential to emit to less than 25 tons of NO_x per year. Otherwise, the boilers must comply with the emissions limits specified in the rule. Also, since the rule must apply to all existing major facilities, those units grandfathered from the permit requirements cannot be exempted.

153. COMMENT: One commenter stated that the way in which N.J.A.C. 7:27-19.7 was proposed unfairly impacts facilities with older equipment (circa 1930). The commenter added that the design capacity of this equipment should not be the basis for the applicability of the requirements. (9)

RESPONSE: The Department must regulate all sources under the rule. Older major sources, which have not been regulated in the past, and therefore have avoided the costs of controls to date, may be required to install controls at this time to comply with the emission limits in the rule. This will serve to level the playing field for all boilers in the State prior to the implementation of future NO_x emission limitations which may be necessary to attain the NAAQS for ozone. Secondly, the tune-up provisions of the rule which encourage increases in efficiency for boilers may actually result in a cost benefit to the owners and operators of older boilers which may not be currently conducting proper maintenance. Thirdly, the owner or operator of any source covered by the rule may also apply for a repowering exemption under N.J.A.C. 7:27-19.13(a)2 which would allow the source to be used for a maximum of five additional years at which time it would have to be replaced.

154. COMMENT: EPA noted that N.J.A.C. 7:27-19.7(a) does not seem to require controls on units sized between 20 and 50 million BTU/hr. EPA stated that a 49 MMBTU unit has the potential to emit 60 tons per year of NO_x; this is not addressed in the regulation and can represent significant emissions. (26)

RESPONSE: In developing this section of the rules, the Department examined all sources of NO_x emissions within the State and determined that there were approximately 245 boilers in this size range and that they contributed only about three percent of the total summer day NO_x emissions. Due to the large number of individual boilers and the

small fraction of the total NO_x emissions which they represent, the Department believes that the requirement for an annual tune-up was reasonable for these sources at this time. Also, actual capacity factors for these kinds of boilers are likely to be such that most of them emit less than 25 tons per year. If future ambient air quality modeling shows that further reductions in NO_x are needed to attain the NAAQS for ozone, then this section will be reevaluated to determine if further controls should be required on these sources.

155. COMMENT: Two commenters stated sources should have until May 31, 1995 to comply with the annual combustion adjustment requirements at N.J.A.C. 7:27-19.7(a) since this is considered RACT for these sources and the RACT deadline for compliance is May 31, 1995. The commenters suggested that N.J.A.C. 7:27-19.7(a) be changed to indicate the following:

(a) Beginning in calendar year 1995 [1994, the owner or.... (15, 27)

RESPONSE: The Clean Air Act specifies that RACT shall be installed as expeditiously as practical, but not later than May 31, 1995. The Department believes that it is reasonable for sources covered by N.J.A.C. 7:27-19.7(a) to adjust the combustion process of these boilers beginning in 1994.

156. COMMENT: Two commenters stated that the NO_x, CO and O_2 concentration testing that would be needed under the annual adjustment requirements of N.J.A.C. 7:27-19.7(a) is overly burdensome and costly and could be more expensive than the costs of control devices needed to comply with the standard. One commenter stated that sources should be given the option to either comply with RACT limits or complete the annual adjustments. (15, 27)

RESPONSE: The measurements required by this section need not be conducted using the costly methods usually required when conducting compliance tests, but may be conducted using portable equipment that has been certified to give accurate readings.

157. COMMENT: One commenter stated that there appears to be a typographical error in the heading to Table 5 of N.J.A.C. 7:27-19.7(b); the heading should refer to N.J.A.C. 7:27-19.7(b), not N.J.A.C. 7:27-19.1(b). (25)

RESPONSE: The table has been revised to reflect the correct citation of N.J.A.C. 7:27-19.7(b).

158. COMMENT: One commenter stated that the averaging time used in determining the emissions limits in Tables 5 and 6 of N.J.A.C. 7:27-19.7(b) and (c), respectively, should be clarified. (26).

RESPONSE: The averaging time applied to the limits in Table 5 or 6 varies depending upon the method used to demonstrate compliance with those emission limits. If the source has installed a continuous emissions monitoring system, then the averaging period is 24 hours. If the source is demonstrating compliance through stack testing, then the emission limits are compared against the average of three one-hour stack tests. This is set forth at N.J.A.C. 7:27-19.15.

159. COMMENT: The commenter stated that some small industrial boilers that were designed to have a high BTU per cubic foot furnace volume classification (for example, package units and railroad-transportable units) may have difficulty meeting the standard for NO_x reduction called for at N.J.A.C. 7:27-19.7(b) and (c). (2)

RESPONSE: See the response to Comment 161. Also, provisions were included at N.J.A.C. 7:27-19.13(a)2 which would allow for the specification of an alternative RACT limit to which these smaller boilers could comply.

160. COMMENT: Several commenters stated that the emission limits in Table 5 of N.J.A.C. 7:27-19.7(b) should be no more stringent than those of Table 6 without N.J.A.C. 7:27-19.7(c). The commenters noted that the limits defining sizes for non-utility boilers vary between Tables 5 and 6, resulting in more stringent limits for smaller boilers than for large boilers. (1, 15, 27)

RESPONSE: The emission limits specified for the smaller boilers regulated under N.J.A.C. 7:27-19.7(b) are consistent with the emission limits adopted by the California Air Resources Board (CARB) as being RACT for this size of boiler. The smaller units tend to generate less heat and therefore generate less NO_x than the large boilers.

161. COMMENT: One commenter stated that the majority of utility boilers are "field erected" units designed and built for a specific site, and the majority of industrial units are "package boilers" which were preassembled to some degree and shipped to the site. The commenter stated that the dissimilarity of the utility and non-utility units precludes an equivalent approach in their regulation as set forth at N.J.A.C. 7:27-19.7(c). (16)

RESPONSE: In setting the emission limits for non-utility boilers, the Department used the data contained in the CARB RACT recommendations, as well as information contained in the industrial boiler ACT issued by the EPA. Both sources support the emission limits specified in Table 6. However, provisions were included at N.J.A.C. 7:27-19.13(a)2 which allow for the specification of an alternative maximum allowable emission rate if the owner or operator of the sources shows it can not comply with the emission limits specified in Table 6.

162. COMMENT: One commenter questioned the technical basis for the emission limits specified in Table 6 of N.J.A.C. 7:27-19.7(c). (30)

RESPONSE: The emission limits set forth in Table 6 were based on a report prepared for the EPA titled "Evaluating and Costing of NO_x Control for Existing Utility Boilers in the NESCAUM Region," and subsequently issued by the EPA as an ACT. Any larger boiler which is greater than 100 MMBTU/hr should be able to comply with these limits.

N.J.A.C. 7:27-19.8 Stationary internal combustion engines

163. COMMENT: One commenter recommended emissions limits from the California district rules for stationary internal combustion engines that are more representative of the control capabilities of commercially achievable technology (the commenter included excerpts from several California district rules in the written comments). (7)

RESPONSE: In developing this rule, the Department was aware of the requirements for internal combustion engines in California. However, the California rule virtually outlaws the use of liquid fuels in these engines, which the Department did not wish to do. The California regulations also disregarded the impact the control technologies may have on CO emissions from these sources, which the Department is concerned with keeping to a minimum. Some of the technologies required by the California rules also have other environmental impacts associated with them, such as the use of ammonia (a hazardous chemical). At this stage in the development of a total NO_x reduction strategy to attain the NAAQS for ozone, the Department believes that the limits currently specified in the rule appropriately represent RACT for sources located in New Jersey.

164. COMMENT: One commenter stated that many of the natural gas-fired, large bore, low rpm internal combustion engines used by the natural gas pipeline industry are over 50 years old, and that the clean-burn retrofitting specified under the RACT-level controls required by N.J.A.C. 7:27-19.8 may not be a readily attainable adaptation. The commenter suggested that an intermediate step for these engines involves the addition of parametric control modifications. The commenter stated that these controls would enable the monitoring and control of air-to-fuel ratios and engine timings, and the minimizing of emissions through changes to engine settings. The commenter stated that such a program could reduce NO_x emissions by 25 percent. (21)

RESPONSE: The Department is aware that not all of the engines mentioned by the commenter will be able to comply with the emission limits set forth at N.J.A.C. 7:27-19.8(b) by using technology which meets the definition of RACT. Provisions have been included at N.J.A.C. 7:27-19.13(a)2 allowing for the specification of an alternative RACT emission rate. The limits in the rule were based on information contained in the EPA ACT for internal combustion engines and a study prepared by the Natural Gas Research Institute which examined the NO_x reduction potention for gas pipeline compressor engines.

165. COMMENT: One commenter stated that the proposed standard of 1.5 gm/hp-hr found at N.J.A.C. 7:27-19.8(a) is below some of the documented levels of performance among engines of the same or different models and does not take into consideration changes that must occur over time. The commenter added that experience using non-selective catalytic reduction (NSCR) on pipeline compressors and cyclically loaded engines is very limited, and its level of performance will be uncertain until actually placed into operation. The commenter stated that many owners may seek approval of a proposed NSCR system under N.J.A.C. 7:27-19.13(a)2 for an alternative maximum allowable emission rate, and that such actions would defeat the administrative efficiencies of a single numerical standard. The commenter recommended that the proposed standard of 1.5 gm/hp-hr be increased to a more realistic value (5.0 gm/hp-hr) by revising N.J.A.C. 7:27-19.8(a) as follows:

(a) The owner or operator of a rich-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 5.0 grams of NO_x per horsepower hour when using non-selective catalytic reduction

(NSCR). If NSCR cannot be installed on an engine, the owner or operator must comply with Section 7:27-19.13. (32)

RESPONSE: The Department disagrees. In reviewing the ACT document prepared by the EPA, which examines all control technologies applicable to internal combustion engines, the Department has determined that 1.5 gm/hp-hr represents RACT for internal combustion engines. For reasons discussed in the response to Comment 146 above, the Department will not specify any one technology which is to be used to comply with RACT.

166. COMMENT: One commenter stated that the Department should be aware that USEPA is proposing in its draft Alternative Control Techniques documents for stationary internal combustion engines less stringent emission limits than those specified at N.J.A.C. 7:27-19.8(a), (b) and (c) (for example, for internal combustion engines, US EPA's proposed limits for rich-burn and lean-burn engines is 2.0 grams/hp-hr). (26)

RESPONSE: The Department is currently reviewing the latest version of the ACT document. If appropriate, the emission rates for internal combustion engines will be revised in the future.

167. COMMENT: One commenter stated that the extensive reconstruction and uncertainty of retrofit engine parts required for the lean-burn engine requirements precludes the consideration of conversion to clean-burn combustion as RACT for existing lean-burn engines. The commenter suggested that alternative RACT for these engines are adjustments to the air/fuel ratio, ignition timing retard, or a combination of these two control technologies (the commenter stated that the NO_x reductions achievable by these technologies range from 25 to 50 percent, and that the maximum effectiveness of these technologies would be about 9.0 gm/hp-hr). The commenter suggested that N.J.A.C. 7:27-19.8(b) be revised as follows:

(b) The owner or operator of a lean-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 9.0 grams of NO_x per horsepower hour when applying clean-burn combustion technology. If clean-burn combustion technology is unavailable for an engine, the owner or operator must comply with Section 7:27-19.13. (32)

RESPONSE: If, despite the utilization of reasonable control measures, the specified RACT emission limit is not met, an alternative RACT Limit may be requested.

N.J.A.C. 7:27-19.10 Glass furnaces

168. COMMENT: One commenter stated that there is neither evidence nor scientific justification to conclude that the rule provisions, as they affect glass furnaces, will enable the State to achieve the NAAQS for ozone. (33)

RESPONSE: The proposed rule implements the Clean Air Act mandate to require the installation of RACT on all major sources of NO_x within the State. RACT implementation does not require a demonstration linking the emissions from a particular source or source category to attainment of the NAAQS. Applicability of the rule is, consistent with Federal law, based solely on the definition of a major source. Since glass furnaces are a major source of NO_x in New Jersey, they are required to install RACT technology. The Department believes that the emission limits specified in the rule represent RACT for glass furnaces.

169. COMMENT: One commenter proposed that N.J.A.C. 7:27-19.10 include a de minimis level for the fossil fuel energy contribution below which NO_x reductions would not be required. (11)

RESPONSE: The Department agrees and has indicated at N.J.A.C. 7:27-19.2 the percentage of heat input which must come from fossil fuel, as reflected in the furnace's potential to emit, for the furnace to be subject to this subchapter.

170. COMMENT: One commenter requested confirmation that N.J.A.C. 7:27-19.10 does not apply to tableware glass manufacturing furnaces, and guidance on the Department's future plans for regulating these furnaces. The commenter recommended that the same reasoning used in the development of the proposed regulations to borosilicate recipe glass should be applied to tableware glass. While the commenter prefers the inclusion of tableware glass manufacturing in the NO_x regulations with defined standards, should this not occur, the commenter requested that tableware glass manufacturing furnaces be expressly exempt from these NO_x regulations. In such case, the commenter suggested the following language be added as a new subsection N.J.A.C. 7:27-19.2(g): "The provisions of this subchapter shall not apply to glass manufacturing furnaces producing primarily tableware glass." (22)

RESPONSE: In the development of N.J.A.C. 7:27-19.10, the Department held several meetings with representatives from glass packaging manufacturers. The provisions in the rule are a direct result of suggestions made during these meetings. As currently written, N.J.A.C. 7:27-19.10 does not specify emission limits for glass furnaces which produce tableware glass. However, this type of glass furnace is not exempt from the provisions of the rule. Instead, the owner or operator of any glass manufacturing furnace which produces tableware or flat glass and meets the criteria specified at N.J.A.C. 7:27-19.2(c) will be required to submit a facility-specific NO_x control plan in accordance with the provisions of N.J.A.C. 7:27-19.13.

171. COMMENT: One commenter stated that the cost effectiveness for low-NO_x burners for glass furnaces is much higher ($1,200-3,700/ton) than for utility boilers. (26)

RESPONSE: There is a wide range of cost effectiveness estimates available for low-NO_x burners. The provisions in the rule have been in effect in California for several years, where experience shows the limits are achievable in many cases without the installation of low-NO_x burners. The Department believes that the emission limits specified in the rule as proposed meet the definition of RACT.

172. COMMENT: One commenter raised several points regarding the establishment of a baseline under N.J.A.C. 7:27-19.10(c)1. The following points were raised:

1. Sources should have the option of establishing the emissions baseline as being the emission rate measured at any representative time no earlier than November 15, 1990, and through means other than source emissions testing, if such testing is impracticable; and

2. Baseline testing should only be required of a source's primary fuel, not all fuels which may be used by the furnace, since the costs for conducting such test would be prohibitive.

The commenter recommended the following change to N.J.A.C. 7:27-19.10(c)2i to accommodate his concerns:

(c)2i: "... from the baseline emission rate established under (c)1 above; or..."

The commenter went on to state that requiring a baseline to be established through source emissions testing might force a source to choose between (1) violating a condition of its present permit requiring use of certain controls, in order to obtain a reading representative of earlier NO_x emissions levels, or (2) simply foregoing participation in the averaging program. The commenter added that a source should not lose the benefit of having implemented changes to reduce NO_x emissions earlier than required under these regulations if a reasonable method for calculating the pre-change NO_x emission levels is available. (19)

RESPONSE: The Department agrees, and has clarified N.J.A.C. 7:27-19.10(c) accordingly.

173. COMMENT: One commenter stated that the final regulations should retain flexibility to allow a source to use alternative reasonable means for making the demonstration that NO_x emissions have been reduced at least 30 percent as presently afforded in proposed N.J.A.C. 7:27-19.10(c)2ii. The commenter stated that this flexibility should include the ability to rely on emissions tests not witnessed by representatives from the Department so long as the source provides reasonable descriptions of any test procedures used and assurances of the accuracy of the results and appropriate correlations for representative and comparable furnaces. (19)

RESPONSE: In some cases, Department representatives need not be present for tests. Any testing performed pursuant to this section must be performed in accordance with the procedures set forth at N.J.A.C. 7:27-19.17 which requires prior Departmental approval and may require that the Department witness the test. Any less stringent testing procedures would jeopardize the accuracy of the data submitted the Department.

174. COMMENT: One commenter stated that the deadlines for complying with N.J.A.C. 7:27-19.10(d) are impossible to meet given the major design revisions thought necessary to meet the applicable emission reductions, and time necessary to procure the necessary materials. The commenter stated that any emission limitation or plan implementation should become effective upon completion of the first re-bricking where the planning process for that re-bricking occurs after the effective date of the rules. The commenter added that the rules should be made clear that prior to such time, there would be no necessity to obtain required permits and certificates, install the approved control technology and comply with any emission limits. (33)

RESPONSE: In developing the rule, the Department learned from the glass industry that a rebricking is done once every five to 10 years.

In order to allow for the more economical installation of RACT controls, the Department at N.J.A.C. 7:27-19.10(d), extended the final compliance date until May of 1997 to allow four years from the date of the proposal (February 16, 1993) to incorporate the controls required. However, the Department may consider extending this deadline on a case-by-case basis where sufficient documentation has been submitted to indicate that such an extension is warranted because of the normal rebricking schedule. In the event of such an extension, the owner or operator of the source must conduct an annual combustion adjustment between May 31, 1995 and the time that the furnace complies with the emission limits set forth under N.J.A.C. 7:27-19.10.

N.J.A.C. 7:27-19.11 Incinerators (Reserved)

175. COMMENT: The commenter stated that they were concerned and frustrated that the proposed rules did not include NO_x RACT requirements for garbage incinerators (municipal incinerators). (6)

RESPONSE: The Department understands the commenter's concerns. However, the Department made the decision not to include specific limitations on municipal solid waste combustors in light of the imminent release of new emissions standards for these sources by the EPA. At present, municipal waste combustors will still be subject to the facility-specific NO_x control plan requirements of N.J.A.C. 7:27-19.13 which will consider the federal standards if proposed as expected.

176. COMMENT: The commenter stated that methods to reduce NO_x emissions from municipal incinerators include the separation of nitrogen-containing wastes before incineration (a process that was determined by USEPA to be BACT for the Brooklyn Navy Yard incinerator), and the installation of control devices on the incinerator. The commenter stated that the Department should include these approaches when the municipal incineration regulations are proposed. (6)

RESPONSE: The Deprtment will examine available means of reducing NO_x emissions from these sources if it proposes any rules which regulate these sources. Under N.J.A.C. 7:27-19.13, which apply to incinerators, the operator must evaluate such controloptions in the process of selecting a facility-specific NO_x control plan.

N.J.A.C. 7:27-19.13 Facility-specific NO_x emissions limits

177. COMMENT: One commenter stated that the Department should clarify whether state-of-the-art provisions are required in an application for an alternative emissions rate or facility-specific emissions rate under N.J.A.C. 7:27-19.13. (14)

RESPONSE: New source State-of-the-art is not required. Existing source RACT is required. The same analysis required under N.J.A.C. 7:27-19.3(c) applies to this section.

178. COMMENT: One commenter stated that N.J.A.C. 7:27-19.13 should be revised to allow for an extension of the deadline for RACT installation for facilities that plan to shutdown or reconstruct the sources regulated at N.J.A.C. 7:27-19.13(a)1 and 2. The commenter stated that the installation of RACT controls is not economically feasible on a source which is to be shut down or reconstructed in the near future. The commenter recommended that the facility NO_x control plan should allow facilities that plan to shut down a source operation prior to April 30, 1999, or plan to reconstruct the source operation and install NO_x control equivalent to BACT for new sources, to delay RACT installation if an enforceable commitment is made. The commenter recommended the addition of N.J.A.C. 7:27-19.13(p):

(p) in lieu of complying with the RACT installation timing set forth in (m) above, the owner or operator of a facility subject to this section may delay RACT installation on a source operation if it is to be shutdown or reconstructed before April 30, 1999. The owner or operator electing to comply with this subsection shall satisfy all of the following requirements:

1. The NO_x facility plan must describe how NO_x emissions can be minimized with existing equipment.

2. Before January 1, 1995, enter into a federally-enforceable agreement with the Department which prohibits the continued operation of the source operation after April 30, 1999, unless it is reconstructed and will meet BACT new source control requirements. (17)

RESPONSE: The Department intends to propose an amendment to this rule in the near future which will provide repowering incentives for units which are to be reconstructed or replaced by newer units provisions similar to that for utility boilers. However, source shutdowns, without replacement of the source, would have to be done prior to May 31, 1995 to avoid the RACT Limit within the rule.

179. COMMENT: Several commenters stated that the 10 tons per year of NO_x trigger limit referred to at N.J.A.C. 7:27-19.13(a)1 is inconsistent with the CAAA and overly burdensome and should be increased to the 25 ton per year NO_x emission rate specified in the Clean Air Act. The commenters also recommended that the final rule be no more stringent than the Clean Air Act. (14, 15, 27)

RESPONSE: The provision at N.J.A.C. 7:27-19.13(a)1 limits the emission units subject to this section. Without this provision, a facility would be forced to analyze all NO_x emission sources within the facility, regardless of the amount of NO_x they emit. With this provision, only emissions units greater than 10 tons need be examined. This provision caused much confusion because of the difference in the use of the term "source" between the Department and the EPA. When EPA (and the Clean Air Act) refers to a source, it is referring to a facility as a whole. When the Department uses the term "source," it is referring to a specific source operate within a facility. A source (emissions unit) which is not otherwise regulated by this subchapter, and which emits less than 10 tons of NO_x per year, is determined to be already complying with RACT even if the facility emissions exceed 25 tons per year.

180. COMMENT: Several commenters stated that the information required by N.J.A.C. 7:27-19.13(a), (b), (c) and (d) to develop a facility-specific "NO_x control plan" is burdensome and will not produce additional environmental benefit. The commenters added that because this review is similar to the state-of-the-art review which new facilities permitted in the last five years have already undergone, these facilities would pass the review specified by the RACT administration in the rule. The commenters recommended the following revision to N.J.A.C. 7:27-19.13(o):

(o) The following are exempt from the provisions of this subchapter:

1. A facility, if the only equipment or source operation(s) at a major facility that emit more than ten (10) tons/yr are non-utility boilers.

2. A source operation subject to 19.13(a)1 if the date of approval of the permit authorizing the installation of the equipment or control apparatus is less than five years from (effective date of this regulatory revision). (15, 17, 27)

RESPONSE: Because the status of NO_x control technology is rapidly changing, a state-of-the-art review could vary considerably within five years. The Department believes it appropriate to review all facilities subject to this subchapter for compliance with RACT.

181. COMMENT: Several commenters suggested that N.J.A.C. 7:27-19.13(b) should be modified to allow for petitions for alternate limitations beyond the proposed three months after the operative date of the subchapter. The commenters stated the following reasons:

1. Sources may not know if their reduction strategy will be successful in attaining compliance with the limitation within the three month time frame. Hence, they should be allowed to apply for alternative emission limits after discovering that the technology chosen to comply with the emission limits is incapable of doing so (16);

2. Three months is insufficient time to conduct stack emission testing to determine actual emissions and prepare engineering studies for the selection and design of controls (15, 27); and

3. The Department may not be able to adequately review these plans to meet the 30-day administrative completeness certification and the six month review. (15, 27)

Several commenters suggested ways of resolving this issue:

1. Allowing an 18-month period following the operative date of this subchapter for the submittal of these emissions plans (15, 27);

2. Using a phased-in approach (15, 27);

3. Providing extensions for the submittal of applications for RACT control. The commenters suggested that the approval of an extension by the Department could be contingent upon the applicant certifying that it will install RACT technologies prior to May 31, 1995. (3, 15, 17, 27)

RESPONSE: N.J.A.C. 7:27-19.13(b) contains no date by which these applications must be submitted to the Department. Any request for an alternative maximum allowable emission rate may be submitted to the Department at any time.

182. COMMENT: One commenter stated that three of their boilers had an extensive permit modification process but would not meet the proposed NO_x emission standards for oil- or gas-firing boilers in some instances. The commenter requested clarification that these sources could be addressed under N.J.A.C. 7:27-19.13(b), and that these boilers would be in compliance with the proposed NO_x RACT requirements. (34)

RESPONSE: If the owner or operator of these boilers can demonstrate that they are unable to comply with the emission limits in this subchapter by using reasonable methods, then that person may apply for an alterna-

tive maximum allowable emission rate as allowed for at N.J.A.C. 7:27-19.13(a)2. Under this facility-specific analysis, the available technologies are evaluated with respect to a particular unit. However, without having specific knowledge of the boilers in question, and not knowing how the NO_x emissions from the boilers were examined, the Department can not make a blanket statement at this time as to whether the boilers will comply with RACT.

183. COMMENT: One commenter stated that facility-specific NO_x emission limits approved under N.J.A.C. 7:27-19.13(b) or (c) should be submitted to EPA for approval and incorporated as a SIP revision so that the alternative limits are clearly enforceable. (26)

RESPONSE: N.J.A.C. 7:27-19.13 has been clarified to indicate that alternative maximum allowable emission limits granted under N.J.A.C. 7:27-19.13(b) or (c) must be incorporated into the SIP.

184. COMMENT: One commenter stated that the case-by-case procedure for demonstrating compliance with the alternative maximum allowable emission limit at N.J.A.C. 7:27-19.13(c) is too complex and overly burdensome. The commenter stated that such a demonstration would be more appropriate for sources that have no alternative means of compliance rather than sources that have installed the best type of that system which is available but are still unable to meet the emission limits established in the rule. (25)

RESPONSE: A full analysis of all available control technologies is particularly important where a source is unable to meet the emission limits specified in the rule. Only then can the Department make a determination what is RACT. The Department does not intend to be overly burdensome or evasive by the frequent employment of N.J.A.C. 7:27-19.13. NO_x RACT control of air pollution is a previously unregulated area for the Department. Analysis of available control technologies is useful to the Department beyond the evaluation of individual RACT. The Department remains committed to working with the regulated community to collect and analyze data regarding the adopted emission rates and, if necessary, will amend the rule in the future.

185. COMMENT: One commenter stated that the requirements to identify, analyze and assess various NO_x control technologies at N.J.A.C. 7:27-19.13(c) and (d) are not necessary where a RACT technology has been identified by the Department as well as by the applicant. The commenter recommended that N.J.A.C. 7:27-19.13(c) and (d) be revised to require only a demonstration that the RACT system chosen represents advances in the art of air pollution control for the type of system chosen. (25)

RESPONSE: The Department has declined to specify one control technology which is considered as RACT for any source. The Department specifies emission limits which constitute RACT. Therefore, before an alternative maximum allowable emission rate can be approved, the full analysis of all available technologies is required to demonstrate that no reasonably available technology exists which is capable of meeting the emission limits specified in the rule.

186. COMMENT: One commenter stated that the word "reasonably" should precede the term "able to comply" at N.J.A.C. 7:27-19.13(c)2. The commenter stated that this was necessary so that overly optimistic emissions levels will not be set, thereby forcing the owner or operator to violate the emission limitation of the designated set. The commenter stated that this recommended change should allow the Department discretion in giving one or more noncomplying units alternative limits, while allowing remaining units to operate within comfortable and reasonably attainable limits, in cases where no other reasonable equipment modifications can be made within the system. (12)

RESPONSE: The Department agrees with this commenter and has made the suggested clarification.

187. COMMENT: One commenter stated that the requirement to demonstrate that a source operation or item of equipment is not able to comply with NO_x RACT through any alternative means of compliance established under N.J.A.C. 7:27-19.13(c)2, or through compliance with an averaging plan is very onerous, and does not clearly define to what extent the applicant will need to perform a demonstration. The commenter recommended that if a source cannot comply with the RACT emissions limit (Table I) but can obtain certain reductions through use of an innovative control technology, then that source should not be included in an averaging scheme and should not be required to show proof pursuant to N.J.A.C. 7:27-19.13(c)2. (14)

RESPONSE: The Department's purpose in including the provisions at N.J.A.C. 7:27-19.13(c)2 was to require the applicant to examine the possibility of complying with this subchapter through means other than this section, since approvals under this section are required to be submitted to EPA as a SIP revision. The demonstration required under N.J.A.C. 7:27-19.13(c)2 will not be unduly rigorous, but should demonstrate that the applicant has examined the possibility of complying through averaging. The Department does not intend an overly detailed analysis of the entire system under an applicant's control before allowing the facility to take advantage of this section.

188. COMMENT: One commenter stated that N.J.A.C. 7:27-19.13(f) does not specify the form that the public comment should take. The commenter recommended that written comments, not public hearings, be required. The commenter stated that if public hearings are specified, the Department should formally propose and promulgate the criteria to be used in making decisions. (3)

RESPONSE: Any facility-specific NO_x control plan approved under this section must be incorporated into the State Implementation Plan for the Attainment of the NAAQS for Ozone. Specific procedures have been set forth by the EPA on the public comment process which must be followed in order for the SIP revision to be accepted. This process requires a mechanism for "public comment." This has been interpreted to mean a public hearing, as well as the opportunity to provide written comments. Any public hearings held by the Department would be held in conformance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

189. COMMENT: Two commenters questioned if the public comment required by N.J.A.C. 7:27-19.13(f) is needed for each application for a NO_x control plan or request for an alternative maximum allowable emission rate. The commenters recommended that the Department should only allow public comment whenever it finds a significant degree of public interest in a permit application or whenever the Department determines that such comments might clarify one or more issues involved in the decision. (15, 27)

RESPONSE: The public comment procedure must be performed for each approval under this section. Public comment is required by the EPA since all approvals under this section will become part of the SIP, and the SIP must undergo a public comment process before the EPA can accept it.

190. COMMENT: One commenter stated that the approval criteria for NO_x control plans at N.J.A.C. 7:27-19.13(g) are unclear and contain no definitive criteria. Specifically, the commenter stated that (1) the requirement to consider "all control technologies available" could be interpreted to include technlogies which are not demonstrated in comparable commercial applications and should not be considered RACT; (2) no criteria are supplied for the applicant to demonstrate that costs for technologies not selected are "disproportionate" to the improvement in reduction of emissions rate or to costs incurred for control of NO_x emissions by others in the owner or operator's industry; and (3) the use of an overall control system efficiency of 90 percent as a determining criterion for determining the application of RACT to manufacturing processes could be interpreted as requiring a focus on add-on technology for existing control systems, rather than an evaluation of the overall system and its efficiency. The commenter also stated that major investments made by industry in upgrading control systems in anticipation of Clean Air Act requirements must be considered in making any RACT determinations. (30)

RESPONSE: First, the provisions of N.J.A.C. 7:27-19.13(g) do not require that the system chosen be 90 percent efficient. The Department assumes that the commenter is referencing current EPA policies regarding the case-by-case determination of RACT for sources of VOCs. This policy does not apply to the determination of case-by-case RACT for sources of NO_x.

The requirement to examine all control technologies available has been included because many technologies, such as Selective Non-Catalytic Reduction (SNCR), may be RACT for one source and not be considered RACT for another, depending upon the specific circumstances of the source in question. Therefore, the Department did not want to limit the scope of the technologies required to be examined by any source seeking an approval under this section.

The Department did not include specific dollar per ton amounts at N.J.A.C. 7:27-19.13(g)6 because of the uncertainties with such estimates.

191. COMMENT: The commenter stated that the department could reduce its six-month review time for plan review allowed under N.J.A.C. 7:27-19.13(g) and increase the time for industry to prepare the plans. (17)

RESPONSE: The Department will not shorten the period of review for routine low NO_x burner applications. However, for a more com-

plicated review, six months is the minimum amount of time needed. The final rule allows industry to obtain a 60 day extension of the plan deadline.

192. COMMENT: Two commenters recommended the following change to N.J.A.C. 7:27-19.13(g)2 so that consistency would be maintained with N.J.A.C. 7:27-19.13(d)3:

2. The proposed plan or request contains all feasible control technologies available for the control of NO_x emissions from the type of equipment or source operation in question.... (15, 27)

RESPONSE: The purpose of N.J.A.C. 7:27-19.13 is to enable the Department to verify that the technologies which the owner or operator of a source chooses not to use are either economically or technologically infeasible to install and operate. By not requiring the owner or operator of the source not to examine any controls which he deems infeasible, the purpose of this section of the rule would be defeated.

193. COMMENT: One commenter stated that clarification was needed regarding the definition of "materially contribute" at N.J.A.C. 7:27-19.13(g)6. (15, 27)

RESPONSE: The wording of this section has been clarified to refer to "the applicable significant air quality impact level set forth in Table 1 at N.J.A.C. 7:27-18.4."

194. COMMENT: One commenter stated that the requirements at N.J.A.C. 7:27-19.13(g)6 should not include an evaluation of "any other environmental impacts" unless these potential impacts are defined within the regulation. The commenter suggests revising N.J.A.C. 7:27-19.13(g)6 as follows:

Emissions [at each proposed limit] **from any averaging units exceeding the NO_x emissions limit under N.J.A.C. 7:27-19.4 or 19.5** will not cause or [materially] **significantly** contribute to an exceedance of the NAAQS for nitrogen dioxide. [or any other impact inconsistent with the purposes of this chapter, the Air Pollution Control Act, N.J.S.A. 26:2(c)1 et seq., or the Clean Air Act, 42 U.S.C. 7401 et seq.] (25)

RESPONSE: The Department has not made the latter change recommended by the commenter. The purpose of including this section in the rule is to enable the Department to examine any environmental impacts associated with the facility-specific NO_x control plan or alternative maximum allowable emission rate. For example, impacts could include increases in CO emissions, increases in VOC emissions, increases in ammonia emissions if SCR or SNCR is used, or other types of potential emissions from the source. This provision is also necessary to ensure that this section does not create a loophole which would allow sources to circumvent New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (NESHAPS) or Prevention of Significant Determination (PSD) requirements.

195. COMMENT: One commenter stated that the Department has not defined what constitutes an adverse impact on health or welfare at N.J.A.C. 7:27-19.13(h). The commenter believes that the determination of an adverse impact should be limited to demonstrating compliance with the NAAQS for nitrogen dioxide. The commenter recommended deleting this section since this requirement will be met by the commenter's proposed requirement of N.J.A.C. 7:27-19.13(g)6. (25)

RESPONSE: The intent of this section is to make clear the Department's authority to revoke the approval granted under N.J.A.C. 7:27-19.13 should a change at the source come to light which causes a threat to health, welfare, or the environment. Because it is impossible to predict these future possible threats, this section must remain somewhat broad.

196. COMMENT: One commenter stated that the requirement at N.J.A.C. 7:27-19.13(h) is overly broad and unduly burdensome, and should be deleted. The commenter added that if the Department retains this requirement, its application should be limited to those pieces of equipment for which the facility is seeking a specific emission limit. (3)

RESPONSE: The Department has clarified this subsection to indicate that the conditions to be issued only affect those sources for which the applicant is seeking approval under N.J.A.C. 7:27-19.13.

197. COMMENT: The commenter stated that the approval of alterations to a NO_x plan required by N.J.A.C. 7:27-19.13(j) and (k) when a source operation is altered should be focused on the NO_x abatement equipment or the NO_x emissions. Such focused review would be similar to the state-of-the-art review for altered equipment. (17)

RESPONSE: The Department agrees with this comment and has made the appropriate refinements to the rule language.

198. COMMENT: Commenters suggested combining the submittals of the NO_x control plan revision required by N.J.A.C. 7:27-19.13(k) and the permit submittal required by N.J.A.C. 7:27-8.3(a)2. The commenters stated that under this approach the subchapter 8 permit approval would then constitute complete approval to construct. The commenters suggested the following revision to N.J.A.C. 7:27-19.13(j):

(i) Before altering any equipment or source operation which is included in an approved NO_x control plan the owner or operator shall apply for and obtain such permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation. The applicant shall include with the permit submittal the revised pages of the NO_x control plan that are affected. (15, 17, 27)

RESPONSE: The Department agrees with the intent of this comment but believes changes to the rule language are not necessary to combine these approval processes. The applicant should include the revised pages of the NO_x control plan that are affected and any other relevant information with the permit submittal.

199. COMMENT: Commenters stated that, under certain situations, altering a permit subject to a NO_x control plan may not change the NO_x control plan in any way, and that therefore the Department should not require that the NO_x control plan be amended in these situations, as currently required at N.J.A.C. 7:27-19.13(i). The commenters recommended that the Department include language indicating that if an alteration does not affect the NO_x control plan, the applicant should notify the Department of such. (15, 17, 27)

RESPONSE: The Department agrees with this comment and has clarified this section. The resubmittal of the NO_x control plan is only necessary if the alterations would impact the types of controls which may be applicable to the source after the alteration has been completed.

200. COMMENT: One commenter stated that N.J.A.C. 7:27-19.13(i), (j) and (k) should not apply to borosilicate recipe glass manufacturers as long as alterations of equipment or source operations do not affect the achievement of the applicable emission reductions. (33)

RESPONSE: The referenced provisions apply only to sources for which approvals are being sought under N.J.A.C. 7:27-19.13(b) or (c). Borosilicate glass furnaces are not required to obtain approval under N.J.A.C. 7:27-19.13(c). The owner or operator of a furnace may exercise the option to seek such approval if the furnace cannot comply with the requirements of N.J.A.C. 7:27-19.10(c).

201. COMMENT: One commenter stated that the Department should add to N.J.A.C. 7:27-19.13(l) the opportunity to contest alterations to the control plan made by the Department pursuant to paragraph (i). (3)

RESPONSE: The Department agrees and has included this provision to N.J.A.C. 7:27-19.13(m). This situation is included in N.J.A.C. 7:27-19.13(m)2.

N.J.A.C. 7:27-19.14 Procedures for obtaining approvals under this subchapter

Approvals of alternative compliance methods

202. COMMENT: One commenter requested that the Department notify the applicant in writing at such time as an application submitted pursuant to N.J.A.C. 7:27-19.14(a) is considered "complete." The commenter stated that this would enable an owner/operator to plan based upon the six-month time frame required for a determination. The commenter also stated that six months may be too long for an applicant to wait for permit approval. The commenter recommended that this time frame be reduced to three months or that an extension beyond the May 31, 1995 implementation date be granted if a timely permit application is submitted. (14)

RESPONSE: N.J.A.C. 7:27-19.14(d) already requires that the Department send this notification to the applicant. Six months is a maximum time period will a determination. In less complex situations, the time period may be less than six months. An extension of the May 31, 1995 deadline may be granted on a case-by-case basis, but only in extraordinary circumstances such as the unavailability of technology in the time frame after permit approval.

203. COMMENT: One commenter stated that it is unclear what kind of documentation would be required under N.J.A.C. 7:27-19.14(a)1 for a source listed in N.J.A.C. 7:27-19.2(b) to show that it emits less than 25 tons per year. (26)

RESPONSE: The person requesting the exemption will be required to demonstrate that the facility's potential to emit, as defined at N.J.A.C. 7:27-19.1, is less than 25 tons per year. To do so, this person must submit a list of all the NO_x-emitting equipment at the facility, which includes each source's potential NO_x emissions if the source were to operate 24 hours per day, 365 days per year, or other time periods reflected by enforceable permit conditions. For any source which is permitted to emit

less than this, the owner or operator must demonstrate this by submitting copies of all valid permits or certificates issued under N.J.A.C. 7:27-8, or copies of any other Federally enforceable document which limits the facility's potential to emit NO_x. If it is demonstrated, through Federally enforceable permits or documents, that the source emits less than 25 tons per year, the source is not subject to the rule.

204. COMMENT: One commenter stated that the procedures for obtaining approvals under N.J.A.C. 7:27-19.14 should include circumstances where an owner/operator must apply for a permit to construct, install or alter control apparatus. The commenter stated that the time frames pertaining to a completeness review and determination of approval/denial should be extended to reflect this situation. (14)

RESPONSE: If a permit is required for an alteration needed to comply with the alternative method, the Department will accept the submission of the application for an alteration as the application required under N.J.A.C. 7:27-19.14 if the applicant indicates in the permit submittal that approval pursuant to N.J.A.C. 7:27-19.14 is also sought. Thus, the permit application and the request for alternative compliance approval can be processed simultaneously.

205. COMMENT: One commenter stated that N.J.A.C. 7:27-19.14(f) is overly broad and unduly burdensome. The commenter recommended that should the Department choose to keep this requirement, its application should be limited to those pieces of equipment for which the facility is seeking approval. (3)

RESPONSE: The Department feels the wording of this section, as is, adequately limits the imposing of conditions in the way which the commenter suggests.

206. COMMENT: One commenter stated that the final promulgation of N.J.A.C. 7:27-19.14(j) should be postponed pending the resolution of Senate Bill No. 1282. (3)

RESPONSE: The Senate bill referenced by the commenter does not affect this section. The bill only applies to violations which are issued when a source is undergoing some unusual operating condition, such as start-up, shut down or an emergency situation. N.J.A.C. 7:27-19.14(j) merely makes it clear that, just because an application is pending with the Department, the owner or operator of a source is not authorized to operate the source in a manner which violates applicable emissions limits and standards.

207. COMMENT: One commenter stated that N.J.A.C. 7:27-19.14(j) should include dates that the respective prohibitions on emissions are effective. The 1990 CAA requires major stationary sources of NO_x to implement RACT as expeditiously as practicable, but no later than May 31, 1995. (12)

RESPONSE: The CAAA require major stationary sources of NO_x to implement RACT as expeditiously as practicable, but no later than May 31, 1995. As an example of the way that N.J.A.C. 7:27-19.14(j) will be applied, consider a boiler which intends to combust natural gas on a seasonal basis as a way of complying with N.J.A.C. 7:27-19.4. The limits in N.J.A.C. 7:27-19.4 take effect on May 31, 1995. If the boiler is operated on natural gas any time after May 31, 1995, it must either have an approval to combust the gas on a seasonal basis, or comply with the emission limits for boilers which burn natural gas on a non seasonal basis, specified at N.J.A.C. 7:27-19.4.

208. COMMENT: One commenter stated that it is unreasonable to hold an owner or operator accountable under N.J.A.C. 7:27-19.14(j) for violations if an application for Departmental approval has been submitted in a timely manner, has been declared complete for review, and is being processed. The commenter suggested the following changes to N.J.A.C. 7:27-19.14(j) to accommodate this:

(j) "If, after [date], an item of equipment ... exceeds the maximum allowable emission rate ... without an approval ... it shall not be a defense to an enforcement action that an application for an approval is pending, unless such application was submitted to the Department by [date], and the applicant has responded to all requests for information within the time limits allowed by the Department. (12)

RESPONSE: The commenter's suggested change would mean that having an application pending with the Department allows the applicant to freely violate all rules and standards, while the application is pending. This is clearly not reasonable. The only violation which might be affected by a pending application would be a citation for failure to have a permit or approval. However, the Department will, as it currently does, use discretion in issuing violations when it can be shown that the applicant has complied fully with Departmental procedures.

N.J.A.C. 7:27-19.15 Procedures and Deadlines for Demonstrating Compliance

209. COMMENT: One commenter requested that utility units be provided with alternate compliance demonstrations under N.J.A.C. 7:27-19.15 when they are to be shut down or replaced by May 31, 1999. Alternatively, the commenter requested that the Department address the applicability of N.J.A.C. 7:27-19.13(a)2 for defining a site-specific alternate NO_x RACT for those units scheduled for shutdown. (16)

RESPONSE: The provision for repowering is found at N.J.A.C. 7:27-19.4(c). The Department has eliminated the term "shutdown" from this section consistent with draft EPA guidance. The only requirements on utility boilers which are to be repowered are that 1) they enter into a federally enforceable agreement with the Department to shut the boiler down before May 1, 1999, and 2) they adjust the combustion process on an annual basis. The Department will be proposing a general repowering provision in the near future.

210. COMMENT: One commenter stated that testing of representative units in accordance with a generic protocol mutually acceptable to owners or operators and the Department should be allowed under N.J.A.C. 7:27-19.15 as an appropriate compliance method for combustion turbines. The commenter further stated that any such testing method should take into account the short stacks on most utility combustion turbines. (25)

RESPONSE: The testing of representative units might be approvable under N.J.A.C. 7:27-19.18 which allows for alternatives to continuous emissions monitors where the alternatives can be shown to be as effective and accurate as CEMS monitors.

211. COMMENT: One commenter suggested that the January 1, 1995 deadlines noted at N.J.A.C. 7:27-19.15(b) be changed to May 15, 1995 in order to be consistent with the CAAA deadline. (14)

RESPONSE: The deadline only determines the time by which the owner or operator of a source must demonstrate to the Department that the source is in compliance with this subchapter. It does not specify the date by which compliance must be achieved. In all cases sources must be in compliance with the emission limits specified in the rule prior to May 31, 1995, but need not conduct the stack testing required to prove that the source is in compliance until May 31, 1996. This will allow sources time to conduct appropriate shake-downs of new equipment and obtain approvals from the Bureau of Technical Services to conduct such testing.

Any source which commences operation after January 1, 1995, must be operated in compliance with this subchapter from the first date it operates. The deadline for demonstrating compliance in this case is six months from the date of commencement of operation. This is a standard condition of most permits issued for major sources and is therefore consistent with current Departmental policies.

212. COMMENT: One commenter suggested that mechanisms be included at N.J.A.C 7:27-19.15 for determining compliance with the calendar-day emission limit of 1.0 lb/MMBTU and the calendar-year emission limit of 1.5 lb/MMBTU for coal-fired, wet-bottom, tangential or face-fired utility boilers. (25)

RESPONSE: The daily emission limit during the ozone season should be determined using an appropriate continuous emissions monitoring system and following the procedures specified in N.J.A.C. 7:27-19.6(g). The annual emission limit should be determined by dividing the total NO_x emitted by the source in given year by the total number of BTUs generated by the source during that year.

213. COMMENT: One commenter stated that submittal requirements for compliance demonstrations are not addressed under N.J.A.C. 7:27-19.15. The commenter stated that they assume no submittal is required. (34)

RESPONSE: Specific submittals to the Department are not required under N.J.A.C. 7:27-19.15, with the exception that any testing methods employed must be approved by the Department prior to conducting the testing. It is the responsibility of the regulated party to maintain the documentation necessary to demonstrate to the Department that the facility is in compliance with the rule. Department inspectors may examine the documentation, or the Department may require that a copy be submitted at any time.

214. COMMENT: Two commenters questioned how the average emissions over one calendar day as required under N.J.A.C. 7:27-19.15(a)1 are calculated given that emissions are instantaneous and continuous. The commenters inquired if the Department would give guidance on the reading intervals (for example, one reading per minute, second, etc.). (15, 27)

RESPONSE: The regulated facility would use continuous emissions monitoring system data to calculate the total NO_x emissions from the source on a given day and divide it by the total BTUs generated by the source on that same day.

215. COMMENT: One commenter stated that there appears to be an inconsistency between the 30-calendar day period referenced in N.J.A.C. 7:27-19.15(a)1, and the 30-day period referenced in N.J.A.C. 7:27-19.6(f)2. The commenter stated that the period mentioned in N.J.A.C. 7:27-19.15(a)1 appears to be a block average, and the period mentioned in N.J.A.C. 7:27-19.6(f)2 appears to be a rolling average. The commenter requested that the Department consider using 30-day block averages in both instances. The commenter added that the use of block averages would simplify recordkeeping and reporting requirements, and would not be precluded by US EPA's Emission Trading Policy, published in the December 4, 1986 Federal Register. (25)

RESPONSE: Both instances of the 30-calendar day period should have been on a rolling basis. This has been clarified in the adopted rule language. The 30-day rolling average is also required to maintain consistency with Title IV acid rain regulations.

216. COMMENT: Two commenters questioned the frequency of stack testing that would be required for the demonstration of compliance under N.J.A.C. 7:27-19.15(a)2. The commenters also inquired if the stack testing would be based on potential emissions. (15, 27)

RESPONSE: The Department will incorporate the frequency of testing in operating permits and will vary that frequency based on the source's potential emissions consistent with EPA's Enhanced Monitoring rules. However, every source subject to this subchapter must conduct the first such stack test prior to May 31, 1996.

217. COMMENT: One commenter stated that N.J.A.C. 7:27-19.15(a)2 should be modified such that units not included in the averaging plan are provided the same fexibility as units included in the averaging plan, and allow compliance during the non-ozone season to be determined on a 30-day average basis. The commenter stated that the proposed compliance requirements appear to penalize units that directly comply with NO_x emission limits specified in the rule rather than complying through averaging. (25)

RESPONSE: The Department clarified the compliance time periods in the final rule.

218. COMMENT: One commenter stated that the average of three one-hour tests as required by N.J.A.C. 7:27-19.15(a)2 is not an appropriate compliance method for utility boilers. The commenter requested that utility boilers follow the procedures outlined in 40 CFR 75, Appendix E (included in the written comments) to determine compliance for units where continuous emission monitors have not been installed. (25)

RESPONSE: Since virtually all utility boilers are required by N.J.A.C. 7:27-19.4(d) to install a continuous emissions monitoring system, they will not be subject to the demonstration of compliance through the stack testing provisions. The average of three one-hour stack tests only applies to those sources which have not installed a continuous emissions monitoring system.

219. COMMENT: One commenter stated that the provisions for yearly stack tests required at N.J.A.C. 7:27-19.15(a)2 for glass manufacturing furnaces are not consistent with the "reasonable costs" aspect of RACT. (22)

RESPONSE: The Department believes annual testing is a reasonable minimum amount of monitoring necessary to be confident a source is in compliance. The actual testing frequency will be specified in the permit issued to the source and will vary as a function of the source's potential emissions.

N.J.A.C. 7:27-19.16 Adjusting Combustion Processes

220. COMMENT: One commenter concurred with the Department that annual monitoring and recording of NO_x and CO emissions during adjustment of combustion processes performed pursuant to N.J.A.C. 7:27-19.16(a) is sufficient to minimize emissions from smaller sources, and that additional requirements would provide little or no environmental benefits. (33)

RESPONSE: The Department concurs with this comment and reiterates that this provision was included to reduce the burden of compliance on the smaller sources regulated by the rule, while still obtaining reasonable NO_x reductions from those sources.

221. COMMENT: One commenter stated that while the procedures in N.J.A.C. 7:27-19.16 are appropriate for adjusting the combustion process for utility boilers, they are not appropriate for adjusting the combustion process for gas turbines. The commenter requested that the Department include separate procedures for assessing the combustion process for gas turbines that would include monitoring of turbine exhaust gas temperature spreads, engine pressure ratios, and water-to-fuel ratios for those units equipped with water injection systems. The commenter stated that annual adjustments may not be an appropriate time interval for gas turbines, especially those units with low capacity factors. (25)

RESPONSE: Appropriate clarifications have been made to the provisions at N.J.A.C. 7:27-19.16 to address the commenter's concerns.

222. COMMENT: One commenter stated that adjusting the combustion process on certain types of equipment to minimize NO_x emissions, as required by N.J.A.C. 7:27-19.16(a), could increase CO, a condition that would reduce the efficiency of the unit and could conceivably consume more energy to achieve the same output that was obtained prior to the combustion adjustment. The commenter stated that this is contrary to the Department's Energy Plan, and that Department should consider this aspect of combustion adjustment before determining if the adjustment plan is acceptable. (10)

RESPONSE: The Department is aware of the possible efficiency penalties involved in reducing the NO_x emission in accordance with N.J.A.C. 7:27-19.16(a), and took this into account when developing this section. The Department feels that the constraint to balance the reduction in NO_x emission against the emissions of CO will serve to prevent any unacceptable decreases in efficiency associated with the adjustment process.

223. COMMENT: Two commenters stated that in order to clarify differences between test measurements and emissions testing, N.J.A.C. 7:27-19.16(c) should indicate that annual adjustments to the combustion process only include testing for CO_2, NO_x, and O_2 concentrations.

RESPONSE: The Department continues to require the monitoring of the emissions of CO, NO_x and O_2 during the adjustments. The measurement of CO is required because it serves as an indicator of both the efficiency of the unit and is generally proportional to the amount of VOC which the unit is emitting. The Department specified monitoring of CO, in lieu of the more burdensome requirement of monitoring VOC, to minimize monitoring cost.

224. COMMENT: Two commenters stated that N.J.A.C. 7:27-19.16 should indicate that the Department accepts the use of portable instruments or other commonly used methods (for example, calorimetric detection tubes, Orsat) for obtaining CO, NO_x and O_2 exhaust concentrations, provided that the instruments or devices are properly maintained, calibrated and used per manufacturer's instructions. The commenters also stated that this section should specify that the exhaust gas sampling location may be selected at any fixed point downstream of the boiler which is accessible to the tester. (1, 15, 27)

RESPONSE: N.J.A.C. 7:27-19.16 does not specify what instruments must be used to measure the exhaust concentrations. Portable monitoring equipment, such as Orsat for Oxygen, and other electrochemical instruments may be acceptable. Details on acceptable testing procedures and approval of alternative procedures can be obtained from the Air Regulation Program, Bureau of Technical Services, CN 413, Trenton, New Jersey 08625.

225. COMMENT: One commenter stated that N.J.A.C. 7:27-19.16 is not clear, and as written could be interpreted to require testing after each and every adjustment, which could result in many tests being performed annually. The commenter stated that this requirement is unduly burdensome, particularly when consideration is given to the cost of testing. The commenter suggests that the Department consider requiring testing on a less frequent basis, perhaps every five years at the time of permit renewal. (14)

RESPONSE: The Department intended that the tests conducted pursuant to this section only be done once at the completion of each year's determination of the acceptable range of combustion adjustments. The testing to be performed at this juncture should not be confused with the testing to be conducted under the provisions of N.J.A.C. 7:27-19.17, which is for compliance determination. The testing in this section may be performed using portable monitoring equipment.

226. COMMENT: One commenter questioned if the replacement of components required by N.J.A.C. 7:27-19.16(a)1 constitutes an "alteration" as defined in N.J.A.C. 7:27-19.1. (3)

RESPONSE: The Department refers the commenter to the definition of "alteration" contained in N.J.A.C. 7:27-8.1. That definition indicates that, if the component being replaced is not considered to be a substantial

component as defined in subchapter 8, then the replacement of components required by N.J.A.C. 7:27-19.16(a)1 will most probably not be an alteration.

227. COMMENT: One commenter stated that N.J.A.C. 7:27-19.16(b) should be amended so that any exceedance of a limit contained in a Certificate to Operate caused by activities performed pursuant to N.J.A.C. 7:27-19.16(a) would not be a violation of the Certificate. (3)

RESPONSE: The commenter's concern is consistent with the Department's intent. The Department believes that the language, as proposed, conveys this intent and relieves the regulated source from any violations of permitted emission rates which may occur during the determination of the range of acceptable adjustment of the combustion process. However, at all times before and after the adjustments are made, the source must be operated in accordance with any and all permit conditions.

228. COMMENT: One commenter stated that N.J.A.C. 7:27-19.16(b) should be eliminated because the pollutant concentration information obtained from tests performed under this section cannot be compared to permitted emission rates. The commenter stated that enforceable and actual emission rates may only be determined by using the source emission test methods covered under N.J.A.C. 7:27-19.17. (1, 15, 27)

RESPONSE: The commenter appears to have misunderstood this provision. The intent was to make it clear that any exceedance of a permitted emission rate during the adjustment process will not result in a violation of the permit. The Department felt that it was possible to exceed permitted emission rates for NO_x, CO or VOC during the adjustment procedures and did not want this to discourage facilities from undertaking these procedures.

However, this section still makes it clear that before and after the adjustments take place, the source must be operated in accordance with all provisions of any applicable permit. This provision will prevent sources which have continuous emissions monitors installed for NO_x, VOC or CO from being subjected to penalties as a result of emissions during the combustion adjustments.

229. COMMENT: The commenters recommended that in N.J.A.C. 7:27-19.16(c)3 and 4 the term "emission rates" should be replaced with "concentration." (1, 15, 27)

RESPONSE: The Department agrees with this comment and has replaced the term "emission rates" with the phrase "concentration in the effluent stream." N.J.A.C. 7:27-19.16(c)5 has similarly been changed to be more specific.

N.J.A.C. 7:27-19.17. Source emissions testing

230. COMMENT: One commenter stated that it is unclear which sources will be subject to the stack testing requirements under N.J.A.C. 7:27-19.17. The commenter suggested that the Department provide guidance (for example, equipment type, fuels, capacities, etc.) for the equipment that would be required to conduct stack tests. The commenter also requested guidance on the deadlines for completion of the tests, and suggested that ample time be provided for test location construction (for example, platforms, ports, etc.), contractor solicitation and protocol development/approval. (10)

RESPONSE: This section gives the Department authority to require sources to conduct emission testing when sufficient justification exists. Such occasions include the verification of a continuous emissions monitoring system, compliance testing for new sources, or other instances when the Department finds that a more accurate measurement of actual emissions is required. The specific requirements will vary depending on the source. The Department will provide reasonable advance notice of such testing.

231. COMMENT: One commenter recommended that the Department allow companies to select a "test unit" if the company owns two or more of the same type (make and size) of unit. Only the "test unit" would be tested if it could be demonstrated that the other "like" units have similar emission characteristics (for example, exhaust gas constituents would be in similar concentrations and emitted at the same rate). (10)

RESPONSE: The Department, at N.J.A.C. 7:27-19.18, has allowed such alternatives to stack tests and continuous emissions monitors for demonstrating compliance with this subchapter. However, under some circumstances, the Department reserves the right to require that more than one "like" unit be tested in order to verify that the emissions from these units are indeed similar.

232. COMMENT: One commenter stated that source emissions testing should not be required where continuous emissions monitors are installed on a source, because the quality assurance and quality control requirements of 40 CFR Part 75 are sufficient to ensure that accurate data will be collected. The commenter stated that stack testing of such units would not be warranted and would result in unreasonable expense and burden. The commenter added that a significant number of their utility boilers will be equipped with continuous emissions monitors. (14)

RESPONSE: N.J.A.C. 7:27-19.17 does not require mandatory testing of any source. It merely gives the Department the authority to require such testing should the Department find that such testing is required to demonstrate that a source is being operated in compliance with the rule.

233. COMMENT: One commenter stated that sufficient time should be allowed for facilities to provide access (through construction of scaffolding or a lift of some type) for any testing which may be required under N.J.A.C. 7:27-19.17. (14)

RESPONSE: The Department will provide reasonable advance notice of such testing.

234. COMMENT: One commenter stated that N.J.A.C. 7:27-19.17 does not specify if a protocol must be submitted to the Department prior to conducting an emission test. The commenter recommended that if this will be a requirement, a section should be added to include a time frame for submitting a protocol to BTS prior to the compliance demonstration. A person conducting testing pursuant to this section must use the test method which the Department specifies or any other method approved in advance and in writing by the Department. (14)

RESPONSE: The Department has clarified this section at N.J.A.C. 7:27-19.17(d)1 to indicate that any stack testing protocols must be approved by the Department prior to conducting the tests.

235. COMMENT: One commenter stated that measurement of fuel combustion on a coal-fired facility required under N.J.A.C. 7:27-19.17(a)3 is not accurate, and in most instances nonexistent. The commenter stated that information specific to actual fuel flow may not be available for particular types of boilers, and that this requirement should be changed to reflect the absence of quality data for coal flow. (14)

RESPONSE: The Department will consider limitations on the availability of some of the information which could be requested under N.J.A.C. 7:27-19.17(a)3, but retains the right to require such information if it is reasonably available and warranted.

236. COMMENT: One commenter stated that the requirement for emissions tests conducted under N.J.A.C. 7:27-19.17(b) or (c) should be consistent with RACT and must therefore be able to be implemented at a reasonable cost. (22)

RESPONSE: The performance of tests under N.J.A.C. 7:27-19.17 is not required of all sources subject to these rules. Also, a source may opt to install a continuous emissions monitoring system to avoid conducting stack tests. Frequency of testing will be consistent with criteria being promulgated in EPA's Enhanced Monitoring rules.

237. COMMENT: One commenter stated that N.J.A.C. 7:27-19.17(d)2 should be re-worded to indicate that a SIP revision is necessary. (26)

RESPONSE: A SIP revision would not be necessary for a method approved under N.J.A.C. 7:27-19.17(d)2 as long as the method is an EPA approved and promulgated method, or otherwise approved in writing by EPA.

N.J.A.C. 7:27-19.18 Continuous emissions monitors

238. COMMENT: The commenter stated that the Department may have underestimated the cost of continuous emissions monitors (CEMs). (18)

RESPONSE: The Department agrees with this comment that it may have underestimated the costs for installing continuous emissions monitoring systems on particular units. Such costs will be considered in the approval of alternatives to CEM's where allowed by Federal rules and guidance.

239. COMMENT: One commenter stated that not all utility boilers within the State are required by the Clean Air Act to install continuous emissions monitors, only those units which are "affected" under Phase I and Phase II, that is, units over 25 MW. (12)

RESPONSE: The Department agrees with the commenter's interpretation of the requirements for continuous emissions monitors under Title IV of the Clean Air Act. Alternatives to CEM's may be considered for low capacity units.

240. COMMENT: The commenter requested clarification of information in the Summary that utility boilers, not under Phase 2, are not required to have continuous emissions monitors. (12)

RESPONSE: The acid rain rules proposed under Title IV of the Clean Air Act Amendments do not require the installation of continuous

emissions monitoring systems on units which are only affected by Phase II of those rules. However, because of the State's non-attainment status for ozone, the Department requires that most utility boilers install a continuous emissions monitoring system.

241. COMMENT: One commenter stated that units should be exempt from the requirements of N.J.A.C. 7:27-19.18(b) through (e) when: 1) the unit is a boiler which is committing to shut down under N.J.A.C. 7:27-19.4(c); or 2) the unit's maximum heat input and/or unit capacity factor are low. (12)

RESPONSE: The Department has clarified this section to allow for alternatives to continuous emissions monitoring systems where the alternatives have been shown to be accurate and reliable.

242. COMMENT: One commenter requested an exemption from continuous emissions monitoring requirements of N.J.A.C. 7:27-19.18 for utility boilers under 250 million BTU per hour. The commenter stated that a stack test on a smaller unit that runs very seldom (less than five to 10 percent of the time) should be sufficiently representative of that unit's emissions to reasonably demonstrate compliance with the standards of this subchapter. The commenter stated that requiring continuous emissions monitoring systems is excessive. (12)

RESPONSE: The Department has allowed for alternatives to continuous emissions monitoring systems on units which do not operate under base-loaded conditions. However, units with low capacity factors are typically operated on days when the potential for an exceedance of the NAAQS for ozone is likely to occur, accurate emissions data and compliance for these days is critical in attaining the ozone NAAQS.

243. COMMENT: One commenter stated that 40 CFR Part 75 includes exemptions from the need for continuous emissions monitoring systems for oil-fired and gas-fired boilers, and that the Department should consider these exemptions and utilize them as guidance for the applicability of continuous emissions monitoring systems required by the proposed rule. The commenter added that the Department should consider whether there is an acceptable level of operations (that is, capacity factor) below which continuous emissions monitoring systems would not be required on a given unit or type of unit. (14)

RESPONSE: N.J.A.C. 7:27-19.18 has been expanded to allow for the use of equivalent alternatives to continuous emissions monitoring systems. Any source, regardless of its size or operating schedule, may take advantage of these provisions.

244. COMMENT: One commenter stated that the requirement for the installation of continuous emissions monitoring systems for all utility boilers is inappropriate because of the excessive expense (the commenter reported costs ranging from $761.00 to $8,273 per ton) and because there is no tangible environmental benefit. The commenter recommended an approach similar to US EPA's continuous emissions monitor requirements (40 CFR 75, a copy of which was supplied by the commenter in the written comments) that specifies alternative monitoring methods for several classes of utility boilers. The commenter stated that making the NO_x continuous emissions monitor requirements of N.J.A.C. 7:27-19 for utility boilers consistent with 40 CFR 75 Appendix E would provide an accurate, reliable, and cost-effective method for determining compliance that preserves the operating flexibility upon which the rule is intended to be based. (25)

RESPONSE: The Department has made provisions in the rule for the use of alternatives to continuous emissions monitoring systems.

245. COMMENT: One commenter stated that the requirements for the installation of continuous emissions monitoring systems on units operated during a fraction of the year (for peak demand power generation) is overly costly. (12)

RESPONSE: The Department agrees with this comment and has allowed for the use of alternatives to continuous emissions monitoring systems if sufficiently reliable to determine compliance.

246. COMMENT: The commenter suggested that some limitations be set for the requirements for installing continuous emissions monitoring systems on units based on the capacity or maximum heat input of the unit. (12)

RESPONSE: The rule has been revised to allow alternatives to continuous emissions monitoring systems.

247. COMMENT: One commenter stated that continuous emissions monitoring systems should not be required to be installed on combustion turbines because: 1) cycling of low capacity gas turbines (or utility boilers) results in poor performance of continuous emissions monitoring systems and unreasonable operating and maintenance costs due to parts wear, calibration gas use, and daily attention by a technician regardless of the operating status of the unit being monitored; 2) most of the commenter's gas turbines would require stack extensions and possibly new independent foundations prior to the installation of continuous emissions monitoring systems in order to comply with the requirements described in 40 CFR 60, Appendix A; and 3) the estimated cost of $5,540 per ton of NO_x monitored (without achieving any additional NO_x reductions) are excessive. The commenter suggests that in lieu of installing continuous emissions monitoring systems, emission rate curves be developed for each model of gas turbine. (25)

RESPONSE: The Department has clarified this section of the rule to allow for alternatives to continuous emissions monitoring systems. This should address the commenter's concerns.

248. COMMENT: One commenter stated that sources that are to be retired or repowered should not be required to install continuous emissions monitoring systems. (14)

RESPONSE: For sources which are to be repowered, it may still be necessary to monitor emissions depending on what interim RACT is determined appropriate for that source. For sources that are to be retired prior to May 31, 1995, the Department may waive the CEM requirement on a case-by-case basis.

249. COMMENT: The commenter stated that additional flexibility in source-specific emission limits was needed, rather than flexibility in the installation of continuous emissions monitoring systems on every unit. (12)

RESPONSE: The purpose of the proposed rule is to establish RACT for all major sources of NO_x in the state. The Department chose to establish RACT by setting an emission rate which constituted the RACT requirements in lieu of a specific technology. The Department has included flexibility in the rule with emissions averaging to allow sources to comply with the emission limits in the most economical way possible. Additionally, facility-specific emission rates are available for those sources which demonstrate the specified limits are not RACT for a particular facility.

250. COMMENT: One commenter stated that the fluctuations in emissions cited in the Summary to the proposed rules and used as justification for continuous emissions monitoring systems requirements may be attributable to small units which individually make small contributions to this "large portion" of NO_x emissions, for which fluctuations in emissions are relatively insignificant. The commenter also stated that there is no substantiation that fluctuations of emissions from each unit in an averaging scheme is significant if the unit is a small source. The commenter also stated that there are methods other than continuous emissions monitoring systems that could be used in adjusting combustion processes. (12)

RESPONSE: One of the points made by the utility industry during the development of these rules was the fact that emissions from utility boilers are highly variable and longer averaging times should be used to allow for this variability. The Department agreed with the utilities on the variability of emissions, provided a 24 hour averaging time, and required that utility boilers install continuous emissions monitoring systems to measure these highly variable emissions. The adopted rule has been expanded to allow for alternatives to CEMs provided the accuracy and reliability of an alternative has been demonstrated to the Department. The Department expects that most utility boilers will be equipped with CEM's.

251. COMMENT: EPA stated that N.J.A.C. 7:27-19.18(a) allows the Department to "approve" a continuous emissions monitoring system but does not allow the Department any discretion. However, N.J.A.C. 7:27-19.18(e) allows the Department discretion in the approval of an alternative continuous emissions monitoring system plan. EPA stated that the criteria listed for these types of approvals should be specific enough so there is no discretion. (26)

RESPONSE: Monitors must comply with the requirements set forth in 40 CFR 60, Appendix B and Appendix F. The point of N.J.A.C. 7:27-19.18(e) is to provide flexibility for a source which can demonstrate that the alternative monitoring method proposed is equivalent to a continuous emissions monitor to determine compliance. To provide this flexibility, it is necessary to place some discretion in the Department.

252. COMMENT: One commenter stated that the provision for limited continuous emissions monitor installation at N.J.A.C. 7:27-19.18(b) should be expanded to include the use of alternative methods in lieu of continuous emissions monitoring systems if emissions can be predicted with the accuracy and precision associated with conventional continuous emissions monitoring systems. The commenter stated that exemptions from continuous emissions monitoring systems are allowed under Title IV, Part 75, Appendices D and E of the 1990 Clean

Air Act Amendments and that emissions from near steady-state operations, such as combustion turbines, can be determined by operational and ambient parameters with the same degree of confidence as continuous emissions monitoring systems. (10)

RESPONSE: The Department agrees. The provisions for alternatives to continuous emissions monitoring systems for multiple sources of the same type at one facility have been expanded to allow the use of alternatives to continuous emissions monitoring systems, under certain circumstances. This could include the limited installation of continuous emissions monitoring systems on one source which is representative of the emissions from one or more other similar sources.

253. COMMENT: One commenter stated that the Department should expand N.J.A.C. 7:27-19.18(b) to allow the installation of continuous emissions monitoring systems on one unit and have that continuous emissions monitor to be considered as representative for each unit of similar type at similar units at different facilities. (14)

RESPONSE: The Department has expanded this section to allow for alternatives to continuous emissions monitoring systems. Such alternatives could include the limited installation of continuous emissions monitors as the commenter recommends.

254. COMMENT: One commenter stated that N.J.A.C. 7:27-19.18(f) is overly broad and unduly burdensome. The commenter stated that if, retained, the requirement should be limited to those pieces of equipment for which the facility is seeking continuous emissions monitoring system approval. (3)

RESPONSE: The intent of the Department's language was to so limit this provision. The rule has been clarified to better reflect this intent.

255. COMMENT: One commenter stated that it is unreasonable that an owner/operator be held accountable for violations such as at N.J.A.C. 7:27-19.18(l) if an application for Departmental approval has been submitted in a timely manner, is declared complete for review and the Department is processing the application. The commenter suggested the following changes to N.J.A.C. 7:27-19.18(l):

(1) "If, after [date], an item of equipment ... exceeds the maximum allowable emission rate ... without an approval ... it shall not be a defense to an enforcement action that an application for an approval is pending, unless such application was submitted to the Department by [date], and the applicant has responded to all requests for information within the time limits allowed by the Department." (12)

RESPONSE: Please see the response to Comment 208 above.

N.J.A.C. 7:27-19.19 Recordkeeping

256. COMMENT: The commenter noted that it is not necessary that the alternative recordkeeping provisions of this regulation be sent to US EPA as a SIP revision, as long as the alternative records are equivalent to the records required in the rule. (26)

RESPONSE: The Department agrees with this comment and has made the appropriate clarification in the rule.

257. COMMENT: One commenter stated that N.J.A.C. 7:27-19.8, 19.9 and 19.10 do not specify whether these sources are subject to any recordkeeping or reporting requirements. The commenter also stated that N.J.A.C. 7:27-19.19 does not specify which sources are required to keep records. (26)

RESPONSE: The provisions of N.J.A.C. 7:27-19.19 only serve to set forth the procedures and format for any records which must be kept in accordance with this subchapter and does not specify the types of records to be kept. The specific recordkeeping requirements are set forth for each type of source in the applicable sections of the rule. No recordkeeping requirements were included in N.J.A.C. 7:27-19.8, 19.9 or 19.10 since these sources will be required to conduct periodic testing to demonstrate compliance with the rule and these test records must be maintained on site.

N.J.A.C. 7:27-19.20 Penalties

258. COMMENT: One commenter stated that the penalties contained in the tables at N.J.A.C. 7:27A-3.10 reflect, in many cases, the maximum that can be imposed by law. The commenter stated that the violations do not justify the setting of maximum penalties and they should be reduced accordingly. (3)

RESPONSE: The Department will revise the cut points for the assessment of penalties under this section to be more reflective of the emission rates and types of violation. This change, and others mentioned in these responses, will be proposed in the near future.

259. COMMENT: One commenter stated that N.J.A.C. 7:27A-3.5(a) and N.J.A.C. 7:27A-3.10 specify various civil administrative penalties to be assessed for various kinds of offenses or violations. The commenter stated that any regulations should provide the Department with sufficient discretion to assess, litigate or settle for civil administrative penalties which fully and fairly account for all the circumstances pertaining to alleged violations, including all relevant aggravating and mitigating circumstances. The commenter recommended that efforts made to achieve or maintain compliance should be specified as mitigating circumstances (in N.J.A.C. 7:27A-3.5(e)) regarding any alleged violation in light of the complexity and clarity of the relevant compliance requirement. (19)

RESPONSE: N.J.A.C. 7:27A-3, as proposed, gives the Department flexibility in assessing administrative penalties, similar to the intent of the commenter's inquiry. However, once the penalty has been assessed, any settlements with the Department to reduce the amount of the penalty must be negotiated on a case-by-case basis.

260. COMMENT: One commenter stated that the penalties for violations of N.J.A.C. 7:26-19.10(c)2 and 3 should not be equal to the highest penalty the Department assesses for air pollution control violations because there is no evidence supporting the conclusion that compliance with these requirements is essential to New Jersey's efforts to attain the ozone NAAQS. The commenter recommended that there should be no penalty to reflect the fact that annual adjustments will be RACT and that this should be encouraged. (33)

RESPONSE: The Department views failure to perform the testing required under these sections to be equivalent to violating a permit condition, and therefore, the Department believes the penalty should be the same. The Department has no way of knowing that a source is in compliance with the provisions of this subchapter until such time as the testing is conducted, and therefore, believes that the penalty for failure to conduct the test should be substantial.

Miscellaneous

261. COMMENT: One commenter stated that the term "utility boilers" should be added to the list under the proposals Social Impact. (26)

RESPONSE: The Department intended the term "boilers" in the Social Impact to include both utility and non-utility boilers.

262. COMMENT: One commenter stated that additional information on EPA comments can be found in a February 2, 1993 memorandum from G.T. Helms, Chief of the Ozone/Carbon Monoxide Programs Branch of the Office of Air Quality Planning and Standards (also enclosed). The commenter supplied a copy of this memorandum with the written comments and recommended that the Department review and incorporate the guidance in Questions #2 and #4, which discuss the installation of control equipment after May 31, 1995. (26)

RESPONSE: The Department has reviewed the memorandum and believes that the rule, as proposed, is consistent with the points raised in this guidance.

263. COMMENT: One commenter stated that systems like geothermal heat pumps can enable the State to realize significant reduction in ozone. The commenter recommended that the Department consider innovative incentives similar to ozone credits or rebates. (28)

RESPONSE: The Department thanks the commenter for the information included in his comment and will consider this information when developing the next phase of NO_x regulations, which may include such economic incentives in the effort to enable the State to attain the NAAQS for ozone. If EPA issues any clarifications to this guidance, the Department will consider revision to this rule or enforcement policies.

264. COMMENT: The commenter requested an extension of the comment period for these proposed rules. (18)

RESPONSE: The Department decided not to extend the date by which comments must be submitted due to the already exceeded deadline of the CAAA and the amount of time that has been spent in developing the rule.

265. COMMENT: The commenter questioned if there would be CO guidelines to accompany the NO_x regulations. (4)

RESPONSE: The guidelines for CO emissions from large combustion sources are proposed in the revisions to N.J.A.C. 7:27-16, the VOC RACT rule, which was proposed on August 2, 1993 (see 25 N.J.R. 3339(a)).

Summary of Hearing Officer's Recommendations and Agency Response:

William O'Sullivan, Administrator of Air Quality Regulation served as the hearing officer at the March 18, 1993 public hearing held at Rowan State College in Glassboro, New Jersey and at the March 19, 1993 public hearing held at the Board of Regulatory Commissioners in Newark, New Jersey.

After reviewing the oral testimony presented at the public hearings, Administrator O'Sullivan recommended the rules be adopted as proposed with the exception that the use of natural gas should be considered an acceptable option to achieve the emissions limits for a unit fueled with oil or coal, and this option should be incorporated in a future revision to this rule, along with other substantive changes the Department intends.

A copy of the record of the public hearings is available upon payment of the Department's normal charges for copying ($0.75 per page for first 10 pages, $0.50 per page for the following 10 pages, $0.25 per page for additional pages.) The record of the public hearing held on March 18, 1993 is 52 pages; the record of the public hearing held on March 19, 1993 is 65 pages. The Department will charge $36.75 for copies of both public records. Persons requesting copies should contact:

ATTN: DOCKET #04-93-01
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Agency-Initiated Changes:

Changes have been made on adoption to correct or clarify the requirements as follows:

At N.J.A.C. 7:27-19.1, in the definition of "specialty container glass," the word "Pharmacopeia" was misspelled in the penultimate line. The spelling was corrected on adoption.

At N.J.A.C. 7:27-19.1, within the definition of "standard conditions," the closing parenthesis was omitted after Celsius. This typographical error was corrected on adoption.

At N.J.A.C. 7:27-19.1, in the definition of "volatile organic compound," within the list of compounds, "chloride" was misspelled under "methylene chloride (dichloromethane)." This typographic error was corrected on adoption.

At N.J.A.C. 7:27-19.1, definitions of the terms "continuous emissions monitor" and "continuous emissions monitoring system," as previously proposed at N.J.A.C. 7:27-22.1, have been added. These terms were omitted from the proposed rule.

At N.J.A.C. 7:27-19.2(e), for stylistic consistency, the phrase "Administrator of EPA" has been replaced with "EPA" and the word "Administrator" has been replaced with "EPA."

In order to maintain stylistic consistency in how lists are given, at N.J.A.C. 7:27-19.4(b)4.1 the word "and" has been added at the end; at N.J.A.C. 7:27-19.6(f), at the end of the introductory text prior to a list, a period is replaced by a colon and unnecessary text deleted; at N.J.A.C. 7:27-19.6(f)1 a semicolon and the word "and" have been inserted in the place of a period at the end of the first item in a list of two items; at N.J.A.C. 7:27-19.13(e) the introductory text is revised to make clear that a list follow, the periods are replaced with semicolons at the end of items 1 through 4, and the word "and" has been added at the end of the penultimate item in the list; at N.J.A.C. 7:27-19.13(l) the text has been reorganized as appropriate to introduce the lists that follows, the periods are replaced with semicolons at the end of paragraphs and subparagraphs, and conjunctions have been added at the end of the penultimate items in each list; at N.J.A.C. 7:27-19.14(d) the introductory text is revised to make clear that a list follows, the periods are replaced with semicolons at the end of paragraphs (d)1 through 3, and the word "and" has been added at the end of the penultimate item in the list; at N.J.A.C. 7:27-19.14(g) the introductory text is revised to make clear that a list follows, the periods are replaced with semicolons at the end of paragraph (g)1, and the word "and" has been added at the end of the penultimate item in the list; at N.J.A.C. 7:27-19.18(d) the introductory text is revised to make clear that a list follows, the periods are replaced with semicolons at the end of paragraphs (d)1 through 3, and the word "and" has been added at the end of the penultimate item in the list; at N.J.A.C. 7:27-19:18(g) the introductory text is revised to make clear that a list follows, the periods are replaced with semicolons at the end of paragraph (g)1, and the word "and" has been added at the end of the penultimate item in the list.

At N.J.A.C. 7:27-19.3(g), a provision has been added to clarify the operative date of the rule for facilities which do not currently exist.

At N.J.A.C. 7:27-19.5(b), upon adoption the word "average" was corrected to read "averaging" in the phrase "averaging plan."

At N.J.A.C. 7:27-19.5(c), in order to maintain consistency of style of punctuation, a period has been replaced with a colon.

At N.J.A.C. 7:27-19.5(c)1 through 6, to make clear that the statements are requirements, the verbs "applies," "obtains," "establishes," "maintains," and "complies," have been revised to be "shall apply," "shall obtain," "shall establish," "shall maintain," and "shall comply," respectively.

At N.J.A.C. 7:27-19.6(e), additional words or phrases have been inserted to clarify that the data referenced is "emissions data" and that the plan referred to is a "monitoring plan."

At N.J.A.C. 7:27-19.6(f), to clarify the intent, the phrase "according to the schedule set forth in (f)1 and 2 below" has been replaced with the simpler phrase "as follows."

At N.J.A.C. 7:27-19.6(f)2, "April" has been replaced with "May" to be complementary to the dates specified in N.J.A.C. 7:27-19.6(f)1.

At N.J.A.C. 7:27-19.6(h)4, a provision for reporting during the non-ozone season was added. It had been omitted in the proposed rule.

At N.J.A.C. 7:27-19.6(i), the term "electric generating utility" has been replaced with the more general term "designated set" as used previously in that subsection.

At N.J.A.C. 7:27-19.6(i)5, the reference to N.J.A.C. 7:27-8.23 as providing certification requirements is corrected to N.J.A.C. 7:27-8.24.

At N.J.A.C. 7:27-19.6(l)1 through 4, the facsimile numbers for the Regional Offices have been deleted in the adopted rule as these numbers are subject to change, and any numbers given could become obsolete and therefore misleading.

At N.J.A.C. 7:27-19.7(b), within the heading for Table 5, the citation should read N.J.A.C. 7:27-19.7(b). This was corrected in the adopted rule.

At N.J.A.C. 7:27-19.8(c) the word "eight" has been replaced with "8.0" for stylistic consistency.

At N.J.A.C. 7:27-19.13(a)1, the last word "and" has been changed to "or." This is consistent with the original intent of this section.

At N.J.A.C. 7:27-19.13(b), the introductory language of the provision has been modified to clarify that the deadline given applies to facilities, equipment, and source operations that are in operation at the time the provision becomes operative and that an owner or operator should utilize the procedures at N.J.A.C. 7:27-19.3(e) to seek an extension of the deadline.

At N.J.A.C. 7:27-19.13(g)3iv, the abbreviation "NO_x" was incorrectly spelled. This has been corrected in the adopted rule.

At N.J.A.C. 7:27-19.13(h), the punctuation within the penultimate line was corrected so that the phrase now reads: "... upon human health, welfare and the environment."

At N.J.A.C. 7:27-19.13(i) (N.J.A.C. 7:27-19.13(j) in the proposal), the text has been revised to clarify that the affected equipment or source operations are those listed at N.J.A.C. 7:27-19.13(b)1.

At N.J.A.C. 7:27-19.14(a)5, a paragraph has been added clarifying that the procedures of this section also apply to alternative monitoring plans which a person may elect to apply for pursuant to N.J.A.C. 7:27-19.18(b).

At N.J.A.C. 7:27-19.15(c), the reference to "(a) or (b) above" has been corrected to (a)1 or 2 above."

At N.J.A.C. 7:27-19.18(i)3, a provision has been added to expand the reasons for revocation of an approval to include the alternatives to CEMs.

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 19. CONTROL AND PROHIBITION OF AIR POLLUTION FROM OXIDES OF NITROGEN

7:27-19.1 Definitions

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

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Ambient air quality standard" means a limit on the concentration of an air contaminant in the general outdoor atmosphere as set forth in N.J.A.C. 7:27-13 or 40 CFR 50.

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" shall have the meaning assigned to it at N.J.A.C. 7:27-8.1.

"Alternative maximum allowable emission rate" means a maximum allowable emission rate, set by the Department on a site-specific basis pursuant to N.J.A.C. 7:27-19.13.

"Anthracite coal" means coal that is classified as anthracite according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77, incorporated herein by reference. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Asphalt" means a solid, semisolid, or liquid material, produced by mixing bituminous substances together with gravel, crushed rock or similar materials, and used commonly as a coating or paving.

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

"Averaging" means complying with the requirements of this subchapter pursuant to N.J.A.C. 7:27-19.6, Emissions averaging.

"Averaging unit" means an individual source operation or item of equipment which is included in a designated set for the purpose of averaging pursuant to N.J.A.C. 7:27-19.6.

"Batch type asphalt plant" means an asphalt plant where the aggregate and asphalt cement or other binder are mixed in equipment other than a rotary dryer.

"Bituminous coal" means coal that is classified as bituminous according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Borosilicate recipe" means a formula for making glass using 60 to 80 percent silicon dioxide, five to 35 percent boric oxides, and four to 23 percent other oxides.

"British thermal unit (BTU)" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Calendar day" means the 24 hour period from 12:00 o'clock midnight to 12:00 o'clock midnight the following day.

"Carbon monoxide (CO)" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

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

***"Continuous emissions monitor" or "CEM" means a device which continuously measures the emissions from one or more source operations.**

"Continuous monitoring system" or "CMS" means a system designed to continuously measure various parameters at a facility which may affect or relate to a facility's emissions. Components of a CMS include, but are not limited to, any continuous emissions monitor (CEM), continuous opacity monitor (COM), continuous process monitor (CPM), or any other constantly operating measuring device and recording device approved by the Department to perform one or more of the functions of a CMS.*

"CFR" means the Code of Federal Regulations.

"Coal" means anthracite coal, bituminous coal, coke, lignite, nonbanded coal, and/or subbituminous coal.

"Coke" means a fused, cellular, porous substance that remains after free moisture and the major portion of the volatile materials have been distilled from bituminous coal and other carbonaceous material by heating it in the absence of air or with a limited supply of air.

"Combined cycle gas turbine" means a gas turbine in which heat is recovered from the turbine's exhaust gases to heat water or generate steam.

"Combustion source" means a source operation or item of equipment which combusts fuel.

"Commercial container glass" means clear or colored glass made of soda-lime recipe, which is formed into bottles, jars, ampoules or other containers, but does not include specialty container glass.

"Commercial fuel" means solid, liquid, or gaseous fuel which is ordinarily produced, manufactured, or sold for the purpose of creating heat.

"Comparable demand day" means, for any day in which an averaging unit is not operating, a day on which demand for electric power was within 10 percent of the demand on the day in question.

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

"Cyclone-fired boiler" means a boiler which combusts fuel in a horizontal water-cooled cylinder before releasing the combustion gases into the boiler.

"Delivery vessel" means any mobile storage tank including, but not limited to, tank trucks or railroad tank cars. This term does not include marine tank vessels.

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

"Designated set" means the averaging units which an owner or operator is authorized by the Department to include in an averaging plan pursuant to N.J.A.C. 7:27-19.6.

"Distillates of air" means helium (He), nitrogen (N_2), oxygen (O_2), neon (Ne), argon (Ar), krypton (Kr), xenon (Xe), and carbon dioxide (CO_2).

"Dry bottom utility boiler" means a utility boiler equipped with an ash disposal hopper bottom with sufficient cooling surface so that ash particles, when removed from the hopper, are in a solid state.

"Drum mix asphalt plant" means an asphalt plant where the asphalt cement or other binder is added to the aggregate while the aggregate is still in the rotary dryer.

"Electric generating utility" means any person who is subject to regulation as a public utility (as defined in N.J.S.A. 48:2-13) for its provision of electric power to another person ***or any person who would be subject to such regulation were it not for that person's status as a municipality***.

"Emergency generator" means a *[stationary internal combustion engine or stationary gas turbine]* ***combustion source*** used to provide mechanical***, thermal*** or electrical *[power]* ***energy*** only when the ***facility's*** primary *[power]* source *[for a facility]* ***of that energy*** has been rendered inoperable by circumstances beyond the control of the owner or operator of the facility. The term does not include equipment used in circumstances other than emergencies, such as during high electric demand days. The term also does not include equipment which continues to be used after the primary *[power]* ***energy*** source either has become operable again or should have become operable had the owner or operator made reasonable efforts to repair it.

"EPA" means the United States Environmental Protection Agency.

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

"Face-fired boiler" means a furnace firing design in which the burners are mounted on one or more walls of the furnace.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person. This term does not include delivery vessels.

"Federally enforceable" means all limitations and conditions on operation, production, or emissions which can be enforced by EPA pursuant to authorities which include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;

3. Any provision of an applicable SIP;

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; or 40 CFR 71; or

5. Any permit issued pursuant to requirements established under the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and this chapter.

"Fixed capital cost" means the capital needed to provide all the depreciable components of a facility, item of equipment or source operation.

"Fuel" means combustible material burned in boilers, furnaces or other machinery to generate heat or other forms of energy. This term includes commercial fuel and non-commercial fuel.

"Fuel oil" means a liquid or liquefiable petroleum product burned for the generation of light, heat or power and derived directly or indirectly from crude oil.

"Gas turbine" means an internal combustion engine fueled by liquid or gaseous fuel, which generates mechanical energy in the form of a rotating shaft which is used to drive an electric generator or other industrial equipment.

"Glass" means a hard, amorphous inorganic substance made by fusing silicates, and sometimes borates and phosphates, with certain basic oxides.

"Glass manufacturing furnace" means equipment which uses heat for the production of glass.

"Heat input" means heat derived from the combustion of fuel put into any boiler, furnace or other piece of equipment. This term does not include the heat from preheated combustion air, recirculated flue gases or exhaust gases from other sources.

"Higher heating value" means the total heat obtained from the complete combustion of a fuel which is at 60 degrees Fahrenheit when combustion begins, and the combustion products of which are cooled to 60 degrees Fahrenheit before the quantity of heat released is measured.

"Horsepower hour" means a unit of energy or work, equal to the work done by a mechanism with a power output of one horsepower over a period of one hour.

"Incinerator " means any device, apparatus, equipment, or structure using combustion or pyrolysis for destroying, reducing or salvaging any material or substance, but does not include thermal or catalytic oxidizers used as control apparatus on manufacturing equipment. For the purposes of this subchapter, this term includes (without limitation) any thermal destruction facility which is a resource recovery facility, as such terms are defined in N.J.A.C. 7:26-1.4.

"Lean-burn stationary internal combustion engine" means a stationary internal combustion engine *[in which the exhaust oxygen (O_2) concentration is greater than four percent]* ***which operates at an air-to-fuel ratio fuel-lean of stoichiometric and cannot operate with an exhaust oxygen concentration less than one percent***.

"Lignite" means coal that is classified as lignite A or B according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Liquid particles" means particles which have volume but are not of rigid shape.

"Major NO_x facility" means any facility which has the potential to emit 25 or more tons of NO_x per year.

"Manufacturing process" means any action, operation or treatment embracing chemical, industrial, manufacturing, or processing factors, methods or forms including, but not limited to, furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, crushers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers or absorbers.

"Maximum allowable emission rate" means the maximum amount of an air contaminant which may be emitted into the outdoor air at any instant in time or during any prescribed interval of time.

"Maximum gross heat input rate" means the maximum amount of fuel a combustion source is able to combust in a given period as stated by the manufacturer of the *[steam generating unit]* ***combustion source***. This term is expressed in BTUs per hour, based on the higher heating value of the fuel.

"National Ambient Air Quality Standard (NAAQS)" means an ambient air quality standard promulgated at 40 CFR 50.

"Natural gas reburning" means a control technology where natural gas is injected into a boiler downstream of the main combustion zone in order to reduce the amount of NO_x in the exhaust gas.

"NESHAP" means a National Emission Standard for a Hazardous Air Pollutant as promulgated under 40 CFR 61.

"Nitrogen dioxide (NO_2)" 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.

"Nonbanded coal" means coal that is classified as nonbanded according to the ASTM Standard Definition of Terms Relating to Megascopic Description of Coal and Coal Beds and Microscopical Description and Analysis of Coals, ASTM D 2796-77, incorporated herein by reference. This document may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Non-commercial fuel" means solid, liquid or gaseous fuel which is not ordinarily produced, manufactured, or sold for the purpose of creating heat.

"Non-utility boiler" means any steam generating unit which is not a utility boiler.

"NSPS" means Standards of Performance for New Stationary Sources as promulgated under 40 CFR 60, commonly referred to as New Source Performance Standards.

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

"Oxides of nitrogen (NO_x)" means all oxides of nitrogen, except nitrous oxide, as measured by test methods approved by the Department and EPA, such as the test methods set forth at 40 CFR 60 Appendix A Method 7E.

"Particles" means any material, except uncombined water, which exists as liquid particles or solid particles at standard conditions.

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

"Person" means any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships and joint stock companies, and shall also include, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.

"Potential to emit" means the capability of a source operation or of a facility to emit an air contaminant at maximum design capacity, except as constrained by any Federally enforceable condition. Such Federally enforceable conditions may include, but are not limited to, the effect of installed control apparatus, restrictions on the hours of operation, and restrictions on the type or amount of material combusted, stored, or processed.

"Ppmv" means a measurement of the concentration of a specified substance in air, expressed as the number of parts of the specified substance per million parts of air, by volume, including the number of parts contributed by water.

"Ppmvd" means a measurement of the concentration of a specified substance in air, expressed as the number of parts of the specified substance per million parts of air, by volume, not including the number of parts contributed by water.

"Rebricking" means the replacement of damaged or worn bricks of a glass manufacturing furnace while the furnace does not contain molten glass.

"Reconstruction" means the replacement of components of an existing facility, item of equipment or source operation to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct an entirely new facility, item of equipment or source operation.

"Regenerative cycle gas turbine" means a gas turbine which recovers heat from its exhaust gases and uses that heat to preheat the combustion air which is drawn into the gas turbine.

"Repowering" means the replacement of the stream generator in a steam generating unit.

"Rich-burn stationary internal combustion engine" means a stationary internal combustion engine in which the *[exhaust oxygen (O_2)]* concentration ***of oxygen in the exhaust*** is no greater than *[four]* ***one*** percent.

"Rotary dryer" means a cylindrical device, which rotates about an axis, through which hot gases are passed for the purpose of removing moisture from any solid.

"Sampling" means the selective collection of a quantity of raw materials, process intermediates, products, by-products or wastes.

"Significant air quality impact level" means an increase, greater than or equal to that specified in Table 1 at N.J.A.C. 7:27-18.4, in the ambient air concentration of a criteria pollutant.

"Simple cycle gas turbine" means a gas turbine which does not recover heat from its exhaust gases.

"Soda lime recipe" means a formula for making glass using 60 to 75 percent silicon dioxide and 25 to 40 percent other oxides and no lead oxides.

"Solid particles" means particles of rigid shape and definite volume.

"Source emission testing" means the testing of a discharge of any air contaminant from equipment, control apparatus or source operation through any stack or chimney.

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

"Specialty container glass" means clear or colored glass made of soda-lime recipe, which is produced to meet the specifications of any standard set forth by The United States Pharmacopeia or The National Formulary, incorporated herein by reference, and which is used for pharmaceutical, cosmetic or scientific purposes. The referenced specifications can be obtained from the United States *[Pharmocepeial]* ***Pharmacopeial*** Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852.

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

"Standard conditions" means 70 degrees Fahrenheit (21.1 degrees Celsius***)*** and one atmosphere pressure (14.7 pounds per square inch absolute or 760.0 millimeters of mercury).

"State implementation plan (SIP)" means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 USC 1857 et seq.).

"Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine or combined cycle gas turbine that is not self-propelled. The term includes a gas turbine of any of these types which is mounted on a vehicle for portability.

"Stationary internal combustion engine" means any internal combustion engine that is not self-propelled. This term includes internal combustion engines which are mounted on vehicles for portability.

"Steam generating unit" means any furnace, boiler, or other device which combusts commercial fuel for the purpose of producing steam.

"Subbituminous coal" means coal that is classified as subbituminous according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388-77. This document may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Tangential-fired boiler" means a furnace firing design where the burners are mounted at the corners of the furnace chamber.

"Testing" means a procedure for determining the kind and amount of one or more air contaminants, potential air contaminants or air contaminant precursors present. This term includes, but is not limited to, sampling, sample custody, analysis, and reporting of findings.

"Use" means to engage in any form or manner of operation of equipment or control apparatus subsequent to the installation of such equipment or control apparatus. This term includes any trial operation.

"Utility boiler" means a steam generating unit*[, all or some of the steam from]* ***owned by an electric generating utility*** which is used for generating electricity ***for commercial use***.

"Volatile organic compound," or "(VOC)," means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

Compounds

methane
ethane
methylene *[cloride]* ***chloride*** (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
trifluoromethane (FC-23)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1,-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)

Classes of perfluorocarbons:

Cyclic, branched, or linear, completely fluorinated alkanes
Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

"Wet bottom utility boiler" means a utility boiler in which the ash is removed from the boiler in a molten state.

7:27-19.2 Purpose, scope and applicability

(a) This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by oxides of nitrogen. The purpose of this subchapter is to require any stationary source or group of sources, located within a contiguous area and under common control, that emits or has the potential to emit at least 25 tons of NO_x per year, to implement reasonably available control technology (RACT) to control NO_x emissions. EPA defines RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility.

(b) The following types of equipment and source operations are subject to the provisions of this subchapter:

1. Any utility boiler;

2. Any non-utility boiler which has a maximum gross heat input rate of at least 20 million BTUs per hour;

3. Any stationary gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour;

4. Any stationary internal combustion engine capable of producing an output of more than 500 horsepower;

5. Any rotary dryer having the potential to emit at least 25 tons of NO_x per year, and located at an asphalt plant;

6. Any glass manufacturing furnace producing commercial container glass, and having a maximum potential production rate of at least 14 tons of glass removed from the furnace per day ***and has the potential to emit more than 10 tons of NO_x per year***;

7. Any glass manufacturing furnace producing specialty container glass, and having a maximum potential production rate of at least seven tons of glass removed from the furnace per day ***and has the potential to emit more than 10 tons of NO_x per year***; and

8. Any glass manufacturing furnace producing borosilicate recipe glass, and having a maximum potential production rate of at least five tons of glass removed from the furnace per day ***and has the potential to emit more than 10 tons of NO_x per year***.

(c) Any major NO_x facility containing any equipment or source operation not specifically listed in (b) above, which equipment or source operation has the potential to emit more than 10 tons of NO_x per year, is subject to the provisions of this subchapter.

(d) Notwithstanding the provisions of (b) and (c) above, any emergency generator which is subject to a Federally enforceable limitation or condition restricting its operations to less than 500 hours during any consecutive 12 month period, and which does not have the potential to emit at least 25 tons of NO_x during its annual period of operations, is not subject to this subchapter.

(e) Notwithstanding the provisions of (b) and (c) above, this subchapter does not apply to any equipment or source operation for which the *[Administrator of]* EPA determines (when the *[Administrator]* ***EPA*** approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from such equipment or source operation.

(f) The owner or operator of a facility containing any equipment or source operation listed in (b) above may apply to the Department for an exemption from this subchapter. The procedure for obtaining the Department's approval of such an exemption is set forth in N.J.A.C. 7:27-19.14. The Department shall approve the exemption only if the facility satisfies the requirements of (f)1 and 2 below:

1. The facility's potential to emit NO_x is less than 25 tons per year; and

2. The facility's potential to emit NO_x on any calendar day from May 15 to September 15 is less than 137 pounds per day.

7:27-19.3 General provisions

(a) Each owner and each operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. If there is more than one owner and operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violations of this subchapter.

(b) The emission limitations specified in this subchapter become operative on May 31, 1995, except as provided in N.J.A.C. 7:27-19.4(c) and 19.10(d).

(c) For any alteration of equipment or source operations necessary to comply with the NO_x emission limits in this subchapter, which alteration does not involve a reconstruction of the equipment or source operation, the use of control measures which incorporate current advances in the art of air pollution control for those types of control measures shall be deemed to satisfy the requirements of N.J.A.C. 7:27-8.8(d). For example, if a utility boiler achieves compliance with an emission limit under this subchapter by installing a low-NO_x burner, the requirements of N.J.A.C. 7:27-8.8(d) are satisfied if the low-NO_x burner installed incorporates current advances in the art of air pollution control for low-NO_x burners.

(d) By *[(date which is three months after operative date of this subchapter)]* ***April 23, 1994***, the owner or operator of any facility, equipment or source operation ***which is in operation prior to January 23, 1994 and is*** subject to this subchapter shall *[apply]***:**

1. Apply* for permits for all equipment and control apparatus necessary for compliance with this subchapter***; and**

2. If the owner or operator seeks to comply with this subchapter pursuant to the facility-specific NO_x emission limit provision of N.J.A.C. 7:27-19.13, submit to the Department a facility-specific NO_x control plan pursuant to N.J.A.C. 7:27-19.13*.

***(e) After receipt of a written request from an owner or operator for an extension of the deadline set forth in (d) above or the deadline set forth at N.J.A.C. 7:27-19.13(b), the Department may authorize a 60-day renewable extension, provided that the request includes a statement, certified in accordance with N.J.A.C. 7:27-8.24, that notwithstanding the request for an extension, the facility will comply with all applicable emission limits set forth in this subchapter by the May 31, 1995 deadline established in (b) above. Such extension may be renewed by the Department upon the written request of the owner or operator provided that the request of the renewal shall also include a statement, certified in accordance with N.J.A.C. 7:27-8.24, that notwithstanding the request for an extension, the facility will comply with all applicable emission limits set forth in this subchapter by the May 31, 1995 deadline established in (b) above. Written requests for the extension of a deadline submitted pursuant to this subsection shall be addressed to:**

Assistant Director, Air and Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection and Energy
CN 422
401 East State Street, 4th Floor
Trenton, New Jersey 08625-0422

(f) The requirement for an owner or operator set forth in (d) above may be waived by the Department if:

1. The source operation which will be permanently shut down prior to May 31, 1995; and

2. The owner or operator submits a request for a waiver to the Department by April 23, 1994. Such request shall include:

i. A statement of the date (prior to May 31, 1995) the source operation will be permanently shut down; and

ii. Certification in accordance with N.J.A.C. 7:27-8.24.

(g) The owner or operator of any facility, equipment or source operation which commences operation on or after January 23, 1994 shall ensure that such facility, equipment of source operation complies with the requirements of this subchapter from the date of commencement of operation.*

7:27-19.4 Utility boilers

(a) The owner or operator of a utility boiler shall cause it to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 1 below, unless the owner or operator of the utility boiler is:

1. Complying with (b) or (c) below in lieu of complying with the emission limits set forth in Table 1 below, under the Department's written approval obtained pursuant to N.J.A.C. 7:27-19.14; or

2. Complying with an averaging plan submitted under N.J.A.C. 7:27-19.6 and approved by the Department in writing pursuant to N.J.A.C. 7:27-19.14.

TABLE 1

Maximum Allowable NO_x Emission Rates for Utility Boilers
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0[1]	1.0[1]	0.60
Coal—Dry Bottom	0.38	0.45	0.55
Oil and/or Gas	0.20	0.28	0.43
Gas Only	0.20	0.20	0.43

[1]Except as provided in (b) below.

(b) In lieu of complying with the emission limits set forth in (a) above, the owner or operator of a coal-fired, wet-bottom utility boiler which uses the tangential or face firing method may comply with the requirements of this subsection, which provides for seasonal combustion of natural gas. ***This shall not include a utility boiler**

which used natural gas as its primary fuel in 1990 or which currently uses natural gas as its primary fuel.* The owner or operator electing to comply with this subsection shall satisfy all of the following requirements:

1. Before July 1, 1994, submit to the Department an application for approval of seasonal natural gas combustion, pursuant to N.J.A.C. 7:27-19.14(a), (b) and (c);

2. Before May 1, 1995, obtain the Department's written approval of the application pursuant to N.J.A.C. 7:27-19.14, and maintain that approval in effect;

3. Comply with all conditions of the Department's written approval;

4. Beginning in calendar year 1995, comply with the following requirements:

i. From May 1 to September 30 of each year, combust *[only]* natural gas in the utility boiler; ***and***

ii. Operate the utility boiler so that it emits NO_x at an average rate for each calendar day no greater than one pound of NO_x per million BTUs; and

5. For every calendar year beginning in 1995, operate the utility boiler so that the average NO_x emission rate over the entire calendar year does not exceed 1.5 pounds of NO_x per million BTUs.

(c) In lieu of complying with the emission limits set forth in (a) above, the owner or operator of a utility boiler which is to be *[shut down or]* repowered before *[April 30]* ***May 15***, 1999 may comply with the requirements of this subsection. The owner or operator electing to comply with this subsection shall satisfy all of the following requirements:

1. Before May 1 of each calendar year beginning with 1995, adjust the combustion process in accordance with the general procedures set forth at N.J.A.C. 7:27-19.16;

2. Before January 1, 1995, enter into a Federally enforceable agreement with the Department which prohibits the continued operation of the utility boiler after April 30, 1999, unless its repowering is completed before that date and it meets the emission limitations specified in Table 2 below thereafter;

3. Before July 1, 1994, submit to the Department an application for approval of compliance under this subsection, pursuant to N.J.A.C. 7:27-19.14(a), (b) and (c), and include in the application specific procedures and schedules for adjustment of the boiler's combustion process in addition to the general procedures set forth in N.J.A.C. 7:27-19.16, and a proposed schedule of milestones for obtaining permits and purchasing equipment for the repowering of the boiler;

4. Obtain the Department's written approval of the application pursuant to N.J.A.C. 7:27-19.14, including, without limitation, approval of the combustion adjustment procedures and schedules based upon a determination that such procedures and schedules will minimize total emissions of NO_x, VOC and CO to the extent practicable using procedures and schedules which are technologically and economically feasible;

5. Maintain the Department's approval in effect; and

6. Comply with all conditions of the Department's written approval, and meet all milestones in that approval (such as for permit applications and permit approvals).

TABLE 2

Maximum Allowable NO_x Emission Rates for Utility Boilers Which Have Been Repowered
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	0.2	0.2	0.2
Coal—Dry Bottom	0.2	0.2	**
Oil and/or Gas	0.1	0.1	0.1
Gas Only	0.1	0.1	**

(d) The owner or operator of any utility boiler subject to this subchapter shall install on the boiler a continuous emissions monitoring system satisfying the requirements of N.J.A.C. 7:27-19.18.

7:27-19.5 Stationary gas turbines

(a) No stationary simple cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO_x at a rate greater than the applicable maximum allowable NO_x emission rate specified in Table 3 below, unless the owner or operator is complying with an averaging plan including that turbine which has been submitted under N.J.A.C. 7:27-19.6 and approved by the Department in writing pursuant to N.J.A.C. 7:27-19.14.

TABLE 3

Maximum Allowable NO_x Emission Rate for Simple Cycle Gas Turbines
(Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.4
Gas	0.2

(b) No combined cycle gas turbine or regenerative cycle gas turbine which has a maximum gross heat input rate of at least 30 million BTUs per hour may emit NO_x at a rate greater than the applicable maximum allowable NO_x emission rate specified in Table 4 below, unless the owner or operator is complying with an *[average]* ***averaging*** plan including that turbine which has been submitted under N.J.A.C. 7:27-19.6 and approved by the Department in writing pursuant to N.J.A.C. 7:27-19.14.

TABLE 4

Maximum Allowable NO_x Emission Rate for Combined Cycle Gas Turbines
(Pounds per million BTU)

Fuel Used	Emission Limit
Oil	0.35
Gas	0.15

(c) In lieu of complying with the emission limits set forth in (a) and (b) above, the owner or operator of a stationary gas turbine may elect to comply with the requirements of this subsection. The owner or operator of the turbine shall satisfy all of the requirements listed in (c)1 through 6 below*[.]***:***

1. The owner or operator of *[applies for and obtains]* ***the stationary gas turbine shall apply for and obtain*** the Department's written approval, in accordance with N.J.A.C. 7:27-19.14 and based on the standards in N.J.A.C. 7:27-19.14 and (c)2 and 3 below;

2. The owner or operator *[establishes]* ***shall establish*** that there is an insufficient supply of water to the turbine suitable for NO_x emission control, due to either of the following circumstances beyond the control of the owner or operator:

i. A legally enforceable limit on the amount of water which the owner or operator's facility may use; or

ii. The need to provide for an alternate supply of water, because the existing supply is insufficiently filtered and de-ionized to be suitable for injection;

3. The owner or operator *[establishes]* ***shall establish*** that there is no commercially available dry low-NO_x combustor suitable for use in the specific stationary gas turbine;

4. The owner or operator *[maintains]* ***shall maintain*** the Department's approval in effect;

5. The owner or operator *[complies]* ***shall comply*** with all conditions of the Department's approval; and

6. The owner or operator annually *[adjusts]* ***shall adjust*** the combustion process of the turbine in accordance with N.J.A.C. 7:27-19.16, before May 1 of each year.

[(d) In reducing the NO_x emission rate to the rate required under (a) or (b) above, the owner or operator of a stationary gas turbine not approved under (c) above shall not allow the CO emission rate to exceed 50 ppmvd at 15 percent O_2 at any operating condition.]

7:27-19.6 Emissions averaging

(a) The Department may authorize an owner or operator to comply with an averaging plan approved by the Department pursuant to this section. An owner or operator in compliance with such an approved averaging plan is not required to comply with any emission limit set forth in this subchapter which would be applicable in the absence of an approved averaging plan.

(b) The owner or operator of two or more source operations or items of equipment may request that the Department authorize an averaging plan for two or more averaging units designated by the owner or operator. The owner or operator seeking authorization for averaging shall submit a written request to the Department at the address set forth in (k) below. The owner or operator shall include the following information in the request:

1. Information sufficient to identify each averaging unit, including its location, a brief description of the unit (for example, "dry-bottom coal-fired utility boiler" or "oil-fired simple-cycle gas turbine"), its permit number, any other identifying numbers, and any other information necessary to distinguish it from other equipment owned or operated by the applicant;

2. The maximum gross heat input rate of each averaging unit, expressed in BTUs per hour;

3. The type of fuel or fuels combusted in each averaging unit;

4. The maximum allowable NO_x emission rate which the owner or operator proposes to impose upon each averaging unit, expressed in pounds per million BTU;

5. The peak daily heat input rate, calculated by averaging the heat input to the unit, expressed in mmBTU, from the five highest days in the last five years;

*[5.]***6.*** A demonstration that in operating at their *[maximum]* ***peak daily*** heat input rates, all of the averaging units together would satisfy the following equation:

$$TPEE \leq TPAE$$

where:

i. TPEE means total peak estimated emissions, and is equal to the sum of the peak estimated emissions for each averaging unit. The peak estimated emissions for each averaging unit equals the maximum emission rate listed in (b)4 above for that averaging unit, multiplied by the *[maximum]* ***peak daily*** heat input rate listed in *[(b)2]* ***(b)5*** above for that averaging unit; and

ii. TPAE means total peak allowable emissions, and is equal to the sum of the total peak allowable emissions for each averaging unit. The peak allowable emissions for each averaging unit equals the applicable NO_x emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 for that averaging unit, multiplied by the *[maximum]* ***peak daily*** heat input rate listed in *[(b)2]* ***(b)5*** above for that averaging unit;

*[6.]***7.*** The method to be used to measure the actual NO_x emission rate of each averaging unit;

*[7.]***8.*** The name and phone number of the individual responsible for the recordkeeping required under (g) below; and

*[8.]***9.*** Any other information which the Department requests, which is reasonably necessary to enable it to determine whether the averaging units designated by the owner or operator will comply with the requirements of this section.

(c) The Department shall approve an averaging plan only if the following requirements are satisfied:

1. Each averaging unit can satisfy the maximum allowable NO_x emission rate which the owner or operator proposed under (b)4 above for that averaging unit;

2. The request for authorization satisfies all requirements of (b) above;

3. The owner and operator of the averaging units to be included in the designated set enter into a Federally enforceable agreement with the Department (such as the inclusion of conditions in the applicable permits and/or operating certificates), requiring any averaging unit for which the NO_x emission rate specified under (b)4 above is less than the applicable maximum allowable NO_x emission rate specified at N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 to continue to emit NO_x at the rate specified under (b)4 above; and

4. Emissions from any averaging unit exceeding the applicable NO_x emission limit under N.J.A.C. 7:27-19.4 or 19.5 will not cause *[or materially contribute to an exceedance of the NAAQS for nitrogen dioxide]* ***the concentration of NO_x in the ambient air to exceed the applicable significant air quality impact level set forth in Table 1 at N.J.A.C. 7:27-18.4*** or any other environmental impact inconsistent with the purposes of this chapter, the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., or the Clean Air Act, 42 U.S.C. 7401 et seq.

(d) The owner or operator of the designated set shall operate each unit in the designated set in compliance with the following:

1. The actual NO_x emissions from each averaging unit in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the maximum allowable NO_x emission rate specified in (b)4 above for that averaging unit; and

2. The sum of the actual NO_x emissions from all averaging units in the designated set, averaged over the appropriate time period specified in (f) below, shall not exceed the sum of the allowable NO_x emissions for all averaging units in the designated set. The allowable NO_x emissions for each averaging unit is calculated according to the following formula:

$$\text{Allowable } NO_x \text{ emissions} = H \times AL$$

where:

i. H means the actual heat input to the averaging unit during the appropriate time interval specified in (f) below. The heat input is expressed in millions of BTUs, based on the higher heating value of the fuel burned; and

ii. AL means the applicable NO_x emission limit set forth in N.J.A.C. 7:27-19.4, 19.5, 19.7, 19.8, 19.9 or 19.10 for that averaging unit, expressed in pounds of NO_x per million BTUs.

(e) The owner or operator of the designated set shall calculate the actual NO_x emissions of each averaging unit using ***emissions*** data from a continuous emissions monitoring system satisfying the requirements of N.J.A.C. 7:27-19.18. The owner or operator may comply with this requirement ***using emissions data derived*** in accordance with a ***monitoring*** plan for limited installation of continuous emissions monitoring systems approved by the Department under N.J.A.C. 7:27-19.18*[(d)]****(e)***.

(f) The owner or operator shall demonstrate compliance with this section *[according to the schedule set forth in (f)1 and 2 below.]* ***as follows:***

1. The owner or operator shall determine whether the operations of the designated set comply with this section for each calendar day during the period beginning May 15 and ending September 15 of each year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire calendar day. The owner or operator shall perform the calculations and make a record of them within three working days after the date which is the subject of the calculation*[.]****; and***

2. The owner or operator shall determine whether the operations of the designated set comply with this section for the 30-day period beginning September 16 of each year, and the 30-day period beginning on each subsequent day through *[April 15]* ***May 14*** of the following year. The owner or operator shall base the calculations required under (d)1 and 2 above upon the heat input and NO_x emissions for each averaging unit over the entire 30-day period. The owner or operator shall perform the calculations and make a record of them by the 15th day of each month, for all 30-day periods ending in the preceding month.

(g) The owner or operator of a designated set shall maintain the records listed below for five years from the date on which each record was made. The owner or operator shall maintain such records in a permanently bound log book, in a format approved in writing by the Department *[and acceptable to the EPA]*. The owner or operator shall maintain the following records:

1. The unique identifier for each averaging unit included in the designated set as specified in (b)1 above;

2. The time period for which the data is being recorded;

3. The date upon which the data was recorded;

4. The amount, type and higher heating value of the fuel(s) consumed over the subject time period;

5. The amount of NO_x (expressed in pounds or tons) emitted by each averaging unit over the subject time period;

6. Whether the amount exceeds the allowable rate for the averaging unit specified under (b)4 above;

7. The sum of the amounts listed in (g)5 above for all averaging units;

8. The allowable NO_x emissions calculated pursuant to (d)2 above; and

9. Any other information required to be maintained as a condition of approval granted pursuant to (b) above.

(h) The owner or operator of a designated set shall submit quarterly reports to the Department on April 30, July 30, October 30 and January 30 of each year, for the immediately preceding calendar quarter ending March 31, June 30, September 30 and December 31, respectively. The owner or operator shall submit the report to the Department at the address set forth in (1) below. The owner or operator shall include the following information in the quarterly report:

1. The information listed in (g)2 and 3 above;

2. In the report for the quarter ending March 31, the compliance determination required under (f)2 above for each 30-day period ending on a calendar day within the quarter;

3. In the report for the quarter ending June 30:

i. The compliance determination required under (f)2 above for each 30-day period ending on a calendar day from April 1 through May 14, inclusive; and

ii. The compliance determination required under (f)1 above for each calendar day from May 15 through June 30, inclusive;

4. In the report for the quarter ending September 30*[, the]**:

i. The compliance determination required under (f)2 above for each 30 day period ending on a calendar day from September 16 through September 30, inclusive; and

ii. The* compliance determination required under (f)1 above for each calendar day from July 1 through September 15; and

5. In the report for the quarter ending December 31, the compliance determination required under (f)2 above for each 30-day period ending on a calendar day within the quarter.

(i) If the emissions from the designated set or from any averaging unit do not comply with (d) above for any time period described in (f) above, the owner or operator of the *[electric generating utility]* ***designated set*** shall deliver (as opposed to send) written notice of the non-compliance to the Department within two working days after the date on which the owner or operator was required to calculate compliance under (f) above. The owner or operator shall provide the notice in writing to the Regional Enforcement Officer, at the address specified in (l) below for the county in which the averaging unit with the highest NO_x emission rate is located. The owner or operator shall include the following information in the notification:

1. The name of the owner or operator;

2. The name and telephone number of the person specified in (b)7 above;

3. All information required to be recorded under (h) above;

4. A statement of the reason(s) for the non-compliance, if known; and

5. Certification of the notification, in accordance with N.J.A.C. 7:27-*[8.23]****8.24***.

(j) An electric generating utility operating a utility boiler or stationary gas turbine which cannot be operated due to sudden and reasonably unforeseeable circumstances beyond the utility's control, and for which the NO_x emission rate specified under (b)4 above is less than the applicable maximum allowable NO_x emission rate under N.J.A.C. 7:27-19.4 or 19.5, shall take the following actions:

1. Within two working days after the averaging unit ceased operating, deliver (as opposed to send) written ***preliminary*** notice to the Department. ***This preliminary notice shall be followed up within 30 calendar days of the occurrence of the incident certifying the information in accordance with N.J.A.C. 7:27-8.24.*** In the written notice, the owner or operator shall identify the unit which is or was not operating, and state why it is or was not operating;

2. If circumstances beyond the control of the owner or operator make it impracticable either to repair the averaging unit within 15 calendar days after it ceased operating, or to comply with the averaging plan without operating the unit (for example, through reducing the operations of another unit and purchasing electric power from another source), include in the notice described in (j)1 above an explanation of those circumstances and an estimate of the time required to repair the averaging unit; and

3. In determining whether the designated set is in compliance with (d)2 above, assume that the NO_x emissions and heat input for the non-operational averaging unit for each of the first 15 days of non-operation (or such longer period, not to exceed six months, as the Department determines is necessary to repair the averaging unit based on the information submitted under (j)2 above) are equal to the actual emissions and heat input for that unit on the most recent comparable demand day. For each day after the end of the period described above, assume that the NO_x emissions and heat input for the non-operational averaging unit are zero.

(k) A person submitting a request for authorization of an averaging plan shall send the request to the Department at the following address:

Chief, Bureau of Air Quality Engineering
Department of Environmental Protection
and Energy
401 East State Street
CN 027
Trenton, New Jersey 08625-0027

(l) A person required to provide notice to the Department under (i) above shall send the notice to the applicable address listed in (l)1 through 4 below.

1. If the averaging unit with the highest NO_x emission limit is located in Burlington County, Mercer County, Middlesex County, Monmouth County or Ocean County:

Central Regional Office
Horizon Center
CN 407
Robbinsville, NJ 08625-0407
[Fax: (609) 584-4220]

2. If the averaging unit with the highest NO_x emission limit is located in Bergen County, Essex County, Hudson County or Union County:

Metro Regional Office
2 Babcock Place
West Orange, NJ 07052-5504
[Fax: (201) 669-3907]

3. If the averaging unit with the highest NO_x emission limit is located in Hunterdon County, Morris County, Passaic County, Somerset County, Sussex County or Warren County:

Northern Regional Office
1259 Route 46 East
Parsippany, NJ 07054-4191
[Fax: (201) 229-7719]

4. If the averaging unit with the highest NO_x emission limit is located in Atlantic County, Camden County, Cape May County, Cumberland County, Gloucester County or Salem County:

Southern Regional Office
20 East Celementon Road
3rd Floor, Suite 302
Gibbsboro, NJ 08525-1175
[Fax: (609) 346-8051]

7:27-19.7 Non-utility boilers

(a) Beginning in calendar year 1994, the owner or operator of a non-utility boiler with a maximum gross heat input rate of at least 20 million but less than 50 million BTUs per hour shall annually adjust the combustion process of the boiler in accordance with N.J.A.C. 7:27-19.16 before May 1 of each year.

(b) Beginning on May 31, 1995, the owner or operator of a non-utility boiler with a maximum gross heat input rate of at least 50

million but less than 100 million BTUs per hour shall cause the boiler to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 5 below.

TABLE 5
Maximum Allowable NO_x Emission Rates for Non-utility Boilers Subject to N.J.A.C. 7:27-*[19.1(b)]**19.7(b)*
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0	1.0	0.55
Coal—Dry Bottom	0.38	0.43	0.55
#2 Fuel Oil	0.12[1]	0.12[1]	0.12[1]
Other Liquid Fuels	0.3[1]	0.3[1]	0.3[1]
Natural Gas	0.1	0.1	0.1

[1]Except as provided for in (c) above.

(c) Beginning on May 31, 1995, the owner or operator of a non-utility boiler with a maximum gross heat input rate of at least 100 million BTUs per hour shall cause the boiler to emit NO_x at a rate no greater than the applicable maximum allowable NO_x emission rate specified in Table 6 below.

TABLE 6
Maximum Allowable NO_x Emission Rates for Non-utility Boilers Subject to N.J.A.C. 7:27-19.7(c)
(pounds per million BTU)

	Firing Method		
Fuel/Boiler Type	Tangential	Face	Cyclone
Coal—Wet Bottom	1.0	1.0	0.60
Coal—Dry Bottom	0.38	0.45	0.55
Oil and/or Gas	0.20	0.28	0.43
Gas Only	0.20	0.20	0.43

(d) The owner or operator of any non-utility boiler with a maximum gross heat input rate of at least 250 million BTUs per hour shall install a continuous emissions monitoring system in accordance with N.J.A.C. 7:27-19.18.

7:27-19.8 Stationary internal combustion engines

(a) The owner or operator of a rich-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 1.5 grams of NO_x per horsepower hour.

(b) The owner or operator of a lean-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by gaseous fuel, shall cause it to emit no more than 2.5 grams of NO_x per horsepower hour.

(c) The owner or operator of any lean-burn stationary internal combustion engine capable of producing an output of more than 500 horsepower, fueled by liquid fuel, shall cause it to emit no more than *[eight]* ***8.0*** grams of NO_x per horsepower hour.

7:27-19.9 Asphalt plants

(a) The owner or operator of a batch type or drum mix asphalt plant which has the potential to emit at least 25 tons per year of NO_x shall cause it to emit NO_x at a rate no greater than 200 ppmvd at seven percent O_2.

(b) At least annually, the owner or operator of an asphalt plant subject to (a) above shall adjust the combustion process of the aggregate dryer in accordance with N.J.A.C. 7:27-19.16.

7:27-19.10 Glass manufacturing furnaces

(a) The owner or operator of any commercial container glass manufacturing furnace listed in N.J.A.C. 7:27-19.2(b)6 shall cause the furnace to emit no more than 5.5 pounds of NO_x per ton of glass removed from the furnace.

(b) The owner or operator of any specialty container glass manufacturing furnace listed in N.J.A.C. 7:27-19.2(b)7 shall cause the furnace to emit no more than 11 pounds of NO_x per ton of glass removed from the furnace.

(c) The owner or operator of a borosilicate recipe glass manufacturing furnace listed in N.J.A.C. 7:27-19.2(b)8 shall:

1. By January 1, 1994*[, conduct source emissions testing in accordance with N.J.A.C. 7:27-19.17 to]* determine the baseline NO_x emission rate from the furnace ***by either:***

i. Conducting source emissions testing in accordance with N.J.A.C. 7:27-19.17; or

ii. Using the results of source emissions testing conducted at any time after November 15, 1990, provided that the procedures used for the source emission testing meet the requirements of N.J.A.C. 7:27-19.17;*

2. By July 1, 1994, submit one of the following to the Department:

i. A written plan detailing how the NO_x emission rate from the furnace will be reduced by 30 percent from the baseline emission rate measured in (c)1 above; or

ii. A demonstration that the NO_x emissions from the furnace, as measured by the source emissions testing performed under (c)1 above, are at least 30 percent less than the uncontrolled NO_x emissions from the furnace as of a date no earlier than November 15, 1990;

3. Before the date specified in (d) below, implement the plan detailed in (c)2i above (unless the owner or operator has submitted the demonstration described in (c)2ii above); and

4. Beginning on the date specified in (d) below, cause the furnace to emit NO_x at a rate no greater than the reduced rate described in (c)2i above, or to continue to emit NO_x at a rate no greater than the rate demonstrated under (c)2ii above.

(d) A glass manufacturing furnace subject to this subchapter shall comply with the requirements of (a), (b), (c)3 and (c)4 above beginning on the earlier of the following:

1. The first date after *[[insert operative date]]* ***January 23, 1994**** on which rebricking of the furnace is completed; or

2. May 1, 1997.

(e) Beginning in calendar year 1994, the owner or operator of a glass manufacturing furnace subject to this subchapter shall adjust the combustion process of the furnace in accordance with N.J.A.C. 7:27-19.17 before May 1 of each calendar year.

7:27-19.11 and 19.12 (Reserved)

7:27-19.13 Facility-specific NO_x emissions limits

(a) This section establishes procedures and standards for the establishment of facility-specific NO_x emissions limits in the following circumstances:

1. If a major NO_x facility contains any source operation or item of equipment not listed in N.J.A.C. 7:27-19.2(b) which has the potential to emit more than 10 tons of NO_x per year, except as provided in *[(o)]* ***(p)**** below; *[and]* ***or****

2. If the owner or operator of a source operation or item of equipment listed in N.J.A.C. 7:27-19.2(b) seeks approval of an alternative maximum allowable emission rate, which would apply to the equipment or source operation in lieu of the emission limit which would otherwise apply under this subchapter.

(b) The owner or operator of a major NO_x facility described in (a)1 above shall obtain the Department's written approval of a facility-specific NO_x control plan in accordance with this section. *[The]* ***For any facility, equipment or source operation which is in operation prior to January 23, 1994, the**** owner or operator shall submit to the Department in writing a proposed NO_x control plan for the facility by *[[insert date which is three months after operative date of this subchapter]]* ***April 23, 1994 or by a later date approved by the Department pursuant to N.J.A.C. 7:27-19.3(e)****. In the proposed NO_x control plan, the owner or operator shall include:

1. A list of each source operation or item of equipment at the facility which has the potential to emit more than 10 tons of NO_x per year and is not listed in N.J.A.C. 7:27-19.2(b). In the list, the owner or operator shall briefly describe the source operation or item of equipment, and list its permit number and any other identifying numbers; and

2. The information listed in (d) below.

(c) The owner or operator of a source operation or item of equipment listed in N.J.A.C. 7:27-19.2(b) may request approval of an alternative maximum allowable emission rate in accordance with this section. In the request, the owner or operator shall include:

1. A brief description of the equipment or source operation which is the subject of the request, and its permit number and any other identifying numbers;

2. A demonstration that the source operation or item of equipment is not ***reasonably*** able to comply with this subchapter through any alternative means of compliance established under this subchapter (for example, through seasonal combustion of natural gas pursuant to N.J.A.C. 7:27-19.4(b), or through compliance with an averaging plan under N.J.A.C. 7:27-19.6); and

3. The information listed in (d) below.

(d) In addition to the information required under (b) or (c) above, as applicable, the owner or operator shall include the following information in a proposed NO_x control plan or request for an alternative maximum allowable emission rate:

1. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, a list of all NO_x control technologies available for use with the equipment or source operation;

2. An analysis of the technological feasibility of installing and operating each control technology identified in (d)1 above;

3. For each control technology which is technologically feasible to install and operate, an estimate of the cost of installation and operation;

4. An estimate of the remaining useful life of each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable;

5. An estimate of the reduction in NO_x emissions attainable through the use of each control technology which is technologically feasible to install and operate;

6. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, the NO_x control technology or technologies which the owner or operator proposes to employ;

7. For each source operation or item of equipment listed in (b)1 above or (c)1 above, as applicable, a proposed NO_x emission limit;

8. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (g) below; and

9. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-8.24.

(e) Within 30 days after receiving a proposed NO_x control plan or request for an alternative maximum allowable emission rate, the Department shall notify the owner or operator in writing whether the submission includes all of the information required under (d) above and under (b) or (c) above, as applicable. *[1.]* If the proposed NO_x control plan or request for an alternative maximum allowable emission rate is incomplete, the ***following shall apply:***

1. The* Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the proposed plan or request complete, and a time by which the owner or operator must submit a complete proposed plan or request*[.]****;***

2. The Department may refrain from reviewing the substance of the proposed plan or request (or any part thereof) until it is complete*[.]****;***

3. The owner or operator shall submit a complete proposed plan or request within the time stated in the Department's notification*[.]****;***

4. If the owner or operator fails to submit a complete proposed plan within the time stated in the Department's notification, the failure is a violation of this subchapter*[.]****; and***

5. If the owner or operator fails to submit a complete request for an alternative maximum allowable emission rate within the time stated in the Department's notification, the Department may deny the request.

(f) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed NO_x control plan or request for an alternative maximum allowable emission rate. The Department shall publish notice of opportunity for public comment in a newspaper of general circulation in the area in which the major NO_x facility is located.

(g) Within six months after receiving a complete proposed NO_x control plan or request for an alternative maximum allowable emission rate, the Department shall approve, approve and modify, or disapprove the proposed plan or request and notify the owner or operator of the decision in writing. The Department shall approve the proposed plan or request only if it satisfies the following requirements:

1. The proposed plan or request contains all of the information required under (d) above and under (b) or (c) above, as applicable;

2. The proposed plan or request considers all control technologies available for the control of NO_x emissions from the type of equipment or source operation in question;

3. For any control technologies described in (g)2 above which the owner or operator does not propose to use on the equipment or source operation, the proposed plan or request demonstrates that the control technology:

i. Would be ineffective in controlling NO_x emissions from the equipment or source operation;

ii. Is unsuitable for use in the equipment or source operation, or duplicative of control technology which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the NO_x emissions rate which the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in NO_x emissions which the control technology is likely to achieve over its useful life; or

iv. Would carry costs disproportionate to the costs incurred for the control of *[No_x]* ***NO_x**** emissions from the same type of equipment or source operations used by other persons in the owner or operator's industry;

4. The emission limit proposed for each source operation and item of equipment is the lowest rate which can practicably be achieved at a cost within the limits described in (g)3iii and iv above;

5. The cost of achieving an additional emission reduction beyond each proposed limit would be disproportionate to the size and environmental impact of that additional emission reduction; and

6. Emissions at each proposed limit will not cause *[or materially contribute to an exceedance of the NAAQS for nitrogen dioxide]* ***the concentration of NO_x in the ambient air to exceed the applicable significant air quality impact level set forth in Table 1 at N.J.A.C. 7:27-18.4**** or any other environmental impact inconsistent with the purposes of this chapter, the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., or the Clean Air Act, 42 U.S.C. 7401 et seq.

(h) Any alternate emissions limit pursuant to N.J.A.C. 7:27-19.13(c) or NO_x Control Plan pursuant to N.J.A.C. 7:27-19.13(b) approved by the Department will be submitted to EPA as an amendment to the State Implementation Plan (SIP) for ozone.*

*[(h)]*****(i)**** As a condition of an approval issued under this section, the Department may impose requirements upon the operation of ***any of the**** equipment or source operations at the subject facility ***listed pursuant to (b)1 or (c)1 above**** necessary to minimize any adverse impact upon human*[,]* health***,**** welfare and the environment.

*[(i)]*****(j)**** Before altering any equipment or source operation which is included in an approved ***facility-specific**** NO_x control plan, the owner or operator shall:

1. *[Pursuant to this section]* ***If the alteration would change any of the information required in (b) or (d) above****, apply for and obtain ***pursuant to the procedures set forth at (b) and at (d) through (j) above**** the Department's approval of an *[amendment to the]* ***amended facility-specific**** NO_x control plan, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval *[of the amendment]* before commencing operation of the altered equipment or source operation, the Department may (in addition to assessing penalties under N.J.A.C. 7:27A-3.10) modify the ***facility-specific**** NO_x control plan to reflect the alteration, in a manner satisfying the criteria set forth in (g) above; and

2. Apply for and obtain such permits and certificates**, or amendments thereto,*** as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

*[(j)]***(k)*** *[Except as provided in (j)1 below, an]* ***An*** approval of an alternative maximum allowable emission rate is void upon the alteration of equipment or source operation which is subject to the rate*[.]* ***unless:***

1. The Department *[may approve]* ***approves*** continued application of the existing alternative maximum allowable emission rate if the proposed alteration does not materially affect the basis of the Department's original approval*[.]***; or***

2. The owner or operator *[may apply]*****, before altering any equipment or source operation which is subject to an alternative maximum allowable emission rate, applies*** for and *[obtain]* ***obtains*** the Department's approval of *[a]*****:**

i. A* revised alternative maximum allowable emission rate pursuant to this section, reflecting the proposed alteration*[.]***; and***

[3. Before altering any equipment or source operation which is subject to the alternative rate, the owner or operator shall apply for and obtain such] ***ii. Such*** permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

(l) The Department may revoke an approval of a NO_x control plan by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the proposed plan or any supporting documentation;

3. EPA denies approval of the proposed NO_x plan as a revision to the State Implementation Plan; or

4. The Department determines that continued use of the subject equipment or source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment.

*[(l)]***(m)*** A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department denied the person's application for approval of a plan or alternative rate under this section;

2. The person seeks to contest one or more conditions of the Department's approval imposed under *[(h)]* ***(i)*** above; or

3. The Department has revoked the person's approval pursuant to *[(k)]***(l)***1, 2 or 4 above.

*[(m)]***(n)*** The owner or operator of a facility described in (a)1 above shall implement the NO_x control plan (including, without limitation, complying with the emission limits set forth in the plan) approved by the Department by May 31, 1995, and maintain compliance with the plan and all conditions of the Department's approval thereafter. The owner or operator of a source operation or item of equipment for which the Department has approved an alternative maximum allowable emission rate shall cause it to emit NO_x at a rate no greater than the approved alternative rate.

*[(n)]***(o)*** The owner or operator submitting a proposed NO_x control plan or request for an alternative maximum allowable emission rate shall send it to the Department at the following address:

Chief, Bureau of Air Quality Engineering
Department of Environmental Protection and Energy
401 East State Street
CN 027
Trenton, New Jersey 08625-0027

*[(o)]***(p)*** A major NO_x facility satisfies the requirements of this subchapter if its only equipment or source operations with the potential to emit 10 tons or more of NO_x per year are non-utility boilers. The owner or operator of such a facility is not required to submit a facility-specific NO_x control plan for the facility.

7:27-19.14 Procedures for obtaining approvals under this subchapter

(a) This section establishes the procedure for obtaining the Department's approval of any of the following:

1. An exemption from this subchapter, pursuant to N.J.A.C. 7:27-19.2(f);

2. Compliance with the requirements of N.J.A.C. 7:27-19.4(b) for utility boilers which will combust natural gas seasonally;

3. Compliance with the requirements of N.J.A.C. 7:27-19.4(c) for utility boilers to be *[shut down or]* repowered; *[or]*

4. Compliance with the requirements of N.J.A.C. 7:27-*[19.4(c)]* ***19.5(c)*** for a stationary gas turbine*[.]***; or***

5. An alternative monitoring plan pursuant to N.J.A.C. 7:27-19.18(b).

(b) The person seeking an approval listed in (a) above shall submit a written application to the Department at the following address:

Chief, Bureau of Air Quality Engineering
Air Quality Regulation
Department of Environmental Protection and Energy
401 East State Street
CN 027
Trenton, NJ 08625-0027

(c) The person seeking the approval under (a) above shall include the following information in the application submitted under (b) above:

1. Any information required under N.J.A.C. 7:27-19.2(f), 19.4(b), 19.4(c), 19.5(c) or 19.18(c), as applicable.

2. The name, address and telephone number of the owner and the operator of the equipment or source operation which is the subject of the application;

3. The street address of the facility at which the subject equipment or source operation is located;

4. The type of equipment or source operation which is the subject of the application, and its make, model and serial number;

5. For requests submitted under N.J.A.C. 7:27-19.5(c), a proposed maximum allowable emission rate for the subject stationary gas turbine;

6. A certification of the application, satisfying the requirements of N.J.A.C. 7:27-8.24; and

7. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (e) below.

(d) Within 30 days after receiving an application, the Department shall notify the applicant in writing whether the application includes all of the information required under (c) above. *[1.]* If the application is incomplete*[, the]*****:**

1. The* Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the application complete, and the time by which the applicant must submit a complete application*[.]*****;***

2. The Department may refrain from reviewing the substance of the application (or any part thereof) until it is complete*[.]*****;***

3. The applicant shall submit a complete application within the time stated in the Department's notification*[.]***; and***

4. *[If the applicant fails to submit a complete application within the time stated in the Department's notification, the]* ***The*** Department may reject the application ***if the applicant fails to submit a complete application within the time stated in the Department's notification***.

(e) Within six months after receiving a complete application, the Department shall notify the applicant of its decision on the application. The Department shall grant its approval under this section only if the applicant satisfies all eligibility requirements set forth in N.J.A.C. 7:27-19.4(b), 19.4(c) or 19.5(c), as applicable.

(f) As a condition of an approval issued under this section (other than an approval of an exemption pursuant to N.J.A.C. 7:27-19.2(f)), the Department may impose requirements upon the operation of the subject equipment or source operation necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) An approval issued under this section is void upon the alteration of equipment or source operation which is the subject of the approval*[.]* ***unless:***

1. The owner or operator *[may apply]* ***applies*** for and *[obtain]* ***obtains*** the Department's approval of a revised approval

pursuant to this section, reflecting the proposed alteration*[.]**; **and***

2. Before altering *[any]* ***the*** equipment or source operation *[which is]* subject to the *[alternative rate]* ***approval***, the owner or operator *[shall apply]* ***applies*** for and *[obtain]* ***obtains*** such permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

(h) The Department may revoke an approval issued under this section, by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the request for the approval or any supporting documentation;

3. The Department determines that as a result of a change in circumstances since the date of the approval, the subject equipment or source operations are able to comply with the applicable section of this subchapter. In revoking an approval pursuant to this paragraph, the Department shall specify an effective date for the revocation which provides the owner or operator with a reasonable amount of time to comply with the applicable section of this subchapter; or

4. The Department determines that continued use of the subject equipment or source operation pursuant to the approval poses a potential threat to public health, welfare or the environment.

(i) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department has denied the person's application for an approval under this section;

2. The person seeks to contest conditions of the approval imposed under (f) above; or

3. The Department has revoked the person's approval pursuant to (h) above.

(j) If an item of equipment or a source operation has exceeded the maximum allowable emission rate applicable under this subchapter without an approval pursuant to this section, it shall not be a defense to an enforcement action that an application for an approval is pending.

7:27-19.15 Procedures and deadlines for demonstrating compliance

(a) The owner or operator of equipment or a source operation subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit pursuant to (a)1 below if a continuous emissions monitoring system has been installed on the equipment or source operation, or pursuant to (a)2 below if no such system has been installed.

1. If a continuous emissions monitoring system has been installed on the equipment or source operation, compliance with the limit is based upon the average of emissions *[over one calendar day, provided, however, that compliance is based upon the average of emissions over a 30 calendar day period when authorized under N.J.A.C. 7:27-19.6(f)2.]**:

i. Between May 15 and September 15, over each calendar day; or

ii. At all other times, over each rolling 30 calendar day period.*

2. If no continuous emissions monitoring system has been installed on the equipment or source operation, compliance with the limit is based upon the average of three one-hour tests, each performed over a consecutive 60-minute period specified by the Department, and performed in compliance with N.J.A.C. 7:27-19.17.

(b) For any equipment or source operation subject to this subchapter which was in operation before January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by May 31, 1996, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(c) For any equipment or source operation subject to this subchapter which commences operations or is altered after January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a) *[or (b)]* ***1 or 2*** above within 180 days from the date on which the source commences operation, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(d) An exceedance of any applicable NO_x emission limit set forth in this subchapter, determined through testing or monitoring performed pursuant to (a), (b), or (c) above or otherwise, is a violation of this subchapter.

7:27-19.16 Adjusting combustion processes

(a) When any provision of this subchapter requires the adjustment of a combustion process for any equipment or source operation, the owner or operator of the equipment or source operation shall:

1. Inspect the burner, and clean or replace any components of the burner as necessary to minimize total emissions NO_x and CO;

2. Inspect the flame pattern and make any adjustments to the burner necessary to optimize the flame pattern; and

3. Inspect the system controlling the air-to-fuel ratio, and ensure that it is correctly calibrated and functioning properly. ***For turbines with fixed air-to-fuel nozzles that cannot be adjusted, the owner or operator shall instead inspect and clean the fuel nozzles annually, recalibrating and repairing as necessary.***

(b) An exceedance of an emission limit which occurs during an adjustment of the combustion process under (a)2 or 3 above, as a result of the adjustment, is not a violation of this chapter. Before the combustion adjustment begins, and after it has been completed, the maximum emission rate of any contaminant shall not exceed the maximum allowable emission rate applicable under this chapter or under an applicable certificate issued pursuant to N.J.A.C. 7:27-8.

(c) The owner or operator of the adjusted equipment or source operation shall record each adjustment conducted under (a) above in a permanently bound log book or other format approved in writing by the Department, containing the following information for each adjustment:

1. The date of the adjustment and the times at which it began and ended;

2. The name, title and affiliation of the person who made the adjustment;

3. The NO_x *[emission rate]* ***concentration in the effluent stream***, in either ppmv or ppmvd, after each adjustment was made;

4. The CO *[emission rate]* ***concentration in the effluent stream***, in either ppmv or ppmvd, after each adjustment was made;

5. The concentration of O_2 at which the *[emission rates under]* ***CO and NO_x concentrations pursuant to*** (c)3 and 4 were measured; and

6. Any other information which the Department or the EPA has required as a condition of approval of any permit or certificate issued for the equipment or source operation.

7:27-19.17 Source emissions testing

(a) Upon request by the Department or EPA, the owner or operator of any equipment or source operation subject to this subchapter shall:

1. Conduct tests to determine the emissions from such equipment or source operation to determine the nature and quantity of VOC, NO_x, or CO being emitted into the outdoor atmosphere;

2. Provide information concerning the location, rate, duration, concentration, and properties of the emissions of NO_x, CO or VOC from such equipment or source operations, and such other information as may be reasonably necessary to assess air emissions;

3. Provide information concerning the rate at which the equipment or source operation is combusting fuel during tests conducted under (a)1 above, and the maximum gross heat input value of the equipment or source operation; and

4. Provide the log prepared under (e) below, or any part thereof requested by EPA or the Department.

(b) Upon the Department's request, the owner or operator of any equipment or source operation subject to this subchapter shall provide the Department with temporary or permanent sampling facilities satisfying the requirements of N.J.A.C. 7:27B-1.4. The owner or operator shall construct such facilities in accordance with all applicable laws, ordinances and regulations, including those which regulate construction practices.

(c) During any testing conducted pursuant to this section, the equipment or source operation, and all components connected, attached to, or serving the equipment, shall be used and operated under normal routine operating conditions, under maximum capacity operating conditions, or under such other conditions within the capacity of the equipment as the Department or EPA requests.

(d) A person conducting testing pursuant to this section shall use the test method which the Department specifies, based upon the circumstances specific to the facility or to the equipment or source operation being tested. The Department shall specify one of the following methods:

1. The methods set forth at 40 CFR 60, Appendix A, method 7E; or

2. Any other method which EPA and the Department have approved ***in advance*** in writing. If EPA approves a method, and the Department determines that the method yields results at least as consistent as the appropriate method listed under (d)1 above, and which has no greater tendency to understate emissions, the Department shall approve the method.

(e) The owner or operator of the tested equipment or source operation shall record any test data collected under this section, and maintain it for at least five years after the date on which the testing was conducted.

7:27-19.18 Continuous emissions monitoring

(a) Any person required to install a continuous emissions monitoring system under this subchapter shall:

1. Obtain a system approved in advance by the Department. The Department shall approve a system if its design and specifications satisfy the requirements established by EPA at 40 CFR Part 60, Appendix B, Performance Specification Tests No. 2, and 40 CFR Part 60, Appendix F, Quality Assurance Requirements;

2. Install the system in compliance with the EPA regulations listed in (a)1 above, and in compliance with the manufacturer's specifications;

3. Conduct performance tests of the system in accordance with the EPA regulations listed in (a)1 above, and obtain confirmation from the Department that the system satisfies the performance requirements of those regulations;

4. Install and operate the system in compliance with the manufacturer's specifications; and

5. Continuously monitor and record NO_x emissions from the equipment or source operation subject to the monitoring requirement.

(b) A person required under this subchapter to install continuous emissions monitoring systems on equipment ***or source operations*** of a given type at a facility may satisfy this requirement without installing *[such a system]* ***a continuous emissions monitor*** on every unit of such equipment ***or source operations*** at the facility, *[in accordance with a plan approved by the Department]* ***by using an alternative monitoring methodology set forth in an alternative monitoring plan, approved in advance in writing by the Department, which is as reliable for demonstrating compliance for that unit as a continuous emissions monitoring system which satisfies the criteria in (a) above would be*.**

(c) A person seeking approval of *[a]* ***an alternative monitoring*** plan *[for limited installation of continuous emissions monitoring systems]* ***pursuant to (b) above*** shall submit a written application to the Department. The applicant shall include in the application all of the information required under N.J.A.C. 7:27-19.14(c)2, 3 *[and]****,*** 4 ***and 6*.** The applicant shall *[also]* include in the application *[a]* ***for the alternative monitoring*** plan *[containing]* the following information for each item of equipment or source operation for which a continuous emissions *[monitoring system]* ***monitor*** is required under this subchapter ***and to which the alternative monitoring plan would apply*:**

1. The make and model of *[the]* ***each unit of*** equipment or source operation;

2. The facility at which the equipment or source operation is used;

3. A description of the conditions under which the equipment or source operation is used;

4. The results of all source emissions testing conducted within the five years preceding the application ***for each unit of equipment or source operation listed in (c)1 above*;**

5. A statement that the applicant proposes to install or not install a continuous emissions *[monitoring system; and]* ***monitor which satisfies the criteria set forth in (a) above;**

6. A demonstration that the monitoring methodology set forth in the alternative monitoring plan is as reliable for demonstrating compliance as a continuous emissions monitor which satisfies the criteria listed in (a)1 above; and*

*[6.]***7.*** Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (e) below.

(d) Within 30 days after receiving an application, the Department shall notify the applicant in writing whether the application includes all of the information required under (c) above. *[1.]* If the application is incomplete*[, the]* ***:**

1. The* Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the application complete, and the time by which the applicant must submit a complete application*[.]****;***

2. The Department may refrain from reviewing the substance of the application (or any part thereof) until it is complete*[.]****;***

3. The applicant shall submit a complete proposed plan or request within the time stated in the Department's notification*[.]****; and***

4. *[If the applicant fails to submit a complete application within the time stated in the Department's notification, the]* ***The*** Department may reject the application ***if the applicant fails to submit a complete application within the time stated in the Department's notification*.**

(e) The Department shall approve *[the]* ***an alternative monitoring*** plan only if***:**

1. The proposed alternative monitoring methodology is equivalent for purposes of reliably determining compliance to a continuous emissions monitor which satisfies the criteria listed in (a)1 above by the following:*

*[1.]****i.*** For each item of equipment or source operation on which a continuous emissions monitoring system is not to be installed, *[there is]* ***the owner or operator identifies*** another item of equipment or source operation at the facility which is:

*[i.]****(1)*** Of the same make and model;

*[ii.]****(2)*** Is used under substantially the same conditions; *[and]*

*[iii.]****(3)*** Will have a continuous emissions monitoring system installed on it; ***and**

(4) Has an emissions rate which will not differ significantly from the emission rate from the corresponding equipment or source operation on which the continuous emissions monitoring system is to be installed; or

ii. For each item of equipment or source operation which a continuous emissions monitor is not to be installed, the owner or operator proposes a monitoring protocol for that equipent or source operation that provides quality-assured, representative monitoring data that an be used to determine continuous compliance consistent with EPA's proposed Enhanced Monitoring guidance, 40 CFR 64 (Federal Register Vol. 58, No. 203, p. 54648-54699). The proposed monitoring protocol should take into consideration site specific factors such as:

i. Control system design;

ii. Operating processes at the facility;

iii. Demonstrated margin of compliance;

iv. The potential variability of emissions; and

v. Established monitoring procedures utilized at the facility to meet other regulatory requirements; and*

2. Under the plan, a continuous emissions monitoring system will be installed on each utility boiler at the facility if required under 40 CFR 75 or 76*[; and

3. The emission rate from the equipment or source operation on which the continuous emissions monitoring system is to be installed

will not differ significantly from the emission rate from the corresponding equipment or source operation on which no continuous emissions monitoring system is to be installed]*.

(f) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of *[the subject]* ***any*** equipment or source operation ***subject to a monitoring plan*** necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) The approval of a plan under this section is void upon the alteration of any item of equipment or source operation included in the plan (whether or not the item of equipment or source operation has a continuous emissions monitoring system installed)*[.]***unless:***

1. The owner or operator *[may apply]* ***applies*** for and *[obtain]* ***obtains*** the Department's approval of a revised plan pursuant to this section, reflecting the proposed alteration*[.]***; and***

2. Before altering *[any]* ***the*** equipment or source operation *[which is]* subject to the plan, the owner or operator *[shall apply]* ***applies*** for and *[obtain]* ***obtains*** such permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

(h) The owner or operator shall comply with the approved plan, and with all conditions imposed by the Department under (f) above.

(i) The Department may revoke an approval issued under this section, by written notice to the owner or operator of the facility which is the subject of the plan, if:

1. Any material condition of the Department's approval of the plan is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the request for the approval or any supporting documentation; or

3. The Department determines that *[as a result of a change in circumstances since the date the alternative rate was approved, the emissions from an unmonitored item of equipment or source operations are not substantially the same as the emissions from the corresponding continuously monitored item of equipment]* ***the alternative monitoring methodology is not equivalent to a continuous emissions monitor which satisfies the criteria of (a)1 above***.

(j) In revoking an approval pursuant to (i) above, the Department shall specify an effective date for the revocation which provides the owner or operator with a reasonable amount of time to install a continuous emissions *[monitoring system]* ***monitor*** on the item of equipment or source operation in question.

(k) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department has denied the person's application for approval of a plan under this section;

2. The person seeks to contest conditions imposed by the Department under (f) above; or

3. The Department has revoked its approval of the person's plan pursuant to (i) and (j) above.

(l) The owner or operator of an item of equipment or source operation required to have a continuous monitoring system shall not operate the equipment or source operation without such a system, except in accordance with a plan approved under this section. If an item of equipment or a source operation required to have a continuous emissions monitoring system is operating without such a system, without first having received approval of a plan authorizing such operation, it shall not be a defense to an enforcement action that an application for approval of a plan is pending.

(m) A person seeking approval of *[a]* ***an alternative monitoring*** plan *[for limited installation of a continuous emissions monitoring system]* shall send the application to the Department at the following address:

Chief, Bureau of Technical Services
Air Quality Regulation ***Program***
Department of Environmental Protection and Energy
[380 Scotch Road] ***CN-411***
Trenton, New Jersey *[08628]* ***08625-0411***

7:27-19.19 Recordkeeping

(a) Any person required to record or maintain information or records pursuant to this subchapter shall maintain the required information or records for a period of no less than five years after the record was made. Such person shall make the records available to the Department or to EPA upon request.

(b) Any person required to record or maintain information or records pursuant to this subchapter may submit a request to the Department, in writing, for approval to maintain alternate records. The Department may approve the request if the person demonstrates to the satisfaction of the Department *[and the EPA]* that the alternate records or information are at least as effective as those required by this subchapter in documenting compliance with this subchapter.

7:27-19.20 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 26:2C-28.3 and N.J.S.A. 26:2C-19(f)1 and 2.

7:27A-3.5 Civil administrative penalty determination—general

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

(d) The Department may assess a civil administrative penalty for a violation of any provision of N.J.A.C. 7:27 for which no penalty amount is specified under N.J.A.C. 7:27A-3.6 through 3.11. The Department shall base the amount of such a penalty assessment upon the following factors:

1. The amount of the penalty established under N.J.A.C. 7:27A-3.6 through 3.11 for a violation which is comparable to the violation in question. Comparability is based upon the nature of the violations (for example, violations of recordkeeping requirements, reporting requirements or emission limits) and the nature and extent of the environmental harm likely to result from the type of violation; and

2. The factors listed in (e) below.

(e) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to this section or under N.J.A.C. 7:27A-3.6, 3.7, 3.8, 3.9, 3.10 or 3.11, based upon any or all of the factors listed in (e)1 through 6 below. The Department may apply such factors in addition to the factors listed in N.J.A.C. 7:27A-3.10(e)5 and 3.11. No such factor constitutes a defense to any violation.

1. The compliance history of the violator;

2. The number of times and the frequency with which the violation occurred;

3. The severity of the violation;

4. The nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed;

5. The nature, timing and effectiveness of measures taken to prevent future similar violations, and the extent to which such measures are in addition to those required under an applicable statute or rule; and

6. Any other mitigating, extenuating or aggravating circumstances.

(f) (No change.)

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

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

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke

the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-18. (No change.)

19. The violations of N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen, and the civil administrative penalty amounts for each violation are as set forth in the following table:

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-19.4(a)	Utility Boilers				
	Actual Emissions (pounds per million BTU):				
	1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	2. From 25 through 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
	3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.4(b)3 and (b)4i	Utility Boilers Seasonally Combusting Natural Gas				
	Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.4(b)4ii and (b)5	Actual Emissions (pounds per million BTU):				
	1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	2. From 25 through 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
	3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.4(c)1	Adjust combustion process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.4(c)2	Repowered Utility Boilers				
	Actual Emissions (pounds per million BTU):				
	1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	2. From 25 through 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
	3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.4(c)6	Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.4(d)	All Utility Boilers				
	Failure to Install CEM	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.5(a) or (b)	Stationary Gas Turbines				
	Actual Emission (pounds per million BTU):				
	3-10 MW Turbine				
	1. Less than 25 percent over the allowable standard	$ 2,000	$ 4,000	$10,000	$30,000
	2. From 25 through 50 percent over the allowable standard	$ 4,000	$ 8,000	$20,000	$50,000
	3. Greater than 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	11-50 MW Turbine				
	1. Less than 25 percent over the allowable standard	$ 6,000	$12,000	$30,000	$50,000
	2. From 25 through 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
	Greater than 50 MW Turbine				
	1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
	2. From 25 through 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
	3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000

N.J.A.C. 7:27-19.5(c)5 Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.5(c)6 Adjust Combustion Process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.5(d) CO concentration				
Maximum Actual Emissions				
1. Less than 25 percent over the allowable standard	$ 2,000	$ 4,000	$10,000	$30,000
2. From 25 through 50 percent over the allowable standard	$ 4,000	$ 8,000	$20,000	$50,000
3. Greater than 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
N.J.A.C. 7:27-19.6(d)1 and 2 Averaging for electric generating utilities:				
Actual Emissions (pounds per million BTU):				
1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
2. From 25 through 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.6(f)1 or 2 Recordkeeping of Compliance Demonstration	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.6(g) Log	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.6(h) Quarterly Reports	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.6(i) Notification of Noncompliance	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.6(j)1 Notification—Inoperable Boiler or Turbine	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.7(a) Adjust combustion process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.7(b) or (c) Non-utility boilers				
Actual Emission (pounds per million BTU):				
Less than 25 MMBTU				
1. Less than 25 percent over the allowable standard	$ 2,000	$ 4,000	$10,000	$30,000
2. From 25 through 50 percent over the allowable standard	$ 4,000	$ 8,000	$20,000	$50,000
3. Greater than 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
25-57 MMBTU				
1. Less than 25 percent over the allowable standard	$ 6,000	$12,000	$30,000	$50,000
2. From 25 through 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
Greater than 57 MMBTU				
1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
2. From 25 through 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.7(d) Failure to install CEM	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.8(a), (b) or (c) Stationary Internal Combustion Engines				
Actual Emission (grams per horsepower hr):				
1000 Hp or Less				
1. Less than 25 percent over the allowable standard	$ 6,000	$12,000	$30,000	$50,000
2. From 25 through 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
Greater than 1000 Hp				
1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
2. From 25 through 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000

N.J.A.C. 7:27-19.9(a) Asphalt plants				
Maximum Actual Emissions:				
1. Less than 25 percent over the allowable standard	$ 2,000	$ 4,000	$10,000	$30,000
2. From 25 through 50 percent over the allowable standard	$ 4,000	$ 8,000	$20,000	$50,000
3. Greater than 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
N.J.A.C. 7:27-19.9(b) Adjust combustion process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.10(a) or (b) Glass Manufacturing Furnaces				
Maximum Actual Emission:				
For less than 10 pounds per hr:				
1. Less than 25 percent over the allowable standard	$ 2,000	$ 4,000	$10,000	$30,000
2. From 25 through 50 percent over the allowable standard	$ 4,000	$ 8,000	$20,000	$50,000
3. Greater than 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	$ 6,000	$12,000	$30,000	$50,000
2. From 25 through 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
From greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
2. From 25 through 50 percent allowable standard	$10,000	$20,000	$50,000	$50,000
3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.10(c)1 Conduct Stack Test	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.10(c)2 Submit Emission Reduction Plan	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.10(c)3 Implement Emission Reduction Plan	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.10(c)4 Reduced Emissions 30%				
Maximum Actual Emission:				
For less than 10 pounds per hr:				
1. Less than 25 percent over the allowable standard	$ 2,000	$ 4,000	$10,000	$30,000
2. From 25 through 50 percent over the allowable standard	$ 4,000	$ 8,000	$20,000	$50,000
3. Greater than 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	$ 6,000	$12,000	$30,000	$50,000
2. From 25 through 50 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
From greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	$ 8,000	$16,000	$40,000	$50,000
2. From 25 through 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
3. Greater than 50 percent over the allowable standard	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.10(e) Adjust combustion process	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.13(i) Modify NO_x control plan for alterations	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.13(m) Implement NO_x Control Plan	$10,000	$20,000	$50,000	$50,000
N.J.A.C. 7:27-19.16(c) Log	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.17(a)1 Conduct Stack Tests	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.17(a)2, 3 or 4 Information	$ 300	$ 600	$ 1,500	$ 4,500

N.J.A.C. 7:27-19.17(b) Sampling and Testing Facilities	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.17(e) Record keeping	$ 500	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-19.18(a)2, 3, 4 or 5 Monitoring	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.18(h) Conditions of Approval	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-19.19(a) or (b) Record keeping	$ 500	$ 1,000	$ 2,500	$ 7,500

20.-25. (No change.)

(a)

POLICY AND PLANNING/AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Volatile Organic Compounds

Adopted New Rule: N.J.A.C. 7:27-16.17

Adopted Amendments: N.J.A.C. 7:27-16.1 (in part) and 7:27A-3.10 (in part)

Proposed: August 2, 1993 at 25 N.J.R. 3339(a) (see also 25 N.J.R. 4551(a)).

Adopted: November 15, 1993 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Filed: November 23, 1993 as R.1993 d.666, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3), **and with all portions of the proposal still pending except those described above.**

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

DEPE Docket Number: 41-93-07.

Effective Date: December 20, 1993.

Operative Date: Operative date of the adoption, or other final action, on the remainder of the proposal published in the New Jersey Register on August 2, 1993, at 25 N.J.R. 3339(a) which is still pending.

Expiration Date: N.J.A.C. 7:27A, December 4, 1994.
N.J.A.C. 7:27 and 7:27B, Exempt.

The New Jersey Department of Environmental Protection and Energy (the Department) is adopting a portion of the proposal which was published in the New Jersey Register on August 2, 1993, at 25 N.J.R. 3339(a). The adopted portion consists of N.J.A.C. 7:27-16.17, which requires major facilities to submit plans for Reasonably Available Control Technology (RACT) for source operations that emit volatile organic compounds (VOC) from source operations not otherwise regulated under subchapter 16. Definitions of terms used in N.J.A.C. 7:27-16.17 are also adopted at N.J.A.C. 7:27-16.1. The other portions of the August 2, 1993 proposal remain pending.

The Department is adopting N.J.A.C. 7:27-16.17 at this time pursuant to the requirements of the Clean Air Act (CAA) at 42 U.S.C. §7511a(b)(2)(C). These CAA provisions specify that the State shall submit a revision to the State Implementation Plan (SIP) to include RACT with respect to all major facilities of VOC that are not covered by any Control Techniques Guideline (CTG) issued by the United States Environmental Protection Agency (EPA). These VOC RACT requirements must be implemented as expeditiously as possible, but no later than May 31, 1995. Because the rule adopted herein requires all owners or operators of major facilities to implement RACT by May 31, 1995, 42 U.S.C. §7511a(b)(2)(C) is satisfied.

The Department recognizes that the owners or operators of facilities that are required or will elect to submit a facility-specific VOC control plan have an especial need for early notice of their obligation. Therefore, the Department has given first priority to adopting N.J.A.C. 7:27-16.17, which establishes the rules for facilities that will apply for facility-specific RACT determinations. While the Department is only adopting the facility-specific RACT provisions at N.J.A.C. 7:27-16.17 at this time, it intends to adopt the remaining portions of the proposal by January 14, 1994.

Normally, Air Pollution Control rules become operative 60 days after adoption (see N.J.S.A. 26:2C-8). However, the Department is deferring the operative date of these rules until the operative date of the adoption, or other final action, on the remainder of the proposal published in the New Jersey Register on August 2, 1993, at 25 N.J.R. 3339(a). The Department expects that the remaining portions of the proposal will be adopted on or around January 14, 1994, which would make the operative date of these rules March 15, 1994, and the due date of these submittals required under the presently adopted rule June 15, 1994. In addition to allowing owners and operators at affected facilities more time to submit facility-specific VOC control plans, this deferred operative date should avoid any confusion that could arise as to whether facilities with source operations subject to the specific provisions in the remaining portions of the proposed rules must comply with the facility-specific VOC control plans adopted in this notice, or whether they should comply with the applicable provisions of the remaining portions of the rule to be adopted on or about January 14, 1994. Source operations for which specific controls have been proposed will not be required to submit facility-specific VOC control plans pursuant to N.J.A.C. 7:27-16.17.

Although owners and operators of facilities that are required to submit facility-specific VOC control plans are not legally required to submit the plans until on or about June 15, 1994, they still must implement the control plans by May 31, 1995, the date Congress set in the CAA. Therefore, owners or operators of facilities that will be subject to facility-specific VOC control plans are advised to submit their plans as soon as possible in order to implement the control plans by May 31, 1995. The Department is willing to begin reviewing plans even prior to the operative date of this rule.

Summary of Public Comments and Agency Responses:

The Department received comments on the portions of the proposal being adopted today from 20 persons. A public hearing was held on Thursday, September 9, 1993 at the Department's hearing room at 401 East State Street in Trenton, New Jersey. The comment period was extended to October 18, 1993, as stated in the Notice of Extension of Public Comment Period published in the New Jersey Register on Monday, October 4, 1993 at 25 N.J.R. 4551(a). The persons who commented on the portions of the proposal being adopted today are as follows:

(1) Robert M. Baldisserotto, Associate Manager of Corporate Environmental Affairs, and Wallace Y. Chang; Hoffman-La Roche

(2) Robert Geiger, Manager for Environmental Regulatory Affairs, and James A. Shissias, General Manager—Environmental Affairs; Public Service Electric and Gas Company

(3) Bradley S. Martin, Senior Consultant—Environmental Affairs; E.I. DuPont de Nemours

(4) John A. Maxwell, Associate Director; New Jersey Petroleum Council

(5) D.J. Campbell, Refinery Regulatory Affairs Advisor, and R.M. Ivory-Moore, State Regulatory Advocate; Mobil Oil Corporation

(6) Lenora Strohm, Staff Project Engineer; General Motors

(7) Dr. Jim Sinclair, P.E., First Vice President; New Jersey Business and Industry Association

(8) Thomas J. Detweiler, Associate Director; Chemical Industry Council of New Jersey

(9) David M. Lucas, Refinery Manager; Chevron U.S.A. Products Company

(10) Joseph R. Cerchiaro, Chairman—Environmental Subcommittee; New Jersey Health Product Council

(11) John Yavorsky, Ph.D., P.E.; Ambient Engineering Inc.

(12) Conrad Simon, Director—Air and Waste Management; United States Environmental Protection Agency

(13) James W. Klickovich, Coordinator—Environmental Affairs, and Charles E. Ash, Engineer—Environmental Affairs; Atlantic Electric

(14) Sybron Chemicals Inc.

(15) David F. Vanderveer, Safety and Environmental Manager; Aqualon Company

(16) H.R. Van Handle, Director—Environmental Affairs; Bayway Refining Company

(17) Randell Abbuhl, Project Manager, and Richard A. Craig, Project Director; Weston

(18) Vincent F. Bennett, Environmental Engineer; Schering-Plough Corporation

(19) Robert G. Suozzo; MERCK—Manufacturing Division (representing Industrial Advisory Group Air Permitting Taskforce)

(20) Diane M. Krell, Site Environmental Engineer—Environmental Control; MERCK—Manufacturing Division

The following is a summary of the comments received on the portions of the proposal being adopted herein and the Department's responses. The number(s) in parentheses after each comment identifies the person(s), as listed above, who provided comment.

N.J.A.C. 7:27-16.1 Definitions

1. COMMENT: These commenters believe the definition of "Federally enforceable" should be clarified in respect to item 3. The definition should indicate that only State Implementation Plans (SIPs) that are approved by the United States Environmental Protection Agency are Federally enforceable. The term "SIP" is not defined in subchapter 16, therefore item 3 of the definition of "Federally enforceable" should be revised to read "Any applicable provision of a SIP approved by EPA through rulemaking." (15) (17)

RESPONSE: The Department has added a definition of the term "State Implementation Plan" or "SIP" in response to this comment. This definition is identical to the definition in place at N.J.A.C. 7:27-8 and clarifies that a SIP must be approved by EPA. EPA published notices of SIP approvals in the Federal Register. Although the procedures for SIP approval are not a rulemaking process, these procedures are specified at 42 U.S.C. 1857 et seq. The Department has referenced this portion of the CAA in the definition of the term "SIP."

2. COMMENT: EPA commented that the fifth criteria listed in the definition of "Federally enforceable" should be removed because these types of permits are not Federally enforceable. Also, a state permit could contain a requirement, permit condition or variance that is not specifically required or permitted by a regulation incorporated by the SIP. A permit condition is not in the SIP until it is specifically submitted and approved by the EPA as a SIP revision. This is also true for orders issued by the state. (12)

RESPONSE: The Department believes that preconstruction permits issued by the Department are Federally enforceable because these permits are issued pursuant to N.J.A.C. 7:27-8, which is part of New Jersey's SIP. These permits are an essential part of the determination of a source operation's potential to emit, because they establish allowable emission rates, maximum hours of operation per year, and various other conditions and limitations on operation. EPA has enforced conditions of several preconstruction permits issued by the Department pursuant to N.J.A.C. 7:27-8 in the past. Similarly, since orders issued by the Department are enforcement of the Department's rules incorporated in New Jersey's SIP, the Department believes that orders are also Federally enforceable.

Further, the Department notes that in the past it has received advice from EPA staff that is somewhat different than the advice given in the comment. Departmental staff are currently discussing this issue with EPA in order to resolve this matter. The Department also understands that EPA is developing clarification of the national guidance on this issue, although such clarification is not final at this time.

The Department has therefore not amended the definition of the term "Federally enforceable" with respect to this comment upon adoption. Once this issue is clarified, the Department will revise the definition, should this be needed, in future rulemaking.

3. COMMENT: EPA commented that the definition of "potential to emit" should refer to 8760 hours per year when determining maximum capacity. (12)

RESPONSE: This comment is consistent with the Department's intent in respect to determining "potential to emit." Unless there is an enforceable condition that limits the hours of operation of a source operation, it could potentially operate 365 days per year and 24 hours per day (8760 hours per year). Therefore, the Department has clarified the definition of "potential to emit" upon adoption by adding the following sentence: "If there is no Federally enforceable limitation on the hours of operation of a source operation, then any determination of the maximum design capacity shall be based on the presumption of operation at 8760 hours per year."

4. COMMENT: The definition of "potential to emit" should not include fugitive emissions because they are difficult to accurately quantify and are insignificant contributors to the toal facility VOC emissions. Also, the CAA does not require fugitive emissions to be included in calculating a source's potential to emit for every source. (2)

The definition of "potential to emit" should clarify that fugitive emissions are included in calculating major source determination and rule applicability only if it is one of the 28 categories identified in 40 CFR 52.24. The summary of the proposed rule implied that fugitive emissions are included in determining major facility status and RACT applicability for all categories. The commenter believes that it is not a correct interpretation of the requirements of the CAAA and that the proposed rule should reflect the CAAA. Sources that are not one of the 28 categories should not be subject to this regulation without full consideration of the social, environmental, and economic impact. (13)

RESPONSE: The Department recognizes that the Federal rules at 40 CFR 52.24(f)(4)(iii) state that "fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources ..." However, the Department is allowed to be more stringent than Federal rules and believes that fugitive emissions should be included in determining whether a facility is a major facility. The potential for adverse effects to health, welfare, or the environment depends on the total emissions from a facility, whether these emissions are released through a stack or chimney or as fugitive emissions. Fugitive emissions of VOCs are a significant portion of air pollution in New Jersey. The Department estimates that in 1990 approximately 4,800 tons of VOC were emitted as fugitives in New Jersey. If the Department should take into consideration only stack emissions, this significant quantity of emissions would be overlooked. Therefore, the Department has determined that it is appropriate to take fugitive emissions into account in determining whether a facility is a major facility. The Department proposed a leak detection and repair program for chemical plants in order to reduce the amount of fugitive emissions that contribute to the ground level ozone problem in New Jersey. Examination of fugitive emissions and potential control strategies is a means of achieving necessary emission reductions. Potential control strategies for fugitive emissions, such as improved "house-keeping" and leak detection and repair, tend to be cost effective means of reducing VOC emissions and should not be excluded solely because Federal regulations allow an exclusion.

N.J.A.C. 7:27-16.17 Facility-specific VOC control requirements

5. COMMENT: These commenters requested clarification concerning when a source operation falls under N.J.A.C. 7:27-16.16 and 16.17 if located at a major VOC facility. The understanding is that operations currently regulated under N.J.A.C. 7:27-16.6 will continue to be regulated under N.J.A.C. 7:27-16.16. No RACT plan for such sources is required to be submitted under N.J.A.C. 7:27-16.17, unless the facility desires to demonstrate that a source otherwise regulated under N.J.A.C. 7:27-16.16 should have a different VOC emission limit; such a demonstration would be submitted under N.J.A.C. 7:27-16.17. This appears to be inconsistent with language in the Preamble (25 N.J.R. 3354) which states that a control plan under N.J.A.C. 7:27-16.17 is required at a major VOC facility for every source having a potential to emit at least three pounds per hour. Such a control plan for all sources would be unnecessary and unreasonable since the sources are in almost all cases regulated by other sections of subchapter 16. (15) (17)

RESPONSE: The Department agrees that the language in the Summary of the proposal could be confusing with regard to which source operations are subject to this section. The proposed rule language states that N.J.A.C. 7:27-16.17 applies to major VOC facilities which contain any source operation that has the potential to emit three pounds of VOC per hour and that is not regulated under any of the other sections of subchapter 16. Therefore, the commenters' understanding that a source operation currently regulated under N.J.A.C. 7:27-16.6 would not be

regulated under N.J.A.C. 7:27-16.17 (but would be regulated under N.J.A.C. 7:27-16.16) is correct, unless the owner or operator seeks approval of an alternate VOC control plan.

6. COMMENT: N.J.A.C. 7:27-16.17 seems to refer to "VOC" when they should probably refer to "applicable VOC." (11)

RESPONSE: It is more appropriate to use the term VOC in N.J.A.C. 7:27-16.17 than the term "applicable VOC." The term "applicable VOC (which means any VOC which has a vapor pressure or sum of partial pressures of 0.02 pounds per square inch (1.0 millimeters of mercury) absolute or greater at standard conditions)" is used in sections of subchapter 16 for source operations that generally operate under ambient conditions, such as storage tanks and transfer operations. Under these cases, vapor pressure of the VOC at standard conditions is a major factor of emissions. The term "VOC" is used in sections of subchapter 16 for source operations which are likely to operate at above ambient temperatures, such as drying ovens in surface coating lines and manufacturing processes. Under these cases, even VOCs with low vapor pressures at standard conditions tend to be emitted, and vapor pressure at standard conditions does not provide a good measure of whether the VOC will be emitted. Therefore, since sources regulated by N.J.A.C. 7:27-16.17 may, in all probability, operate above ambient temperatures, the term "VOC" is more appropriate than "applicable VOC."

7. COMMENT: EPA's definition of RACT notwithstanding, the Department has chosen to provide a single, catch-all RACT standard to each category of sources regulated under the Rules; for example, N.J.A.C. 7:27-16.8 imposes a single standard for all utility boilers above a certain capacity, without regard to the economic feasibility of that emissions limit. As an alternative, the Department affords the option of a facility-specific VOC and CO control plan, as it did under the NO_x regulations. Unlike the NO_x regulations however, this plan is the only alternative and is difficult to obtain. The Department recognized in the Preamble that it "expects that owners and operators of such source operations will rarely find it necessary or desirable to resort to the facility-specific approach to VOC control." The commenter believes that RACT for VOC and CO emissions requires plans tailored to the specific unit, taking into account the type and age of the unit, the type of fuel burned in the unit, the capacity factor of the unit, and the level of NO_x reduction required by the unit. This approach corresponds to the NESCAUM Report's conclusion that the level of VOC and CO emissions is "very site-specific." (See NESCAUM Report, p. 77). The commenter urges the Department to revise its rule to make the submission of a facility or source-specific compliance plan a viable option to the categorical approach presently proposed. By doing so, the Department will comply with both the spirit of EPA's RACT definition and the realities of utility emissions of VOCs and CO. (13)

RESPONSE: The Department is allowing facilities the same degree of flexibility at N.J.A.C. 7:27-16.17 as it allows in the facility-specific control plan provisions in the NO_x rules at N.J.A.C. 7:27-19.13. Like the NO_x rules, if a company desires a means to control a source operation other than what is specified, it may submit a proposed alternative plan to control emissions. The Department mentioned this similarity in the Summary of the proposed rule: "The contents of the plan and criteria for the Department's decision to approve or reject the plan are essentially identical to the corresponding provisions in the NO_x rule ..." Both facility-specific provisions allow an owner or operator to propose RACT for their particular source operation.

Although the Department recognizes that there are likely to be fewer VOC facility-specific plans than NO_x specific plans, that does not mean that the provisions for VOC facility-specific plans do not provide a viable option. Indeed, the Department believes this will be an attractive option for many combustion sources. In general, VOC control technology is more established than the emerging NO_x control technology. Since VOC control techniques for fuel combustion operations are not as well established as control technologies for other source types, such as surface coating and transfer operations, alternative VOC control plans may be desirable for fuel-burning operations. A facility may use an alternative means to control a source operation if it demonstrates that the alternative is reasonably available control technology. This rule provides procedures to specify RACT control based on the specific characteristics of each source operation.

8. COMMENT: It should be noted that EPA guidance does not permit the installation of minimum controls to a facility in order to lower its potential to emit to 25 tons per year, and thereby avoid installation of RACT for the facility. (12)

RESPONSE: New Jersey's rules do not allow "minimum" controls to be installed to avoid RACT requirements. If a facility seeks to reduce its allowable emissions through the installation of controls and wants this reduction to be taken into consideration in the determination of whether the facility is a major VOC facility, the owner or operator must seek Departmental approval of a preconstruction permit. The Air Pollution Control Act (N.J.S.A. 26:2C) prohibits the Department from approving any preconstruction permit unless it incorporates advances in the art of air pollution control.

9. COMMENT: Requiring a major VOC facility to implement a VOC control plan for every source operation at the facility that has the potential to emit at least three pounds of VOC per hour is not appropriate for our batch industry. A batch operation may have more than three pounds per hour emitted for a short time period followed by long lengths of time with minimal emissions. (10)

RESPONSE: N.J.A.C. 7:27-16.17 does not apply to every source operation which has the potential to emit at least three pounds per hour at a major facility. The section only applies to those source operations which are not otherwise regulated (or exempted) in subchapter 16. Since batch operations are generally regulated under N.J.A.C. 7:27-16.6 (proposed for recodification as N.J.A.C. 7:27-16.16), they would not be subject to the requirements of N.J.A.C. 7:27-16.17, unless the facility elects to comply pursuant to an alternative VOC control plan.

10. COMMENT: N.J.A.C. 7:27-16.17 requires control of any VOC source emitting three pounds per hour or more that is not specifically addressed in another part of this regulation. The commenter recommended this requirement be deleted from the regulation and instead be addressed on an individual basis when the facilities apply for operating permits. The extent of the impact of this regulation on the sources is unknown. For large streams with low VOC emissions, this regulation may not be practicable, effective or reasonable. Without knowing what the impact of the regulation will be, its implementation should be accomplished through the operating permit program rather than through VOC RACT regulation. (9)

RESPONSE: The Department is obligated to adopt this rule pursuant to the Clean Air Act. If the Department waited to address these source operations in the operating permit program, it would be in violation of the CAA which mandates RACT to be applied to source operations within major facilities. This rule allows facilities to demonstrate what (if any) control strategy is reasonable for each source operation on a case-by-case basis and does not mandate ineffective, impracticable or unreasonable control. These VOC plans will be incorporated into a facility's operating permit during the operating permit issuance process. Also, it is worth noting that without this rule, there would be no basis to impose these controls in an operating permit.

11. COMMENT: N.J.A.C. 7:27-16.17 facility-specific VOC requirements should be revised to exempt sources for which RACT control technologies do not exist. RACT control technologies do not exist for low-concentration, high-volume sources; however this rule could conceivably regulate them. Stacks with particulate emissions do not have available control technologies. An additional concern is the potential use of this section to regulate wastewater treatment facilities. However, there is no available EPA (Federal) guideline for this.The cost of retrofitting these facilities with VOC control technology would be extremely cost prohibitive and would not represent reasonable control technology. (4) (5)

RESPONSE: This section addresses source operations on a case-by-case basis. The RACT determination for each source operation will be based on the cost effectiveness and feasibility of all potential control options. If, for a particular source operation (such as a high volume, low VOC concentration source), all potential control strategies are infeasible or cost-prohibitive, then the RACT determination for that source would be not to utilize any additional control strategies.

The Department is currently evaluating regulation of VOCs from waste water treatment facilities. EPA's Control Techniques Guideline (CTG) for Industrial Wastewater is expected to be proposed by the end of the year and final by June 1994 (several months before the exemption for wastewater treatment operations at N.J.A.C. 7:27-16.27 would expire). This CTG will specify RACT for wastewater treatment facilities, and compliance with the control criteria specified in the CTG must be consistent with the schedule indicated in the CTG.

12. COMMENT: With regards to N.J.A.C. 7:27-16.17(a)1i and ii, three commenters recommended that this section be deleted. Two commenters further explained that this section as written would conceivably regulate sources for which no RACT control technology exists. Examples of these

types of sources may include: fluid catalytic cracking units in petroleum refineries, large industrial heaters, and wastewater treatment facilities. The use of a VOC concentration limit instead of a pounds per hour or tons per year limit would be more appropriate. Control technologies for VOC concentrations below 50 ppm are not available. Even the available control technologies are not applicable to all gaseous sources depending on the dust content, temperature and velocity of the gas stream.

For example, application of VOC controls to the typical refinery wastewater treatment plant would be extremely expensive. This regulation could be cost prohibitive in a capital restricted environment. In the next five years, the refining industry will be spending millions of dollars to comply with the Federal clean fuels requirements. The Mobil refinery has already spent twelve million dollars on benzene removal facilities as a part of Benzene NESHAPs. These facilities also remove a significant portion of VOCs from the wastewater stream. Additional VOC controls for the wastewater treatment facilies are estimated to be in the range of 30 million dollars. VOC regulation of wastewater treatment facilities should wait until guidelines are set by the Federal government and should include all costs (capital expenditures, and operating costs) in the determination of reasonable control technology. (4) (5) (9)

With regards to N.J.A.C. 7:27-16.17(a)1i, the loss of the exemption for wastewater treatment systems will have a tremendous impact on both industry, and the general community through the inclusion of POTWs. The cost to develop alternative VOC control plans that would include all alternative processes, their installation costs and operating expenses, would be excessive in comparison to the level of VOC reduction and not consistent with the definition of RACT. It is recommended that the exemptions, outlined in N.J.A.C. 7:27-16.27(b)4 and 16.27(b)5, remain in place. (18)

RESPONSE: This section cannot be deleted. It is designed to appropriately regulate sources at major facilities that would otherwise not be regulated under subchapter 16. The requirement at 42 U.S.C. §7511a(b)(2)(C) of the Clean Air Act Amendments (CAA) specifies that the State shall submit a revision to the State Implementation Plan (SIP) to include RACT with respect to all major facilities of VOC that are not covered by any CTG issued or to be issued by EPA.

This section will not require control technologies that do not exist. This section allows facilities to propose an alternative VOC control plan and justify what is Reasonably Available Control Technology on a case-by-case basis.

13. COMMENT: With regards to N.J.A.C. 7:27-16.17(a)1i, the phrase "or exempted under N.J.A.C. 7:27-16.27" should be eliminated. The Preamble to N.J.A.C. 7:27-16.27 states that facilities that are awaiting development of an EPA CTG are exempt from subchapter 16 until November 1994. N.J.A.C. 7:27-16.17(a) needs clarification to reflect this intent. N.J.A.C. 7:27-16.17(a)1i stipulates (in conjunction with paragraphs (a)1 and 1ii) that source operations not regulated under N.J.A.C. 7:27-16.2 through 16.16 or 16.18 through 16.21 or exempted under N.J.A.C. 7:27-16.27 are regulated by N.J.A.C. 7:27-16.17. This wording indicates that the sources exempted in N.J.A.C. 7:27-16.27 are subject to N.J.A.C. 7:27-16.17 on the same timeline as all other affected sources. This is contrary to the intent expressed in the Preamble that sources exempted by N.J.A.C. 7:27-16.27 do not need to submit a facility-specific RACT plan until November 1994. (3)

RESPONSE: The Department has amended N.J.A.C. 7:27-16.17(a) upon adoption in order to make clear that the following source operations are not subject to N.J.A.C. 7:27-16.17:

(1) Source operations currently regulated elsewhere in subchapter 16; and

(2) Source operations that are specifically exempted elsewhere in subchapter 16 because the source operation is within a category that is exempted or because the source operation operates below threshold levels for control or below exclusion rates.

14. COMMENT: With regards to N.J.A.C. 7:27-16.17(a)1ii, nine commenters recommended that the three pounds per hour emission level be replaced with a 10 tons per year emission level. The reasons for this recommendation are:

- Batch operations could emit three pounds per hour for a short time and then be followed by long periods with minimal emissions. On an annual basis, the emissions from this type of operation may not even be significant and may not warrant a facility specific RACT plan. It is not economically reasonable to install controls on a batch operation that infrequently exceeds an hourly threshold when annual emissions are low. (1) (3) (7) (8) (10) (19) (20)
- The three pounds per hour is not appropriate to typical VOC sources; a long-term potential to emit should be established. The 10 tons per year criterion is more implementable than the three pounds per hour criterion. (1) (3) (7) (8) (10) (14) (18) (19) (20)
- Wastewater equipment that is fed batch process wastewaters is an example of a process that may not have significant annual emissions but may periodically spike above the three pounds per hour regulatory criterion. For example, one plant tested for 23 days had emissions above three pounds per hour on only two days; VOC emissions on the remaining days were negligible. Requiring a control plan based on the three pounds per hour criterion is therefore not an effective use of industry or DEPE resources. (1) (3) (7) (8) (10) (19) (20)
- The terminology "potential to emit three pounds per hour VOC" is inconcise in its content. Is this a peak emission or an average over a batch cycle? A tray drying operation that emits more than three pounds per hour VOC at the start batch cycle and mostly water vapor at the end of the cycle is cited as an example. The impact of the regulation would be monumental at a particular pharmaceutical production operation. (18)
- Items such as rupture disks and emergency relief valves have the potential to emit in excess of three pounds per hour VOC during an upset condition. Therefore, virtually any operation equipped with emergency relief systems becomes subject to this regulation. The requirement to control this equipment that is normally not used during the course of operations is definitely not the intention of RACT. (18)

RESPONSE: The NAAQS for ozone is an hourly standard. Even though the emissions averaged over one year from a batch operation may be small, the process may emit large quantities of VOCs during a short period of time. Short term emissions of VOCs can have significant atmospheric effects. If conditions for ground level ozone production are favorable, short term emissions from a source operation will increase the rate of ozone production. Since the formation of ground level ozone is sensitive to the short-term emissions of VOCs, this rule must correspond to that sensitivity in order to be an effective means to reduce the formation of ground level ozone. Annual emissions do not account for this sensitivity. However, just because this section applies to a source operation, does not necessarily mean that additional control equipment will need to be installed. Unreasonable and infeasible control will not be required. If it can be demonstrated that a particular control option for a source operation is not reasonable, it will not be required.

The Department plans to regulate wastewater treatment operations in a manner consistent with EPA's upcoming CTG.

Most batch processes are already subject to N.J.A.C. 7:27-16.6 (proposed N.J.A.C. 7:27-16.16). However, the Department has clarified that the three pounds per hour threshold is equivalent to three pounds per batch cycle hour for batch processes. This equivalence is currently expressed at N.J.A.C. 7:27-16.6 and the definition of "batch cycle emission rate" is currently defined at N.J.A.C. 7:27-16.1.

With regard to source operations that have emergency relief devices, the potential to emit is based on physical and operational design capacity, not on emissions released during emergency conditions. Therefore, this section does not apply to emergency devices such as rupture disks and pressure relief devices.

15. COMMENT: With regards to N.J.A.C. 7:27-16.17(a)1ii and 16.17(d)1, an applicability threshold quantity of three pounds VOC per hour is established. The commenter recommends that this level be changed to one-half gallon per hour (½ gal/hr) and two and one-half gallons per day (2½ gal/day), consistent with the threshold quantity established in proposed N.J.A.C. 7:27-16.7(e). (6)

RESPONSE: The suggested applicability criteria apply only to surface coating operations. Since many source operations subject to N.J.A.C. 7:27-16.17 are not surface coating operations, the suggested criteria (based on quantities of coatings used) would not be appropriate. Therefore, since this section applies to many types of source operations, the threshold is based on pounds per hour which can be applied to any type of source operation.

16. COMMENT: With regards to N.J.A.C. 7:27-16.17(a)2, a source is permitted to apply for an alternative VOC plan. EPA states that it should be noted that applying for such a plan does not relieve the source from complying by May 31, 1995 for newly regulated sources or compliance dates in other sections. (12)

RESPONSE: The Department agrees and has amended N.J.A.C. 7:27-16.17(c) to clarify that compliance by May 31, 1995 (as required by the CAA) may not be postponed by submitting an alternative VOC control plan.

17. COMMENT: With regards to N.J.A.C. 7:27-16.17(a)2, the commenter seeks clarification. N.J.A.C. 7:27-16.17(a)2 excludes facilities regulated elsewhere in subchapter 16 from the requirements of this section. If the facility is permitted elsewhere in N.J.A.C. 7:27, and has a VOC or total non-methane hydrocarbon limit greater than three pounds per hour, is this source additionally constrained by this N.J.A.C. 7:27-16.17 regulation? (16)

RESPONSE: If a source operation that has the potential to emit at least three pounds of VOC per hour is located at a major facility, is not regulated elsewhere in subchapter 16 and is not exempted elsewhere in subchapter 16, then it must comply with N.J.A.C. 7:27-16.17 whether or not the source operation is regulated by another subchapter. If, for example, a source operation is regulated by subchapter 8 (but not by a particular section in subchapter 16) and has the potential to emit at least three pounds of VOC per hour, there are three compliance options: 1. demonstrate that the control apparatus currently meets the control criteria set forth in N.J.A.C. 7:27-16.17(b)1i; 2. submit a plan that will achieve the control criteria by May 31, 1995 set forth in N.J.A.C. 7:27-16.17(b)1ii; or 3. submit an alternative control plan (which may show that less additional control is reasonable, or if further control is unreasonable, existing control is appropriate).

18. COMMENT: With regards to N.J.A.C. 7:27-16.17(b), the commenter recommends that the specific control limits identified be changed from 90 percent to the "maximum amount of control demonstrated for the source." The best demonstrated RACT may not necessarily be able to achieve 90 percent reduction. Furthermore, a specific VOC-containing material may not be able to be substituted due to Federal motor vehicle safety standards. (6)

RESPONSE: If 90 percent capture and 90 percent control efficiencies (81 percent total or combined control) are not achievable, then an alternative VOC control plan should be submitted.

19. COMMENT: With regards to N.J.A.C. 7:27-16.17(b), the language is not clear on the use of the combination of pollution prevention and traditional control to achieve the requirements of the section. The language must be revised to make it clear that any combination of pollution prevention and traditional control may be used in order to achieve the 81 percent total capture and control requirement of this section. (14)

RESPONSE: The Department has amended the rule to make clear that a combination of pollution prevention and control apparatus may be used to achieve the specified emission reductions.

20. COMMENT: With regards to N.J.A.C. 7:27-16.17(b)1, these commenters stated concerns regarding the submittal of alternative compliance plans within three months of the operative date of the new rules. Recommendations for alternate time periods include: six months, nine to 12 months, and 12 months. Reasons cited are: time for characterizing emissions, performing an economic and feasibility study for alternatives and pollution prevention measures, engineering and design, RACT analysis, selecting an option, obtaining management approval, obtaining funding and preparing and submitting a permit application. One commenter noted that more effective facility-wide plans could be developed with additional time and plans could be submitted over a year, which would help alleviate some of the strain on the Department's resources. (2) (6) (9) (14)

RESPONSE: The Department has added provision at N.J.A.C. 7:27-16.17(q) which allows a facility to submit a written request to an extension of the deadline to submit facility-specific VOC control plans. This language is consistent with similar provisions being adopted in the NO_x RACT rules (N.J.A.C. 7:27-19). It should be noted that this provision does not relieve the facility of the May 31, 1995 compliance date set by the CAA.

21. COMMENT: With regards to N.J.A.C. 7:27-16.17(b), the May 31, 1995 date is too tight a time period to be in compliance. Two years are needed after permit approval to order, receive, and install equipment and shut down the facility to tie-in the equipment. The tie-in of RACT equipment should occur during the normal maintenance cycle or costs would be prohibitive due to loss of revenue when the product is most in demand. N.J.A.C. 7:27-16.17(b)1ii should read "A demonstration that within two (2) years of May 31, 1995 the source operation ..." and N.J.A.C. 7:27-16.17(b)2 should read "Within two (2) years of May 31, 1995, comply with...". (9)

RESPONSE: The Department cannot extend this date that Congress mandated in the CAA. However, if a facility can demonstrate that it would be impossible to implement the approved VOC control plan by May 31, 1995, the Department will consider issuing Administrative Consent Orders for such situations.

22. COMMENT: With regards to N.J.A.C. 7:27-16.17(b), this section should be made voluntary and revised to read "The owner or operator of any facility subject to (a)1 above may at the owner or operator's option: ..." The commenter believes it is inappropriate to require identification and control of the three pounds per hour sources within three months of the rule effectiveness date. Each major facility must include these same sources in the facility's Clean Air Act Amendment (CAAA) operating permit, along with a control plan limiting emissions to RACT or MACT limits depending on the HAPs contained in the emission. For a large facility, such as a petroleum refinery, the review of all normal and malfunction scenarios to determine other than permitted emission sources is a large project consuming man-years of effort. To comply with the certification requirements of N.J.A.C. 7:27-16.17(d)5 and 7:27-8.24, identification and quantification of all potential emissions must be completed to certify that all sources above three pounds per hour have been addressed. This change will allow facilities the option to identify and control any VOC emissions above three pounds per hour in the interval between the present and their CAAA permit due date. A minimum acceptable RACT criteria will then be given in the regulation. (16)

RESPONSE: N.J.A.C. 7:27-16.17 cannot be voluntary. The CAA mandates that RACT be applied to all major VOC facilities.

Some source operations that are required to submit VOC control plan may also be required to comply with upcoming Maximum Achievable Control Technology (MACT) standards for Hazardous Air Pollutants (HAPs) pursuant to Title III of the CAAA. In reviewing the facility-specific VOC control plans, the Department will take into consideration that MACT standards will be applied to such source operations and will only require reasonable interim control measures given the timeframe between implementation of the VOC control plan and the implementation of the MACT standard.

23. COMMENT: N.J.A.C. 7:27-16.17(b)1i and (b)2i address the situation where facilities already have controls installed ("is served by"). However, paragraph (b)2 requires compliance by May 31, 1995, this would seem to permit a source to discontinue operation of installed control equipment until May 31, 1995. The savings clause of the Clean Air Act prohibits removing controls in effect or not using controls already operating. Therefore, N.J.A.C. 7:27-16.17(b)1i should contain the requirement that a source continue to comply with any control requirements or permit conditions currently in effect. (12)

RESPONSE: The Department agrees that the rule should clarify that source operations that currently utilize control equipment shall continue to comply with any requirements or permit conditions in effect. The Department has clarified this at N.J.A.C. 7:27-16.17(r).

24. COMMENT: N.J.A.C. 7:27-16.17(b) permits the use of "pollution prevention measures" and paragraph (j)6 provides the criteria they must meet. For these to be Federally enforceable, they must be submitted as SIP revisions. (12)

RESPONSE: The Department will incorporate any pollution prevention measures into the new or amended permits for sources that are part of a facility-specific VOC control plan. Therefore, as conditions of a permit issued pursuant to N.J.A.C. 7:27-8 (rules which are part of New Jersey's State Implementation Plan), they would not be required to be submitted as a SIP revision. The Department wishes to encourage the use of pollution prevention measures. Submitting each pollution prevention measure as a SIP revision would increase the amount of paperwork upon industry, the Department and EPA, and subsequently decrease the desired encouragement of their use.

25. COMMENT: With regards to N.J.A.C. 7:27-16.17(b), a facility that is exempt under N.J.A.C. 7:27-16.27 will not be able to comply with RACT by May 31, 1995. If the EPA does not issue a CTG by the end of November 1993, a facility-specific RACT plan is proposed to be submitted to the Department by November 15, 1994 for these temporarily exempted sources (if EPA issues a CTG on time, an alternate compliance schedule is supposed to be proposed). DEPE will require several months to approve this plan leaving only several months for the affected facility to install the approved RACT control equipment. This is impossible. The intent of the Clean Air Act Section 183 (which pertains to CTGs) is not to require impossible control installation timelines for these sources awaiting control guidance from EPA. The facility-specific RACT plan submitted for the sources exempted by N.J.A.C. 7:27-16.27

should include a RACT proposal, and timeline for installation, and cannot be subject to the timelines proposed in N.J.A.C. 7:27-16.17. (3)

RESPONSE: EPA is expected to issue CTGs for categories of source operations listed in N.J.A.C. 7:27-16.27 which will no longer be exempted on November 14, 1994. The CTGs for Industrial Wastewater and Offset Lithography are expected to be finalized by November 14, 1994. These CTGs will specify RACT, and compliance with the control criteria specified in the CTG will be consistent with the schedule indicated in the CTG. If a CTG for any of these categories is not issued by November 14, 1994, the owner or operator of a source operation in such a category would be required to submit a facility-specific VOC control plan. The CTG for the surface coating of plastic parts is expected to be proposed by November 14, 1994. The Department believes that the proposed CTG will provide enough guidance for the appropriate control of such source operations.

26. COMMENT: With regards to N.J.A.C. 7:27-16.17(d)2iv, the commenter recommends that the list be further defined to address demonstrated technologies for that particular source. (6)

RESPONSE: N.J.A.C. 7:27-16.17(d)2iv requires a list of "all VOC control technologies available for use with the source operation." These would be demonstrated technologies, but not necessarily demonstrated for that particular source. This is reasonable if the technology has been demonstrated on a source with similar emission characteristics.

27. COMMENT: With regards to N.J.A.C. 7:27-16.17(d)2xi, the commenter supports the proposed requirement, but recommends that the permit completeness determination and permit approvals coincide with the plan completeness determination and plan approval. It is mandatory to have these activities occur concurrently in order to make the May 15, 1995 compliance date more feasible. (6)

RESPONSE: The Department recognizes the necessity of coinciding plan and permit approvals. The Department intends to issue approvals for applicants for permits and approvals for the VOC control plans simultaneously.

28. COMMENT: N.J.A.C. 7:27-16.17(f) permits a source to limit its potential to emit below the applicability level if its actual emissions have been less than 25 tons per year. Therefore, the resulting compliance plans limiting potential to emit must be submitted and approved as SIP revisions. Subsection (i) should also apply to "compliance plans" submitted pursuant to (f). (12)

RESPONSE: The Department disagrees with this guidance. The CAA states that RACT must be applied to all major VOC facilities. Once a facility reduces its potential to emit below the threshold for a major facility, the Federal RACT mandates no longer apply to the facility.

29. COMMENT: With regards to N.J.A.C. 7:27-16.17(f)2, the subsection should read "Within two (2) years of May 31, 1995, the owner or operator...". (9)

RESPONSE: The Department cannot extend this date without violating the CAA.

30. COMMENT: N.J.A.C. 7:27-16.17(i) states that New Jersey will submit alternate VOC control plans to EPA as SIP revisions. The wording may be confusing to sources and sources should understand that State approval does not guarantee EPA approval. While the State may approve these "case-by-case" alternate VOC control plans, they do not become Federally enforceable until EPA approves them as a SIP revision. (12)

RESPONSE: The Department recognizes that its approval of an alternative VOC control plan does not guarantee EPA's approval of an alternative VOC control plan submitted as SIP Revisions. However, the Department expects that there will be very few, if any, cases where the EPA will not approve an alternative VOC control plan as a SIP revision where the Department has reviewed it for sufficiency in meeting applicable requirements and issued its approval.

31. COMMENT: With regards to N.J.A.C. 7:27-16.17(j)3, the listed criteria are really documentation that the source must submit and seem to be more appropriately located in N.J.A.C. 7:27-16.17(d)2. (12)

RESPONSE: All of these factors, VOC control effectiveness, feasibility and cost effectiveness, will be based on the information submitted to the Department pursuant to N.J.A.C. 7:27-16.17(d)2 (which requires a feasibility analysis, estimation of emission reductions, and a cost analysis of each control option).

32. COMMENT: With regards to N.J.A.C. 7:27-16.17(j), these commenters stated that a dollar per ton figure needs to be promulgated as part of the alternative VOC control plan requirements to assure the regulated community that "Reasonable" remains a key part of RACT. Six commenters recommended that DEPE consider the $2-10 thousand ton figure stated in the Preamble to N.J.A.C. 7:27-16.4, and index the value to the annual consumer price index. One commenter suggested $2,000/ton indexed to the consumer price index. The dollar per ton RACT criteria will have a significant impact on NJ Industry and should not be left to DEPE policy. Adding this criteria will make the regulation more predictable and consistent. The $/ton number should be formally proposed, commented on, and promulgated. Future changes to this number need to go through the same public review. Six of the commenters cited N.J.A.C. 7:27-16.17(j)3iii relating to disproportionate costs. The November 1994 expiration of the industrial wastewater exemption was of particular concern. Several commenters have data on air emissions from their wastewater plants, and cost estimates to cover and control them. In many instances the cost to install retrofit covers and control devices on a wastewater plant is prohibitively expensive for modest reductions in VOC emissions. (1) (3) (7) (8) (10) (19) (20)

RESPONSE: The Department believes that a strictly cost-based RACT standard is inadequate to fairly and effectively implement RACT. Because the actual cost for the installation of RACT will vary greatly from source to source, even within a category, no one cost has been specified above which a technology can be dismissed as not meeting the definition of RACT. Instead, provisions have been included in the rule which state several critria which should be used to determine if a specific control scenario constitutes RACT.

33. COMMENT: N.J.A.C. 7:27-16.17(o)1 refers to "material" condition. What is the intent of using this word? Is the DEPE trying to differentiate between violations of different permit conditions? This should be clarified. (12)

RESPONSE: The word "material" is used in order to limit what conditions may, if violated, may be grounds for revocation of an approval for an alternative VOC compliance plan. Violations of trivial and insignificant conditions are not grounds for revocation of an approval for an alternative VOC compliance plan.

Summary of Hearing Officer's Report

Richard V. Sinding, Assistant Commissioner, Policy and Planning, served as the hearing officer at the September 9, 1993, public hearing held at the Department's hearing room at 401 East State Street in Trenton, New Jersey.

After reviewing the testimony at the public hearing, Assistant Commissioner Sinding recommended that N.J.A.C. 7:27-16.17, related definitions of N.J.A.C. 7:27-16.1, and related penalties at N.J.A.C. 7:27A-3.10 be adopted as proposed at this time.

A copy of the record of public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying ($0.75 per page for the first ten pages, $0.50 per page for the following 10 pages, and $0.25 per page for additional pages). Persons requesting copies should contact:

ATTN: DOCKET #41-93-07
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Changes Upon Adoption in Response to Comments:

In response to Comment 1, the Department has added the definition of the term "State Implementation Plan" or "SIP" to N.J.A.C. 7:27-16.1. This definition is identical to the definition in place at N.J.A.C. 7:27-8.1.

In response to Comment 3, the Department has clarified that "potential to emit" shall be based on the operation of a source operation at 8760 hours per year unless the source operation's hours of operation are limited by a Federally enforceable condition.

In response to Comment 13, the Department has amended N.J.A.C. 7:27-16.17(a) upon adoption in order to make clear that a source operation is not subject to N.J.A.C. 7:27-16.17 if it is currently regulated elsewhere in subchapter 16, or if it is specifically exempted elsewhere in subchapter 16 because the source operation is within a category that is exempted or because the source operation operates below threshold levels for control or below exclusion rates.

In response to Comment 14, the Department has specified at N.J.A.C. 7:27-16.17(a)1 that the applicability threshold for a batch process is potential batch cycle emissions of three pounds per hour.

In response to Comment 16, the Department has clarified at N.J.A.C. 7:27-16.17(c) that submission of a proposed alternative VOC control plan

does not relieve a facility from complying by May 31, 1995 for newly regulated source operations or compliance dates in other sections of this subchapter.

In response to Comment 19, the Department has amended N.J.A.C. 7:27-16.17(b)1i and ii to make clear that a combination of pollution prevention and control apparatus may be used to achieve the specified emission reductions.

In response to Comment 20, the Department has added N.J.A.C. 7:27-16.17(q) in order to allow facilities to request extensions for the submission of facility-specific VOC control plans.

In response to Comment 23, the Department has made clear, at N.J.A.C. 7:27-16.17(r) that to discontinue operation of installed control equipment until May 31, 1995 is not approvable.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:27-16.17(d)1 has been restructured for clarification.

At N.J.A.C. 7:27-16.17(f)1, the Department has corrected the citation of the certification requirements.

At N.J.A.C. 7:27-16.17(j)6ii, the Department changed "reduction" to "reductions" in order to correct grammar and to be consistent with the rest of the paragraph.

Proposed N.J.A.C. 7:27-16.17(p)3 has been revised in order to eliminate conflicting reasons why a person may request an adjudicatory hearing. N.J.A.C. 7:27-16.17(o) has been restructured to accommodate this change. The proposal stated at N.J.A.C. 7:27-16.17(p)1 that a person may request an adjudicatory hearing for any reason other than an EPA rejection of a SIP revision. Additionally, the proposal stated at N.J.A.C. 7:27-16.17(p)3 that a person may request an adjudicatory hearing if the Department had rejected the person's approval pursuant to (o) above which includes EPA's denial of an alternative VOC control plan as a SIP revision. The adoption resolves this conflict in a manner consistent with the intent of the proposal.

Proposed N.J.A.C. 7:27-16.17(q) has been recodified at N.J.A.C. 7:27-16.17(s) due to the addition of new provisions at subsections (q) and (r) in response to comment.

At N.J.A.C. 7:27A-3.10(e)16, the Department has corrected the citations for violations of provisions of N.J.A.C. 7:27-16.17 and has clarified the explanations. N.J.A.C. 7:27-16.17(b)1 states that an owner or operator must submit information, pursuant to subsections (e)—demonstration plan—or (d)—alternative plan; therefore, violations of N.J.A.C. 7:27-16.17(d) and (e) have been redesignated at paragraph (b)1. Compliance with these plans are specified at N.J.A.C 7:27-16.17(b)2i and (b)2ii; therefore, the proposed penalties indicating paragraph (b)1 and (b)2 have been corrected to reflect the proper citations. Compliance for the voluntary alternative VOC control plan is specified at N.J.A.C. 7:27-16.17(c)2; therefore, the proposed penalty indicating paragraph (c)1 has been corrected to reflect the proper citation and additional explanation is given under the class. Additional explanation is given under the class for violation of N.J.A.C. 7:27-16.17(n).

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 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS

7:27-16.1 Definitions

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

"Federally enforceable" means all limitations and conditions on operation, production, or emissions that can be enforced by EPA. The foregoing limitations and conditions that can be enforced by EPA include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;

3. Any provision of an applicable SIP;

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; or 40 CFR 71; or

5. Any permit or order issued pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., or this chapter.

...

"Potential to emit" means the maximum capacity of a source operation or a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including control apparatus and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is Federally enforceable. ***If there is no Federally enforceable limitation on the hours of operation of a source operation, then any determination of the maximum design capacity shall be based on a presumption of operation at 8760 hours per year.*** This term includes the fugitive emissions emitted by the source operation or facility as calculated in a manner consistent with the provisions of N.J.A.C. 7:27-21 and current guidance issued by the Department pursuant thereto.

...

"State implementation plan" or "SIP" means a plan for the attainment of any NAAQS, prepared by a state and approved by the EPA pursuant to Section 110 of the Clean Air Act (42 U.S.C., 1857 et seq.).

...

7:27-16.17 Facility-specific VOC control requirements

(a) This section establishes procedures and standards for the establishment of VOC control requirements *[in the following circumstances]* ***for any source operation that***:

*[1. If a major VOC facility contains any source operation that:

i. Is not regulated under N.J.A.C. 7:27-16.2 through 16.16 or 16.18 through 16.21, or exempted under N.J.A.C. 7:27-16.27; and

ii. Has the potential to emit at least three pounds of VOC per hour; or]*

1. Is located at a major facility and has the potential to emit at least three pounds per hour (potential batch cycle emission rate of three pounds per hour for batch processes), and:

i. Is not regulated elsewhere in this subchapter; or

ii. Is not specifically exempted elsewhere in this subchapter because the source operation is within a category that is exempted or because the source operation operates below exclusion rates or threshold levels for control; or*

2. If the owner or operator of a source operation regulated under N.J.A.C. 7:27-16.2 through 16.16 or 16.18 through 16.21 seeks approval of an alternative VOC control plan, which would apply to the equipment or source operation notwithstanding any control requirement or emission limit which would otherwise apply under this subchapter.

(b) The owner or operator of any facility ***that contains a source operation**** subject to (a)1 above shall:

1. By *[three months after the operative date of these new rules]* ***three months after the operative date of the adoption or other final action, on the remainder of the proposal published in the New Jersey Register on August 2, 1993, at 25 N.J.R. 3339(a)****, submit *[one of the following]* ***a demonstration for all source operations**** to the Department at the address listed in *[(q)]* ***(s)**** below****. This demonstration shall include one of the following for each source operation subject to (a)1 above****:

i. *[A demonstration that]* ***Information, pursuant to (e) below, that demonstrates**** the source operation is ***currently**** served by a control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, *[or]* that the owner or operator has implemented pollution prevention measures ***(or a combination of control apparatus and pollution prevention measures)**** that achieve at least the same level of VOC emission reductions;

ii. *[A demonstration that]* ***Information, pursuant to (e) below, that demonstrates**** by May 31, 1995 the source operation will be served by control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, *[or]* that the owner or operator will implement pollution prevention measures ***(or a combination***

of control apparatus and pollution prevention measures)* that achieve at least the same level of VOC emission reductions; or

iii. A proposed alternative VOC control plan prepared in accordance with (d) below.

2. Beginning on May 31, 1995, comply with either (b)2i or ii below:

i. Use control apparatus that the Department has determined (pursuant to (1) below) will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected; or

ii. Operate the facility in accordance with an alternative VOC control plan approved by the Department pursuant to (j) below.

(c) An owner or operator seeking approval of an alternative VOC control plan pursuant to (a)2 above shall submit to the Department at the address listed in *[(q)]* ***(s)*** below a proposed alternative VOC control plan prepared in accordance with (d) below. ***Submission of a proposed alternative VOC control plan does not relieve an owner or operator of any facility, equipment or source operation facility from complying by May 31, 1995 for source operations first regulated under this subchapter as amended operative (add operative date upon adoption of or other final action on the remainder of the proposal published in the New Jersey Register on August 2, 1993 at 25 N.J.R. 3339(a)) (see 25 N.J.R. ____ and 26 N.J.R. ____) or compliance dates in other sections of this subchapter.*** If and when the Department approves the alternative VOC control plan, the owner or operator shall be subject to the conditions and requirements of the plan and of the Department's approval.

(d) An owner or operator submitting a proposed alternative VOC control plan pursuant to (b)1iii ***or (c)*** above shall include the following information in the plan:

1. A list of each source operation at the facility to be included in the plan*[.]**:*

i. For a submission pursuant to (b)1iii above, the list shall include each source operation that is not regulated under N.J.A.C. 7:27-16.2 through 16.16, 16.20 or 16.21, and has the potential to emit at least three pounds of VOC per hour*[.]**; or***

ii. For a submission pursuant to (c) above, the list shall include each source operation for which the owner or operator seeks an alternative to compliance under N.J.A.C. 7:27-16.2 through 16.16, 16.20 or 16.21;

2. The following information for each source operation listed pursuant to (d)1 above:

i. A brief description of the source operation, and its permit number and any other identifying numbers;

ii. The maximum rated capacity of the source operation;

iii. The source operation's potential to emit VOC;

iv. A list of all VOC control technologies available for use with the source operation;

v. A list of all alternative processes and pollution prevention measures that the owner or operator is considering using with or in place of the source operation to reduce VOC emissions;

vi. An analysis of the technological feasibility of installing and operating each control technology and process alternative identified in (d)2iv and v above;

vii. For each control technology and process alternative which is technologically feasible to install and operate, an estimate of the cost of installation and annual operation;

viii. An estimate of the remaining useful life of the existing source operation;

ix. An estimate of the reduction in VOC emissions attainable through the use of each control technology and process alternative identified in (d)2iv and v above;

x. The VOC control technology or technologies or process alternatives which the owner or operator proposes to employ;

xi. For any construction, alteration or installation of any equipment or control apparatus that the owner or operator proposes in the plan, a complete application for all permits required under N.J.A.C. 7:27-8;

xii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

xiii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. Any other information the Department requests that is reasonably necessary to enable it to determine whether the application satisfies the requirements of (j) below; and

4. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-8.24.

(e) An owner or operator submitting a demonstration pursuant to (b)1i or ii above shall include the following information in the demonstration:

1. A list of each source operation at the facility within the scope of (a)1 above;

2. The following information for each source operation listed pursuant to (e)1 above:

i. A brief description of the source operation, and its permit number and any other identifying numbers;

ii. The maximum rated capacity of the source operation;

iii. The source operation's potential to emit VOC;

iv. A description of the control apparatus that serves the source operation (for demonstrations pursuant to (b)1i above) or that the owner or operator states will serve the source operation (for demonstrations pursuant to (b)1ii above);

v. An analysis of how the control apparatus will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected;

vi. A description of any pollution prevention measures that the owner or operator has implemented (for demonstrations pursuant to (b)1i above) or will implement (for demonstrations pursuant to (b)1ii above), and analysis of how such measures will control VOC emissions to the extent required under (b)1i and ii above;

vii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

viii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. A complete application for each permit required under N.J.A.C. 7:27-8 for any equipment or control apparatus to be constructed, altered or installed in connection with the demonstration;

4. Any other information which the Department may request which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (1) below; and

5. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-8.24.

(f) Notwithstanding the provisions of (b) above, the owner or operator of a facility that had actual annual emissions of VOC in 1990 and each year thereafter of less than 25 tons, may comply with the requirements of this section by obtaining the Department's approval of a compliance plan and implementing such a plan. To comply in this manner, the owner or operator shall submit a proposed compliance plan pursuant to (f)1 below, obtain the Department's approval of the plan pursuant to (k) below, and implement the plan pursuant to (f)2 below.

1. The owner or operator shall submit to the Department a proposed compliance plan that includes the following information, and is certified by the owner or operator pursuant to N.J.A.C. 7:27-*[8.23]***8.24***:

i. Documentation establishing that the actual annual emissions of VOC from the facility in 1990 and each year thereafter were less than 25 tons. If the facility did not commence operations until after 1990, the documentation shall address each year beginning with the year that operations commenced. The documentation shall include records maintained at the facility and any report of actual emissions, including any emission statement, submitted for the facility to the Department for the relevant years;

ii. A statement of the owner or operator's intent to reduce the facility's potential to emit VOC to less than 25 tons per year;

iii. A description of how the reduction of the facility's potential to emit is to be achieved;

iv. Complete applications for amendments to any existing permit or for any new permit required to achieve the reduction of the facility's potential to emit VOC to less than 25 tons per year; and

v. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan.

2. By May 31, 1995, the owner or operator of the facility shall reduce the facility's potential to emit VOC to less than 25 tons per year and achieve compliance with all new or amended permits.

(g) Within 30 days after receiving a demonstration submitted pursuant to (b)1 above, a proposed alternative VOC control plan submitted pursuant to (b)2 above, or a proposed compliance plan submitted pursuant to (f) above, the Department shall notify the owner or operator in writing whether the submission includes sufficient information to commence review. If the submission does not contain sufficient information to complete the review, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the submission complete, and a time by which the owner or operator must make a complete submission. The Department may refrain from reviewing the substance of the submission until the additional information is provided to the Department.

(h) Failure by an owner or operator to submit the additional information requested by the Department pursuant to (g) above within the time stated in the Department's notification shall constitute a violation of this subchapter. In such case, the Department may deny the request for approval of the submission and pursue its other remedies.

(i) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed alternative VOC control plan. The Department shall publish a Notice of Opportunity for Public Comment in a newspaper for general circulation in the area in which the major VOC facility is located. In addition, the Department shall submit any approved alternative VOC control plan to EPA as a proposed revision to New Jersey's State Implementation Plan.

(j) Within six months after receiving a complete proposed alternative VOC control plan, the Department shall approve, approve and modify, or disapprove the proposed plan and notify the owner or operator of the decision in writing. The Department shall approve the proposed plan or request only if it satisfies the following requirements:

1. The proposed plan or request contains all of the information required under (d) above;

2. The proposed plan considers all control technologies available for the control of VOC emissions from the type of equipment or source operation in question;

3. For any control technologies described in (j)2 above which the owner or operator does not propose to use on the equipment or source operation, the proposed plan demonstrates that the control technology:

i. Would be less effective in controlling VOC emissions from the equipment or source operation than the proposed measures;

ii. Is unsuitable for use with the source operation, or duplicative of control technology or pollution prevention measure which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the VOC emissions rate which the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in VOC emissions which the control technology is likely to achieve over its useful life; or

iv. Would carry costs disproportionate to the costs incurred for the control of VOC emissions from the same type of source operations used by all other persons in the owner or operator's industry;

4. The emission limit proposed for each source operation is the lowest rate which can practicably be achieved at a cost within the limits described in (j)3iii and iv above;

5. The cost of achieving an additional emission reduction beyond each proposed limit would be disproportionate to the size and environmental impact of that additional emission reduction; and

6. For any pollution prevention or other emission reduction measures proposed by the owner or operator, the proposed plan demonstrates that the measures:

i. Result in actual reductions in VOC emissions;

ii. Result in VOC emission reduction*s* which are quantifiable; and

iii. Result in VOC emission reductions which are Federally enforceable.

(k) Within six months after receiving a complete compliance plan submitted pursuant to (f) above, the Department shall approve, approve and modify, or disapprove the proposed compliance plan and notify the owner or operator of the decision in writing. The Department shall approve the proposed compliance plan only if it satisfies the following conditions:

1. The compliance plan contains all of the information required under (f) above;

2. The compliance plan demonstrates to the Department's satisfaction that actual emissions of VOC, including fugitive VOC emissions, in 1990 (or the first year of the facility's operations, if operations commenced after 1990) and each year thereafter are less than 25 tons;

3. The proposed recordkeeping requirements are sufficient to enable the Department to verify that the owner or operator is complying with the plan; and

4. The compliance plan demonstrates that the potential to emit VOC will be less than 25 tons if the plan is approved and implemented.

(l) Within six months after receiving a complete demonstration submitted pursuant to (b)1 above, the Department shall approve, approve and modify, or disapprove the demonstration and notify the owner or operator of the decision in writing. The Department shall approve the demonstration only if:

1. The demonstration includes all of the information required under (e) above;

2. To the extent that the demonstration depends upon any construction, alteration or installation and use of any equipment or control apparatus that is not in use as of the time the demonstration was submitted, the owner or operator has obtained all permits and certificates required for the control apparatus under N.J.A.C. 7:27-8, and has agreed to install and use all such control apparatus in accordance with the permits and certificates;

3. To the extent that the demonstration depends upon the implementation of pollution prevention measures that have not been implemented before the time at which the demonstration was submitted, the owner or operator has agreed to implement such measures; and

4. The demonstration establishes to the satisfaction of the Department that the control apparatus will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, or that the pollution prevention measures will achieve at least the same level of emission reductions.

(m) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the source operation(s) necessary to minimize any adverse impact upon human health, welfare and the environment.

(n) Before altering any source operation which is included in an approved alternative VOC control plan, approved compliance plan or demonstration (except as authorized or required in the approval), the owner or operator shall:

1. Pursuant to this section, apply for and obtain the Department's approval of an amendment to the approved compliance plan, VOC control plan, or demonstration, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval of the amendment before commencing operation of the altered equipment or source operation, the Department may (in addition to assessing penalties under N.J.A.C. 7:27A-3.10) modify the VOC control plan, compliance plan or demonstration to reflect the alteration, in a manner satisfying the criteria set forth in (j), (k) or (l) above, respectively; and

2. Apply for and obtain such permits and certificates for the alteration, as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation. Any permit application must be submitted with the application to amend the VOC control plan.

(o) The Department may revoke an approval of an alternative VOC control plan, compliance plan or demonstration by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the owner or operator's submission or any supporting documentation;

[3. For an alternative VOC control plan, EPA denies approval of the plan as a revision to the State Implementation Plan; or]

*[4.]***3.*** The Department determines that continued use of the subject source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment*[.]***; or***

4. For an alternative VOC control plan, EPA denies approval of the plan as a revision to the State Implementation Plan.

(p) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department has denied the person's application for approval under this section for any other reason than an EPA rejection of the SIP revision;

2. The person seeks to contest one or more conditions of the Department's approval imposed under (m) above; or

3. The Department has revoked the person's approval pursuant to (o)***1 through 3*** above.

(q) After receipt of a written request from an owner or operator, the Department may authorize a 60 day extension of the deadline set forth in (b)1 above, provided that such a request shall include a statement, certified in accordance with N.J.A.C. 7:27-8.24, that notwithstanding the request for extension, the facility will comply with all applicable emission limits set forth in this section by the May 31, 1995 deadline established in (b)2 above. Such extension may be renewed by the Department upon the written request of the owner or operator provided that the request for renewal shall also include a statement, certified in accordance with N.J.A.C. 7:27-8.24, that notwithstanding the request for an extension, that the facility will comply with all applicable emission limits set forth in this section by the May 31, 1995 deadline established in (b)2 above. Written requests for the extension of a deadline submitted shall be submitted to the address listed below:

Assistant Director, Air and Environmental Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection and Energy
CN 422
401 East State Street, 4th floor
Trenton, New Jersey 08625-0422

(r) Notwithstanding the requirement at (b)2 above, demonstration that a source operation is currently served by control apparatus that meets the criteria set forth in (b)1i above does not relieve a facility from complying with all existing emission limits and conditions set forth in this chapter.*

*[(q)]***(s)*** The owner or operator submitting a proposed alternative VOC control plan, compliance plan or demonstration shall send it to the Department at the following address:

Chief, Bureau of New Source Review
Division of Environmental Regulation
Department of Environmental Protection and Energy
CN 401
Trenton, New Jersey 08625-0401

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

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

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection 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.-15. (No change.)

16. The violations of N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (VOC), and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
. . .					
***N.J.A.C. 7:27-16.17(b)1**	**Submittal**	**$300**	**$600**	**$1,500**	**$4,500***
N.J.A.C. 7:27-16.17(b)*[1]****2i***	Control Apparatus	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.17(b)2***ii***	Compliance with Alternative VOC Control Plan	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.17(c)*[1]****2***	Compliance ***with Alternative VOC Control Plan***	$2,000	$4,000	$10,000	$30,000
*[N.J.A.C. 7:27-16.17(d)	Submittal	$300	$600	$1,500	$4,500]*
*[N.J.A.C. 7:27-16.17(e)	Submittal	$300	$600	$1,500	$4,500]*
N.J.A.C. 7:27-16.17(n)	*[Submittal]* ***Amendment of Compliance Plan***	$300	$600	$1,500	$4,500
. . .					

HEALTH

(a)

VITAL RECORD SERVICES

Access to Death Records

Adopted New Rules: N.J.A.C. 8:2A

Proposed: July 19, 1993 at 25 N.J.R. 3115(a).
Adopted: November 23, 1993 by Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health.
Filed: November 24, 1993 as R.1993 d.667, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:8-23.

Effective Date: December 20, 1993.
Expiration Date: December 20, 1998.

Summary of Public Comments and Agency Responses:

Comments were received from the following organizations and individuals: Carolyn Cobb, American Council of Life Insurance; Henry Meisner, Prudential Insurance Co.; Charles Vogel, State Farm Insurance Co.; Emma Byrne, Department of Law and Public Safety; Patrice Reilly, Department of Public Advocate; Wilson Beebe, New Jersey Funeral Directors Association; Kenneth G. Mayer, Concerned Citizen; Deborah McGrath, Hillsdale Health Department; Joan Skal, Township of Little Falls; Mildred Euler, Borough of Bergenfield; Helen Mackel, Town of Kearney; and Dale Zeller, Lakewood Township.

The local registrars of vital statistics were concerned about administrative problems (as indicated in comments 1 through 6). Their concerns are as follows:

1. COMMENT: Is there a time frame, for example, 25 to 30 years, wherein the law does not apply? When do the records become open to the public?

RESPONSE: The law and the rules always apply. The records are open to the public to the extent allowed by N.J.A.C. 8:2A-1.2.

2. COMMENT: What constitutes an authorized representative?

RESPONSE: An authorized representative is one who has been authorized by one of the persons listed in the rules who is authorized to receive a full copy of the death certificate.

3. COMMENT: How does a Registrar determine that a person requesting a full copy is a caretaking partner?

RESPONSE: The Registrar should require the applicant to submit a written request containing the information shown in Appendix A, giving their relationship to the decedent as "caretaking partner." The Department has amended the rule at N.J.A.C. 8:2A-1.2(a)2 to require only the information contained on the form, rather than the specific form, to avoid imposing an unduly burdensome requirement upon the public.

4. COMMENT: If the legal executor is physically or mentally incapacitated, who is authorized to receive the full death record?

RESPONSE: A person listed in the rules at N.J.A.C. 8:2A-1.2(a)2i through v, or a guardian appointed by a court of law.

5. COMMENT: Where are the release forms filed?

RESPONSE: The forms are filed with the Registrar who issued the certificate of death record, to be kept for five years.

6. COMMENT: I receive requests from hospitals (tumor registries) inquiring about the cause of death. Should these requests be honored?

RESPONSE: Information should only be provided to the representatives listed in the rules. If the persons are not authorized specifically by the rules, the matter should be referred to the Commissioner of the Department of Health.

7. COMMENT: The three life insurance companies who responded were concerned as follows: Access to death records are needed for the purpose of evaluating life insurance claims and distributing life insurance benefits. It is important to know the mode of death, for example, suicide—accidental death, etc., to determine eligibility for benefits. Death records are also needed to monitor mortality rates. In addition, cause of death information is used to check the accuracy and validity of answers given on the insurance application. Life insurers are required by standards set by the American Academy of Actuaries to test their mortality tables used to establish liability reserves required under law.

RESPONSE: Insurance companies can gain access to full copies of the death certificate from the beneficiary on the insurance policy. If the beneficiary is not authorized to receive a full copy of the death certificate, the insurance company may seek relief through N.J.A.C. 8:2A-1.2(a)2v, by contacting the Commissioner of the Department of Health. Mortality data is available through the Public Health Statistics program of the State Department of Health.

8. COMMENT: The two governmental agencies commented that they routinely need complete death certificates in connection with investigative/inspection functions on behalf of the various professional and occupational boards. The Public Advocate requires cause of death information to enforce Federal laws on abuse and neglect of individuals protected by the Public Advocate's office.

RESPONSE: The Department agrees that this need is valid and necessary. A change of this nature however, is substantive and cannot be made without additional public comment. Therefore the Department will propose an amendment in the near future to allow access for governmental agencies in the course of their duties, except where prohibited by law.

COMMENT: Kenneth G. Mayer, a concerned citizen, felt that this policy requires the Social Security number of the decedent be made part of the death certificate which would then be a violation of Federal law, 42 U.S.C.A. 405(C)(2)(C)VII et seq.

RESPONSE: The proposed rules merely specify what information contained in existing death certificates shall be shown in the process of issuing a certification of the death certificate. The informant who provides the personal particulars on a death certificate volunteers the Social Security information; thus, it is not a violation of Federal Law to certify information given by the next of kin. However, the Department has removed the Social Security number from the mandatory section since the Department cannot, and does not, require it. The Department has also deleted the "state file number", since this number is not used universally, and is not needed for the retrieval of data requested.

COMMENT: The New Jersey Funeral Directors Association stated that the State Department of Health should not rely on family members getting copies of certificates with medical particulars. New Jersey funeral directors normally obtain certification of the death records as part of the services they provide to their client. They feel that a burden would be placed on the family to obtain full copies of the death certificate if the rules required the presentation of an affidavit.

RESPONSE: The Department does not want the new rules to be a burden to anyone affected. However, the change requested by the Association is substantive and cannot be made without additional public comment. Therefore the Department will propose an amendment in the near future to allow access for funeral directors under contract with the family of the deceased in the course of their duties, except where prohibited by law.

COMMENT: The New Jersey Funeral Directors Association has also commented that the cause of death normally appears on the burial permit and is not covered by the rules.

RESPONSE: The burial permit is an integral part of the death record. Therefore, the Department considers any request to issue a copy of the burial permit to come under the same rules as that of the death record.

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

CHAPTER 2A
DEATH RECORDS

SUBCHAPTER 1. ACCESS TO DEATH RECORDS

8:2A-1.1 Definitions

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

"Commissioner" means the State Commissioner of Health.

"Department" means the New Jersey State Department of Health.

"Informant" means the name of the individual providing the personal particulars for the preparation of the birth certificate.

"State Registrar" means the New Jersey State Registrar of Vital Statistics.

8:2A-1.2 Access to death records

(a) The State Registrar or other custodian of vital records shall supply, upon request of any applicant, a certified copy of any death

record, provided the required statutory search fee is submitted, except where such fee is excluded by statute or regulation.

1. The certification or certified copy shall include, at a minimum, the name of the decedent, place of death (county, city), date of death, *[social security number,]* sex, date of birth, *[State file number]* and date of issuance, providing this information is available.

2. The certification may include other information; however, the last sickness and death particulars (cause of death and medical particulars) will only be included on the certification or certified copy of the death record if the applicant completes a certification *[in the form]* ***containing the information*** set forth in Appendix A, incorporated herein by reference, that he or she is related to the decedent as follows:

i. Executor, administrator of the estate, or authorized representative of the deceased person;

ii. Surviving spouse or caretaking partner;

iii. If there is no spouse or caretaking partner, then by another authorized member of the family;

iv. A parent, guardian, or other individual authorized under State law to act in a minor's behalf; or

v. The Commissioner, at his or her discretion, in the event that a deceased person has neither an authorized representative nor next of kin as defined above in (a)2i through iv above.

3. Any of the relatives to the decedent in (a)2i through v above may consent to the release, to a third party, of a death certificate containing cause of death and medical particulars. Such consent must also be provided in the form of a certification ***similar to that*** as set forth in Appendix A.

4. Any certified copy of a death certificate, with or without last sickness and death particulars, may be released without consent under the following conditions:

i. To qualified personnel for the purpose of conducting scientific research, but a record shall be released for research only following review of the research protocol by an Institutional Review Board constituted pursuant to Federal regulation 45 C.F.R. 46.101 et seq. The person who is the subject of the record shall not be identified, directly or indirectly, in any report of the research, and research personnel shall not disclose the person's identity in any manner;

ii. To qualified personnel for the purpose of conducting management audits, financial audits or program evaluation, but the personnel shall not identify, directly or indirectly, the person who is the subject of the record in a report of an audit or evaluation, or otherwise disclose the person's identity in any manner. Identifying information shall not be released to the personnel unless it is vital to the audit or evaluation;

iii. To the Department as required by State or Federal law; or

iv. As permitted by rules adopted by the Commissioner for the purposes of disease prevention and control.

(b) The State Registrar or other custodian of vital records shall not permit physical inspection and/or access to the full death record nor shall he or she disclose information, copy or issue the full record unless he or she is satisfied that the applicant is authorized to obtain a full copy of such record, as listed in (a)2, 3 and 4 above.

APPENDIX A

Certification

Date: _____

I, _____ (Applicant), _____ (Relationship),

to decedent, hereby authorize the issuance of a certification of the death record of _____, disclosing the cause of death section. I certify that the above information, supplied by me, is true. I am aware that I am subject to punishment if I have falsely supplied the above information.

_____

Signature

(a)

DIVISION OF EPIDEMIOLOGY, OCCUPATIONAL AND ENVIRONMENTAL HEALTH SERVICES

Definitions and Standards of Identity for Designated Fluid Milk Products, and Sanitary Requirements for the Production and Processing of Milk and Fluid Milk Products

Adopted Amendments: N.J.A.C. 8:21-10.1, 10.2, 10.4, 10.6 and 10.12

Proposed: September 20, 1993 at 25 N.J.R. 4373(a).
Adopted: November 24, 1993 by Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health.
Filed: November 24, 1993 as R.1993 d.689, **without change.**

Authority: N.J.S.A. 24:10-57.10, 24:10-57.23 and 24:10-57.24b.

Effective Date: December 20, 1993.
Expiration Date: October 23, 1995.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposal was held on October 19, 1993, at the Department of Health, Health and Agriculture Building, Trenton, New Jersey. The hearing officer was Kenneth Kolano, Program Manager of the Food and Milk Program. Mr. Kolano recommended that the agency consider the comments, which was done. The agency's responses follow. A record of the hearing is maintained in the files of the Food and Milk Program and can be reviewed by contacting Mr. Kolano, New Jersey Department of Health, Food and Milk Program, CN 369, Trenton, NJ 08625. Two comments were received at the hearing and are summarized below. No written comments were provided during the formal public comment period.

Summary of Public Comments and Agency Responses:

COMMENT: Mr. William Prentice representing the New Jersey Milk Industry Association testified in support of the proposed amendments; particularly, the proposed changes to the rule concerning shelf-life expiration dates for milk and milk products. He stated that the rule change permits New Jersey milk plants to remain competitive with facilities in surrounding states. It has also led to an increase in quality control measures for firms which want to request extended dating from the Department.

COMMENT: Mr. Larry Kurz of Readington Farms testified in support of the proposed amendments, noting that the rule change on shelf-life dating has meant increased efficiency in their plant's shipping and delivery operations, since they no longer need to segregate product in their storage facilities according to the individual state of destination.

RESPONSE: The Department recognizes the two comments in support of the proposed rule amendments.

Full text of the adopted amendments follows:

8:21-10.1 Definitions and product standards

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The following standards of identity conform to the Code of Federal Regulations for milk and cream (21 CFR 131).

"Acidified Sour Cream":

1. (No change.)

2. Optional ingredients.

i.-v. (No change.)

(1) Fruit and fruit juice, including concentrated fruit and fruit juice.

(2) Safe and suitable natural and artificial food flavoring.

3.-5. (No change.)

...

"Certified industry inspector" means an individual certified by the Department to conduct dairy farm inspections of producers shipping to New Jersey permit holders. Such certification shall be in accordance with the procedures established by the Department pursuant to the provisions of the Grade A Pasteurized Milk Ordinance (1989) (PHS-FDA Publication 229).

...

"Concentrated milk and/or fluid milk products" means and includes the fluid milk products resulting from the removal of a considerable portion of the water from the milk and/or fluid milk products which, when combined with potable water in accordance with instructions printed on the container, conform with the definitions of the corresponding product as defined.

...

"Cultured milk":

1.-3. (No change.)

4. Other optional ingredients.

i. (No change.)

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii.-ix. (No change.)

5.-7. (No change.)

...

"Drug" means:

1. Articles recognized in the official United States Pharmacopeia, official Hemeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them;

2. Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

3. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

4. Articles intended for use as a component of any articles specified in 1, 2 or 3 above, but does not include devices or their components, parts or accessories.

"Eggnog" means:

1.-3. (No change.)

4. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

5.-8. (No change.)

...

"Half-and-Half":

1.-4. (No change.)

5. Label declaration. When used in the food, each of the ingredients shall be declared on the label as required by the applicable sections of 21 CFR 101.

...

"Heavy cream":

1-4. (No change.)

5. Label declaration. When used in the food, each of the ingredients shall be declared on the label as required by the applicable sections of 21 CFR 101.

...

"Item" as listed in N.J.A.C. 8:21-10.6(d) and (e) means the Grade "A" Pasteurized Milk Ordinance (1989 Revision) (PHS/FDA Publication No. 229). The letter "r" refers to raw milk; the letter "p" refers to pasteurized milk.

...

"Light cream":

1.-4. (No change.)

5. Label declaration. When used in the food, each of the ingredients shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Light Whipping Cream":

1.-4. (No change.)

5. Label declaration. When used in the food, each of the ingredients shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Lowfat Milk":

1.-2. (No change.)

3. Optional ingredients. The following safe and suitable ingredients may be used:

i.-iii. (No change.)

iv. Characterizing flavoring ingredients (with or without coloring, nutritive sweetener, emulsifiers, and stabilizers) as follows:

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

4.-6. (No change.)

"Lowfat yogurt" means:

1. (No change.)

2. Vitamin addition (optional).

i. (No change.)

ii. If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 μg) thereof, within limits of good manufacturing practice.

3. (No change.)

4. Other optional ingredients.

i. (No change.)

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii.-v. (No change.)

5.-7. (No change.)

...

"Nonfat yogurt" means:

1.-3. (No change.)

4. Other optional ingredients:

i. (No change.)

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii.-v. (No change.)

5.-7. (No change.)

...

"Skim milk":

1.-2. (No change.)

3. Optional ingredients. The following safe and suitable optional ingredients may be used:

i. (No change.)

ii. Concentrated skim milk, nonfat dry milk, or other milk derived ingredients to increase the nonfat solids content of the food: Provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present, shall not be decreased as a result of adding such ingredients.

iii.-iv. (No change.)

4.-6. (No change.)

...

"Whipped cream" means the product defined in 21 CFR 131.150 or 131.157 into which air or gas has been incorporated. If nitrous oxide is used as the propellant in whipped cream, a permit is required from the State Department of Health pursuant to N.J.S.A. 24:6B.

...

"Yogurt" means:

1.-3. (No change.)

4. Other optional ingredients.

i. (No change.)

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii.-v. (No change.)
5.-7. (No change.)

8:21-10.2 Labeling
(a)-(b) (No change.)
(c) Tanks transporting raw milk and fluid milk products to a milk plant are required to be marked with the name and address of the milk plant or hauler and shall be sealed. For each such shipment, a shipping statement shall be prepared containing at least the following information:
1.-11. (No change.)
(d)-(f) (No change.)

8:21-10.4 Examination of milk and fluid milk products
(a) (No change.)
(b) During any consecutive six months, at least four samples of raw milk for pasteurization shall be collected in at least four separate months from each producer and at least four samples of raw milk for pasteurization, ultra-pasteurization or aseptic processing, shall be collected in at least four separate months by the regulatory agency, from each milk plant after receipt of the milk by the milk plant and prior to pasteurization, ultra-pasteurization or aseptic processing. During any consecutive six months, at least four samples of heat-treated milk products, from plants offering such products for sale, shall be collected in at least four separate months. During any consecutive six months, at least four samples of pasteurized milk, flavored milk, flavored lowfat milk, flavored skim milk, each fat level of lowfat milk and at least four samples of defined fluid milk product except aseptically processed, shall be collected in at least four separate months from every milk plant. Samples of milk and fluid milk products shall be taken while in the possession of the producer or distributor at any time prior to delivery to the store or consumer. Samples of milk and fluid milk products from dairy retail stores, food service establishments, grocery stores, and other places where milk and fluid milk products are sold shall be examined periodically as determined by the health authority; and the results of such examination shall be used to determine compliance with standards, labeling and cooling requirements. Proprietors of such establishments shall furnish the health authority, upon request, with the names of all distributors from whom milk or fluid milk products are obtained.
(c) Required bacterial counts, somatic cell counts, and cooling temperature checks shall be performed on raw milk for pasteurization. In addition, drug tests on each producer's milk shall be conducted at least four times during any consecutive six months. Required bacterial counts, drug tests, coliform determinations, phosphatase, and cooling temperature checks shall be performed on pasteurized milk and fluid milk products.
(d) Whenever two of the last four consecutive bacteria counts (except those for aseptically processed milk and milk products), somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk and/or milk products, the health authority or a representative so designated shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within 21 days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit and/or court action shall be instituted whenever the standard is violated by three of the last five bacteria counts, coliform determinations, cooling temperatures, or somatic cell counts. The Department shall offer to the person concerned a hearing pursuant to N.J.S.A. 24:10-57.8. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
(e) (No change.)
(f) Whenever a pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected. An additional sample shall be taken and tested for pesticide residues and no milk shall be offered for sale until it is shown by a subsequent sample to be free of pesticide residues or below the actionable levels established for such residues.
(g) Whenever a drug residue test is positive, an investigation shall be made to determine the cause and the cause shall be corrected in accordance with Appendix N of the Grade "A" Pasteurized Milk Ordinance (1989 Revision) (PHS/FDA Publication No. 229) which is incorporated herein by reference. The Department shall offer to the producer concerned a hearing pursuant to N.J.S.A. 24:10-57.8. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
(h)-(i) (No change.)

8:21-10.6 Standards for milk and fluid milk products
(a)-(b) (No change.)
(c) The chemical, bacteriological, and temperature standards for milk and fluid milk products are as follows:
1. Raw milk for pasteurization, ultra-pasteurization or aseptic processing.
i.-iii. (No change.)
iv. Drugs:
(1) No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method or
(2) No positive results on drug residue detection methods as referenced in Appendix N of the Grade "A" Pasteurized Milk Ordinance (1989 Revision) (PHS/FDA Publication No. 229) which is incorporated herein by reference.
v. Somatic Cell Count—Individual producer milk not to exceed 750,000 per ml. for cow's milk or 1,000,000 per ml. for goat's milk.
2. Pasteurized milk and fluid milk products.
i.-iii. (No change.)
iv. Phosphatase (not applicable to bulk shipped, heat-treated milk products)—Less than 1 ug phenol per ml. by Scharer Rapid Method or less than 500 milliunits per L. by the Fluorometric Procedure (or equivalent by other means).
v. Drugs—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method or no positive results on drug residue detection methods acceptable to the Food and Drug Administration and the Department.
3. Aseptically processed milk and fluid milk products.
i.-ii. (No change.)
iii. Drugs—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method or no positive results on drug residue detection methods acceptable to the Food and Drug Administration and the Department.
4. Pasteurized mixes for frozen desserts.
i.-iii. (No change.)
iv. Phosphatase—Less than 1 ug phenol per ml. by Scharer Rapid Method or less than 500 milliunits per L. by the Fluorometric Procedure (or equivalent by other means).
(d) Sanitation requirements for raw milk for pasteurization, ultra-pasteurization or aseptic processing are as follows:
1. Item 1r.—Abnormal Milk: Cows which show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgement of the health authority, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the health authority may direct.
i. (No change.)
ii. Whenever a herd milk sample exceeds any of the following screening test results, a confirmatory count, using a Direct Microscopic, Electronic, Membrane Filter DNA or Optical Somatic Cell counting technique, shall be made on that sample and the results of this count shall be the official result. Pyronine Y-methyl green stain shall be used in the confirmatory test for direct microscopic somatic cell counts in goat's milk.
(1) California mastitis test—1 applicable to goat's milk only;
(2) Wisconsin mastitis test—18 mm. applicable to goat's milk only.
iii. Whenever the confirmatory count indicates the presence of greater than 750,000 somatic cells per ml. on cow's milk or 1,000,000

somatic cells per ml. on goat's milk, the following procedure shall be followed:

(1) (No change.)

(2) Whenever two of the last four consecutive somatic cell counts exceed 750,000 cells per ml. on cow's milk or 1,000,000 cells per ml. on goat's milk, written notice thereof shall be sent to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed 750,000 cells per ml. on cow's milk or 1,000,000 somatic cells per ml. on goat's milk. In addition to the written notice, an inspection should be made by certified personnel. This inspection should be made at milking time to be the most effective.

(3) An additional milk sample shall be taken within 21 days of the written notice and inspection required above, but not before the lapse of three days. If three of the last five samples within any consecutive six months indicate a confirmatory count greater than 750,000 cells per ml. on cow's milk or 1,000,000 somatic cells per ml. on goat's milk, the receipt of milk from the producer shall be discontinued for a period of at least two days or until such time as additional samples show correction of the condition.

2. Item 2r.—Milking Barn, Stable, or Parlor Construction: A milking barn, stable or parlor shall be provided on all dairy farms in which the cows being milked shall be housed during milking operations. The areas used for milking purposes shall:

i. Have floors constructed of concrete or equally impervious material; provided, convalescent (maternity) pens located in milking areas of stanchion-type barns may be used when they comply with the guidelines specified in Appendix B.V. of the Grade A Pasteurized Milk Ordinance (1989) (United States Public Health Service—FDA Publication 229);

ii.-vii. (No change.)

3.-11. (No change.)

12. Item 12r.—Utensils and Equipment Storage: All containers, utensils, and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and shall be protected from contamination prior to use; provided, that milk pipelines and pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers and milk pumps and tubular coolers, plate coolers and milk pumps which are designed for mechanical cleaning and other equipment, as accepted by the U.S. Food and Drug Administration, which meets these criteria may be stored in the milking barn or parlor provided this equipment is designed, installed and operated to protect the product and solution contact surfaces from contamination at all times.

13.-21. (No change.)

(e) (No change.)

8:21-10.12 Dating of milk and fluid milk products

(a) Fluid milk products as defined in N.J.S.A. 24:10-57.1 and all types and varieties of cottage and soft cheeses designated by the Department, intended for direct sale to consumers, shall be legibly marked with a "shelf-life expiration date." This date shall be determined and applied on the final consumer package or container by the initial processor or manufacturer. Prior to determining this date, each processor or manufacturer shall notify the Department of the intended date selected by him for each fluid milk product. All data and material used by the processor or manufacturer in his determination of this date shall be made available to the Commissioner upon request. If the data and material submitted does not, in the opinion of the Commissioner, justify the "shelf-life expiration date," the Commissioner shall prohibit the sale of the product until such time as satisfactory data is supplied or until a new "shelf-life expiration date" consistent with the data is applied to the product.

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

(a)

HOSPITAL REIMBURSEMENT

Appropriate Collection Procedures; the Set-Off of Individual Liability Program; Uncompensated Care; Uncompensated Care Trust Fund; Determination of Uncompensated Care Payments; Demographic Information

Adopted Amendment: N.J.A.C. 8:31B-4.38
Adopted Repeals: N.J.A.C. 8:31B-4.39 and 8:31B-7
Adopted Repeal and New Rule: N.J.A.C. 8:31B-4.40

Proposed: July 19, 1993 at 25 N.J.R. 3125(a).

Adopted: November 23, 1993, by Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: November 24, 1993 as R.1993 d.668, **with substantive changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1991, c.187 and N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: December 20, 1993.

Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:

Written comments were received from: Gregory A. Alban, Director of Finance, The Mountainside Hospital; Joseph G. Bezek, Director of Finance, St. Francis Medical Center; Susan Czesak, Business Office Manager, Beth Israel Hospital; John Dandridge, Jr., President and CEO, United Hospitals Medical Center; Kevin J. Dunn, Vice President Payor Services, Robert Wood Johnson University Hospital; John Forsman, Senior Vice President, Community Medical Center; Ronald J. Guy, Chief Financial Officer, Helene Fuld Medical Center; Dennis J. Hemenway, President, New Jersey Patient Account Managers Association; Ronald P. Jones, Executive Vice President & Chief Financial Officer, United Hospitals Medical Center; Joseph M. Lemaire, President, Healthcare Financial Management Association New Jersey Chapter; Nancy Meyerowitz, Assistant Vice President, Financial Planning, Overlook Hospital; Lorene Mirabelli, Advisory Installation Director, Shared Medical Systems Corporation; Charles A. Mowll, Vice President, New Jersey Hospital Association; Marge Ridolfi, Director, Business Services, The Medical Center at Princeton; Jennifer Schertl, CPA, Vice President, Finance, Chief Financial Officer, Holy Name Hospital; Frank Vaul, Assistant Vice President of Finance, Kimball Medical Center; and Frank Villares, Vice President/Finance, Elizabeth General Medical Center.

Several commenters requested that the Department include additional data elements in the rules, including: treatment date; CPT-4 code; treatment location; and patient identification number. Commenters suggested that each of these data elements would enhance the analyses which will result from the collected information. The Department agrees that adding these data will benefit the analysis. Moreover, because each datum is routinely collected by hospitals and stored electronically, adding these data elements to those identified in the proposal does not represent any additional reporting effort or expense to hospitals. And, by defining the data set specification more completely at the outset (rather than adding to the information later), programming costs and administrative information flows, the chief costs of complying with the requirements will be incurred only once.

One suggested addition, Social Security account number, was rejected because it cannot be collected due to Federal confidentiality rules. However, because a unique patient identification number has significant utility in permitting analyses with unduplicated counts of individual patients, medical record number was substituted for Social Security account number in the data set specification.

N.J.A.C. 8:31B-4.38

COMMENT: Several commenters disagreed with the proposed charity care payment limit being set at the established Medicaid rate for dialysis services and noted that Medicaid presently pays the Medicare composite rate and that this payment rate should be continued. One commenter noted concern about the appropriateness of applying the Medicaid pay

ment rates for charity care to dialysis services, but concurred that the rule was consistent with statutory requirements in P.L. 1992, c.160 (Chapter 160).

RESPONSE: This comment addresses the appropriateness of using the Medicaid rate for certain services. While Chapter 160 does require that charity care services be reimbursed at the Medicaid rate, this proposal has been amended on adoption to eliminate the requirement that charity care be reported as the Medicaid rate. The Department notes that it has authority only to require the Medicaid rate; it does not have authority to dictate to Medicaid (which is in the Department of Human Services) how the Medicaid rate should be established.

N.J.A.C. 8:31B-4.40

1. COMMENT: Commenters questioned the Department's authority to request demographic information about patients whose accounts are written off as uncollectible (bad debts) and are also not eligible for charity care payments. One commenter interpreted the Health Care Reform Act as requiring the submission of demographic information only for persons who qualify for charity care. Another comment requested that the Department explain its continued efforts to regulate bad debt and charity care "since we no longer receive any subsidization from these programs."

RESPONSE: The Health Care Reform Act makes the Department of Health responsible, in 1993, for determining the manner in which demographic information about persons who qualify for charity care shall be submitted in order for hospitals to continue to be eligible for charity care subsidies in subsequent years. The Act does not restrict the Department in its collection of data necessary to properly analyze this issue. The data collection and analysis is necessary for both responsible distribution of charity care subsidies, as well as development of the Subsidized Insurance Program (SIP). For 1994, the Act is specific about the submission of demographic information stating that all hospitals, including those who do not receive a charity care subsidy, must submit the requested information to the Essential Health Services Commission (EHSC). It would be unreasonable to conclude that the data collection in 1993 was intended to be limited in a manner which would hamper the complete analysis of the issue of uncompensated care in the State's hospitals.

Furthermore, audits and studies conducted by the Department and reviewed by interested parties, including hospitals and the Health Care Cost Containment Advisory Committee, suggest that a significant proportion of charity care eligible persons and families do not become eligible for the program and are reported as bad debt. Obtaining information about bad debt will greatly increase the accuracy and usefulness of these data by identifying these "false negative" charity care cases. Moreover, the specific data element for "screening", which will appear for each bad debt case and provide needed information about the eligibility process, is also intended to provide an affirmative signal that all persons written off to bad debt were notified about the existence of the Charity Care Program.

Charity care subsidy amount distributions for 1994 are currently under discussion before the EHSC. Information about bad debt in a given year may inform the analysis about charity care subsidy distributions in subsequent years. Finally, under N.J.S.A. 26:2H-5, the Department has express authority to collect this information.

2. COMMENT: Several commenters questioned and challenged implementing reporting requirements effective January 1, 1993 stating that: several data elements do not exist in hospitals' data systems; manually reconstructing certain data elements will be impossible; and manually reconstructing certain data elements will be extraordinarily time consuming and costly. These comments focused on the difficulty and expense in retroactively reporting just those data elements needed to gauge charity care activities (screening status, family size, family income, family assets and charity care approval percent). One comment noted that: "To comply retroactively would require intense manual effort." One commenter noted that the proposal's intent to collect data on whether or not each patient was screened for charity care is not possible as there is "no current mechanism for identifying screened patients." Commenters therefore recommended that data reporting, especially for charity care data elements, begin no earlier than 1994 in order to provide time to construct administrative collection and electronic storage systems and to avoid the costs associated with manually reconstructing information. Comments were also received requesting that the Department not penalize hospitals for failing to provide complete data during the first full year (1993) of data collection.

RESPONSE: These rules are not intended to be punitive. The Department's objective is to collect meaningful information which will meet the intent of the Legislature's directive contained in P.L. 1992, c.160, which was enacted on November 30, 1992.

The Department acknowledges that retroactive reporting presents greater technical and managerial challenges to hospitals than prospective reporting. However, even though the proposed requirements were first published in the New Jersey Register on July 19, 1993 hospitals have been required to supply bad debt patient profile data since 1990. Chapter 160, which requires collecting charity care demographic information, was enacted on November 30, 1992. The Department alerted hospitals about new data requirements in a memorandum to chief financial officers dated February 5, 1993. Department staff alerted the industry by attending meetings where the new requirements were discussed. Moreover, the industry formed a policy group, with representatives from the New Jersey Hospital Association (NJHA), the New Jersey Healthcare Financial Management Association (HFMA), and the New Jersey Patient Account Managers Association (NJPAMA), to discuss reporting requirements and Department staff met with this group on several occasions.

The Department acknowledges that not all hospitals will be able to reconstruct all the required information as of January 1, 1993 and recognizes that screening information about patients who were denied charity care may, in some cases, be unavailable. A diligent good faith attempt by hospitals to maximize compliance is expected. Because approved charity care payments are subject to audit and must be well-documented, data elements for all approved charity care cases must be reported.

3. COMMENT: Comments were made about certain charity care data elements, namely screening status; family size; family income; family assets; and charity care approval percent. Commenters requested that the Department require this information only for patients who were eligible, or qualified, for some proportion of charity care payment. One commenter noted that to obtain this information for all patients, where charity care eligible patients represented only five percent of the total, would constitute an invasion of privacy for the other 95 percent of the hospital's patients.

RESPONSE: The Department acknowledges that income and asset information is difficult for hospitals to collect. However, beginning in 1989, Department rules, specifically N.J.A.C. 8:31B-4.40(b)4iv, required hospitals to request "place of employment, income, real property and durable personal property and liquid assets owned by the patient or responsible party and bank accounts possessed by the patient or responsible party, along with account numbers and the name and location of the bank" where there is an indication that health insurance coverage is either not documented or where coverage is unlikely to provide payment in full. Therefore, hospitals would have had to create administrative methods to capture this information, in order to comply with these rules.

The Department agrees that this information is needed only to complete applications for eligibility (qualification) for charity care or to screen-out persons or families who are ineligible (unqualified) for charity care. The Department rejects the notion that this information should only be required to be reported for charity care eligible persons. Information is also needed when cases are screened and then classified as ineligible. Information about rejected cases is needed for policy analysis, including the EHSC's development of the SIP.

The Department agrees that documentation of the required income and asset information will not routinely be collected by hospitals, and need not be collected, unless pertinent to reach an accurate determination regarding a patient's charity care eligibility. Where this information is not pertinent (for example, where patients were notified about charity care but did not respond to the notification), these detailed data need not be collected nor reported. Necessary required reporting is defined at N.J.A.C. 8:31B-4.41.

4. COMMENT: Comments were received requesting the Department to completely define the data set before it is adopted. Commenters also questioned adopting the data set before all elements were fully defined and exposed to public comment and review.

RESPONSE: Operational definitions of the proposed data elements are the same as those used for inpatients on the UB-82 or UB-92 Form. UB-82 data elements are routinely reported by acute care hospitals under N.J.A.C. 8:31B-2.5. There should be minimal difficulty for hospitals meeting these requirements. The types of information have been set forth in rule; the manner of submitting the information is to be established by the Department, with input from the regulated public.

It is estimated that about ⅔ to ¾ of bad debt and charity care cases are for outpatient services. Most of the proposed outpatient data elements are included in Bad Debt Patient Profile Reports which hospitals have been reporting to the Department since July 1, 1991. These data are therefore already clearly defined.

The remaining data elements, those which have not yet been reported or operationally defined, are required by P.L. 1992, c.160. Therefore, these data elements must be collected. Moreover, the Department is cooperating with representatives of the industry and its professional groups (HFMA, NJHA and NJPAMA), and will continue to do so, in creating methods of submitting data which are meaningful, practical and consistent with existing definitions. The Department believes that the rules can be adopted while the operational definitions, that is, the specific computer format requirements, are being finalized.

5. COMMENT: Several commenters suggested that the Department obtain CPT-4 codes for all cases reported and then group or aggregate these data into categories of significance rather than having the hospital group data before submission. It was noted that this would assure consistency in collecting data (and subsequent report comparability) and permit flexibility in recasting the reporting categories if needed.

RESPONSE: The Department concurs with these comments and will incorporate CPT-4 code reporting, which is used universally in medical settings and which conforms to UB requirements, into the specification. The rule has been amended accordingly at N.J.A.C. 8:31B-4.40(a)1ii. This change, while substantive, is not so substantive as to require additional notice and opportunity for comment because it lessens the requirement on the regulated public, harms no one, and provides a benefit to the Department in that the data can be maintained in a flexible form.

6. COMMENT: Commenters noted that Medicare deductibles are paid for differently and customarily filed and maintained separately. Does the Department want these included?

RESPONSE: Charity care reporting should be as complete as possible, to provide data for health care policy analysis. Medicare deductible amounts would automatically be included in total charges and amounts written off under rules at N.J.A.C. 8:31B-4.40(a)1ii.

7. COMMENT: Commenters pointed out that much bad debt and charity care activity originates in the Emergency Room. They suggested that, in order to fully monitor meaningful activities, the location where the patient was registered/treated be added as another data element. One comment noted that codes used on the UB Form should be adopted.

RESPONSE: The Department agrees that including the location where the patient was treated will enhance the data set and the analyses which can be done with the information. This data element will be incorporated into the specification and the rule has been amended accordingly. Moreover, this added data element is already routinely captured by hospitals for billing purposes and will not add any additional reporting burden. A data field which conforms to UB reporting specifications will be added to capture this information.

8. COMMENT: Comments noted that the proposed data set does not include an identification number (Social Security account number and legal alien identification number were noted) which permits using the information for a Statewide data base.

RESPONSE: Using social security numbers is strictly limited by Federal confidentiality requirements and cannot be used for this application. The Department is not requiring a legal alien identification number but will recommend that the EHSC (which is responsible for collecting information in 1994) explore this datum regarding confidentiality implications and limitations.

This comment raises not only the possibility of using these data for Statewide analyses, but also the prospect of duplicate case counts. The Department has, therefore, amended the rule to include medical record number in the data set, so that aggregated data can show an unduplicated patient/case count. Patient medical record/identification number is routinely created and stored electronically by hospitals and will not create an additional reporting burden. Because the data set will include hospital identifier, patient control (account) number and treatment date, the Department will be able to link these data with patient billing information in a Statewide data base.

9. COMMENT: Commenters noted that all reporting should be driven by the date (and quarter) in which all activities to be reported were completed rather than having some completed activities and some initiated activities (for example, screening) in the same reports. Otherwise, patients could be reported twice; once in screening for charity care, and once as bad debt.

RESPONSE: The Department agrees that charity care and bad debt patients should be reported only once. Moreover, the Department agrees that the quarter in which a case was written off to bad debt or deemed eligible (or ineligible) for charity care establishes a reasonable and consistent standard for reporting these cases. In order to remain consistent with bad debt patient profile reports (thereby facilitating longitudinal trending) the requirement used for profile reports in N.J.A.C. 8:31B-4.40(a)1i will be retained. The requirement uses the write-off date as the reporting standard.

This comment raises an issue about another category of cases which must be reported, namely: cases found to be ineligible at screening but not yet matured as bad debt. These are cases which would not be reported as either charity care eligible or charity care ineligible and bad debt. In these cases, screening has determined that the patient or family is not eligible for charity care but the amount owed has not aged to write-off. Some of these accounts will be paid by the patient before going to bad debt and thereby be excluded from reporting.

This is a meaningful category of cases for reporting and analytic purposes. But reporting these cases raises the prospect of duplicate reports (that is, reported once under screening status of ineligible but not yet bad debt and reported again as bad debt, screened out as ineligible). Therefore, to permit the Department to measure the occurrence of these cases, and to provide a way to eliminate duplicate reporting, the Department has amended the proposal to incorporate each patient's treatment date as a required data element in the specification. This data element is already routinely collected by hospitals for inpatients and outpatients and should be available for reporting without creating an additional burden on hospitals.

Adding treatment date will have additional benefits. It will permit analyses to approximate the time between service date and the quarter that the account was written off or the quarter charity care eligibility was established.

10. COMMENT: Most commenters pointed out several problems attendant to incorporating the "Medicaid amount" for charity care and bad debt accounts into the data set. Comments suggested that the difficulty in reporting Medicaid amount varies significantly between inpatients and outpatients. Comments about reporting inpatient Medicaid amounts noted that: regrouping into DRG's is possible but costly; regrouping is impossible; prospective grouping is costly; and the Department should do grouping or regrouping with hospital-provided codes. Comments about reporting outpatient Medicaid amounts included: "hospitals do not have the capability of converting outpatient service charges to Medicaid payment rates"; Medicaid rate data are not present in hospital data systems; creating the capacity to report this data element will be too costly; hospitals do not create Medicaid rates for outpatients (they bill charges and accept whatever Medicaid pays); calculations to determine these amounts are complex and change; and the Department should do these calculations with hospitals providing the necessary treatment codes. One commenter noted that the EHSC will begin processing claims in 1994 and that claims data can then become the source for this reporting.

RESPONSE: The Department acknowledges that the industry does not customarily calculate a Medicaid amount for outpatient services, as hospitals customarily accept the amount Medicaid pays for these services. This practice thereby provides Medicaid amounts for Medicaid patients who have claims paid, but does not provide these amounts for all bad debt and charity care patients.

The Department agrees that many hospitals will need to make administrative and computer system changes in order to routinely report Medicaid amounts for all charity care and bad debt patients. This will be more burdensome and costly than the Department anticipated when it designed the reporting specification.

The Department believes that less burdensome and costly alternatives for approximating hospital-specific and Statewide Medicaid amounts can be used in lieu of requiring that hospitals report this information for each case. Therefore, the Department has eliminated the "Medicaid amount" as a data element in the adopted rule.

11. COMMENT: Comments requested that "Medicaid amount" be changed to "Charity Care amount."

RESPONSE: Under Chapter 160, the charity care amount is the same rate paid to hospitals by the Medicaid program (except that charity care services provided to emergency room patients who do not require those services on an emergency basis shall be reimbursed at a rate appropriate for primary care, according to a schedule of payments developed by the

EHSC). However, for the purpose of data reporting, the Department has eliminated the "Medicaid amount" from the data specification thereby made this change unnecessary.

12. COMMENT: Commenters requested that final adoption and implementation of charity care demographic data reporting be deferred until charity care and charity care audit rules are adopted. Comments suggested that demographic data, Charity Care Program requirements and audit requirements are interrelated and should be considered and adopted simultaneously.

RESPONSE: The Department acknowledges that these proposals are related. However, it rejects the notion that they are interdependent to a degree where all three must be simultaneously adopted. Charity care demographic information gathering is intended for use in health care policy analysis; not as a direct program control.

OAL NOTE: As N.J.A.C. 8:31B-3.41 was repealed effective November 15, 1993 at 25 N.J.R. 5149(a), it is not included as a repeal adopted herein.

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

8:31B-4.38 Charity care and reduced charge charity care

(a) Charity care includes only the reasonable cost of the following:

1. Charity care for services, provided the patient is qualified as eligible pursuant to N.J.A.C. 8:31B-4.37;

2. Advanced life support (ALS) services provided pursuant to P.L. 1984, c.146 (N.J.S.A. 26:2K-7 et seq.) provided the patient is qualified as eligible for charity care pursuant to N.J.A.C. 8:31B-4.37.

3. Charity care as defined by following N.J.A.C. 8:31B-4.37 for outpatient dialysis services provided after September 1, 1987 to patients ineligible for Medicare coverage. Reasonable costs shall be limited to the lower of the established Medicaid rate or the prospectively determined composite rate as established by Medicare. The amount reported by the hospital as charity care shall not include Medicare co-insurance amounts, since Medicare will reimburse providers for the amount, provided the patient is eligible for charity care pursuant to N.J.A.C. 8:31B-4.37.

(b) Charity care excludes the cost of the following:

1.-6. (No change.)

7. Cost associated with procuring organs sent to foreign countries; and

8. Non-health services provided by a hospital.

8:31B-4.40 Demographic Information

(a) Hospitals which are licensed to provide acute care services shall submit information about all inpatients and all outpatients to the Department of Health.

1. These hospitals shall submit quarterly information to the Department of Health for all patients who have balances which were written off to bad debt (in that quarter) and for all patients who were screened for charity care (in that quarter). This information shall be provided on media specified by the Department.

i. Quarterly periods shall be: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. The first quarter will be from January 1, 1993 through March 31, 1993.

ii. Information will be reported about each patient described in (a)1 above. This information will include: age; sex; marital status; health insurance coverage; health insurance coverage of the parent, spouse or responsible party (when the patient does not have insurance); hospital code number; county in which the hospital is located; employment status code; total charges; *[Medicaid amount;]* amount written off; reason for patient's failure to pay; DRG code (for inpatients); *[outpatient treatment code (mental health, substance abuse, prenatal, AIDS or other)]* ***CPT-4 code (for outpatients)***; family income amount; family size; family assets amount; patient account number; Zip Code; financial screening status; *[and]* subsidy approval percent***; medical record number; treatment date; and treatment location***.

(a)

DIVISION OF HEALTH CARE PLANNING, FINANCING AND INFORMATION SERVICES

Certificate of Need: Hospital Policy Manual General Policies; Equity Contributions and Financing

Adopted Amendments: N.J.A.C. 8:33A-1.2 and 1.16

Proposed: December 21, 1992 at 24 N.J.R. 4476(a).

Adopted: November 23, 1993 by Bruce Siegel, M.D., M.P.H., Commissioner of Health Designate (with approval of the Health Care Administration Board).

Filed: November 24, 1993 as R.1993 d.669, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Effective Date: December 20, 1993.

Expiration Date: November 25, 1997.

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

Full text of the adoption follows:

8:33A-1.2 General policies

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

(j) The Department of Health shall give preference to applicants which do any of the following:

1. (No change.)

2. Make services available to persons who are unable to pay; or

3. (No change.)

8:33A-1.16 Standards regarding equity contribution and financing

(a) Financing of hospital construction modernization/renovation, or equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including all capital costs, all financing and carrying charges, net interest on borrowings during construction, and debt service reserve fund. The Commissioner may reduce the equity requirement for applicants who can demonstrate financial hardship and that the proposed project will primarily serve a medically underserved population, and the applicant hospital has historically demonstrated that it has provided significant levels of charity care for which it has not been reimbursed. This equity requirement may be reduced by one half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the Statewide average uncompensated care percentage for acute care hospitals.

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

(b)

DIVISION OF HEALTH PLANNING, FINANCING AND INFORMATION SERVICES

Certificate of Need: Cardiac Diagnostic Facilities and Cardiac Surgery Centers

Adopted New Rules: N.J.A.C. 8:33E

Proposed: August 16, 1993 at 25 N.J.R. 3712(a).

Adopted: November 23, 1993 by Bruce Siegel, M.D., M.P.H., State Commissioner of Health, (with approval of the Health Care Administration Board).

Filed: November 24, 1993 as R.1993 d.670, **with substantive and technical changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 2H-7.

Effective Date: December 20, 1993.

Expiration Date: December 20, 1995.

Summary of Public Comments and Agency Responses:

A total of 56 commenters provided comments on the interim proposed cardiac rules. Commenters included:

American Society of Extra-Corporeal Technology, Inc.
Ronald R. Baris, B.A., C.C.P.
Cardiology Center of Northwest New Jersey; Steven B. Roth, M.D.
Cardiology Consultants of North Morris; Robert L. Wang, M.D.
Cardiology Diagnostic Associates; Stephen J. Fischl, M.D.
Cardio-Vascular Associates of Southern N.J., P.C.; Emmons G. Paine, M.D.
Cathedral Healthcare System; Timothy Ford, Director of Planning
John B. Checton, M.D.
Clapp and Eisenberg; (representing Atlantic Health Systems, Inc.)
Cohen, Shapiro, Polisher, Shiekman and Cohen; (representing Newcomb Medical Center)
Cooper Hospital/University Medical Center;
Anthony J. DelRossi, M.D., Chief, Department of Surgery
Rosemary O. Leach, R.N., MEd, VP for Nursing and Joanne D'Antonio, R.N., and Ann Gerfin, R.N.
Cynthia P. Arnold, Adm. Director, Cardiology Services
Deborah Heart and Lung Center;
Roger A. Moore, M.D.
Lynn B. McGrath, M.D., Chairman, Department of Surgery
Charles Dennis, M.D., Chairman, Department of Cardiology
Diagnostic Cardiology Associates; Kent Volosin, M.D.
Dover General Hospital and Medical Center; Wayne C. Schiffner, President
Eastern Heart Institute at the General Hospital Center at Passaic;
Sanjeev Saksena, M.D.
Richard Chan, C.C.P.
Donald P. Ferri, M.D.
Hackensack Medical Center; Judith Lewis, Adm. Director, Cardiac Svs.
Jacques G. Losman, M.D.
Jersey Shore Medical Center
Charles J. Mattina, M.D.
Medical Center at Princeton;
Jane D. Kerney, VP for Communications/Planning
John R. Lloyd, CRT, Adm. Director, Cardiopulmonary
Mid-Atlantic Perfusion Associates
Monmouth Medical Center; Marie T. Morgan, Sr. Mgr., Strategic Services and Jane L. Leikind, VP for Strategic Services
Morristown Memorial Hospital;
Richard P. Oths, President
Stephen L. Winters, M.D.
Newark Beth Israel Medical Center;
Lester M. Bornstein, President
Isaac Gielchinsky, M.D., Director, Cardiovascular Surgery
Mark Jay Zucker, M.D., Director, Cardiac Transplant Program
Laszlo Fuzesi, M.D., Surgical Director, Cardiac Transplantation
New Jersey Heart Institute at Our Lady of Lourdes Medical Center
New Jersey Hospital Association (NJHA)
New Jersey State Society of Anesthesiologists (NJSSA)
Michael H. Flashburg, M.D., President
Ervin Moss, M.D., Consultant
Northern New Jersey Association of Extracorporeal Technology
Overlook Hospital; John J. Gregory, M.D., Director, Cardiopulmonary Department
Pascack Valley Hospital; John A. Frey, VP for Planning
Raritan Bay Medical Medical Center; Ronald D. Esser, Chief Operating Officer
Riverview Medical Center; Lawrence M. Merlis, President/C.E.O.
Shanley & Fisher; (representing Somerset Medical Center)
Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross; (representing Englewood Hospital and Medical Center)
Somerset Medical Center; William J. Monagle, President and C.E.O.
St. Barnabas Medical Center; Donna Levinson, V.P., Planning
St. Elizabeth Hospital; R.M. Watson, M.D.
St. Joseph's Hospital and Medical Center
David Bregman, M.D., Chairman, Department of Surgery
Haroutune Mekhjian, M.D., Chief, Cardiac Surgery
St. Michael's Medical Center;
Donald G. Rubinstein, M.D.
Perfusion Staff
Summit Medical Group, P.A.; Thomas V. Inglesby, M.D.
Westwood Cardiology Associates, P.A.

N.J.A.C 8:33E-2.1 Scope and Purpose

1. COMMENT: Several commenters, many of whom are law firms who are either currently engaged in litigation with the Department over cardiac-related issues or are contemplating doing so, objected strenously to the Department's failure to call for new invasive cardiac diagnostic and cardiac surgery services. One of these commenters (Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross) noted that the last call for certificate of need applications took place in the fall of 1991 and that a continued Statewide "freeze" on cardiac surgery applications "fails to account for regional and subregional conditions that exist in certain areas and that warrant individualized review of cardiac surgery CN applications." This commenter suggests the Department "can and should review certificate of need applications on a case-by-case basis, pursuant to the standards set forth in the Health Care Facilities Planning Act, ('the Act'), until its statewide review is complete." A second commenter (Clapp & Eisenberg) voiced virtually identical concerns regarding the "unofficial moratorium on expansion of cardiac surgery facilities" which this commenter stated was arbitrary, capricious and unreasonable. This commenter also viewed the policies contained in this rule as anticompetitive in "attempting to mechanically maintain and enhance the utilization of existing providers." A public hearing was requested by this commenter as well, in order to provide a forum for citizen and medical community discussion. Yet another commenter, (Cohen, Shapiro, Polisher, Shiekman, and Cohen) stated that in its view the proposal is "illegal and must be redrafted either to eliminate all CNs for cardiac services, including expansion ... or open it to all hospitals". This commenter considers the rules as contributing to the monopoly held by existing providers and failing to ensure that unmet need is being addressed.

RESPONSE: The Department's concern over these issues is shared by other states as well as other professional groups. A joint American College of Cardiology/American Heart Association Task Force, for example, issued a report in November, 1991 which chronicled the development of cardiac catheterization laboratories over the past four decades. The Task Force recommended "a very cautious approach to the development of new laboratory services" and stated:

Most patients already live less than 30-60 minutes away (by land or air ambulance) from an existing laboratory. When a need can be documented, a traditional laboratory with cardiac surgery support is recommended. Without supporting data from appropriate clinical trials, the development of new laboratories without cardiovascular surgical back-up cannot be recommended at this time.

This report, and other recent literature dealing with the issues of quality, cost and access to cardiac services are cited in a brief bibliography in the material prepared by the Department for the Board's consideration.

The policies contained in these proposed rules, as indicated by the Department in its presentation before the Health Care Administration Board at the time that this proposal was considered for initial publication, represent an interim stage in the development of Statewide cardiovascular health policy. This interim stage seeks to reestablish the Department's historic commitment to the preservation of cardiac diagnostic and treatment services of the highest quality that are available to all residents of the State who are in need of these services.

The initial analysis of the State's cardiac care diagnostic and treatment services, contained in the cardiovascular disease chapter of the State Health Plan, noted that considerable open heart surgery and cardiac catheterization resources existed in New Jersey and that overall utilization of these resources Statewide represented approximaely 60 percent of capacity. Within those Statewide figures, however, there was considerable variation within LAB regions and among specific cardiac providers. Several existing cardiac catheterization providers, in particular those located at cardiac surgery centers where lengthier therapeutic interventions (for example, coronary angioplasty, complex electrophysiology studies) are permitted, exhibited considerable utilization that greatly exceeded the capacity levels established both in the Plan (2,000 catheterization equivalents or CEs) and in these rules (2,500 CEs). The Department's concern over the excessive demands being placed on a relatively small percentage of the State's cardiac catheterization laboratory resources, however, was tempered by an overall concern over the appropriateness of these procedures. Clearly the adequacy of current Statewide resources should be determined in the context of a review of cardiovascular health promotion and disease prevention strategies that over time will affect the demands being placed on the State's cardiac diagnostic and treatment service providers.

In order to assess the global issue of cardiovascular health in New Jersey, the Commissioner of Health convened the Cardiovascular Health Advisory Panel (CHAP) comprised of leading State experts in the fields of health promotion, disease prevention, and diagnosis and treatment services. At the same time that this expert group was empaneled, the Department sought to greatly enhance its data collection and analysis of Statewide cardiac data by establishing a patient-specific data base that stratifies cardiac patients according to pre-procedure risk factors that will assist the Department, the individual cardiac providers, and potential consumers in assessing the performance of the State's cardiac resources. This enhanced data collection effort began as of July 1, 1993 for open heart surgery patients and has been extended to therapeutic intervention patients as of October 1, 1993. The CHAP has already become involved in a number of health promotion activities being contemplated by the Department and has committed itself, following its review and approval of these cardiac rules prior to their publication, to assist the Department in its overall review of the entire spectrum of public policy regarding cardiovascular disease. As indicated in the original proposal summary, the cardiac chapter contains reserved sections that deal with the initiation of new services that will be completed pending the outcome of the Department's cardiac policy review.

The Department recognizes the fact that there is considerable interest in the establishment of new services among many of the State's hospitals; however, the Department must develop the above criteria in order to determine, in the words of the statute, that the service is necessary and will have a positive economic impact on the delivery of health care services. The Department has established specific planning rules for cardiac services since 1977 to govern the review of competing applications.

The language that was contained in the former cardiac rules regarding new facilities is anachronistic. These are the issues that are being carefully studied by the Department at this time. To adopt an alternative approach to the Department's interim policy, as suggested by the above commenters, would be to disregard the implications of underutilization of these types of cardiac services on patient outcome and permit proliferation of services to occur.

N.J.A.C. 8:33E-2.6(a)

2. COMMENT: One commenter, Shanley and Fisher, P.C., states that "to the extent that these rules will regionalize and limit diagnostic cardiac services, they implement the goals and objectives of the State Health Plan, contrary to Chapter 31." The commenter also states that the Statewide review of cardiac services proposed to be conducted by the Cardiovascular Health Advisory Panel (CHAP) appears to reiterate the SHP. The composition of the CHAP was also questioned because it is comprised of "a significant number of individuals who have affiliations with facilities that currently offer cardiac catherization (sic) and consequently would be the only facilities eligible to apply for expansion in the October 1, 1993 batch." The commenter considers this composition discriminatory "in that representatives of institutions which do not have invasive cardiac diagnostic facilities are not represented." The commenter also objects to the publication of the certificate of need call, viewing its timing as a contravention of the "notice and opportunity to comment" requirements of the Administrative Procedures Act (APA). The commenter also considers the convening of the CHAP as violating the APA, since it was formed prior to the approval of the proposed rule that creates the Panel. Lastly, this commenter views the consideration of expansion limited to applications from existing cardiac catheterization providers as potentially exacerbating a policy of centralization that could be found to be inappropriate following more detailed evaluation of the State's cardiac care policies.

RESPONSE: The rules that are established in this chapter, as indicated in the Summary statements that accompanied the proposal, build upon sound policies of establishing centers of excellence in subspecialty care. They are intended to assure the preservation of facility performance by requiring assurances of sufficient physician and team credentialling, training, and caseloads to maintain professional skill and reducing unnecessary risks to patients. The linkage between high volume and improved patient outcome has been consistently reported in the cardiac literature for the past two decades. It is the Department's view that the contents of the caridac rules are consistent with the enabling statute, that is, it is necessary to provide for the protection and promotion of the health of the State's residents. It reflects national and regional trends and is further supported by the American College of cardiology and the American Heart Association.

The proposal was made in concert with a recommendation by the CHAP, but certainly can stand alone on its own merits. This discussion of the CHAP membership is irrelevant to the proposed rule. Irrespective of the rule, the Commissioner has the authority to convene technical advisory groups to provide advice and expertise on health care issues which has been exercised in this case by the convening of the Cardiovascular Health Advisory Panel (CHAP). Amended language clarifying the fact that the CHAP "has been" established is being added to the adoption notice at N.J.A.C. 8:33E-1.6(a) and 2.6(a).

Both the Department and the CHAP are cognizant of the broad implications of their activities in this area and have taken elaborate steps, in their initial efforts in reviewing cardiac diagnostic and treatment services, to reach out to the provider community and solicit their input. Representatives from all of the State's open heart surgical programs and interventional cardiology programs have been invited to attend CHAP meetings and discuss the new data reporting mechanisms being put into place by the Department. The effort to communicate the work of the CHAP throughout the health care community will continue, as the process of reviewing Statewide cardiac policy intensifies over the coming months, as additional data is evaluated and revisions or additions to these rules are drafted.

The Department does not agree with the comment that the timing of the call does not afford public comment on these rules as required by the Administrative Procedures Act. However, full consideration of public comment was undertaken. Should major substantive changes from the proposed chapter be required, the Department will take any necessary appropriate action to accord fairness to all certificate of need applicants.

N.J.A.C. 8:33E-1.12, New Facilities; N.J.A.C. 8:33E-2.8, Population base; and N.J.A.C. 8:33E-2.13, New facilities

3. COMMENT: The New Jersey Hospital Association (NJHA) stated that the rules should not place a two-year moratorium on new cardiac catheterization programs and on the expansion or initiation of cardiac surgery programs. Several other commenters also considered the proposal as a two year moratorium on new programs. NJHA suggests the elimination of the moratorium on new catheterization programs and a maximum of six months on the moratorium for cardiac surgery services.

RESPONSE: These rules do not establish a two-year moratorium on cardiac services, but rather represent an initial step in dealing with a highly complex series of issues related to the appropriate levels of cardiac care availability throughout the State. This includes a careful study of both cardiovascular health promotion and disease prevention services and activities, as well as cardiovascular detection, treatment, and rehabilitation services. The two year expiration date for these rules is intended to assure a timely review of those sections of the rules that have been reserved for further study. Absent announcement of this expiration date, the rules would automatically expire in five years. The commenter is seeking amendments that would permit applications from new providers to be accepted for processing immediately in the case of cardiac catheterization services and in six months for new cardiac surgery centers. The criteria that would be used to review these applications, however, is not addressed by the commenter. The Department does not view such a recommendation as contributing to the orderly development of needed health care services, but rather as an invitation to proliferation that may jeopardize patient care unnecessarily. The American College of Cardiology (ACC) and the American Heart Association (AHA) clearly identified this issue in their report:

"In view of the lack of appropriately controlled safety and need data for hospital-based mobile or free-standing laboratories operating without on-site (accessible by gurney) cardiac surgery facilities, the task force reaffirms the position that further development of these services cannot be endorsed at this time. In addition, there is reason for major concern that such proliferation in catheterization services may contribute to increasing costs and troubling ethical questions."

It is not the Department's intention to call for applications for cardiac services without carefully establishing the parameters for the evaluation of those applications. The language in the Health Care Facilities Planning Act, while providing a broad framework for agency regulatory activity, does not provide specific guidance for specific service delivery that is necessary for a proper and equitable review of competitive proposals. The Department has, to date, carefully prepared the foundation for each call by establishing appropriate standards and criteria with sufficient specificity to clearly define the purpose and scope for each review of certificate of need applications.

N.J.A.C. 8:33E-1.13, Submission of Certificate of Need Applications; and N.J.A.C. 8:33E-2.15, Submission of Certificate of Need Applications

4. COMMENT: The New Jersey Hospital Association (NJHA) stated that the rules should not hold a hospital hostage to underutilized facilities within the LAB, when that hospital is at or above capacity. Expansion of hospitals at optimal capacity should be permitted, regardless of the activity of surrounding providers.

RESPONSE: The Department has historically considered both cardiac catheterization and open heart surgery as regional in nature, requiring an areawide assessment as opposed to an institution-specific approach in order to justify a caseload sufficient to maintain an effective and efficient service. The interim nature of this rule proposal is designed to address areas of the State that demonstrate considerable demand for services. That demand is, again, generated from a "regional" rather than a hospital-specific service area and can perhaps be met by alternative providers which demonstrate additional capability to provide services. The presence of alternative providers which have not achieved even minimum utilization levels is a clear indication of the presence of considerable additional capacity in the region, since minimum capacity as defined in these rules is less than one third of a catheterization laboratory's capacity as reflected by Statewide utilization statistics.

The Department is required to consider the statutory provisions of the Health Care Facilities Planning Act, which includes an examination of alternative providers as a key consideration of the planning process. In the case of cardiac catheterization and cardiac surgery services, there are extremely few providers that fall below the minimum annual thresholds contained in these rules. Based on the most recent utilization statistics available (1992) only one LAB region would be affected by this provision in the rules, and there are no existing providers in this LAB region that approach the threshold volumes necessary for acceptance of an expansion application at this time.

It is the Department's view that the strength of this State's cardiac catheterization and cardiac surgery providers, and the policies that have guided the establishment of these services, is reflected by the ability of virtually all providers in the State to meet the rigorous volume and quality standards that have been established during the past 15 years of cardiac regulatory activity. A key element in the State's cardiac policies throughout this period has been the concern over the impact of additional capacity and additional providers on the existing array of services. These rules retain that concern, since the importance of the maintenance of sufficient cardiac patient volume to guarantee appropriate patient outcome remains the key indicator in virtually every study of cardiac service outcome that has appeared in the literature in the past two decades.

N.J.A.C. 8:33E-1.3(d), 2.3(a)5, 2.3(b)4, 2.3(c)1.i, 2.3(d)4, and 2.3(e)4

5. COMMENT: Several comments were received related to the requirement that individual physicians perform an annual number of cardiac procedures in order to maintain privileges. Dr. Gregory, of Overlook Hospital, questioned the reason that this has become a requirement rather than a recommendation, which was the language originally used by the Task Force and incorporated into the previous cardiac regulation. It is Dr. Gregory's view that the institution would no longer have the prerogative to set this minimum level of activity and is establishing Statewide policy based on dated information that is characterized by this commenter as "arbitrary and unwise." Dr. R.M. Watson echoes these sentiments, noting that high volume catheterization alone does not necessarily guarantee careful technique. Both physicians suggest that the ultimate determination should be made by the individual institution.

RESPONSE: The Department has been concerned for some time over the relatively large numbers of physicians who, based on preliminary analysis of Statewide physician volume data, are not in compliance with the minimum recommended volume criteria that had been established in the previous expired cardiac rule. The Department views the inclusion of performance standards for both physician and facility volume to be prudent public policy, given the volume sensitivity of these procedures in sustaining optimal patient outcome. In virtually every case, these minimum standards are consistent with those of the professional groups associated with each procedure (for example, American College of Surgeons; American College of Cardiology). The standards being proposed do not preclude local institution action to correct the performance of physicians, regardless of whether they meet the minimum volume standards. Furthermore, the rule requires the facility to set the required caseload per physician: it establishes only minimum criteria that can be elaborated upon by insitutional credentialling bodies throughout the State.

N.J.A.C. 8:33E-2.3(e)2

6. COMMENT: Morristown Memorial Hospital (MMH) regards the minimum utilization level for complex electrophysiology studies contained in the rule (100 cases annually) as "excessively high" and recommends that the standard be lowered to 75 cases annually. Cooper Hospital, on the other hand, suggested 300 catheterization equivalents as an annual standard. This latter commenter also recommended that a dedicated EPS laboratory should be a requirement for provision of these services.

RESPONSE: The standard of 100 complex electrophysiology cases/procedures is consistent with past requirements for this service and was in fact used as a basis for consideration of a substantial proportion of the EPS programs that currently exist in the State. In short, the certificate of need applicants that gained approval to perform these specialized EPS services were required to document their respective abilities to achieve this minimum level of activity. A recent review of Statewide EPS activity for calendar year 1992 found that only those EPS providers who had recently initiated their services were unable to achieve this minimum volume. Electrophysiology services, like all of the other diagnostic and therapeutic cardiac services that are the subject of these rules, require specialized physician and personnel skills that can best be provided at centers of cardiac excellence that attract a broad range of cardiac patients. The cardiac surgery center is viewed as the optimal setting for all of these patients, and the annual volume requirements are structured to assure the maintenance of skill and the quality of service delivery that is essential for optimal patient outcomes. The recommendation that the Department add language that would require the dedication of a laboratory for the provision of complex EPS would be overly restrictive, considering the fact that the minimum annual volume requirement as proposed in these rules is 100 cases annually.

N.J.A.C. 8:33E-1.4(b)3 and 2.4(c)2iii

7. COMMENT: Several comments were made regarding the qualifications of the registered nurse who is required by the proposed rules to be trained in advanced life support (ALS). Several commenters noted that this is not a requirement of State licensing and that, given the other personnel required to be present (that is, board-certified cardiologist), only basic life support training is necessary.

RESPONSE: The ALS requirement, which had been included in the previous cardiac rules, was originally included in the State's licensing requirements at N.J.A.C. 8:43G but was subsequently removed on adoption. (See 21 N.J.R. 2162(a), 22 N.J.R. 488(b).) In order to maintain consistency with State licensing requirements, this training requirement is being deleted. It is also being deleted from the PTCA and EPS sections of the rules. Language citing the existing licensing requirements is being added in place of the original language.

N.J.A.C. 8:33E-2.4(a)1v

8. COMMENT: Many perfusionists (for example, Ronald R. Baris, Richard Chan), cardiac physicians (that is, David Bregman, Isaac Gielchinsky, Mark Zucker, Laszlo Fuzesi, Lynn B. McGrath, Haroutune Mekhjian, Jacques Losman), as well as several perfusionist groups and associations (for example, American Society of Extra-Corporeal Technology, Inc.; Mid-Atlantic Perfusion Associates, Inc.; Northern New Jersey Association of Extra-Corporeal Technology; St. Michael's perfusion staff) throughout the State took issue with the personnel requirements regarding perfusionist qualifications that are contained in the rules. All of these commenters cited the inconsistency between the proposed perfusionist requirements with current State licensing requirements at N.J.A.C. 8:43G-7.5(i) and suggested that the current proposed language substantially diminished perfusionist competency standards. Several commenters suggested alternative wording, while other commenters proposed use of existing licensing standards as a remedy.

RESPONSE: In order to maintain consistency with licensing requirements, the Department is amending this section of the rule with language that is consistent with licensing requirements at N.J.A.C. 8:43G-7.5(i).

N.J.A.C. 8:33E-2.4(a)1iii

9. COMMENT: The New Jersey State Society of Anesthesiologists (NJSSA) and the Chairman of the Department of Anesthesia at Deborah Heart and Lung Center commented that the existing language requiring board certification of anesthesiologists is problematic, because two years

are often required for a physician to achieve board certification following the completion of his training. Retention of this language, the Society feels, will force anesthesiologists trained in New Jersey to leave the State, limit their practice to general anesthesia, or work under the direction of a board certified anesthesiologist until achieving board certification. A time limit is suggested as a remedy, which would allow sufficient time for a newly trained anesthesiologist to obtain board certification status.

RESPONSE: In order to maintain consistency with licensing requirements, the Department is amending this section of the rule with language that is consistent with licensing requirements at N.J.A.C. 8:43G-7.5(c).

N.J.A.C. 8:33E-1.4(b) and 2.4(c)2

10. COMMENT: Jersey Shore Medical Center (JSMC) states that the absence of language permitting associated physicians who have just completed their training from practicing in New Jersey until they have become board certified in their specialty is an inappropriate limitation on the utilization of these recently trained physicians. It was suggested that a specified time period for board-eligible physicians to obtain board certification should be specified in the rule.

RESPONSE: In order to maintain consistency with licensing requirements, the Department is amending this section of the rule with language that is consistent with licensing requirements at N.J.A.C. 8:43G-7.15(b). This licensing language establishes a two-year time period for the attainment of board certification. Amended language regarding the consideration of waivers to these credentialling requirements is also being added to correct the licensing waiver requirement language at N.J.A.C. 8:33E-2.4(c)2ii(1) and 1.4(b)2i. In both cases, language is being added to reference the State licensing requirements for waivers previously adopted into the administrative code at N.J.A.C. 8:43G-7.40 and N.J.A.C. 8:43G-7.28. The language in both of these sections is also being amended to provide identical language for both cardiac diagnostic facilities and cardiac surgery centers.

11. COMMENT: Several hospital commenters (for example, Riverview Medical Center, Monmouth Medical Center, Medical Center at Princeton, Pascack Valley Hospital) took issue with the restrictive nature of the interim cardiac policy, since the policy as proposed does not permit new cardiac providers to be considered in the October 1, 1993 call for certificate of need applications. Since the call preceded HCAB consideration of final adoption of the cardiac rule, commenters were obstructed from broadening the process to allow all hospitals to apply for cardiac catheterization. Riverview Medical Center (RMC) states that there is something inherently wrong with a process that promulgates new rules while establishing a call date for CON submission prior to final approval of the regulations. Monmouth Medical Center also requested the inclusion of language recognizing the special needs of major teaching hospitals in seeking to initiate cardiac catheterization services. Pascack Valley Hospital (PVH) states that the proposal should not be approved without the completion of the "new facilities" paragraph at N.J.A.C. 8:33E-1.12 and characterizes the proposed interim policy as "presumptuous, unfounded, arbitrary, and unreasonable." PVH also states that the regulations as proposed do not adequately address ambulatory or mobile catheterization laboratories and that the regulatory approach to cardiac catheterization is unnecessary and overly conservative. A number of physicians (Drs. Checton, Ferri, and Mattina in Long Branch; Dr. Paine in Voorhees) felt that the proposal was contrary to optimal health care delivery.

RESPONSE: The Department clearly indicated at the time that these rules were initially proposed that this was an interim measure, designed primarily to address a situation where the demand for cardiac services at individual provider locations greatly exceeded not only the minimum utilization levels that were established in previous cardiac rules (that is, 500 catheterization cases each year), but the threshold volume level previously required for consideration of additional catheterization laboratory capacity (that is, 1,000 catheterization patients or 1,000 catheterization equivalents). In examining cardiac service utilization data for the past two years, there was a considerable range in patient utilization volume among providers. There was also a considerable disparity exhibited between those facilities limited to the provision of diagnostic catheterization services ("Invasive cardiac diagnostic facilities") and those facilities located at cardiac surgery centers that provide a full range of diagnostic and therapeutic procedures and interventions. Regarding the timing issue of the call and the final publication of the rules, see the Response to Comment 2, above.

Specific criteria regarding both ambulatory catheterization and mobile catheterization laboratories will be included as overall cardiovascular health policies are reviewed in the coming months. The Department has never incorporated policies regarding either of these issues in its previous cardiac rules.

N.J.A.C. 8:33E-1.13 and 2.15

12. COMMENT: Several commenters viewed the threshold volumes cited in the rules for existing providers of cardiac catheterization services (1,800 catheterization at N.J.A.C 8:33E-1.13) and cardiac catheterization/therapeutic intervention services provided at cardiac surgery centers (that is, 2,500 catheterization or catheterization equivalents at N.J.A.C. 8:33E-1.15) as far too high for optimal patient care. St. Barnabas Medical Center, for example, states that while this level can be met (that is, 1,800 catheterization cases), "it is simply not justified." This same sentiment is shared by Dr. John Gregory from Overlook, who also views the disparity between the two volume levels as inappropriate because "the capacity of a laboratory does not increase merely because it is connected to a cardiac surgery program." Cooper Hospital also questioned the need to differentiate volume standards between the two types of laboratory settings. Morristown Memorial Hospital, on the other hand, questioned the timeliness of the data that would be used to assess compliance with the threshold volume requirement. MMH suggesting that the existing language ("most recent calendar year") should be replaced with language that would read "the four most recent quarters." Our Lady of Lourdes Medical Center disagrees with the 1,800 catheterization volume, suggesting that "the threshold volume should be set at 90% of a reasonable capacity definition and not the highest volume of CEs in the State.

RESPONSE: The disparity between the two sets of threshold figures is related to the limited capability of cardiac catheterization facilities, as opposed to similar facilities that are located within a cardiac surgery center, as indicated by an examination of Statewide performance levels at both types of providers. The thresholds are based on a thorough examination of historic statewide utilization levels through 1992. They do not represent the highest volumes of catheterizations and catheterization equivalents that have been experienced in the State. The range of utilization experience, based on calendar year 1992 utilization is considerable. The number of patients undergoing diagnostic cardiac catheterization procedures per laboratory ranged from a low of 458 patients to a high of 2,466 patients within a single laboratory. As far as patient throughput figures for cardiac catheterization facilities that perform therapeutic interventions is concerned, the range of catheterization equivalents per laboratory ranged from a low of 1,060 CEs to a high of 3,722 CEs. In each case, the annual volume threshold that is established by these interim rules represents less than 75 percent of volumes that have been achieved by the state's cardiac providers.

The establishment of two thresholds is based on the limited type of procedures permitted by non-surgical providers of cardiac catheterization services. These providers perform only diagnostic catheterizations for which the catheterization equivalent value is clearly ascertained as equal to 1.0 catheterization equivalent. The equivalents for other cardiac interventions, on the other hand, are defined in relation to the diagnostic catheterization procedure and when converted into catheterization equivalents indicate a much higher capacity than facilities solely performing diagnostic catheterizations. The Department intends to examine the legitimacy of the current equivalency ratios as part of its analysis of future cardiac policy. In the short run, however, it has established thresholds based on the experience of New Jersey providers.

It must be emphasized that the thresholds for consideration of applications at this time should not be construed as the establishment of a standard for future expansion of cardiac catheterization laboratory services but rather a standard that permits facilities facing extraordinary demands on its services to meet those demands as expeditiously as possible. These utilization levels are not only achievable, but there are at least four existing cardiac providers in the state that are able to document the level of activity necessary to be considered for expansion under these rules.

N.J.A.C. 8:33E-2.1(b)

13. COMMENT: Several comments were received questioning the definition of a cardiac surgery center, which contains language which confines the location of cardiac surgery services to a single site. Commenters viewed this language as "arbitrary" and "aimed at a single provider" and recommended its removal.

RESPONSE: The proposed language is intended to clarify the Department's long-standing position regarding the definition of a "program" and results from a number of instances where providers have sought to "expand" their existing service at a second site. The language does

not seek to single out a provider, but rather to clarify language in the previous rule which misled several applicants into believing that multiple site programs were possible under these rules. Similar language appears in the State's megavoltage oncology rules at N.J.A.C. 8:33I, for similar clarification purposes.

N.J.A.C. 8:33E-1.2 and 2.2, Definitions

14. COMMENT: Several clinical comments were received from providers of complex electrophysiology services (EPS) (Hackensack Medical Center, Newark Beth Israel Medical Center, Cooper Hospital, Morristown Memorial Hospital, The Heart Center at Our Lady of Lourdes Medical Center) which questioned the definition of complex EPS as it appears in the proposal. Several of the commenters suggested changes to make the text more specific, some to make the text less specific, and some requested more definition regarding who should be present. Other commenters suggested that electrophysiology in its totality (that is, simple EPS and complex EPS) be included in the definition and restricted to cardiac surgery centers.

RESPONSE: The language contained in the proposal is identical to the language that appeared in the preceding cardiac rule, which expired in 1992. The EPS comments that were received upon publication of this proposal are reflective of a field of cardiology that is changing rapidly, indicative of a need to maintain the type of expert clinical input that the Department has historically relied upon through a succession of technical advisory committees, task forces and panels. While there was considerable comment on the need to include more specificity with regard to the types of procedures that are included under the term "complex" electrophysiology, there was some disagreement as to the specific clarification language that was recommended by the clinical experts commenting on these rules. There was virtual agreement that the definition should state that the "intent to induce ventricular or supraventricular tachycardia" should be included in the language in this section. Amended language providing more specific procedures that constitute "complex" are being adopted in response to the comments.

15. COMMENT: Both Newark Beth Israel Medical Center and the New Jersey Heart Institute provided similar comments on the definition of Percutaneous Transluminal Coronary Angioplasty (PTCA). These commenters considered the broadening of the PTCA team to include more recent therapeutic interventions as somewhat misleading. The term "coronary catheter angioplasty" was recommended by the New Jersey Heart Institute. Newark Beth Israel recommended "Cardiac Interventional Procedures" as a remedy.

RESPONSE: While the Department is in agreement that the term "Percutaneous Transluminal Coronary Angioplasty" is not the optimal term to apply to the broad range of therapeutic interventions that are performed at cardiac surgery centers throughout the State, the existing language clearly conveys the fact that this term is being used to refer to the broader range of therapeutic interventions. The alternative language provided by these commenters, as well as all other clinical comments submitted during this public comment period, will be provided to the Cardiovascular Health Advisory Panel (CHAP) for their consideration, for future amendments to these rules.

N.J.A.C. 8:33E-2.3(e)3

16. COMMENT: Several commenters disagreed with the restriction of complex electrophysiology services to only surgery centers. Other commenters either supported this limitation or sought to extend the limitation to all complex and non-complex electrophysiology studies. Cathedral Healthcare System noted that the absence of a definition of non-complex electrophysiology testing may add some confusion to this issue.

RESPONSE: The limitation of "complex" electrophysiology procedures to cardiac surgery centers is a restatement of cardiac policy that was established in the preceding cardiac rules, after considerable clinical debate. The retention of this policy is viewed by the Department as an assurance that the management of patients manifesting these dangerous symptoms is provided in an optimal setting, where extensive experience with such patients exists. The clarifying language being added to the definition section for "complex electrophysiology" also provides a clarification of "non-complex" EPS.

N.J.A.C. 8:33E-2.4(e)1 and (f)1, 2.4(a)iv, and 2.5(a)2

17. COMMENT: Several commenters questioned the need for specifying a "radiologic" technician in the personnel requirements for PTCA and EPS procedures, but not for diagnostic catheterization procedures. Comments were also received regarding inconsistencies between State licensure requirements and these planning rules concerning nursing presence in the operating room (N.J.A.C. 8:33E-2.4(a)iv) and staffing in the intermediate care unit (N.J.A.C. 8:33E-2.5(a)2).

RESPONSE: In order to maintain consistency with licensing requirements, the Department is amending this text, at N.J.A.C. 8:33E-2.4 and 2.5 with language that is consistent with licensing requirements at N.J.A.C. 8:43G-7.24 and 7.27, for PTCA and EPS staffing. Similar amendments are proposed to maintain consistency with licensing requirements concerning nursing personnel at N.J.A.C. 8:33E-2.4(a)iv and 2.5(a)2.

N.J.A.C. 8:33E-2.4(b)1 and 2

18. COMMENT: Three comments were received questioning the rationale for "requiring at least 6 surgical intensive care beds for each operating room." Dr. John Gregory questioned the medical basis for such a standard and Hackensack Medical Center asked whether a CON was necessary to add the number of intensive care beds necessary to comply with this section. The New Jersey Heart Institute recommended four beds as a more appropriate standard.

RESPONSE: The language contained in the rule is intended as a guideline rather than a standard and is intended as an indicator of possible additional support services that may be necessary for the provision of open heart surgery services. There is no "requirement" for six intensive care beds for each cardiac surgery operating room. As far as the ability to add beds in order to adhere to this "guideline" is concerned, there is certainly a need for a certificate of need for any addition of licensed beds. The requirements necessary for consideration of such bed additions can be found in the Hospital Policy Manual at N.J.A.C. 8:33A and the Certificate of Need Policy Manual at N.J.A.C. 8:33.

N.J.A.C. 8:33E-1.6 and 2.6

19. COMMENT: A comment was made by Clapp & Eisenberg that the charge of the Cardiovascular Health Advisory Panel (CHAP) was not identical to that of the former Cardiac Services Committee, and did not include specific language dealing with mortality and complication rates of cardiac providers throughout the State.

RESPONSE: The charge to the CHAP is far more extensive than that given to the former committee and does include specific reference to its responsibility to review "statewide cardiac service performance." However, it is not pertinent to this rulemaking.

N.J.A.C. 8:33E, in general

20. COMMENT: Commenters provided suggestions for an assortment of clinical issues that are either disputed by other commenters or are of a highly technical nature that requires further detailed study. Several commenters questioned the definition of "percutaneous transluminal coronary angioplasty" as being too broad, since it includes more recently developed procedures which should be individually defined or renamed for clarification purposes. It was also suggested that the catheterization equivalent (CE) ratio for "complex electrophysiology studies" (defined at N.J.A.C. 8:33E-2.3(c)2) be reconsidered and that other cardiac procedures performed in the laboratory (for example, permanent pacemaker insertions) be assigned catheterization equivalents as well.

RESPONSE: In order to respond to these substantive clinical comments, the Department would have to obtain the expert advice of the Cardiovascular Health Advisory Panel (CHAP) and, once a consensus is reached on the appropriate language, publish these changes for public comment. The Department intends to review the sections addressed by these comments in the near future in its continued review of overall cardiac care policy.

AGENCY NOTE: The following bibliography represents the current literature upon which the Department based the development and promulgation of these rules.

COMMENTS AND RESPONSES—ADDENDUM
October 14, 1993
Health Care Administration Board Meeting
Cardiac Catheterization/Therapeutic Intervention/Cardiac Surgery
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Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal in brackets with asterisks *[thus]*):

8:33E-1.1 Scope and purpose

(a) The invasive cardiac diagnostic facility specializes in the detection and diagnosis of cardiac disorders. Unlike the cardiac surgery center in which both diagnostic and therapeutic services are co-located, the invasive cardiac diagnostic facility does not provide cardiac surgery but rather on the basis of diagnostic studies refers patients, where appropriate, to facilities offering cardiac surgery and other advanced cardiac diagnostic and treatment modalities. A regional approach to the provision of invasive cardiac diagnostic services is necessary to provide safe, complete patient care, efficiently and effectively, at reasonable cost to the consumer.

(b) In the invasive cardiac diagnostic facility the primary diagnostic services are provided by cardiac catheterization, coronary angiographic and non-invasive laboratories. The cardiac catheterization and coronary angiographic laboratories are devoted to achieving optimal quality physiological and angiographic studies. The non-invasive laboratory includes, at a minimum, ECG instruments, exercise stress testing, Doppler technology/echocardiography equipment and Holter type monitoring and nuclear cardiology (often in a separate department) facilities.

(c) The Inter-Society Commission for Heart Disease Resources (I.C.H.D.) and the New Jersey Cardiac Services Task Force support the position that the safety and efficacy of laboratory performance requires a caseload of adequate size to maintain the skills and efficiency of the staff. Death or serious nonfatal complications of myocardial infarction and/or cerebral embolus occurs in 1.5 percent of the population examined by invasive techniques. Such problems occur ten times more often in institutions performing fewer than 100 examinations per year than in those performing 400 examinations annually. In the interest of patient care, then, it is important to encourage maximum utilization of the State's existing diagnostic resources. It is also essential that in view of the invasive nature of the cardiac catheterization procedure and the extent of possible complications associated with these procedures, cardiac surgery services should be accessible promptly, either in-house or by immediate transfer, in the event of an emergency or complication. Therefore, outpatient catheterization must be performed in a laboratory that is physically part of a health care facility offering inpatient support services.

(d) The standards and criteria defined in this subchapter shall apply to the efficient delivery of quality diagnostic services within the setting of the cardiac catheterization laboratory. In addition to meeting these minimal requirements, the invasive cardiac diagnostic facility is expected to operate a well established non-invasive cardiac diagnostic laboratory. Additional policy has been proposed for the more comprehensive cardiac surgery center and is identified within N.J.A.C. 8:33E-2.

8:33E-1.2 Definitions

For the purposes of this subchapter the following definitions shall apply:

"Cardiac catheterization" means the insertion of a thin, flexible tube (catheter) into a vein or artery and guiding it into the heart for purposes of diagnosis or limited treatment, such as the introduction of thrombolytic (clot dissolving) agents.

"Complex Electrophysiology Study" (EPS): Refers to the more complex variety of electrophysiology study *[(such as left atrial and ventricular mapping and ablation, catheter mapping, device implants and surgical procedures)]* ***and includes:**

Procedures which intend to induce ventricular or supraventricular tachycardia;

Activation sequence mapping of cardiac tachyarrhythmias;

Electrode catheter ablative procedures;

Implantation of anti-tachyarrhythmia devices and implantable cardioverter defibrillators.

These complex procedures are in contrast to non-complex electrophysiologic procedures, which primarily involve His-Purkinje conduction evaluation without arrhythmia induction.*

"Open heart surgery" refers to a procedure using a heart-lung by-pass machine to perform the functions of circulation during surgery.

"Pediatric" cardiac patients are those patients below the age of 16.

"Percutaneous transluminal coronary angioplasty" (PTCA) means the passage of a balloon-tipped catheter (thin tube) to the site of narrowing in an artery and the inflation of the balloon to reduce the obstruction. PTCA has come to include other invasive procedures to dilate coronary obstruction such as atherectomy of various kinds (for example, excisional, laser) and arterial stenting procedures.

8:33E-1.3 Utilization of invasive cardiac diagnostic facilities

(a) Utilization standards are based on the number of patients upon whom invasive cardiac diagnostic procedures (cardiac catheterization) are performed. Cardiac catheterization is characterized as the entry into the systemic circulation and catheterization of the right heart and especially the left heart or angiography of the cardiac structures.

(b) Volume of patients diagnosed is not the only determinant or indicator of quality. The provision of advanced and invasive cardiac procedures require appropriate institutional infrastructure, including specialized nursing services, sophisticated laboratory technology, and in some cases well-developed non-cardiac specialty expertise (See N.J.A.C. 8:33E-1.3 and 1.4). However, some minimum volume is required to maintain the skills of the diagnostic team and to minimize costs per patient. The minimum acceptable number of adult cardiac catheterization patients per cardiac laboratory is 500 per year in order to maintain the skills of the catheterization team and the efficiency and effectiveness of the invasive cardiac diagnostic service. New services must attain this minimum utilization level within three years of operation. Failure to achieve the minimum level by the end of the second year of operation will result in notification of Department of Health intention to withdraw Certificate of Need approval. The inability to achieve minimum utilization levels during the third year of operation will require the submission of a Certificate of Need to close the service. Existing services must achieve minimum utilization levels within one year of the effective date of this subchapter or be subject to administrative penalties.

(c) Applicants seeking to expand existing invasive cardiac diagnostic laboratory services must indicate conformance with all standards and criteria contained herein and document a minimum volume as defined at N.J.A.C. 8:33E-1.13 in the form of diagnostic catheterization procedures or cardiac catheterization equivalents (CEs) in the existing laboratory (or in each existing laboratory). A CE is considered to equal the average time required to perform a standard diagnostic cardiac catheterization. CEs for Percutaneous Transluminal Coronary Angioplasty (PTCA) (2.5 CEs) and initial (3.0 CEs) and repeat (1.5 CEs) Electrophysiology Studies (EPS) should be included if applicable.

(d) Each invasive cardiac diagnostic facility shall establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. As recommended by the New Jersey Cardiac Services Task Force, in its 1987 report, each physician must perform 50 cases a year with a minimum of 100 cases over a two year period. (This minimum case load may be accomplished at more than one laboratory.)

(e) Only centers with invasive pediatric cardiac diagnostic and pediatric cardiac surgery programs shall perform invasive cardiac diagnostic procedures on pediatric patients.

(f) Cardiac catheterization procedures must be performed in a hospital-based facility where inpatient support services are available on site.

(g) The following shall apply to invasive cardiac diagnostic facilities providing or seeking to provide complex electrophysiology studies (EPS) or percutaneous transluminal coronary angioplasty (PTCA):

1. Complex electrophysiology studies and percutaneous transluminal coronary angiography as defined in N.J.A.C. 8:33E-1.2 shall be performed in a hospital-based facility where cardiac surgery services are immediately available on site.

8:33E-1.4 Facility personnel; requirements and responsibilities

(a) Each invasive cardiac diagnostic facility shall be staffed, at a minimum, by at least the following full-time personnel:

1. One physician;
2. One registered nurse; and
3. One technician.

(b) While the following functions shall be performed within each facility, more than one function may be executed by a single individual if that individual has been appropriately cross-trained to perform the required functions:

1. The laboratory director (physician in charge) shall be the chief diagnostician within the unit, and shall be certified by the Sub-Specialty Board of Pediatric Cardiology of the American Board of Pediatrics or the Cardiovascular Sub-Specialty Board of the American Board of Internal Medicine. In addition to Board certification, the director shall have broad experience and training in invasive cardiac diagnostic procedures, including, but not limited to, a minimum of 12 months in a cardiac catheterization training program and the performance of 200 cardiac catheterization procedures with 100 of these procedures performed as the primary operator.

2. Associate physicians may be assigned to the laboratory and shall meet the identical training and certification requirements for laboratory director contained in *[paragraph]* ***(b)***1 above. In addition, all catheterizing physicians shall adhere to the minimum physician volume standards establised by each laboratory in accordance with N.J.A.C. 8:33E-1.2(d).

i. Exceptions for incumbent directors and associate physicians to these minimum training and certification requirements may be granted by the Commissioner upon application by an institution providing documentation as to the physician's qualifications, in accordance with the requirements of this chapter***, N.J.A.C. 8:43G-7.15(b), 7.40 and 7.28,*** and N.J.A.C. 13:35.

3. The registered nurse shall assist with administration of medications and the preparation and observation of the patient. The nurse shall have (ICCU) experience, shall *[be competent in advanced life support (ALS)]* ***meet the licensing requirements specified at N.J.A.C. 8:43G-7.15(d)***, and must have knowledge of cardiovascular medications and experience with catheterization.

4. The cardiac catheterization technician shall handle blood samples and assist in the performance tests. The technician shall help in the maintenance of equipment and supplies and should be trained to aid in patient observation and acute cardiac care.

5. The monitoring and recording technician shall be responsible for constant monitoring of physiologic data including the electrocardiogram and recording this information. This function can best be handled by a second cardiac catheterization technician or radiologic technician.

6. The radiologic technician shall be skilled in conventional radiography and shall have special training and skills in angiographic techniques. This technician shall be competent in magnification radiography, subtraction photography, cine recording, television presentations and the use of video tape and shall be responsible for the care and maintenance of all radiologic equipment.

7. The electronic and radiological repair technician shall be highly trained and available for consultations regarding the operation and maintenance of all radiographic and physiologic measuring and recording instruments in the laboratory. This person shall be immediately available to carry out repairs in the event of equipment failures during the course of the procedure.

8. Hospitals providing invasive cardiac diagnostic services should, to the extent possible, have native speaking clinical personnel available who can overcome language barriers and know and understand cultural differences among patients.

9. Hospitals providing invasive cardiac diagnostic services shall develop cardiology outreach mechanisms and referral services (for example, physician education, public information, primary care clinical services).

(c) One physician trained and experienced in cardiac catheterization shall be present in the room during all catheterization and angiographic procedures. An appropriately trained and experienced registered nurse and technician shall also be present during all procedures.

8:33E-1.5 Peer review

(a) Quality control is essential for the consistent high quality level of performance required of any medical services. As one means of quality control, appropriate mechanisms for peer review shall be described in each application for designation as a cardiac diagnostic facility. Such mechanisms should include, but not be limited to, the delineation of criteria for the evaluation of:

1. Overall case selection for study (for example, rate of normal studies, rate of surgical referral);

2. Laboratory and physician performance as recommended by the Cardiac Service Task Force including the physician performance guidelines (for example, case volume, mortality and complication rates per physician);

3. Quality of studies (for example, number of incomplete studies, diagnostic adequacy of firms, number of restudies performed elsewhere);

(b) In all cases, criteria selection should be based on sound medical practice and consistency with the literature.

(c) Each peer review team shall include at least one cardiovascular surgeon from the surgical center to which surgical candidates are commonly referred.

8:33E-1.6 Commissioner's cardiovascular health advisory panel (CHAP)

(a) A cardiovascular health advisory panel *[shall be]* ***has been*** established, under the authority of the Commissioner of Health, to participate in the development of cardiovascular health policy. This committee shall also:

1. Assist in the development of Statewide cardiovascular health promotion and disease prevention activities;

2. Review cardiac service technological developments and the degree to which these developments have achieved clinical acceptance within the medical community;

3. Review State standards and criteria for cardiac services and Statewide cardiac service performance;

4. Respond to Statewide issues regarding cardiac care as requested by the Commissioner of Health;

5. Assist in the development and implementation of Statewide cardiac research and data activities.

8:33E-1.7 Association with cardiac surgical services

(a) Applicants providing cardiac diagnostic services without a surgery program shall have written agreements with institutions providing open heart surgery and catheterization, specifying a mechanism for insuring quality control, rapid referral for surgery, emergency back-up procedures and regular communication between the cardiologist performing catheterization and the surgeons to whom patients are referred. At least one of the referral agreements shall be written with a New Jersey cardiac center. In addition, one of the referral agreements shall be with a cardiac surgical center which is within one hour travel time from the diagnostic facility to insure prompt referral in the event of an emergency.

(b) To insure that costs are not unnecessarily increased by duplication of procedures, written assurance shall be included within the referral agreement stating that, to the greatest extent possible, the receiving facility will accept the results of the diagnostic facility's examinations. Departures from this practice shall be limited to an established peer review mechanism at the receiving center.

(c) The provision of complex electrophysiology services (EPS) and percutaneous transluminal coronary angiography (PTCA), as defined in this chapter, must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.

8:33E-1.8 Documentation of purchase and operational cost

The applicant shall provide full written documentation of the projected implementation and operational costs of the proposed program. This documentation will include direct and indirect costs, that is, construction, equipment, supplies, personnel, maintenance, overhead costs, as well as projected costs of remodeling or renovation necessary to accommodate the program. Projections of anticipated revenues shall be supplied for at least the first three years.

8:33E-1.9 Statistical data required

At the request of the Commissioner, the facility shall maintain and provide basic statistical data on the operation of the program and report those data to the Department of Health on a quarterly basis and on a standardized form prepared by the Department. Copies of the full text of the required quarterly reporting forms may be obtained upon written request to the New Jersey State Department of Health, Center for Health Statistics, Room 405, CN 360, Trenton, New Jersey 08625.

8:33E-1.10 Certification of nondiscriminatory practices

Each applicant shall provide the Department with written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices to the effect that no patient shall be refused treatment on the basis of race, religion, sex, age or ability to pay.

8:33E-1.11 Compliance

Facilities which are providing cardiac diagnostic services without cardiac surgery shall meet the minimum criteria and standards outlined in this subchapter within one year following the effective date of this subchapter, and each year thereafter, or be subjected to licensing sanctions. These sanctions may include closure of the service or that portion of the service that will result in compliance with minimum State standards.

8:33E-1.12 New facilities

(Reserved)

8:33E-1.13 Submission of Certificate of Need Applications

(a) The Department of Health will only process certificate of need applications for the expansion of existing invasive cardiac diagnostic facilities located in local advisory board areas, designated pursuant to the New Jersey Health Care Facilities Planning Act (P.L. 1971, c.136 and 138) and amendments thereto, and in accordance with procedures set forth below and in N.J.A.C. 8:33. Certificate of need applications will only be accepted for processing from existing cardiac catheterization providers located in local advisory board areas where all existing invasive cardiac diagnostic facilities and services meet minimum levels of utilization, per laboratory, as specified at N.J.A.C. 8:33E-1.3(b) and where the applicant's level of utilization during the most recent calendar year prior to submission of the application exceeds 1,800 diagnostic catheterization procedures. Documentation should also be provided that indicates that other existing area providers of this invasive cardiac diagnostic service will not be jeopardized by the proposed new service.

(b) No more than one additional invasive cardiac diagnostic laboratory expansion will be approved in each local advisory board area for each call for certificate of need applications.

SUBCHAPTER 2. REGIONAL CARDIAC SURGERY CENTERS

8:33E-2.1 Scope and purpose

(a) The purpose of this subchapter is to establish standards and general criteria for the planning of a regional cardiac surgical center and for the preparation of an application for a certificate of need for such a facility. A regional approach to the provision of cardiac services is necessary to provide safe, complete patient care, efficiently and effectively, at reasonable cost to the consumer.

(b) A regional cardiac surgical center is defined as a health care facility which specializes in most aspects of cardiac service, including at a minimum, cardiovascular surgical services as well as invasive cardiac diagnostic services. These cardiac surgery services are to be provided at a single hospital location.

(c) In the regional cardiac surgical center, the primary diagnostic services are provided by a cardiac catheterization and coronary angiographic laboratory and a non-invasive laboratory. A cardiac catheterization, coronary angiographic laboratory is one which provides a service devoted to achieving physiological and angiographic studies of optimal quality.

(d) At a minimum, the non-invasive laboratory shall include the following facilities:

1. ECG instruments;
2. Exercise Stress testing;
3. Echocardiography equipment;
4. Holter-type monitoring; and
5. Nuclear cardiology.

(e) Before heart surgery is performed, every patient shall undergo diagnosis through a recognized diagnostic service, except in an extreme emergency, as in the case of open wounds to the heart.

(f) The cardiovascular surgical services include open heart, closed heart and coronary artery surgery, as well as surgery of the great

vessels, and also cardiac assist devices, such as the intra-aortic balloon pump. The requirements contained in this subchapter for facilities, personnel and equipment for open heart surgery shall be the minimum requirements for all cardiovascular surgical procedures.

8:33E-2.2 Definitions

For the purposes of this subchapter the following definitions shall apply:

"Cardiac catheterization" means the insertion of a thin, flexible tube (catheter) into a vein or artery and guiding it into the heart for purposes of diagnosis or limited treatment, such as the introduction of thrombolytic (clot dissolving) agents.

"Complex Electrophysiology Study" (EPS): Refers to the more complex variety of electrophysiology study *[(such as left atrial and ventricular mapping and ablation, catheter mapping, device implants and surgical procedures)]* ***and includes:**

Procedures which intend to induce ventricular or supraventricular tachycardia;

Activation sequence mapping of cardiac tachyarrhythmias;

Electrode catheter ablative procedures;

Implantation of anti-tachyarrhythmia devices and implantable cardioverter defibrillators.

These complex procedures are in contrast to non-complex electrophysiologic procedures, which primarily involve His-Purkinje conduction evaluation without arrhythmia induction.*

"Open heart surgery" refers to a procedure using a heart-lung by-pass machine to perform the functions of circulation during surgery.

"Pediatric" cardiac patients are those patients below the age of 16.

"Percutaneous transluminal coronary angioplasty" (PTCA) means the passage of a balloon-tipped catheter (thin tube) to the site of narrowing in an artery and the inflation of the balloon to reduce the obstruction. PTCA has come to include other invasive procedures to dilate coronary obstruction such as atherectomy of various kinds (e.g., excisional, laser) and arterial stenting procedures.

8:33E-2.3 Utilization of cardiac surgical centers

(a) The following shall apply to adult cardiovascular surgical units:

1. Once criteria for new cardiac surgery services are developed at N.J.A.C. 8:33E-2.13 below, utilization criteria and standards for new cardiac surgery services will be specified and promulgated at that time.

2. All existing regional adult cardiac surgical centers shall continue to perform at least 250 open heart surgical procedures per year per operating room to insure the competency of the surgical services team and to provide for efficient and economical operation.

3. Existing regional adult cardiac surgery centers shall document a volume of 350 open heart surgical procedures per year per operating room in order to be considered for an expansion of its operating room capacity.

4. Existing regional adult cardiac surgery centers that are in compliance with all minimum standards and criteria contained in this subchapter, including the minimum volume requirements for percutaneous transluminal coronary angioplasty (PTCA) at (d) below, may utilize a separate operating room for PTCA backup. This backup operating room shall not be utilized for routine cardiac surgery and shall not be considered a cardiac operating room for purposes of this subchapter.

5. Each cardiac surgical center shall establish a minimum caseload per physician and team in order to ensure a consistent level of proficiency within the surgical program. As recommended in the Commissioner's Cardiac Services Task Force (CSTF) report, a minimum of 100 cases per year shall be maintained to preserve the professional skills of a supervising cardiac surgeon, which shall refer to the physician in charge of the specific case.

(b) The following shall apply to pediatric cardiac diagnostic and surgical services:

1. An applicant for a certificate of need as a regional pediatric cardiac surgical center shall provide written documentation that the proposed center will perform at least 150 pediatric open and closed heart surgery procedures per year, at least 75 of which must be open heart procedures, for each operating room utilized for pediatric open heart surgery by the end of the third year of operation and each year thereafter.

2. A regional pediatric cardiac surgical center shall continue to perform at least 150 pediatric open and closed heart surgery procedures per year per operating room to insure the competency of the pediatric surgical services team and to provide for an efficient and economical operation. Existing pediatric cardiac surgical centers shall achieve this utilization standard within one year of the effective date of this subchapter and shall maintain the standard on an annual basis thereafter.

3. The minimum acceptable number of pediatric cardiac catheterization patients per invasive pediatric cardiac diagnostic laboratory is 150 per year. New pediatric surgical centers shall achieve this minimum level of utilization in their invasive pediatric cardiac diagnostic laboratory within three years from the initiation of the service. As cited at N.J.A.C. 8:33E-1.2(e), pediatric patients requiring invasive cardiac diagnostic procedures shall undergo these procedures only in centers with invasive pediatric cardiac diagnostic and pediatric cardiac surgery programs.

4. Each invasive pediatric cardiac laboratory shall establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. As recommended by the Commissioner's Cardiac Services Task Force (CSTF), a minimum of 50 pediatric cases a year with a minimum of 100 pediatric cases over a two year period shall be maintained to preserve a consistent level of proficiency.

(c) The following shall apply to adult cardiac diagnostic services located within the cardiac surgery center:

1. Utilization standards for the diagnostic services shall be based on the number of patients upon whom invasive cardiac diagnostic procedures are performed. The minimum acceptable number of adult cardiac catheterization patients per laboratory shall be 500 per year, in order to maintain the efficiency and the skills of the catheterization team.

i. Each invasive cardiac diagnostic service shall establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. As recommended by the Commissioner's Cardiac Services Task Force (CSTF), a minimum of 50 cases a year with a minimum of 100 cases over a two year period must be maintained to preserve a consistent level of proficiency.

2. Surgical centers seeking to expand existing invasive cardiac diagnostic laboratory services must indicate conformance with all standards and criteria contained in this subchapter and document a minimum volume of cardiac catheterization procedures or cardiac catheterization equivalents (CEs) in the existing laboratory (or in each existing laboratory) as specified at N.J.A.C. 8:33E-2.15. A CE is considered to equal the average time required to perform a cardiac catheterization procedure. A percutaneous transluminal coronary angioplasty procedure will be considered as 2.5 CEs. An initial complex electrophysiology study will be 3.0 CEs and a repeat complex electrophysiology study will be 1.5 CEs.

3. The laboratory must be prepared to perform pre- and post-operative examinations on a scheduled basis, and emergency examinations at all times.

4. As a planning guideline, the accepted ratio of examinations to cardiac operations shall be at least two examinations to one operation.

5. Cardiac catheterization procedures must be performed in a hospital-based facility here inpatient support services are available on site.

(d) The following shall apply to adult cardiac surgery centers providing or seeking to provide percutaneous transluminal coronary angioplasty (PTCA) services:

1. An applicant for a certificate of need as a regional adult cardiac surgery center that also seeks to provide PTCA services in its invasive cardiac diagnostic laboratory must provide written documentation that the center will perform a minimum of 200 PTCA procedures per year by the third year of operation.

2. A regional adult cardiac surgery center shall continue to perform a minimum of 200 PTCA procedures annually in order to assure acceptable institutional quality. Existing cardiac surgery centers providing PTCA shall comply with this utilization standard within this one year of the effective date of this subchapter and shall maintain this standard on an annual basis thereafter.

3. PTCA procedures must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.

4. Each PTCA facility shall establish a minimum number of PTCA procedures for each physician with PTCA laboratory privileges. As recommended by the Commissioner's Cardiac Services Task Force (CSTF), each physician seeking to continue to perform PTCA procedures as the primary operator shall perform a minimum of 75 PTCA cases a year, 150 PTCA cases over a two year period (excluding the physician's first year of clinical practice following completion of training), and 50 PTCA cases per year, as primary physician, to preserve a consistent level of proficiency.

(e) The following shall apply to adult cardiac surgery centers providing or seeking to provide complex electrophysiology studies (EPS):

1. An applicant for a certificate of need as a regional adult cardiac surgery center that also seeks to provide complex electrophysiology studies or an existing cardiac surgery center seeking to initiate complex electrophysiology services must provide written documentation that the center will perform a minimum of 100 electrophysiology studies per year, with at least 50 of these studies representing initial studies of patients. These new complex electrophysiology services must achieve this minimum utilization level within three years of service implementation.

2. A regional cardiac surgery center shall continue to perform a minimum of 100 complex electrophysiology studies annually in order to assure acceptable institutional quality. Existing cardiac surgery centers providing complex electrophysiology studies shall comply with this utilization standard within one year of the effective date of this subchapter and shall maintain this standard on an annual basis thereafter.

3. Complex electrophysiology studies shall be performed in a hospital-based facility where cardiac surgery services are immediately available on site.

4. Each complex electrophysiology service shall establish a minimum number of complex electrophysiology studies for each physician with electrophysiology laboratory privileges. As recommended by the Commissioner's Cardiac Services Task Force (CSTF), a minimum of 50 complex electrophysiology cases a year, with at least 25 as initial studies, shall be maintained to preserve a consistent level of proficiency.

8:33E-2.4 Cardiac surgery center personnel

(a) The following shall apply to cardiovascular surgical units:

1. Cardiac surgery is most successful when performed by a smoothly functioning team. Based on 250 open heart procedures the basic team of the regional cardiac surgical center for each operation shall consist of the following permanently assigned staff:

i. One physician in charge, board-certified by the American Board of Thoracic and Cardiovascular Surgery as a cardiovascular surgeon who directs the team or the surgical unit. Based on the Commissioner's Cardiac Task Force recommendation, the physician in charge must perform a minimum of 100 procedures annually;

(1) Exceptions for incumbent directors to this requirement for board certification may be granted by the Commissioner after consultation with the CCSC and upon application by an institution providing proper documentations as to the physician's qualifications;

ii. One assistant to the physician in charge who will be a board qualified surgeon. A cardiothoracic surgery resident or fellow may serve as an assistant. There shall be two surgeons in the operating room;

iii. *[A board certified anesthesiologist with additional training and experience in cardiac surgery problems]* ***An anesthesiologist, meeting the licensing requirements contained at N.J.A.C. 8:43G-7.5(c)1 and 2*** shall be responsible for the anesthetic management of cardiac surgery patients. This anesthesiologist may be assisted *[by another board certified or board eligible anesthesiologist, an anesthesia resident, an anesthesia technician, or a nurse anesthetist with special training and experience with cardiac surgery patients]* ***by additional personnel as specified at N.J.A.C. 8:43G-7.5(d)****;

iv. There shall be at least *[two operating room nurses (at least]* one *[of whom must be a]* registered nurse*[) trained and experienced in cardiac surgery and advanced cardiac life support]* ***and an assistant meeting licensing requirements at N.J.A.C. 8:43G-7.5(h)**** in each operating room;

v. *[One certified perfusionist (a trained and qualified perfusionist who is currently part of a cardiac surgery team may be included) shall operate the perfusion pump. A second individual capable of handling the pump should be available to assist this perfusionist as the need arises. Certification of all perfusionists is recommended]* ***In accordance with N.J.A.C. 8:43G-7.5(i), a perfusionist who is certified by the American Board of Cardiovascular Perfusion or meets the experience requirements shall be available to operate the perfusion pump for each cardiac surgical procedure. A second perfusionist meeting the same requirements shall be available in the surgical suite to assist. In emergency cases, a second perfusionist may be off-site and readily summoned if needed****;

vi. A cardiovascular nurse specialist (one for every 100 open heart procedures) may be employed to supplement the cardiovascular surgical team.

vii. A board certified cardiologist shall be available to assist in the management of problems relating to unstable hemodynamic status and complex arrhythmias, if necessary.

2. The operating cardiac surgeon, in conjunction with the attending cardiologist, shall be responsible for overseeing and integrating all details of pre-operative evaluation and preparation of the operation procedures and of postoperative care.

(b) The intensive care cardiac recovery room (or Surgical Critical Care Unit, (SCCU) is the area where cardiac patients are held for postoperative care. At a minimum, patient coverage in this area shall be on a one specially trained cardiac nurse to one patient basis for the first 24 hours after surgery or in accordance with the diagnosis. During this period, the operating surgeon and team or qualified alternate shall be on call. After a full 24 hours following the operative day, and in accordance with patient diagnosis, nursing coverage may be reduced to a maximum of three patients to two nurses during the second and third days following the operative day as long as ventilatory and other life support systems have been discontinued.

1. There should be at least six surgical intensive care beds for each operating room within the surgical center that is dedicated to open heart surgery patients.

2. The surgical intensive care unit shall include physiologic monitoring equipment capable of arrhythmia detection (including slave scopes). Portable x-ray equipment and computers for laboratory work should also be available.

(c) The following shall apply to cardiac diagnostic facilities located in a cardiac surgery center:

1. Each diagnostic facility shall be staffed, at a minimum, by the following full-time personnel:

i. One physician;

ii. One registered nurse; and

iii. One technician.

2. While the following functions shall be performed within each facility, more than one function may be executed by a single individual who has been appropriately cross-trained to perform the required functions:

i. The laboratory director (physician in charge) shall be the chief diagnostician within the unit, certified in cardiology by the Sub-Specialty Board of Pediatric Cardiology of the American Board of Pediatric or the Cardiovascular Sub-Specialty Board of the American Board of Internal Medicine. In addition to board certification, the director shall have broad experience and training in invasive cardiac diagnostic procedures including, but not limited to, a minimum of 12 months in a cardiac catheterization training program and the performance of 200 cardiac catheterization procedures with 100 of these procedures performed as the primary operator;

ii. Associate physicians may be assigned to the laboratory and shall meet the identical training and certification requirements for laboratory director contained in (c)2i above. In addition, all catheterizing physicians must adhere to the minimum physician volume standards established by each laboratory in accordance with N.J.A.C. 8:33E-2.3(c);

(1) Exceptions to these minimum training and certification requirements for incumbent directors and associate physicians may be granted by the Commissioner after consultation with the CHAP and upon application by an institution providing proper documentation as to the physician's qualifications, in accordance with the requirements of this chapter**, N.J.A.C. 8:43G-7.15(b), 7.40 and 7.28,*** and N.J.A.C. 13:35.

iii. The registered nurse shall assist with administration of medications and the preparation and observation of the patient. The nurse shall have Intensive Care Cardiac Unit (ICCU) experience, shall *[be competent in advanced cardiac life support (ALS)]* ***meet the licensing requirements specified at N.J.A.C. 8:43G-7.15(d)***, and must have knowledge of cardiovascular medications and experience with catheterization;

iv. The cardiac catheterization technician shall handle blood samples and assist in the performance tests. The technicians shall help in the maintenance of equipment and supplies;

v. The monitoring and recording technician shall be responsible for constant monitoring of physiologic data, including the electrocardiogram, and recording this information. This job can best be handled by a second cardiac catheterization technician or radiologic technician;

vi. The technician shall be skilled in conventional radiography and shall have special training and skills in angiographic techniques. This technician shall be competent in magnification radiography, subtraction photography, cine recording, television presentations and the use of video tape and be responsible for the care and maintenance of all radiologic equipment;

vii. The electronic and radiological repair technician shall be highly trained and available for consultations regarding the operation and maintenance of all radiographic and physiologic measuring and recording instruments in the laboratory. This person shall be immediately available to carry out repairs in the event of equipment failures during the course of the procedure;

viii. Hospitals providing invasive cardiac diagnostic and cardiac surgery services shall, to the extent possible, have native speaking clinical personnel available who can overcome language barriers and know and understand cultural differences among patients; and

ix. Hospitals providing invasive cardiac diagnostic and cardiac surgery services should develop cardiology outreach mechanisms and referral services (for example, physician education, public information, primary care clinical services).

3. One physician trained and experienced in cardiac catheterization shall be present in the room during all catheterization and angiographic procedures. A nurse and a technician, trained and experienced as required by this chapter, shall be present during all procedures.

(d) Only the special personnel required by a cardiac diagnostic center established within an existing hospital are specified in (c) above. Appropriate supporting staff or personnel shall be available in existing departments within the hospital, in accordance with the requirements of all applicable laws, rules and regulations.

(e) The following shall apply to invasive cardiac diagnostic facilities located in cardiac surgery centers that seek to perform percutaneous transluminal coronary angioplasty (PTCA):

1. Each invasive diagnostic facility must be staffed, at a minimum, by the following personnel during a PTCA procedure:

i. The physician directing the procedure shall be a board certified cardiologist with well-recognized excellence in the management of routine cardiac catheterization and who has participated in a minimum of 100 PTCA procedures (with at least 50 as primary operator) ***and meets the licensing qualifications specified at N.J.A.C. 8:43G-7.23(a)***;

ii. An assisting physician**, if needed,*** may be a board eligible cardiologist or a cardiology fellow;

iii. A registered nurse *[trained and experienced in advanced life support, cardiac drugs, and cardiac catheterization/PTCA]* ***meeting the licensing requirements specified at N.J.A.C. 8:43G-7.24(a)2*** shall be available to assist with PTC procedures; and

iv. *[A radiologic technician trained and experienced in cardiac catheterization/PTCA]* ***One assistant meeting the licensing requirements specified at N.J.A.C. 8:43G-7.24(a)3*** shall be available to assist with PTCA procedures.

(f) The following shall apply to invasive cardiac diagnostic services located in cardiac surgery centers that seek to perform complex electrophysiology studies (EPS):

1. Each invasive cardiac diagnostic service shall be minimally staffed, at a minimum, by the following personnel during a complex electrophysiology study:

i. The physician directing the procedure must be a board certified cardiologist with well-recognized excellence in the management of routine cardiac catheterization who has obtained at least one additional year of specialized training in complex EPS and cardiac arrhythmias, including participation in 100 complex EPS procedures**, and meets the licensing qualifications specified at N.J.A.C. 8:43G-7.26(a)***.

ii. An assisting board certified cardiologist**, if needed,*** shall be present during complex EPS procedures.

iii. A registered nurse *[trained and experienced in advanced life support, cardiac drugs, and cardiac catheterization/EPS]* ***meeting the licensing requirements specified at N.J.A.C. 8:43G-7.27(a)2*** shall be present during the procedure.

iv. *[A radiologic technician trained and experienced in cardiac catheterization/EPS]* ***One assistant meeting the licensing requirements specified at N.J.A.C. 8:43G-7.27(a)3*** shall be present during the procedure.

8:33E-2.5 Use of inpatient facilities

(a) In a center performing 250 open heart surgical procedures annually, the following inpatient facilities shall be required:

1. Because of the nature of care to be provided, cardiac surgical patients shall be grouped at the intermediate or acute care level for proper observation and treatment. During the preoperative stage when diagnostic work-ups are to be performed, six beds in a general medical/surgical unit shall be available for patients having an average length of stay of three to four days.

2. An intermediate intensive care/cardiac care unit will be available for post-operative care. It shall include four beds for patients having an average length of stay of three to four additional days following discharge from the SCCU or surgical recovery room. These beds may be located in a cardiovascular step-down unit with telemetry monitoring but reduced nursing coverage *[with a maximum ratio of four patients to one nurse]* ***consistent with licensing requirements at N.J.A.C. 8:43G-9.20 and*** in accordance with patient diagnosis. Suitably equipped beds will be available for the rest of the patient's stay. At a minimum the intensive care/cardiac care unit will have the following capabilities:

i. Facilities for hemodynamic ECG monitoring;

ii. Temporary pacemaker insertion;

iii. C.P.R. equipment;

iv. Arrhythmia detection equipment;

v. Resuscitative equipment; and

vi. Cardiovascular support devices (such as an intra-aortic balloon pump).

8:33E-2.6 Commissioner's cardiovascular health advisory panel (CHAP)

(a) A cardiovascular health advisory panel *[shall be]* ***has been*** established, under the authority of the Commissioner of Health, to participate in the development of cardiovascular health policy. This committee shall also:

1. Assist in the development of Statewide cardiovascular health promotion and disease prevention activities;

2. Review cardiac service technological developments and the degree to which these developments have achieved clinical acceptance within the medical community;

3. Review State standards and criteria for cardiac services and Statewide cardiac service performance;

4. Respond to Statewide issues regarding cardiac care, as requested by the Commissioner of Health;

5. Assist in the development and implementation of Statewide cardiac research and data activities.

8:33E-2.7 Referral

(a) Each applicant for a certificate of need as a regional cardiac center shall agree to send out a mailing to all appropriate institutions and physicians stating that the services of the center are available. Following certificate of need approval, the center shall provide the Department with written documentation that this mailing has occurred.

(b) Each applicant shall provide written documentation, in the form of an institutional policy statement, that the center will accept referrals from physicians not ordinarily having access to the applicant's facilities.

(c) Each center will have written transfer agreements to receive appropriate patients from the invasive cardiac diagnostic facilities in its service area, or health services area, whichever is larger.

8:33E-2.8 Population base

(Reserved)

8:33E-2.9 Documentation of purchase and operational cost

The applicant will provide full written documentation of the projected implementation and operational costs of the proposed program. This documentation will include direct and indirect costs, that is, construction, equipment, supplies, personnel, maintenance, overhead costs, as well as projected costs of remodeling or renovation necessary to accommodate the program. Projections of anticipated revenues shall be supplied for at least the first three years.

8:33E-2.10 Statistical data required

At the request of the Commissioner, the facility will maintain and provide basic statistical data on the operation of the program and report that data to the Department of Health on a quarterly basis and on a standardized form prepared by the Department. Copies of the full text of the required quarterly reporting forms may be obtained upon written request to the New Jersey State Department of Health, Center for Health Statistics, Room 405, CN 360, Trenton, New Jersey 08625.

8:33E-2.11 Certification of nondiscriminatory practices

Each applicant shall provide the Department with written certification of compliance with all Federal and State laws in regard to nondiscriminatory practices to the effect that no patient shall be refused treatment on the basis of race, religion, sex, age or ability to pay.

8:33E-2.12 Peer review

(a) Quality control is essential for the consistent high quality level of performance required of any medical services. As one means of quality control, appropriate mechanisms for peer review shall be described in each application for designation as a cardiac diagnostic facility. Such mechanisms should include, but not be limited to, the delineation of criteria for the evaluation of:

1. Overall case selection for study (for example, rate of normal studies, rate of surgical referral);

2. Laboratory and physician performance as recommended by the Cardiac Service Task Force including the physician performance guidelines (for example, case volume, mortality and complication rates per physician);

3. Quality of studies (for example, number of incomplete studies, diagnostic adequacy of firms, number of restudies performed elsewhere);

(b) In all cases, criteria selection should be based on sound medical practice and consistency with the literature. Cardiac surgical centers with marginal utilization (10 percent above or below minimum utilization standards) will be reviewed by the CHAP to assure appropriate case selection has occurred.

8:33E-2.13 New facilities

(Reserved)

8:33E-2.14 Compliance

(a) Existing pediatric and adult cardiac surgery centers shall continue to meet the minimum criteria and standards contained in this subchapter on an annual basis. Existing providers failing to achieve minimum utilization standards specified in this subchapter within one year following the effective date of this subchapter and each year thereafter will be subject to reimbursement or licensing sanctions. These sanctions may include closure of the service or that portion of the service that will result in compliance with minimum State standards.

(b) All certificate of need applications for new pediatric and adult cardiac surgery centers must document the ability of the applicant to meet the minimum standards and criteria contained in this subchapter within three years from the initiation of the service. Failure to achieve the minimum level by the end of the second year of operation will result in notification of Department of Health intention to rescind certificate of need approval and more for licensing sanctions. The inability to achieve minimum utilization levels during the third year of operation or thereafter will result in loss of license for the service.

8:33E-2.15 Submission of Certificate of Need applications

(a) The Department of Health will only process certificate of need applications for the expansion of existing invasive cardiac diagnostic services within cardiac surgery centers located in local advisory board areas, designated pursuant to The New Jersey Health Care Facilities Planning Act (P.L. 1971, c.136 and 138) and amendments thereto, in accordance with procedures set forth below and in N.J.A.C. 8:33. Certificate of need applications will only be accepted for processing from existing cardiac catheterization providers located in local advisory board areas where all existing invasive cardiac diagnostic facilities and services meet minimum levels of utilization per laboratory during the most recent calendar year prior to submission of the application as specified at N.J.A.C. 8:33E-1.3(b) or at N.J.A.C. 8:33E-2.3(c), whichever is applicable; and where the applicant's level of utilization during the most recent calendar year prior to submission of the application exceeds 2,500 catheterization equivalents per laboratory. Documentation should also be provided that indicates that other existing area providers of this invasive cardiac service will not be jeopardized by the proposed new service.

(b) No more than one additional invasive cardiac diagnostic laboratory expansion will be approved in each local advisory board area for each call for certificate of need applications.

(a)

OFFICE OF HEALTH POLICY AND RESEARCH

Certificate of Need Policy Manual for Long-Term Care Services

Adopted Amendments: N.J.A.C. 8:33H

Proposed: August 16, 1993 at 25 N.J.R. 3719(a).

Adopted: November 23, 1993 by Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: November 24, 1993 as R.1993 d.671, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 8, P.L. 1992 c.160.

Effective Date: December 20, 1993.

Expiration Date: September 8, 1997.

Summary of Public Comments and Agency Responses:

During the public comment period which ended on September 15, 1993, the Department of Health received comments from the following individuals and organizations: Jersey Coast Health Planning Council; Ocean County Planning Board; County Long-Term Care Committees for Salem, Gloucester, and Burlington Counties; New Jersey Association of Non-Profit Homes for the Aging (NJANPHA); Sunrise Retirement Homes and Communities and Marriott Corporation; Center for Hope

Hospice; Kessler Institute for Rehabilitation; Harmon Hicks; and the Department of Human Services (Division of Mental Health and Hospitals).

COMMENT: The County Long-Term Care Committees for Salem, Gloucester, and Burlington Counties express strong support for the Department's efforts to promote levels of care which are less restrictive than nursing homes. They also endorse the proposal for an expedited Certificate of Need review process for Assisted Living Residences and Comprehensive Personal Care Homes. The Ocean County Planning Board also expressed support for these two new alternatives, which will enable elderly residents to continue leading fairly independent lives.

RESPONSE: The Department appreciates these commenters' supportive remarks and acknowledges the efforts of volunteers who served on the Assisted Living Policy Work Group and Long-Term Care Overview Panel. These groups contributed to the development of the amendments to N.J.A.C. 8:33H.

COMMENT: The Jersey Coast Health Planning Council (LAB VI) commends the Department for encouraging the development of Assisted Living Residences and Comprehensive Personal Care Homes during the 18-month "window of opportunity." However, the Council recommends that local advisory boards (LABs) should have the right to request the Commissioner of Health to call for nursing home Certificates of Need in counties that can demonstrate a need for additional nursing home beds during the 18-month period. Need should be demonstrated by facilities' occupany rates and changes in the ability to have patients placed within the county. Furthermore, the Planning Council requests that the Department issue a progress report to the LABs every six months documenting progress in implementing all long-term care Certificates of Need that have been approved for three or more years.

RESPONSE: The Department shares the Jersey Coast Health Planning Council's concern about access to long-term care services, particularly for Medicaid-eligible individuals. Over the past two years, the Department of Human Services' Division of Medical Assistance and Health Services (DMAHS) has worked in collaboration with the Department of Health to promote access to lower cost alternatives to nursing home care; DMAHS is optimistic that Medicaid funding will be available to pay for Comprehensive Personal Care Homes and other long-term care alternatives in State Fiscal Year 1995 (SFY95).

Nonetheless, the Department of Health acknowledges that if Medicaid funding for the alternatives is not available, access to long-term care must be assured. This will most likely entail expansion of the nursing home bed supply. Therefore, the Department of Health is committed **first** to actively supporting the Department of Human Services in its SFY95 budget request for Medicaid funding for the alternatives. In the absence of this funding, however, it is the Department of Health's intention to call for and approve additional nursing home beds in areas of the State where they are needed. It will not be necessary for LABs to request a call for nursing home Certificates of Need, since existing rules (see N.J.A.C. 8:33H-1.4(i)1) will guide the call for additional beds.

With respect to the commenter's request for a progress report on Certificates of Need for nursing homes, this information is already available to the LABs on request from the Department's Certificate of Need program. Furthermore, monthly updates of all CN activity are currently generated by the Department's Management Information System; LABs receive this update at State Health Planning Board meetings.

COMMENT: NJANPHA commends the Department for proposing an 18-month "window of opportunity" for the expedited Certificate of Need review of assisted living residences and comprehensive personal care homes. The commenter recommends the following changes to the rules: (1) the definitions of "assisted living residence" and "comprehensive personal care home" in N.J.A.C 8:33H-1.2 should be amended to reflect that these facilities are required to assure assisted living services are available **as promised in the facility's admission agreement**; (2) the current definition of "Statewide restricted admissions facility" should be maintained, at least until the outcome of a legal challenge to P.L. 1993, c.140, is known; (3) N.J.A.C. 8:33H-1.10(c)4 should be modified to permit Class C boarding homes which are **under construction** on or before the date that the rules become effective to be eligible for conversion to a comprehensive personal care home; (4) the 20-bed limitation on the number of new comprehensive personal care home beds that may be added to an existing facility should be eliminated at N.J.A.C. 8:33H-1.10(d); (5) the reference to transfer agreements with State, county, or private psychiatric hospitals should be deleted at N.J.A.C. 8:33H-1.10(a), since referrals to such facilities rarely occur, and many acute care hospitals have psychiatric units; and (6) the requirements for five percent occupany by Supplemental Security Income (SSI)-eligible individuals in comprehensive personal care homes should be eliminated at N.J.A.C. 8:33H-1.10(n), in light of the grossly inadequate SSI payment rate. The latter comment was also submitted by Sunrise Retirement Homes and Marriott Corporation. They contend that the five percent SSI requirement could impact on the financial viability of a project and prevent worthy facilities from converting to a CPCH.

RESPONSE: The Department declines to change the definition of assisted living residences and comprehensive personal care homes. In their present form, these definitions are the same as those contained in the Licensing Standards at N.J.A.C. 8:36. To include a different set of definitions in N.J.A.C. 8:33H-1.2 would increase confusion. Reference to the Licensing Standards in the current definitions should guide interested parties to a fuller understanding of what may be "promised in the facility's admission agreement."

The Department accepts the commenter's suggestions regarding the definition of a "Statewide restricted admissions facility" and Class C boarding homes' eligibility for conversion to a Comprehensive Personal Care Home (N.J.A.C. 8:33H-1.10(c)4). The rules have been modified accordingly.

The Department declines to eliminate the 20-bed addition limit on new comprehensive personal care home beds (N.J.A.C. 8:33H-1.10(d)). Facilities desiring to add a larger number of beds (or units) may receive approval for an unlimited number of new assisted living residence units (see N.J.A.C. 8:33H-1.10(d)1i). It is the Department's position that the apartment-style design features of assisted living residences are integral to the concept of assisted living and are therefore preferable to the more facility-style living environment of comprehensive personal care homes. For this reason, assisted living residence construction is encouraged, while expansion of comprehensive personal care homes is somewhat less desirable.

The Department also declines to eliminate the reference to transfer agreements with State, county, or private psychiatric hospitals. While the commenter observes that referrals **to** such facilities rarely occur, it is the Department's hope that these transfer agreements will work in the other direction, providing access to alternative placements for discharged psychiatric patients.

The Department acknowledges the commenters' concerns about the financial impact of the five percent SSI occupancy requirement for comprehensive personal care homes, but maintains that the requirement is a fair, very modest way to assure access to care for the SSI-eligible population. The Departments of Health and Human Services are working collaboratively to institute the residential health care facility rate of SSI payment for comprehensive personal care homes, given that the minimum level of nursing care and other services is comparable in these two facilities. Thus Class C boarding homes with SSI residents will benefit financially from converting to a CPCH, as they do currently from converting to a RHCF; RHCF operators, in turn, would not lose their current level of payment from SSI recipients after converting to a CPCH. However, the Department agrees to add a qualifying statement at N.J.A.C. 8:33H-1.10(n)2 to stipulate that if the level of SSI payment for comprehensive personal care homes is ultimately set at a level below the rate for residential health care facilities, the five percent SSI occupancy requirement will not be implemented.

COMMENT: Sunrise Retirement Homes and Marriott Corporation (jointly submitted comments) recommend that the definitions at N.J.A.C. 8:33H-1.2 be consistent with the definitions in the licensing standards at N.J.A.C. 8:36. They request that the definition of a comprehensive personal care home be amended to delete reference to a maximum of two residents per room. In N.J.A.C. 8:33H-1.8(b)2, an unimplemented assisted living residence should be defined as "not yet under construction." The commenter recommends that N.J.A.C. 8:33H-1.10(c)1, 2, and 4 be amended to include "under construction" as an indicator of whether a residential health care facility and/or Class C boarding home should be eligible for conversion to a comprehensive personal care home (CPCH).

RESPONSE: All definitions which are contained in both N.J.A.C. 8:33H and N.J.A.C. 8:36 have been reviewed and are consistent with one another. With regard to the CPCH definition, the Department does not agree to delete the two-person per room limitation. Comprehensive personal care homes will be conversions of existing buildings that will have to meet square footage requirements which are significantly less stringent than those for an assisted living residence. Consistent with the

values of assisted living, the two-person limitation is intended to provide a greater level of resident privacy and to reduce the institutional quality of CPCHs.

In regard to N.J.A.C. 8:33H-1.8(b)2, the interpretation of whether a project is implemented will be governed by the provisions of N.J.A.C. 8:33; specifically, N.J.A.C. 8:33-3.10(a)1i. The latter indicates that a project is implemented when it is "approved and/or licensed by the Department's Division of Health Facilities Evaluation and Licensing." This interpretation is subject to less ambiguity and inconsistency of application than the commenter's recommended definition, "under construction."

The Department accepts the commenter's recommendation to include Class C boarding homes which are under construction at the time the rules become effective. This will assure parity with residential health care facilities which are Certificate of Need (CN)-approved. However, it is redundant and therefore unnecessary to specify, as the commenter has suggested, that RHCFs may be "under construction," since new RHCFs may only be under construction if they have CN-approval.

COMMENT: Kessler Institute for Rehabilitation is concerned about the definition of "nursing home-level of care" in N.J.A.C. 8:33H-1.2. Inclusion of references to "severe impairments" and "rehabilitative services" creates ambiguity in the distinction between comprehensive rehabilitation and nursing home-levels of care. This will lead to a duplication of services at a very high cost to the unsuspecting public.

RESPONSE: The definition of "nursing home-level of care" contained in N.J.A.C. 8:33H-1.2 is used in the context of this rule to differentiate between residents who are essentially independent or who require a lower level of supportive services and those who are so severely impaired as to require "nursing home level care." The concept is a critical one in this rule, because Assisted Living Residences and Comprehensive Personal Care Homes are intended to serve in many cases as a **substitute** for nursing facility placement for people who require long-term care. The definition in N.J.A.C. 8:33H-1.2 was developed, and is currently utilized, by the Department of Human Services' Division of Medical Assistance and Health Services. It is consistent with the Licensing Standards for Long-Term Care Facilities (N.J.A.C. 8:39), including the requirements for rehabilitative services (see N.J.A.C. 8:39-37).

COMMENT: The Center for Hope Hospice recommends that a definition of "hospice" be included (including recommended text), and that the definition of a "comprehensive personal care home" be modified to exempt inpatient hospices from the requirement for lockable doors on residential unit entrances. At N.J.A.C. 8:33H-1.10, the commenter requests an addition to explain the circumstances under which the Department of Health would encourage the establishment of inpatient hospices licensed as comprehensive personal care homes.

RESPONSE: The Department accepts the commenter's suggestion that a definition of "hospice" be added for clarification at N.J.A.C. 8:33H-1.10(a). The Department does not, however, choose to define "hospice" in the manner suggested by the commenter, choosing instead to define hospice in a more global way. The service to the person is the same, no matter where the person resides. The Department has also clarified N.J.A.C. 8:33H-1.10(a) to reflect the purpose of the chapter. With regard to lockable doors, the Department respectfully declines to include an exemption for hospices within the definition of a comprehensive personal care home. However, Certificate of Need applicants may request a waiver from specific physical plant requirements, if they can demonstrate that it is in the best interest of the client population they plan to serve.

COMMENT: Mr. Harmon Hicks indicates that the definition of a "Medicaid-eligible patient" mislabels persons who are above the income cap and therefore denied Medicaid coverage and confuses the issue of protection of community spouses who cannot receive benefits under the spousal impoverishment protection law. It is not clear that savings to the State effected through home and community-based alternatives proposed by DOH will exceed the cost to the patient's family due to the denial to the community spouse of his or her legal income and asset protection under Medicaid law.

RESPONSE: Medicaid-eligible patients receiving Medicaid-waivered home and community based services **are** protected by spousal impoverishment protection laws. However, as the commenter states, persons on General Assistance who do not qualify for Medicaid due to income in excess of established caps are not protected by these laws. The commenter's suggestion would require legislative change in the spousal impoverishment protection law. This is outside the purview of the Department of Health in proposing amendments to N.J.A.C. 8:33H. In any case, the broad definition of a Medicaid-eligible patient which is contained in this rule has the effect of promoting and extending access to long-term care services for people who receive General Assistance.

COMMENT: The Department of Human Services' Division of Mental Health and Hospitals (DMH&H) raised a question about how the conversion of residential health care facilities to comprehensive personal care homes will affect beds which have previously been reserved, through the Certificate of Need process, for occupancy by patients referred from State and county psychiatric hospitals.

RESPONSE: Per N.J.A.C. 8:33H-1.10(n), converting facilities will be required to maintain their existing residents who are former psychiatric patients. Furthermore, all facilities converting to comprehensive personal care homes will be subject to a requirement of at least five percent Supplemental Security Income-recipient occupancy, and half of these placements will be reserved for former psychiatric patients.

Summary of Agency-Initiated Changes:

The public comments regarding N.J.A.C. 8:36 included many questions about the Department's wilingness to grant waivers from the physical plant standards for assisted living residences and comprehensive personal care homes, particularly with regard to the environmental needs of a special client population (for example, people with severe Alzheimer's Disease). The Department is concerned that some physical plant waivers could result in an environment which is not compatible with the values and philosophy of assisted living and which does not promote an improved quality of life for residents. Therefore, the Department will make decisions about plant waiver requests during the Certificate of Need process. To assure consistency between the proposed rules and the Licensing Standards at N.J.A.C. 8:36, a paragraph addressing physical plant waivers is added at N.J.A.C. 8:33H-1.8(d)2 and N.J.A.C. 8:33H-1.10(e)1. This provision is also included at N.J.A.C. 8:36-2.7(e). (See notice of adoption published elsewhere in this issue of the New Jersey Register.)

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

8:33H-1.1 Scope and purpose

(a) The purpose of this chapter is to set forth Certificate of Need and related planning requirements for long-term care services.

(b) (No change.)

(c) The rules contained in this chapter address the Certificate of Need requirements for the following categories and types of facilities, as they are defined in N.J.A.C. 8:33H-1.2:

1. Nursing homes;
2. Comprehensive personal care homes;
3.-4. (No change.)
5. Assisted living residences;
6.-7. (No change.)

Recodify existing (e) through (h) as (d) through (g) (No change in text.)

8:33H-1.2 Definitions

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

"Aging in place" means a process whereby individuals remain in their living environment despite the physical and/or mental decline and growing needs for supportive services that may occur in the course of aging. For aging in place to occur, services are added, increased, or adjusted to compensate for the person's physical and/or mental decline.

"AIDS Community Care Alternatives Program" or "ACCAP" means a Medicaid Federal waiver program which offers all Medicaid services plus special home and community-based services, including case management, to persons who are financially eligible and diagnosed as having AIDS. At a minimum, the person must meet the nursing facility level of care criteria and be maintained in the community at a cost that is no greater than the cost to Medicaid for institutional care.

"Alternate family care" means a contractual arrangement between a client, an alternate caregiving family, and a sponsoring agency whereby no more than two individuals in need of long-term care

receive room, board, and care in the private residence of a non-related family that has been trained to provide the necessary care-giving.

. . .

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services, including residents who require formal long-term care. Assisted living promotes resident self-direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"Assisted living residence" means a facility which is licensed by the Department of Health, in accordance with N.J.A.C. 8:36, to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, to four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

"Commissioner" means the State Commissioner of Health.

"Community Care Program for the Elderly and Disabled" or "CCPED" means a Medicaid-funded, Federally waivered program offering all Medicaid services plus special home and community-based services, including case management to persons who meet specific medical and financial nursing facility eligibility criteria. At a minimum, the person must meet the nursing facility level of care criteria and be maintained in the community at a cost that is no greater than the cost to Medicaid for institutional care.

"Comprehensive personal care home" means a facility which is licensed by the Department of Health, in accordance with N.J.A.C. 8:36, to provide room and board and to assure that assisted living services are available when needed, to four or more adults unrelated to the proprietor. Residential units in comprehensive personal care homes house no more than two residents and have a lockable door on the unit entrance.

"Continuing care retirement community" means the provision of lodging and nursing, medical, or other related services at the same or another location to an individual pursuant to an agreement effective for the life of the individual or for a period greater than one year, including mutually terminable contracts, and in consideration of the payment of an entrance fee with or without other periodic charges. A fee which is less than the sum of the regular periodic charges for one year of residency is not considered an entrance fee. For Certificate of Need exemption purposes, a new or proposed community which will have fewer than four independent living units per nursing facility bed, or an existing community which proposes to construct additional nursing facility beds which will be utilized by persons who have not paid the entrance fee, is not a continuing care retirement community.

"Deficiency" means a finding or findings by the Department of Health that a facility is not in compliance with applicable State licensure requirements and/or Federal requirements for a health care facility. A deficiency remains valid unless overruled by the Commissioner of Health or a judicial appeal process.

. . .

"Hospice" means a program of palliative and supportive services provided to terminally ill persons and their families in the form of physical, psychological, social, and spiritual care.

. . .

"Nursing home-level care" means care provided to individuals who have chronic medical condition(s) resulting in moderate to severe impairments in physical, behavioral, cognitive, and/or psychosocial functioning. The need for nursing home-level care and services is determined by a registered nurse and identified in a plan of care, in accordance with N.J.A.C. 8:36-7.1 "Nursing home-level care" includes, but is not limited to, partial or total assistance with activities of daily living (for example, bathing, dressing, eating, toileting, mobility), assistance with self-administering or administration of medications, and provision of treatments and periodic reassessments as directed by the plan of care. It may also include the provision of physiotherapy, occupational therapy, therapeutic counseling, and other rehabilitative services as indicated by the individual's medical condition.

. . .

"Statewide restricted admissions facility" means a non-profit nursing home owned and operated by a ***religious or*** fraternal organization that serves only members of that organization and their immediate families.

[AGENCY NOTE: N.J.A.C. 8:33H-1.3 is recodified as N.J.A.C. 8:33H-1.20.]

8:33H-1.20 Relationship between licensure and certificate of need requirements

(a) The provisions of N.J.A.C. 8:39, Licensing Standards for Long-Term Care Facilities, N.J.A.C. 8:43, Manual of Standards for Licensure of Residential Health Care Facilities, and N.J.A.C. 8:36, Standards for Licensure of Assisted Living Residences and Comprehensive Personal Care Homes, are hereby incorporated by reference. Applicants receiving certificate of need approval under the provisions of this chapter shall comply with all applicable licensing requirements of N.J.A.C. 8:39, N.J.A.C. 8:36, and N.J.A.C. 8:43.

8:33H-1.3 "Window of opportunity" approach to planning long-term care alternatives

(a) Notwithstanding other provisions of this chapter, and in the interest of stimulating the development of new long-term care alternatives, the Department of Health hereby effectuates an 18-month "window of opportunity," during which applicants for assisted living residences and comprehensive personal care homes may file a Certificate of Need application which shall receive an expedited review. Applications submitted during this time shall be reviewed in accordance with the pertinent requirements set forth in this chapter, but shall not be subject to a need methodology.

1. The "window of opportunity" shall commence on *[the date these rules become effective; that is, the date the adopted rules are published in the New Jersey Register]* ***December 20, 1993***.

2. Prior to the conclusion of the 18 month "window of opportunity" on *[(insert date upon adoption)]* ***June 20, 1995***, the Department shall propose a new need methodology for all long-term care services and new criteria for a full competitive Certificate of Need review process for assisted living residences and comprehensive personal care homes. Effective at the conclusion of the "window of opportunity," the expedited review process for these facilities will no longer be available.

3. At such time as the Department of Health adopts licensing standards for alternate family care programs, as defined at N.J.A.C. 8:33H-1.2, the Department shall also adopt amendments to this chapter to effectuate a "window of opportunity," during which applicants for alternate family care programs may file a Certificate of Need application which shall receive an expedited review.

8:33H-1.4 Role of counties, Local Advisory Boards, and the State in long-term, care planning

(a) (No change.)

(b) In each county where there is a projected need for new long-term care placements in accordance with the methodology specified in N.J.A.C. 8:33H-1.5, the Long-Term Care Committee shall formulate a proposal specifying the mix of options and the number of placements of each type that are to be developed in the county. Options shall be:

1.-2. (No change.)

3. Comprehensive personal care homes;

Recodify 5-6 as 4-5 (No change in text.)

(c) (No change.)

(d) The Local Advisory Board shall make a determination as to whether each county's placement mix proposal and the process whereby it was developed by the county Long-Term Care Committee comply with all applicable requirements contained in this chapter.

1.-2. (No change.)

3. In the event that a county has not developed a placement mix proposal which is accepted by the Local Advisory Board within the time frame stipulated in (c) above, a "default" proposal shall be

developed and implemented for the county by the State Health Planning Board. Options available in the default mix proposal shall be:

i.-ii. (No change.)

Recodify iv-v as iii-iv (No change in text.)

(e)-(m) (No change.)

8:33-1.5 Projection of need for long-term care placements

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

(d) The formula for computing the number of long-term care placements needed shall be as follows:

1. (No change.)

2. From each county's total computed in (d)1 above, subtract the county's current inventory of long-term care placements, which shall include the following:

i. (No change.)

ii. Home and community-based service waiver slots, including those currently available to the county and those which have been requested in the county's placement mix proposal, accepted in accordance with N.J.A.C. 8:33H-1.4-(c)1;

iii. (No change.)

iv. Alternate family care placements, including those currently in use and those which have been requested in the county's placement mix proposal, accepted in accordance with 8:33H-1.4;

v. Licensed and Certificate of Need-approved assisted living residence units; and

vi. Licensed and Certificate of Need-approved comprehensive personal care beds.

3. (No change.)

(e) (No change.)

8:33H-1.6 Pediatric long-term care

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

8:33H-1.8 Assisted living residences

(a) The applicant for an assisted living residence or for an addition to an existing, licensed assisted living residence shall submit a Certificate of Need application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33.

(b) The applicant shall provide a description of his or her professional track record, as it pertains to the ability to implement and operate high quality assisted living residences. The description shall include, but not be limited to, the applicant's experience serving an elderly/disabled population, history of compliance with applicable regulatory requirements, fiscal viability, and record of timely, successful implementation and management of previous projects.

1. Applicants who own, operate, or manage any licensed health care facilities in New Jersey or other states shall have their track record evaluated in accordance with the requirements in N.J.A.C. 8:33H-1.14.

2. To minimize the problem of "paper beds" (that is, approved but unimplemented facilities) and to facilitate the establishment of high quality assisted living providers, and notwithstanding the provisions of N.J.A.C. 8:33H-1.12(f), no more than three Certificate of Need approvals for unimplemented assisted living residences may be held by any applicant at any point in time.

(c) The applicant shall provide a description of the proposed assisted living services and a plan for how these services will be provided in the facility, in accordance with the licensing requirements at N.J.A.C. 8:36. The plan shall include, but not be limited to, a description of staff roles and responsibilities, staff orientation and training regarding assisted living concepts, and resident orientation and education regarding available services.

(d) The applicant shall provide a description of the proposed physical plant, including the square footage for each common area and square footage per residential unit. The applicant shall specify how the architectural design will promote the essential elements of assisted living, including privacy, active independence, autonomy, and a homelike environment. Furthermore, the applicant shall indicate how the physical plant will facilitate the care of residents with common long-term care problems such as reduced mobility, incontinence, and dementia.

1. An existing building or health care facility may be considered for approval as an assisted living residence, provided that the proposed structure is or will be in substantial compliance, as determined by the Department of Health, with all applicable physical plant requirements contained in N.J.A.C. 8:36.

2. All requests for waivers to the physical plant requirements in N.J.A.C. 8:36-3 shall be fully explained, justified, and approved in accordance with N.J.A.C. 8:36-2.7, as part of the certificate of need application.

(e) The applicant shall provide a description of the community in which the proposed assisted living residence will be located and a demographic analysis of the facility's target population. The applicant shall provide supporting documentation to show that the facility will be affordable given the socio-economic status of the target population, and that financially viable occupancy rates can be achieved given the size of the proposed facility in relation to the size and demographic characteristics of the target population.

(f) The applicant shall submit a draft copy of the resident service contract, indicating proposed charges for room and board and all levels of care and for all additional services not included in the standard package rates. This contract shall specify how and when the resident will be notified of any change in charges.

(g) The application shall include a statement of the applicant's commitment to assuring access to assisted living for individuals with nursing home-level care needs, as defined in N.J.A.C. 8:33H-1.2. Within 36 months after licensure, at least 20 percent of the facility's residents shall be individuals with nursing home-level care needs. This percentage shall be computed based on the number of resident days per calendar year and may include direct admissions as well as maintained residents with nursing home-level care needs. The facility shall report this information to the Department of Health by April 15 of each year for the prior calendar year.

(h) In order to assure two-way access to care between hospitals and the assisted living residence, the applicant shall maintain signed referral and/or transfer agreements with at least two New Jersey hospitals, including at least one State, county, or private psychiatric hospital. At the time of initial licensure, the facility shall sign and subsequently maintain these written agreements.

(i) Certificate of Need applications submitted subsequent to the time that Medicaid reimbursement for assisted living residences becomes generally available shall include a statement of commitment to provide access and continuity of care for Medicaid-eligible patients, including former psychiatric patients, who need nursing home level care.

8:33H-1.10 Comprehensive personal care homes

(a) In order to improve the utilization of readily available residential health care and "Class C" boarding home beds, to give current residents of these facilities the opportunity to age in place, and to improve access to care for many hospitalized patients and others who need long-term care placements, the Department shall give consideration to the conversion of residential health care facilities and "Class C" boarding homes to comprehensive personal care homes. The Department aims to preserve and promote the residential atmosphere of these settings, while enhancing the level of care and services they may provide, in accordance with the licensure standards at N.J.A.C. 8:36. ***Furthermore, in the case of hospice, the Department aims to promote the establishment of comprehensive personal care homes to serve terminally ill persons who lack adequate caregiving support to meet their needs while residing at home.***

(b) The applicant for a comprehensive personal care home shall submit a Certificate of Need application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33.

(c) Eligibility for conversion to a comprehensive personal care home shall be open exclusively to the following:

1. Freestanding residential health care facilities which were either licensed or Certificate of Need-approved on or before *[the date that these rules become effective]* ***December 20, 1993***;

2. Residential health care beds located within a long-term care facility that was licensed or Certificate of Need-approved on or

before *[the date that these rules become effective]* ***December 20, 1993***;

3. Licensed long-term care beds; and

4. "Class C" boarding homes which were licensed ***or under construction*** on or before *[the date that these rules become effective]* ***December 20, 1993***.

(d) Eligibility for the construction of new comprehensive personal care beds shall be open exclusively to the following:

1. Existing comprehensive personal care homes and existing facilities proposing conversion to a comprehensive personal care home that wish to add a limited number of beds. Within any five year period commencing at the time of licensure, the new construction of no more than 20 beds as an addition to an existing or proposed comprehensive personal care home may be considered for Certificate of Need approval.

i. Applicants who wish to add more than 20 beds shall apply for approval as an assisted living residence.

2. Hospice programs which have been Medicare-certified for at least 12 consecutive months. If approved, the facility shall be constructed using the current New Jersey Uniform Construction Code, Use Group I-1, which is applicable for residential health care facilities.

i. As a condition of Certificate of Need approval, the facility shall be occupied exclusively by patients who are eligible for hospice services.

ii. The facility shall contain no more than 20 comprehensive personal care beds at project completion.

(e) Only applications proposing the conversion of facilities which are capable of meeting the physical plant standards for licensure as a comprehensive personal care home, in accordance with N.J.A.C. 8:36, shall receive consideration for approval to convert to comprehensive personal care.

1. All requests for waivers to the physical plant requirements in N.J.A.C. 8:36-3 and 8:36-17 shall be fully explained, justified, and approved in accordance with N.J.A.C. 8:36-2.7, as part of the certificate of need application.

(f) Only applications proposing either conversion of the facility's entire complement of beds, or conversion of one or more separate and distinct units, wings, floors, or areas within the facility, shall receive consideration for approval to convert to comprehensive personal care.

(g) With regard to the facility's physical plant (for example, corridor widths, room size, handicap accessibility), the applicant shall identify the facility's capacity and limitations for meeting the needs of those residents who may require nursing home-level care. In this context, the applicant shall identify how and whether residents with common long-term care problems such as reduced mobility, incontinence, and dementia can safely and effectively be accommodated in accordance with the licensing standards at N.J.A.C. 8:36.

1. Comprehensive personal care homes shall have no more than two residents per bedroom. Applicants shall propose the conversion of that number of beds which will result in no more than two residents per room. If the facility has bedrooms with more than two occupants, the applicant shall propose a plan to achieve occupancy of no more than two residents per room in the comprehensive personal care beds.

(h) Applicants proposing the conversion of an existing, licensed residential health care facility or "Class C" boarding home shall provide a description of the facility, its current services, staff qualifications, the community in which it is located, linkages with other community agencies, residents' demographics (for example, age, race/ethnicity, payer mix), and recent occupancy data.

(i) The applicant shall provide a description of the proposed comprehensive personal care program and a plan for how it will be implemented in the facility, in accordance with the licensing requirements at N.J.A.C. 8:36. The plan shall include, but not be limited to, a description of new staff roles and responsibilities, staff orientation and training regarding assisted living concepts, resident orientation and education regarding new services to be provided, as needed, and specific changes in the operation of the facility which will be necessary to comply with the licensure standards for comprehensive personal care homes.

(j) Applicants who own, operate, or manage any licensed health care facilities in New Jersey or other states shall have their track record evaluated in accordance with the requirements in N.J.A.C. 8:33H-1.14.

(k) The applicant shall submit a draft copy of the resident service contract, indicating proposed charges for room and board and all levels of care and all additional services not included in the standard package rates. This contract shall specify how and when the resident will be notified of any change in charges.

(l) In order to assure two-way access to care between hospitals and the comprehensive personal care home, the applicant shall submit copies of signed referral and/or transfer agreements with at least two New Jersey hospitals, including at least one State, county, or private psychiatric hospital.

(m) Certificate of Need applications submitted subsequent to the time that Medicaid reimbursement for comprehensive personal care homes becomes generally available shall include a statement of commitment to provide access and continuity of care for Medicaid-eligible patients, including former psychiatric patients, who need nursing home level care.

(n) In converting to a comprehensive care home from a residential health care facility or Class C boarding home, the facility shall maintain its existing residents who are Supplemental Security Income-eligible recipients and former psychiatric patients. On an ongoing, annual basis, at least five percent of the facility's residents shall be Supplemental Security Income-eligible recipients, at least half of whom shall be former psychiatric patients. This percentage shall be computed based on the number of resident days per calendar year. The facility shall report this information to the Department of Health by April 15 of each year for the prior calendar year.

1. In the event that the facility's Supplemental Security Income-eligible residents develop the need for nursing home level care, as defined at N.J.A.C. 8:33H-1.2 and determined by Medicaid's preadmission screening process at N.J.A.C. 10:63, the facility shall maintain these residents in accordance with the licensing standards at N.J.A.C. 8:36, subject to the facility's discharge criteria in accordance with N.J.A.C. 8:36-4.1(d), provided that Medicaid reimbursement is available. However, if Medicaid reimbursement is not available, the facility shall make all necessary arrangements to transfer the person to a nursing home.

2. In the event that the Supplemental Security Income (SSI) payment rate for comprehensive personal care homes is set at a level below the SSI payment rate for residential health care facilities, the five percent occupancy requirement for SSI-eligible residents in (n) above shall not take effect. However, comprehensive personal care homes shall maintain their existing residents who are Supplemental Security Income-eligible, as required in (n) above.

8:33H-1.12 Residential health care facilities

(a) An applicant proposing a new residential health care facility shall submit a Certificate of Need application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33. The applicant shall comply with the applicable utilization requirements for Supplemental Security Income recipients and former psychiatric patients, in accordance with 8:33H-1.15.

8:33H-1.13 Conversion or elimination of licensed or Certificate of Need approved beds or services

(a) Applicants proposing to convert any licensed beds shall submit schematic plans with a floor layout of the facility, illustrating how the proposed conversion will be accomplished. In order to assure that the bed conversion can be implemented in accordance with health facility construction standards, it is recommended that applicants consult with the Department's Office of Health Facilities Construction Services in the Division of Health Facilities Evaluation, prior to submitting a certificate of need application. Applications for bed conversions that are submitted without schematic plans shall be deemed incomplete.

(b) Applicants for the conversion of residential health care beds to long-term care beds shall document a commitment to enabling current residents to continue occupying their assigned beds until or unless a permanent relocation placement is requested by the resident.

1. (No change.)

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

(f) Certificate of Need applications proposing the conversion of residential health care beds to long-term care beds shall meet the following requirements:

1.-3. (No change.)

(g) (No change.)

(h) (No change in text.)

8:33H-1.14 Quality of care and licensure track record requirements for long-term care, assisted living residences, comprehensive personal care homes, and residential health care facilities

(a) (No change.)

(b) Applicants shall demonstrate the capacity to provide a quality of care which meets or surpasses the requirements contained in the applicable licensing standards for the facility. Evidence of the capacity to provide high quality care shall include (b)1 below and may also include (b)2 through 4 below:

1. A satisfactory record of compliance with licensure standards in existing health care facilities which are owned, operated, or managed, in whole or in part, by the applicant. This shall include reports issued by licensing agencies from other states, as well as from the Department;

2.-4. (No change.)

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

(e) In evaluating track record, the Department may consider any evidence of noncompliance with applicable licensure and certification requirements provided by an official state licensing and/or certification agency in any state outside of New Jersey, or any official records from any agency of the State of New Jersey indicating the applicant's non-compliance with the agency's licensure or certification requirements in a facility the applicant owned, operated, or managed in whole or in part.

1. It is the responsibility of the applicant to contact all relevant licensing and certification agencies in all other states where the applicant owns, operates, or manages facilities, in order to secure letters or other documentation from them attesting to the track record of the applicant in those states. This documentation shall be submitted by the applicant as part of the Certificate of Need application.

(f)-(i) (No change.)

8:33H-1.18 Location of facilities

(a) The applicant shall describe the proposed site of a project and the immediate surrounding community, identifying how the site is currently zoned and providing a time table for securing any and all necessary zoning and land use approvals. The construction of new or replacement facilities proposed to be located on sites which are currently zoned for heavy industrial use shall not be approved.

1. Applicants should not enter into costly land use or zoning approval procedures prior to receiving an approved Certificate of Need.

(b) (No change.)

(c) The applicant for a new facility shall describe the availability to the proposed site of all necessary utilities. Where utilities are not already available at the proposed site, the applicant shall provide a timetable and detail the costs for obtaining these utilities.

(d) The applicant shall identify the proposed facility's proximity to any potential source of adverse environmental conditions. Facilities shall be located so as to prevent exposure of residents to adverse environmental conditions which might hamper or interfere with their care, including excessive noise levels, offensive odors, or unsightly physical surroundings.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Standards for Licensure of Assisted Living Residences and Comprehensive Personal Care Homes

Adopted New Rules: N.J.A.C. 8:36

Proposed: August 16, 1993 at 25 N.J.R. 3734(a).

Adopted: November 23, 1993 by Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: November 24, 1993 as R.1993 d.672, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: December 20, 1993.

Expiration Date: December 20, 1998.

Summary of Public Comments and Agency Responses:

The proposed new rules were published on August 16, 1993. Sixteen letters of comment were received during the comment period which closed on September 15, 1993. An additional nine letters of comment were received after September 15. In developing these responses the Department considered all comments received regardless of date. Comment letters were received from Monmouth County Office of Social Services; Eric S. Martindale, Jr.; Salem County Long Term Care Committee; Collingswood Manor; Philip D. Sloane, M.D., Professor, Department of Family Medicine, University of North Carolina; Visiting Nurses Association (VNA) of Southern New Jersey; New Jersey Hospice Organization; New Jersey Department of Community Affairs, Division of Codes and Standards; Marriott Corporation and Sunrise Retirement Homes and Communities; State Board of Nursing; New Jersey Department of Human Services, Division of Mental Health and Hospitals; New Jersey Association of Non-Profit Homes for the Aging (NJANPHA); Bergen Pines County Hospital; IDEAS; Manor Health Care Corporation; Andrew Cohen, Esq; The Union County Long Term Care Task Force; The Center for Hope Hospice; Dr. Solomon Goldberg; New Jersey Association of Health Care Facilities; Essex County Long Term Care Task Force; Gloucester County Long Term Care Committee; Burlington County Long Term Care Committee; the Region One Health Planning Advisory Board; the Visiting Nurse Association of Sussex County; St. Clare's/ Riverside Medical Center; and The United Methodist Homes of New Jersey.

COMMENT: Many commenters expressed their strong support of the goals and concepts contained in the rules and the "thoughtfulness that went into their development." IDEAS noted that the rules represented "a commitment to ensuring the highest quality of life, in addition to quality of care, a combination not found in many other states." United Methodist Homes stated "that the orientation towards reduction in regulation will enhance the quality of the service that is provided and promote local initiative to identify a variety of ways in which the quality of life for frail seniors can be improved."

RESPONSE: The Department appreciates these many comments and acknowledges the efforts of the volunteers who participated in the Assisted Living Licensure Work Group and advised staff over many months regarding these rules.

COMMENT: Several commenters expressed concern that the proposed rules were "too stringent" or "too restrictive" and that assisted living "Should not be regulated as stringently as a traditional medical model facility." However, these commenters offered no specific revisions to the rules.

RESPONSE: N.J.A.C. 8:36, as proposed, is significantly less stringent and more flexible than the licensing standards for any other health care facility in New Jersey. Thus, the Department disagrees with the generalization made by these commenters and believes that the proposed revisions noted below will clarify the extent of provider flexibility and initiative offered by these rules.

COMMENT: Mr. Martindale asked that a number of clarifying statements be added to the rules clearly encouraging the conversion of apartment buildings into assisted living facilities.

RESPONSE: The rules at this time intentionally do not address the provision of assisted living services in apartment buildings. Apartments

developed with Department of Housing and Urban Development funds may not become licensed health care facilities. The Department will continue to work with the Assisted Living Licensure Work Group to investigate how best to provide assisted living in non-licensed apartments and what, if any, additional regulations may be appropriate.

N.J.A.C. 8:36-1.3 Definitions

COMMENT: The Center for Hope Hospice recommends that the term "hospice" be defined, and suggested a definition for the term.

RESPONSE: Proposed N.J.A.C. 8:36-17.1(b) permits hospice programs to apply for licensure as comprehensive personal care homes. Thus, the Department accepts this comment and has included a definition of the term as requested.

COMMENT: Collingswood Manor, Marriot/Sunrise, NJANPHA, and the United Methodist Homes each requested that a sentence be added to the definition of a "health care service" to clarify that the administration of a medication, in and of itself, did not constitute a health care service.

RESPONSE: The Department agrees that the administration of medications, by itself, does not constitute a health care service. This clarification is more appropriately made, and has been made, under Pharmaceutical Services, at N.J.A.C. 8:36-9.3 as a new subsection (a). The administration of medication is either accomplished by a nurse, or delegated by that nurse to a licensed practical nurse or home health aide who is under that nurse's supervision, in accordance with the Nursing Practices Act.

COMMENT: Marriott/Sunrise requested that the definition of a "comprehensive personal care home" be revised to delete the prohibition against housing more than two individuals in a residential unit. The commenters note that there is not a similar prohibition for assisted living residences.

RESPONSE: The Department does not agree with the suggestion to delete this requirement. Comprehensive personal care homes will be conversions of existing buildings that will have to meet significantly less stringent square footage requirements than those for an assisted living residence. Additionally, these homes are not required to provide private baths or kitchenettes. In these circumstances, it is appropriate to permit only two individuals per unit so that the goals of independence, homelike surroundings, and privacy may be more readily met.

COMMENT: Marriott/Sunrise, NJANPHA and United Methodist Homes commented on the definition of "personal care." They requested that the following clarifying sentence be added: "Except as required by these rules, personal care need not be provided by a personal care assistant."

RESPONSE: The Department agrees that this is the intent of the rules and has made the requested language addition.

COMMENT: Andrew Cohen noted that the definition of "assisted living" was too broad and might "create some confusion as to which types of facilities would be considered assisted living facilities." He suggested deleting the reference to personal services, in the definition, leaving only the term health care services.

RESPONSE: The Department disagrees with the comment. The definition is clear within the context of the entire rule. Perhaps more importantly, the suggested revision would not indicate the true nature of what assisted living means and would make it appear to reflect only a medical model, contrary to the intent of these rules.

COMMENT: NJANPHA requested that a definition of a "continuing care retirement community" be added to this section. They believe such communities should be noted later in the rules and thus should be included in the definitions.

RESPONSE: The Department agrees and has added the requested definition.

N.J.A.C. 8:36-1.5 Qualifications of the administrator

COMMENT: Marriott/Sunrise suggested that the qualifications be expanded to require that at a minimum the administrator must be at least 18 years of age and have high school diploma or equivalent. NJANPHA requested that the reference in N.J.A.C. 8:36-1.5(b) to "assisted living concepts" be expanded by adding the phrase "and related topics." This would allow greater flexibility and breadth in the programming for continuing education.

RESPONSE: The Department agrees these suggestions clarify the intent of the rules and has made the recommended changes, which are in keeping with the Department's requirements for other similar facilities.

N.J.A.C. 8:36-1.7 Qualifications of licensed practical nurses

COMMENT: Marriott/Sunrise suggested that this section be deleted since the rules do not require any staffing by licensed practical nurses.

RESPONSE: While the rules do not require any staffing by a licensed practical nurse, the Department anticipates that some facilities may staff with them. Thus, it is important to retain this section.

N.J.A.C. 8:36-1.8 Qualifications of personal care assistants

COMMENT: Collingswood Manor, Marriott/Sunrise, NJANPHA, and United Methodist Homes asked that provisions be made at N.J.A.C. 8:36-1.8(a) for a future third training alternative for personal care assistants. The suggested language is "Other training program approved by the Department." They also asked for a new subsection (c) to be added that would permit persons enrolled in a training program to perform as a personal care assistant with certain limitations.

RESPONSE: The Department agrees that these are appropriate suggestions that clarify intent and has made the requested revisions.

N.J.A.C. 8:36-1.11 Qualification of registered professional nurses

COMMENT: The State Board of Nursing suggested adding language requiring that registered professional nurses employed in an assisted living setting "document educational preparation or clinical practice experience in caring for the geriatric client."

RESPONSE: The Department does not agree that the recommended addition is necessary, as it is not currently mandated in either long term care or residential health care services. A registered professional nurse is trained and educated to perform nursing assessments and may do so by virtue of holding a license. Additionally, not all residents in an assisted living environment will be elderly. Thus, it is important that any nurse working in this environment have expertise related to the population of that environment. The Department will monitor resident outcomes and believes there are sufficient safeguards in the rules to assure both quality of care and quality of life.

N.J.A.C. 8:36-2.2 Application for licensure

COMMENT: Collingswood Manor, NJANPHA, and United Methodist Homes suggested that subsection (c) be amended to permit the facility to submit an alternative document indicating the scope of the facility's services instead of its admission agreement. It was also indicated that since these facilities will undergo at least an annual survey when the agreement would be checked, the requirement for submitting all revisions to the Department to review could be deleted. In addition, it was suggested that this subsection not apply when a continuing care retirement community (CCRC) contracts with its residents to provide assisted living pursuant to a continuing care agreement, as this would be requiring an additional agreement. However, the subsection would apply whenever a CCRC provided assisted living to an individual who is not a party to a continuing care agreement.

RESPONSE: The Department agrees these suggested revisions would appropriately ease the paperwork requirements on facilities and has made the requested changes.

COMMENT: Marriott/Sunrise and NJANPHA suggested that the intent of the phrase in parentheses in subsection (d) would be clarified if the word "licensed" was inserted before "beds" and if the words "maximum" and "available" were deleted.

RESPONSE: The Department agrees and has made the requested revisions.

N.J.A.C. 8:36-3.4 Exit passageways and corridors

COMMENT: The Union County Long Term Care Task Force suggested increasing the minimum corridor width from 44 inches to 60 inches so that two wheelchairs could pass each other in the hallway.

RESPONSE: The Department does not agree with this suggestion. The clear intent of these rules is to provide an environment as homelike as possible. Thus, corridor widths (and lengths) should be kept as small as possible. It is expected that the design of new assisted living residences will provide for alcoves or other innovative designs so that two wheelchairs can navigate a corridor, although not necessarily side by side.

N.J.A.C. 8:36-3.8 Minimum unit size

COMMENT: The NJANPHA and the United Methodist Homes both suggested that subsection (a) reference clear and usable floor area and not just clear floor area. Additionally, they recommended that a vestibule not be excluded from the calculation of the size of clear and usable floor area since, depending on the design of the unit, vestibules may be usable for furniture placement and the like.

RESPONSE: The Department agrees with these recommended changes and has revised the section accordingly, to add the word "usable," which, in architectural terms, means spaces which are not used for some other purpose, such as passage, or door clearance.

COMMENT: Manor Care suggested that the 150 square foot minimum requirement at subsection (a) "is not optimal for the resident suffering from a progressive disease such as dementia. From the perspective of a specialty provider, the requirement that resident units take on an apartment-like atmosphere both in size and amenities over-invests valuable resources in residents' private space, overlooking the need to provide multiple, clustered activity spaces that maintain the familiarity of a single family home. In designing for dementia, the more fiscally prudent approach would enable the provision of somewhat smaller resident bedrooms in conjunction with all support areas necessary to create an appropriate homelike environment." The commenter asks that language be modified to permit "latitude" in these rules for providers to develop assisted living facilities for those with dementia. Marriott/Sunrise suggested that a smaller square footage requirement may make assisted living more affordable for low income persons.

RESPONSE: The proposed rules were developed keeping in mind that some residents would be suffering from some form of dementia. The resources used in developing these rules indicated that a good deal of independence and privacy were not necessarily incompatible with the care of persons with dementia. The term "specialty provider" used by the commenter appears to indicate the commenter's concern that special rules need to be developed to permit an assisted living-like environment for population with specifically defined "special" needs. These rules are not intended to address "special" needs, although the Department does intend in the future to explore the need for specific rules or exemptions to accommodate a defined "special" needs population. Thus, at this time, it is not appropriate to modify the rules. However, it is the Department's intent to promote as broad an array of assisted living environments as possible. Any provider proposing the development of an assisted living environment to exclusively and at all times serve a "special needs" (including low income) population may request a waiver to the physical plant requirements in accordance with N.J.A.C. 8:36-2.7. A new subsection (e) has been added there as a technical amendment to clarify the Department's intent and to note that such waiver requests must also be requested and approved through the certificate of need process.

COMMENT: Both IDEAS and the Center for Hope Hospice commented on subsection (c) which requires that residential units shall be lockable by the occupants. The former suggested that this might not be appropriate for cognitively impaired individuals, and the latter noted it might not be appropriate for the terminally ill in a hospice setting. IDEAS recommended that facilities be permitted a waiver from this requirement, while the hospice suggested adding language that would exempt a hospice program from it.

RESPONSE: The Department does not agree that any facility should be automatically exempted from this requirement. The ability to lock one's own door is central to the assisted living environment and in promoting privacy. This may hold true even in a hospice setting. However, facilities will be able to request a waiver from this provision based on the nursing assessment and discussion with the resident and resident's family.

N.J.A.C. 8:36-3.9 and 3.10 Toilets, baths, handwashing sinks and kitchenettes

COMMENT: Dr. Sloane of the University of North Carolina, IDEAS, Manor Care, Marriott/Sunrise, NJANPHA, and United Methodist Homes commented on these two sections. Marriott/Sunrise, NJANPHA, and the United Methodist Homes each suggested that only one handwashing sink be required—not one each in the bathroom and kitchenette. Dr. Sloane, IDEAS, and Manor Care each noted that the various requirements regarding bathrooms and kitchenettes may not always be appropriate for the cognitively impaired.

RESPONSE: The Department does not agree that sinks in both the bathroom and kitchenette are unnecessary. Assisted living is to promote as homelike an environment as possible. Virtually all homes have sinks in both areas. From both aesthetic and infection prevention points of view, it is not appropriate to expect toilet activities to occur in a kitchen sink where food is prepared; or to expect kitchen activities to occur in a bathroom sink.

In response to the other commenters, it has been noted previously that the Department will consider physical plant waivers for those providers who plan to exclusively serve a "special needs" population.

N.J.A.C. 8:36-3.11 Community space

COMMENT: IDEAS expressed concern that this section merely requires community space to be developed at 30 square feet per resident and is not specific enough as to the kinds of space that must be developed.

RESPONSE: This section is intentionally written as proposed in order to provide the developer with as much flexibility as possible in facility design. This remains the Department's intent and, thus, the rule is not changed.

N.J.A.C. 8:36-3.14 Administration and public areas

COMMENT: Both NJANPHA and the United Methodist Homes recommend that subsections (g) and (h), related to examination/treatment rooms and an infirmary, be deleted. They believe these kinds of areas are unnecessary in assisted living and that the kinds of care that would be provided in such rooms would be more appropriately provided in the resident's room.

RESPONSE: While the Department agrees that most, if not all, resident care should be provided in the resident's room, that may not always be possible. These kinds of rooms are not required but at the provider's option. In that vein, they merely offer an additional design flexibility for the provider.

N.J.A.C. 8:36-4.1 Types of services provided to residents

COMMENT: The State Board of Nursing asked that N.J.A.C. 8:36-4.1(a) state that the referenced "assessment" be done "only by a registered professional nurse." The Board also requested that reference to N.J.A.C. 13:37-6.2 regarding delegation of nursing tasks be added to N.J.A.C. 8:36-4.1(c).

RESPONSE: Subsection (a) is correct as proposed. The "assessment" noted in the subsection is to be used by the facility to provide or coordinate appropriate care to the resident. Thus, an "assessment" might be done by other than registered professinal nurses, such as a physician or physical therapist. In regard to subsection (c), it is noted that the requested citation is already more appropriately included at N.J.A.C. 8:36-9.3, Administration of medications. Subsection (c) is a general requirement and also includes the requirement for supervision of the self-administration of medications which does not fall under nurse delegation responsibilities.

COMMENT: Collingswood Manor, the Division of Mental Health and Hospital (DMHH), IDEAS, Marriott/Sunrise, NJANPHA, the Region One Health Planning Board, St. Clare's/Riverside Medical Center, Dr. Sloane, the State Board of Nursing, Union County Long Term Care Task Force, and the United Methodist Homes all commented on proposed N.J.A.C. 8:36-4.1(d). The Division of Mental Health and Hospitals expressed concern that the phrase "moved from the facility" did not clearly imply that the transfer was to a "more appropriate" facility.

IDEAS and Dr. Sloane noted that the reference in paragraph (d)4 to "simple decisions" was too vague. The Board of Nursing did not feel that it was clear who made the decision to move the resident from the facility and that all of subsection (d) was too broad. The Union County Long Term Care Task Force recommended that paragraph (d)3 be deleted since "many disabled persons consider implied nursing home care to be inappropriate for the lifestyles they like to have." Collingswood Manor, Marriott/Sunrise, NJANPHA, and the United Methodist Homes noted that the phrase "and is not controllable by medication" in paragraph (d)7 is inappropriate and should be deleted since almost any behavior can be controlled by sufficient medication. The latter three organizations also recommended that paragraph (d)8 be rephrased to indicate the intent that the three clauses indicated are not additive. NJANPHA also asked that language be added that exempted continuing care retirement communities from subsection (e) when such a community offers assisted living to one of its residents pursuant to a continuing care agreement. The commenter also argues that these communities "have every incentive to keep residents in the assisted living component for as long as possible." The Region One Health Planning Board and St. Clare's/Riverside Medical Center expressed concern about potential "conflicts of interest" between health care staff and facility owners/administrators.

RESPONSE: The Department does not concur with the comments of the DMHH or the State Board of Nursing. N.J.A.C. 8:36-4.1(e) requires that the facility's admission agreement clearly specify whether or not a resident with one or more of the characteristics listed in N.J.A.C. 8:36-4.1(d)1 through 8 will be retained. Subsection (d) requires that transfer may occur only upon documentation in the health care plan

that a higher level of care is needed and N.J.A.C. 8:36-7.1(d) requires the health care assessment and plan be completed by a registered professional nurse. In addition, N.J.A.C. 8:36-4.12, 4.13 and 6.1(a)10 all provide protection against inappropriate transfer. The Department also does not share the concerns expressed by IDEAS and Dr. Sloane regarding N.J.A.C. 8:36-4.1(d)4 since documentation of the cognitive decline must be made in the health care plan by the registered nurse. The Department also does not agree that N.J.A.C. 8:36-4.1(d)3 should be deleted. It must be reiterated that N.J.A.C. 8:36-4.1(d)1 through 8 describes permissive, not required, discharge criteria. Also, the Department agrees with the comments regarding N.J.A.C. 8:36-4.1(d)7 and 8, as well as the exemption for continuing care retirement communities, and has made the requested revisions. Finally, the Department believes there are sufficient protections in the rules and in professional licensing requirements to preclude the kinds of conflict of interest to which the commentor's allude.

COMMENT: The Union County Long Term Care Task Force recommended that a requirement be added that each facility contract with a home health agency. They noted this "will better meet the needs of patients in newly developing Assisted Living Programs."

RESPONSE: The Department does not agree that this should be a mandated requirement. Facilities will be required to meet the staff levels in N.J.A.C. 8:36-4.5. The purpose of these rules is to encourage the development and use of living arrangements which are as homelike and normal as possible. In order to accomplish this, the rules must be flexible and not unduly burdensome.

N.J.A.C. 8:36-4.5 Staffing requirements

COMMENT: Both NJANPHA and the United Methodist Homes requested that language be added at paragraph (b)1 to permit a facility with fewer than 24 licensed beds to petition the Department for a waiver from the requirement of at least one awake personal care assistant "during the normal sleeping hours of residents." These groups also noted that while N.J.A.C. 8:36-4.1(d) references "staffing ratios," the requirements are for staffing "levels" and requested that the appropriate change be made. Finally, they also requested that the term "due diligence" be deleted from subsection (f) because it is "a legal term of art that implies a level of inquiry that would be extremely time consuming and costly to achieve."

RESPONSE: It must be noted that the following submission of written comments NJANPHA advised the Department it "withdrew" their comment regarding the awake personal care assistant during sleeping hours. The Department acknowledges this withdrawal but notes that since assisted living may be provided in a wide variety of types of buildings (one story, multiple stories, separate cottages, etc.), a specific waiver from this staffing requirement is not appropriate at this time. However, the Department does agree with the other two comments regarding this section and has amended the language accordingly.

N.J.A.C. 8:36-4.6 Policy and procedure manual

COMMENT: The Division of Mental Health and Hospital expressed concern that this section does not require the policy and procedure manual to include policies on discharge and eviction procedures.

RESPONSE: As noted previously, discharge based on health care requirements must be based on the health care plan developed by the registered professional nurse. Additional protections are included at N.J.A.C. 8:36-4.12 and 4.13, and N.J.A.C. 8:36-6.1(a)10 requires that resident care policies address discharge, termination by the facility, transfer and readmission of residents with criteria for each.

N.J.A.C. 8:36-4.12 Admission and retention of residents

COMMENT: NJANPHA and the United Methodist Homes noted that residents have a right to decide whether or not, and to what extent, their families should be involved in interviews and other interactions with the facility. They recommended that subsection (a) be revised to incorporate this concept. They also requested that subsection (e) relating to an infirmary be deleted since assisted living facilities should care for residents in their own rooms. The Division of Mental Health and Hospitals requested that subsection (c) be amended to include clear language that determination to retain a resident or not be made after mental health screening occurs, not prior to such screening. They also requested that language be added requiring the facility to reserve the individual's residence for a period of at least 10 days to determine whether or not a person can be stabilized and returned.

RESPONSE: The Department agrees that the intent of the rules is to provide as much decision making as possible to the resident. Thus, the language at subsection (a) has been clarified as requested. Since an infirmary is optional the language at subsection (e) is retained for those facilities who choose to utilize one. The Department agrees with the Division of Mental Health and Hospitals comment regarding the timing of the decision on whether or not a resident should be retained and, since this was the intent, has added clarifying language. The addition of a 10-day reservation is not needed. N.J.A.C. 8:36-6.1(a)10 already requires policies on discharge and readmission.

N.J.A.C. 8:36-4.13 Involuntary discharge

COMMENT: The Division of Mental Health and Hospitals questioned whether the provisions in this section are consistent with landlord-tenant laws.

RESPONSE: Assisted living residences and comprehensive personal care homes will be licensed health care facilities and not subject to landlord-tenant laws.

N.J.A.C. 8:36-4.16 Referral and transfer agreements

COMMENT: NJANPHA and the United Methodist Homes both requested that the reference to private psychiatric hospitals be deleted. They argue that referrals to such entities only rarely occur, that many general acute care hospitals have psychiatric units, and that some facilities may use psychiatric hospitals outside the State. The Division of Mental Health and Hospitals requested that language be added specifying that transfers must be in accordance with the mental health screening law, N.J.S.A. 30.

RESPONSE: The Department does not concur with these comments. It is anticipated that referrals will not only go in one direction, that is, from assisted living to another facility, but also in the reverse. Thus, referral and transfer agreements with all entities proposed is appropriate. N.J.A.C. 8:36-4.12(c) already refers to N.J.S.A. 30 and there is no reason to repeat it in this section.

N.J.A.C. 8:36-5.2 Administrator's responsibilities

COMMENT: The Division of Mental Health and Hospitals suggests that the following language be added to paragraph (a)5: "Establishing and maintaining liaison relationships and communication with facility staff and services and with residents and their families **and community hospitals, social and mental health service agencies.**"

RESPONSE: The Department agrees this clarifies intent but has added it as a new paragraph (a)6.

N.J.A.C. 8:36-6.1 Resident care policies and procedures

COMMENT: Both NJANPHA and the United Methodist Homes requested that paragraph (a)7 be deleted. They argue that medical procedures will rarely be done and when they are it is the health care professional's responsibility, not the facility's, to obtain informed consent.

RESPONSE: The Department concurs with this recommendation and believes it will also reduce the paperwork burden on facilities with no harm to residents. The paragraph has been deleted.

N.J.A.C. 8:36-6.2 Financial arrangements

COMMENT: Collingswood Manor, NJANPHA, and the United Methodist Homes requested that subsection (a) be revised to include language that at the resident's request, financial information be provided to the resident's family.

RESPONSE: The Department concurs the resident should have this right and has amended the language accordingly.

COMMENT: NJANPHA and the United Methodist Homes asked that paragraph (a)3 be clarified to indicate that the subparagraphs are alternative and not additive. They recommended that at the end of subparagraph (a)3iii, the word "and" be replaced with "or."

RESPONSE: The Department agrees that these subparagraphs are meant to be alternative and not additive and has made the recommended change.

N.J.A.C. 8:36-7.1 Resident service plans

COMMENT: NJANPHA and the United Methodist Homes both suggested that the heading of this section be revised to reflect the title of the entire subchapter. They noted that this section includes more than just resident service plans.

RESPONSE: The Department is in agreement with this comment and has made the appropriate revisions.

COMMENT: Dr. Sloane commented that all residents should receive an initial nursing assessment and that the exception at subsection (a) for those whose physician has written that no health care services are needed be deleted.

RESPONSE: The Department believes the noted exception is warranted. The issue was carefully discussed by the Assisted Living Licensure Work Group which recommended its inclusion. In addition, at a minimum, each resident who has no health service needs must be reassessed semi-annually. Also, written policies and procedures must be developed and implemented for monitoring the condition of all residents and for notifying the registered nurse if there are any significant changes in a resident's condition.

COMMENT: NJANPHA and the United Methodist Homes suggested revising the language at subsection (a) to clarify that the referenced assessment is "an initial nursing assessment."

RESPONSE: The Department agrees that this clarifies the intent and has made the requested revision.

COMMENT: Marriott/Sunrise, NJANPHA, and the United Methodist Homes asked that the completion time for the development of the resident service plan required at subsection (b) be changed from seven to 14 days. This would make it consistent with the time frame for the health care assessment in subsection (d).

RESPONSE: Since at least some residents may require both a resident service plan and a health care assessment (followed by a health care plan), it may be advantageous to do both concurrently. Therefore, the Department has made the requested change.

COMMENT: NJANPHA and the United Methodist Homes requested some rewording to simplify the language in paragraphs (b)1 through 3 and the inclusion of a new paragraph (b)4. The latter would not require the information in paragraphs (b)1 through 3, if such information were already included in a resident admission agreement.

RESPONSE: The Department believes the requested revisions clarify intent and has made the changes which were submitted by the commenters, deleting from paragraph (b)1 specification regarding service delivery, clarifying paragraph (b)2, and eliminating a reference to the resident assessment from paragraph (b)3.

COMMENT: NJANPHA and the United Methodist Homes also suggested minor rewording of subsections (c), (d), (f) and (g) that would clarify intent. They also recommend the deletion of paragraph (d)5. It is suggested that the latter is not necessary since it is included in N.J.A.C. 8:36-7.1(d)1 through 4.

RESPONSE: The Department agrees to make the clarifying language requested. However, it is not agreed that paragraph (d)5 is unnecessary, rather that it is an important component of a health care plan. This paragraph is not deleted.

COMMENT: Both the Essex and Union County Long Term Care Task Forces commented on subsections (d) and (e). The former organization noted that while a health care assessment should be completed by a registered professional nurse, the reference to using the Minimum Data Set (MDS) should be removed. The latter recommended the deletion of these two subsections and their replacement with "less stringent assessment procedures."

RESPONSE: The Department does not agree with these comments. The MDS is a commonly and easily used health care assessment tool and is noted in the rule as one tool that may be used. There is no requirement that the MDS must be used so long as the categories noted at subsection (e) are assessed. The Department notes that these two subsections were developed with care and form an integral part of the subchapter. It is not clear what "less stringent assessment procedures" the commenter had in mind but it is difficult to comprehend a true health care assessment without at least some attention to the categories noted in subsection (e).

COMMENT: The Visiting Nurse Association of Sussex County expressed concern that subchapter 7 had "no provisions for increased professional nursing" depending on the number of residents requiring health care services or the complexity of such services.

RESPONSE: N.J.A.C. 8:36-7.3(a) and 7.4(a) clearly state that it is the responsibility of the facility to assure that residents receive health care services as needed and according to the health care plan.

N.J.A.C. 8:36-7.2 Implementation of plans

COMMENT: Marriott/Sunrise, NJANPHA, and the United Methodist Homes suggested that N.J.A.C. 8:36-7.2 be revised. Marriott/Sunrise and the United Methodist Homes requested that the time frame for review/revision of the health care plan be changed from quarterly to semiannually. The United Methodist Homes also requested that the time frame for review/revision of the resident plan be changed from quarterly to annually, while NJANPHA asked that it be changed to semiannually.

RESPONSE: The Department does not agree to revise the time frame for review/revision of the health care plan. In consideration of all the other regulatory flexibility contained in these rules and the range of health conditions and ages of residents who will avail themselves of assisted living facilities, a quarterly review and revision of the health care plan is appropriate. However, the Department does agree to change the time frame for the resident service plan from quarterly to semiannually as requested by NJANPHA, since a semiannual review will serve the needs of the resident, given that needs for service would not change dramatically.

N.J.A.C. 8:36-7.3 Health care services

COMMENT: Marriott/Sunrise and NJANPHA both suggested that alternative language be developed for subsection (b). Their concern was that the proposed language requires a facility to have more than one registered nurse on staff so that this individual could be available 24 hours a day, every day. It was noted that this would unnecessarily increase costs.

RESPONSE: While the Department understands the intent of this comment, it does not concur that any change in the proposed rule is necessary. This section is the only one in the proposed rules where it is noted that a registered professional nurse must be available. Considering the age and potential health status of many residents, this is a reasonable requirement. However, it must be noted that this requirement may be fulfilled by contracting with, for example, a home health agency or other organization, not just with individual nurses. Thus, no change has been made to the rules.

N.J.A.C. 8:36-7.4 Provision of health care services

COMMENT: NJANPHA suggested that a sentence be added to subsection (a) requiring the administrator to develop a system to identify residents receiving a health care service, so these residents can be "tracked" in regard to any changes in health care needs which might arise.

RESPONSE: The Department agrees that this is appropriate and has made the requested addition, to provide a way to organize the review of health care services, since health care needs can change.

COMMENT: The Assisted Living Licensure Work Group suggested that subsection (d) be revised so that not only the "health care professional" be permitted to notify the physician of a significant change in the resident's condition. It was noted that a "health care profesisonal" may not always be on premises and that a personal care assistant or the administrator could just as readily telephone the physician. The Work Group also suggested adding language specifically granting the resident the right to request that the resident's family member, and not a facility staff person, be the one who notifies the physician of any change in condition.

RESPONSE: The Department agrees that these are appropriate suggestions and has made revisions to the rules as adopted. However, the Department notes that it would not be reasonable to change the responsibility for notification of the physician, since the facility must maintain the record. The family can also notify the physician, in addition to the facility. The recording requirement added at subsection (d) is consistent with licensing rules, and with general practice, which require that a physician write notes regarding patient contacts.

COMMENT: Marriott/Sunrise, NJANPHA, and the United Methodist Homes all suggested that subsection (e) be revised to indicate that for a resident who had not been receiving a health care service but who temporarily needs such services, a formal health care assessment and plan is not necessary.

RESPONSE: The Department agrees that this suggestion provides appropriate flexibility to the facility and its staff and has made the requested revision. There is no need to develop a health service plan to treat a cold, for example, although the patient might need, temporarily, health services such as nursing to treat the cold.

COMMENT: NJANPHA, the Regional One Health Planning Board, and the United Methodist Homes suggested that subsection (g) be revised to include a nurse practitioner/clinical nurse specialist.

RESPONSE: The Department agrees and has made the requested revision, and notes that nurse practitioners/clinical nurse specialists are all also supervised by physicians, in accordance with the Nursing Practices Act.

COMMENT: Marriott/Sunrise and the United Methodist Homes requested that subsection (i) be revised to only require procedures to be developed for dealing with emergencies. NJANPHA suggested deleting the paragraph since its intent was covered elsewhere.

RESPONSE: The Department agrees that N.J.A.C. 8:36-6.1(a) appropriately requires policies for emergency care and has deleted N.J.A.C. 8:36-7.4(i).

N.J.A.C. 8:36-7.5 Quality assurance

COMMENT: NJANPHA and the United Methodist Homes suggested minor language revisions to clarify the intent of this section.

RESPONSE: The Department concurs with these suggestions and made the requested revisions, to clarify the rule.

N.J.A.C. 8:36-8.2 Designation of a food service supervisor

COMMENT: NJANPHA and the United Methodist Homes commented that N.J.A.C. 8:36-8.2(a)1 through 5 "will require excessive and needless paperwork and record keeping." They proposed collapsing these requirements into one statement that maintains the essence of subsection (a) and paragraph (a)3.

RESPONSE: The Department believes that, on balance, the requirements as proposed may not be necessary to assure appropriate dietary services in an assisted living environment. Thus, it has made the requested revisions.

N.J.A.C. 8:36-8.3 Responsibilities of dieticians

COMMENT: St. Clares/Riverside suggested that "diet prescription should be mandatory, not optional, because decline is often the precursor to physical or mental health changes in the elderly and should be monitored astutely as a prime indicator of health."

RESPONSE: The Department believes the rule is appropriate as written. Mandating "diet prescriptions" for all residents would not only add a large unnecessary expense but also be unnecessarily intrusive into the daily lives of residents. Such a mandate is not in keeping with the intent of these rules.

N.J.A.C. 8:36-8.4 Requirements for dining services

COMMENT: Collingswood Manor, IDEAS, NJANPHA, and the United Methodist Homes commented on subsection (c). Collingswood Manor simply stated that "assisted living philosophy shouldn't force the resident to be diet compliant." IDEAS noted that the word "attractive" in paragraph (c)10 was "difficult" to define and regulate. The United Methodist Homes suggested that paragraphs (c)9 and 12 be deleted and that the words "or so requests" be deleted from paragraph (c)13. NJANPHA suggested that paragraphs (c)9 and 12 be revised to indicate that they are applicable only when a resident has a health care plan that identifies diet as a service. NJANPHA also requested that paragraph (c)13 be revised to delete the words "or so requests."

RESPONSE: The Department concurs with NJANPHA that paragraph (c)9, 12 and 13, as written, will be burdensome, difficult to implement, and potentially intrusive to residents. These sections have been revised as requested. The Department notes that residents are free to select their own diets. The word "attractive" is intended to convey a pleasant atmosphere, which will necessarily vary from situation to situation, and which will be judged by the surveyor.

N.J.A.C. 8:36-9.2 Self-administration of medications

COMMENT: NJANPHA and the United Methodist Homes suggested deleting N.J.A.C. 8:36-9.2(a)1 through 3 in its entirety. They argue that residents who have the capacity to self-administer are not under the facilities supervision or control in this regard.

RESPONSE: The Department's intent is for subsection (a) to be a definition to implement subsection (b). Therefore, in response to the comment, subsection (a) has been deleted from this section since it is already defined in N.J.A.C. 8:36-1.3.

N.J.A.C. 8:36-9.3 Administration of medications

COMMENT: NJANPHA requested that a new subsection (a) be added making clear that "the administration of medication in and of itself shall not be considered a health care service."

RESPONSE: The Department agrees that this is the intent of the rules and has added a clarifying statement as a new subsection (a).

COMMENT: The State Board of Nursing suggested revised language be added at subsection (b) which clarifies and makes more explicit the role of the registered professional nurse in the delegation of medication administration. MCOSS, Inc. expressed concerns regarding medication administration and noted that "only a professional nurse should be responsible for it."

RESPONSE: The Department concurs with the Board of Nursing and has made the requested revisions. This revision addresses the concerns expressed by MCOSS and makes clear that the registered nurse is responsible for medication administration.

COMMENT: Marriott/Sunrise, NJANPHA, and the United Methodist Homes all noted that paragraph (b)2 refers to a "Statewide training program." NJANPHA urged the Department to "prepare and offer the program as soon as possible" and design it so it could be offered on site. Marriott/Sunrise offered a similar comment, while the United Methodist Homes suggested that language be added requiring the personal care assistant to complete the training program within six months of the date the program is generally available.

RESPONSE: The development of the curriculum of a Statewide training program regarding medication administration has been underway since August, 1993, with the assistance of representatives of the State Board of Nursing and the New Jersey Nurses Association. The program will provide for the training of personal care assistants on-site and is expected to be offered prior to the licensing of any assisted living facilities.

COMMENT: NJANPHA noted that the term "medically stable" at paragraph (b)3 is "so vague as to be useless."

RESPONSE: The Department concurs and has made this and other technical revisions to clarify 9.3(b)1 through 5.

N.J.A.C. 8:36-9.5 Storage of medications

COMMENT: Collingswood Manor, NJANPHA, and the United Methodist Homes questioned whether the requirement for a "medication storage area" at subsection (a) could be satisfied by the use of a medication cart.

RESPONSE: The use of a locked medication cart is acceptable and a sentence indicating this has been added.

COMMENT: NJANPHA questioned the vagueness and the use of the term "individual medication administration device" at subsection (c), because it was a confusing term.

RESPONSE: The Department concurs and has deleted this term.

COMMENT: NJANPHA requested that subsection (e) be reworded to be more permissive and allow a stock supply of medications to be maintained if the Department was notified in advance.

RESPONSE: The Department does not agree and believes the proposed wording is more appropriate for a facility that will not be staffed by licensed personnel and where there is no requirement for a pharmacy and therapeutic committee to decide which prescription medications should be kept in stock. In this circumstance, requiring prior Departmental approval is appropriate.

COMMENT: Marriott/Sunrise, NJANPHA, and the United Methodist Homes requested that term "consultant" be deleted from subsection (f) since there is no requirement for a consultant pharmacist.

RESPONSE: The Department concurs and has deleted the term.

N.J.A.C. 8:36-10.1 Provision of resident activities

COMMENT: St. Clare's/Riverside considered this section too vague, suggesting that the rules "mandate two 50 minute sessions for socialization on a daily basis."

RESPONSE: The Department believes that the proposed language is appropriate and sees no need to "mandate" specific time periods for activities in an assisted living environment.

N.J.A.C. 8:36-11.1 Provision of social work services

COMMENT: The New Jersey Association of Health Care facilities requested that the term "clinical" be deleted from this section, as it is too limiting, since it refers to only one aspect of social work.

RESPONSE: The Department concurs and has deleted the term. If specific "clinical" social work services are required by a resident, the language as revised will still require the provision of such services. The Department views this relaxing of the requirement as less burdensome on the facility, while taking nothing away from the resident.

COMMENT: St. Clare's/Riverside suggested that social work assessments should "be required at the initial intake and with annual updates."

RESPONSE: The Department does not concur that this mandate needs to be added to the rules. These rules are specifically designed to provide flexibility so that services are provided "as required" "or as needed" not on a required schedule whether they are needed or not. The Department will monitor the effectiveness and appropriateness of this flexibility over time to assure both quality of care and quality of life.

N.J.A.C. 8:36-13.6 Record retention

COMMENT: Collingswood Manor, NJANPHA, and the United Methodist Homes requested that the time period for record retention be shortened from 10 to seven years.

RESPONSE: The Department cannot implement the suggested change, as N.J.S.A. 26:85 requires that records be maintained for a 10 year period following the most recent discharge of the resident.

N.J.A.C. 8:36-13.6 Residents' individual records

COMMENT: Collingswood Manor, NJANPHA, and the United Methodist Homes noted that residents are free to have relationships with their physicians without the knowledge of the facility. Thus, they requested that N.J.A.C. 8:36-13.6(a)4 be revised to read: "Record of physician visits, if known."

RESPONSE: The Department concurs and has revised the rule to delete paragraph (a)4, since no record need be kept of an activity which may go on without the knowledge of the facility.

N.J.A.C. 8:36-15.1 Provision of services

COMMENT: Marriott/Sunrise, NJANPHA, and the United Methodist Homes requested that subsection (c) regarding written policies and procedures be deleted. They argue that this simply requires "needless paperwork" and that the intent of the paragraph is captured in the remainder of the subchapter.

RESPONSE: The Department concurs that this requirement is unecessary and that this paragraph can be deleted without harm to residents. The Department notes that, in this type of facility, the measurement of outcomes in terms of the resident and the physical plant are the most important. If a need is seen for written policies and procedures, these will be required as part of a plan of correction, but such "paperwork" is not consistent with the intent of the Department as it encourages the development of such facilities.

N.J.A.C. 8:36-15.3 Resident environment

COMMENT: Collingswood Manor, NJANPHA, and the United Methodist Homes requested that the statement "while taking into consideration residents' personal preferences for style of living" be added at subsection (a).

RESPONSE: The Department concurs that this is appropriate and has inserted the requested language with respect to the resident's individual living environment.

N.J.A.C. 8:36-15.5 Heating and air conditioning

COMMENT: NJANPHA, and the United Methodist Homes asked that the requirement that all areas used by residents be equipped with air conditioning at N.J.A.C. 8:36-15.5(a)3ii be eliminated.

RESPONSE: The Department does not agree and believes that air conditioning is appropriate for assisted living facilities, in order to provide an attractive and comfortable alternative to nursing homes (which require air conditioning) for the residents.

N.J.A.C. 8:36-16.4 Employee health

COMMENT: NJANPHA, and the United Methodist Homes requested that the term "medical staff" be deleted at subsection (a) since assisted living facilities will not have a medical staff.

RESPONSE: The Department concurs and has removed this term as requested.

N.J.A.C. 8:36-17.1 Eligibility

COMMENT: Marriott/Sunrise, NJANPHA, and the United Methodist Homes each requested that this section of the licensing requirements be made consistent with the same requirements in the Certificate of Need Policy Manual for Long Term Care Services (N.J.A.C. 8:33H-1.10).

RESPONSE: In order to assure consistency between the two rules, N.J.A.C. 8:36-17.1(a) has been revised to simply note that eligibility to convert to a comprehensive personal care home shall be in accordance with N.J.A.C. 8:33H-1.10(c) or (d), whichever is applicable.

N.J.A.C. 8:36-17.3 Physical plant

COMMENT: NJANPHA and the United Methodist Homes requested that N.J.A.C. 8:36-17.3(a)2 requiring a comprehensive automatic fire-suppression system be revised to exempt "buildings in Use Group I-2 constructed of fire restrictive materials."

RESPONSE: The Department concurs and has amended this section accordingly, to exempt such buildings, in accordance with the provisions governing similar facilities.

COMMENT: NJANPHA and the United Methodist Homes requested that N.J.A.C. 8:36-17.3(d) be revised to include "useable" floor area as was requested at N.J.A.C. 8:36-3.8(a).

RESPONSE: The Department concurs and has made the requested revision.

COMMENT: Marriott/Sunrise and the United Methodist Homes requested that subsection (f) be revised to remove the prohibition against more than two individuals residing in a residential unit of a comprehensive personal care home. They argue that this same prohibition does not apply to assisted living residences.

RESPONSE: The Department does not agree with this comment. The square footage requirements for comprehensive personal care homes are substantially less than those for an assisted living residence. In addition, the latter are also required to have a kitchenette and private bath while the former are not. Thus, it will be difficult to promote privacy and independence in a comprehensive personal care home without this prohibition. It is also important to note that an exception may be granted to those facilities which have more than two individuals per unit at the time of conversion to a comprehensive personal care home.

COMMENT: The Department of Community Affairs, Division of Codes and Standards, indicated that all of N.J.A.C. 8:36-17.3(a)1 through 5 and (b) and (c) should be removed since these provisions "deal with building and fire items that are solely the responsibility of the State Uniform Construction Code and the State Uniform Fire Code" administered by the Department of Community Affairs. They made similar statements about N.J.A.C. 8:36-3.14 through 3.16, 12.3(d) and 15.3(b)6. The comment suggests that the Department of Health has no authority to establish building code standards.

RESPONSE: The Department of Health acknowledges that the Department of Community Affairs (DCA), Division of Codes and Standards has full authority to administer the Uniform Construction Code and the Uniform Fire Code. The Department of Health has no intention of usurping the role of DCA and has made a number of technical changes in subchapters 3 and 17 and at N.J.A.C. 8:36-15.3(b)6 deleting BOCA references and replacing them with references to the Uniform Construction Code, N.J.A.C. 5:23 which should alleviate some of the noted concerns. However, some of the noted sections, particularly N.J.A.C. 8:36-17.3(a)1 through 5 include requirements that are specific to a licensed health care facility that will accommodate residents with varying disabilities. These are provided here as guidance to potential developers and are intended to complement, not replace, the Uniform Construction Code and the Uniform Fire Code. The Department of Health does not view these as being inconsistent with the latter codes as the listed sections deal chiefly with physical environment (not building requirements) and additional fire protection.

Summary of Agency-Initiated Changes

References to the 1990 BOCA Code and its specific sections have been deleted, since there is a newer edition and various sections have been rearranged and are no longer applicable. Consequently, N.J.A.C. 8:36-3.3(a), 3.5(b), 3.6 and 15.3(b)6 have been amended to refer only to Uniform Construction Code, N.J.A.C. 5:23.

N.J.A.C. 8:36-3.12 has been amended to delete terms no longer used and to add the current terminology.

Since mechanical codes are no longer based on hourly air changes and interior wall and ceiling finishes are no longer classified as A, B, C. Thus, N.J.A.C. 8:36-3.3(c), 3.7, 17.3(b)2 and 17.3(c) have been deleted or revised accordingly.

N.J.A.C. 8:36-1.5(b) has been amended to add "related topics" to the continuing education requirements, in order to accommodate changes in information which will supplement the basic information on assisted living concepts.

N.J.A.C. 8:36-9.3(b)1 has been rewritten to permit the administration of short term scheduled medications, provided there is a reassessment of the resident by a registered professional nurse every 72 hours in order to determine if the medication is still required. This will add flexibility, and will cause no harm to the patient, while assuring that appropriate medical attention is provided.

Technical/editorial changes were made at the following citations: N.J.A.C. 8:36-2.2(c), 3.4, 4.14(a)1, 7.3(d), 7.4(c), and 9.5(b) and (c).

At N.J.A.C. 8:36-9.3, paragraph (b)5 has been changed to delete the term "FDA approved unit dose" and replace it with the more appropriate general term "unit of use," and subsection (c) has been deleted, since the medication should be administered in any manner preferred

by the patient. N.J.A.C. 8:36-9.5(c)3 has been amended to correct the term to "unit of dose," as well as deleting the reference to Bingo or punch card systems, since that specification is no longer needed.

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

CHAPTER 36

STANDARDS FOR LICENSURE OF ASSISTED LIVING RESIDENCES AND COMPREHENSIVE PERSONAL CARE HOMES

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:36-1.1 Scope

(a) The rules in this chapter pertain to all facilities which provide assisted living services. These rules constitute the basis for the licensure of assisted living residences and comprehensive personal care homes by the New Jersey State Department of Health.

(b) Assisted living residences shall comply with N.J.A.C. 8:36-1 through 16; comprehensive personal care homes shall comply with N.J.A.C. 8:36-17.

8:36-1.2 Purpose

(a) The purpose of these rules is to establish standards for assisted living residences and comprehensive personal care homes which are intended to promote "aging in place" in a homelike setting for frail elderly and disabled persons, including persons who require formal long-term care. Assisted living residences and comprehensive personal care homes assure that residents receive supportive health and social services as they are needed to enable them to maintain their independence, individuality, privacy, and dignity in an apartment-style living unit. The assisted living environment promotes resident self direction and personal decision-making while protecting residents' health and safety.

(b) An assisted living residence or comprehensive personal care home offers a suitable living arrangement for persons with a range of capabilities, disabilities, frailties, and strengths. In general, however, assisted living is not appropriate for individuals who are incapable of responding to their environment, expressing volition, interacting, or demonstrating any independent activity. For example, individuals in a persistent vegetative state who require formal long-term care should not be placed or cared for in an assisted living residence or comprehensive personal care home.

(c) The aim of this chapter is to establish minimum rules with which an assisted living residence or comprehensive personal care home must comply in order to be licensed to operate in New Jersey.

8:36-1.3 Definitions

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

"Activities of daily living (ADL)" means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include at least: mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

"Aging in place" means a process whereby individuals remain in their living environment despite the physical and/or mental decline and growing needs for supportive services that may occur in the course of aging. For aging in place to occur, services are added, increased, or adjusted to compensate for the person's physical and/or mental decline.

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services, including residents who require formal long-term care. Assisted living promotes resident self direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"Assisted living residence" means a facility which is licensed by the Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, for four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

"Assistance with transfer" means providing verbal and physical cuing or the physical assistance of no more than two facility staff or both while the resident moves between bed and a standing position or between bed and a chair or wheelchair.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Bedridden" means physically unable to rise from bed, even with assistance with transfer from the bed.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Comprehensive personal care home" means a facility which is licensed by the Department of Health to provide room and board and to assure that assisted living services are available when needed, to four or more adults unrelated to the proprietor. Residential units in comprehensive personal care homes house no more than two residents and have a lockable door on the unit entrance.

"Continuing care retirement community" means a facility that has received a certificate of authority pursuant to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330 et seq.

"Department" means the New Jersey State Department of Health.

"Documented" means written, signed, and dated.

"Employee" means a person who is gainfully employed in the assisted living facility on a full or part-time basis and for whom a record of hours worked and wages paid are maintained and who meets the health, age and other requirements of this chapter. Reimbursement for such employment may include salaries, wages, room and board, or any combination thereof. A person placed in the assisted living facility under a purchase of care or service agreement by the facility, or the resident, is not considered an employee.

"Formal long-term care" means ongoing assistance with activities of daily living and health care services, provided on a daily or regular basis to people with disabling long-term illnesses by nurses or other health care professionals or by personnel under the direction and supervision of health care professionals, as ordered by a physician.

"Full-time" means relating to a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation, and financial viability of the facility.

"Guardian" means a person appointed by a court of competen jurisdiction to handle the affairs and protect the rights of an resident of the facility who has been declared a mental incompetent Guardian does not include a person affiliated with the facility, it operations or personnel, unless ordered by the court.

"Health care service" means any service provided to a residen of an assisted living residence or comprehensive personal care hom that is ordered by a physician and required to be provided o delegated by a licensed, registered or certified health car professional. Any other service, whether or not ordered by a physi cian, that is not required to be provided by a licensed, registere or certified health care professional is not to be considered a healt care service. For purposes of this definition a certified health car professional excludes certified homemaker/home health aide an certified nurse aides.

"Health care facility" means a facility so defined in N.J.S.A 26:2H-1 et seq., and amendments thereto.

"Job description" means written specifications developed for eac position in the facility, containing the qualifications, duties an responsibilities, and accountability required of employees in tha position.

"Hospice" means a program of palliative and supportive services provided to terminally ill persons and their families in the form of physical, psychological, social and spiritual care.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Nursing supervision" means services which are provided to a resident whose condition requires continued monitoring of vital signs and physical and cognitive status. Such services shall be medically complex enough to require ongoing assessment, planning, or intervention by a nurse; required to be performed by or under the supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident's condition or the disease state or stage.

"Personal care" means services supportive to residents' care and comfort, including, but not limited to, assistance with activities of daily living. ***Except as required by these rules, personal care need not be provided by a personal care assistant.***

"Personal care assistant" means a person who is qualified in accordance with N.J.A.C. 8:36-1.8.

"Resident" means a person who lives in an assisted living residence or comprehensive personal care home.

"Residential unit" means a separate apartment or unit where one or more individuals reside within the assisted living residence or a room or rooms where residents reside within a comprehensive personal care home.

"Responsible person" means a person who has been designated by the resident and who has agreed to assist the resident, as needed, in arranging for health, social and financial services or making decisions regarding such services.

"Self administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a resident to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed (in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39), labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

"Shift" means a time period defined as a full working day by the facility in its policy manual.

"Signature" means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D., D.O.) of a person, legibly written with his or her own hand. A controlled electronic signature system may be used.

"Specialized care" or "specialized long-term care" means the care of individuals who must use a respirator or mechanical ventilator and the care of patients with severe behavior management problems, such as combative, aggressive, and disruptive behaviors.

"Staff education plan" means a written plan which describes a coordinated program for employee education for each service, including inservice programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

1. "Direct supervision" means supervision on the premises.

8:36-1.4 Qualifications of all staff

All staff shall be emotionally stable, be in good physical and mental health, be of good moral character, and exhibit a concern for the safety and well-being of residents.

8:36-1.5 Qualifications of the administrator of an assisted living residence or comprehensive personal care home

(a) The administrator of an assisted living residence or comprehensive personal care home shall:

***1. Be at least 18 years of age;**

2. Possess a high school diploma or equivalent; and*

*[1.]***3.*** Hold a current New Jersey license as a nursing home administrator, or be eligible to take the New Jersey Nursing Home Administrator's Licensing Examination, according to Department of Health requirements; or *[2. Complete]* ***complete*** an Assisted Living training course approved by the Department of Human Services or other equivalent training as approved by the Department of Health, within one year of his or her employment as administrator*[; and]**.*

(b) The administrator of an assisted living residence or comprehensive personal care home shall participate at least annually in a minimum of at least 10 hours of continuing education regarding assisted living concepts ***and related topics***, as specified and approved by the Department of Health or the Nursing Home Administrators Licensing Board.

(c) The owner of an assisted living residence who meets the qualifications listed in (a) above may also serve as the administrator.

8:36-1.6 Qualifications of dietitians

The dietitian shall possess a bachelor's degree from an accredited college or university with a major area of concentration in a nutrition-related field of study, and one year of full-time professional experience or graduate-level training in nutrition.

8:36-1.7 Qualifications of licensed practical nurses

Each licensed practical nurse shall be so licensed by the New Jersey State Board of Nursing

8:36-1.8 Qualifications of personal care assistants

(a) Each personal care assistant shall have completed:

1. A nurse aide training course approved by the New Jersey State Department of Health and shall have passed the New Jersey Nurse Aide Certification Examination; or

2. A Homemaker-Home Health Aide training program approved by the New Jersey Board of Nursing and shall be so certified by the Board*[.]***; or***

3. Other equivalent training program approved by the Department.

(b) Each personal care assistant shall receive orientation prior to or upon employment and on-going inservice education regarding the concepts of assisted living.

(c) The responsibilities of a personal care assistant may be performed by a person who is enrolled in one of the three training programs referred to in (a) above, but such a person must complete the program and pass the examination or become certified (as the case may be) within six months of the date of hire or cease functioning as a personal care assistant. A personal care assistant-in-training may not administer medication or fulfill the requirement at N.J.A.C. 8:36-4.5(b) that a facility must have one awake personal care assistant on the premises at all times.

8:36-1.9 Qualifications of pharmacists

Each pharmacist shall be so registered by the New Jersey State Board of Pharmacy.

8:36-1.10 Qualifications of physicians

Each physician shall be licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

8:36-1.11 Qualifications of registered professional nurses

Each registered professional nurse shall be so licensed by the New Jersey State Board of Nursing.

8:36-1.12 Qualifications of social workers

Each social worker shall be licensed or certified by the New Jersey State Board of Social Work Examiners.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:36-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, licensed to operate, or closed except upon application for, and receipt of, a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625-0360
609-292-6552

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:36-2.2 Application for licensure

(a) Following receipt of a Certificate of Need, any person, organization, or corporation desiring to operate an assisted living residence shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
Licensing and Certification & Standards
Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
609-588-7726

(b) Any long term care facility, residential health care facility, or Class "C" boarding home planning to provide assisted living services shall obtain licensing approval from the Department prior to initiating services.

(c) A copy of the assisted living residence or comprehensive personal care home admission agreement ***or other document stating the scope of a facility's services*** shall be forwarded to the Director, Licensing and Certification & Standards (see (a) above for address) for review when application for licensure is made. Review shall ensure that the admission agreement does not violate any requirements contained herein, any conditions placed on *[Condition]* ***Certificate*** of Need approval, or any applicable State or Federal statutes. *[Any subsequent changes to the admission agreement shall be submitted to the Department of Health for review.]* ***This subsection does not apply when a continuing care retirement community (CCRC), as defined at N.J.A.C. 8:36-1.3, contracts with its residents to provide assisted living pursuant to a continuing care agreement. This subsection does apply, however, when a CCRC provides assisted living to a person who is not a party to a continuing care agreement.***

(d) The Department shall charge a nonrefundable fee of $500.00 plus $10.00 per bed (for the *[maximum]* number of ***licensed*** beds *[available]*) for the filing of an application for licensure of an assisted living residence and comprehensive personal care home and for the annual renewal of the license. The facility shall receive a license for the maximum number of beds available in its residential units.

(e) Each applicant for a license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing and Certification Program.

8:36-2.3 Newly constructed or expanded facilities

(a) Any assisted living residence or comprehensive personal care home with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

(b) The licensure application for a newly constructed, renovated or expanded facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction Services
Division of Health Facilities Evaluation and Licensure
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367
609-588-7731

(c) An on-site inspection of the construction of the physical plant shall be made by representatives of Health Facilities Construction Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

8:36-2.4 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this manual.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:36-2.2(d)) for review of the conditions for licensure and operation has taken place between the Licensing and Certification Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. The initial survey required by N.J.A.C. 8:36-2.4(a) results in a finding of substantial compliance with the requirements of this chapter.

3. The completed licensure application is on file with the Department;

4. The fee for filing of the application has been received by the Department;

5. A copy of the admission agreement is on file with the Department;

6. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

7. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

8. Survey(s) by representatives of the Department indicate the facility adheres to the rules in this chapter; and

9. Personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit residents to the facility until the facility has the written approval and/or license issued by the Licensing and Certification Program of the Department. Violators of this requirement will be subject to penalties for operating a facility without a license, pursuant to N.J.S.A. 26:2H-14.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and resident records and conferences with residents.

(e) A temporary license may be issued to a facility for a period of up to six months, subject to renewal as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license shall not be assignable or transferable and shall be immediately void if the facility ceases to operate or if the facility ownership changes.

8:36-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is in substantial compliance with the requirements of this chapter, and is operated as required by N.J.S.A. 26:2H-1 et seq.

(b) A license shall be granted for a period of one year or less, as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license shall not be assignable or transferable, and it shall be immediately void if the facility permanently ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department, or if the facility is more than 60 days delinquent in payment of a penalty issued pursuant to N.J.S.A. 26:2H-14.

(f) The license may not be renewed if local rules, regulations and/or requirements are not met, on a case by case basis.

8:36-2.6 Surrender of license

The facility shall notify each resident, the resident's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:36-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of residents or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure resident safety; and

4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver, depending upon the waiver requested.

(e) All requests for waivers to the physical plant requirements in subchapters 3 and 17 shall be fully explained, justified, and approved as part of the certificate of need application submitted in accordance with N.J.S.A. 26:2H-1 et seq. and N.J.A.C. 8:36-2.1(a).*

8:36-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of residents from a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of (a) and (b) above shall apply to facilities with a temporary or provisional license and facilities with a full license.

8:36-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, assess monetary penalty, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

8:36-2.10 Advertisement of assisted living

Only facilities licensed as assisted living residences or comprehensive personal care homes may describe and offer themselves to the public as providing assisted living services and care or other similar services. Violation of this requirement shall constitute operation of a health care facility without a license, and shall be subject to penalty in accordance with N.J.S.A. 26:2H-14.

SUBCHAPTER 3. PHYSICAL PLANT AND ENVIRONMENT

8:36-3.1 Scope

(a) The standards in this subchapter shall apply to new construction of assisted living residences or alterations or renovations to existing buildings to create assisting living residences.

(b) Prior to approval of a certificate of need for a transfer of ownership, the Department may conduct a physical plant inspection of the facility to determine the extent of physical plant deficiencies, based upon current codes and standards.

1. A report of the physical plant inspection shall be provided to the prospective buyer and seller.

2. A plan of correction shall be submitted to the Department for all physical plant deficiencies.

(c) New buildings and alterations, renovations and additions to existing buildings for assisted living residences shall conform with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-3.2, Use Group I-1 of the subcode.

8:36-3.2 Restrictions

Mixed use occupancy shall not be permitted in buildings classified as High Hazard (H), Factory (F) or Assembly (A-2) Use Groups.

8:36-3.3 Ventilation

(a) Means of ventilation shall be provided in accordance with *[BOCA National Building Code/1990 Section 706.0,]* ***the Uniform Construction Code, N.J.A.C. 5:23*** either by windows or by mechanical ventilation for every habitable room. *[When provided by mechanical ventilation there shall be at least two air changes per hour.]*

(b) Means of ventilation shall be provided for every bathroom or water closet (toilet) compartment. Ventilation shall be provided either by a window with an openable area or by mechanical ventilation *[with at least 10 air changes per hour]*.

[(c) All hallway corridors and passageways shall have a minimum of two outside air changes per hour.]

8:36-3.4 Exit access passageways and corridors

The width of passageways, aisles and corridors shall *[not be less than]* ***have a minimum of*** 44 inches of clear space.

8:36-3.5 Automatic fire detection system

(a) Smoke detectors shall be provided in all residents' bedrooms, living rooms, and "studio apartment" units, whether or not the facility contains a comprehensive automatic fire suppression system throughout.

(b) All fire detection systems shall be installed in accordance with *[BOCA National Building Code, 1990, Section 1017.0]* ***the Uniform Construction Code, N.J.A.C. 5:23*** and NFiPA 72 E.

8:36-3.6 Fire suppression systems

All facilities shall be provided with a fire suppression system in accord with *[section 1004.0 of the 1990 BOCA National Building Code]* ***the Uniform Construction Code, N.J.A.C. 5:23***.

8:36-3.7 Interior finish requirement

*[(a) Interior wall and ceiling finishes within unit enclosures shall be Class A (having a flame spread of 0-25 and smoke development 0-450 based on test results from NFPA 255, Standard Method of

Test of Surface Burning Characteristics of Building Materials). In all other areas, interior wall and ceiling finishes shall be Class A or Class B (having a flame spread of 26-75 and smoke development 0-450).

(b) Interior floor finishes in corridors, stairways and exits shall be Class I or Class II (critical radiant flux, minimum of 0.45 W/sq. cm. or 0.22 W/sq. cm. respectively, based on test results from NFPA 253, Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source).]*

Interior wall, ceiling and floor finishes shall be in compliance with the Uniform Construction Code, N.J.A.C. 5:23.

8:36-3.8 Minimum Unit Size

(a) Residential units occupied by one person shall have a minimum of 150 square feet of clear ***and useable*** floor area. ("Clear ***and useable*** floor area" means space exclusive of *[vestibule,]* closets, bathroom and kitchenette.)

(b) In units occupied by more than one resident, there shall be a minimum of 80 additional square feet of clear floor area for each additional occupant.

(c) Residential units shall be lockable by the occupant(s). Egress from the unit must be possible at all times and locking hardware shall enable occupant(s) to gain egress from within by means of a simple operation. All residential units shall be accessible by means of a master key or similar system which is available at all times in the facility, and available at all times for use by designated staff.

(d) Each residential unit shall have an exterior glazed area equal to at least eight percent of the clear floor area.

8:36-3.9 Toilets, baths and handwashing sinks

(a) A bathroom with a toilet, bathtub and/or shower, and handwashing sink shall be located in each residential unit.

(b) Additional toilet facilities shall be provided to meet the needs of residents, staff and visitors to the facility and shall be located in areas other than the residential units.

8:36-3.10 Kitchenettes

(a) Each residential unit shall contain, at a minimum, a small refrigerator, a cabinet for food storage, a small bar-type sink, and space with electrical outlets suitable for small cooking appliances, for example, a microwave, a two-burner cooktop, or a toaster-oven.

1. Upon entering the assisted living facility, the resident and the resident's family or representative shall be asked if they wish to have a cooking appliance. If so, the appliance shall be provided by the facility, in accordance with facility policies. If the resident and resident's family or representative wish to provide their own cooking appliance, it shall meet the facility's safety standards.

2. If the resident and resident's family or representative do not want a cooking appliance or if resident assessments indicate that having a cooking appliance in the living unit endangers the resident, no cooking appliance shall be provided or allowed in the living unit.

8:36-3.11 Community space

The facility shall provide a minimum of 30 square feet per resident of community spaces for dining and for active and passive recreation.

8:36-3.12 Laundry equipment

(a) Each assisted living facility shall provide at least one non-commercial washer and dryer for residents' personal items.

(b) Where laundry equipment is limited to non-commercial type (ordinary household or residential types), no special fire protective measures shall be required.

(c) When commercial type laundry equipment is utilized, it shall be installed in a separate laundry room. The remainder of the home shall be protected from the laundry room by *[partitions and openings]* ***fire separation assemblies*** of at least one-hour *[fire-resistance rating]* ***rated construction***. *[Doors to such laundry rooms shall be protected in accordance with N.J.A.C. 8:36-3.7(b).]* ***Openings in all fire separation assemblies shall be protected in accordance with the Uniform Construction Code, N.J.A.C. 5:23.***

(d) All dryers shall be vented to the outside of the building.

8:36-3.13 Dietary department

(a) Construction, equipment, and installation of food service facilities shall meet the requirements of the dietary programs.

(b) The following facilities shall be provided, at a minimum:

1. A control station for receiving food supplies;
2. Minimum storage facilities for four days' food supply, including refrigeration and freezer for cold storage items;
3. Food preparation facilities;
4. Handwashing facilities located in the food preparation area;
5. Facilities for food distribution to residents;
6. Warewashing space;
7. Potwashing facilities and facilities for cart washing;
8. Storage areas for cans and carts;
9. Waste storage facilities;
10. Offices or desk space for dietitian(s) and the dietary service manager;
11. Janitor's closet; and
12. Self-dispensing icemaking facilities.

8:36-3.14 Administration and public areas

(a) A grade level entrance, sheltered from the weather and able to accommodate wheelchairs shall be provided, and shall include a reception and information counter or desk and waiting space.

(b) Space for private interviews shall be provided.

(c) An individual mailbox for each resident shall be provided.

(d) General or individual offices for records, administrative and professional staffs shall be provided.

(e) Space shall be provided for storing employee's personal possessions.

(f) Separate space shall be provided for storage of office supplies, sterile or pharmaceutical supplies, and housekeeping supplies.

(g) A room(s) for examination and treatment of residents, which is adequate for an overnight stay and includes toilet facilities, may be provided. It shall have a minimum floor area of 100 square feet, excluding space for vestibule, toilet and closet. It shall contain a lavatory or sink equipped for handwashing, a work counter, storage facilities, and a desk, counter or shelf for writing.

(h) An infirmary may be provided for residents who may need 24-hour observation on a temporary basis. Clear space of at least three feet shall be provided at each side and at the foot of each bed in the infirmary. Toilet facilities shall be provided in the infirmary.

8:36-3.15 Fire extinguisher specifications

(a) There shall be a minimun of two fire extinguishers in the basement, at least one on each floor of the building and as required in kitchen areas, all of which shall bear the seal of the Underwriters Laboratories.

(b) The following types of extinguishers shall be provided:

1. In kitchen areas, because of danger of grease fires, extinguishers shall be of the Class B dry chemical type 2-B and a minimum of five pounds. The maximum travel distance to an extinguisher shall be 50 feet.

2. In the basement area, an extinguisher shall be Class B dry chemical type 2-B and a minimum of five pounds if oil or gas is used as fuel. The maximum travel distance to an extinguisher shall be 50 feet.

3. In all other areas a Class A air-pressurized 2½ gallon water type 2-A extinguisher shall be provided. The maximum travel distance to an extinguisher shall be 75 feet.

8:36-3.16 Sound devices

If self-locking doors are used at the main entrance and other entrances which open onto a roof or balconies, they shall be equipped with a sounding device, such as a bell, buzzer or chime which is in operating condition. The sounding device shall be affixed to the outside of the door or to the adjacent exterior wall for use in the event that a person is unable to enter the building and shall ring at an area staffed 24 hours a day.

8:36-3.17 Telecommunications

Each residential unit shall be pre-wired for telephone and television reception.

SUBCHAPTER 4. GENERAL REQUIREMENTS

8:36-4.1 Types of services provided to residents

(a) The assisted living residence or comprehensive personal care home shall provide and/or coordinate personal care and services to residents, based on assessment by qualified persons, in accordance with the New Jersey Nursing Practice Act, the rules in this manual, and the individual needs of each resident.

(b) The assisted living residence or comprehensive personal care home shall be capable of providing at least the following services: assistance with personal care, nursing, pharmacy, dining, activities, recreational, and social work services to meet the individual needs of each resident.

(c) The assisted living residence or comprehensive personal care home shall provide supervision of and assistance with self-administration of medications, and administration of medications by trained and supervised personnel, as needed by residents.

(d) The assisted living residence or comprehensive personal care home shall be capable of providing nursing services to maintain residents, including residents who require formal long-term care. However, the resident may be, but is not required to be, moved from the facility if it is documented in the health care plan that a higher level of care is required as demonstrated by one or more of the following characteristics:

1. The resident requires 24 hour, seven day a week nursing supervision.
2. The resident is bedridden for more than 14 consecutive days.
3. The resident is consistently and totally dependent in four or more of the following activities of daily living: eating, bathing, dressing, grooming, and toileting.
4. The resident has a cognitive decline severe enough to prevent the making of simple decisions regarding activities such as bathing, dressing and eating and cannot respond appropriately to cuing and simple directions.
5. The resident requires treatment of a stage three or four pressure sore or multiple stage two pressure sores. However, a resident who requires treatment of a single stage two pressure sore shall be retained and a plan of care developed and implemented to stabilize the sore and the condition which caused it.
6. The resident requires more than assistance with transfer as defined at N.J.A.C. 8:36-1.3.
7. The resident is a danger to self or others *[and is not controllable by medication]*.
8. The resident has a medically unstable condition*[,]* ***and/or*** has special health problems, and a regimen of therapy cannot be appropriately developed and implemented in the assisted living environment.

(e) The facility's admission agreement with each resident must clearly specify if the facility will or will not retain residents with one or more characteristics described in (d)1 through 8 above, to what extent, and, if applicable, at what additional cost. ***This subsection does not apply when a continuing care retirement community (CCRC), as defined at N.J.A.C. 8:36-1.3, contracts with its residents to provide assisted living pursuant to a continuing care agreement. This subsection does apply, however, when a CCRC provides assisted living to a person who is not a party to a continuing care agreement.***

(f) Residents who require specialized long-term care, as defined at N.J.A.C. 8:36-1.3, may not remain in the assisted living residence or assisted living program and shall be transferred to a long-term care facility that provides the applicable form of specialized care.

(g) The assisted living residence or comprehensive personal care home shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

8:36-4.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Any proposed change in ownership shall be reported to the Director of the Licensing and Certification Program of the Department in writing and in conformance with licensing requirements.

(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

(c) The owner or governing authority of the facility shall assume legal responsibility for the management, operation, and financial viability of the facility.

8:36-4.3 Submission and availability of documents

The facility shall, upon request, submit in writing any documents which are required by the rules in this chapter to the Director of the Licensing and Certification Program of the Department. Additionally, upon request of the Department, the facility shall submit in writing data related to utilization, demographics, costs, charges, staffing, and other planning and financial data necessary to evaluate the services provided.

8:36-4.4 Personnel

(a) The facility shall develop written job descriptions and ensure that personnel are assigned duties based upon their education, training, and competencies and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide resident care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

8:36-4.5 Staffing requirements

(a) The facility shall maintain and implement written staffing schedules. Actual hours worked by each employee shall be documented.

(b) The facility shall provide on the premises at all times the following minimum numbers of employees:

1. At least one awake personal care assistant; and
2. At least one additional employee.

(c) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training. All personnel providing personal care or health services shall receive orientation at the time of employment and at least annual in-service education regarding, at a minimum, the following:

1. The provision of services and assistance in accordance with the concepts of assisted living;
2. Emergency plans and procedures; and
3. The infection prevention and control program.

(d) The staffing *[ratios of]* ***level in*** this chapter *[are]* ***is*** minimum only and the assisted living residence and comprehensive personal care home shall employ staff in sufficient number and with sufficient ability and training to provide the basic care and resident assistance and supervision required, based on assessment of the acuity of resident's needs.

(e) Personnel, including staff under contract, with a reportable communicable disease or infection shall be excluded from the assisted living residence and comprehensive personal care home until examined by a physician who shall certify to the administrator that the condition will not endanger the health of residents or other employees.

(f) The facility shall exercise good faith and *[due diligence]* ***employ reasonable efforts*** to ensure that staff providing personal care and services to residents have not been convicted of a crime relating adversely to the person's ability to provide resident care, such as homicide, assault, kidnapping, sexual offenses, robbery, and crimes against the family, children or incompetents, except where the applicant or employee with a criminal history has demonstrated his rehabilitation in order to qualify for employment at the facility.

8:36-4.6 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and resident care services of the facility;

2. A description of the services which the assisted living residence or comprehensive personal care home is capable of providing;

3. Policies and procedures for maintaining security;

4. Policies and procedures for reporting all diagnosed and/or suspected cases of resident abuse or exploitation. If the resident is 60 years of age or older, the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly shall be notified, in compliance with N.J.S.A. 52:27G-7.1 et seq.;

5. Policies and procedures for maintaining confidentiality of resident records, including policies and procedures for examination of resident records by the resident and other authorized persons and for release of the resident's records to any individual outside the facility, as consented to by the resident or as required by law or third party payor;

6. Policies and procedures for the maintenance of personnel records for each employee, including at least his or her name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, prior criminal records, records of physical examinations, job description, records of orientation and inservice education, and evaluations of job performance; and

7. Policies and procedures, including content and frequency, for physical examinations and immunizations and tuberculin testing upon employment and subsequently for employees and persons providing direct resident care services in the facility through contractual arrangements or written agreement.

(b) The facility shall make all policy and procedure manuals available to residents, guardians, designated responsible persons, prospective applicants, and referring agencies during normal business hours or by prior arrangement.

8:36-4.7 Resident transportation

(a) The facility shall be capable of providing resident transportation, either directly or by arrangement, to and from health care services provided outside the facility, and shall promote reasonable plans for security and accountability for the resident and his or her personal possessions, as well as transfer of resident information to and from the provider of the service, as required by individual residents and specified in resident's service plans.

(b) The facility shall assist residents, if needed, in arranging for transportation to activities of social, religious, and community groups in which the resident chooses to participate.

8:36-4.8 Written agreements

The facility shall have a written agreement or its equivalent, or a linkage for services not provided directly by the facility. If the facility provides care to residents with psychiatric disorders, the facility shall also have a written agreement with one or more community mental health centers specifying which services will be provided by the mental health center. The written agreements shall require that services be provided in accordance with the rules in this chapter.

8:36-4.9 Reportable events

(a) The facility shall notify the Department immediately by telephone at 609-588-7725 (609-392-2020 after business hours), followed within 72 hours by written confirmation, of the following:

1. Interruption for three or more hours of basic physical plant services, such as heat, light, power, water, food, or staff;

2. Termination of employment of the administrator, and the name and qualifications of his or her replacement;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, all residents who are missing for 24 hours, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to residents and/or personnel, disruption of services, and extent of damages;

5. Any major occurrence or incident of an unusual nature shall be reported immediately to the Department by telephone, and shall be confirmed in writing to the Department as soon as possible thereafter;

6. All alleged or suspected crimes which are serious crimes committed by or against residents, which have also been reported at the time of occurrence to the local police department; and

7. All suspected cases of resident abuse or exploitation which have been reported to the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly.

8:36-4.10 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility during normal business hours, to residents and the public:

1. All waivers granted by the Department;

2. A copy of the last annual licensure inspection survey report and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding resident rights;

4. Business hours of the facility;

5. Policies and procedures for maintaining security of the assisted living residence and comprehensive personal care home;

6. The toll-free hot line number of the Department; telephone numbers of county agencies and of the State of New Jersey Office of the Ombudsman; and

7. The names of, and a means to formally contact, the owner and/or members of the governing authority.

8:36-4.11 Maintenance of records

(a) The facility shall maintain an annual chronological listing of residents admitted and discharged, including the destination of residents who are discharged.

(b) Statistical data, such as resident census and facility characteristics, shall be forwarded on request, in a format provided by the Department.

8:36-4.12 Admission and retention of residents

(a) The administrator of the assisted living residence or the administrator's designee shall conduct an interview with the resident and, if *[available]* **the resident agrees***, the resident's family, guardian, or interested agency, prior to or at the time of the resident's admission. The interview shall include at least orientation to the facility's policies, business hours, fee schedule, services provided, resident rights, and criteria for admission and discharge. Documentation of the resident interview shall be included in the resident's record.

(b) At the initial interview prior to, or at the time of, admission of each resident, the administrator or the administrator's designee shall be provided with the name, address, and telephone number of a family member, guardian, responsible person or designated community agency who can be notified in the event of the resident's illness, incident, or other emergency.

(c) If a facility has reason to believe, based on a resident's behavior, that the resident poses a danger to himself or herself or others and that the facility is not capable of providing proper care to the resident, then the attending physician or the physician on call, in consultation with facility staff and a resident representative, shall determine whether the resident is appropriately placed in that facility. The facility or resident representative shall *[attempt to locate a new placement if necessary, and to]* initiate the mental health screening process in accordance with N.J.S.A. 30 ***and, based on the results and recommendations of that screening process, shall attempt to locate a new placement if necessary***.

(d) If an applicant, after applying in writing, is denied admission to the assisted living residence or program, the applicant and/or his or her family, guardian, or designated community agency shall, upon written request, be given the reason for such denial in writing, signed by the administrator, within 15 days of the receipt of the written request.

(e) If there is an infirmary in the facility, residents shall be transferred to the infirmary only if they have consented to such transfer and shall remain in the infirmary for a limited time only, generally not to exceed one week.

8:36-4.13 Involuntary discharge

(a) Written notification by the administrator shall be provided to a resident and/or his or her family, guardian, or designated responsible person, of a decision to involuntarily discharge the resident from the facility. Such involuntary discharge shall only be upon grounds contained in the facility's policies and procedures and shall occur only if the resident has been notified and informed of such policies in advance. The notice of discharge shall be given at least 30 days in advance and shall include the reason for discharge and the resident's right to appeal. This 30 day advance notice shall not apply if the discharge is for reasons in accordance with the criteria specified at N.J.A.C. 8:36-4.1(d)1 through 8. A copy of the notice shall be entered in the resident's record.

(b) The resident shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing and a copy shall be included in the resident's record with the disposition or resolution of the appeal. The resident shall have the right to retain legal counsel to appeal.

(c) In an emergency situation, as stated in N.J.A.C. 8:36-4.12(d), for the protection of the life and safety of the resident or others, the facility may transfer the resident without 30 days notice. The Department shall be notified in the event of such discharge.

8:36-4.14 Notification requirements

(a) The resident's family, guardian, and/or designated responsible person or community agency shall be notified, immediately after the occurrence, in the event of the following:

1. The resident acquires *[any]* ***an*** acute illness requiring medical care;

2. Any serious accident, criminal act or incident occurs which involves the resident and results in serious harm or injury or results in the resident's arrest or detention. The Department of Health shall also be notified of these events;

3. The resident is transferred from the facility; or

4. The resident expires.

(b) Such notification shall be given at the time of occurrence, and then documented in the resident's record.

8:36-4.15 Interpretation services

The facility shall demonstrate the ability to provide a means to communicate with any resident admitted who is non-English-speaking and/or has a communication disability, using available community or on-site resources.

8:36-4.16 Referral and transfer agreements

Each licensed assisted living residence and comprehensive personal care home shall maintain written referral and/or transfer agreements with at least one licensed acute care hospital in New Jersey, at least one licensed State, county, or private psychiatric hospital in New Jersey, and with at least one licensed New Jersey long term care facility.

SUBCHAPTER 5. ADMINISTRATION

8:36-5.1 Appointment of administrator

An administrator shall be appointed and an alternate shall be designated in writing to act in the absence of the administrator. The administrator or a designated alternate shall be available at all times.

8:36-5.2 Administrator's responsibilities

(a) The administrator or designee shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including resident rights;

2. Planning for, and administration of, the managerial, operational, fiscal, and reporting components of the facility;

3. Ensuring that all personnel are assigned duties based upon their ability and competency to perform the job and in accordance with written job descriptions;

4. Ensuring the provision of staff orientation and staff education; *[and]*

5. Establishing and maintaining liaison relationships and communication with facility staff and services and with residents and their families*[.]***; and***

6. Establishing and maintaining liaison relationships and communications with community hospitals, social, and mental health service agencies.

(b) The administrator shall be qualified in accordance with N.J.A.C. 8:36-1.5.

SUBCHAPTER 6. RESIDENT CARE POLICIES

8:36-6.1 Resident care policies and procedures

(a) Written resident care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, the following:

1. Resident rights;

2. Advance directives, including but not limited to, the following:

i. The circumstances under which an inquiry will be made of individuals regarding the existence and location of an advance directive;

ii. Requirements for provision of a written statement of resident rights regarding advance directives, approved by the Commissioner or his or her designee, to residents upon admission; and

iii. Requirements for documentation in the resident record;

3. The determination of staffing levels to ensure delivery of services and assistance as needed for each resident of the facility during each 24-hour period. Services may be provided directly by staff employed by the facility or in accordance with a written contract;

4. The delivery of personal care and assistance to residents in accordance with assisted living concepts which specify that each resident will be encouraged to maintain his or her independence and personal decision making abilities;

5. The referral of residents to health care providers in accordance with individual needs and resident service plans;

6. Emergency medical and dental care of residents, including notification of the resident's family, guardian, or designated community agency, and care of residents during periods of acute illness;

[7. Obtaining written informed consent for any medical procedures performed at the facility which require informed consent by law, and the circumstances under which written informed consent shall be obtained;]

*[8.]***7.*** Resident instruction and health education;

*[9.]***8.*** The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq.

i. Residents, staff and visitors shall be permitted to smoke only in designated smoking areas having adequate outside ventilation;

ii. Nonflammable ashtrays in sufficient numbers shall be provided in designated smoking areas;

iii. Any room designated for smoking shall meet the following ventilation requirements for acceptable indoor air quality:

(1) A ventilation system which prevents contaminated air from recirculating through the facility;

(2) The number of air changes per hour within the designated smoking room shall be equivalent to the number necessary to achieve 60 cubic feet per minute per smoker, based on occupancy of no greater than five smokers per 100 square feet; and

(3) Negatively pressurized air to prevent backstreaming of smoke into nonsmoking areas of the facility;

iv. At the facility's option, a smoke-free policy may be developed, which shall include adequate notice to all applicants prior to admission to the facility;

*[10.]***9.*** Discharge, termination by the facility, transfer, and readmission of residents, including criteria for each;

*[11.]***10.*** The care and control of pets, if the facility permits pets in the facility or on its premises; and

*[12.]***11.*** A policy to determine those circumstances where the resident's absence should be investigated.

8:36-6.2 Financial arrangements

(a) The facility shall:

1. Inform residents of any and all fees for services provided and charges for supplies routinely provided by the facility. Upon ad-

mission and at the time of any price change the resident shall also be informed of the costs of supplies which are specially ordered*. **At the resident's request, this information may be provided instead to the resident's family, guardian, or designated community agency***;

2. Maintain a written record of all financial arrangements with the resident and/or his or her family, guardian, or designated community agency with copies furnished to the resident;

3. Assess no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:

i. Upon written agreement of the resident and/or his or her family, guardian, or designated community agency, who shall be given a copy of the written approval;

ii. Upon written orders of the resident's physician, stipulating specific services not included in the admission agreement;

iii. Upon 30 days' prior written notice to the resident and/or his or her family of any change in charges, expenses, or other financial liabilities that are in addition to the agreed daily, weekly, or monthly rate; *[and]* ***or***

iv. Where there is written documentation of the resident's agreement to the purchase and cost of supplies which are purchased through the facility.

4. Provide the resident with information regarding financial assistance available from third-party payors and/or other payors and referral systems for residents' financial assistance.

5. All residents who have advanced a security deposit to a facility prior to or upon their admission shall be entitled to receive interest earnings which have accumulated on such funds or property.

i. The facility shall hold such funds or property in trust for the resident and they shall remain the property of the resident. All such funds shall be held in an interest-bearing account as established under requirements of N.J.S.A. 30:13-1 et seq.

ii. The facility may deduct an amount not to exceed one percent per annum of the amount so invested or deposited for costs of servicing and processing the accounts.

iii. The facility within 60 days of establishing an account shall notify the resident, in writing, of the name of the bank or investment company holding the funds and the account number. The facility shall thereafter provide a quarterly statement to each resident it holds security funds in trust for identifying the balance, interest earned, and any deductions for charges or expenses incurred in accordance with the terms of the contract or agreement of admission.

8:36-6.3 Personal needs allowance

(a) The administrator or his or her representative shall develop a policy and procedure for handling the monthly personal needs allowance for each resident who receives Supplemental Security Income (SSI) or General Public Assistance. The personal needs allowance shall be at least the amount specified by the New Jersey State Department of Human Services pursuant to N.J.S.A. 44:7-87(h).

(b) Every administrator to whom resident's personal funds are entrusted shall maintain written records, such as a ledger, including the date each payment was received, the amount of payment, the date of each disbursement, the amount of each disbursement, the reason for each disbursement and to whom each disbursement was made. The personal needs allowance shall not be commingled with any other facility operating account and shall be deposited into an interest bearing account. Each resident shall receive his or her personal needs allowance within 72 hours of the receipt of the check by the administrator.

(c) The resident shall sign to acknowledge receipt of funds, or goods or services purchased with such funds, at the time of disbursement.

SUBCHAPTER 7. RESIDENT ASSESSMENTS, RESIDENT SERVICE PLAN*S*, HEALTH CARE PLANS AND HEALTH CARE SERVICES

8:36-7.1 ***Initial assessments,*** *[Resident]* ***resident*** service plans***, health care assessments and health care plans***

(a) Each resident shall *[be assessed]* ***receive an initial assessment*** by a registered professional nurse to determine if the resident needs general and/or health care services. The initial nursing assessment shall not be required if a licensed physician specifies in writing, within 60 days prior to admission, that the resident has no health care service needs and is appropriate for an assisted living residence or a comprehensive personal care home.

(b) If the assessment indicates that the resident has general service needs, a resident service plan shall be developed within *[seven]* ***14*** days of the resident's admission. The resident service plan shall include, but not be limited to, the following:

1. The resident's requirements for assistance in activities of daily living (ADL), if needed*[, including designation of persons who will provide assistance, how the services will be provided, and frequency]*;

2. The resident's *[requirements for]* ***needs, if any, for assistance with*** transportation*[, if needed]*; and

3. Requirements for assistance with recreational and other activities, if needed*[, as determined by the resident assessment.]*;*

4. In lieu of the required resident service plan, the facility may substitute the admission agreement (or other document presented to the resident) provided it explains the circumstances under which the resident will receive assistance with ADLs, transportation, recreational and other activities.

(c) If the resident does not *[require]* ***have*** any ***general*** service*[s]* ***needs***, a resident service plan is not needed.

(d) If the resident assessment indicates that the resident requires health care services, a health care assessment shall be completed within 14 days of admission by a registered professional nurse using the Minimum Data Set (MDS) form (available from the Department) or an assessment instrument which has been adopted by the facility that meets the requirements of (e) below. Based on *[that]* ***the health care*** assessment a written ***health care*** plan *[of care]* shall be developed. The health care plan shall include, but not be limited to the following:

1. Orders for treatment or services, medications, and diet, if needed;

2. The resident's needs and preferences for himself or herself;

3. The specific goals of treatment or services, if appropriate;

4. The time intervals at which the resident's response to treatment will be reviewed; and

5. The measures to be used to assess the effects of treatment.

(e) Each *[resident]* ***health care*** assessment by the registered professional nurse shall include, at a minimum, evaluation of the following:

1. Cognitive patterns;
2. Communication/hearing patterns;
3. Vision patterns;
4. Physical functioning and structural problems;
5. Continence;
6. Psychosocial well-being;
7. Mood and behavior patterns;
8. Activity pursuit patterns;
9. Disease diagnoses;
10. Health conditions;
11. Oral/nutritional status;
12. Oral/dental status;
13. Skin conditions;
14. Medication use; and
15. Special treatment and procedures.

(f) If the resident does not need a health care service, a ***health*** care plan is not needed *[for that service]*.

(g) The resident shall participate and, if *[indicated]* ***the resident agrees***, family members shall be invited to participate in the

development of the resident service plan and health care plan, if plans are needed. Participation shall be documented in the resident's record.

8:36-7.2 Implementation of plans

The resident service plan *[and/or health care plan]* shall be reviewed and, if necessary, revised *[quarterly]* ***semiannually***, based upon the resident's response to the care provided *[by each of the participating services]*. ***The health care plan shall be reviewed, and if necessary, revised quarterly, based upon the resident's response to the care provided.*** Documentation in the resident's record shall indicate review and any necessary revision of the resident service plan and/or health care plan.

8:36-7.3 Health care services

(a) The assisted living residence and comprehensive personal care home shall assure that the resident receives health care services, as defined at N.J.A.C. 8:36-1.3, under the direction of a registered professional nurse, in accordance with the health care plan.

(b) The facility shall have at least one registered professional nurse available at all times. Available, in this instance, shall mean on call and capable of being reached by telephone.

(c) A registered professional nurse shall be responsible for developing nursing practice policies and procedures and the coordination of all health care services required in the resident's health care plan.

(d) Written policies and procedures shall insure, but not be limited to the following:

1. Assessment of the health ***care*** service needs of all residents in the facility*[, and reassessment]* at least *[quarterly]* ***semiannually*** *[of all residents]*, *[including those who did not have an initial nursing service plan]* ***except that those residents who have a health care plan shall be reassessed quarterly***;

2. Monitoring of the conditions of the residents on a periodic basis;

3. Notification of the registered nurse if there are significant changes in a resident's condition;

4. Assessment of the resident's need for referral to a physician or community agencies as appropriate; and

5. Maintenance of records as required.

8:36-7.4 Provision of health care services

(a) The facility shall arrange for health care services to be provided to residents as needed, in accordance with assessments and with health care plans. ***The administrator shall develop a system to identify the residents receiving a health care service.***

(b) At the time of admission, arrangements shall be made between the administrator and the resident, guardian, or designated community agency regarding the physician and dentist to be called in case of illness, or the person to be called for a resident who, because of religious affiliation, is opposed to medical treatment.

(c) The initial health care *[service]* assessment shall be documented by the health care professional providing the service and shall be updated as required, in accordance with professional standards of practice, at least quarterly.

(d) The *[health care professional shall notify the]* resident's physician or the physician's designee ***shall be notified*** of any significant change in the resident's physical or psychological condition ***and any intervention by the physician shall be recorded***.

(e) *[The administrator or designee shall ensure that an up-to-date log is maintained containing the names of all residents who are receiving health care services, the type of health care services being provided to the resident, the names of the health care personnel who are providing the services, and the date and reasons for the resident's discontinuing of health care services.]* ***If a resident who has not been receiving a health care service requires a health care service on a temporary basis (meaning a period of time reasonably expected to be 14 days or less and not involving a significant change in condition or a life threatening illness), neither a health care assessment nor a health care plan need be done. The administrator shall develop a system to identify the residents receiving a health care service on a temporary basis.***

(f) The registered professional nurse or a physician shall be called at the onset of illness of any resident to arrange for assessment of the resident's nursing care needs or medical needs and for needed nursing care intervention or medical care.

(g) Each resident shall have an annual physical examination by a physician ***or by a nurse practitioner/clinical nurse specialist***, which shall be documented in the resident's record. The physician ***or nurse practitioner/clinical nurse specialist*** shall certify annually that the resident does not have needs which exceed the care which the assisted living residence or comprehensive personal care home is capable of providing.

(h) Residents shall be permitted free choice of a physician.

[(i) The administrator shall arrange for a physician to be available for emergencies, including injuries or accidents to residents, or when required by a resident's condition.]

*[(j)]***(i)*** If it is determined that there is a medical need for a transfer to another health care facility because the assisted living residence or comprehensive personal care homes cannot meet the resident's needs such transfers shall be initiated promptly, in accordance with N.J.A.C. 8:36-4.1(d)1. The registered professional nurse shall be notified to ensure that the resident is receiving appropriate care during the transfer period. If the resident is not transferred within seven days, the Department shall be notified and assistance shall be requested from the Department to arrange for transfer of the resident.

8:36-7.5 Quality assurance

The facility shall develop written policies and procedures for *[and establish a Quality Assurance Program for all residents receiving]* ***monitoring the quality of*** health care services ***provided to residents***.

SUBCHAPTER 8. DINING SERVICES

8:36-8.1 Provision of meals

The assisted living residence or comprehensive personal care home shall providing dining services to meet the daily nutritional needs of residents, directly in the facility.

8:36-8.2 Designation of a food service *[supervisor]* ***coordinator***

(a) The facility shall designate a food service *[supervisor]* ***coordinator*** who, if not a dietitian, functions with scheduled consultation from a dietitian. When meals are prepared in the facility, the food service *[supervisor]* ***coordinator*** or designee shall be present in the facility. The food service *[supervisor]* ***coordinator*** shall *[be responsible for, but not limited to, the following:]* ***ensure that dining services are provided as specified in the dining portion of the health care plan.***

*[1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the dining service;

2. Participating in planning and budgeting for the dining service;

3. Ensuring that dining services are provided as specified in the dining portion of the resident service plan;

4. Assisting in developing and maintaining written job descriptions for dining service personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.]*

8:36-8.3 Responsibilities of dietitians

(a) If indicated, according to residents' needs, a dietitian shall be responsible for providing resident care, including, but not limited to, the following:

1. Assessing the nutritional needs of the resident. If indicated, preparing the dietary portion of the health care plan on the basis of the assessment, providing dietary services to the resident as specified in the dietary portion of the health plan, reassessing the resident, and revising the dietary portion of the health care plan. Each of these activities shall be documented in the resident's record; and

2. Providing nutritional counseling and education to residents.

8:36-8.4 Requirements for dining services

(a) The facility and personnel shall comply with the provisions of Chapter XII of the New Jersey Sanitary Code, N.J.A.C. 8:24.

(b) A current diet manual shall be available to the dining service personnel and to the nursing service personnel.

(c) Meals shall be planned, prepared, and served in accordance with, but not limited to, the following:

1. At least three meals shall be prepared and served daily to residents;

2. The facility shall select foods and beverages, which include fresh and seasonal foods, and shall prepare menus with regard to the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal preference of residents;

3. Written, dated menus shall be planned at least 14 days in advance for all diets. The same menu shall not be used more than once in any continuous seven day period;

4. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus shall be posted in a conspicuous place in residents' area, and/or a copy of the menu shall be provided to each resident. Any changes or substitutes in menus shall be posted or provided in writing to each resident. Menus, with changes or substitutes, shall be kept on file in the facility for at least 30 days;

5. Diets served shall be consistent with the diet manual, the dietitian's instructions, and, if applicable for special diets, shall be served in accordance with physicians' orders;

6. Nutrients and calories shall be provided for each resident, based upon current recommended dining allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the resident, if applicable;

7. Between-meal snacks and beverages shall be available at all times for each resident, unless medically contraindicated as documented by a physician in the resident's health care plan;

8. Substitute foods and beverages of equivalent nutritional value shall be available to all residents;

9. *[There shall be designated staff responsible for observing meals refused or missed and documenting the name of the resident and the meal refused or missed]* ***In the case of a resident who has a health care plan in which diet is identified as a service, the staff shall observe whether meals are refused or missed and shall document this information****;

10. All meals shall be served at the proper temperature and shall be attractive when served to residents. Place settings and condiments shall be appropriate to the meal;

11. Seatings shall be arranged for each meal in order to accommodate individual resident's meal-time preferences, in accordance with facility policies;

12. ***In the case of a resident who has a health care plan in which diet is identified as a service, a**** *[A]* record shall be maintained for *[each]* ***such**** resident, identifying the resident by name, diet order, if applicable, and other information, such as meal patterns, when on a calculated diet and allergies*[. Such record shall be available in the dining area]*; and

13. If the resident is ill, *[or so requests,]* meals shall be served in his or her apartment, as indicated in the resident service plan and in accordance with facility policy.

8:36-8.5 Commercial food management services

If a commercial food management firm provides dining services, the firm shall be required to conform to the standards of this subchapter.

SUBCHAPTER 9. PHARMACEUTICAL SERVICES

8:36-9.1 Provision of pharmaceutical services

The assisted living residence and comprehensive personal care home shall be capable of ensuring that pharmaceutical services are provided to residents in accordance with physician's orders and with each resident's health care plan.

8:36-9.2 Self-administration of medications

*[(a) Self-administration of medications by residents shall be performed as follows:

1. By removing a dose from a previously dispensed, properly labeled container (including a unit dose container);

2. By verifying it with the directions on the label; and

3. By taking orally, injecting, inserting, or otherwise administering the medication;]*

*[(b)]***(a)*** If indicated in the resident's health care plan ***or resident's service plan****, a designated employee shall provide resident supervision and/or assistance during self-administration of medications in accordance with physicians' orders. Any employee who has been designated to provide resident supervision or assistance during self-administration of medications shall have received training from the licensed professional nurse or the licensed pharmacist, and such training shall be documented.

1. The facility shall document the provision of training to each employee who has been designated to provide resident supervision and/or assistance with self-administration of medications; and

2. The facility shall document any observed instance where medications are not taken in accordance with physician's orders.

8:36-9.3 Administration of medications

(a) Notwithstanding the definition of "health care service" at N.J.A.C. 8:36-1.3, the administration of medication in accordance with N.J.A.C. 8:36-9.2 and 9.3, in and of itself, shall not be considered a health care service.

*[(a)]***(b)*** All medications administered by qualified personnel shall be administered in accordance with prescriber orders, facility policy, and all Federal and State laws and regulations.

*[(b)]***(c)*** *[The registered professional nurse may delegate responsibility, in accordance with N.J.A.C. 13:37-6.2, for medication administration to personal care assistants, based upon individual residents' needs and circumstances, within specific limits.]* ***The administration of medications is within the scope of practice and remains the responsibility of the registered professional nurse. The registered professional nurse may choose to delegate the task of administering medications in accordance with N.J.A.C. 13:37-6.2 to personal care assistants who have completed a medication administration course approved by the State Board of Nursing and the Department. When the registered nurse delegates the task of administering medications to personal care assistants this delegation is based upon individual residents' needs and circumstances, within specific limits.*** These limits shall include, but not be limited to, the following:

1. *[Administration of oral medications, external applications, rectal suppositories, and pre-dawn insulin injections only may be delegated; class two drugs (narcotics), anti-psychotic drugs, and drugs requiring any other mode of administration are excluded from the nurse's delegation]* ***The administration of oral, ophthalmic, otic, inhalant, nasal, rectal, vaginal, topical and injectable (subcutaneous) medications may be delegated. Residents receiving short term Scheduled medications (II-IV) for analgesia, and injections other than pre-drawn insulin, must be reassessed by the registered nurse at least every 72 hours, in order to determine if the medication is still required****;

2. A Statewide training program regarding medication administration shall be completed by each personal care assistant who will administer medications;

[3. The resident's condition shall be medically stable;]

*[4.]***3.*** The delegating nurse shall review with the personal care assistant medication actions and untoward effects for each drug to be administered. Pertinent information about medications' adverse effects, side effects, and potential interactions shall be incorporated into the care plan for each resident, with interventions to be implemented by the personal care assistant and other caregiving staff; and

*[5.]***4.*** *[An FDA approved unit dose]* ***A unit of use**** drug distribution system shall be developed and implemented.

[(c) Medications for individual residents shall only be removed from their original prescription containers by qualified personnel when an individual medication administration device is used.]

(d) Each resident shall be identified prior to drug administration.

(e) Drugs prescribed for one resident shall not be administered to another resident.

(f) Personnel shall report drug errors and adverse drug reactions immediately to the director of health services, to the prescriber, and to the pharmacist, and shall document the incident in the resident's record.

8:36-9.4 Designation of a pharmacist

(a) The facility shall designate a pharmacist who shall direct pharmaceutical services and provide consultation to the physician, facility staff, and residents, as needed. The pharmacist shall assist the facility with, at a minimum, the following:

1. Training of employees;
2. Educating residents regarding medications;
3. Establishing policies and procedures which ensure safe and appropriate self-administration of medications;
4. Reviewing medication records; and
5. Inspecting all common areas that the facility has designated for storage of medications and maintaining records of such inspections.

8:36-9.5 Storage of medications

(a) For those residents who do not self-administer medications, the administrator shall provide an appropriate and safe medication storage area, either in a common area or in the resident's unit, for the storage of medications. ***The storage area requirement may be satisfied through the use of a locked medication cart.***

1. The storage area shall be kept locked when not in use.
2. The storage area shall be used only for storage of medications and medical supplies.
3. The key to the storage area shall be kept on the person of the employee on duty who is responsible for resident supervision.
4. Each resident's medications shall be kept separated within the storage area, with the exception of large volume medications which may be labeled and stored together in the storage area.

*[(b)]***5.*** Medications shall be stored in accordance with manufacturer's instructions and with U.S.P. (United States Pharmacopoeia) regulations.

*[(c)]***(b)*** *[Unless the facility is using an individual medication administration device, all]* ***All*** medications shall be kept in their original containers and shall be properly labeled and identified.

1. The label of each resident's prescription medication container shall be permanently affixed and contain the resident's full name, physician's name, prescription number, name and strength of drug, lot number, ***quantity,*** date of issue, expiration date, manufacturer's name if generic, directions for use, and cautionary and/or accessory labels. If a generic substitute is used, the drug shall be labeled according to the Drug Utilization Review Council Formulary, N.J.S.A. 24:6E-1 et seq. Required information appearing on individually packaged drugs or within an alternate medication delivery system need not be repeated on the label.
2. All over-the-counter (OTC) medications repackaged by the pharmacy shall be labeled with an expiration date, name and strength of the drug, lot number, date of issue, manufacturer's name if generic, and cautionary and/or accessory labels, in accordance with U.S.P. regulations. Original manufacturer's containers shall be labeled with at least the resident's name, and the name label shall not obstruct any of the aforementioned information.
3. If a unit *[dose]* ***of use*** drug distribution system is used, each dose of medication shall be individually packaged in a hermetically sealed, tamper-proof container, and shall carry full manufacturer's disclosure information on each discrete dose. Disclosure information shall include, but not be limited to, the following: product name and strength, lot number, expiration date, and manufacturer's or distributor's name. *[("Bingo" or punch card systems are not required to have each discrete dose labeled.)]*

*[(d)]***(c)*** Single use and disposable items shall not be reused.

*[(e)]***(d)*** No stock supply of prescription medications shall be maintained, unless prior approval is obtained from the Department.

*[(f)]***(e)*** Discontinued or expired medications shall be destroyed within 30 days in the facility, or, if unopened and properly labeled, returned to the pharmacy. All medication destruction in the facility shall be witnessed and documented by two persons, each of whom shall be either the administrator, the licensed nurse or the *[consultant]* pharmacist.

SUBCHAPTER 10. RESIDENT ACTIVITIES

8:36-10.1 Provision of resident activities

(a) A planned, diversified program of resident activities shall be offered daily for residents, including individual and/or group activities, on-site or off-site, to meet the individual needs of residents.

(b) Residents shall have the opportunity to organize and participate in a Resident Council that presents the resident's concerns to the administrator of the facility.

SUBCHAPTER 11. SOCIAL WORK SERVICES

8:36-11.1 Provision of social work services

The facility shall arrange for the provision of *[clinical]* social work services to residents who require them, in accordance with N.J.S.A. 45:15BB.

SUBCHAPTER 12. EMERGENCY SERVICES AND PROCEDURES

8:36-12.1 Emergency medical services

(a) Emergency medical services shall be available to or arranged for residents requiring these services.

(b) The facility shall develop a written plan for arranging for emergency transportation of residents for medical care and returning them to the assisted living residence.

8:36-12.2 Emergency plans and procedures

(a) The facility shall develop written emergency plans, policies, and procedures which shall include plans and procedures to be followed in case of medical emergencies, power failures, fire, or natural disasters. The emergency plans shall be filed with the Department of Health and the Department shall be notified when the plans are changed. Copies of emergency plans shall also be forwarded to other agencies in accordance with State and municipal laws.

(b) The emergency plans, including a written evacuation diagram specific to the unit that includes evacuation procedure, location of fire exits, alarm boxes, and fire extinguishers, and all emergency procedures, shall be conspicuously posted throughout the facility. All employees shall be trained in procedures to be followed in the event of a fire and instructed in the use of fire-fighting equipment and resident evacuation as part of their initial orientation and at least annually thereafter. All residents shall be instructed in emergency evacuation procedures.

(c) Procedures for emergencies shall specify persons to be notified, process of notification and verification of notification, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating residents, procedures for reentry and recovery, frequency of fire drills, tasks and responsibilities assigned to all personnel, and shall specify medications and records to be taken from the facility upon evacuation and to be returned following the emergency.

8:36-12.3 Drills and tests

(a) The facility shall conduct at least one drill of the emergency plans every month, of which at least one annually shall take place during every working shift. The facility shall maintain documentation of all drills, including the date, hour, description of the drill, participating staff, and signature of the person in charge. In addition to drills for emergencies due to fire, the facility shall conduct at least one drill per year for emergencies due to a disaster other than fire, such as storm, flood, other natural disaster, bomb threat, or nuclear accident (a total of 12 drills). All staff shall participate in at least one drill annually, and selected residents may participate in drills.

(b) At least one joint fire drill shall be conducted annually, involving the local fire department. The facility shall notify first aid and civil defense agencies of this drill and shall participate in community-wide disaster drills.

(c) The facility shall test at least one manual pull alarm each month of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(d) Fire extinguishers shall be conspicuously hung, kept easily accessible, shall be visually examined monthly and the examination shall be recorded on a tag which is attached to the fire extinguisher. Fire extinguishers shall also be inspected and maintained in accordance with manufacturers' and applicable National Fire Protection Association (NFPA) requirements. Each fire extinguisher shall be labeled to show the date of such inspection and maintenance.

SUBCHAPTER 13. RESIDENT RECORDS

8:36-13.1 Health record

A current, complete health record shall be maintained for each resident who is receiving health care services.

8:36-13.2 Confidentiality

Records and information regarding the individual resident shall be considered confidential and the resident shall have the opportunity to examine such records, in accordance with facility policies. The written consent of the resident shall be obtained for release of his or her records to any individual outside the facility, except in the case of the resident's transfer to another health care facility, or as required by law, third-party payor, or authorized government agencies.

8:36-13.3 Record retention

All records shall be maintained for a period of 10 years after the discharge of a resident from the assisted living facility.

8:36-13.4 Record availability

The records required in this subchapter shall be maintained for all residents and shall be kept available on the premises for review at any time by representatives of the Department of Health.

8:36-13.5 Register

(a) A register which contains a current census of all residents along with other pertinent information, shall be maintained by each assisted living residence. The following standards for maintaining the register shall apply:

1. The administrator or the administrator's designee shall make all entries in the register and shall be responsible for its maintenance and safe-keeping;

2. The register shall be kept up-to-date at all times. Admissions, discharges and discharge destination, and other changes shall be recorded within 48 hours;

3. The register, which is a permanent record, shall be kept in a safe place; and

4. All entries into the register shall be clear, legible, and written in ink or typed.

8:36-13.6 Residents' individual records

(a) Each resident's record shall include at least the following:

1. The resident's completed admission application and all records forwarded to the facility;

2. The resident's name, last address, date of birth, name and address of sponsor or interested agency, date of admission, date of discharge (and discharge destination) or death, the name, address and telephone number of physician to be called, and the name and address of nearest relative, guardian, responsible person, or interested agency, together with any other information the resident wishes to have recorded;

3. A copy of the resident's service plan and/or health care plan, if applicable; ***and***

[4. A complete record of physicians' visits, if applicable, including dates and physician's comments; and]

*[5.]***4.*** All assessments and treatments by health care and service providers, entered at least annually. Documentation and/or notes from all health care and service providers shall be entered at least quarterly, or more frequently based on individual resident's needs.

8:36-13.7 Record of death

Whenever a resident dies in the assisted living residence, the administrator or the administrator's designee shall include written documentation from the physician of the date and time of death, the name of the person who pronounced the death, disposition of the body, and a record of notification of the family.

SUBCHAPTER 14. RESIDENT RIGHTS

8:36-14.1 Posting and distribution of statement of resident rights

(a) To assure the highest quality of services, each Assisted Living provider will post and distribute a statement of resident rights, as approved and issued by the Department in accordance with N.J.S.A. 30:13, the Nursing Home Patients Bill of Rights, and consistent with the following principles of assisted living:

1. Provide personalized services and care to meet each resident's needs;

2. Foster the independence and individuality of each resident;

3. Treat each resident with respect, courtesy, consideration and dignity;

4. Assure each resident the right to make choices with respect to services and lifestyle;

5. Assure each resident's right to privacy;

6. Nurture the spirit and uniqueness of each resident;

7. Encourage families and friends participation in resident service planning and implementation; and

8. Provide opportunities for the Assisted Living Facilities to become a valuable community resource.

SUBCHAPTER 15. HOUSEKEEPING, SANITATION, SAFETY AND MAINTENANCE

8:36-15.1 Provision of services

(a) The facility shall provide and maintain a sanitary and safe environment for residents, in accordance with Chapter 12, New Jersey Sanitary Code, N.J.A.C. 8:24.

(b) The facility shall provide housekeeping, laundry, pest control, and maintenance services, and shall provide assistance to residents who require assistance with these services in their residential units.

[(c) Written objectives, policies, a procedure manual, and an organizational plan for housekeeping, sanitation, safety, laundry and maintenance services shall be developed and implemented.]

8:36-15.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility. The facility shall have a written schedule that determines the frequency of cleaning and maintenance of all equipment, structures, areas, and systems.

(b) Housekeeping personnel shall be trained in cleaning procedures, including the use and care of equipment.

8:36-15.3 Resident environment

(a) The following housekeeping and sanitation conditions shall be met ***(application of this requirement with respect to the individual living environment shall take into consideration residents' personal preferences for style of living)***:

1. The facility and its contents, including all surfaces such as tables, floors, walls, beds and dressers, shall be clean to sight and touch and free of dirt and debris;

2. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;

3. All resident areas shall be free of noxious odors;

4. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Items which are broken or worn to the extent that they may cause discomfort or present danger to residents shall be repaired, replaced, or removed promptly;

5. All equipment and materials necessary for cleaning, disinfecting, sanitizing, and sterilizing (if applicable) shall be provided;

6. For central kitchens, thermometers which are accurate to within three degrees Fahrenheit shall be kept in a visible location within refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration. Temperatures shall be maintained in accordance with Chapter 12 of the New Jersey Sanitary Code, N.J.A.C. 8:24;

7. Lighted and ventilated storage spaces shall be provided in the facility for the proper storage of residents' clothing, linens, drugs, food, cleaning and other supplies;

8. Articles in storage shall be elevated from the floor and away from walls (if moisture is present), ceilings, and air vents;

9. Unobstructed aisles shall be provided in storage areas;

10. Effective and safe controls shall be used to minimize and eliminate the presence of rodents, flies, roaches and other vermin in the facility;

11. When facility housekeeping services are provided, items such as bedpans, toilets and sinks shall be disinfected, using a process for disinfection established by the facility; and

12. Toilet tissue, soap, paper towels or air dryers, and waste receptacles shall be provided in each common area toilet facility at all times. A self-draining dish or device shall be provided for storage of bar soap, if bar soap is used. Resident's personal cloth towels may be used in residential units.

(b) The following safety conditions shall be met:

1. Non-carpeted floors in public areas shall be coated with slip-resistant floor finish, and any carpeting in public areas shall be kept clean and odor free and shall not be frayed, worn, torn, or buckled;

2. All equipment shall have unobstructed space provided for operation;

3. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

4. All household and cleaning products used by facility staff shall be identified, labeled, and secured. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room. The telephone number of the poison control center shall be conspicuously posted in the facility;

5. Combustible materials shall not be stored in heater rooms or within 18 feet of any heater;

6. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in accordance with fire safety requirements specified *[at Table 313.1.4.1 of BOCA National Building]* ***in the Uniform Construction*** Code*, **N.J.A.C. 5:23***;

7. If pets are allowed in the facility, the facility shall provide safeguards to prevent interference in the lives of residents, and the facility should comply with guidelines for pet facilitated therapy issued by the New Jersey State Department of Health;

8. A licensed electrician or an independent inspection agency approved by the State of New Jersey shall annually inspect and provide a written statement that the electrical circuits and wiring in the facility are satisfactory and in safe condition;

i. The written statement shall include the date of inspection, and shall indicate that circuits are not overloaded, that all wiring and permanent fixtures are in safe condition, and that all portable electrical appliances, including lamps, are U.L. approved; and

ii. The written statement shall be forwarded annually to the New Jersey Department of Health, Division of Health Facilities Evaluation.

8:36-15.4 Waste removal

(a) All solid or liquid waste, garbage, and trash shall be collected, stored, and disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste which is stored within the building shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers and collected from storage areas regularly so as to prevent nuisances such as odors. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24.

(b) If garbage compactors are used, they shall comply with all State and local codes.

8:36-15.5 Heating and air conditioning

(a) The heating and air conditioning system shall be adequate to maintain the required temperature in all areas used by residents. Residents may have individually controlled thermostats in residential units in order to maintain temperatures at their own comfort level.

1. During the heating season, the temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) during the day ("day" means the time between sunrise and sunset) and 68 degrees Fahrenheit (20 degrees Celsius) at night, when residents are in the facility.

2. The facility or residents may not utilize portable heaters.

3. During warm weather conditions, the temperature within the facility shall not exceed 82 degrees Fahrenheit, in accordance with Chapter 173, Laws of New Jersey, 1989.

i. The facility shall provide for and operate adequate ventilation in all areas used by residents.

ii. All areas of the facility used by residents shall be equipped with air conditioning and the air conditioning shall be operated so that the temperature in these areas does not exceed 82 degrees Fahrenheit.

4. Residents may regulate temperature controls in residential units, and may, by choice, exceed 82 degrees Fahrenheit.

(b) Filters for heaters and air conditioners shall be provided as needed and shall be maintained in accordance with manufacturer's specifications.

8:36-15.6 Water supply

(a) The water supply used for drinking or culinary purposes shall be adequate in quantity, of a safe and sanitary quality, and from a water system which shall be constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., N.J.A.C. 7:10 et seq. and local laws, ordinances, and regulations. Copies of the Safe Drinking Water Act can be obtained from the Department of Environmental Protection, Bureau of Potable Water, CN 209, Trenton, New Jersey 08625.

(b) The temperature of the hot water used for bathing and handwashing shall be at least 95 degrees and shall not exceed 110 degrees Fahrenheit (35-43 degrees Celsius).

(c) Equipment requiring drainage, such as ice machines, shall be drained to a sanitary connection, in accordance with State and local codes.

(d) The sewage disposal system shall be maintained in good repair and operated in compliance with State and local laws, rules, and ordinances.

8:36-15.7 Building and grounds maintenance

The building and grounds shall be well maintained at all times. The interior and exterior of the building shall be kept in good condition to ensure an attractive appearance, provide a pleasant atmosphere, and safeguard against deterioration. The building and grounds shall be kept free from fire hazards and other hazards to resident's health and safety.

8:36-15.8 Laundry services

(a) Written policies and procedures shall be established and implemented for the facility's laundry services, including, but not limited to, policies and procedures regarding the following:

1. Storage and transportation of laundry;

2. Collection and storage of soiled laundry in a ventilated area;

3. Protection of clean laundry from contamination during processing, transporting, and storage; and

4. Handling and laundering of resident's clothing and personal items separately from other laundry.

(b) Soiled laundry shall be stored in a ventilated, vermin-proof area, separate from other supplies, and shall be stored, sorted, rinsed, and laundered only in areas specifically designated for those purposes.

(c) All soiled laundry from resident rooms and other service areas shall be stored, transported, collected, and delivered in a covered laundry bag or cart. Laundry carts shall be in good repair, kept clean, and identified for use with either clean or soiled laundry.

(d) Clean laundry shall be protected from contamination during processing, storage, and transportation within the facility.

(e) Soiled and clean laundry shall be kept separate. An established procedure shall be followed to reduce the number of bacteria in the fabrics. Equipment surfaces that come into contact with laundry shall be sanitized.

(f) Residents who choose to launder their personal items shall be provided with in-house assistance in accordance with facility policy.

(g) If the facility provides a laundry service on site in lieu of using a commercial laundry service, it shall provide a receiving, holding, and sorting area with hand-washing facilities. The walls, floors, and ceilings of the area shall be clean and in good repair. The flow of ventilating air shall be from clean to soiled areas, and ventilation shall be adequate to prevent heat and odor build-up.

SUBCHAPTER 16. INFECTION PREVENTION AND CONTROL SERVICES

8:36-16.1 Infection control program

(a) The facility shall develop and implement an infection prevention and control program.

(b) The licensed professional nurse, in coordination with the administrator, shall be responsible for the direction, provision, and quality of infection prevention and control services. The health care services director, in coordination with the administrator, shall be responsible for, but not limited to, developing and maintaining written objectives, a policy and procedure manual, and an organizational plan for the infection prevention and control service.

8:36-16.2 Development of infection control policies and procedures

(a) The facility shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control. Written policies and procedures shall be consistent with the following Centers for Disease Control publications:

1. Guideline for Handwashing and Hospital Environmental Control; and

2. Enforcement Procedures for Occupational Exposure to Hepatitis B Virus (HVB) and Human Immunodeficiency Virus (HIV), OSHA Instruction CPL 2-2.44A, August 15, 1988 (or current edition).

NOTE: Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161
or
Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

8:36-16.3 General infection control policies and procedures

(a) Written policies and procedures shall be established and implemented regarding infection prevention and control, including, but not limited to, policies and procedures for the following:

1. In accordance with Chapter II, New Jersey State Sanitary Code, N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all residents or personnel having these infections, diseases, or conditions;

2. Infection control and isolation, in accordance with the Centers for Disease Control and Occupational Safety and Health Administration publication, "Enforcement Procedures for Occupational Exposure to Hepatitis B Virus (HVB) and Human Immunodeficiency Virus (HIV)," OSHA Instruction CPL 2-2.44A, August 15, 1988 (or current edition);

3. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;

4. Surveillance techniques to minimize sources and transmission of infection;

5. Techniques to be used during each resident contact, including handwashing before and after caring for a resident;

6. Protocols for identification of residents with communicable diseases and education of residents regarding prevention and spread of communicable diseases;

7. Sterilization, disinfection, and cleaning practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and non-disposable resident care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged, labeled, processed, transported, and stored to maintain sterility and to permit identification of expiration dates; and

iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and

8. Needles and syringes used by residents as part of home self-care shall be destroyed in accordance with N.J.S.A. 2A:170-25.17, and amendments thereto, and shall then be placed in a puncture-resistive container prior to disposal.

8:36-16.4 Employee health and resident policies and procedures for infection prevention and control

(a) Each new employee*[, including members of the medical staff employed by the facility,]* upon employment shall receive a two-step Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions shall be employees with documented negative two-step Mantoux skin test results (zero to nine millimeters of induration) within the last six months, employees with a documented positive Mantoux skin test result (10 or more millimeters of induration), employees who have received appropriate medical treatment for tuberculosis, or when medically contraindicated. Results of the Mantoux tuberculin skin tests administered to new employees shall be acted upon as follows:

1. If the Mantoux test is significant (10 millimeters or more of induration), a chest x-ray shall be performed and, if necessary, followed by chemoprophylaxis or therapy.

2. Any employee with positive results shall be referred to the employee's personal physician and shall be excluded from work until the physician provides written approval to return.

(b) The facility shall have written policies and procedures establishing timeframes, requiring annual Mantoux tuberculin skin tests for all employees except those exempted under (a) above.

(c) The facility shall assure that all current employees who have not received the Mantoux test upon employment, except those exempted by (a) above, shall receive a test within 3 months of the effective date of this rule. The facility shall act on the results of tests of current employees in the same manner as prescribed in (a) above.

(d) Employees who have signs or symptoms of a communicable disease shall not be permitted to perform functions that expose residents to risk of transmission of the disease.

(e) If a communicable disease prevents the employee from working for a period of more than three days, a physician's statement approving the employee's return shall be required prior to the employee's return to work.

(f) The facility shall develop and implement procedures for the care of employees who become ill while at work or who have a work-related accident.

(g) The facility shall maintain listings of all residents and personnel who have reportable infections, diseases, or conditions.

(h) High-level disinfection techniques approved by the New Jersey State Department of Health shall be used for all reusable respiratory therapy equipment and instruments that touch mucous membranes.

(i) Disinfection procedures for items that come in contact with bed pans, sinks, and toilets shall conform with established protocols for cleaning and disinfection.

(j) All residents shall be provided with an opportunity to wash their hands before each meal and shall be encouraged to do so. Staff shall wash their hands before each meal and before assisting residents in eating.

(k) Personnel who have had contact with resident excretions, secretions, or blood, whether directly or indirectly, in activities such

as performing a physical examination, providing catheter care, and emptying bedpans, shall wash their hands with soap and warm water for between 10 and 30 seconds or use other effective hand sanitation techniques immediately after such contact.

(l) Equipment and supplies used for sterilization, disinfection, and decontamination purposes shall be maintained according to manufacturers' specifications.

(m) The facility shall maintain records documenting contagious diseases contracted by employees during employment, as specified at N.J.A.C. 8:57-1.3(a) and (b).

8:36-16.5 Staff education and training for infection prevention and control

All staff members shall be informed about the facility's infection control procedures, including personal hygiene requirements.

8:36-16.6 Regulated medical waste

(a) The facility shall develop policies and procedures for the collection, storage, and handling of regulated medical waste.

(b) The facility shall comply with the provisions of N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules and regulations promulgated pursuant to the aforementioned Acts.

SUBCHAPTER 17. COMPREHENSIVE PERSONAL CARE HOMES

8:36-17.1 Eligibility

(a) Eligibility for conversion to a comprehensive personal care home shall be open exclusively to *[the following:]* ***those entities identified at N.J.A.C. 8:33H-1.10(c) and (d), whichever is applicable.***

*[1. Freestanding residential health care facilities which were licensed or Certificate of Need-approved on or before the date these rules become effective;

2. Residential health care beds located within a long-term care facility that was licensed or Certificate of Need-approved on or before January 1, 1993;

3. Licensed long-term care beds;

4. "Class C" boarding homes which were licensed on or before January 1, 1993. In order to be eligible for conversion to a comprehensive personal care home, a "Class C" boarding home must, at a minimum, be capable of meeting the physical plant standards for licensure as a comprehensive personal care home in N.J.A.C. 8:36-17.3.

(b) Hospice programs which have been Medicare-certified for at least 12 consecutive months are also eligible for licensure as a comprehensive personal care home. These programs may propose the construction of a new comprehensive personal care home. Such new construction shall, at a minimum, meet the physical plant requirements specified at N.J.A.C. 8:36-17.3.]*

8:36-17.2 Services provided to residents

Each comprehensive personal care home shall comply with the following subchapters and sections of N.J.A.C. 8:36:1, 2, 3.8(c), 3.15, 3.16, and 4-16, (except 15.5(a)4).

8:36-17.3 Physical plant

(a) Each comprehensive personal care home shall, at a minimum:

1. Maintain substantial compliance with the 1977 Uniform Construction Code;

2. Maintain a comprehensive automatic fire-suppression system throughout the facility***. Buildings presently in Use Group I-2 or buildings which comply with the construction requirements for an I-2 use may apply to the Department for an exemption to this requirement, provided they can document compliance with the New Jersey Uniform Fire Code, N.J.A.C. 5:18, with regard to construction type****;

3. Maintain compliance with N.J.A.C. 5:23-7.

4. Provide smoke detectors in all resident bedrooms, living rooms, and public areas; and

5. Provide corridor widths of at least 36 inches of clear space.

(b) Ventilation requirements for comprehensive personal care homes are as follows:

1. Means of ventilation shall be provided either by a window with an openable area or by mechanical ventilation for every habitable room. If mechanical ventilation is used, there shall be at least two air changes per hour.

2. Means of ventilation shall be provided for every bathroom or water closet compartment (toilet). Ventilation shall be provided either by a window with an openable area or by mechanical ventilation *[with at least 10 air changes per hour]*.

3. All hallway corridors and passageways shall have a minimum of two outside air changes per hour.

(c) *[The interior finish of a comprehensive personal care home shall comply with the following:]* ***Interior wall, ceiling and floor finishes shall be in compliance with the Uniform Construction Code, N.J.A.C. 5:23.***

*[1. Interior wall and ceiling finishes in resident areas shall be Class B (having a flame spread of 26-75 and smoke development of 0-450, based on test results from National Fire Protection Association (NFPA) 255, Standard Method of Test of Surface Burning Characteristics of Building Materials). In all other areas, interior wall and ceiling finishes shall be Class B or Class C (having a flame spread of 76-200 and smoke development of 0-450).

2. Interior floor finishes in corridors, stairways and exits shall be Class I or Class II (critical radiant flux, minimum of 0.45 watts per square centimeter (w/sq. cm.) or 0.22 w/sq. cm., respectively, based on test results from NFPA 253, Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source).]*

(d) Residential units occupied by one person shall have a minimum of 80 square feet of clear ***and useable*** floor area. ("Clear ***and useable*** floor area" means space exclusive of *[vestibule,]* closets, bathroom and, if provided, kitchenette.)

(e) In units occupied by more than one resident, there shall be a minimum of 50 additional square feet of clear floor area.

(f) No residential unit in a comprehensive personal care home may be occupied by more than two individuals. An exception may be considered in those instances where an eligible facility at the time of conversion to a comprehensive personal care home has more than two individuals in a unit. However, as attrition occurs, the number of individuals per residential unit shall be reduced to no more than two.

8:36-17.4 Information provided to residents

Each comprehensive personal care home administrator, manager, or their designee shall explain to all residents assisted living concepts, services to be provided based on these concepts, and shall explain all charges for these services.

8:36-17.5 Prohibition of resident discharge on conversion of facility

An eligible existing facility converting to a comprehensive personal care home shall not discharge any current resident solely because of the conversion. If compliance with this rule results in more than two individuals per residential unit, the facility shall apply for the exception noted at N.J.A.C. 8:36-17.3(f).

8:36-17.6 Combination of license categories

Another licensed bed category may be located within a distinct and separate section of the comprehensive personal care home. The comprehensive personal care home shall comply fully with all licensure requirements applicable to each licensed component.

(a)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Proposed Readoption: N.J.A.C. 8:71

Proposed: September 20, 1993 at 25 N.J.R. 4377(a).
Adopted: November 17, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: November 24, 1993 as R.1993 d.674, **without change.**

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

Effective Date: November 24, 1993.
Expiration Date: November 24, 1998.

Summary of Public Comments and Agency Responses:
The Drug Utilization Review Council received no comments pertaining to this readoption.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:71.

(b)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: March 1, 1993 at 25 N.J.R. 875(a).
Adopted: November 17, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: November 24, 1993 as R.1993 d.673, **with portions of the proposal not adopted but still pending.**

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

Effective Date: December 20, 1993.
Operative Date for Naproxen tabs 250mg, 375mg, 500mg Geneva and Naproxen sodium tabs 275mg and 550mg Geneva: December 21, 1993.
Expiration Date: November 24, 1998.

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

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the list of interchangeable drug products was held on March 29, 1993. Mark A. Strollo, R.Ph., M.S., served as hearing officer. One person attended the hearing. No comments were submitted. The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Naproxen sodium tabs 275mg, 550mg	Geneva
Naproxen tabs 250mg, 375mg, 500mg	Geneva

The following products were **not adopted but are still pending**:

Benzoyl peroxide gel 5%, 10%	Glades/Stiefel
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Geneva
Diflunisal tabs 250mg, 500mg	Purepac
Guaifenesin SR tabs 600mg	Theraids
Guanabenz acetate tabs 4mg, 8mg	Zenith
Ketoprofen caps 50mg, 75mg	Geneva
Metoprolol tabs 50mg, 100mg	Geneva
Oxazepam caps 10mg, 15mg, 30mg	Geneva
Piroxicam caps 10mg, 20mg	Zenith
Procainamide HCl SR tabs 500mg, 750mg	Copley

OAL NOTE: See related notices of adoption at 25 N.J.R. 1970(c), 2881(b), and 4497(b).

(c)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: September 7, 1993 at 25 N.J.R. 3906(a).
Adopted: November 17, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: November 24, 1993 as R.1993 d.675, **with portions of the proposal not adopted but still pending.**

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

Effective Date: December 20, 1993.
Operative Date for Naproxen sodium 275mg, 550mg Danbury: December 21, 1993.
Expiration Date: November 24, 1998.

Summary of Public Comments and Agency Responses:
The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: In support of its nadolol tablets, Bristol-Myers clarified that the application included the 160mg strength but was not listed in the proposal published in the New Jersey Register. Bristol-Myers also noted that it was the innovator of this product and that the biodata was based on the 160mg strength of nadolol.

RESPONSE: The Council did not consider the 160mg strength of Bristol's Nadalol tablets for adoption because it was not properly proposed, in accordance with the rulemaking procedures. In addition, there was no detriment to the health and welfare of New Jersey residents. Therefore, the Council has proposed the addition of Nadalol tablets, 160mg, in the November 1, 1993 issue of the New Jersey Register, at 25 N.J.R. 4844(a).

COMMENT: In opposition to ALRA's digoxin tablets, Burroughs Wellcome informs the Council of FDA inspections of ALRA which cited good manufacturing practice deficiencies and also criminal charges filed by the FDA against ALRA. Burroughs Wellcome requests deferral of ALRA's digoxin product to allow for comment.

RESPONSE: The Council deferred taking action on this product, pending submission of supporting data from ALRA.

COMMENT: In opposition to Daniel's levothyroxine 88mcg and 112mcg tablets, Boots Pharmaceuticals notes that the market share of these two additional strengths is very small. However, Boots informs that Council of its plan to submit a petition to have all strengths of Daniels' levothyroxine tablets removed from the Formulary, based on published and unpublished data. Boots requests the deferral of these two additional strengths until their petition is reviewed.

RESPONSE: The Council proceeded with its consideration of Daniels' levothyroxine 88mcg and 112mcg tablets and approved these additional two strengths, based on the supporting data submitted for Daniels' initial application. Any petition for the removal of Daniel's levothyroxine tablets would be considered, and a proposal for deletion published in the New Jersey Register, based upon supporting information.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on September 27, 1993. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. One person attended the hearing. Three comments were received as summarized above. The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted" and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Albuterol sulfate inh. soln. 0.083%	Copley
Alprazolam tabs 0.25mg, 0.5mg, 1mg	Alphapharm
Alprazolam tabs 0.25mg, 0.5mg, 1mg	Roxane
Amiloride/HCTZ tabs 5/50	West Point
Berocca Plus tabs substitute	Lini
Chlorothiazide tabs 250mg, 500mg	West Point
Clindamycin phosphate topical soln 1%	Paddock
Dexamethasone tabs 0.5mg, 0.75mg, 1.5mg, 4mg	Roxane
Entex capsule substitute	H.N. Norton

Entex liquid substitute	Silarx
Erythromycin/sulfisoxazole 200/600 susp	Barr
Fluocinonide cream 0.05%	Hamilton
Fluocinonide emollient 0.05%	Hamilton
Fluocinonide ointment 0.05%	Hamilton
Fluocinonide soln. 0.05%	Hamilton
Fluocinonide top soln 0.05%	Copley
Hydrochlorothiazide tabs 25mg, 50mg	West Point
Hyoscamine sulfate sl tabs 0.125mg	Pegasus
Hyoscamine sulfate soln 0.125mg/ml	Pegasus
Hyoscamine sulfate tabs 0.125mg	Ferndale
Isoxsuprine HCl tabs 10mg, 20mg	Manuf. Chemists
Lactulose soln 10g/15ml	Copley
Lactulose soln 10g/15ml	Technilab
Leucovorin calcium tabs 5mg, 10mg, 15mg, 25mg	Roxane
Levothyroxine sodium tabs 88mcg, 112mcg	Daniels
Methyldopa tabs 125mg, 250mg, 500mg	West Point
Methyldopa/HCTZ tabs 250/15, 250/25	West Point
Metoclopramide soln 5mg/5ml	Silarx
Metoprolol tartrate tabs 50mg, 100mg	Lemmon
Nadolol tabs, 20mg, 40mg, 80mg, 120mg	Bristol-Myers
Naproxen sodium tabs 275mg, 550mg	Hamilton
Naproxen sodium tabs 275mg, 550mg	Danbury
Naproxen tabs 250mg, 375mg, 500mg	Hamilton
Nortriptyline caps 10mg, 25mg, 50mg, 75mg	Creighton
Nystatin/triamcinolone oint.	Taro
Phenazopyridine tabs 100mg, 200mg	Manuf. Chemists
Piroxicam caps 10mg, 20mg	Roxane
Robitussin AC expectorant substitute	Bio-Pharm
Robitussin DAC expectorant substitute	Bio-Pharm
Rondec DM drops substitute	Bio-Pharm
Rondec DM drops substitute	Silarx
Rondec-DM syrup substitute	Bio-Pharm
Rondec-DM syrup substitute	Silarx
Stuartnatal 1+1 tabs substitute	Eon
Sulfacetamide/prednisolone ophth soln.	Steris
Sulfasalazine tabs 500mg	Danbury
Tamoxifen citrate tabs 10mg	Zeneca
Timolol maleate tabs 5mg, 10mg	West Point
Trimethobenzamide HCl supp. 100mg, 200mg	Clay-Park
Urised Tabs substitute	Manuf. Chemists

The following drugs were **not adopted but are still pending**:

Amiloride/HCTZ tabs 5/50	Danbury
Atenolol tabs 50mg, 100mg	Lemmon
Digoxin Tabs 0.125mg, 0.25mg, 0.5mg	ALRA
Dyphylline/Guaifenesin elixir	Silarx
Endal HD liquid substitute	Great Southern
Gemfibrozil tabs 600mg	Purepac
Isosorbide dinitrate tabs 30mg	Par
Metoprolol tartrate tabs 50mg, 100mg	Lemmon
Methazolamide tabs 25mg, 50mg	Copley
Naproxen sodium tabs 275mg, 550mg	Copley
Naproxen tabs 250mg, 375mg, 500mg	Danbury
Phenazopyridine tabs 95mg	Manuf. Chemists
Triamterene/HCTZ tabs 37.5/25	Danbury

(a)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: May 3, 1993 at 25 N.J.R. 1814(b).

Adopted: November 17, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: November 24, 1993 as R.1993 d.676, **with portions of the proposal not adopted but still pending.**

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

Effective Date: December 20, 1993.

Operative Date for Naproxen sodium tabs 275mg, 550mg Teva, Naproxen tabs 250mg, 375mg, 550mg Teva and Lederle: December 21, 1993.

Expiration Date: November 24, 1998.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received no comments pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the list of interchangeable drug products was held on May 24, 1993. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Five persons attended the hearing. No comments were offered. The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Gemfibrozil tabs 600mg	Lederle
Naproxen sodium tabs 275mg, 550mg	Teva
Naproxen tabs 250mg, 375mg, 500mg	Teva
Naproxen tabs 250mg, 375mg, 500mg	Lederle

The following drugs were **not adopted but are still pending**:

Cyclobenzaprine tabs 10mg	Duramed
Diltiazem tabs 30mg, 60mg, 90mg, 120mg	Mutual
Methocarbamol tabs 500mg	Mutual
Minoxidil tabs 2.5mg, 10mg	Mutual
Naproxen sodium tabs 275mg, 550mg	Mutual
Naproxen sodium tabs 275mg, 550mg	Purepac
Naproxen tabs 250mg, 375mg	Mutual
Propoxyphene napsylate/APAP 50/325, 100/650	Mutual
Trazodone tabs 150mg	Mutual

OAL NOTE: See related notices of adoption at 25 N.J.R. 2881(a) and 4496(a).

(b)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: January 4, 1993 at 25 N.J.R. 55(a).

Adopted: November 17, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: November 24, 1993 as R.1993 d.677, **with portions of the proposal not adopted but still pending.**

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

Effective Date: December 20, 1993.

Operative Date for Naproxen tabs 250mg, 375mg, 500mg Mylan and Purepac: December 21, 1993.

Expiration Date: November 24, 1998.

Summary of Public Comments and Agency Responses:

No comments were received regarding the adopted products.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the list of interchangeable drug products was held on February 1, 1993. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Two persons attended the hearing. Two comments were offered, as summarized in a previous issue of the New Jersey Register (see 25 N.J.R. 1221(a)). The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Naproxen tabs 250mg, 375mg, 500mg	Mylan
Naproxen tabs 250mg, 375mg, 500mg	Purepac
Nortriptyline caps 10, 25, 50, 75mg	Mylan

The following products were **not adopted but are still pending**:

Aminophylline tabs 100mg, 200mg	West-ward
Atenolol/chlorthalidone 50/25, 100/25	Mylan
Cortisone acetate tabs 25mg	West-ward
Entex LA tabs substitute	Trinity
Histalet Forte substitute tabs	Trinity
Hydrocortisone tabs 20mg	West-ward
Ibuprofen tabs 400mg, 600mg, 800mg	Invamed
Metoclopramide oral solution 5mg/5ml	Silarex
Nadolol tabs 20mg, 40mg, 80mg, 120mg	Mylan
Oxtriphylline/guaifenesin elixir 100/50 per 5ml	Barre-Nat'l
Phenytoin suspension 125mg/5ml	Barre-Nat'l
Pindolol tabs 5mg, 10mg	Novopharm
Piroxicam caps 10mg, 20mg	Purepac
Prednisone tabs 5mg, 10mg, 20mg	West-ward
Rynatuss tabs substitute	Trinity
Singlet LA caps substitute	Trinity
Triazolam tabs 0.125mg, 0.25mg	Mylan

OAL NOTE: See related notices of adoption at 25 N.J.R. 1221(a), 1969(c), 2882(a), and 4496(b).

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: July 6, 1993 at 25 N.J.R. 2802(b).
Adopted: November 17, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: November 24, 1993 as R.1993 d.678, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: December 20, 1993.
Operative Date for Metoprolol tartrate tabs 50mg, 100mg Danbury and Naparoxen tabs 250mg, 375mg, 500mg Copley: December 21, 1993.
Expiration Date: November 24, 1998.

Summary of Public Comments and Agency Responses:
No comments were received regarding the adopted products.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on July 26, 1993. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. One person attended the hearing. Two comments were offered, as summarized in a previous issue of the New Jersey Register (see 25 N.J.R. 4495(b)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Hydroxyzine pamoate caps 25mg, 50mg	Eon
Metoprolol tartrate tabs 50mg, 100mg	Danbury
Naproxen tabs 250mg, 375mg, 500mg	Copley

The following drugs were **not adopted but are still pending**:

Alprazolam tabs 0.25mg, 0.5mg, 1mg	Geneva
Atenolol tabs 50mg, 100mg	Genpharm
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Watson
Desipramine HCL tabs 25mg, 50mg, 75mg, 100mg	Eon
Imipramine HCL tabs 10mg, 25mg, 50mg	Eon
Levothyroxine sodium tabs 25mcg, 50mcg	Rhone-Poulenc Rorer
Levothyroxine sodium tabs 75mcg, 100mcg	Rhone-Poulenc Rorer
Levothyroxine sodium tabs 125mcg, 150mcg	Rhone-Poulenc Rorer
Levothyroxine sodium tabs 175mcg, 200mcg	Rhone-Poulenc Rorer
Levothyroxine sodium tabs 300mcg	Rhone-Poulenc Rorer
Naproxen tabs 500mg	Genpharm
Naproxen tabs 500mg	Mutual
Pergonal injection substitute 75IU, 150IU	Lederle
Tetracycline HCL caps 250mg	Eon

OAL NOTE: See related notice of adoption at 25 N.J.R. 4495(b).

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION ON AGING

Congregate Housing Services Program Service Subsidy Formula Notice of Upper and Lower Limits of Disposable Income for 1994

Take notice that, in compliance with N.J.S.A. 52:27D-188 and N.J.A.C. 5:70-6.3(f) the Division on Aging hereby announces the upper and lower limits of each income category of disposable income for 1994. The income categories have been determined by multiplying the income limits for 1993 by the percentage increase in Social Security benefits given to Social Security recipients pursuant to 42 U.S.C.A. 415 for the immediately preceding calendar year.

The income categories of disposable income for 1994 are as follows:

D.I. of $0.00 to $205.00: SERVICE SUBSIDY = 95 percent of PROGRAM

COST: PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of $205.01 to $344.00: SERVICE SUBSIDY = 80 percent of PROGRAM

COST: PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of $344.01 to $485.00: SERVICE SUBSIDY = 60 percent of PROGRAM

COST: PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of $485.01 to $624.00: SERVICE SUBSIDY = 40 percent of PROGRAM

COST: PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of $624.01 to $764.00: SERVICE SUBSIDY = 20 percent of PROGRAM

COST: PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

EDUCATION

(b)

THE COMMISSIONER

Notice of Public Hearings State Plan for the Education of Children with Educational Disabilities

Take notice that the New Jersey Department of Education, Office of Special Education Programs will receive public comment on the revised State Plan under the Education of Individuals with Disabilities Act for fiscal years 1995 through 1997. This revision is a required submission under the Act. The Federal Office of Special Education and Rehabilitation Services (OSERS) in the United States Department of Education must approve the State Plan prior to authorizing Part B funds for special education services to the state of New Jersey.

Copies of the 1995-97 State Plan may be obtained from Office of Special Education Programs or from the 21 offices of the county superintendent of schools. Appendices are available for review at the Office of Special Education Programs, 240 West State Street, New Jersey. If you wish to review the appendices, contact Carol Kaufman at the address/telephone number below.

Interested agencies, organizations and individuals are invited to comment on the revised State Plan and/or to allege a failure to comply with applicable statutes and/or regulations.

The **public comment period** on the State Plan is January 10, 1994 to February 9, 1994. **Public hearings** will be held from 3:00 P.M. to 5:00 P.M. as following:

Tuesday, January 25, 1994
Gloucester County Office of Education
R.R. #4, Box 184D
Sewell, NJ 08080
(609) 468-6500

Wednesday, January 26, 1994
Bergen County Office of Education
327 East Ridgewood Avenue
Paramus, NJ 07652
(201) 599-6256

Thursday, January 27, 1994
Middlesex County Office of Education
200 Old Matawan Road
Old Bridge, NJ 08857
(908) 390-6000

These hearings are not in relation to Plan to Revise Special Education in New Jersey.

If you wish to comment on the revised State Plan, you may request an opportunity to testify or you may send your written comment to:

Carol Kaufman
Office of Special Education Programs
CN 500
Trenton, New Jersey 08625
(609) 292-7605

The State Plan amendments will be revised following a review of the public comments. The State Plan will be submitted to the Federal Office of Special Education and Rehabilitative Services in the United States Department of Education on or about February 22, 1994.

ENVIRONMENTAL PROTECTION AND ENERGY

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast and Upper Raritan Water Quality Management Plans Public Notice

Take notice that on November 16, 1993, 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 and Upper Raritan Water Quality Management Plans was adopted by the Department. This amendment allows for expansion of the Environmental Disposal Corporation (EDC) sewage treatment plant (STP) in Bedminster Township, which discharges to an unnamed tributary of the North Branch Raritan River, to serve an annual average flow of 1.9 million gallons per day from Bedminster Township, Far Hills Borough, Peapack-Gladstone Borough and Bernards Township. The projected wastewater flow from Bernards Township to be served by the EDC STP is increased from 390,425 gallons per day (gpd) to 562,337 gpd by this amendment. No change in service area is proposed. This amendment updates the Bedminster Township and Bernards Township Wastewater Management Plans.

Please be aware that adoption of this amendment represents only one part of the permit process and that other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that on November 16, 1993, 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 Tri-County Water Quality Management Plan (WQM) was adopted by the Department. The amendment adopts the Logan Township Municipal Utilities Authority (LTMUA) Wastewater Management Plan (WMP). This WMP expands the sewer service area of the LTMUA Sewage Treatment Plant (STP) to serve additional portions of Logan Township. In addition, the WMP clarifies the future sewer service area mapping in Woolwich Township, served by the LTMUA STP, identified in the Tri-County WQM Plan. This clarification based the sewer service area boundary on existing lot and block lines of parcels presently identified for sewer service in Woolwich Township.

Based on the sewer service area expansion a projected future (20 year) wastewater planning flow of 3.45 million gallons per day (MGD) for the LTMUA STP is proposed. The WMP also identifies all existing NJPDES permitted wastewater discharges and one proposed, currently unpermitted, discharge to ground water of up to 0.072 MGD to service the Logan Asphalt Plant. Those areas of Logan Township not designated as sewer service area are designated as individual on-site ground water disposal service area of >2,000 gallons per day. The GCUA is presently preparing a regional WMP for its district which includes both municipalities addressed in this WMP.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future trreatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(b)

OFFICE OF LAND AND WATER PLANNING

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 comments on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of Florence Township. The amendment would adopt the Florence Township Wastewater Management Plan (WMP). This WMP proposes to expand the sewer service area of the Florence Township Sewage Treatment Plant (STP) to serve additional portions of Florence Township including the Route 130 corridor and vacant land northeast of the New Jersey Turnpike Extension. Based on the sewer service area expansion, a projected future wastewater planning flow of 2.5 million gallons per day for the Florence Township STP is proposed. This proposal does not include a wastewater flow projection from a future Regional Food Distribution Center to be located in Florence and Burlington Townships. A separate Water Quality Management Plan amendment would be required to allow the Florence Township STP wastewater flow or sewer service area to expand beyond what is identified in this WMP.

The WMP also identifies all existing NJPDES permitted wastewater dischargers. A general manufacturing zone near Interstate Route 295 has been designated to be served by ground water discharge disposal of less than 20,000 gallons per day (GPD). The remainder of the Township, within the Florence Township Planning Area, has been designated as individual on-site ground water disposal service area of less than 2,000 GPD.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

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 Land and Water Planning, CN 423, 401 East State Street, Trenton, N.J. 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 Land and Water Planning at (609) 633-1179.

Interested persons should submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEPE address cited above with a copy sent to Mr. L. Russell Trice, Alaimo Associates, 200 High Street, Mt. Holly, New Jersey 08060. 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 persons 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 notice to Dr. Van Abs 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.

(c)

TOXIC CATASTROPHE PREVENTION ACT (TCPA) PROGRAM

Notice of Availability of Annual TCPA Fee Schedule Report for Fiscal Year (FY) 1994 Pursuant to N.J.A.C. 7:31-2.16(c)8

Take notice that the Department of Environmental Protection and Energy is adjusting fees to registrants under the Toxic Catastrophe Prevention Act pursuant to N.J.A.C. 7:31-2.16(c)8, as adopted June 18, 1993. While this fee schedule is being established, the Department will continue to re-examine its fee-setting process. The Department has established a Public Advisory Task Force to examine several issues related to the TCPA rule and to assess the impact of the Accidental Release Prevention provisions of the Federal Clean Air Act Amendments of 1990 on New Jersey Industry. The examination of the fee-setting process will be part of this effort.

The current fees are based on a projected annual budget of $2,357,000. The Department has revised that budget to lower it by $378,000 to $1,979,000. The annually adjusted facility-derived and base fee unit rates, calculated in accordance with N.J.A.C. 7:31-2.16(c)1 through 7, operative during FY 1994, are as follows:

Base fee unit rate	$4,400
Facility derived fee unit rate	$3,400

The inventory derived fee unit rate is established at $10.00 per hazard unit at N.J.A.C. 7:31-2.16(l)1 through 3. A registrant with a site hosting a single facility and a single hazard unit will be billed an Annual TCPA fee for FY 1994 of $7,810, determined as follows:

Base fee	$4,400
Facility-derived fee	3,400
Inventory-derived fee	10
	$7,810

The values of adopted annually adjusted fee unit rates differ from the values anticipated by the Department. In the statement on Economic Impact of the Proposed Readoption with Amendments of N.J.A.C. 7:31

(25 N.J.R. 1425(b), 1443) published April 5, 1993, the Department projected two cases of annually adjusted unit fee rates which compare with those adopted here as follows:

	Base unit fee rate	Facility-derived unit fee rate
Projected, Case 1	$7,377	$2,280
Case 2	$8,000	$2,302
Adopted	$4,400	$3,400

The difference between the projected ranges and the adopted values reflect several parameters of input on cost of the TCPA program and the census data on registrant sites and systems. However, the most significant reason is that the operating cost of the TCPA program as reflected in its adopted budget for FY 1994 is some $378,000 lower than projected with almost all of the reduction in non Risk Assessment Section costs; it is these costs that are distributed to the base fee element which declined from the $7,400 to $8,000 range projected to the $4,400 value adopted. The higher value of the facility-derived fee adopted versus projected ($3,400 versus $2,300, respectively) reflects the fewer number of facilities registered as of August-September 1993 compared to the number projected; the average number of facilities per registrant which were registered in August-September 1993 amounted to 1.8 facilities per registrant compared to the ratio of 2.4 facilities per registrant which would have resulted from the registrations projected.

The Department, during the month of January 1994, will send each registrant a bill stating the fee for FY 1994 which shall reflect the number of units of facilities and inventory of extraordinarily hazardous substances at the registrant site, pursuant to N.J.A.C. 7:31-2.16(g). The registrant shall pay its fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28, 1994. The check or money order shall be submitted to:

New Jersey Department of Environmental Protection
and Energy
Bureau of Revenue
Division of Financial Management, Planning
and General Services
CN 417
Trenton, New Jersey 08625

The Annual TCPA Fee Schedule Report detailing the calculations and inputs regarding number of TCPA registrants and facilities, EHS inventories and TCPA spending plan (budget) is available from the Department. Interested persons should contact the Department for a copy of the report at the following address:

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection
and Energy
Division of Environmental Safety, Health and
Analytical Programs
CN 424
Trenton, New Jersey 08625

The Department will mail a copy of this report to all current TCPA registrants.

INSURANCE

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Notice of Receipt of Petition for Rulemaking and Action thereon
Unfair Claims Settlement Practices
N.J.A.C. 11:2-17

Petitioner: New Jersey Hospital Association.
Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 11:1-15.

Take notice that petitioner New Jersey Hospital Association ("NJHA"), a voluntary non-profit association whose membership consists of 100 institutions, 75 of which are general acute care hospitals, 18 of which are specialized facilities such as psychiatric and rehabilitation facilities, and seven of which are governmentally owned facilities, filed with the Department a petition to amend and propose new rules regarding unfair claims settlement practices, N.J.A.C. 11:2-17. The petition was received on October 7, 1993.

The petitioner requests that the Department promulgate regulatory amendments and new rules to establish requirements and standards for (1) insurers, health care providers and health care facilities regarding requests for verification/preauthorization of benefits; (2) health insurance claims audits; and (3) payment of health insurance claims.

The following statements are a condensation of the arguments presented by the petitioner in support of its rulemaking request:

1. For many years the state has struggled to deal with the growing hospital uncompensated care burden. New Jersey law and hospital licensure standards require hospitals to render care to all residents of the state regardless of their ability to pay for care. Hospitals fully support these requirements and continue to provide needed hospital care to indigent and working poor residents of the state. Requiring hospitals to render care regardless of the patient's ability to pay, however, does not mean the hospitals must render free care to insured patients or patients with the ability and resources to pay for care. Consequently, hospitals must be permitted to evaluate their exposure to bad debt for non-emergent patients seeking elective admission prior to rendering care.

In assessing the risk of loss due to bad debts, hospitals need reliable information on which to base their decisions to admit non-emergent elective cases. Hospitals rely on the representation of insurance company representatives in decisions to admit patients and incur the cost of rendering care. The biggest problem hospitals have experienced involves obtaining immediate verification of insurance coverage. While most insurers have mechanisms in place to respond to hospital and other provider inquiries, often the information obtained is unreliable or is given with disclaimers. An unreliable or erroneous response to a request for verification of coverage can result in significant losses for hospitals.

NJHA believes that it is reasonable and within the Department's authority (N.J.A.C. 11:2-17.2 non-exclusivity clause) to provide standards for pre-authorization and verification of coverage before patient/claimants incur substantial medical expenses which they might not be able to afford if those services are not covered under the patient's policy. NJHA has determined that the Department's regulations dealing with "Unfair Claims Settlement Practices" and specifically, "Rules for replying to pertinent communications" at N.J.A.C. 11:2-17.6 do not address inquiries by hospitals or patient/claimants regarding verification of benefits for hospital services being sought by the covered patient. These rules are only effective without notification of a claim. Furthermore, existing regulations do not reflect any duty or obligation on the part of insurers in regard to their representations affirming or denying coverage of the services being requested by patient/claimants.

NJHA believes that minimum insurance verification standards including sanctions against providing erroneous or misleading information must be promulgated by the Department. This petition contains a detailed proposal which would establish standards for hospitals to request verification of coverage from insurers and for insurers to respond in writing to those requests. NJHA's proposal also reflects the need for sanctions to be imposed in the event that those standards are not adhered to.

2. Additionally, hospitals believe that they have been subjected to inappropriate payment delays by insurers. Hospitals have no quarrel with the prudent and judicious review or audit of patient medical records which is performed to determine the appropriateness of billed charges. However, the use of medical records audits as a means of delaying payment should not be condoned. Hospitals believe that standards must be developed to protect them from inappropriate payment delays.

Although recent legislation permits hospitals to charge interest in the event that hospital bills are upaid after 60 days, the threat of interest charges after an already extended payment delay is not an effective inducement to motivate insurers to make timely payments. On the contrary, insurers have demonstrated their belief that this legislation establishes a minimum 60-day grace period delay.

Existing regulations do not adequately protect hospital or patient/claimant rights to prompt settlement or payment of claims. Regulations regarding prompt investigation and settlement of claims (N.J.A.C. 11:2-17.7) contain vague language which permits insurance companies to take refuge behind their right to determine the appropriateness of charges for services rendered as a payment delaying tactic. In most cases, insurers make no payment until such claims are audited thus receiving the benefit of interest during the period during which the claim is under review. NJHA's proposal would establish partial payment requirements and specific time requirements for claims under review.

3. Another concern of hospitals, particularly comprehensive rehabilitation and psychiatric/substance abuse hospitals, involves exhaustion of benefits. The amount of coverage available for psychiatric and substance abuse care has become extremely limited in recent years. Frequently, patients are transferred to a specialized facility after utilizing substantial benefit amounts in a non-specialized facility. Therefore, psychiatric/substance abuse hospitals as well as patients seeking admission, face the strong possibility of limited coverage or total exhaustion of benefits. Comprehensive rehabilitation hospital claims, because of the nature of the services rendered, occur late in the payment cycle. Consequently, these hospitals experience the denial of insurance payments due to exhaustion of benefits.

Hospitals believe that standards requiring insurers to promptly pay must be enhanced to give preference to providers with efficient billing systems. Therefore, providers that submit clean claims should be paid promptly without regard to the date of service. Given the limitations on benefit dollars contained within most insurance policies and the competition among providers and health care facilities for those dollars, fairness dictates that valid claims for services rendered be paid on a first-in first-out basis.

Existing regulations do not adequately protect the rights of providers or health care facilities to prompt payment of claims in cases where benefits may be nearing exhaustion. Although the Department cannot correct the problems inherent in a hospital or provider that renders services later in the care cycle, e.g., rehabilitation hospitals, the Department can allow for fair treatment of an efficient provider or hospital by establishing rules for the payment of benefits based on the timing of claims submitted. NJHA's proposal would establish standards for validating the receipt and payment of claims by insurance carriers. Benefit dollars would be reserved for claims to be audited.

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

Amend N.J.A.C. 11:2-17.3 by adding the following definitions:

"Audit of a health insurance claim" means an insurer's review of a bill for services provided to a claimant by a health care facility or provider of health care. The audit of a health insurance claim is performed to determine the appropriateness and/or medical necessity of charges appearing on the claimant's bill for services.

"Health care facility" means the facility or institution whether public or private, engaged principally in providing services for the diagnosis of treatment of human disease, pain, injury, deformity or physical condition, including but not limited to a general hospital or special hospital licensed by the Commissioner of Health pursuant to N.J.S.A. 26:2H-1 et seq.

"Provider of health care" means an individual who is a direct or indirect provider of health care service in that the individual's primary activity is the provision of health care services to individuals or the administration of health care facilities in which such care is provided and, when required by State law, the individual has received professional training in the provision of such services or in such administration and is licensed or certified for such provision or administration.

"Verification/Preauthorization" means a request by either a first party claimant, a third party claimant, a health care facility, or provider of health care for an insurance company determination of coverage on a prospective claim.

Amend N.J.A.C. 11:2-17.7 to read as follows:

11:2-17.7 Rules for prompt investigation and settlement of claims

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

[(e) Except as provided in (e)1 below, all health insurance claims shall be paid no later than 60 calendar days after the insurer receives written notice of the claim.

1. The maximum payment period for health insurance claims may be extended under the following circumstances:

i. The health insurer contests a claim, and the insurer sends a written notice of such fact to the insured or insured's assignee within 45 calendar days of the insurer's receipt of the claim. The notice that the claim is contested shall identify the contested portion of the claim and the reasons for contesting the claim. If only a portion of a claim is contested the insurer shall remit payment for the uncontested portion in accordance with (e) above; or

ii. The health insurer requests additional information from the insured concerning a claim that the insurer is contesting. After the insurer receives the additional information requested, the insurer shall either pay or deny the claim within 90 calendar days of the insurer's receipt of the additional information.]

Recodify (e)2 and 3 as **(e)1 and 2.**

(f)-(h) (No change.)

Amend N.J.A.C. 11:2-17.9 to read as follows:

11:2-17.9 Rules for fair and equitable settlements applicable to life and health insurance**, and automobile insurance personal injury protection**

(a)-(k) (No change.)

(l) In regard to requests for verification/preauthorization of prospective claims by either a first party claimant, a third party claimant, a health care facility, or a provider of health care, insurers shall:

1. Respond to written and facsimile requests for verification/preauthorization of benefits in kind within 48 hours of the receipt of the request. Such receipt shall be documented by indicating the date received on each incoming request.

i. Health care facility and provider of health care requests for verification/preauthorization of benefits must at a minimum include the following information:

(1) Patient name and address;

(2) Responsible party name and address;

(3) Policy identifying information—policy number, group or plan name or number;

(4) Admitting diagnosis;

(5) Physician statement of medical necessity (optional); and

(6) Planned date of admission or service.

ii. Pursuant to the requirements of this section, the Commissioner shall develop a standardized uniform format to be used by health care facilities and providers of health care in seeking verification/preauthorization of benefits.

2. Insurer responses to requests for verification shall at a minimum indicate the following:

i. The patient seeking services is insured under the policy;

ii. The service or admitting diagnosis is a covered service under the terms of the policy;

iii. The extent to which benefit dollars have been used through the verification date;

iv. The verification date;

v. Caps or limitations on benefit dollars or days;

vi. Estimated value of pending or unbilled claims to which the insurance carrier has such knowledge;

vii. Any policy conditions such as determinations of medical necessity which could result in the denial of payment for the services sought; and

viii. Advice that the request for verification contains insufficient information on which to provide a complete reliable response to the request for verification.

Amend N.J.A.C. 11:2-17.14 to read as follows:

11:2-17.14 Penalties

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

(c) If after notice and hearing, the Commissioner finds that an insurer has violated the provisions of N.J.A.C. 11:2-17.9(l) or has negligently provided erroneous information, the Commissioner may deem the insurer liable in the entirety for claims related to the violation. In determining the extent to which the insurer is liable for claims arising from the violation or erroneous information provided, the Commissioner shall consider whether the health care facility or provider of health care relied on the precertification or verification of coverage in its decision to admit a patient. Health care facilities and providers of health care must document their decision to admit based upon the information provided in the precertification or request for verification of coverage. Insurers must maintain accurate records or requests for precertification or verification of coverage including the date of the request, the date of the response, and the information provided.

1. Insurers shall not pass the cost of penalties incurred under this section to subscribers or administered plans by including these costs in premium experience computations.

2. Insurers deemed liable for claims pursuant to this section shall not charge claimants policy deductibles or copayments.

Recodify (c) as (d).

Amend N.J.A.C. 11:2-17 to add a new section as follows:

(New section) Prompt investigation and settlement of health insurance claims

(a) Every insurer shall commence an investigation of all health insurance claims within 10 working days of receipt of notification of the claim.

(b) Except as provided in (c) below, all health insurance claims shall be paid no later than 60 calendar days after the insurer receives written notice of the claim.

(c) This section establishes guidelines and requirements for insurers electing to perform audits of health insurance claims.

1. Insurers must notify health care facilities or providers of health care of their intention to audit a claimant's health insurance claim within 30 days of the patient's discharge or date of service. Upon notification of the intent to audit the health insurance claim, insurers must reimburse the health care facility or provider of health care at least 80 percent of the charges billed. Either a portion or the entire payment may be recouped by the insurer pending the resolution of the audit. Insurers failing to provide timely notification or reimbursement pursuant to this section shall forfeit the right to audit the health insurance claim. Insurers seeking to reinstate the right to audit health insurance claims may appeal to the Commissioner indicating the circumstances that led to the failure to comply with the requirements of this section.

2. Audits of health insurance claims must be completed within one year of the patient's discharge or date of service. Insurers failing to complete the audit of the patient's claim within the one year time limit forfeit the right to audit the health insurance claim and must immediately reimburse the health care facility or health care provider the balance of unpaid charges.

3. The balance of unpaid charges, subject to the finding of the audit and negotiations with the health care facility or provider of health care services over disputed charges, must be paid in full within ten days of the completion of the audit but in no event shall the insurer withhold reimbursement for longer than one year of the date of discharge or service.

(d) Insurers shall remit payment for claims submitted by health care facilities and providers of health care on a first-in first-out basis. Insurers shall maintain records regarding the receipt of claims, including the date received, and their efforts to investigate the validity of the claim and the appropriateness of billed charges. For claims which the insurer seeks to conduct an audit of the billed charges, only the 80 percent portion of the claims shall be initially payable on the first-in first-out basis. Upon resolution of the audit and agreement on the unpaid balance, the unpaid balance of the audited bill takes precedence over any yet unpaid bill related to the claim that was received by the insurer after the date the claim was first submitted.

(e) In regard to disputes between insurers and health care facilities and providers of health care services about the timing of billing and unpaid charges due to the exhaustion of benefits under the claimant's insurance plan or contract, the Commissioner shall, upon notice, conduct a hearing to investigate the issues in dispute.

The Commissioner hereby certifies that the petition was duly considered pursuant to law. Upon due deliberation, the Department has determined that the proposal requires further consideration of several issues. These include, but are not limited to, the following:

1. Proposed deletion of N.J.A.C. 11:2-17.7(e)1i and ii. This language has only been in effect since December 7, 1992. It was intended to conform existing regulations to provisions of the Health Care Cost Reduction Act (P.L. 1991, c.187).

2. Proposed N.J.A.C. 11:2-17.14(c) appears to go well beyond the purpose of subchapter 17 which is primarily to identify what constitutes unfair claims settlement practices and to provide penalties for violations. Proposed subsection (c) would, in effect, require the Commissioner to supersede existing civil remedies with his own determination of insurer liability including amounts to be recovered by aggrieved health care facilities and providers of health care.

The proposal is deferred for further deliberations by the Department to be concluded no later than April 29, 1994. The results of these further deliberations will be mailed to the petitioner and published in the New Jersey Register in accordance with N.J.A.C. 11:1-15.3(c).

LABOR

(a)

OFFICE OF THE CONTROLLER

Notice of Rates for Board and Room, Meals and Lodging Furnished by Employers in Addition to, or in Lieu of, Money Wages during Calendar Year 1994

Take notice that, in accordance with N.J.A.C. 12:16-4.8, the Department of Labor hereby publishes notice of the following rates for board and room, meals and lodging furnished by employers in addition to, or in lieu of, money wages during calendar year 1994:

Full board and room, weekly	$115.80
Lodging, per week	$ 49.60
Meals, per day	$ 13.20

If less than three meals per day, the individual meals shall be valued as follows:

Breakfast	$ 4.00
Lunch	$ 4.00
Dinner	$ 5.30

LAW AND PUBLIC SAFETY

(b)

DIVISION OF STATE POLICE
OFFICE OF EMERGENCY MANAGEMENT

Notice of Grant Availability to County and Municipal Local Emergency Planning Committees for Projects Implementing the USDOT Hazardous Materials Transportation Uniform Safety Act

Take notice that on September 9, 1992, the United States Department of Transportation, Research and Special Programs Administration released its final rule, 49 CFR Part 110, the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) regulations. Under these rules a single agency for each of the 50 states is designated to be the coordinator of grant funds for hazardous materials transportation related planning and training activities. For New Jersey, the HMTUSA grant coordinator is the New Jersey State Police Office of Emergency Management (NJOEM).

Beginning in 1994, states apply for grant funds every year. State funding is broken down into separate planning and training grants. Under the Planning Grant, the NJOEM is required to ensure that 75 percent of the Grant goes towards activities which result in direct benefit to Local Emergency Planning Committees (LEPCs) in New Jersey. One of the ways in which this will be accomplished is by providing Pass-Through grants to county and municipal LEPCs for the purposes of conducting specific projects related to hazardous material transportation emergency planning. The primary objective of these grants will be to improve the implementation of LEPC emergency planning efforts. The HMTUSA goes beyond traditional emergency planning by encouraging **transportation specific** activities. While existing Federal and State law requires planning around **fixed** chemical handling facilities, HMTUSA extends into planning and training activities which address the **transportation** of hazardous materials and the emergency response associated with it. Transportation includes the storage of hazardous materials incidental to its movement (that is, it includes all handling from the point of origin through the point of destination).

The possibility of a hazardous materials transportation incident varies greatly in New Jersey. Some local areas are at risk from air, rail, roadway, and waterway incidents. Other areas may be at relatively low risk. Further differences may exist due to the location of nearby transportation dependent populations such as hospitals, schools, and nursing homes, as well as the proximity to industrial zones, terminals, ports, railyards, and pipelines. For these reasons, the NJOEM has chosen to make a portion of the State's HMTUSA grant available **directly** to LEPCs for the purpose of developing projects to address the unique circumstances of the transportation of hazardous materials at the local level. For 1994, $44,000 will be made available by the NJOEM. Funding will be limited to a cap of $8,800 per grant, and will be made on a reimbursement basis. The grant program is open only to the 21 county and 567 municipal LEPCs in New Jersey. Only one application may be submitted and approved for each LEPC in a given grant year. LEPCs must have a State approved Emergency Operations Plan in order to be eligible to apply. A letter of EOP approval from the NJOEM is required. LEPCs must also provide proof that they are a viable LEPC, having membership from the appropriate agencies according to the requirements of SARA Title-III. A copy of the **current** ledger of LEPC members is required.

All applications must include the following information:

1. Cover letter;
2. An HMTUSA Pass-Through Grant Program Project Application;
3. An LEPC Applicant Certification form;
4. Proof of approval of the LEPCs Emergency Operations Plan;
5. Proof of a viable LEPC. A copy of the jurisdictions LEPC ledger will suffice for this purpose;
6. A project narrative; and
7. Other supporting documentation, at the discretion of the applicant.

Project applications and all supporting documentation will be forwarded to the following address:

Major Carl A. Williams
HMTUSA Pass-Through Grant Program
NJSP Office of Emergency Management
Hazardous Materials Emergency Response Planning Unit
Box 7068 River Road
West Trenton, NJ 08628-0068

All applications must be postmarked no later than January 15, 1994. Applicants which have been selected for funding under this program will be notified in writing by the NJOEM no later than February 15, 1994.

A complete information and application kit for the HMTUSA Pass-Through Grant Program has been sent to all 21 county and 567 municipal emergency management coordinators. Additional copies may be requested in writing from the NJOEM at the address provided in this notice.

(a)

DIVISION OF MOTOR VEHICLES

Notice of an Application for Contract Carrier Permit

Take notice that Director Stratton C. Lee, Jr., Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed an application for a Contract Carrier Permit:

CONTRACT CARRIER (NON-GRANDFATHER)
Industrial Molasses Company, Inc.
7901 Xerxes Avenue South
Suite 320
Minneapolis, MN 55431

Protests in writing and verified under oath may be presented to the Director, Division of Motor Vehicles, 225 East State Street, CN 162, Trenton, NJ 08666 within 20 days (January 9, 1994) following the publication of an application.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Notice of Tax Rate
Petroleum Products Gross Receipts Tax
January 1, 1994—June 30, 1994

This notice is to advise petroleum products gross receipts taxpayers that for the period January 1, 1994 through June 30, 1994 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 November 1, 1993 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 promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

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 OCTOBER 18, 1993

NEXT UPDATE: SUPPLEMENT NOVEMBER 15, 1993

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
24 N.J.R. 4455 and 4606	December 21, 1992	25 N.J.R. 2795 and 3050	July 6, 1993
25 N.J.R. 1 and 218	January 4, 1993	25 N.J.R. 3051 and 3276	July 19, 1993
25 N.J.R. 219 and 388	January 19, 1993	25 N.J.R. 3277 and 3582	August 2, 1993
25 N.J.R. 389 and 616	February 1, 1993	25 N.J.R. 3583 and 3884	August 16, 1993
25 N.J.R. 619 and 736	February 16, 1993	25 N.J.R. 3885 and 4360	September 7, 1993
25 N.J.R. 737 and 1030	March 1, 1993	25 N.J.R. 4361 and 4540	September 20, 1993
25 N.J.R. 1031 and 1308	March 15, 1993	25 N.J.R. 4541 and 4694	October 4, 1993
25 N.J.R. 1309 and 1620	April 5, 1993	25 N.J.R. 4695 and 4812	October 18, 1993
25 N.J.R. 1621 and 1796	April 19, 1993	25 N.J.R. 4813 and 4980	November 1, 1993
25 N.J.R. 1797 and 1912	May 3, 1993	25 N.J.R. 4981 and 5382	November 15, 1993
25 N.J.R. 1913 and 2150	May 17, 1993	25 N.J.R. 5383 and 5728	December 6, 1993
25 N.J.R. 2151 and 2620	June 7, 1993	25 N.J.R. 5729 and 6084	December 20, 1993
25 N.J.R. 2621 and 2794	June 21, 1993		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:10-1.1, 9.1, 9.2, 14.1, 14.2, 14.3, 18.1	Family Development hearings	25 N.J.R. 3888(a)		
1:13A	Lemon law hearings	25 N.J.R. 5387(a)		
	Most recent update to Title 1: TRANSMITTAL 1993-2 (supplement September 20, 1993)			
AGRICULTURE—TITLE 2				
2:2	Animal Disease Control Program	25 N.J.R. 5387(b)		
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:68	Commercial feeding stuffs	25 N.J.R. 3889(a)	R.1993 d.606	25 N.J.R. 5462(a)
2:69	Commercial fertilizers and soil conditioners	25 N.J.R. 4544(a)	R.1993 d.688	25 N.J.R. 5917(a)
2:69-1.11	Commercial values of primary plant nutrients	25 N.J.R. 3585(a)	R.1993 d.600	25 N.J.R. 5917(b)
2:76-5.1-5.4	Soil and water conservation project cost-sharing	25 N.J.R. 3279(a)	R.1993 d.521	25 N.J.R. 4899(a)
2:76-6.11	Farmland Preservation Program: acquisition of development easements	25 N.J.R. 3890(a)		
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
	Most recent update to Title 2: TRANSMITTAL 1993-5 (supplement August 16, 1993)			
BANKING—TITLE 3				
3:1-13.2	Mortgage loans: fire insurance amount	25 N.J.R. 3585(b)	R.1993 d.520	25 N.J.R. 4900(a)
3:3-2.2, 2.3	Release of bank examination reports to independent auditors	25 N.J.R. 4819(a)		
3:4-1.6	Capital for interim conversion in merger or acquisition	25 N.J.R. 4545(a)	R.1993 d.661	25 N.J.R. 5917(c)
3:4-2	Payment of stock options to directors, officers and employees of State depositories	25 N.J.R. 3586(a)	R.1993 d.565	25 N.J.R. 5145(a)
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:28-4.7, 4.12	Repair and improvement loans	25 N.J.R. 3587(a)	R.1993 d.517	25 N.J.R. 4900(b)
3:31	Repeal (see 3:28-4.7, 4.12)	25 N.J.R. 3587(a)	R.1993 d.517	25 N.J.R. 4900(b)
3:32	Conversion of associations and savings banks	25 N.J.R. 2799(a)	R.1993 d.535	25 N.J.R. 4900(c)
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:41-2.1, 11	Cemetery Board: location of interment spaces and path access	25 N.J.R. 623(a)	R.1993 d.632	25 N.J.R. 5462(b)
3:41-5.1	Cemetery Board: cemetery company price lists	25 N.J.R. 4819(b)		
	Most recent update to Title 3: TRANSMITTAL 1993-7 (supplement September 20, 1993)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			
PERSONNEL—TITLE 4A				
4A:1-5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(c)	R.1993 d.614	25 N.J.R. 5464(a)
4A:3-4.10	State service: demotional pay adjustments	25 N.J.R. 4821(a)		
4A:4-2.2, 2.14	Equal employment opportunity	25 N.J.R. 4821(b)		

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4A:4-2.9	Make-up examinations	25 N.J.R. 4823(a)		
4A:4-2.11	Residence requirements: administrative correction	_____	_____	25 N.J.R. 5145(b)
4A:4-7.8	Voluntary demotions	25 N.J.R. 4823(b)		
4A:6-1.2, 1.6, 1.11, 1.12, 1.13	Leaves of absence	25 N.J.R. 4824(a)		
4A:6-1.3	Equal employment opportunity	25 N.J.R. 4821(b)		
4A:7-1.1, 2.1, 2.2, 2.3, 3.1	Equal employment opportunity	25 N.J.R. 4821(b)		

Most recent update to Title 4A: TRANSMITTAL 1993-6 (supplement October 18, 1993)

COMMUNITY AFFAIRS—TITLE 5

5:10-1.12	Hotels and multiple dwellings: administrative correction	_____	_____	25 N.J.R. 4901(a)
5:18-1.4, 1.5, 2.1, 2.3, 2.5, 2.6, 2.11, 2.14, 4.1, 4.3	Uniform Fire Code	25 N.J.R. 4363(a)	R.1993 d.628	25 N.J.R. 5466(a)
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:18A-1.4, 2.2, 2.3, 2.5–2.11, 3.3, 3.4, 3.6, 4.2–4.6, 4.9, 4.10	Fire Code enforcement	25 N.J.R. 4363(a)	R.1993 d.628	25 N.J.R. 5466(a)
5:18B-2.8	High level alarms	25 N.J.R. 4363(a)	R.1993 d.628	25 N.J.R. 5466(a)
5:18C-1.4, 1.5, 1.7, 1.8, 1.9, 2.3	Fire service training and certification	25 N.J.R. 4363(a)	R.1993 d.628	25 N.J.R. 5466(a)
5:23-1.4, 2.7, 2.17A	Uniform Construction Code: minor work; ordinary repairs	25 N.J.R. 3692(a)	R.1993 d.580	25 N.J.R. 5145(c)
5:23-2.6, 2.14, 2.23, 3.2, 3.4, 3.8A, 3.11A, 3.14–3.18, 3.20, 3.20A, 3.21, 4.3A, 4A.8, 4A.11, 12.2	Uniform Construction Code: subcodes	25 N.J.R. 3891(a)	R.1993 d.662	25 N.J.R. 5918(a)
5:23-2.17A	Uniform Construction Code: reroofing work	25 N.J.R. 4546(a)	R.1993 d.663	25 N.J.R. 5927(a)
5:23-2.18A, 3.11, 4.20	UCC: utility load management device permits; mausoleum plan review; Department fees	25 N.J.R. 4546(b)		
5:23-2.22, 4.18, 4.20, 4.22, 4.26, 4.29, 4.31, 4.39, 4A.1-4A.5, 4A.7-4A.2, 4B, 4C	Uniform Construction Code: industrialized/modular buildings	25 N.J.R. 5388(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-4.5	Uniform Construction Code: "Notice of Elevator Device Sealed Out of Operation"	25 N.J.R. 3693(a)	R.1993 d.581	25 N.J.R. 5146(a)
5:23-4.18	UCC: subcode training registration fee	25 N.J.R. 4548(a)	R.1993 d.665	25 N.J.R. 5928(a)
5:25-5.5	New home warranties and builder registration: claims procedure	25 N.J.R. 4986(a)		
5:26-8.2	Meetings of community associations	25 N.J.R. 3693(b)	R.1993 d.522	25 N.J.R. 4901(b)
5:27-1.3, 1.4, 1.6, 2.1, 12.2	Rooming and boarding houses: administrative corrections	_____	_____	25 N.J.R. 5928(b)
5:28	Foreword State Housing Code: administrative correction	_____	_____	25 N.J.R. 5928(b)
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:80-24	Housing and Mortgage Finance Agency: Lease-Purchase Program	25 N.J.R. 4826(a)		
5:80-26.19	Housing and Mortgage Finance Agency: affordable housing controls	25 N.J.R. 4369(a)	R.1993 d.640	25 N.J.R. 5471(a)
5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)		
5:80-32	Housing and Mortgage Finance Agency: housing investment sales	25 NJ.R. 4828(a)		
5:92-1.1	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		

Most recent update to Title 5: TRANSMITTAL 1993-10 (supplement October 18, 1993)

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MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:7-1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1317(a)	R.1993 d.615	25 N.J.R. 5472(a)
	Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)			
EDUCATION—TITLE 6				
6:1 et seq.	Title 6, New Jersey Administrative Code: opportunity for public comment	25 N.J.R. 4369(b)		
6:2	Appeals to State Board of Education	25 N.J.R. 4548(b)		
6:22A	School facility lease purchase agreements	25 N.J.R. 3588(a)	R.1993 d.544	25 N.J.R. 4901(c)
6:78	Marie H. Katzenbach School for the Deaf	25 N.J.R. 3592(a)	R.1993 d.543	25 N.J.R. 4904(a)
	Most recent update to Title 6: TRANSMITTAL 1993-7 (supplement October 18, 1993)			
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:0	Green glass marketing and recycling: request for public input on feasibility study	25 N.J.R. 1654(a)		
7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G-1–5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)		
7:1I	Sanitary Landfill Facility Closure and Contingency Fund: processing of damage claims	25 N.J.R. 5116(a)		
7:1K-1.5, 3.1, 3.4, 3.9-3.11, 4.3, 4.5, 4.7, 5.1, 5.2, 6.1, 6.2, 7.2, 7.3, 9.2-9.5, 9.7, 12.6-12.9	Pollution Prevention Program requirements	25 N.J.R. 1849(a)		
7:2-2.20, 3.6, 6.4, 8.4, 8.6, 10.2, 16.5, 17.1, 17.3, 17.4, 17.5	State Park Service Code	25 N.J.R. 2799(b)	R.1993 d.657	25 N.J.R. 5953(a)
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)	R.1993 d.637	25 N.J.R. 5694(a)
7:7A-1.4, 2.7	Freshwater Wetlands Protection Act rules: definition of project	25 N.J.R. 1642(a)	R.1993 d.646	25 N.J.R. 5954(a)
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)	R.1993 d.549	25 N.J.R. 5146(b)
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9-4 (7:9B)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)	R.1993 d.610	25 N.J.R. 5569(a)
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-4.15	Water surface quality standards: Wallkill River	25 N.J.R. 3755(a)		
7:11-4.3, 4.4	Sale of water from Manasquan Reservoir Water Supply System: administrative corrections	———	———	25 N.J.R. 5956(a)
7:13-7.1	Delaware River, Pohatcong Township: flood plain redelineation	25 N.J.R. 4370(a)		
7:13-7.1	Overpeck Creek, Englewood: flood plain redelineation	25 N.J.R. 4371(a)		
7:13-7.1	Poplar Brook, Deal: flood plain redelineation	25 N.J.R. 4372(a)		
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)		
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)	R.1993 d.610	25 N.J.R. 5569(a)
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1–3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:20A	Water usage certifications for agricultural or horticultural purposes	25 N.J.R. 3956(a)		
7:25-6	1994-95 Fish Code	25 N.J.R. 3053(b)	R.1993 d.526	25 N.J.R. 4905(a)

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7:25-7.13, 14.1, 14.2, 14.4–14.8, 14.10–14.13	Crab management	25 N.J.R. 4831(a)		
7:25-18.1, 18.14	Summer flounder permit conditions	25 N.J.R. 2167(a)		
7:25-18.5, 18.6, 18.12	Delaware Bay gill net permits	25 N.J.R. 5397(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)	R.1993 d.638	25 N.J.R. 5664(a)
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)		
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16, 17.1, 17.3, 17.4, 23.1-23.7, 25.1, 25.7	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1993 d.666	25 N.J.R. 6002(a)
7:27-1.4, 2.1, 8.1, 8.2, 16, 17.1, 17.3, 17.4, 23.1–23.7, 25.1, 25.7	Air pollution control: extension of comment period	25 N.J.R. 4551(a)		
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-15.1, 15.4	Enhanced Inspection and Maintenance (I/M) program	25 N.J.R. 5400(a)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)	R.1993 d.682	25 N.J.R. 5957(a)
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3, 25.4, 25.9, 25.10, 25.11, 25.12	Oxygenated fuels program	25 N.J.R. 4039(a)		
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.2, 3.10	Air pollution civil administrative penalties	25 N.J.R. 3339(a)	R.1993 d.666	25 N.J.R. 6002(a)
7:27A-3.2, 3.10	Air pollution civil administrative penalties: extension of comment period	25 N.J.R. 4551(a)		
7:27A-3.5, 3.10	Control and prohibition of air pollution from oxides of nitrogen: civil administrative penalties	25 N.J.R. 631(a)	R.1993 d.682	25 N.J.R. 5957(a)
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Oxygenated fuels program penalties	25 N.J.R. 4039(a)		
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-3.1, 3.10	Air pollution sampling and analytical procedures	25 N.J.R. 3339(a)	R.1993 d.666	25 N.J.R. 6002(a)
7:27B-3.1, 3.10	Air pollution sampling and analytical procedures: extension of comment period	25 N.J.R. 4551(a)		
7:27B-4.1, 4.5–4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-1.4	Radiation protection: administrative corrections	_____	_____	25 N.J.R. 5665(a)
7:28-15	Medical diagnostic X-ray installations: administrative correction	_____	_____	25 N.J.R. 5148(a)
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:36	Green Acres Program: opportunity to review draft rule revisions	25 N.J.R. 1473(a)		
7:36	Green Acres Grant Program	25 N.J.R. 3405(a)	R.1993 d.609	25 N.J.R. 5666(a)
7:45	Delaware and Raritan Canal State Park Review Zone	25 N.J.R. 4836(b)		

Most recent update to Title 7: TRANSMITTAL 1993-10 (supplement October 18, 1993)

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8:2A-1	Access to death records	25 N.J.R. 3115(a)	R.1993 d.667	25 N.J.R. 6012(a)
8:21-10.1, 10.2, 10.4, 10.6, 10.12	Milk and fluid milk products	25 N.J.R. 4373(a)	R.1993 d.689	25 N.J.R. 6013(a)
8:23-6	Pilot low-cost spaying and neutering clinic surgery fees	25 N.J.R. 3116(a)	R.1993 d.568	25 N.J.R. 5148(a)
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:31B	Hospital financing	25 N.J.R. 3117(a)	R.1993 d.593	25 N.J.R. 5149(a)
8:31B	Hospital financing: correction to proposal	25 N.J.R. 3566(a)		
8:31B-3.41, 4.38, 4.39, 4.40, 7	Hospital reimbursement: uncompensated care	25 N.J.R. 3125(a)	R.1993 d.668	25 N.J.R. 6016(a)
8:31B-4.41-4.41N	Hospital reimbursement: charity care audit functions	25 N.J.R. 3707(a)	R.1993 d.592	25 N.J.R. 5154(a)
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)	R.1993 d.669	25 N.J.R. 6019(a)
8:33A-1.10, 1.16, 1.29	Hospital Policy Manual: capital cap and review process	25 N.J.R. 3710(a)	R.1993 d.570	25 N.J.R. 5161(a)
8:33E	Cardiac diagnostic facilities and surgery centers: certificate of need	25 N.J.R. 3712(a)	R.1993 d.670	25 N.J.R. 6019(b)
8:33H	Long-term care services: certificate of need policy	25 N.J.R. 3719(a)	R.1993 d.671	25 N.J.R. 6031(a)
8:34	Nursing home administrators: standards for licensing	25 N.J.R. 3727(a)	R.1993 d.545	25 N.J.R. 4908(a)
8:36	Assisted living residences and comprehensive personal care homes: standards for licensure	25 N.J.R. 3734(a)	R.1993 d.672	25 N.J.R. 6037(a)
8:40-1.1, 2.3, 2.7, 3.1, 4.12, 5.23, 6.26	Invalid coach and ambulance services: licensure; street EMS	25 N.J.R. 2663(a)	R.1993 d.594	25 N.J.R. 5163(a)
8:41-4.1, 10.5-10.13, 11	Mobile intensive care programs: standing orders; paramedic clinical training objectives	25 N.J.R. 2665(a)		
8:44	Operation of clinical laboratories	25 N.J.R. 3904(a)	R.1993 d.595	25 N.J.R. 5164(a)
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.11	Clinical laboratories: reporting by supervisors	25 N.J.R. 3751(a)		
8:57-3.2	Physician reporting of occupational and environmental diseases and injuries	25 N.J.R. 2186(a)	R.1993 d.569	25 N.J.R. 5164(b)
8:59-5.6	Worker and Community Right to Know: exclusions from labeling requirements	25 N.J.R. 3441(a)		
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b); 25 N.J.R. 582(a))	24 N.J.R. 1674(a)	R.1993 d.226	25 N.J.R. 1970(b)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a); 25 N.J.R. 583(a))	24 N.J.R. 2414(b)	R.1993 d.338	25 N.J.R. 2882(b)
8:71	Interchangeable drug products (see 24 N.J.R. 4261(a); 25 N.J.R. 582(b))	24 N.J.R. 2997(a)	R.1993 d.225	25 N.J.R. 1970(a)
8:71	Interchangeable drug products (see 25 N.J.R. 580(b), 2883(a))	24 N.J.R. 4009(a)	R.1993 d.468	25 N.J.R. 4497(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1221(a), 1969(c), 2882(a), 4496(b))	25 N.J.R. 55(a)	R.1993 d.677	25 N.J.R. 6061(b)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b), 4497(b))	25 N.J.R. 875(a)	R.1993 d.673	25 N.J.R. 6060(b)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a), 4496(a))	25 N.J.R. 1814(b)	R.1993 d.676	25 N.J.R. 6061(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b))	25 N.J.R. 2802(b)	R.1993 d.678	25 N.J.R. 6062(a)
8:71	Interchangeable drug products	25 N.J.R. 3906(a)	R.1993 d.675	25 N.J.R. 6060(c)
8:71	List of Interchangeable Drug Products	25 N.J.R. 4377(a)	R.1993 d.674	25 N.J.R. 6060(a)
8:71	Interchangeable drug products	25 N.J.R. 4844(a)		

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HIGHER EDUCATION—TITLE 9				
9:1	Licensing and degree approval standards	25 N.J.R. 3057(a)	R.1993 d.523	25 N.J.R. 4915(a)
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)		
9:7-9	Paul Douglas Teacher Scholarship Program	25 N.J.R. 3594(a)		
9:11-1.4	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	25 N.J.R. 4886(a)		
9:17	Implementing the Higher Education Equipment Leasing Fund	25 N.J.R. 4887(a)		

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10:3	Contract administration	25 N.J.R. 3694(b)	R.1993 d.597	25 N.J.R. 5165(a)
10:4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(b)	R.1993 d.616	25 N.J.R. 5526(a)
10:8	Patient advance directives; DNR orders; declaration of death	25 N.J.R. 2669(a)		
10:31-1.4, 2.1, 2.2, 2.3, 8.1, 9.1	Screening and Screening Outreach Programs: mental health services	25 N.J.R. 1324(a)	R.1993 d.607	25 N.J.R. 5945(b)
10:37-5.37–5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)		
10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)		
10:38-1.4, 2.1, 2.2, 3.3, 3.4, 3.6, 3.8, 4.3, 5.2, 7.2, 7.4, 7.5, App. C, E, G	Interim Assistance Program for discharged State psychiatric hospital clients	25 N.J.R. 3697(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:44A	Licensed community residences to developmentally disabled	25 N.J.R. 4378(a)	R.1993 d.633	25 N.J.R. 5528(a)
10:49-19.1, 19.4, 19.7, 19.11	State-defined HMOs	Emergency (expires 12-3-93)	R.1993 d.525	25 N.J.R. 4793(a)
10:51-5.6	Pharmaceutical services: income eligibility limits	25 N.J.R. 3407(a)	R.1993 d.608	25 N.J.R. 5528(b)
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)	R.1993 d.647	25 N.J.R. 5947(a)
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:60-1.1–1.17, 2.2, 2.4, 2.5, 2.8, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 3.2, 3.3, 3.6, 4.2, 6, App. A, H	Home Care Services Manual	25 N.J.R. 2803(a)	R.1993 d.588	25 N.J.R. 5167(a)
10:62	Vision care services	25 N.J.R. 3907(a)		
10:66	Independent clinic services: Medicaid program services	25 N.J.R. 4379(a)	R.1993 d.641	25 N.J.R. 5528(c)
10:69-5.1	HAAAD income eligibility limits	25 N.J.R. 3407(a)	R.1993 d.608	25 N.J.R. 5528(b)
10:69A-1.2, 6.2	PAAD income eligibility limits	25 N.J.R. 3407(a)	R.1993 d.608	25 N.J.R. 5528(b)
10:69B	Lifeline Programs	25 N.J.R. 3701(a)	R.1993 d.586	25 N.J.R. 5167(b)
10:69B-4.2	Lifeline programs: income eligibility limits	25 N.J.R. 3407(a)	R.1993 d.608	25 N.J.R. 5528(b)
10:80	Organization of the Division of Family Development	Exempt	R.1993 d.518	25 N.J.R. 4931(a)
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-8.22	Medicaid eligibility of dependent child of adolescent parent	25 N.J.R. 2815(a)	R.1993 d.519	25 N.J.R. 4931(b)
10:81-10.7, 10.8	Refugee Resettlement Program: eligibility limitations	25 N.J.R. 3919(a)	R.1993 d.648	25 N.J.R. 5948(a)
10:81-11.4, 11.16A, 11.20	Public Assistance Manual: closing criteria for IV-D cases; application fee for non-AFDC applicants	25 N.J.R. 881(a)	R.1993 d.634	25 N.J.R. 5951(a)
10:81-11.7, 11.9	Non-AFDC child support orders	25 N.J.R. 2816(a)	R.1993 d.649	25 N.J.R. 5949(a)
10:81-11.9	CWA/CSP Unit paternity services: administrative corrections	———	———	25 N.J.R. 5950(a)
10:81-11.21	Review and adjustment of child support orders in AFDC, foster care, and Medicaid Only cases	25 N.J.R. 2818(a)	R.1993 d.627	25 N.J.R. 5567(a)
10:81-14.18A	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:82-3.14	Deeming income of parents or guardians of adolescent parent	25 N.J.R. 2819(a)	R.1993 d.566	25 N.J.R. 5168(a)
10:82-5.3	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
10:86-10.2, 10.6	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:87	Food Stamp Program	25 N.J.R. 4697(b)		
10:97-1.3, 3.1	Commission for the Blind and Visually Impaired: licensing procedure for Business Enterprise Program	25 N.J.R. 4551(d)		
10:121A-5.10	Requirements for adoption agencies: searches	25 N.J.R. 3415(a)	R.1993 d.532	25 N.J.R. 4932(a)
10:122	Manual of Requirements for Child Care Centers	25 N.J.R. 4987(a)		
10:126	Family day care registration: manual of requirements	25 N.J.R. 3703(a)	R.1993 d.533	25 N.J.R. 4932(b)
10:127-2.1, 3.7, 3.8, 5.2, 8.1, 8.4, 9.1, 9.10, 10.4, 10.13, 10.15, 10.16, 10.25	Residential child care facilities requirements: administrative correction	———	———	25 N.J.R. 4932(c)
10:133D-2	DYFS case management: case plan	25 N.J.R. 2209(a)	R.1993 d.534	25 N.J.R. 4934(a)
10:133D-4	DYFS case management: in-person visits with clients and substitute care providers	25 N.J.R. 2210(a)	R.1993 d.587	25 N.J.R. 5168(b)

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10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		
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10A:1-1.3, 1.4	Public information requests; reimbursement for copying costs	25 N.J.R. 4552(a)	R.1993 d.635	25 N.J.R. 5475(a)
10A:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(b)	R.1993 d.617	25 N.J.R. 5474(a)
10A:2-2.2	Inmate accounts: transaction fees	25 N.J.R. 4849(a)		
10A:3-1.4, 2.3	Inmate keep separate status	25 N.J.R. 4702(a)	R.1993 d.679	25 N.J.R. 5929(a)
10A:4-5.1, 5.2, 5.3	Sanctions for prohibited acts committed by inmates	25 N.J.R. 4435(a)	R.1993 d.584	25 N.J.R. 5169(a)
10A:9-5.5	Restoration to inmates of forfeited commutation credits	25 N.J.R. 4553(a)	R.1993 d.636	25 N.J.R. 5476(a)
10A:16-9.1	Blood donation by inmates: autologous donations	25 N.J.R. 3920(a)	R.1993 d.567	25 N.J.R. 5170(a)
10A:31-6.13	Reimbursement for copying costs	25 N.J.R. 4552(a)	R.1993 d.635	25 N.J.R. 5475(a)
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-3.47	State Parole Board: victim input	25 N.J.R. 4705(a)		
10A:71-7.16	State Parole Board: general conditions of parole and future eligibility upon revocation	25 N.J.R. 3597(a)		
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11:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1327(a)	R.1993 d.618	25 N.J.R. 5666(b)
11:1-7	New Jersey Property-Liability Insurance Guaranty Association: plan of operation	25 N.J.R. 1045(a)		
11:1-31	Surplus lines insurer eligibility	25 N.J.R. 1819(a)		
11:1-32.4, 35	Insurance holding company systems	25 N.J.R. 4275(a)	R.1993 d.554	25 N.J.R. 5170(b)
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:1-36	Examination of insurers	25 N.J.R. 4284(a)	R.1993 d.555	25 N.J.R. 5180(a)
11:1-37	Public adjusters' licensing	25 N.J.R. 5432(a)		
11:2-17.11	Payment of third-party claims: written notice by insurer to claimant	25 N.J.R. 3921(a)	R.1993 d.681	25 N.J.R. 5929(b)
11:2-27	Determination of insurers in a hazardous financial condition	25 N.J.R. 4286(a)	R.1993 d.556	25 N.J.R. 5182(a)
11:2-28	Credit for reinsurance	25 N.J.R. 4289(a)	R.1993 d.557	25 N.J.R. 5184(a)
11:2-34	Surplus lines: allocation of premium tax and surcharge	25 N.J.R. 1826(a)	R.1993 d.582	25 N.J.R. 5194(a)
11:2-36	Risk retention groups and purchasing groups	25 N.J.R. 4298(a)	R.1993 d.558	25 N.J.R. 5197(a)
11:2-37	Producer-controlled insurers	25 N.J.R. 4304(a)	R.1993 d.559	25 N.J.R. 5202(a)
11:2-38	Increase in property and casualty capital and surplus requirements	25 N.J.R. 4306(a)	R.1993 d.560	25 N.J.R. 5204(a)
11:2-39	Increase in capital and surplus requirements for life and health insurers	25 N.J.R. 4309(a)	R.1993 d.561	25 N.J.R. 5208(a)
11:2-40	Life, health and annuity reinsurance agreements	25 N.J.R. 4314(a)	R.1993 d.562	25 N.J.R. 5212(a)
11:3-2.2, 2.4, 2.5, 2.6, 2.11, 2.12	Personal Automobile Insurance Plan	25 N.J.R. 2212(a)	R.1993 d.548	25 N.J.R. 5215(a)
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
11:3-16.10	Private passenger automobile insurance: rate filing requirements	25 N.J.R. 4436(a)		
11:3-20.5, 20A.1	Automobile insurers: reporting apportioned share of MTF losses in excess profits reports; ratio limiting the effect of negative excess investment income	25 N.J.R. 1829(a)		
11:3-28.1, 28.2, 28.4, 28.6, 28.10-28.13, App. A, B	Reimbursement of excess medical expense benefits paid by automobile insurers	25 N.J.R. 2636(b)	R.1993 d.583	25 N.J.R. 5219(a)
11:3-29.2, 37.10	Automobile insurance PIP coverage: application of medical fee schedules to acute care hospitals and other facilities	25 N.J.R. 4706(a)		
11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)		
11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)		
11:3-42.12, 42.17	Producer assignment program: administrative corrections	———	———	25 N.J.R. 5930(a)
11:4-37	Selective contracting arrangements of insurers	25 N.J.R. 4554(b)		
11:5	Real Estate Commission rules	25 N.J.R. 3597(b)	R.1993 d.552	25 N.J.R. 5229(a)
11:5-1.3	Real Estate Commission: broker pre-licensure requirements	25 N.J.R. 4849(b)		
11:5-1.3, 1.10, 1.27, 1.28, 1.31	Real Estate Commission: extension of comment periods on various licensure and prelicensure proposals	25 N.J.R. 5099(a)		
11:5-1.10	Real Estate Commission: compensation and licensure requirement	25 N.J.R. 4851(a)		
11:5-1.27	Real Estate Commission: educational requirements for broker and salesperson licensure	25 N.J.R. 4852(a)		

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11:5-1.31	Real Estate Commission: license transfer procedure	25 N.J.R. 4858(a)		
11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:16-1.2	Statement of liability for fraud on claim forms: administrative correction	_____	_____	25 N.J.R. 5229(b)
11:17-6	Managing general agents	25 N.J.R. 4318(a)	R.1993 d.563	25 N.J.R. 5229(c)
11:17-7	Reinsurance intermediaries	25 N.J.R. 4323(a)	R.1993 d.564	25 N.J.R. 5234(a)
11:19-2.2, 2.3, 2.5, App. B	Data submission requirements for all domestic insurers	25 N.J.R. 2820(b)		
11:20-2	Individual Health Coverage Program: temporary plan of operation	25 N.J.R. 4707(a)	R.1993 d.550	25 N.J.R. 5244(a)
11:20-11	Individual Health Insurance Reform Act: relief from obligations	25 N.J.R. 4559(a)	R.1993 d.654	25 N.J.R. 5930(b)
11:21	Small Employer Health Benefits Program	25 N.J.R. 3599(a)	R.1993 d.553	25 N.J.R. 5253(a)
11:21-1.2, 4.1, App. Exhibits	Small Employer Health Benefits Program	25 N.J.R. 5017(a)		
11:21-1.3, 1.4, 1.5, 6, 7, 7A, 17, 18, App. Exh. N–T	Small Employer Health Benefits Program	25 N.J.R. 4437(a)	R.1993 d.644	25 N.J.R. 5668(a)
11:21-2	Small Employer Health Benefits Program: Plan of Operation	25 N.J.R. 4563(a)		
11:21-2	Small Employer Health Benefits Program: public hearing on Plan of Operation	25 N.J.R. 4678(a)		
11:21-14	Small Employer Health Benefits Program: declaration and approval of reinsuring or risk-assuming carrier status	25 N.J.R. 4572(a)	R.1993 d.551	25 N.J.R. 5347(a)
11:21-15	Small Employer Health Benefits Program: relief from obligations	25 N.J.R. 4577(a)	R.1993 d.629	25 N.J.R. 5692(a)
11:21-16	Small Employer Health Benefits Program: withdrawal of carriers from plans market	25 N.J.R. 4859(a)		
11:21–App. Exh. E	Small Employer Health Benefits Program: correction to proposed Appendix Exhibit E and extension of comment period	25 N.J.R. 4458(a)		
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12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1334(a)	R.1993 d.619	25 N.J.R. 5476(b)
12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA): extension of comment period	25 N.J.R. 2216(a)		
12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment Compensation and Temporary Disability: 1994 maximum benefit rates, taxable wage base, government entity contribution rate, base week, and alternative earnings test	25 N.J.R. 3922(a)	R.1993 d.589	25 N.J.R. 5351(a)
12:17-11.2	Offset of unemployment benefits by retirement and pension income	25 N.J.R. 3923(a)	R.1993 d.590	25 N.J.R. 5352(a)
12:18-1.1, 2.4, 2.27, 2.40, 2.43, 2.48, 3.1, 3.2, 3.3	Temporary Disability Benefits Program	25 N.J.R. 1515(c)		
12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)		
12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)		
12:41	Job Training Partnership Act: grievance, hearing, and review procedures	25 N.J.R. 5456(a)		

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12:45	Division of Vocational Rehabilitation Services	25 N.J.R. 5130(b)		
12:175	Ski lift safety	25 N.J.R. 4581(a)	R.1993 d.639	25 N.J.R. 5478(a)
12:235-1.6	Workers' Compensation: 1994 maximum benefit rate	25 N.J.R. 3925(a)	R.1993 d.591	25 N.J.R. 5352(b)
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12A:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1335(b)	R.1993 d.620	25 N.J.R. 5478(a)
12A:10-1	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N..R. 4461(b)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 2216(c)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)		
12A:121	Urban Enterprise Zone Authority: policies	25 N.J.R. 4582(a)	R.1993 d.645	25 N.J.R. 5933(b)
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13:1C	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1338(a)	R.1993 d.612	25 N.J.R. 5480(a)
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)		
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:27-3	Board of Architects: scope of architectural services	25 N.J.R. 5439(a)		
13:27-5.8	Board of Architects: examination fees	25 N.J.R. 3704(a)	R.1993 d.602	25 N.J.R. 5484(a)
13:27-8.13	Landscape architects: advertisements and listings	25 N.J.R. 5440(a)		
13:29-1.13	Board of Accountancy: biennial renewal fee for inactive or retired licensees	25 N.J.R. 1665(b)	R.1993 d.585	25 N.J.R. 5352(c)
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:30-8.1	Board of Dentistry: fee schedules	25 N.J.R. 3927(a)	R.1993 d.598	25 N.J.R. 5352(d)
13:30-8.6	Board of Dentistry: professional advertising	25 N.J.R. 2823(a)	R.1993 d.651	25 N.J.R. 5934(a)
13:30-8.7	Board of Dentistry: patient records	25 N.J.R. 1833(a)	R.1993 d.650	25 N.J.R. 5935(a)
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13:34	Board of Marriage Counselor Examiners rules	25 N.J.R. 3060(a)	R.1993 d.599	25 N.J.R. 5485(a)
13:35-2A.9, 2A.11, 6.13	Certified midwife practice: prescriptive authority	25 N.J.R. 4583(a)		
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13:35-6.5	Board of Medical Examiners: permissible charges for copies of patient records	25 N.J.R. 4862(a)		
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13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)	R.1993 d.604	25 N.J.R. 5487(a)
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13:39A-1.4	Board of Physical Therapy: fees and charges	25 N.J.R. 5446(a)		
13:39A-2.5	Board of Physical Therapy: referral of patients from chiropractors	25 N.J.R. 3938(a)	R.1993 d.642	25 N.J.R. 5488(a)
13:39A-5.2, 5.4, 5.6	Board of Physical Therapy: examination standards for therapists and assistants	25 N.J.R. 5447(a)		

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13:42	Board of Psychological Examiners rules: public hearing and extension of comment period regarding psychoanalysis and scope of practice, and employment by non-profit community organization	25 N.J.R. 4585(a)		
13:42-1.2	Board of Psychological Examiners: written examination fee	25 N.J.R. 3929(a)		
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13:44C-2.2	Audiology and Speech-Language Pathology Advisory Committee: fees and charges	25 N.J.R. 5448(a)		
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late renewal and reinstatement fee timeframes	25 N.J.R. 3931(a)	R.1993 d.643	25 N.J.R. 5489(a)
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
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13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
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13:44E-2.14	Board of Chiropractic Examiners: referral of patients to physical therapists	25 N.J.R. 3938(a)	R.1993 d.642	25 N.J.R. 5488(a)
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13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)		
13:45A-26	Automotive dispute resolution	25 N.J.R. 3939(a)		
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47B	Weights and measures	25 N.J.R. 5102(a)		
13:49	State Medical Examiner: standards for procedures and investigations	25 N.J.R. 5104(a)		
13:70-1.31	Thoroughbred racing: prohibited services by Racing Commission employees and appointees	25 N.J.R. 4458(b)	R.1993 d.684	25 N.J.R. 5938(b)
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)		
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)		
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13:70-29.61	Thoroughbred racing: Superfecta	25 N.J.R. 5450(a)		
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13:78	Administration of Victim and Witness Advocacy Fund	25 N.J.R. 4721(a)	R.1993 d.687	25 N.J.R. 5939(b)
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14:12-2.1	Filing of Demand Side Management Resource Plans	25 N.J.R. 5111(a)		
14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		
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15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		
15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		
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16:28A-1.19	Parking restrictions along Route 28 in Bound Brook	25 N.J.R. 3943(a)	R.1993 d.575	25 N.J.R. 5356(b)
16:28A-1.19	Time limit parking zone along Route 28 in Somerville	25 N.J.R. 5111(b)		
16:28A-1.19, 1.57	Parking restrictions along Route 28 in Bound Brook and U.S. 206 in Hamilton Township	25 N.J.R. 4459(b)	R.1993 d.623	25 N.J.R. 5493(a)
16:28A-1.38	No stopping or standing zones along Route 71 in Spring Lake Heights	25 N.J.R. 5112(a)		
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.41	Restricted parking along Route 77 in Bridgeton	25 N.J.R. 3944(b)	R.1993 d.576	25 N.J.R. 5357(a)
16:28A-1.41	Time limit parking in Bridgeton	25 N.J.R. 4118(a)	R.1993 d.577	25 N.J.R. 5358(a)
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16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
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17:6	Consolidated Police and Firemen's Pension Fund	25 N.J.R. 3946(a)	R.1993 d.659	25 N.J.R. 5942(b)
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19:45-1.12A	Minimum and maximum gaming wagers	25 N.J.R. 3953(a)	R.1993 d.630	25 N.J.R. 5521(a)
19:45-1.19	Card-o-lette	25 N.J.R. 2230(a)		
19:45-1.29	Approval of listings of uncollectible checks	25 N.J.R. 5114(a)		
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19:46-1.26	Coupon redemption for slot machine play	25 N.J.R. 4471(a)		
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