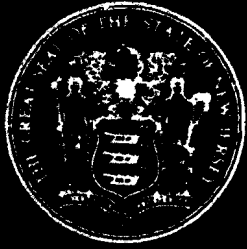
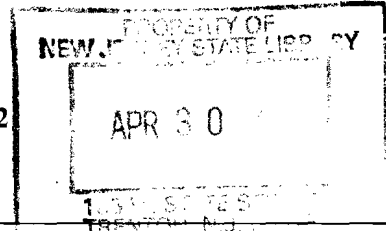


NEW JERSEY REGISTER



THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 25 NUMBER 9
May 3, 1993 Indexed 25 N.J.R. 1797-1912
 (Includes adopted rules filed through April 12, 1993)



DEPARTMENT OF TREASURY
 NEW JERSEY STATE LIBRARY ARCHIVE
 CH. 179
 1797-1912

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 16, 1993
 See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MARCH 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. 87(1993)**

**Defense Conversion and Community Assistance
Commission**

Issued: March 29, 1993.

Effective: March 29, 1993.

Expiration: Indefinite.

WHEREAS, the respective branches of the military have proposed to the federal Defense Base Closure and Realignment Commission certain base closings and realignments throughout the Nation; and

WHEREAS, three major defense facilities in New Jersey have been proposed for closure or realignment: Fort Monmouth, Monmouth County; McGuire Air Force Base, Burlington County; and the Naval Air Warfare Center, Mercer County; and

WHEREAS, these base closings and realignments, and the general reduction in federal spending for national defense purposes, will have a significant impact upon defense firms, communities and workers, thus affecting the economy of the State and the prosperity, safety, health and general welfare of our citizens and their standard of living; and

WHEREAS, there is a need for the State to take immediate action to prepare for and address the economic repercussions that may befall the State as a result of the Commission's recommendations; and

WHEREAS, an assessment must be made as to the potential impact of declining defense expenditures on the State's economy; and

WHEREAS, there is a need to identify and evaluate all federal and State programs that may be of assistance to defense firms, communities and other businesses interested in conversion or joint use; and

WHEREAS, new State initiatives must be developed and the activities of existing programs and personnel must be coordinated in order to meet the specific needs of businesses, communities and workers; and

WHEREAS, the State must develop and implement a comprehensive plan to ensure New Jersey's continued economic growth;

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

1. There is hereby created the "Defense Conversion and Community Assistance Commission" (hereinafter "Commission").

2. The Commission shall consist of a minimum of twenty-five members and a maximum of fifty members. The public members of the Commission shall be appointed by the Governor who shall include representatives from, but not be limited to, contracting firms, organized labor, academia, banking and financial institutions, air freight and air transport associations and community leaders. This Commission shall also include as *ex officio* members the Commissioners of the Departments of Commerce and Economic Development, Labor, Transportation, Environmental Protection and Energy, and Banking; the Adjutant General of the Department of Military and Veterans' Affairs; the Executive Director of the Economic Development Authority; and the Chairs of the Commission of Science and Technology and the Commission on Employment and Training; or their designees. Furthermore, there shall be two members who shall be Representatives from the United States Congress. An additional four members of the Commission shall be State legislators, two of whom shall be appointed from the Senate and be appointed by the Senate President (no more than one of whom shall be of the same political party), and two of whom shall be appointed from the General Assembly and be appointed by the Speaker (no more than one of whom shall be of the same political party). The Chair and Vice-Chair of the Commission shall be designated from among the members by the Governor. All members shall serve without compensation.

3. The Commission shall study the economic impact of the defense base closings and federal defense spending reduction upon defense firms, communities, local businesses and workers and make recommendations to ensure that the various factors cited in the Preamble of the Executive Order, and other factors deemed relevant by the Commission, are given proper consideration.

4. The Commission shall coordinate for the State of New Jersey the receipt and distribution of all funds to be used to implement those programs that have been recommended by the Commission to mitigate the impact of defense base closure and realignment, defense industry conversion and community and worker assistance, unless otherwise specified by law.

5. Subject to the approval of the Governor, the Commission may prepare and approve a budget to be funded through available federal and State funds to conduct forums, to reimburse members of the Commission for reasonable and necessary expenses for attending Commission meetings and performing Commission duties, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions.

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

7. This Order shall take effect immediately.

(b)

**OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 88(1993)**

**Review of State Government Anti-Sexual Harassment
Policies, Practices and Procedures**

Issued: April 4, 1993.

Effective: April 4, 1993.

Expiration: Indefinite.

WHEREAS, in recognition of our recent celebration of Women's History Month, it is appropriate for the State of New Jersey to redouble its efforts to advance the cause of equality for all women; and

WHEREAS, all women enjoy a fundamental right to be treated with equal respect and dignity; and

WHEREAS, sexual harassment of any kind is totally repugnant to basic principles of equality; and

WHEREAS, the threat of sexual harassment in the workplace continues to hinder the progress of women in professional life; and

WHEREAS, women have the right to be totally free from unwanted sexual advances and other forms of sexual harassment that create an intolerable and offensive atmosphere in the workplace; and

WHEREAS, this State must take every necessary and appropriate step toward eradicating sexual harassment and gender discrimination from the workplace; and

WHEREAS, the New Jersey Department of Personnel currently operates a successful training program through its Human Resource Development Institute that is designed to educate State employees on this important topic; and

WHEREAS, the State should ensure that all governmental entities adopt effective policies to eradicate sexual harassment from the workplace;

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

1. The Commissioner of Personnel shall conduct a comprehensive review of the State's current policies, practices, and procedures for eradicating sexual harassment from the government workplace. The Commissioner of Personnel, working in cooperation with the Personnel Advisory Board, shall examine current policies, practices, and procedures, including N.J.A.C. 4A:7-1.2 et seq., to determine how these practices and procedures can be made more effective and sensitive to the needs of victims of sexual harassment. The Commissioner of Personnel shall submit a final report to me no later than ninety (90) days after the date of this Executive Order.

GOVERNOR'S OFFICE

2. The final report shall set forth findings and recommendations, and shall address all relevant issues including: (a) What are the current practices and procedures employed by the nineteen principal State departments as well as State authorities and colleges?; (b) Do these practices and procedures respond adequately to the needs of victims of sexual harassment?; (c) Do these practices and procedures provide adequate sanctions for those who are found to have committed acts of sexual harassment?; (d) Are these practices and procedures uniform throughout all units of State government?; and (e) Are State employees adequately advised of the nature of sexual harassment and the remedies that exist?

EXECUTIVE ORDERS

3. Concurrent with the preparation of this report, all State agencies, departments, authorities, and instrumentalities shall develop a plan for providing anti-sexual harassment training programs or seminars for employees and/or for management and administrative personnel. In particular, the nineteen principal State departments shall make available to employees the anti-sexual harassment program as administered through the Human Resources Development Institute in the Department of Personnel.

4. This Order shall not be construed to apply to local, county, or municipal governments.

5. This Order shall take effect immediately.

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Grades and Standards

Proposed Readoption: N.J.A.C. 2:71

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

Authority: N.J.S.A. 4:3-11.12.

Proposal Number: PRN 1993-256.

Submit comments by June 2, 1993 to:

Dhun B. Patel, Ph.D., Director
Division of Regulatory Services
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:71, Grades and Standards, expires on July 8, 1993. The Department of Agriculture, Division of Regulatory Services has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. The readoption of this chapter insures the ongoing viability of the rules.

N.J.A.C. 2:71-1.1 through 2:71-1.40 are the rules relating to the marketing, processing, labeling and transporting of eggs. These rules satisfy the need for an orderly marketing program for quality shell eggs and result in the economic protection of the State's egg industry. The subchapter states that any eggs marketed to consumers, institutional consumers or retailers shall be edible and shall conform to the standards for consumer grades; that fees and charges for inspection and grading services by Department personnel shall be the same as those charged by the U.S.D.A.; that the name and address of packer or distributor shall be prominently displayed on containers of eggs; that containers of loose eggs produced in New Jersey must be properly sealed; that there must be registration of label or containers which bears the name New Jersey or Jersey. The subchapter also defines a reused egg container; prescribes the proper sanitary conditions in cleaning and handling shell eggs from the packing room to the transporting vehicle; prescribes labeling requirements for New Jersey produced eggs; prescribes use of the New Jersey map symbol on egg packages and in advertising; and defines an egg container.

N.J.A.C. 2:71-2.1 through 2.32, are the rules describing the Standards and Grades as applied to fruits and vegetables. The Department of Agriculture, under a cooperative agreement with the United States Department of Agriculture, has provided the fruit and vegetable industry with inspection and grading services since 1922 when the first United States Standards were promulgated. The United States Standards are a measure of quality, for example: U.S. Fancy; U.S. No. 1; and U.S. No. 2.

United States Standards are used when grading all New Jersey fruits and vegetables (N.J.A.C. 2:71-2.1) with the exception of asparagus intended for canning or freezing which is graded pursuant to N.J.A.C. 2:71-2.8. The New Jersey grades for canning or freezing are described and diameter classifications for spears are specified in N.J.A.C. 2:71-2.9. Words and terms used in subchapter 2 are defined in N.J.A.C. 2:71-2.10 followed by a clarification of terms used in this section (N.J.A.C. 2:71-2.11).

Asparagus acceptable for New Jersey No. 1 grade is described in N.J.A.C. 2:71-2.12. Asparagus is the only vegetable graded using New Jersey Standards because scoring defects are more clearly defined. The procedure for receiving loads of asparagus after severe wind and rainstorms is stated in N.J.A.C. 2:71-2.13. The function and need for unrestricted sampling of asparagus for processing is summarized in N.J.A.C. 2:71-2.16 and equipment and personnel required by applicants is discussed in N.J.A.C. 2:71-2.17.

This subchapter on inspection and grading of fruits and vegetables has in the past, and will continue to, enable farmers, packers, brokers and shippers to market loads of fresh product of uniform quality and provide an equitable basis for payment between buyer and seller.

N.J.A.C. 2:71-2.2 through 2.7 deal with the use of "Jersey Fresh" as the logo for the "Jersey Fresh Quality Grading Program" and the "Jersey Fresh Quality Premium Program" on containers of certain fresh fruits, vegetables and shell eggs. These rules describe the application for license and the licensing procedure, the license period, charge for licensing, the commodities to be marketed under the "Jersey Fresh" logo, commodity graders, packing requirements, packer identification, definitions of grade standard terms and penalties for improper use.

N.J.A.C. 2:71-3.1, Standards for plant material, states that the State Board of Agriculture adopts and promulgates as Official, New Jersey Grades, the United States Standards for asparagus, Christmas trees and tomato plants. This rule aids in the orderly marketing of these commodities.

N.J.A.C. 2:71-5, Marking Open and Closed Packages of Potatoes, originated with the need for an orderly marketing program for quality potatoes. The rules relate to marketing, grading, and labeling of potatoes for the economic protection of the State's potato industry. The subchapter states that any potatoes marketed shall conform to the standard grades for potatoes and be labeled as to the specific grade.

Social Impact

Readoption of N.J.A.C. 2:71 will affect the producers, packers, wholesalers, retailers and consumers of the commodities covered in this chapter.

N.J.A.C. 2:71-1.1 through 1.40 will continue to protect the egg industry and the consumers it serves by high quality standards which are uniformly applied to all packers of eggs sold and/or produced in New Jersey by mandatory inspections conducted at the retail and wholesale marketing levels. The results of these rules past, present and future guarantee that the New Jersey consumer receives high quality shell eggs in properly identified containers.

N.J.A.C. 2:71-2.1 through 2.32 will continue to protect the New Jersey fruit and vegetable industry and the consumers it serves in that inspection and grading of fruits and vegetables marked as to grade or standard assures the public of compliance with the grade indicated. The service enables the farmer and packer to market a high quality product. This in turn, benefits the consumer who would otherwise be unable to compare quality with price. In addition, this chapter opens markets, to producers, such as the export market which is not available without inspection.

Further products packed under the "Jersey Fresh" quality grading logo will enhance the promotion of uniformly packed high quality New Jersey farm products to the benefit of the packers and consumers. Packers will gain new markets for their products, while consumers will have more quality products and an identifiable larger supply of quality products available. The "Jersey Fresh Quality Grading Program" has been well received by the growers, buyers and consumers.

N.J.A.C. 2:71-3.1, in setting United States grades as the official grades for New Jersey asparagus, Christmas trees and tomato plants will continue to enhance the marketability of these products through the use of a standard that is well recognized and understood domestically as well as internationally.

N.J.A.C. 2:71-5.1 through 5.7 will continue to protect the potato industry and the consumers it serves by high quality standards which are uniformly applied to all packers of New Jersey produced potatoes by mandatory inspections conducted at the retail and wholesale marketing levels.

Economic Impact

The cost of producing a superior quality product in the past and present time is borne both by the producer and consumer. The producer or packer incurs extra costs in producing or purchasing New Jersey eggs and packaging containers. These costs are channeled to the consumer in the form of a higher price per dozen charged at the retail level.

Subchapter 2 has the greatest economic impact upon the farmers, packers, brokers, shippers, processors and receivers of fruits and vegetables. These groups would be adversely affected if the inspection and grading program were discontinued. Exports and imports would be

drastically curtailed because of State and Federal regulations requiring inspection and certification; also sales to the military would be completely halted. There would be no objective method to establish the true value of loads of fruits and vegetables or uniform quality commensurate with prevailing market prices. Furthermore, there would be no unbiased third party to assist in settling claims or disputes between shippers and receivers.

The applicant for the inspection and grading service is charged a minimal fee for the work performed. The fee is a marketing cost which is passed through to the product consumer. This fee is used to help the Department in the administration of the program.

The economic impact on the producers (growers) licensed under the voluntary "Jersey Fresh Quality Grading Program" is minimal. The \$30.00 annual license fee has been proven to be offset by increases in the price received by the producers through the sale of high quality products.

Any licensed packer using "logo" containers for products other than those covered by the rules or any unlicensed packer using "logo" packages for any product is subject to a penalty of not more than \$50.00 for the first offense and not more than \$100.00 for each subsequent offense.

The producer or packer incurs extra costs in producing or purchasing New Jersey potatoes and packaging containers. These costs are channeled to the consumer in the form of a higher price per pound charged at the retail level. The cost of producing a superior quality product in the past and present time is borne both by the producer and consumer.

Regulatory Flexibility Analysis

N.J.A.C. 2:71 does impact small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., primarily farmers. Basically the bulk of the rules impose compliance standards, as described in the Summary above, on those participating in these programs. There are also reporting requirements, including registering samples of labels used in the shell egg program and annual reporting in the Jersey Fresh Program. The recordkeeping requirements include maintenance of accurate records in the shell egg program, proper invoicing in the Jersey Fresh Program and the marking of potato packages. However, these rules are designed to insure truth in packaging and an adherence to statements of quality. This assures that products are delivered to consumers free from defects and risk of disease. Therefore, it is the Department of Agriculture's position that although the rules may be more costly for a small business to implement, they are necessary for the public health, welfare and safety. Further, by the use of uniform grades and standards all products are judged against each other intrinsically and not just on advertising budget.

For the voluntary portion of these rules, specifically N.J.A.C. 2:71-2.1 through 2.32 (Fruits and Vegetables) there is no requirement to market in conformance with these rules, to do so in the commercial market without following these grades, which are universal in the product selling area for New Jersey commodities, would put the small business at a competitive disadvantage with all other states. As the New Jersey rules are for all practical purposes the Federal rules, they add no cost or complexity to the operation which has not already been imposed by another agency. The use of accepted standards does promote the orderly marketing of similar goods in the generic sense and allows equally good produce from the small farm to compete with the products of larger operation. Should a farmer choose to participate under the voluntary rules, the cost of participating should be offset by higher prices received for the produce.

For the above reasons the Department of Agriculture feels that no separate rules for small and large businesses are needed.

Full text of the proposed readoption may be found in the New Jersey Administrative code at N.J.A.C. 2:71.

(a)

DIVISION OF REGULATORY SERVICES

Bonding Requirement of Commission Merchants, Dealers, Brokers, Agents

Proposed Readoption with Amendment: N.J.A.C. 2:72

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

Authority: N.J.S.A. 4:11-20 and 4:11-33.1.

Proposal Number: PRN 1993-257.

Submit comments by June 2, 1993 to:
 Dhun B. Patel, Ph.D., Director
 Division of Regulatory Services
 New Jersey Department of Agriculture
 CN 330
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:72, Licensing and Bonding, expires on July 8, 1993. The Department of Agriculture has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable, and responsive to the purpose for which they were originally promulgated. Readoption is necessary because N.J.A.C. 2:72 originated with the need to protect the New Jersey growers of perishable agricultural commodities who fell victim to unscrupulous buyers of their products, by insuring that the buyers of perishable farm products doing business with New Jersey farmers have on deposit with the Department of Agriculture sufficient security bond to cover their purchases. The rules have provided the New Jersey farmers a method of recovering monies owed to them by licensed agricultural commission merchants (any person engaged in the business of soliciting or receiving any perishable agricultural commodity for sale on commission on behalf of the grower thereof), brokers, agents and commodity dealers in the event of bankruptcy or default by enabling the farmer to file a verified claim against the security or deposit held by the Department. The rules establish a formula to be used in determining the amount of the required bond as well as the need for dealer's and commission merchant's record of transactions and broker's memorandum of sale. The rules have been amended over the years since 1930 to update the minimum and maximum values of the bond requirements, to include additional commodities and to update payment due dates. This chapter continues to protect New Jersey farmers from economic disadvantages caused by the failure of buyers to promptly pay for products ordered and received from growers.

A minor change is being made to this Chapter at this time. A non-regulatory statement, which appears at the back of Chapter 72 is now being deleted as it is unnecessary and no longer reflects New Jersey Administrative Code convention.

Social Impact

N.J.S.A. 4:11-19 requires that all commission merchants, dealers, agents and brokers of perishable agricultural commodities on a credit basis be licensed after filing the required security with the Department of Agriculture. All commission merchants, dealers, agents and brokers of perishable agricultural commodities in New Jersey are directly effected by this rule, as well as, New Jersey farmers. Readoption of N.J.A.C. 2:72 will require and ensure that all credit buyers of perishable agricultural commodities are uniformly bonded and licensed to buy products directly from the New Jersey farmer. All New Jersey farmers enjoy some economic protection through this process of having all buyers licensed. Unlicensed credit buyers are subject to monetary penalties pursuant to N.J.S.A. 4:11-34.

Economic Impact

Buyers of perishable agricultural commodities are annually charged a \$30.00 application fee, as prescribed in N.J.S.A. 4:11-19. Buyers also bear the administrative cost of obtaining the deposited security from an insurance company or bonding agent, which usually runs \$10.00 per thousand or to a maximum of \$500.00. This administrative charge is paid by the buyer directly to the bonding company. There is also a certain economic impact upon the Department of Agriculture for program administration costs.

Regulatory Flexibility Analysis

N.J.A.C. 2:72 does impact on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in that all buyers, both large and small, operating on a credit basis with New Jersey producers of perishable agricultural commodities must deposit a security to cover their transactions with producers, who are to the best of the Department of Agriculture's knowledge, almost exclusively small businesses.

The rules do provide for a different price for the security from small businesses. Based on the formula in N.J.A.C. 2:72-1.1, the security required for a small business is in the \$3,000 to \$10,000 range, while the security required for a large business is in the \$35,000 to \$50,000 range.

The rules impose both recording and recordkeeping requirements upon dealers and commission merchants to keep basic records of transactions and issue a copy to growers. These requirements, although stipulated in these rules, are normal requirements of doing business and are therefore not viewed as so burdensome as to merit differing standards.

The Department of Agriculture does not feel the rules impose any more burden on the regulated community than are necessary to insure the fiscal responsibility of the purchaser on credit.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:72.

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

[STATEMENT]

[In reference to the entire matter of records, this Department recognizes that the statute requires they be adapted to the particular business as commission merchant, dealer or broker which the licensee is conducting and that in each case they must fully and clearly disclose all facets of his transactions.

So many different sorts of agreements or contracts are made and such a wide range of services may be performed for the grower or other license holder that it is impossible to outline every item or class of record that may be essential.

The related regulation in this matter sets forth the minimum information which is considered essential. The individual transaction will provide basis for necessary additions to those points already outlined, therefore, the burden is placed upon the license holder to determine what must be put on record to provide all essential facts regarding his transactions.]

(a)**DIVISION OF REGULATORY SERVICES****Controlled Atmosphere Storage****Apples****Proposed Re-adoption: N.J.A.C. 2:74**

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

Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:10-26 et seq., specifically 4:10-30.

Proposal Number: PRN 1993-258.

Submit comments by June 2, 1993 to:

Dhun B. Patel, Ph.D., Director
New Jersey Department of Agriculture
Division of Regulatory Services
CN 330

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:74, controlled Atmosphere Storages, expires on July 8, 1993. The Department of Agriculture has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable, and responsive to the purpose for which they were originally promulgated. N.J.A.C. 2:74 was originally promulgated to promote the development of the New Jersey apple industry by regulating the use of controlled

atmosphere storage facilities and the disposition of apples exposed to such storage. The controlled atmosphere process through the use of atmospheric and temperature controls preserves the quality of apples in storage and extends the marketing season of the product.

N.J.A.C. 2:74-1.1 and 1.2 explain the scope of the law and give a definition of terms used. Construction requirements for controlled atmosphere facilities are described in N.J.A.C. 2:74-1.3. Registration is explained in N.J.A.C. 2:74-1.4 in addition to the fee charged for each controlled atmosphere storage room. The required atmospheric and temperature controls used in this process are then summarized in N.J.A.C. 2:74-1.5. The records kept by each owner or operator are described in N.J.A.C. 2:74-1.6. The necessity for an invoice covering the sale of controlled atmosphere storage apples is explained in N.J.A.C. 2:74-1.7 in addition to the means used by the Department in verifying the process (N.J.A.C. 2:74-1.8). Misrepresentation and the requirements for trade and the requirements for storage facilities in and outside the State of New Jersey are then outlined in N.J.A.C. 2:74-1.9 through 1.11. Penalties for violating the law or the rules and regulations are described in N.J.A.C. 2:74-1.12.

The chapter should not be allowed to expire because it has been effective in prohibiting fraudulent branding of apples which have not been stored under controlled atmosphere conditions. This chapter continues to provide the New Jersey apple industry with additional marketing strategies during seasons when weather, conditions, economic conditions and/or supply problems are evident.

Social Impact

N.J.A.C. 2:74 has an impact on consumers, distributors and owners/operators of apple storage facilities. The chapter guarantees that New Jersey consumers are supplied with high quality apples on a year-round basis by businesses which choose to participate in marketing the product. The chapter also has an effect on owners/operators of the storage facilities who are regulated by the provisions of the chapter in that they are required to keep daily records on oxygen levels for each storage room.

Economic Impact

The costs of producing controlled atmosphere apples are shared by both the owners/operators of the storage facilities and consumers. The owners/operators incur extra costs in construction and maintenance and fees for storage rooms necessary for the controlled atmosphere process. These costs are passed on to the consumer through prices charged per pound at the store level.

Regulatory Flexibility Analysis

Small businesses as defined by the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.) do make use of the opportunity to market controlled atmosphere stored apples and thus are impacted by the rules governing them.

The rules are designed to orderly market a product to insure that the product is what is claimed. There is no obligation to the grower or marketer to use the controlled atmosphere process except the hope to make a larger profit over a longer period selling season. The compliance standards of the rules are performance standards allowing the operation to be sized to meet the business's operation and expectations and are therefore not burdensome and do not need separate standards based on business size. The recordkeeping and reporting requirements which include daily readings, invoicing, reporting schedule for oxygen reduction and registration are minimal standards which also vary somewhat with the size of operation and therefore do not merit differing standards based on business size.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:74.

(a)**STATE AGRICULTURE DEVELOPMENT COMMITTEE****Acquisition of Development Easements****Proposed Amendments: N.J.A.C. 2:76-6.2 through 6.5, 6.8, 6.11, 6.13 and 6.16****Proposed Repeals: N.J.A.C. 2:76-6.7, 6.9 and 6.10****Proposed New Rules: N.J.A.C. 2:76-6.8, 6.9 and 6.10****Proposed Repeal and New Rule: N.J.A.C. 2:76-6.6 and 6.17**Authorized By: State Agriculture Development Committee,
Arthur R. Brown Jr., Chairperson.

Authority: N.J.S.A. 4:1C-5f.

Proposal Number: PRN 1993-198.

Submit comments by May 5, 1993 to:

Donald D. Applegate, Executive Director
State Agriculture Development Committee
CN 330

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 2:76-6, Acquisition of Development Easements, substantially amends the current rules. The subchapter deals with the process for applying, evaluating, appraising and purchasing development easements on farmland pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. (see related proposal for new rules at N.J.A.C. 2:76-10 in this issue of the New Jersey Register). The proposed amendments, repeals and new rules simplify the easement purchase process for the State Agriculture Development Committee (SADC), county agriculture development boards (CADBs) and farmland owner/applicants. The amendments, repeals and new rules provide the CADBs more direct control and responsibility for the evaluation and selection of farms eligible for participation in the State farmland preservation program. It also establishes a regular 12-month cycle for easement purchase funding rounds.

The proposed changes to the definition section, N.J.A.C. 2:76-6.2, amend some existing definitions and incorporate new definitions as used in the subchapter to conform with the proposed amendments.

New definitions are proposed for "appraisal handbook standards," "exceptions," "quality score" and "use for agricultural purposes." The definitions for "residential unit" and "residual dwelling site" are amended and properly recodified in correct alphabetic order. The definitions for "application," "landowner asking price" and "municipal planning review body" are amended.

Proposed amendments to N.J.A.C. 2:76-6.3 and 6.4 eliminate references to the option agreement process since a statutory change, N.J.S.A. 4:1C-11 et seq., removed the requirement that a farm be enrolled in an eight-year program prior to the sale of a development easement. The proposed amendment also provides that any landowner whose land qualifies for differential property tax assessment under the Farmland Assessment Act and which is included in an agricultural development area ("ADA") is eligible to sell a development easement.

The proposed amendment to N.J.A.C. 2:76-6.5 enables the CADBs to evaluate development easement purchase applications by utilizing their own criteria adopted in conformance with standards contained in the Agriculture Retention and Development Act. It also eliminates the requirement that the CADBs consider SADC criteria when evaluating easement purchase applications as set forth in N.J.A.C. 2:76-6.16. The amendment also requires the CADBs to determine the number of residual dwelling site opportunities ("RDSOs") allocated to the farm at the time of CADB's preliminary review at N.J.A.C. 2:76-6.5(b). Moreover, the proposed N.J.A.C. 2:76-6.5 permits the CADBs to submit up to seven applications to the SADC without prior SADC approval. SADC approval is required if the CADB grants preliminary approval to more than seven applications.

The proposed amendment to N.J.A.C. 2:76-6.6 removes the SADC's requirement for granting preliminary approval for seven or less applications from a CADB. The SADC's preliminary approval is still required on applications in excess of seven. In those cases, the SADC must find that the application is of superior quality and that there is a substantial likelihood that the land would change from productive agriculture to

nonagricultural use prior to the next funding round. Existing N.J.A.C. 2:76-6.7 dealing with municipal review of the easement purchase application was eliminated and incorporated into proposed subsection N.J.A.C. 2:76-6.5(e).

N.J.A.C. 2:76-6.8 is proposed for recodification and amendment to N.J.A.C. 2:76-6.7. The proposed amendments provide the SADC the ability to remove an appraiser from its approved list if the appraisals are not conducted in conformance with the Committee's appraisal handbook or recognized appraisal practices. The proposed amendments further establish a common date of September 1 of the year in which the appraisals are conducted for determining the fair market value of the development easement. Moreover, the SADC has established an absolute deadline for receipt of completed appraisals from the CADBs.

Proposed new N.J.A.C. 2:76-6.8 maintains provisions pertaining to the SADC's appointment of a review appraiser and certification of the development easement's fair market value. It also provides that the SADC shall not certify a development easement value greater than the highest independent appraised value of the development easement or less than the lowest independent appraised value. It also contains a procedure which allows the SADC to find an appraisal invalid.

The existing N.J.A.C. 2:76-6.9, Final Board review, has been recodified and amended in proposed N.J.A.C. 2:76-6.10. The proposed new rule at N.J.A.C. 2:76-6.9 describes the procedure for the landowner's submission of an offer to sell a development easement. The new rule also contains a requirement that the landowner asking price be a sealed confidential offer submitted to the SADC on or before a specified date and time.

Proposed new N.J.A.C. 2:76-6.10, Final board review, identifies the requirements and procedures for the CADBs final review and ranking of development easement applications and has been recodified from N.J.A.C. 2:76-6.9 virtually without change.

The proposed amendments to N.J.A.C. 2:76-6.11 eliminate the SADC's sole use of the statutory formula as the criterion for reranking applications at the time of final review. The amendment incorporates the statutory formula with the application's quality score (which results from the evaluation of the criteria contained in N.J.A.C. 2:76-6.16). Furthermore, the amendment uncouples the SADC's cost share grant percentage from the statutory formula index. Instead, the SADC's grant is based upon an incremental scale related to the landowner's final asking price. For purposes of providing for an annual funding round, the SADC establishes a maximum limit of state funds to provide grants to counties for the purchase of a development easement on farmland. The proposal amends the current rule which states that the SADC's grant is based upon the acreage known at the time of final SADC approval. Instead, it is proposed that the SADC's grant be based on final surveyed acreage subject to available funds.

The proposed amendment to N.J.A.C. 2:76-6.13 is a technical amendment which more accurately reflects the requirements for lien, easement and right-of-way holders to subordinate their rights to the rights and privileges granted by the sale of the development easement to the CADB.

The proposed amendments to N.J.A.C. 2:76-6.14 deletes paragraph (b) and adds the requirement to paragraph (b)1, recodified as (b), that a certified survey accompany a request for a grant of reimbursement.

The proposed amendments to N.J.A.C. 2:76-6.16 change the current SADC criteria for evaluating applications. The amendments provide that the SADC may deduct up to 10 points for exceptions which adversely affect the applicant's agricultural operation. In addition, the CADB's highest ranked application based on factors which determine the degrees to which the purchase would encourage the survivability of the municipally approved program in productive agriculture and factors which determine the degree of imminence of change of the land from productive agriculture to nonagricultural use will receive 10 points. Criterion relating to geographic distribution among counties, historic and environmental contributions and uniqueness of the operation have been eliminated.

The proposed amendments to N.J.A.C. 2:76-6.17 change the current rule which authorizes the CADB to allocate residual dwelling site opportunities ("RDSOs") on farms considered for development easement purchase at an overall gross density not to exceed one residential unit per 50 acres to one residential unit per 100 acres. Even though the gross density of RDSOs is lessened, the SADC will permit an applicant to except parcels of land from the premises, if approved by the CADB. However, if the exceptions adversely impact the applicant's agricultural operation, the SADC may deduct up to 10 points from the applicant's score.

The CADBs must decrease the RDSO allocation based upon existing and proposed residential buildings on the premises. The CADBs may decrease the RDSO allocation at their discretion. The proposed amendments detail the procedure for CADBs and applicants to follow after approving the exercise of an RDSO. While the SADC retains enforcement powers concerning whether the residential unit constructed continues to be utilized for agricultural purposes, the board has sole responsibility for certifying that the construction and use of the residential unit is for agricultural purposes and that the location of the residual dwelling site minimizes any adverse impact on the agricultural operation.

Social Impact

The proposed amendments, repeals and new rules will have a positive social impact on farmland owners/applicants and counties participating in the Agriculture Retention and Development Program.

The amendments, repeals and new rules specifically address concerns raised by CADBs and the agricultural community to establish an annual cycle for purchasing development easements, to provide CADBs more direct control and responsibility for implementing the program and to simplify the process for the SADC, CADBs and farmland owners/applicants.

The proposed amendments, repeals and new rules will result in the preservation of farmland in a more efficient manner which is a benefit to the agricultural industry and the general public.

Economic Impact

The proposed amendments, repeals and new rules will have a positive economic impact for both State and county governments because of improved administrative efficiency resulting from the establishment of an annual review and funding cycle.

Farmland owners/applicants also benefit from the reduction of the time from the submission of an application to receipt of funds for the sale of a development easement. This allows farmland owners/applicants to provide for more efficient estate planning and reinvestment in their agricultural enterprises. In turn, this will benefit the overall agricultural industry in the State.

The proposed amendments, repeals and new rules will generally have a positive economic impact on counties due to the projected increase in State cost share grants. It was estimated that the State's present cost share grants would have increased from 63.2 percent under the 1990/91 and 1991/92 funding rounds to 68.7 percent under the proposed amendments. This would have resulted in a \$1.5 million increase in State cost share grants to counties. While it is conceded that a few counties would have received a reduction in State funding under the proposal, most counties could have anticipated an increase in State cost share grants.

Regulatory Flexibility Analysis

The proposed amendments, repeals and new rules will impact owners of farmland and appraisers of which a majority are small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The number of owners of farmland that may be affected by the proposed amendments is relatively small. If each of the 16 CADBs approve seven applications, a total of 112 landowners are impacted. A landowner that voluntarily applies to sell a development easement is required to submit a completed application to the CADB. Subsequent to the certification of a development easement value, the landowner may submit a sealed confidential offer to sell the development easement on or before a uniform date and time to be set by the SADC. If a landowner receives final approval by the CADB and the SADC, the landowner is required to provide evidence that current lien, easement and right-of-way holders will, as required by the CADB and SADC subordinate their rights to the rights and privileges granted by the sale of the development easement to the CADB and supply recordable evidence of their subordination at the time of transfer of the easement.

Overall, the proposed amendments do not impose unduly burdensome recording, recordkeeping or compliance requirements on landowners participating in the program.

The proposed amendments impose compliance requirements which are uniform for small businesses and other businesses to protect the integrity of the program.

The number of appraisers affected is also relatively small. The SADC is required to adopt a list of appraisers that expressed an interest in conducting appraisals in the program and have met the experience and qualifications required by the SADC. Currently, there are 76 appraisers on the list certified by the SADC. CADBs are required to select two

appraisers from the list to conduct independent appraisals on lands approved by the CADB and where appropriate, the SADC. The appraiser's willingness to accept a contract with the CADB is totally voluntary. The proposed amendments require the appraisers to follow the procedures outlined in the appraisal handbook standards prepared and to be adopted by the SADC (see the related proposal in this issue of the New Jersey Register). The purpose of the standards is to provide appraisers with a uniform procedure and format for completing the appraisals. The compliance requirements outlined in the standards are generally consistent with recognized appraisal practices which do not impose unduly burdensome recording, recordkeeping or compliance requirements.

The proposed amendments impose compliance requirements which are uniform for small businesses and other businesses to protect the integrity of the program and, therefore, no differing standards are proposed.

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

2:76-6.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

...
 "Application," [means a standard form adopted by the State Agriculture Development Committee] **as relates to the purchase of development easements, means a standard form adopted by the county agriculture development board.**

"Appraisal handbook standards" **means the rules and requirements for conducting appraisals established at N.J.A.C. 2:76-10.**

...
 "Exceptions," **unless the text indicates otherwise, means portions of the applicant's land holdings which are not to be encumbered by the deed restrictions contained in N.J.A.C. 2:76-6.15.**

...
 "Landowner asking price" means the [price of the development easement agreed upon by the landowner and the board at the time of the board's final review] **applicant's per acre confidential offer for the sale of a development easement.**

...
 "Municipal planning review body" means the [municipal planning board or zoning board of adjustment] **appropriate governmental body having authority for reviewing and approving development proposals.**

...
 ["Option agreement" means a written agreement for consideration between an owner of land and the board whereby the board has a right to purchase the development easement within a specified time for a designated price.]

...
 "Quality score" **means the Committee's numeric total derived from the application of the criteria for evaluating a development easement application contained in N.J.A.C. 2:76-6.16.**

"Residential unit" **means the residential building to be used for single family residential housing and its appurtenant uses. The construction and use of the residential unit shall be for agricultural purposes.**

"Residual dwelling site" **means the location of the residential unit and other appurtenant structures.**

"Residual dwelling site opportunity" means the [right] **potential to construct a residential unit and other appurtenant structures [within a residual dwelling site] on the premises in accordance with N.J.A.C. 2:76-[6.16]6.17.**

["Residual dwelling site" means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.

"Residential unit" means the residential building located within the residual dwelling site to be used for single family residential housing and its appurtenant uses. The construction and use of the unit shall be for agricultural purposes.]

...
 "Use for agricultural purposes," **as related to the exercise of a residual dwelling site opportunity and the continued use of the**

residential unit constructed thereto, means at least one person residing in the residential unit shall be regularly engaged in common farmsite activities on the premises including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage, water management and grazing.

2:76-6.3 Eligible applicants

[(a)] Any [owner of land] **landowner** that applies to the board in compliance with N.J.A.C. 2:76-6.4[(a)] and whose land is in a farmland preservation program [or], a municipally approved program or qualifies for differential property tax assessment pursuant to the Farmland Assessment Act of 1964 and which is included in an agricultural development area shall be eligible to sell a development easement on that land.

[(b)] Any owner of land that applies to the board in compliance with N.J.A.C. 2:76-6.4(b) shall be eligible to sell a development easement on that land provided the board determines the land qualifies for a farmland preservation program or a municipally approved program.]

2:76-6.4 Application

[(a)] Under the provision of N.J.A.C. 2:76-6.3[(a)], the landowner shall submit a completed application to the board.

[(b)] Under the provision of N.J.A.C. 2:76-6.3(b), the landowner shall submit the following:

1. A completed application;
2. A petition for the creation of a farmland preservation program or a municipally approved program; and
3. An option agreement which shall state the following conditions:
 - i. The landowner's binding offer to sell the development easement at a specific price;
 - ii. The time limitation, not to exceed one calendar year, during which the board may exercise the option;
 - iii. Sufficient consideration for the option to purchase the development easement shall be provided by the board to the landowner;
 - iv. Disapproval by either the board, committee or, when applicable, the municipal governing body, concerning the creation of a farmland preservation program or a municipally approved program, shall terminate and nullify any transaction or agreements concerning the sale of the development easement; and
 - v. Disapproval by either the board, committee or municipal governing body, concerning the purchase of the development easement, shall terminate and nullify any transaction or agreements concerning the creation of a farmland preservation program or a municipally approved program.]

2:76-6.5 Preliminary board review

(a) The board shall review[,] and evaluate [and decide on] the easement purchase application and respective project area to determine the suitability of the land for development easement purchase and establish a priority ranking of the applications on the basis of the following factors:

- [1. Criteria for evaluating easement purchase applications as identified in N.J.A.C. 2:76-6.16; and]
- [2.]1. Criteria duly adopted by the board which evaluates the degree to which the purchase would encourage the survivability of the land in productive agriculture and the degree of imminence of change of the land from productive agriculture to nonagricultural use pursuant to N.J.S.A. 4:1C-31b.

[(b)] The board shall, concerning a petition submitted under the provision of N.J.A.C. 2:76-6.4(b)2, review the petition in accordance with N.J.A.C. 2:76-3.4 and 3.5 or N.J.A.C. 2:76-4.4 and 4.5.]

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

(d) The board shall approve or disapprove the application.

[(e)] The board shall, concerning an application submitted in accordance with N.J.A.C. 2:76-6.4(b)1 and which has received preliminary board approval, enter into an option agreement with the landowner. The option agreement shall:

1. Contain the deed restrictions identified in N.J.A.C. 2:76-6.15.
2. Identify the number of dwelling site opportunities permitted pursuant to N.J.A.C. 2:76-6.16(a); and
3. Contain the deed restriction identified in N.J.A.C. 2:76-6.16(h).]

(e) An application approved by the board shall be forwarded to the municipal governing body for review.

1. Unless previously granted by prior ordinance, the municipal governing body shall by resolution approve or disapprove the application and so notify the board.

[(f)] The board shall forward an approved application(s) with a priority ranking, supporting documents and a detailed justification for its decision to the committee for preliminary review.]

(f) The Committee's preliminary approval is not required for seven or fewer applications designated by the board.

(g) The board shall submit a request for a grant for the purchase of a development easement to the Committee on or before the date appraisal work is authorized pursuant to N.J.A.C. 2:76-6.7. The request for a grant shall be submitted on a form prescribed by the Committee. The information provided by the board shall include the following:

1. RDSO eligibility and allocation;
2. Exceptions approved by the board with its justification;
3. CADB preliminary ranking with its justification; and
4. Other information relating to the specific application as required by the Committee.

(h) In the event that the board grants preliminary approval to more than seven applications it shall forward to the committee all such application(s) in excess of seven with its justifications for granting such approvals along with other information required in subsection (g) above.

2:76-6.6 Preliminary [committee] Committee review

[(a)] Upon receipt of an application from the board, the committee shall review and evaluate the easement purchase application and respective project area pursuant to N.J.A.C. 2:76-6.16.

(b) The Committee shall review the application to ensure that residual dwelling site opportunities have been allocated in accordance with the provisions of N.J.A.C. 2:76-6.16(a).

(c) The Committee may remand the application to the board if the number of allocated residual dwelling site opportunities appears excessive in view of factors listed in N.J.A.C. 2:76-6.17(a)1 through iii.

(d) The committee shall forward its position and priority ranking of applications to the board.]

(a) The Committee shall review and evaluate all applications received from the boards in accordance with the criteria set forth in N.J.A.C. 2:76-6.16.

(b) For those applications which are in excess of seven per county, the Committee may grant preliminary approval only if it finds that the application is of superior quality and that there is a substantial likelihood that the land would change from productive agriculture to nonagricultural use prior to the next funding round.

(c) The Committee shall establish a preliminary ranking of the approved applications based on the applicant's quality score and inform the board at least 30 days prior to the committee's certification of a development easement value.

[2:76-6.7 Municipal review

(a) Provided the board and the committee have determined that the land is suitable for development easement purchase, the board shall forward a copy of the application to the municipal governing body for review.

(b) Unless previously granted by prior ordinance, the municipal governing body shall by resolution approve or disapprove the application and so notify the board.]

2:76-[6.8]6.7 Appraisals

[(a)] Two appraisals shall be conducted on lands that have received board, committee, and municipal approvals.]

[(b)](a) The procedure for conducting and reviewing appraisals shall be as follows:

1. The [committee] Committee shall adopt a list of appraisers;

i. The Committee may remove appraisers from the adopted list if the appraisals are not conducted in conformance with the appraisal handbook standards pursuant to N.J.A.C. 2:76-10 or generally recognized appraisal practices.

2. The board in accordance with county procedures shall select two appraisers from the list adopted by the [committee] Committee to conduct independent appraisals on lands that have received board, municipal and, where appropriate, committee approvals;

3. Appraisers shall perform appraisals in accordance with procedures detailed in the [appraiser's] appraisal handbook. [(The committee shall prepare an appraiser's handbook and make it available to the boards);]

i. The appraiser shall certify the fair market value of the development easement as of September 1 of the year in which the appraisals are conducted;

4. Upon completion of the appraisals, the appraisers shall forward appraisal reports to the appropriate person designated by the board to review the reports for completeness of contractual requirements[.]; and

[5. The completed reports shall be forwarded directly to the committee.

6. The committee shall appoint a review appraiser to evaluate the two appraisals and to recommend a fair market value of the development easement;

7. The committee shall have final authority for certifying the fair market value of the development easement.

8. The committee shall inform the board of the certified fair market value of the development easement.]

5. The board shall forward the completed appraisals to the Committee on or before January 15th following the year in which the appraisals were conducted.

2:76-6.8 Committee certification of development easement value

(a) The Committee shall appoint a review appraiser to evaluate the appraisals submitted by the board and to recommend a fair market value of the development easement for each application. The review appraisal shall be done in accordance with the appraisal handbook standards at N.J.A.C. 2:76-10.

(b) The Committee shall have final authority for certifying the fair market value of the development easement.

(c) The Committee's certified fair market value of the development easement shall not be greater than the highest independent appraised value of the development easement or be less than the lowest independent appraised value of the development easement.

(d) The Committee may find an appraisal invalid if it does not comply with the appraisal handbook for standards at N.J.A.C. 2:76-10 or generally recognized appraisal practices.

i. If an appraisal is found to be invalid, the committee shall reject the application for which the appraisal was conducted.

(e) The Committee shall certify the fair market value of the development easement and submit the value to the board.

[2:76-6.9 Final board review

(a) Within 30 days of the board's receipt of the certified fair market value of the development easement, the board and landowner shall arrive at a landowner asking price for the development easement.

1. The purchase price of the development easement shall be adjusted according to the acceptance or rejection of any residual dwelling site opportunities permitted pursuant to N.J.A.C. 2:76-6.17.

(b) The board shall review the easement purchase application, respective project area, landowner asking price, and the formula contained in N.J.S.A. 4:1C-31b(1) to determine the suitability of the land for development easement purchase on the basis of the following factors:

1. Criteria for evaluating easement purchase applications as identified in N.J.A.C. 2:76-6.16; and

2. Criteria duly adopted by the board.

(c) The board shall rank and approve or disapprove an application(s) and state the reasons for arriving at the decision.

1. Regardless of the formula index, the board may disapprove an application if the board determines that the applicant has initiated

proceedings in anticipation of applying to sell a development easement or during the application process which have the effect of increasing the applicant's appraised development easement value.

(d) Based on available funds, applications receiving priority ranking shall be forwarded to the committee for final review.]

2:76-6.9 Landowner offer

(a) Within 30 days of the board's receipt of the certified fair market value of the development easement, the board shall forward the value to the landowner and the landowner shall submit an asking price to the committee.

(b) The landowner asking price shall contain information required by the Committee.

(c) The landowner asking price shall be submitted as a sealed confidential offer on or before a uniform date and time to be set by the Committee.

i. The Committee shall not accept any offer submitted after the time and date prescribed by the Committee or any offer which does not contain the information required by the Committee.

(d) The Committee shall publicly open all of the confidential landowner offers at a time and date prescribed by the Committee and published pursuant to the "Open Public Meeting Act".

(e) The Committee shall forward the landowner offers to the respective boards.

[2:76-6.10 Board application to the committee

(a) Within 60 days of the board's receipt of the certified fair market value of the development easement, the board shall submit the following information to the committee:

1. Priority ranking of applications;
2. Landowner asking price;
3. Justification for arriving at its decision; and
4. Percent of county and local cost share for each application.]

2:76-6.10 Final board review

(a) Within 60 days of the board's receipt of the Committee's certified fair market value of the development easement, the board shall approve or disapprove the applications and submit the following to the Committee:

1. The priority ranking of the approved applications based upon suitability criteria duly adopted by the board which evaluate the following:

i. Priority consideration shall be given to offers with higher numerical values obtained by applying the following formula:

$$\frac{\text{nonagricultural developmental value} - \text{agricultural value}}{\text{nonagricultural development value} - \text{agricultural value}} = \frac{\text{landowner's asking price}}{\text{agricultural value}}$$

ii. The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

iii. The degree of imminence of change of the land from productive agriculture to nonagricultural use;

2. The final purchase price of the development easement for each application.

i. The purchase price of the development easement shall be adjusted according to the acceptance or rejection of any residual dwelling site opportunities permitted pursuant to N.J.A.C. 2:76-6.17 and other adjustments required by the committee;

3. The percent of county and local cost share funding for each application; and

4. The justification for the board's decision.

(b) Regardless of the board's ranking determined by (a) above, the board may disapprove an application if it determines that an applicant has initiated proceedings in anticipation of applying to sell a development easement or during the application process which have the effect of increasing the applicant's appraised development easement value.

2:76-6.11 Final committee review

[(a) Using the original ranking made pursuant to N.J.A.C. 2:76-6.6 as a base, the committee shall re-rank the applications which have

received preliminary approval and are eligible for state cost share funds according to the formula contained in N.J.S.A. 4:1C-31b(1) and any percentage reduction of the committee's percent cost share per application.

1. Regardless of original rankings, funding priority will be given to those applications which have received preliminary approval and are eligible for State cost share funds with higher numerical values obtained by application of the following statutory formula:

$$\frac{\text{nonagricultural development value} - \text{agricultural value}}{\text{nonagricultural value} - \text{agricultural value}} - \frac{\text{landowner asking price}}{\text{formula index}} = \text{formula index}$$

i. Applications having the same formula index of greater than (0) will be ranked according to the original ranking obtained in N.J.A.C. 2:76-6.6.

ii. Applications having a formula index of (0) will be ranked according to the reduction in the committee's percent cost share. Applications with identical committee cost share reductions will be prioritized according to the original ranking obtained in N.J.A.C. 2:76-6.6.

iii. Applications having the same formula index less than (0) will be ranked according to the reduction in the committee's percent cost share. Identical committee cost share reductions will be prioritized according to the original ranking obtained in N.J.A.C. 2:76-6.6. A reduction in the committee's percent cost share on an application shall be based on the fair market value of the development easement certified by the committee.

iv. Regardless of the formula index, the committee may disapprove an application if the committee determines that the applicant has initiated proceedings in anticipation of applying to sell a development easement or during the application process which have the effect of increasing the applicant's appraised development easement value.

v. The committee may give funding priority to offers with the higher numerical values in any one county obtained by applying the above formula.

(b) The committee shall not authorize funding for more than 80 percent of the cost of the development easement.

1. The percent committee cost share shall be based upon the applicant's formula index as follows:

formula index	percent committee cost share
Less than 0.10	60
0.10 up to less than 0.20	65
0.20 up to less than 0.30	70
0.30 up to less than 0.40	75
0.40 or greater	80]

(a) Subsequent to the Committee's certification of development easement values but prior to the applicant's submission of an offer pursuant to N.J.A.C. 2:76-6.9, the Committee shall approve a maximum limit of funds available to provide grants to counties and municipalities for the purchase of development easements on farmland.

(b) Upon receipt of applications which have received final approval by the board, the Committee shall determine the landowner's formula index by application of the formula contained in N.J.S.A. 4:1C-31b(1) as follows:

$$\frac{\text{nonagricultural development value} - \text{agricultural value}}{\text{nonagricultural development value} - \text{agricultural value}} - \frac{\text{landowner asking price}}{\text{formula index}} = \text{formula index}$$

(c) The Committee's funding priority shall be given to those applications which have higher numerical values obtained by application of the following formula:

$$(\text{quality score}) + (\text{formula index} \times 200) = \text{final score}$$

i. Regardless of the final score, the Committee may disapprove an application if it determines that the applicant has initiated

proceedings in anticipation of applying to sell a development easement or during the application process which have the effect of increasing the applicant's appraised development easement value.

ii. The Committee may give funding priority to offers with higher numerical values in any one county based on the applicant's final score.

(d) The Committee shall not authorize a grant for an amount greater than 80 percent of the Committee's certified fair market value of the development easement.

1. The Committee's cost share grant shall be based upon the landowner's asking price as follows:

Landowner asking price	Percent Committee cost share	
For the first \$1,000	\$ 0 to \$ 1,000	80
For the next \$2,000	from > \$ 1,000 to \$ 3,000	70
For the next \$2,000	from > \$ 3,000 to \$ 5,000	60
For the next \$5,000	from > \$ 5,000 to \$10,000	50
For the next \$5,000	from > \$10,000 to \$15,000	25
For the next \$5,000	from > \$15,000 to \$20,000	10
For the next amount	> \$20,000	0

i. If the landowner asking price is greater than the certified fair market value, the Committee's cost share grant shall be based upon the Committee's certified fair market value.

2. Notwithstanding [(b)](d)1 above, the [committee will fund] Committee shall provide a grant for the purchase of a development easement purchase on the top ranked application in a county at an 80 percent cost share in those counties which have not received an 80 percent committee cost share for development easement purchase.

3. The [committee will] Committee shall not provide any cost share funds for ancillary costs for development easement purchases.

[(c)](e) [The committee will fund] Subject to the available funds, the Committee shall approve a grant, on a per acre basis, for the purchase of a development easement [purchased at the respective cost share percentage] as determined in [(b)1 and 2] (d)1 and 2 above, based on the [acreage known at the time of final committee approval; however, any increase in cost of a development easement resulting from an increase in acreage as determined by the] final [survey will not be paid for by the committee] surveyed acreage. [The committee shall adjust its share on a per acre basis if there is a reduction in the cost of a development easement resulting from a decrease in surveyed acreage.]

(f) The Committee shall notify the respective boards of applications receiving final approval.

2:76-6.13 Terms, contingencies and conditions of purchase

(a) Upon the landowner's acceptance of an offer to sell a development easement, the landowner shall provide evidence that current lien, easement and right-of-way holders will, as required by the committee and board, [subrogate] subordinate their rights to the rights and privileges granted by the sale of the development easement to the board and shall supply recordable evidence of their [subrogation] subordination at the time of transfer of the easement.

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

2:76-6.14 Payment procedures; schedule of payment

(a) (No change.)

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

[1.](b) Proof of title insurance, a certified survey and a [certified] copy of the recorded deed shall be forwarded to the [committee] Committee when requesting [payment] a grant for reimbursement of the board's purchase of a development easement.

2:76-6.16 Criteria for evaluating development easement applications

(a) The evaluation shall be based on the merits of the individual application[,] and the application's contribution to [the] its respective project [area's ranking relative to other project areas and available

funds] area. The weight factor assigned to each criterion identifies the relative importance of the specific criterion in relation to the other criteria.

(b) The criteria listed in (c), (d), (e), [and] (f) and (g) below shall be combined to demonstrate the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture.

(c) (No change.)

(d) The boundaries and buffers criterion (weight 20) is as follows:

1. (No change.)

2. Factors to be considered are as follows:

i. The type and quality of buffers, including:

(1) Compatible uses as follows:

(A)-(H) (No change.)

(I) Highways (limited access); [and]

(J) Golf course (public); and

[(J)](K) Other compatible buffers.

(2) (No change.)

(3) Negative consideration:

(A) Exceptions which adversely affect the applicant's agricultural operation (weight 10).

ii.-iii. (No change.)

(e) (No change.)

(f) The size and density criterion (weight 20) is as follows:

1. (No change.)

2. Factors to be considered are as follows:

i. The size of the individual application;

ii. The size of the individual application in relation to the average farm size in the respective county; and

[iii. The overall size of the project area; and]

[iv.]iii. The density [and contiguity] of the [subject project area] individual application in relation to the project area. Density shall be recognized as the [proportion] contiguity of lands encompassed by development easement purchase applications, development easements purchased, other permanently deed restricted farmlands, farmland preservation programs and municipally approved programs [in relation to the remaining lands contained in the interstices of the outer boundaries of the project area].

(g) The board's highest ranked application (weight 10) will be given priority consideration to recognize local factors which encourage the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture and degree of imminence of change of the land from productive agriculture to nonagricultural use.

[(g)](h) Factors which determine the degree of imminence of change of the land from productive agriculture to nonagricultural use criterion (weight 10) are as follows:

1.-2. (No change.)

[(h) Special considerations are as follows:

1. Factors of positive special consideration by the committee are as follows:

i. The first viable application in a county; and

ii. Geographical distribution among counties.

2. Factors of positive special consideration by the committee and the board are as follows:

i. Historic contributions;

ii. Environmental contributions;

iii. Uniqueness of the agricultural operation; and

iv. Any other considerations which the committee deems appropriate.

3. Items of negative special consideration by the committee and the board are as follows:

i. Any division of the property compromising the applicant's agricultural operation.]

2:76-6.17 Residual dwelling site opportunity

[(a) Residual dwelling site opportunities may be allocated to the premises by the board pursuant to the following conditions:

1. The number of residual dwelling site opportunities may be allocated at an overall gross density not to exceed one residential unit per 50 acres, including existing residential buildings located on

the premises. The board may decrease this density in consideration of the following conditions:

i. Proposed residential units which have received preliminary or final approval from a municipal planning review body on the premises at the time of the landowner's submission of an application to sell a development easement;

ii. Exceptions of tracts of land from the application to sell a development easement; and

iii. Related situations not otherwise listed above.

2. A landowner may reject the allocation of one or more residual dwelling site opportunities.

(b) Residual dwelling sites and residential units shall be located in accordance with the following standards established by the Committee:

1. The boundaries and configuration of a residual dwelling site shall minimize the adverse impact on the agricultural operation;

2. The location of a residential unit within a residual dwelling site shall provide for a minimum of 100 foot setback from lands currently under agricultural production; and

3. The Committee and the Board shall certify that the construction and use of any residential unit shall be for agricultural purposes. No other residences shall be permitted.

(c) Upon the intent of the landowner to exercise a residual dwelling site opportunity, the board shall be notified by the landowner of the following:

1. The intent to exercise a residual dwelling site opportunity; and

2. The proposed location of the residual dwelling site.

(d) The Board may review the proposed location of the residual dwelling site and submit comments to the landowner and the municipal planning review body regarding the impact of the proposed location of the residual dwelling site on the continued viability of the agricultural operation.

(e) Approval of the location of the residual dwelling site and the residential unit shall be made by the municipal planning review body.

(f) Upon approval of the location of the residual dwelling site by the municipal planning review body, the landowner shall:

1. Prepare, or cause to be prepared, a legal metes and bounds description of the location of the residual dwelling site; and

2. Submit a copy of the legal metes and bounds description to the Board and the Committee for general recordkeeping purposes.

(g) In the event a subdivision of the premises occurs in compliance with N.J.A.C. 2:76-6.15(a)13, any unexercised residual dwelling site opportunities shall be reallocated to the subdivided tracts as determined by the landowner.

(h) The following restriction shall be incorporated in the easement when there has been an award of one or more residual dwelling site opportunities:

(_____) residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17. Upon the intent of the Grantor to exercise a residual dwelling site opportunity, the Grantee shall be notified of the intent to exercise a residual dwelling site opportunity and the proposed location of the residual dwelling site. The Grantee may review the proposed location and submit comments to the Grantor and the municipal planning review body regarding the impact of the proposed location of the residual dwelling site on the farm operation. Approval of the location of the residual dwelling site shall be made by the municipal planning review body and meet the following standards established by the Committee:

1. The boundaries and configuration of the residual dwelling site shall minimize the adverse impact on the agricultural operation;

2. The location of the residential unit within the residual dwelling site shall provide for a minimum of 100 foot setback from lands currently under agricultural production; and

3. The construction and use of a residential unit shall not be permitted unless the Grantee and Committee certify that the construction and use of the residential unit shall be for agricultural purposes. No other residences shall be permitted.

Upon approval of the location of the residual dwelling site by the municipal planning review body, the landowner shall:

1. Prepare, or cause to prepare, a legal metes and bounds description of the location of the residual dwelling site; and
2. Submit a copy of the legal metes and bounds description to the Grantee and the Committee for general recordkeeping purposes.

In the event a subdivision of the premises occurs in compliance with deed restriction No. 13 above, any unexercised residual dwelling site opportunities shall be reallocated to the subdivided tracts as determined by the Grantor.

For the purpose of this easement, a "residual dwelling site" means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.

For the purpose of this easement, "residential unit" means the residential building located within the residual dwelling site to be used for single family residential housing and its appurtenant uses. The construction and use of the unit shall be for agricultural purposes.

or

No residual dwelling site opportunities have been allocated pursuant to the provisions of N.J.A.C. 2:76-6.17. No new residential buildings are permitted on the Premises except as provided in the Deed of Easement.]

(a) Upon a landowner's request, residual dwelling site opportunities may be allocated to the premises by the board only under the following conditions:

1. The overall gross density shall not exceed one residential unit per 100 acres. The board shall decrease the allocation in consideration of the following conditions:

- i. Existing residential buildings on the premises;
- ii. Proposed residential buildings which have received preliminary or final approval from the municipal planning review body; and
- iii. In no case shall the overall density of residual dwelling site opportunities, existing residential buildings and proposed residential buildings exceed one unit per 100 acres.

2. The board may decrease the allocation in consideration of the following conditions:

- i. Exceptions of parcels of land from a tax block and lot contained in the application to sell a development easement or a tax block and lot adjacent to the application which is under the same record ownership as the landowner; and
- ii. Other factors which the board deems appropriate.

(b) At the landowner's option, the allocation of residual dwelling site opportunities may be reduced at any time prior to the sale of the development easement.

(c) The following restriction shall be attached to and recorded with the deed of the land and shall run with the land to identify the number of residual dwelling site opportunities allocated to the premises:

(_____) residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.17, Residual Dwelling Site Opportunity. The Grantor's request to exercise a residual dwelling site opportunity shall comply with the rules promulgated by the Committee in effect at the time the request is initiated.

In the event a subdivision of the premises occurs in compliance with deed restriction No. 13 above, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective subdivided lots. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.

In the event a residual dwelling site opportunity has been approved by the Grantee, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement at the time of Grantee's approval. The Corrective Deed shall reflect the reduction of residual dwelling site opportunities allocated to the Premises. The Corrective Deed shall be recorded with the County Clerk. A copy of the

recorded Corrective Deed shall be provided to the Grantee and Committee.

For purposes of this Deed of Easement:

"Residual dwelling site opportunity" means the potential to construct a residential unit and other appurtenant structures on the Premises in accordance with N.J.A.C. 2:76-6.17.

"Residential dwelling site" means the location of the residential unit and other appurtenant structures.

"Residential unit" means the residential building to be used for single family residential housing and its appurtenant uses. The construction and use of the residential unit shall be for agricultural purposes.

(d) Nothing in this section shall be construed to mandate the board to allocate a residual dwelling site opportunity to the premises.

(e) A request to exercise an RDSO shall be conducted in the following manner:

1. If a landowner or contract purchaser intends to exercise a residual dwelling site opportunity subsequent to the purchase of a development easement, an application shall be submitted to the board. If a contract purchaser submits the request, the record owner shall also endorse the application.

2. The application shall contain the information required by the board.

3. Upon receipt of the application the board shall forward a copy of the application to the Committee.

4. The Committee may submit comments, if any, concerning the application to the board within 35 days of its receipt.

5. The Committee's failure to submit any comments shall not be construed as recommending approval or denial of the application.

6. Upon the expiration of the 35-day committee comment period, the board may review the application to exercise an RDSO.

7. The residual dwelling site opportunity may only be exercised if the board determines that the construction and use of the residential unit is for agricultural purposes and that the location of the residual dwelling site minimizes any adverse impact on the agricultural operation.

8. Upon the board's finding that the construction and use of the proposed residential unit is for agricultural purposes and that the residual dwelling site minimizes any adverse impact on the agricultural operation, the board shall forward the application requesting the exercise of a residual dwelling site opportunity to the municipal planning review body.

9. In the event the municipal planning review body determines that the proposed residual dwelling site is not permitted, and if an alternate site is proposed the application shall be returned to the board for review as outlined in (e)7 and 8 above.

10. The board's approval to exercise a residual dwelling site opportunity shall be valid for a period of three years from the date of approval. Extensions may be granted by the board.

(f) Documentation of the status of an allocated residual dwelling site opportunity shall be as follows:

1. In the event a subdivision of the premises occurs in compliance with N.J.A.C. 2:76-6.15(a)13, the landowner shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective subdivided lots. The Corrective Deed shall be recorded with the county clerk. A copy of the recorded Corrective Deed shall be provided to the board and Committee; and

2. In the event a residual dwelling site opportunity has been approved by the board, the landowner shall prepare or cause to be prepared a Corrective Deed of Easement at the time of the board's approval. The Corrective Deed shall reflect the reduction of residual dwelling site opportunities allocated to the premises. The Corrective Deed shall be recorded with the county clerk. A copy of the recorded Corrective Deed shall be provided to the board and Committee.

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE Appraisal Handbook Standards

Proposed New Rule: N.J.A.C. 2:76-10

Authorized By: State Agriculture Development Committee,

Arthur R. Brown, Jr., Chairperson.

Authority: N.J.S.A. 4:1C-5f.

Proposal Number: PRN 1993-260.

Submit written comments by June 2, 1993 to:

Donald D. Applegate, Executive Director
State Agriculture Development Committee
CN 330

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules, N.J.A.C. 2:76-10, Appraisal Handbook Standards, identify the standards established by the State Agriculture Development Committee (SADC) for independent professional appraisers to follow when conducting appraisals for farmland for the purpose of acquiring a development easement pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, as amended, and N.J.A.C. 2:76-6. Furthermore, the proposed new rules are intended to provide a more uniform appraisal report format to streamline the SADC review appraisal process and to achieve more consistency in the appraisal valuations.

Proposed N.J.A.C. 2:76-10.1 describes the applicability of the proposed new rules.

Proposed N.J.A.C. 2:76-10.2 contains the definitions of commonly used words in the subchapter.

Proposed N.J.A.C. 2:76-10.3 identifies the required general format of the appraisal report prepared by the appraisers. The report format requires a summary, general information, property valuation before development easement acquisition, property valuation after development easement acquisition, final estimate of development easement value and an addendum.

Proposed N.J.A.C. 2:76-10.4 through 10.9 more fully describe each of the topics of the report format identified at N.J.A.C. 2:76-10.3. In addition, the proposed new rules include sample formats to report the "Summary of Salient Facts and Important Conclusions," "Table of Contents," and "Land Sale Comparative Rating Grid."

Social Impact

The proposed new rules will have a positive social impact on county agriculture development boards (CADBs), appraisers and participants in the Farmland Preservation Program.

The standards contained in the proposed new rules are generally recognized as standard appraisal procedures for appraisers to follow when determining the fair market value of a development easement. The purpose of incorporating the standards in the rules is to obtain uniformity in appraisal report formats and more consistency in development easement valuations.

CADBs and appraisers participating in the program will benefit from the proposed new rules because the mandatory standards for completing an appraisal will be clearly defined. Counties can more accurately reflect the requirements in their appraisal contracts for appraisers to follow.

Based on past experience, general guidelines provided to the appraisers for conducting appraisals resulted in a wide array of report formats, contents and appraisal values. The SADC anticipates that the proposed new rules will promote more uniformity, thereby greatly reducing the time needed to review the appraisal reports. The proposed new rules are consistent with proposed amendments to N.J.A.C. 2:76-6, which establish an annual cycle of applications to be considered by the SADC (see the notice of proposal published elsewhere in this issue of the New Jersey Register). Farmland owners applying to sell a development easement will also benefit from the shorthand appraisal review process.

Economic Impact

The proposed new rules will have a positive economic impact for State and county governments, appraisers and farmland owners participating in the Farmland Preservation Program.

State and county governments will benefit from the establishment of uniform appraisal standards by improving administrative efficiency and reducing appraisal review costs.

Appraisers hired by the county will benefit from the proposed new rules because the standards established by the proposed new rules will be known in advance of submitting a bid to complete the assignment.

Farmland owners participating in the sale of a development easement to the county will benefit from the reduction of the time from the submission of an application to receipt of funds for the sale of a development easement.

Regulatory Flexibility Analysis

The proposed new rules will impact appraisers participating in the Farmland Preservation Program of which a majority are small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16.

The number of appraisers affected by the proposed new rules is relatively small. Pursuant to N.J.A.C. 2:76-6.7, the SADC is required to adopt a list of appraisers that expressed an interest in conducting appraisals in the program and have met the experience and qualifications required by the SADC. Currently, there are 76 appraisers on the list certified by the SADC. CADBs are required to select two appraisers from the list to conduct independent appraisals on lands approved by the CADB and, where appropriate, the SADC. The appraiser's willingness to accept a contract with the CADB is totally voluntary. The proposed new rules require the appraisers to follow certain standards which will be incorporated in the SADC's appraisal handbook.

The compliance requirements set forth by the standards are generally consistent with recognized appraisal practices which do not impose unduly burdensome recording, recordkeeping or compliance requirements. The compliance requirements are uniform for small businesses and other businesses to protect the integrity of the appraisal process for determining the value of a development easement.

Full text of the proposal follows:

SUBCHAPTER 10. APPRAISAL HANDBOOK STANDARDS

2:76-10.1 Applicability

This subchapter provides the standards contained in the State Agriculture Development Committee's appraisal handbook for independent professional appraisers to follow when conducting appraisals of farmland for the purpose of acquiring a development easement pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, as amended.

2:76-10.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural value" means the value of the property based solely on its agricultural productivity which does not take into account alternative uses for the property.

"Agricultural market value" means the market value of property with a present and future highest and best use for agricultural production. This includes consideration of exposure on the market and competition for agricultural property among farmers.

"Appraiser handbook" means a document prepared and adopted by the Committee which identifies the standards for conducting appraisals which shall be available to the boards.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"Committee" means the State Agricultural Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Development easement" means an interest in land, less than fee simple absolute title thereto, which enables the owner to develop the land for any nonagricultural purpose as determined by and acquired under the provisions of N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and any relevant rules or regulations promulgated pursuant thereto.

"Exceptions", unless the text indicates otherwise, means portions of the applicant's land holdings which are not to be encumbered by the deed restrictions contained in N.J.A.C. 2:76-6.15.

"Hydrologically limited area" means those areas which are designated as freshwater wetlands, transition zones, 100 year flood hazard areas, hydric soils, State open waters, State-owned riparian lands, or otherwise lack or have limited development potential due to excessive water.

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"Market value restricted" means the market value of property subject to the deed restrictions placed on the title of the property as set forth in N.J.A.C. 2:76-6.15.

"Market value unrestricted" means the market value that a property will bring in the open market under all conditions requisite for a fair sale and which value includes all rights of fee simple ownership.

"Subject property" means the property being considered for the purchase of a development easement.

2:76-10.3 Appraisal report format

(a) The appraisal reports prepared by the independent appraiser pursuant to N.J.S.A. 2:76-6.7 shall follow the following format:

1. Summary;
2. General information;
3. Property valuation before development easement acquisition (market value unrestricted);
4. Property valuation after development easement acquisition (market value restricted);
5. Final estimate of development easement value; and
6. Addendum.

(b) The requirements for each section of the appraisal reports are described in N.J.A.C. 2:76-10.4 through 10.9.

2:76-10.4 Summary

(a) The summary section of the appraisal report shall contain the following:

1. A letter of transmittal which shall include the development easement value expressed as a per acre value and a total value;
2. A certification of appraisal which shall include the market value unrestricted, market value restricted, date of valuation and the signature of the appraiser responsible for the report;
3. A summary of salient facts and important conclusions which shall include any other information which the appraiser deems relevant. The format shall conform with the sample, Appendix A of this subchapter, incorporated herein by reference; and
4. A table of contents which shall include the topic listings contained in the appraisal report with corresponding page numbers. The format shall conform with the sample, Appendix B of this subchapter, incorporated herein by reference.

2:76-10.5 General information

(a) The general information section of the appraisal report shall contain the following:

1. The purpose of the appraisal which estimates the market value of the development easement on the subject property as restricted pursuant to N.J.A.C. 2:76-6.15;
2. A statement of the rights being valued:
 - i. Market value unrestricted;
 - ii. Market value restricted; and
 - iii. Development easement value;
3. A section defining the legal and technical terms of the report;
4. Any assumptions and limiting conditions;
5. A section identifying the subject property by municipal tax map block and lot or other means. The subject property and its current use shall be briefly described;
6. Zoning and assessment information; and
7. Information detailing community and neighborhood data. This shall include, but not be limited to, the character of the community, land use trends, degree of development pressure in the area and any other information which may impact the market value unrestricted.

2:76-10.6 Property valuation before development easement acquisition (market value unrestricted)

(a) The property valuation before development easement acquisition (market value unrestricted) section of the appraisal report shall contain the following:

1. A description of the subject property including all physical attributes and improvements which shall include, but not be limited to:
 - i. A discussion of the topography, soil characteristics, hydrologically limited areas, state owned or privately held riparian lands,

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frontage, configuration, dwellings, outbuildings and other appropriate characteristics;

ii. Any rejected, approved, or pending subdivision plans;

iii. Any residual dwelling site opportunities allocated to the subject property pursuant to N.J.A.C. 2:76-6.17. (The appraiser shall not incorporate the effect of the value of residual dwelling site opportunities into the valuation);

iv. Any exceptions to the subject property. (The appraiser shall incorporate the effect of the value of exceptions into the valuation); and

v. The estimated acreage of hydrologically limited areas.

(b) A detailed discussion of the subject property's highest and best use based upon its characteristics as set forth in this section.

(c) A determination of the subject property's market value unrestricted. The appraiser shall consider the effect of building and improvements when conducting the valuation, but only the market value of the land is required to be identified.

1. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the subject property. At a minimum, the report shall address the following:

- i. Grantor/grantee;
- ii. Deed date/recording date;
- iii. Deed book and page;
- iv. Sale price;
- v. Property size;
- vi. Location, block and lot;
- vii. Soil types/percent tillable soils;
- viii. Frontage/access;
- ix. Conditions of sale;
- x. Color photograph(s);
- xi. Improvements;
- xii. Utilities;
- xiii. Easements;
- xiv. Verification; and
- xv. Legible copy of subject tax map.

2. The appraiser shall adjust the comparable sales to include salient characteristics in the market which may include, but not be limited to the following: soil characteristics, zoning, topography, hydrologically limited areas, riparian lands (state owned or privately held), date of sale and financing.

i. The appraiser shall provide a land sale comparative rating grid in conformance with the sample, Appendix C of this subchapter, incorporated herein by reference.

ii. The final estimate of value shall be expressed as a per acre figure and a total value for the property.

3. In addition, the appraiser may consider the following methods of valuation:

- i. Subdivision method;
- ii. Income capitalization method; and
- iii. Cost method.

4. The appraiser shall provide a value conclusion which identifies the final market value unrestricted for the subject property and discuss how the conclusion was determined.

2:76-10.7 Property valuation after development easement acquisition (market value restricted)

(a) The property valuation after development easement acquisition (market value restricted) section of the appraisal report shall contain the following:

1. A description of the subject property in conformance with N.J.A.C. 2:76-10.6(a)1. In addition, an evaluation of the deed restrictions contained in N.J.A.C. 2:76-6.15 and their effect on the subject property, the subject property's adaptability for agricultural use or other uses which are not in conflict with the deed restrictions, soils and their productivity and other items which are significant to the valuation of the subject property;

2. A detailed description of the subject property's highest and best use as encumbered by the deed restrictions. The highest and best use analysis shall consider the following:

- i. The legality of possible use;
- ii. The physical possibility of use;

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- iii. The probability or likelihood of use; and
- iv. The economic feasibility of use.
- 3. A determination of the subject property's market value restricted. The appraiser shall consider the effect of buildings and improvements when conducting the valuation, but only the market value of the land is required to be identified.
 - i. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the subject property as encumbered by the deed restrictions. The appraiser shall consider the following types of land sales;
 - (1) Deed restricted properties;
 - (2) Physically limited properties;
 - (3) Flood plain;
 - (4) Low development pressure; and
 - (5) Development easements.
 - ii. The appraiser shall adjust the comparable sales to include, but not be limited to, the following: soil characteristics, zoning, hydrologically limited areas, date of sale and financing.
 - (1) The appraiser shall provide a land sale comparative rating grid in conformance with the sample in Appendix C.
 - (2) The final estimate of value shall be expressed as a per acre value and a total value for the property.
 - iii. In addition, the appraiser may consider the following methods of valuation:
 - (1) Income capitalization; and
 - (2) Cost approach.

- 2:76-10.8 Final estimate of development easement value
- (a) The final estimate of development easement value section of the appraisal report shall contain the following:
 - 1. The estimated development easement value which is arrived at by the difference between the market value unrestricted and the market value restricted and reported as a per acre value and total value of the property;
 - 2. A discussion of the rights represented by the value conclusion and resultant changes in the highest and best use of the unrestricted versus the restricted property; and
 - 3. A summary of the major points of the report which support the final estimate of value.
- 2:76-10.9 Addendum
- (a) The addendum section of the appraisal report shall contain the following:
 - 1. A subject property location map;
 - 2. A subject property tax map or survey;
 - 3. Soils/flood/topographic maps;
 - 4. A study of hydrologically limited areas (if appropriate);
 - 5. Subject property photos (color);
 - 6. Reference materials, studies, articles, or other data considered important;
 - 7. Development easement deed restrictions; and
 - 8. The appraiser's qualifications.

**APPENDIX A
SUMMARY OF SALIENT FACTS
AND IMPORTANT CONCLUSIONS**

PROPERTY LOCATION		
PROPERTY TYPE		
LAND SIZE		
ZONING		
HIGHEST AND BEST USE		
DATE OF VALUATION		
	PER	TOTAL
	ACRE	ACRE
ESTIMATE OF PROPERTY VALUE "BEFORE":	_____	_____
ESTIMATE OF PROPERTY VALUE "AFTER":	_____	_____
ESTIMATE OF DEVELOPMENT EASEMENT VALUE:	_____	_____

**APPENDIX B
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Subject Property Description and Adaptability for Development Use	00
Highest and Best Use	00
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Sales Grid	00
Value Conclusion	00
PROPERTY VALUATION AFTER DEVELOPMENT EASEMENT ACQUISITION (MARKET VALUE RESTRICTED)	
Subject Property Description	00
Highest and Best Use	00
Valuation Methods	00
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FINAL ESTIMATE OF DEVELOPMENT EASEMENT VALUE	
ADDENDUM	
Subject property location map	00
Subject property tax map or survey	00
Soils/flood/topographic maps	00
Study of hydrologically limited areas	00
Subject property photos	00
Reference materials, etc.	00
Development easement restrictions	00
Appraiser's qualifications	00

APPENDIX C

LAND SALE COMPARATIVE RATING GRID

Sale No.	1	2	3
Sale Price	_____	_____	_____
Reflects in Units	_____ /AC	_____ /AC	\$ _____ /AC
Date of Sale	_____	_____	_____
Conditions of Sale	_____%	_____%	_____%
Financing	_____%	_____%	_____%
Time Adjustment	_____	_____%	_____%
Total Adjustment	_____%	_____%	_____%
Adjusted Sales Price	\$ _____	\$ _____	\$ _____
Location	_____%	_____%	_____%
Size	_____	_____	_____
Frontage	_____	_____	_____
Topography	_____	_____	_____
Zoning	_____	_____	_____
Easements	_____	_____	_____
Wetlands (Hydrologically limited areas)	_____	_____	_____
Soils	_____	_____	_____
Other	_____	_____	_____
Net Adjustment	_____	_____%	_____%
Value Indicated to Subject by Unit	\$ _____ /AC	\$ _____ /AC	\$ _____ /AC

HEALTH

(a)

**DRUG UTILIZATION REVIEW COUNCIL
Drug Evaluation and Acceptance Criteria
Proposed Readoption: N.J.A.C. 8:70**

Authorized By: Drug Utilization Review Council, Henry T. Kozek, Secretary.
Authority: N.J.S.A. 24:6E-6(g).
Proposal Number: PRN 1993-252.
The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:70 will expire on August 19, 1993. The Drug Utilization Review Council (the Council) in the Department of Health proposes to readopt this chapter without change. The Council has reviewed these rules and has determined that they are necessary, reasonable, and proper for the purposes for which they were originally promulgated.

N.J.A.C. 8:70 gives the criteria governing the acceptance of generic drugs onto the List of Interchangeable Drug Products ("the List"; see N.J.A.C. 8:71). These criteria were adopted to assure that manufacturers of drugs know the standards against which their products will be judged. When a manufacturer submits an application for products to be added to the List, it is through reviewing these criteria that the manufacturer may know whether any product is suitable for inclusion on the List.

In addition, the criteria also define terms so that all applicants possess an identical understanding as to what is required of them, as well as stipulating how manufacturers may reapply for any product which the Council may initially reject.

Social Impact

The Council believes that this readoption will continue the positive social impact that these rules have had in the past: the elderly, those persons with limited income, and any interested citizen will continue to be assured of reasonably priced generic substitutes for brand name drugs.

Economic Impact

The Council believes a positive economic impact will be exerted, not only on those groups mentioned under Social Impact (above), but on

several State programs that pay for medications, such as PAAD Program, the Medicaid Program, and the prescription insurance program available to all State employees. A 1992 Drug Utilization Review Council Survey has estimated that the Statewide total of these savings approximated \$100 million annually.

No economic impact upon the manufacturers is anticipated, since, in many cases, New Jersey follows the bioequivalency study requirements as the FDA, which such manufacturers must comply with before receiving approval in New Jersey.

Regulatory Flexibility Analysis

The readopted rules, which contain the criteria and describe the process for placement of a drug on the Interchangeable Drug Products list, will continue to impact several dozen generic manufacturers which employ fewer than 100 employees, and may thus be considered small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small generic drug manufacturers have no record keeping requirements or other paperwork to complete under this rule. As indicated in the Economic Impact, manufacturers must comply with FDA requirements. Since the Council utilizes, for the most part, the same bioequivalency study data, these rules impose no other requirements. It would not be appropriate to allow any exemptions from this rule, due to an overriding concern for public health and welfare.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:70.

(b)

**DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Proposed Amendments: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council, Henry T. Kozek, Secretary.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1993-251.

A public hearing concerning these proposed amendments will be held on Monday, May 24, 1993, at 2 P.M. at the following address:

Room 804, Eighth Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by June 2, 1993 to:

Mark A. Stollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, New Jersey 08625-0360
609-292-4029

The agency proposal follows:

Summary

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

For example, the proposed clindamycin phosphate, 1% topical solution, could be used as a less expensive substitute for Cleocin T, a branded prescription medicine. Similarly, the proposed diflunisal 250 mg and 500 mg tablets could be substituted for the more costly branded product, Dolobid.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was \$7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq; specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

Albuterol tabs 2 mg, 4 mg	W-C
Alprazolam tabs 0.25 mg, 1 mg, 2 mg	Lederle
Atenolol tabs 50 mg, 100 mg	Mutual
Atenolol/chlorthalidone tabs 50/25, 100/25	Mutual
Berocca Plus tablet substitute	Westward
Clindamycin phosphate topical soln 1%	Greenstone
Clindamycin phosphate topical soln 1%	Lemmon
Cyclobenzaprine tabs 10 mg	Duramed
Diflunisal tabs 250 mg, 500 mg	Roxane
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Mutual
Fluphenazine HCl oral soln 5 mg/ml	Copley
Gemfibrozil tabs 600 mg	Lederle
Golytely substitute	Block
Methocarbamol tabs 500 mg	Mutual
Minoxidil tabs 2.5 mg, 10 mg	Mutual
Naproxen sodium tabs 275 mg, 550 mg	Mutual
Naproxen sodium tabs 275 mg, 550 mg	Teva
Naproxen sodium tabs 275 mg, 550 mg	Purepac
Naproxen tabs 250 mg, 375 mg	Mutual
Naproxen tabs 250 mg, 375 mg, 500 mg	Teva
Naproxen tabs 250 mg, 375 mg, 500 mg	Lederle
Piroxicam caps 10 mg, 20 mg	Mutual
Potassium Cl ER tabs 8 mEq	ALRA
Propoxyphene napsylate/APAP 50/325, 100/650	Mutual
Trazodone tabs 50 mg, 100 mg, 150 mg	Mutual
Tussi-organidin DM liq substitute	Mova

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

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

Authorized By: Drug Utilization Review Council, Henry T. Kozek, Secretary.

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

Proposal Number: PRN 1993-253.

A public hearing concerning these proposed amendments will be held on Monday, May 24, 1993, at 2:00 P.M. at the following address:

Room 804, Eighth Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit comments by June 2, 1993 to:

Mark A. Stollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

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

Over the past 15 years of its existence, certain medications have been added to the Formulary which are no longer made by specific manufacturers. At this time, specific products are proposed for deletion based on their unavailability to make the Formulary more up-to-date and uncluttered.

Social Impact

There would be little social impact of the proposed deletions on prescribers, pharmacies or patients, because the medications would continue to be available to those who need them from other manufacturers. The proposed products are either not available or no longer manufactured.

Economic Impact

To the extent that some medications from involved manufacturers cannot be returned to suppliers for credit, a minor impact would be felt by certain pharmacies that stocked these medications. However, this impact is greatly minimized since these products have not been available for quite some time and most inventories have been totally depleted.

Overall, it is anticipated that very few persons will be economically adversely affected by these deletions.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq; specifically, over 2,000 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies or small generic drug manufacturers resulting from the proposed deletions. As discussed in the Economic Impact above, some cost may be incurred by certain pharmacies who stocked the medications proposed for deletion, but such costs are greatly minimized due to the probable depletion of such stocks.

Full text of the proposed amendments follows:

The following products are proposed for deletion from the List of Interchangeable Drug Products:

Acetaminophen 300/Codeine tabs, 30 mg	Boots Lab
Acetaminophen/codeine tabs, 15mg, 30mg, 60mg	Duramed
Acetaminophen/codeine tabs, 60mg	Barr
Acetaminophen with codeine phosphate tabs, 300mg-15mg, 300mg-30mg	Barr
Allopurinol tabs 100mg, 300mg	Barr
Amiloride tabs, 5mg	Par
Aminophylline liquid, 105mg/5ml	Bay

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Amitriptyline/perphenazine tabs, 2/10, 2/25	Danbury	Hydrocodone 5mg/phenylpropanolamine syrup 25mg	Bay
Amitriptyline/perphenazine tabs, 2/10, 2/25	Barr	Hydrocodone 5mg/Pseudophedrine syrup, 60mg	Bay
Amitriptyline/perphenazine tabs, 4/10, 4/25	Barr	Hydrocortisone/Neomycin/Polymyxin B otic susp.	Lemmon
Amitriptyline/perphenazine tabs, 4/10, 4/25	Danbury	Hydroxazine HCl tabs 10mg, 50mg, 100mg	Barr
APAP/300mg Codeine tabs 30mg	Pharmfair	Hydroxazine HCl tabs 10mg, 25mg, 50mg	Lemmon
Bacitracin/Neomycin/Polymyxin ophth. oint.	Pharmfair	Hydroxyzine HCl tabs 10mg, 25mg, 50mg	Par
Belladonna alkaloids with phenobarbital tablets	Danbury	Hydroxazine pamoate caps 50mg	Barr
Belladonna alkaloids with phenobarbital tablets	Lemmon	Hydroxyzine pamoate capsules 50mg	Danbury
Belladonna alkaloids with phenobarbital tablets	Richlyn	Ibuprofen tabs 300mg	Par
Berocca tabs substitute	Pioneer	Ibuprofen tabs 400mg, 600mg	Danbury
Betamethasone dipropionate cr. & oint. 0.05%	Lemmon	Ibuprofen tabs 400mg, 600mg, 800mg	Barr
Betamethasone valerate oint. 0.1%	Lemmon	Ibuprofen tabs 800mg	Chelsea
Butabarbital Sodium tabs 15mg, 30mg	Lemmon	Ibuprofen tabs 800mg	Purepac
Butabarbital Sodium elixir 30mg/5ml	Bay	Indomethacin caps 25mg, 50mg	Danbury
Butalbital Aspirin/Caffeine tabs	Boots Labs	Indomethacin caps 25mg, 50mg	Lemmon
Chlordiazepoxide caps 10mg, 25mg	Pioneer	Indomethacin caps 25mg, 50mg	Par
Chlordiazepoxide/amitriptyline 5/12.5, 10/25	Barr	Iodochlorhydroxyquin 3%/HC 0.5% cream 1%	Pharmfair
Chlordiazepoxide HCl caps 5mg, 10mg, 25mg	Lemmon	Isosorbide dinitrate tabs sublingual 2.5mg, 5mg	Barr
Chlorpheniramine, phenylephrine,		Isosorbide dinitrate tabs 5mg, 10mg, 20mg, 30mg	Barr
phenylpropanolamine, phenyltoloxamine syrup	Bay	Isoxsuprine HCl tabs 10mg, 20mg	Chelsea
Chlorpromazine HCl concentrate 30mg/ml, 100mg/ml	Bay	Lactulose syrup 10g/15ml	PharmBasics
Chlorpropamide tabs 100mg, 250mg	Lemmon	Lindane lotion, shampoo 1%	Bay
Chlorthiazide tabs 250mg	Chelsea	Lorazepam tabs 0.5mg, 1mg, 2mg	Par
Clindamycin caps 75mg	Danbury	Lorazepam tabs 0.5mg, 1mg, 2mg	Barr
Clindamycin caps 75mg	Biocraft	Meclizine HCl tab 12.5mg, 25mg	Richlyn
Clofibrate caps 500mg	Chelsea	Meclizine HCl tabs 12.5mg, 25mg	Danbury
Clonidine HCl tabs 0.1mg, 0.2mg, 0.3mg	Barr	Meperidine tabs 50mg, 100mg	Barr
Cyclandelate caps 200mg, 400mg	Chelsea	Meprobamate tabs 200mg, 400mg	Richlyn
Cyclandelate caps 200mg, 400mg	Par	Meprobamate tabs 200mg, 400mg	Barr
Cyclandelate caps 200mg, 400mg	Pioneer	Meprobamate tabs 400mg	Purepac
Cyclandelate caps 200mg, 400mg	Sidmak	Metaproterenol Solution (inhalation) 5%	PharmBasics
Cyproheptadine HCl tabs, 4mg	Danbury	Methocarbamol tabs 500mg, 750mg	Purepac
Cyproheptadine HCl tabs, 4mg	Pioneer	Methocarbamol tabs 500mg, 750mg	Pioneer
Desipramine tabs 25mg, 50mg, 75mg, 100mg	PharmBasics	Methylclothiazide tabs 2.5mg, 5mg	Par
Dexamethasone ophth. soln. 0.1%	Americal	Methyldopa tabs 125mg, 250mg, 500mg	Barr
Dicyclomine tabs, 20mg	Pioneer	Metoclopramide tabs 10mg	Par
Dicyclomine HCl 10mg caps, 20mg tabs	Lemmon	Metronidazole tabs 250mg, 500mg	Par
Dicyclomine HCl caps 10mg, tabs 20 mg	Richlyn	Metronidazole 250 tablets, 500mg	Chelsea
Dicyclomine HCl caps 10mg	Barr	Metronidazole 250 tablets, 500mg	Barr
Dicyclomine HCl caps 10mg	Danbury	Multiple vitamins with fluoride drops	Bay
Dicyclomine HCl caps 10mg	Pioneer	Nacadixic acid tabs 250mg	Danbury
Dicyclomine HCl tabs 20mg	Barr	Naphazoline ophth. soln. 0.1%	Americal
Diphenhydramine caps 25mg, 50mg	Pioneer	Neomycin/Dexamethason ophth. soln.	Pharmafair
Diphenhydramine HCl caps 25mg, 50mg	Lemmon	Nylidrin HCl tabs 6mg, 12mg	Danbury
Diphenhydramine HCl caps 25mg, 50mg	Richlyn	Nylidrin HCl tabs 6mg, 12mg	Chelsea
Diphenoxylate/Atropine tabs 2.5mg	Pharmafair	Nylidrin HCl tabs 6mg, 12mg	Sidmak
Diphenoxylate/Atropine tabs 2.5mg/0.025	Pharmafair	Nylidrin HCl tabs 6mg, 12mg	USV
Diphenoxylate HCl with Atropine sulfate tablets		Nystatin vaginal tabs 100,000 units	Lemmon
2.5mg with 0.025mg	Chelsea	Oxtriphylline elixir 100mg/5ml	Bay
Diphenoxylate HCl with Atropine sulfate tablets		Oxtriphylline elixir 50mg/5ml	Bay
2.5mg with 0.025mg	Barr	Oxybutynin tablets, 5mg	PharmBasics
Dipyridamole tabs 25mg, 50mg, 75mg	Danbury	Oxycodone/APAP tabs 5/325	Barr
Disopyramide phosphate caps 100mg, 150mg	Barr	Oxycodone ASA tablets, 0.38/325mg	Barr
Doxepin HCl caps 10mg, 25mg, 50mg, 75mg, 100mg,		Oxytetracycline HCl caps 250mg	Richlyn
150mg	Purepac	Papaverine HCl tabs 300mg	Sidmak
Doxycycline caps, 50mg	Lemmon	Perphenazine/amitriptyline 2/10, 2/25, 4/10, 4/25, 4/50	Par
Doxycycline hyclate caps 50mg, 100mg	Barr	Phenazopyridine HCl tabs 100mg, 200mg	Richlyn
Doxycycline hyclate tabs 100mg	Barr	Phenylbutazone caps 100mg	Barr
Erythromycin/Sulfisoxazole susp. 200/600	Barr	Polymyxin B Sulfate, Neomycin Sulfate,	
Fenoprofen caps 200mg, 300mg	Danbury	Hydrocortisone otic soln.	Pharmafair
Fenoprofen calcium tabs, 600mg	Chelsea	Polymyxin B Sulfate, Neomycin Sulfate,	
Flurazepam caps 15mg, 30mg	Barr	Hydrocortisone otic susp.	Pharmafair
Furosemide tabs 20mg, 40mg	Chelsea	Przepam caps 5mg, 10mg	PharmBasics
Gentamicin cream, ointment 1%	Pharmafair	Prednisolone acetate sulfacet., 0.2%/10%	Pharmafair
Gentamicin ophth. soln. 3mg/ml	Americal	Prednisolone sodium phosphate ophth. sol. 0.125%	Pharmafair
Gentamicin sulfate ophthalmic oint. 3mg/g	Pharmafair	Prochlorperazine maleate tabs 5mg, 10mg, 25mg	Duramed
Haloperidol tabs 0.5mg, 1mg, 2mg, 5mg, 10mg, 20mg	Barr	Propanteline bromide tabs 15mg	Richlyn
HCTC tabs 25mg, 100mg	Danbury	Propoxyphene HCl caps 65mg	Danbury
Hydralazine HCl 10mg, 25mg, 50mg	Richlyn	Propoxyphene HCl caps 65mg	Richlyn
Hydralazine HCl tabs 10mg, 25mg, 50mg, 100mg	Barr	Propoxyphene napsylate/APAP tabs 50/325	Barr
Hydralazine HCl tabs 25mg, 50mg	Lemmon	Propoxyphene napsylate/APAP tabs 100/650	Barr
Hydrochlorothiazide tabs 25mg, 50mg	Richlyn	Propranolol tabs 10mg, 20mg, 40mg	Par
Hydrochlorothiazide tabs 25mg, 50mg, 100mg	Barr	Propranolol tabs 10mg, 20mg, 40mg	Barr
Hydrochlorothiazide tabs 50mg	Lemmon	Propranolol tabs 60mg, 90mg	Danbury
Hydrocodone 5mg/Guaifenesin 200mg/ Pseudophedrine syrup, 60mg	Bay	Propranolol tabs 60mg, 80mg, 90mg	Par
		Propranolol tabs 60mg, 80mg	Barr

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CORRECTIONS

Quinine sulfate tabs 260mg
 Salsalate tabs 500mg, 750mg
 Salsalate tabs 500mg, 750mg
 Selenium sulfide lotion 2.5%
 Sodium fluoride tabs 2.2mg
 Sodium fluoride chew tabs 2.2mg
 Spironolactone tabs 25mg
 Sulphacetamide ophth. sol. 15%
 Sulfacetamide prednisolone ophth. soln.
 Sulfacetamide sodium ophth. sol. 15%
 Sulfacetamide sodium/prepnisolone acetate ophth. oint.
 Sulfacetamide sodium/prepnisolone acetate ophth. susp.
 Sulfanilamide vaginal cream 15%
 Sulfasalazine tabs 0.5g
 Sulfisoxazole tabs 500mg
 Tetracycline HCl caps 250mg, 500mg
 Theophylline with Guaifensin liquid 150mg/15ml with 90mg/15ml
 Theophylline with potassium iodide syrup
 Thioridazine HCl oral solution, 30mg/ml, 100mg/ml
 Thioridazine HCl tabs 10mg, 15mg, 25mg, 50mg, 100mg
 Thioridazine HCl tabs 10mg, 15mg, 25mg, 50mg, 100mg
 Thiothixene oral solution 5mg/ml
 Tolazamide tabs 100mg, 250mg, 500mg
 Tolbutamide tabs 500mg
 Traimcinolone acetonide cream 0.5%
 Triamcinolone/nystatin cream
 Triamcinolone/nystatin oint.
 Trifluoperazine HCl tabs 1mg, 2mg, 5mg, 10mg
 Triple sulfa vaginal cream
 Verapamil tabs 80mg, 120mg
 Vitamin B Complex tabs
 Vitamins A, D, C with fluoride solution 0.25mg

Chelsea
 Amide
 Chelsea Labs
 Bay
 Pharmfair
 Boots Labs
 Barr
 Americal
 Americal
 Pharmafair
 Pharmafair
 Pharmafair
 Lemmon
 Danbury
 Barr
 Richlyn
 Bay
 Bay
 Bay
 Par
 Barr
 Lemmon
 Par
 Barr
 Bay
 Pharmafair
 Pharmafair
 Duramed
 Lemmon
 Barr
 Pioneer
 Bay

5.3 have been amended to require custody staff to complete a Police Training Commission approved course. N.J.A.C. 10A:31-5.3(i) and (j) are being deleted because these areas of training are now part of the Police Training Commission Curriculum. Pursuant to requirements of the Police Training Act, reference to the Gun Control Act (N.J.S.A. 2C:39-6j) has been added to language at N.J.A.C. 10A:31-5.3(f) and the reference to "Sheriff's Officers" at N.J.A.C. 10A:31-5.3(g) since this title no longer is used in adult county correctional facilities.

Social Impact

Job training requirements vary in length and intensity; hence, the proposed amendments allow each adult county correctional facility to train civilian staff in a time frame that is more efficient and effectual. Also, the Police Training Commission standardized compulsory education and training program, reflected in the proposed amendments, should result in adult county correction officers who have a higher level of efficiency in law enforcement; who can better protect the health, safety and welfare of inmates, correctional facility staff and citizens; and who can help ensure the maintenance of security and the orderly operation of the county correctional facilities.

Economic Impact

The proposed amendments should help alleviate non-essential training costs for civilian employees. The proposed amendments concerning the Police Training Commission mandated training of correction officers represents the codification of this ongoing program. It is, however, anticipated that costs associated with training county correctional officers will increase in the future due to expanded training needs. The cost of meeting and maintaining the requirements is established through the budget process with monies allocated by State and county governments.

Regulatory Flexibility Statement

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

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

10A:31-5.1 Training and Staff Development Program

(a) (No change.)

(b) The facility's Training and Staff Development Program, for all employees and all correction officers subject to the Police Training Act (N.J.S.A. 52:17B-66 et. seq.), shall be coordinated and supervised by a qualified training officer, at a supervisory level.

10A:31-5.2 Training officer

(a) The training officer shall have responsibility for planning and implementing [the training program and coordinating it with other employee programs]:

1. The Police Training Commission (P.T.C.) training program; and

2. Civilian employee training programs.

(b) (No change.)

10A:31-5.3 Orientation and training for employees

(a) All new civilian employees shall receive orientation training prior to job assignment and [an] additional [40 hours of] training [during the first year of employment] on an as needed basis.

(b) (No change.)

[(c)] The additional 40 hours of training shall relate specifically to the new employee's job assignment.

(d) All employees shall receive a minimum of 40 hours of training each year after the first year of employment.]

[(e)](c) All civilian employees who work in direct and continuing contact with inmates shall receive training that covers, at a minimum: 1.-13. (No change.)

Recodify existing (f)-(g) as (d)-(e) (No change in text).

[(h)](f) All personnel authorized to use firearms shall be trained in weaponry on a continuing, in-service basis as required by the [State Police Training Commission] Gun Control Act (N.J.S.A. 2C:39-6j).

CORRECTIONS

(a)

THE COMMISSIONER

Adult County Correctional Facilities Training and Staff Development

Proposed Amendments: N.J.A.C. 10A:31-5.1, 5.2 and 5.3

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 52:17B-66.

Proposal Number: PRN 1993-264.

Submit comments by June 2, 1993 to:
 William H. Fauver, Commissioner
 Department of Corrections
 CN 863
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The present rule at N.J.A.C. 10A:31-5.3 requires that adult county correctional facilities afford all new employees an additional 40 hours of training during the first year of employment and a minimum of 40 hours of training each year after the first year of employment. Length and intensity of civilian job training varies, such as that training associated with a switchboard operator, a maintenance worker or a physician. Therefore, the Department of Corrections is proposing an amendment at N.J.A.C. 10A:31-5.3 which will place the responsibility of determining the amount and type of civilian staff training under the authority of the adult county correctional facility administration.

Since all county correction officers are now subject to the Police Training Act (N.J.S.A. 52:17B-66 et seq.), N.J.A.C. 10A:31-5.1, 5.2 and

(i) All authorized personnel shall be trained thoroughly in the use of chemical agents if such agents are approved for use in the facility.

(j) All security personnel shall be trained in approved methods of applying physical force to control inmates, where necessary.]

[(k)](g) County [facilities] **correction officers** shall [use the program(s) provided by] **complete Police Training Commission (P.T.C.) approved course** at the Corrections Officers Training Academy and Staff Development Center, New Jersey Department of Corrections [for the training of County Correction Officers and Sheriff's Officers unless these county facilities have an in-house accredited program] **or at an alternative P.T.C. approved school** (see N.J.S.A. 52:17B-66 et seq.).

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Medicaid Only
New Eligibility Computation Amounts**

Proposed Amendments: N.J.A.C. 10:71-4.8, 5.4, 5.5, 5.6 and 5.9

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

Authority: N.J.S.A. 30:4D-3; 30:4D-7, 7a, b and c; 42 CFR 435.210 and 435.1005; 20 CFR 416.1163 and 416.2025.

Agency Control Number: 93-P-10.

Proposal Number: PRN 1993-265.

Submit comments by June 2, 1993 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 10:71 increase the Medicaid Only eligibility computation amounts at N.J.A.C. 10:71-5.4(a)12, 5.5(g) and 5.9(e) and the income eligibility standards at N.J.A.C. 10:71-5.6(c)5. The amendments align Medicaid Only eligibility for the aged, blind and disabled with that of the Supplemental Security Income (SSI) program. Section 1902(a) of the Social Security Act requires that Medicaid Only eligibility be determined using the same criteria as applies in the SSI program. The proposed revised income eligibility and computation amounts reflect the 3.0 percent Federal cost-of-living increase in the SSI payment levels effective January 1, 1993. The Medicaid "cap" standard applies to Medicaid patients in Title XIX institutional facilities and to those who qualify under the "cap" standard, that is, persons receiving services under the home and Community Based Waivers, including CCPED, ACCAP and Model Waivers. The Medicaid "cap," the income standard applicable for persons in Title XIX long term care facilities, is set at 300 percent of the Federal SSI benefit (not including any State supplement amount) for an individual, the maximum level authorized by the Social Security Act. The amendments must be implemented effective January 1, 1993 to maintain compliance with Federal law.

Proposed amendments are being made at N.J.A.C. 10:71-4.8 to reflect a Federally required change in the figures used to determine how much of a couple's resources are protected for the community spouse when one member of the couple requires long term care. Using the new Federal figures which are effective January 1, 1993, the community spouse's share of resources is the greater of \$14,148 or one-half of the couple's countable resources, not to exceed \$70,740.

Social Impact

The increase in the standard and income computation amounts used in the eligibility process theoretically expands the population of potentially eligible persons. However, based on past experiences with increases

in the Medicaid "cap," little, if any, increase in the Medicaid caseload because of this proposed amendment is anticipated.

The Medicaid "cap" income eligibility standard is used to determine eligibility for the Community Care Program for the Elderly and Disabled and other home and community-based waiver programs, as well as for persons in Title XIX long term care facilities. The increase in the "cap" standard will help preserve the eligibility of persons who received a 3.0 percent cost-of-living increase in their Social Security benefits effective January 1, 1993.

Economic Impact

Past experiences with similar increases in these income standards has demonstrated that there will be an insignificant economic impact on the public, the State and county agencies administering the program. These increases affect only eligibility for Medicaid and do not result in receipt of cash assistance.

The Department is unable to estimate the fiscal impact of increasing the amount of resources that may be protected for the community spouse because it lacks information concerning the resources of persons who are in long term care. The proposed amendment will affect only those married persons when the couple's resources are less than \$28,296 or in excess of \$141,480. Some portion of the affected population will attain Medicaid eligibility one month earlier than they would have under the current rules. (It should be noted that Medicaid eligibility for long term care is limited to individuals with a gross monthly income of less than \$1,302).

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The increase in these income standards affects only the eligibility of individuals for Medicaid. Because program eligibility is determined by the State and county governments, these rules impose no reporting, record keeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, the Department concludes that no regulatory flexibility analysis is necessary.

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

10:71-4.8 Institutional eligibility; resources of a couple

(a) In the determination of resource eligibility for an individual requiring long term care, the county welfare agency shall establish the combined countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989. This determination shall be made upon a request for a resource assessment in accordance with N.J.A.C. 10:71-4.9 or at the time of application for Medicaid benefits. The total countable resources of the couple shall include all resources owned by either member of the couple individually or together. The CWA shall establish a share of the resources to be attributed to the community spouse in accordance with this section. (No community spouse's share of resources may be established if the institutionalized individual's current continuous period of institutionalization began at any time before September 30, 1989.)

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989 and shall not exceed \$[68,700]70,740 unless authorized in 4 or 5 below. The community spouse's share of the couple's resources shall be the greater of:

- i. \$[13,740]14,148; or
 - ii. (No change.)
- 2.-9. (No change.)

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

- 1.-11. (No change.)
- 12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no

cost or at a reduced value. Persons determined to be "living in the household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have income in the amount of:

\$[160.67]**164.67** for an individual

\$[231.00]**237.33** for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

10:71-5.5 Deeming of income

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

(g) A table for deeming computation amounts follows:

TABLE A
Deeming Computation Amounts

1. Living allowance for each ineligible child	\$[203.00] 218.00	
2. Remaining income amount	Head of Household \$[211.00] 218.00	Receiving Support and Maintenance \$[140.66] 145.33
3. Spouse to Spouse Deeming—Eligibility Levels		
a. Residential Health Care Facility	\$[1,125.36] 1,149.36	
b. Eligible individual living alone with ineligible spouse	\$[869.36] 894.36	
c. Living alone or with others	\$[664.25] 683.25	
d. Living in household of another	\$[515.09] 527.76	
4. Parental Allowance—Deeming to Child(ren)		
Remaining income is:	1 Parent	Parent & Spouse of Parent
a. Earned only	\$[844.00] 868.00	\$[1,266.00] 1,304.00
b. Unearned only	\$[422.00] 434.00	\$[633.00] 651.00
c. Both earned and unearned	\$[422.00] 434.00	\$[633.00] 651.00

10:71-5.6 Income eligibility standards

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

(c) Non-institutional living arrangements:

1.-4. (No change.)

5. Table B follows:

TABLE B

Variations in Living Arrangement	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	\$[572.05] 584.05	\$[1,125.36] 1,149.36
II. Living Alone or with Others	\$[453.25] 465.25	\$[658.36] 677.36
III. Living alone with Ineligible Spouse	\$[658.36] 677.36	
IV. Living in Household of Another	\$[325.65] 333.65	\$[515.09] 527.76

V. Title XIX Approved Facility:

\$[1,266.00]**1,302.00**†

Includes persons in acute general hospitals, nursing facilities, intermediate care facilities/mental retardation and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid ["Cap"] "cap".

(d) (No change.)

10:71-5.9 Deeming from sponsor to alien

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

(e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:

1. (No change.)

2. Subtract \$[422.00]**434.00** for the sponsor, \$[633.00] **651.00** for the sponsor if living with his or her spouse, \$[844.00]**866.00** for the sponsor if his or her spouse is a co-sponsor.

3. Subtract \$[211.00]**217.00** for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. (No change.)

(f) (No change.)

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Surplus Lines Insurer Eligibility

Reproposed New Rules: N.J.A.C. 11:1-31

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

Authority: N.J.S.A. 17:1C-6(e), 17:1-8, 17:1-8.1 and 17:22-6.40 et seq.

Proposal Number: PRN 1993-242.

Submit comments by June 2, 1993 to:

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

The agency proposal follows:

Summary

N.J.S.A. 17:22-6.45 provides that the Commissioner of Insurance (Commissioner) may make eligible as a surplus lines insurer an insurer which is not licensed to transact business in this State. Surplus lines insurers provide coverage which is generally not available from licensed insurers. N.J.S.A. 17:22-6.45 generally prohibits a surplus lines agent from placing coverage with an unauthorized insurer which is not an eligible surplus lines insurer.

Pursuant to the criteria for eligibility set forth in N.J.S.A. 17:22-5.45, the Department of Insurance (Department) developed filing requirements for unauthorized insurers seeking to become eligible surplus lines insurers. Upon review and approval of information that demonstrates compliance with the statutory criteria, the Commissioner issues a "Certificate of Eligibility" (Certificate) to the applicant.

On January 6, 1992 the Department proposed N.J.A.C. 11:1-31 to codify and clarify its filing requirements for insurers seeking surplus lines eligibility (see 24 N.J.R. 9(a)). As a result of public comments received on the proposed rules pursuant to N.J.S.A. 52:14B-4, and further review and evaluation of the proposed rules, the Department has determined to make substantive changes to the application procedures regarding deposit requirements for surplus lines eligibility, as well as other substantive and nonsubstantive clarifying changes.

When these rules were previously proposed, the Department of insurance (Department) received 10 timely, written comments from surplus lines insurers, surplus lines agents, surplus lines insurer trade associations, an insurer trade association, and a producer trade association as follows:

1. The National Association of Professional Surplus Lines Offices;
2. Great Central Insurance Company;
3. FTP Inc.;
4. The Surplus Lines Association of New Jersey;
5. The National Association of Independent Insurers;
6. LeBoeuf, Lamb, Leiby and MacRae (on behalf of Underwriters at Lloyd's London, Anglo-American Insurance Company Ltd., Associated Electric & Gas Insurance Services Ltd., and Terra Nova Insurance Company Ltd.);
7. The American Insurers Association;
8. Independent Insurance Agents of New Jersey;
9. Lexington Insurance Company; and
10. Princeton Risk Managers.

COMMENT: Several commenters objected to the requirements in N.J.A.C. 11:1-31.4(a)15i(5)(A) and (B), which require an insurer seeking surplus lines eligibility and currently eligible surplus lines insurers to make a deposit in this State of at least \$500,000 or an amount equal to 25 percent of its outstanding loss reserves in New Jersey, whichever is greater. The commenters believe that the deposit requirement is burdensome, inappropriate, redundant, discriminatory in its impact, and may reduce the availability of surplus lines insurance by causing the withdrawal of surplus lines insurers from New Jersey.

Several commenters specifically stated that, given the existence of the New Jersey Surplus Lines Insurance Guaranty Fund, which is designed to protect New Jersey citizens' claims against insolvent surplus lines insurers, it is redundant to increase the deposit requirement for \$200,000 to a minimum of \$500,000 and possibly above. The commenters further believe that the rules are unfairly discriminatory in that N.J.A.C. 11:1-31.4(a)15i(5)(B) provides that if the applicant or eligible surplus lines insurer is a wholly-owned subsidiary and is required to deposit securities in excess of \$500,000, the applicant or insurer may file with the Commissioner an indemnity agreement by which its ultimate parent guarantees that it will discharge the subsidiary's obligations in this State, in lieu of the additional deposit requirement. One of the commenters stated that this results in a disparate impact upon insurers depending on the insurer's size, ownership and "willingness" of the parent to indemnify the subsidiary for its New Jersey obligations. The commenter further stated that unauthorized insurers having \$2 million or less of New Jersey reserves will be required to post a \$500,000 deposit regardless of ownership or affiliation, but that companies writing business reflected by more than \$2 million of reserves can avoid the in-State deposit if they are a part of the affiliated group and the ultimate parent agrees to guarantee the subsidiary's obligations. The commenter stated that independent companies having no affiliation or ultimate parent will be forced to meet the deposit requirement of the minimum \$500,000 and above. The commenter believes that there is no rationale for this distinction regarding the deposit requirement and that the distinction is therefore arbitrary.

The commenter further requested clarification as to what would constitute a subsidiary's "ultimate parent." The commenter stated that the ultimate parent does not have to be an insurance company, and that it also appears that holding company entities, non-insurance parents and non-U.S. based parents could qualify to indemnify or guarantee the discharge of its unauthorized insurer subsidiary's obligations in New Jersey.

Finally, this commenter stated that in-State deposit requirements will not provide the benefit sought in that no statutory deposit can be established at a level sufficient to provide security to policy holders should the company be unable to meet its obligations. The commenter thus believes that deposit requirements are simply a burden or a "trade barrier" to carriers seeking to do business on a non-admitted basis in a particular state and do not provide any real protection.

Several commenters further stated that the deposit requirement is particularly unnecessary in light of the other requirements of the rules (for example, capital and surplus requirements and premium to surplus limitations). One commenter specifically stated that it does not object to being required to establish a reasonable United States trust fund for the protection of U.S. policyholders, but objected to the "Balkanization" of trust fund requirements contemplated by the rules. The commenters stated that if every state adopted the type of requirements now proposed under these rules, all surplus lines insurers would be required to post separate deposits in all jurisdictions. This would impose a great financial burden, as well as interfere with the insurer's ability to effectively invest its assets. One commenter further stated that virtually all jurisdictions which require overseas insurers to establish a U.S. trust fund allow the insurer to provide a single trust fund for the protection of all U.S. policyholders.

Several commenters also stated that the increased expense associated with the deposit requirement will result in increased premiums to New Jersey residents. Finally, the commenters stated that the deposit requirement establishes a significant barrier to market entry and artificially constricts capacity, while offering policyholders little protection not already provided through the U.S. trust fund. One commenter therefore suggested that the deposit requirements be deleted, or at minimum, not be applied to those overseas insurers which are currently eligible in New Jersey and have demonstrated their commitment to this State.

RESPONSE: Upon review of the commenters' concerns, the Department has determined to substantially revise the deposit requirements. The Department has determined that it is not necessary to require that all applicants for surplus lines eligibility or all currently eligible surplus lines insurers post a special deposit for the protection of New Jersey policyholders in all cases. Accordingly, the rules as revised do not require all applicants or currently eligible surplus lines insurers to deposit securities for the protection of New Jersey policyholders. The Department believes, however, that there may be circumstances in which a special deposit may be warranted as a condition of approving a request for a certificate of eligibility or as a condition for continued surplus lines eligibility in order to establish satisfactory evidence of the applicant's financial integrity and to help ensure that the applicant's operation in this State will not be hazardous to the public or policyholders of this State, pursuant to N.J.S.A. 17:22-6.45(d). Such a determination, however, would be made on a case by case basis. The rules are therefore revised to provide that the Commissioner may condition the approval of an application for a certificate of eligibility or condition continued surplus lines eligibility upon the applicant or eligible surplus lines insurer depositing securities in an amount specified by the Commissioner in trust for the benefit and security of all of its New Jersey policyholders and claimants in order to provide satisfactory evidence of financial integrity. The determination of whether a special deposit is required, and the amount of such deposit, shall be based on the Commissioner's consideration of various factors relating to the financial integrity of the insurer and other factors that indicate whether the insurer's operations without the deposit would be hazardous to the public or policyholders in this State. For example, the Commissioner will consider: the applicant's current financial condition as indicated through both a review of the documents submitted as part of the application process required by these rules and the kinds of insurance the applicant intends to write in this State and the extent to which those lines of business are covered by the Surplus Lines Insurance Guaranty Fund. In the case of currently eligible surplus lines insurers, the Commissioner will consider any adverse changes to the insurer's financial condition or any changes in the kinds of insurance the insurer writes in this State or increase in the amount of business written in this State.

The Department believes that requesting a special deposit in certain circumstances is both reasonable and appropriate. For example, if an applicant intends to write an extensive amount of business in a line that it is afforded no protection by the Surplus Lines Insurance Guaranty Fund, the operation of that applicant in this State may be hazardous in that if it becomes insolvent, the policyholders of this State would be afforded no protection other than the general United States trust fund or general deposit which is located in the applicant's state of domicile. Since every jurisdiction where the applicant or insurer is either licensed or eligible to write business would have a claim on such funds, it is doubtful that such funds would be promptly available to satisfy New Jersey claims.

The Department believes that the rules as revised address the commenter's concerns regarding market entry and the ability to invest assets

of the insurer while preserving the ability of the Commissioner to ensure that an applicant or eligible surplus lines insurer has established satisfactory evidence of financial integrity and that its operations would not be hazardous to the public or policyholders in this State, as required by N.J.S.A. 17:22-6.45(d).

COMMENT: Several commenters objected to the premium to surplus limitations imposed pursuant to N.J.A.C. 11:1-31.4(a)15i(3). This rule requires that an insurer seeking surplus lines eligibility certify that it will maintain a net premiums to surplus ratio for all jurisdictions of three to one or lower; and a gross premiums to surplus ratio for all jurisdictions of six to one or lower. The commenters stated that while this reflects a proper concern for solvency, the ratios are static and inflexible and thus should not be included in a regulation. The commenters believe that the specific standard should be deleted and that more flexible measures that recognize the complexities of solvency review and analysis would be better suited for inclusion in the rules as a regulatory standard.

One commenter specifically stated that if the requirement were adopted, a medium sized, well-run insurer with a gross premium to surplus ratio of 6.5 to one which relies upon well-run solvent insurers for its reinsurance protection would be prohibited from entering the New Jersey surplus lines market regardless of the quality of the insurer. In contrast, the commenter stated that a smaller insurer with less operating experience and which relies upon an "untested" reinsurer could be considered for eligibility as long as its gross premium surplus ratio is less than six to one. The commenter believes that the former carrier is more likely to be a valuable participant in this State's surplus lines market than the latter carrier. The commenter further stated that the National Association of Insurance Commissioners-Non-Admitted Insurers Information Office (NAIC-NAIIO) requires listed insurers to complete a financial format on an annual basis which includes premium to surplus ratios and other data. The commenter believes that New Jersey should follow this approach.

Another commenter stated that the specific standard is unnecessary since flexibility is provided under N.J.A.C. 11:1-31.6(a)2, which provides the Commissioner with the sufficient authority to eliminate companies that operate at an improper premium to surplus ratio. Under this section, the Commissioner is authorized to withdraw the eligibility of an unauthorized insurer if he or she has reason to believe that the "eligible surplus lines insurer is insolvent, in an unsafe financial condition or no longer in compliance with [New Jersey laws]". The commenter believes that this is sufficient authority to enable the Commissioner to eliminate insolvent or "questionable" unauthorized carriers from the marketplace without resorting to the establishment of the rigid and inflexible premium to surplus standards.

RESPONSE: Upon review of the commenters' concerns, the Department has determined not to change this provision. The Commissioner is statutorily required to ensure that the condition or methods of an insurer seeking eligibility are not such as to render its operations hazardous to the public or its policyholders before granting eligibility. The Department through experience has determined that the premium to surplus ratios set forth in these rules are appropriate and reasonable benchmarks by which to evaluate the financial stability of an insurer. These ratios are traditional benchmarks utilized by the Department in evaluating the financial condition of insurers authorized or eligible to transact business in this State. The Department further notes that the rule merely codifies existing requirements regarding premium to surplus ratios currently imposed. Finally, while the Department recognizes that the Commissioner possesses the authority to withdraw an insurer's eligibility if the insurer is in an "unsound financial condition," the Department believes it is reasonable and appropriate to set forth minimum premium to surplus standards in these rules to ensure that all surplus lines insurers are fully apprised of factors the Commissioner will consider in determining whether an insurer is in unsound financial condition.

COMMENT: Several commenters objected to N.J.A.C. 11:1-31.4(a)15ii(3), which requires that a foreign applicant certify that it will issue an insurance policy not later than 90 days after the effective date of the corresponding insurance placement. The commenters believe that this requirement is too rigid to warrant an inclusion in rules governing surplus lines eligibility.

One commenter specifically stated that the same requirement does not apply to alien applicants and believes that it is unfair to impose requirements on U.S. domiciled unauthorized companies which are not imposed on alien unauthorized companies. The commenter believes that a more flexible and practical approach to the policy issuance requirement

applied to both alien and foreign applicants may be found in N.J.A.C. 11:1-31.6(a)3, which provides that the Commissioner may withdraw the surplus lines eligibility of an insurer if he determines that the insurer does not make reasonably prompt payment of just losses and claims in this State. The commenter further stated that the rules could alternatively provide that an unauthorized insurer is required to issue a policy on "a prompt and reasonable basis." The commenter believes that this would allow differences in geography and differences in "distribution systems" to be taken into consideration in determining whether the rule has been satisfied.

RESPONSE: The requirement that a foreign surplus lines insurer issue an insurance policy not later than 90 days after the effective date of the placement of such coverage is set forth in N.J.S.A. 17:22-6.50. This statute specifically exempts alien insurers from the 90 day issuance requirement. N.J.A.C. 11:1-31.4(a)15ii(3) merely reflects this statutory requirement.

COMMENT: Several commenters stated that it is unclear whether the rules apply only to an insurer applying for a certificate of eligibility in this State. One commenter stated that based on the definition of "applicant," the commenter believes that a currently eligible surplus lines insurer would be "grandfathered" out of the requirements in the rules.

Another commenter specifically requested clarification regarding which portions of the rules would be applicable to currently eligible surplus lines insurers. For example, the commenter assumed that currently eligible surplus lines insurers would not be required to make a second "one time payment" of \$25,000 to the Surplus Lines Insurance Guaranty Fund.

RESPONSE: These rules essentially set forth the requirements by which an unauthorized insurer may become an eligible surplus lines insurer in this State. An insurer that is currently eligible to insure surplus lines risks in this State pursuant to a valid certificate of eligibility need not reapply for a certificate of eligibility under these rules. However, an insurer that is currently eligible is required to continue to comply with the conditions for continued surplus lines eligibility, which have been codified at N.J.A.C. 11:1-31.4(a)15, as applicable. Obviously, a currently eligible surplus lines insurer that has already submitted its payment of \$25,000 to the New Jersey Surplus Lines Insurance Guaranty Fund will not be required to make another one time payment. The Department notes, however, that if an insurer's eligibility has been withdrawn, and it subsequently reapplies for eligibility, such insurer would be considered a new "applicant" subject to all filing requirements and fees, including the \$25,000 payment to the Surplus Lines Insurance Guaranty Fund pursuant to N.J.S.A. 17:22-6.75(a)1.

COMMENT: One commenter noted that N.J.A.C. 11:1-31.4(a)8 requires an applicant to submit a summary of its assumed and ceded reinsurance business. The commenter believes that this section should be clarified to ensure that it does not become unduly burdensome for applicants. The commenter stated that the details specified by the rules might well require an analysis of hundreds of separate reinsurance treaties.

RESPONSE: Upon review of the comment, the Department has determined not to change this provision. Reinsurance may have a substantial effect on the financial condition of the ceding insurer in that reinsurance permits the ceding insurer to reduce liabilities for the amount of insurance ceded. However, if an assuming insurer fails, the ceding insurer is still liable for the full amount of the liability undertaken through the direct writing of business. The amount of business an applicant has assumed similarly affects its financial condition since its liabilities have increased. The Department therefore believes it necessary, reasonable and appropriate to review the reinsurance transactions of an applicant to ensure that the nature of the reinsurance transaction and the condition of the assuming insurer will not result in the applicant's operations being hazardous to the public or its policyholders. The Department recognized, however, that it may be burdensome to require an applicant to file copies of all reinsurance treaties and contracts. Accordingly, the rules, both as originally proposed and as re-proposed, require that the applicant submit only a summary of its assumed and ceded reinsurance business. The rules as re-proposed, however, provide that the Department may require that the applicant file a copy of a specific reinsurance treaty or contract to address any specific questions or concerns of the Department based upon review of the summary of the applicant's assumed and ceded reinsurance business. This provision appropriately limits the filing requirement of specific reinsurance treaties or contracts only when deemed necessary based on

the review of the summary of reinsurance transactions that all applicants are required to file.

COMMENT: One commenter objected to N.J.A.C. 11:1-31.4(a)13iv, which requires an applicant to submit a summary of its current methods for establishing rates. The commenter stated that surplus lines insurers are not regulated as to rates and thus this information is irrelevant. The commenter further stated that since the carrier would be accepting a risk of a different level of quality from that written by the admitted market, rates must be flexible and easily adjusted based on results and market fluctuations. Based on all of the information currently required by the Department as reflected in these proposed rules, the commenter believes that the Department is in a position to make an informed decision regarding the financial ability and soundness of an applicant. The commenter thus believes that additional information regarding ratemaking data is unnecessary.

RESPONSE: The Department believes that it is reasonable and appropriate to review an applicant's methods of establishing rates as a part of the review of the applicant's current and proposed methods for conducting business. The rates an insurer charges may affect the insurer's overall financial condition. Although the Department does not regulate rates charged by surplus lines insurers per se, the Department believes it appropriate to require that an applicant submit a summary of its methods of establishing rates as a part of the description of the applicant's business plans to ensure that the applicant has competent underwriting personnel to ensure that the general method of operations of the applicant will not be hazardous to the public or policyholders. Finally, the Department notes that pursuant to N.J.S.A. 17:22-6.43(b), rates for coverages exported to a surplus insurer may not be lower than the lowest rate filed by or on behalf of any authorized insurer. The Department believes that this codification of existing filing requirements is reasonable and appropriate.

COMMENT: One commenter objected to N.J.A.C. 11:1-31.4(a)15i(2), which exempts insurance exchanges from the \$25,000 payment toward the New Jersey Surplus Lines Insurance Guaranty Fund. The commenter stated that it is unfair to exempt one class of carrier from this obligation. The commenter further stated that while an exchange may have a guaranty fund of its own, there is no assurance that such fund will be sufficient to cover its liabilities in all states including New Jersey.

The commenter further believes that each syndicate member of an exchange should be required to submit the \$25,000 deposit and that each syndicate be required to submit to the same examination that an applicant for a certificate of eligibility undergoes. The commenter stated that it has become common in the remaining exchange for a syndicate to accept 100 percent of the risk rather than subscribing to a percentage. The commenter believes that the financial stability of individual syndicates is critical to the protection of New Jersey policyholders as is the protection afforded by the New Jersey Surplus Lines Insurance Guaranty Fund.

RESPONSE: Only member insurers are required to make a one time payment of \$25,000 to the Surplus Lines Insurance Guaranty Fund pursuant to N.J.S.A. 17:22-6.75. Insurance exchanges, however, are not member insurers of the Surplus Lines Insurance Guaranty Fund as specified at N.J.S.A. 17:22-6.45. Accordingly, insurance exchanges are not required to make the \$25,000 payment pursuant to statute. It must also be noted that N.J.S.A. 17:22-6.45(d)(1) provides minimum capital and surplus that insurance exchanges must maintain in the aggregate and for each individual syndicate. This statute additionally authorizes the Commissioner to impose minimum and capital surplus standards both in the aggregate and on each individual syndicate in amounts necessary in the Commissioner's opinion for the protection of all insurance exchange policyholders.

COMMENT: One commenter requested clarification whether the assets required to satisfy the in-State deposit requirement must be physically located in New Jersey. The commenter further believes that it is not clear whether the amounts deposited remain in trust only for the benefit of New Jersey claimants and policyholders or whether they are available for all claimants and policyholders.

RESPONSE: As noted in the response to a previous comment, the general "in-State" deposit requirement for all applicants and insurers has been eliminated. However, to the extent in-State deposits are requested for an individual applicant or insurer, those amounts deposited would be deposited in this State in accordance with N.J.A.C. 11:2-32, and would remain in trust only for the benefit of New Jersey claimants and policyholders.

COMMENT: One commenter objected generally to the amount of information required by the proposed rules. The commenter stated that it makes a filing each year with the NAIC-NAIIO, which provides information pertaining to ceded reinsurance arrangements. The commenter further stated that it promptly advises the NAIC-NAIIO of changes in major officers or directors of the company, changes in ownership, changes in plans of operation and similar significant developments. The commenter believes it more appropriate to provide this same information to the Department, rather than the extensive information required by the rules. The commenter stated that it would be impractical to require surplus lines insurers to provide advanced notices of any changes in its assumed or ceded reinsurance agreements in that changes will occur in most agreements annually during the course of negotiations between the parties. The commenter does not believe that the Department intends that this negotiation process be halted at any time and changes discussed so that notices may be given to the Department.

The commenter further stated that the terms "chief administrative officers" and "methods of operation" require clarification at N.J.A.C. 11:1-31.4(a)15i(4). The commenter stated that compliance with this section could result in a premature disclosure of highly confidential information and could conceivably trigger violations of securities laws in some cases. The commenter therefore suggested that these provisions be reconsidered.

RESPONSE: The Department initially notes that the rules essentially codify existing filing requirements. The Department further believes that the rules do not require an eligible surplus lines insurer to file information substantially different from that which the commenter stated is filed with the NAIC-NAIIO. The commenter stated that it "promptly" notifies the NAIC-NAIIO of changes in major officers or directors of the company, changes in ownership, changes in plans of operation, etc. This is substantially similar to the information required under N.J.A.C. 11:1-31.4(a)15i(4).

The Department agrees, however, that it would be problematical to require that an insurer notify the Department of any changes in officers or its plan of operation, etc. prior to such change. The Department did not intend this result. The requirement that insurers notify the Department "in advance" was intended to mean that an insurer is required to notify the Department of any changes prior to the filing of the next annual statement. The Department has determined that this provision requires clarification. N.J.A.C. 11:1-31.4(a)15i(4) as repropounded has been revised to require that an insurer notify the Department of changes in directors, plan of operation, etc. within 30 days of any such change.

With respect to the comment that the terms "chief administrative officers" and "methods of operation" require clarification, the term "methods of operation" is intended to include the insurer's plan for conducting business in this State, including the information set forth in N.J.A.C. 11:1-31.4(a)13 and (a)14; the term "chief administrative officers" is intended to include the company's president, senior vice president, secretary and treasurer. The rules as repropounded reflect these clarifications.

COMMENT: One commenter stated that the application requirements in N.J.A.C. 11:1-31.4(a)4, 5, 7 and 9 are not readily applicable to "overseas" insurers but rather apply to insurers formed in the United States. For example, the commenter stated that most overseas insurance regulators, including the United Kingdom Department of Trade and Industry, do not require the type of examination required under N.J.A.C. 11:1-31.4(a)4. Similarly, the commenter stated that N.J.A.C. 11:1-31.4(a)9 appears to apply the New Jersey Holding Company Act and SEC requirements to a holding company whose only connection with the United States may be that of a European affiliate that writes surplus lines insurance on New Jersey risks. The commenter believes that this provision should be revised.

RESPONSE: The Department believes that these requirements may be applied to both foreign (U.S.) insurers and alien (overseas) insurers. The commenter also apparently misconstrued the requirements set forth at N.J.A.C. 11:1-31.4(a)4, 5, 7 and 9. The rules do not require, as the commenter apparently believes, that an alien insurer file the exact information or report required of authorized insurers, but requires only that the insurer file the information or report conducted in its state or country of domicile. Citing the commenter's example, while the content of an examination performed by overseas insurance regulators may not be exactly the same as that of U.S. insurance regulators, an examination is nevertheless performed. N.J.A.C. 11:1-31.4(a)4 requires only that the applicant submit a copy of the most recent examination performed by the regulator in its state or country of domicile.

With respect to the other requirements, the references to various statutes and rules are intended to apprise the insurer of the information required. It is not intended to indirectly apply statutes and rules to unauthorized alien insurers that are not otherwise applicable. Citing the commenter's other example, N.J.A.C. 11:1-31.4(a)9 is not intended to indirectly apply the New Jersey Insurance Holding Company Systems Act to alien insurers if not otherwise applicable, but rather is intended to apprise insurers of the information the Department requires regarding the applicant's ultimate parent and the persons who control the applicant. This provision is clarified to reflect this intent. The Department finally notes that alien eligible surplus lines insurers are currently required to file an annual audited financial report since N.J.A.C. 11:2-26 applies to eligible surplus lines insurers as well as authorized insurers.

COMMENT: One commenter objected to the requirements in N.J.A.C. 11:1-31.4(a)12 as unnecessarily broad. This rule requires that the applicant provide a listing of all administrative, civil or criminal actions which the applicant, its affiliates or any directors or officers have been subject. The commenter cited as an example, this rule as applied to the UK insurer which is the subsidiary of the Scandinavian parent which, in turn, also owns a German insurance broker. The commenter stated that read literally, the rule would require the UK insurer to report a civil dispute heard in Germany in 1983 involving the German broker, even if the alleged violation of German insurance law was purely tangential to the principle dispute; the allegation was frivolous; and the applicant and its parent were in no way involved or affected by the dispute. The commenter therefore requested the Department "fine tune" the provision.

RESPONSE: As noted previously, the Department is statutorily required to ensure that an applicant's method of operation will not be hazardous to the public or its policyholders as a condition of granting surplus lines eligibility. The Department believes that in order to make such a determination, it is necessary to review any history of criminal or civil actions against the applicant, its affiliates, directors, etc. The severity of any violation may range from relatively innocuous (as in the case of the commenter's example) to egregious (for example, where the German broker stole or embezzled millions of dollars of policyholder funds). The effect of any actions or violations of law on the application cannot be ascertained unless the Department is apprised of the actions or violations. It must also be noted that while the commenter suggested that the Department "fine tune" the provision, it suggested no alternative language. The Department therefore believes that no change is required.

COMMENT: One commenter stated that portions of the rules are inconsistent with the statute. For example, the commenter stated that N.J.A.C. 11:1-31.3(b)2 could be read to suggest that the only way an insurer may become an eligible surplus lines insurer is to meet the rule's capital and surplus requirements. The commenter stated, however, that N.J.S.A. 17:22-6.45(d)(1) provides an alternative for certain types of insurers, such as an unincorporated group of alien individual insurers, to become eligible.

RESPONSE: The rules were not intended to limit the ability of an insurer to become eligible as provided by statute. The rules are therefore clarified to provide that in lieu of the capital and surplus requirements and trust fund requirements set forth in N.J.S.A. 17:22-6.45(d)(1), any Lloyd's or any similar unincorporated group of alien insurers shall maintain a trust fund of not less than \$50 million as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group.

COMMENT: One commenter expressed concern with the capital and surplus requirements set forth in N.J.A.C. 11:1-31.3(b)2. The commenter stated that the rules require capital and surplus of not less than twice the amount required for admitted insurers in the State. The commenter stated that a specified amount or minimum rather than a multiple of the amount required for admitted insurers would provide a clearer standard for capital and surplus levels for surplus lines insurers. The commenter stated that a fixed dollar amount approach is currently used in the NAIC's model surplus lines law and in many other states. The commenter believes that uniformity in this regard, while providing adequate levels to provide financial stability, is helpful for insurer's compliance with multiple state requirements.

RESPONSE: The capital and surplus requirements reflect the statutory requirement in N.J.S.A. 17:22-6.45(d)(1). This statute generally requires that an insurer seeking to become eligible to insure surplus lines risks in this State maintain capital and surplus of not less than twice the amount of minimum capital and surplus required for like admitted insurers.

COMMENT: One commenter expressed concern with the filing requirements set forth in N.J.A.C. 11:1-31.4. The commenter stated that the filing requirements are tied to short time periods, and suggested that the time periods be extended or some provision made for extensions, particularly given the extensiveness of the information sought.

RESPONSE: The requirements set forth in N.J.A.C. 11:1-31.4 essentially relate to documents to be submitted as part of an application for surplus lines insurer eligibility. There is no time period within which the insurer must compile and submit the information as part of its application. The only data that is due at specific times are those documents required of currently eligible surplus lines insurers (for example, annual filing of loss reserve opinion statement and annual filing of a copy of its annual statement). These documents are generally required on an annual basis, are generally already required of insurers in their domiciliary jurisdiction and are currently required to be filed by eligible surplus lines insurers. The Department therefore does not believe that any provision for extension of time is necessary since the only data filing requirements tied to specific time periods are generally copies of filings required to be filed in the insurer's domiciliary jurisdiction, and which are currently required by the Department.

The repropoed new rules are summarized as follows:

Proposed N.J.A.C. 11:1-31.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:1-31.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:1-31.3 provides the general requirements for an application for a certificate.

Proposed N.J.A.C. 11:1-31.4 sets forth the specific filing requirements for an application for a certificate.

Proposed N.J.A.C. 11:1-31.5 provides for the issuance of a certificate by the Commissioner.

Proposed N.J.A.C. 11:1-31.6 provides for the withdrawal of surplus lines eligibility under certain conditions.

Proposed N.J.A.C. 11:1-31.7 provides that failure to comply with these rules may result in the denial of a certificate.

Social Impact

The repropoed new rules will ensure that the filing requirements for the issuance of a certificate are clearly and fully set forth. This should streamline the application process which, in turn, should benefit applicants. The Department will similarly benefit in that applicants will more likely submit complete filings.

In addition, these repropoed new rules set forth the filing requirements from which the Department may determine whether an applicant's financial condition and methods of operation meet the criteria for eligibility in N.J.S.A. 17:22-6.45, which have been established by the Legislature for the protection of New Jersey policyholders.

Economic Impact

Applicants will be required to bear the costs associated with compiling and filing the required information. Since these filing requirements reflect current Department practice, little or no additional economic impact is imposed. Applicants are also required to pay the \$1,000 application fee to cover Department costs of reviewing the data submitted, as currently required pursuant to N.J.A.C. 11:1-32.7(a)1. In addition, an applicant or currently eligible surplus lines insurer may be required to deposit securities in the amount specified by the Commissioner where the Commissioner has determined that a specific deposit is necessary to establish evidence of the applicant's or insurer's financial integrity and to enable the Department to determine that the applicant's operations in this State will not be hazardous to the public or policyholders in this State, pursuant to N.J.S.A. 17:22-6.45. The Department believes, however, that any applicant or insurer whose financial condition is such that it meets the statutory minimum capital and surplus requirements and other requirements for eligibility should not find the payment of the application fee or additional deposit requirements to be burdensome.

Further, as was indicated in the Social Impact statement above, the filing requirements will enable the Department to determine whether an applicant's financial condition meets the statutory criteria for eligibility in N.J.S.A. 17:22-6.45.

Finally, most of the data to be filed is required by current Department practice. Therefore, no significant additional costs to the Department or to the applicant are imposed by these repropoed new rules.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These proposed rules apply to foreign and alien insurers only, and thus do not apply to resident businesses of this State.

Full text of the proposed new rules follow:

SUBCHAPTER 31. SURPLUS LINES INSURER ELIGIBILITY**11:1-31.1 Purpose and scope**

(a) This subchapter sets forth the filing requirements and procedures for unauthorized insurers which seek to become eligible surplus lines insurers in this State in accordance with the Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq.

(b) This subchapter applies to unauthorized insurers which seek to become eligible surplus lines insurers in this State and currently eligible surplus lines insurers.

11:1-31.2 Definitions

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

"Alien applicant" means an applicant which is an unauthorized insurer formed under the laws of any country other than the United States, its states, districts, territories, commonwealths, possessions or the Panama Canal Zone.

"Applicant" means an unauthorized foreign or alien insurer applying for a certificate of eligibility in this State.

"Certificate of eligibility" means a certificate issued to an unauthorized insurer by the Commissioner pursuant to N.J.S.A. 17:22-6.45 evidencing that it is an eligible surplus lines insurer in this State.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Eligible surplus lines insurer" or "surplus lines insurer" means an unauthorized foreign or alien insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

"Foreign applicant" means an applicant which is an unauthorized insurer formed under the laws of a jurisdiction of the United States other than this State.

"NAIC" means the National Association of Insurance Commissioners.

"Surplus lines agent" means a person licensed pursuant to N.J.S.A. 17:22A-1 et seq. and N.J.A.C. 11:17 with the authority to place insurance coverages on behalf of unauthorized insurers.

"Unauthorized insurer" means a foreign or alien insurer that is not duly authorized to transact business in this State by a current certificate of authority issued pursuant to the laws of this State.

11:1-31.3 General requirements

(a) No surplus lines agent shall place any coverage in this State with any unauthorized insurer which is not an eligible surplus lines insurer in this State, except for the placement of an insurance risk pursuant to N.J.S.A. 17:22-6.45(h), where insurance on a risk eligible for export is not procurable from eligible surplus lines insurers. No unauthorized insurer shall become an eligible surplus lines insurer unless made eligible by the Commissioner in accordance with N.J.S.A. 17:22-6.45 and this subchapter.

(b) No certificate of eligibility shall be issued to an applicant unless it demonstrates the following:

1. That it is either:

i. Currently authorized in its state or country of domicile as to the kind or kinds of insurance proposed to be so placed for not less than one year preceding the application for eligibility; or

ii. The subsidiary of an admitted insurer or eligible surplus lines insurer that has been admitted or eligible for not less one year preceding the application for eligibility;

2. Satisfactory evidence of financial integrity. Satisfactory evidence of financial integrity may be demonstrated if the applicant satisfies all of the requirements for the issuance of a certificate of eligibility

pursuant to N.J.S.A. 17:22-6.40 et seq. and this subchapter, and after review of the information required to be submitted pursuant to this subchapter or from any other available source (for example, the NAIC, A.M. Best and Standard and Poor's), the Commissioner does not find:

i. That any factors exist from which he or she may determine that the applicant is in a hazardous financial condition as set forth in N.J.A.C. 11:2-27; or

ii. That the applicant's condition or methods of operation are such as would render its operation hazardous to the public or policyholders in this State;

3. That it has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than twice the amount of the minimum capital and surplus required by this State for like admitted insurers;

i. An alien applicant shall also maintain in the United States an irrevocable trust fund in a state or federally chartered bank in an amount not less than \$2,500,000 for the protection of all of its policyholders in the United States. The trust fund shall conform to the requirements set forth in N.J.S.A. 17:22-6.45(d)(1);

4. In lieu of the capital and surplus requirements and trust fund requirements set forth in (b)2i and (b)2i(1) above, any Lloyd's or other similar unincorporated group of alien individual insurers shall maintain a trust fund of not less than \$50,000,000 as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group. The trust fund shall conform to the requirements set forth in N.J.S.A. 17:22-6.45(d)(1);

5. An insurance exchange created by laws of another state may be approved by the Commissioner as a eligible surplus lines insurer. Such an insurance exchange shall comply with the applicable financial requirements set forth in N.J.S.A. 17:22-6.45(d)(1) in addition to the requirements set forth in this subchapter;

6. That it has complied with all of the requirements of N.J.S.A. 17:22-6.45 and this subchapter to entitle it to transact business as an eligible surplus lines insurer in this State;

7. That its condition or methods of operations are not such as would render its operation hazardous to the public or policyholders in this State;

8. That it is of good reputation as to providing service to the policyholders and the payment of losses and claims; and

9. That its management is not incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance buying public; and that it is not affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

(c) All information submitted pursuant to this subchapter shall be sent to:

New Jersey Department of Insurance
Division of Financial Examinations
Attention: Surplus Lines Insurer Eligibility
CN-325
Trenton, New Jersey 08625-0325

11:1-31.4 Certificate of eligibility; filing requirements

(a) All applicants shall submit the following to the Commissioner:

1. A copy of the applicant's charter as currently in force, certified by the lawful custodian of the original document;

2. A copy of the applicant's bylaws as currently in force, certified by a senior officer of the applicant;

3. A certified copy of the applicant's current certificate of authority from the applicant's state or country of domicile;

4. A certified copy of a report of the most recent examination of the applicant's affairs by the department of insurance, or its equivalent, of the applicant's state or country of domicile;

5. An annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by the applicant's state or country of domicile which is substantially similar to the report required by N.J.A.C. 11:2-26;

6. Directors' and officers' biographical affidavits on a form provided by the Commissioner;

7. A statement of opinion by qualified actuary, relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by the applicant, containing the information required by N.J.A.C. 11:1-21;

8. A summary of the applicant's assumed and ceded reinsurance business, indicating the treaty parties, retentions, maximum risks, types of contract (that is, prorata, facultative, etc.) and any other information which may be relevant to the applicant's reinsurance portfolio;

i. The Department may require that the applicant file a copy of any specific reinsurance treaty or contract to address questions or concerns based upon the Department's review of the summary of assumed and ceded reinsurance business;

9. If the applicant is a member of a holding company system, a certified copy of the information filed pursuant to the holding company act of the state, district, territory, commonwealth, possessions or country of domicile, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3 and applicable Securities and Exchange Commission requirements pursuant to 15 U.S.C. 77a et seq. and 15 U.S.C. 78a et seq., including the names of all shareholders of record who control, either directly or indirectly, five percent or more of the applicant's outstanding shares;

10. A listing of all jurisdictions in which the applicant has applied for authorization to transact the business of insurance as a licensed insurer or surplus lines insurer during the preceding 10 years, including the dates and results of such application;

11. A listing of all jurisdictions from which the applicant has withdrawn during the preceding 10 years, including the reasons for withdrawal;

12. A listing of all administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, its affiliates, or any of its directors or officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent, such criminal actions, orders, proceedings and determinations shall also include violations unrelated to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings and determinations related thereto;

13. A description of the applicant's present business plan or plans for conducting an insurance business, including, but not limited to:

i. The geographical areas in which the applicant currently conducts business;

ii. The kinds of insurance the applicant currently writes;

iii. The applicant's current marketing methods;

iv. A summary of the applicant's current methods for establishing premium rates; and

v. A description of agency systems, including any managing general agency contracts;

14. A proposed plan for conducting insurance business in this State, including, but not limited to:

i. The geographical area in which the applicant intends to conduct business;

ii. The kinds of insurance the applicant intends to write;

iii. The applicant's proposed marketing methods;

iv. The applicant's proposed methods for the establishment of premium rates; and

v. A three year forecast of anticipated premiums in this State by line of business;

15. A certification signed by an officer of the applicant that it will comply with the following conditions for continued surplus lines eligibility upon being issued a certificate:

i. For all applicants:

(1) Annually file with the Department a statement of opinion by a qualified actuary relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by the applicant which meets the requirements of N.J.A.C. 11:1-21, on or before June 30 (for foreign applicants) or on or before September 1 (for alien applicants) of each year;

(2) Except insurance exchanges, submit a nonrefundable, one time payment of \$25,000 to the New Jersey Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.75;

(3) Maintain a net premiums to surplus ratio for all jurisdictions of 3:1 or lower; and a gross premiums to surplus ratio for all jurisdictions of 6:1 or lower;

(4) Advise the Department within 30 days of any changes in the applicant's chief administrative officers, including the president, senior vice president, secretary or treasurer; methods of operation, including the information set forth in (a)13 and (a)14 above; or assumed or ceded reinsurance agreements; and

(5) Deposit securities, or increase the amount of any existing deposit required pursuant to N.J.A.C. 11:1-31.5, if the Commissioner finds that such deposit is necessary for the eligible surplus lines insurer to establish evidence of financial integrity, as required by N.J.S.A. 17:22-6.45(d), and to ensure that the condition or methods of operation of the insurer are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a deposit, or increase in the amount of an existing deposit, is required, and the amount of such deposit or increase, the Commissioner shall consider:

(A) Any adverse change in the financial condition of the insurer as determined through a review of the information submitted pursuant to this subchapter;

(B) Any change in the amount of business written in this State;

(C) Any change in the lines of business written in this State;

(D) The extent to which the lines of business currently written by the insurer and amount thereof are covered under the Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.70 et seq.; and

(E) Such other factors as the Commissioner deems relevant to determine whether a particular insurer has established satisfactory evidence of financial integrity and that the insurer's condition and methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State.

ii. For foreign applicants only:

(1) Annually file with the Department on or before March 1, a copy of its NAIC Annual Statement filed with its state of domicile for the year ended immediately preceding, and a copy of the report of any examination of the insurer during the year covered by the Annual Statement;

(2) File NAIC quarterly financial statements within 45 days after the end of each calendar quarter;

(3) Issue an insurance policy not later than 90 days after the effective date of the corresponding insurance placement; and

(4) Annually file with the Department on or before June 1 of each year, a copy of its annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by its domiciliary jurisdiction which is substantially similar to the report required by N.J.A.C. 11:2-26; and

iii. For alien applicants only:

(1) Annually file with the Department on or before September 1, a copy of its audited financial statement; a report of its independent auditor, if any; and the Standard NAIO Financial Reporting Format filed with the NAIC Non-admitted Insurers Information Office for the year ended December 31 immediately preceding;

16. A written request, signed by a licensed surplus lines agent, that the Commissioner issue a Certificate of Eligibility to the applicant;

17. The nonrefundable application fee set forth in N.J.A.C. 11:1-32.7(a)1; and

18. Any additional information deemed necessary by the Commissioner to evaluate the applicant including, but not limited to, updated financial statements.

(b) Foreign applicants shall submit the following to the Commissioner in addition to the requirements in (a) above:

1. A certificate of compliance from its state of domicile;

2. Statements of the applicant's financial condition as of and for the two immediately preceding calendar years;

i. The annual statements shall be submitted on NAIC annual statement blanks, including fully completed and executed jurat pages subscribed and sworn to by the applicant's president, secretary and treasurer;

ii. The statement submitted for the most recent year shall be for a calendar year ending not more than nine months prior to the date of submission of the application; and

3. The applicant's quarterly financial statements for the current year in the NAIC format.

(c) Alien applicants shall submit the following to the Commissioner in addition to the requirements in (a) above:

1. Two duly authenticated copies of its current annual financial statement; one in the language and monetary value of its country of domicile and one in the English language with all monetary values expressed in United States dollars at the current exchange rate shown in the statement;

i. The statement shall be for a calendar year ending not more than nine months prior to the date the filing of such statement in the applicant's country of domicile is due.

2. If the applicant is registered with the NAIC Non-Admitted Insurers Information Office, a copy of the Standard Financial Reporting Format submitted to the NAIC Non-Admitted Insurers Information Office;

3. A description of the deposits and amounts thereof for the benefit of all United States policyholders for all United States jurisdictions in which the applicant is currently transacting business; and

4. A copy of a duly executed trust fund agreement for the benefit of the applicant's United States policyholders in the amount of not less than \$2,500,000 or in the amount of \$50,000,000, as applicable, as required by N.J.S.A. 17:22-6.45(d)(1).

(d) The Commissioner shall notify the applicant within 60 days whether the application is complete. If the application is incomplete, the notice shall specify the items or information necessary to cure the deficiency.

11:1-31.5 Certificate of eligibility; issuance

(a) If the applicant demonstrates that it fulfills the requirements for eligibility in N.J.S.A. 17:22-6.45 and this subchapter, the Commissioner shall issue a Certificate of Eligibility to the applicant.

1. The Commissioner may condition approval of an application for surplus lines eligibility on the applicant depositing securities, as that term is defined in N.J.S.A. 17:20-1 and N.J.A.C. 11:2-32, in an amount determined by the Commissioner, if the Commissioner finds that such deposit is necessary for the applicant to establish satisfactory evidence of financial integrity, as required by N.J.S.A. 17:22-6.45(d), and to ensure that the condition or methods of operation of the applicant are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a deposit is required, and the amount of such deposit, the Commissioner shall consider:

i. The financial condition of the applicant as determined through a review of the information submitted pursuant to this subchapter;

ii. The amount of business to be written in this State;

iii. The lines of business to be written in this State;

iv. The extent to which the lines of business to be written by the applicant and the amount thereof are covered under the Surplus Lines Insurance Guaranty Fund, pursuant to N.J.S.A. 17:22-6.70 et seq.; and

v. Such other factors as the Commissioner deems relevant to determine whether the particular applicant has established satisfactory evidence of financial integrity and the applicant's condition or methods of operation are not such as would render its operation hazardous to the public or policyholders in this State.

(b) The Certificate of Eligibility shall remain continuously in effect unless the Commissioner withdraws eligibility as set forth in N.J.A.C. 11:1-31.6.

11:1-31.6 Withdrawal of eligibility

(a) The Commissioner may withdraw the eligibility of an insurer to insure surplus lines risks in this State if:

1. The insurer fails to file the data required or otherwise comply with the requirements for continued surplus lines eligibility as certified by the insurer in its application for eligibility pursuant to N.J.A.C. 11:1-31.4(a)15;

2. The Commissioner has reason to believe that the eligible surplus lines insurer is insolvent, in an unsound financial condition or no longer in compliance with N.J.S.A. 17:22-6.40 et seq. or this subchapter; or

3. The Commissioner finds, after a hearing thereon in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, of which notice was given to all licensed surplus lines agents, that an eligible surplus lines insurer has willfully violated the laws of this State or does not make reasonably prompt payment of just losses and claims in this State.

(b) The Commissioner shall notify all licensed surplus lines agents in this State of withdrawals of eligibility made pursuant to this section.

(c) Except as otherwise specified by the Commissioner, an insurer whose eligibility has been withdrawn pursuant to (a) above shall be prohibited from writing any new business or renewing existing business, but shall continue to service existing business through expiration of each policy.

11:1-31.7 Failure to comply with subchapter; denial of certificate of eligibility

Failure to submit the information required by this subchapter completely and accurately may result in the denial of a certificate of eligibility to transact business as an eligible surplus lines insurer in this State.

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Surplus Lines Insurance: Allocation of Premium Tax and Surcharge

Proposed New Rules: N.J.A.C. 11:2-34

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

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:22-6.57, 6.58, 6.59, 6.61, 6.64, 6.65, 6.73, 6.75(2) and 6.76; and 54:49-3 and 4.

Proposal Number: PRN 1993-247.

Submit comments by June 2, 1993 to:

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

The agency proposal follows:

Summary

These proposed new rules provide a method by which the surplus lines premium receipts tax and assessments are computed on the portion of the premium allocable to risks or exposures in this State. N.J.S.A. 17:22-6.59 provides that the premiums charged for surplus lines coverages are subject to a tax of three percent of all gross premiums. The surplus lines agent is required to collect the amount of the tax from the insured and forward to the Commissioner of Insurance (Commissioner) each quarter, a check for the tax due.

In addition, N.J.S.A. 17:22-6.59 provides that when a surplus lines policy covers risks or exposures only partially in New Jersey, the tax payable is computed on the premium which is allocable to the risks or exposures located in New Jersey. To date, a method of allocation has not been promulgated by the Department of Insurance (Department). This has led to confusion among surplus lines agents regarding the method of allocation for the remittance of premium taxes payable on risks or exposures located in this State. The Department therefore proposes these rules which set forth a method of allocation for calculating

the surplus lines premium receipts tax imposed pursuant to N.J.S.A. 17:22-6.59.

Similarly, N.J.S.A. 17:22-6.64 requires the insured to withhold and remit the appropriate amount of premium tax to the Commissioner when purchasing insurance directly from an unauthorized insurer.

These proposed rules shall also apply to the calculation of the assessment imposed pursuant to the New Jersey Surplus Lines Insurance Guaranty Fund Act, N.J.S.A. 17:22-6.70 et seq. N.J.S.A. 17:22-6.75(2) provides for the payment of an assessment (currently assessed at four percent of the policy premium) to be collected by the surplus lines agent and forwarded each quarter to the New Jersey Surplus Lines Insurance Guaranty Fund, to pay certain claims of insolvent surplus lines insurers. The allocation schedule in these proposed rules is similar to the schedule utilized by New York State and, as such, reduces the regulatory burden by using a similar allocation formula as a neighboring state.

Proposed N.J.A.C. 11:2-34.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:2-34.2 provides the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:2-34.3 provides the method by which the premium, premium tax and assessment shall be allocated to risks or exposures located in New Jersey.

Proposed N.J.A.C. 11:2-34.4 provides the requirements for recordkeeping under these rules.

Proposed N.J.A.C. 11:2-34.5 provides the penalties for violation of these rules.

Appendix A sets forth the Surplus Lines Premium Tax Allocation Schedule.

Social Impact

These proposed rules provide a formal method by which the premiums, on which the surplus lines premium tax and assessment are payable, are to be allocated to the risks or exposure located in New Jersey. This will ensure that surplus lines agents and insureds are fully apprised of the allocation methodology for calculating the appropriate amount of premium tax and assessment due this State. This will benefit surplus lines agents and insureds by streamlining the calculation and remittance of such tax and assessment. The Department and Surplus Lines Insurance Guaranty Fund (SLIGF) will similarly benefit in that surplus lines agents and insureds will more likely submit accurately calculated premium taxes and assessments in a timely manner.

Economic Impact

Surplus Lines agents and insureds will be required to submit the premium taxes and assessment calculated in accordance with the method of allocation set forth in these proposed rules. Surplus Lines agents and insureds are currently required to submit premium taxes and the corresponding assessment. Therefore, no additional economic burden is imposed. Further, the rules provide a method by which surplus lines agents and insureds may allocate the premium on which the tax and assessment is payable to the risks or exposures in this State. This will permit the correct amount of tax and assessment to be paid if the rules are carefully followed by the parties.

Department staff will continue to review tax and assessment submissions to determine that the calculation of these amounts are in compliance with these rules.

Regulatory Flexibility Analysis

The proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules will apply to small businesses which are surplus lines agents and insureds which are required to withhold and forward the surplus lines insurance premium tax and assessment pursuant to N.J.S.A. 17:22-6.59, 6.64 and 6.75. To the extent the proposed rules apply to small businesses, they may impose a greater impact in that small businesses may have to devote proportionately more staff and financial resources to calculate the applicable tax and assessment in the manner prescribed by these rules. Since surplus lines agents and insureds are statutorily required to calculate, withhold and forward the premium receipts tax and assessment, any additional burden should be minimal.

The proposed new rules provide no different compliance requirements based upon business size. These rules provide the method by which the premium on the surplus lines insurance premium tax and assessment is allocated to risks or exposures in this State. The surplus lines agent, insured and self insured are required to maintain for three years records of the method used to compute the premium tax. Neither N.J.S.A. 17:22-6.59 and 6.64 which impose the tax, nor N.J.S.A. 17:22-6.75 which

imposes the assessment, provide different compliance requirements based on business size. A consistency and uniformity are furthered in the allocation of premium for purposes of calculating the surplus lines insurance premium receipts tax and assessment, no differentiation in compliance requirement is provided based on business size.

Full text of the proposal follows:

SUBCHAPTER 1. SURPLUS LINES INSURANCE: ALLOCATION OF PREMIUM TAX AND SURCHARGE

11:2-34.1 Purpose and scope

(a) This subchapter sets forth the method by which the surplus lines premium receipts tax imposed pursuant to N.J.S.A. 17:22-6.59 and 6.64 and the New Jersey Surplus Lines Insurance Guaranty Fund assessment imposed pursuant to N.J.S.A. 17:22-6.75 is computed on the portion of the premium which is properly allocable to the risks or exposures located within this State.

(b) This subchapter applies to all surplus lines agents and insureds required to forward premium receipts tax to the Commissioner pursuant to N.J.S.A. 17:22-6.59 and 6.64, and assessments to the New Jersey Surplus Lines Insurance Guaranty Fund pursuant to N.J.S.A. 17:22-6.75a(2).

11:2-34.2 Definitions

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

"Allocation Schedule" means the schedule in the Appendix to this subchapter incorporated by reference which sets forth the criteria for tax allocation to New Jersey of a portion of the premium of multi-state risks.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Guaranty fund" means the New Jersey Surplus Lines Insurance Guaranty Fund created by N.J.S.A. 17:22-6.73.

"Located in New Jersey" or "in New Jersey" means a physical presence in or headquartered in the State of New Jersey.

"Surplus lines agent" means an individual licensed pursuant to N.J.S.A. 17:22A-1 et seq. and N.J.A.C. 11:17-2.2 to place insurance coverages with unauthorized insurers.

"Surplus lines insurer" means an unauthorized insurer which is eligible for placement of insurance coverage pursuant to N.J.S.A. 17:22-6.42, 6.43 and 6.45.

"Unauthorized insurer" means an insurer that is not duly authorized to transact business in this State by a current certificate of authority issued pursuant to N.J.S.A. 17:17-1 et seq. for domestic insurance companies and N.J.S.A. 17:32-1 et seq. for foreign companies, and any other laws of this State.

11:2-34.3 Allocation of premium tax and surcharge

(a) Each surplus lines agent shall on or before the end of the month next following each year calendar quarter file with the Commissioner a verified report in duplicate of all surplus lines insurance transacted, or not transacted, during such calendar quarter as set forth in N.J.S.A. 17:22-6.58. The surplus lines agent shall collect from the insured and forward to the Commissioner the appropriate amount of tax collected for each quarterly period as set forth in N.J.S.A. 17:22-6.59 which shall be allocated as set forth in this subchapter when a surplus lines policy covers risks or exposures only partially located within this State.

(b) Premiums charged by eligible surplus lines insurers in this State are subject to a surcharge of up to four percent calculated in accordance with N.J.S.A. 17:22-6.75(2). The surplus lines agent shall collect from the insured and forward to the Fund the amount of the surcharge on a quarterly payment basis.

(c) The surplus lines agent or insured shall determine the premium and surcharge properly allocable to risks or exposures located in this State by using the method of allocation according to the Allocation Schedule set forth in the Appendix to this subchapter, which is hereby incorporated by reference, which pertains to the classification describing the coverage.

(d) If the Allocation Schedule does not identify a classification appropriate to the property or risk located in this State, the surplus lines agent or insured shall use an alternative equitable method of allocation for the property or risk.

(e) If a policy covers more than one classification:

1. For any portion of the coverage identified by a classification on the Allocation Schedule, the tax shall be computed using the Allocation Schedule for the corresponding portion of the premiums.

2. For any portion of the coverage not identified by a classification on the Allocation Schedule, the tax shall be computed as set forth in (d) above.

3. For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation that pertains to the classification on the Allocation Schedule describing the predominant coverage.

(f) If, in the opinion of the Commissioner, the information provided by the surplus lines agent or insured is insufficient to support its method of allocation, or if the Commissioner determines that the method used is incorrect, the Commissioner shall determine an equitable and appropriate method of allocation as follows:

1. If the Allocation Schedule identifies a classification appropriate to the coverage, the Commissioner shall use the method of allocation as set forth in (c) above.

2. If the Allocation Schedule does not identify the classification appropriate to the coverage, the Commissioner, in determining an alternate method of allocation, shall give significant weight to documented evidence of the underwriting exposure basis and any other criteria used by the insurer to determine the policy premium. The Commissioner may also consider other available information to the extent he or she finds the information sufficient and relevant, including, but not limited to, the following:

- i. The percentage of the insured's physical assets in this State;
- ii. The percentage of the insured's employee payroll in this State;
- iii. The percentage of the insured's sales in this State; and
- iv. The amount of premium tax paid to another jurisdiction.

(g) The listing of any coverage of insurance in the Allocation Schedule shall not mean that such coverage has been deemed by

the Commissioner as eligible for export. No coverage shall be eligible for export unless the conditions set forth in N.J.S.A. 17:22-6.43 are satisfied.

11:2-34.4 Duty to file allocation form

(a) The surplus lines agent shall file a copy of the work sheets which show the method of allocation when it employs an alternative method of allocation to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.57 and 6.58 and all renewals, until such time as a different method is approved and filed.

(b) The insured or self-insured shall file a copy of the allocation form when it employs an alternative method of allocation to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.64 and 6.65, and all renewals, until such time the alternative method is approved and filed.

11:2-34.5 Duty to keep records

(a) The surplus lines agent shall maintain records concerning the method used to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.57 and 6.58, including those records as indicated in the allocation schedule, and all renewals, for a period not less than three years.

(b) The insured or self insured shall maintain records concerning the method used to compute the surplus lines insurance premium tax in accordance with N.J.S.A. 17:22-6.64 and 6.65, including those records as indicated in the allocation schedule, and all renewals, for a period not less than three years.

(c) These records shall be available for review by the Department at all times and copies shall be provided to the Surplus Lines Examining Office of the Department, upon request, at any time during the period of retention.

11:2-34.6 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law including, but not limited to, N.J.S.A. 17:22-6.61, 6.64 and 6.76.

APPENDIX

SURPLUS LINES PREMIUM TAX AND ALLOCATION SCHEDULE

Criteria for Tax Allocation of Multi-State Risks

CLASSIFICATION	ALLOCATED TO NEW JERSEY BY
PROPERTY INSURANCE	
Real Property (including buildings and other permanent additions)	Insured value of structures and other property in New Jersey
Personal Property (including inland marine)	Insured value of property permanently or principally situated in New Jersey
Business Interruption, Time Element or similar time valued coverages	Insured time valued elements in New Jersey
Farmowners, Homeowners and Businessowners (BOP)	Insured value of structures and other property in New Jersey
Aircraft	Insured value of aircraft principally hangared in New Jersey
Motor Vehicle	Insured value of motor vehicles principally garaged in New Jersey
Kidnap and Ransom	Number of insured employees principally employed in New Jersey
Ocean Marine	None to New Jersey
FIDELITY AND SURETY	
Fidelity, Forgery and other Indemnity Bonds	Number of insured employees in New Jersey
Bankers Blanket Bonds	Number of insured employees in New Jersey
Performance Bonds	Total bond value of contracts in New Jersey
Other Surety Bonds	Total bond value of contracts in New Jersey
CREDIT INSURANCE	
Credit Insurance	Value of insured debt in New Jersey
RESIDUAL VALUE INSURANCE	
Residual Value Insurance	Allocate to value of underlying property
LIABILITY INSURANCE	
Manufacturers and Contractors	Payroll in New Jersey
Premises Operations	Square footage of premises in New Jersey

Owners and Contractors Protective Products
 Completed Operations
 Child Care
 Contractual
 Recreational
 Environmental Impairment
 Asbestos Abatement
 Employee/Member Benefit Program
 Special Events
 Professional Liability
 Errors and Omissions
 Directors and Officers:
 For-profit organization
 Not-for-profit organization
 Hospital, Nursing Home and Adult Home
 Liquor Liability
 Railroad Protective
 Aircraft
 Motor Vehicle
 Umbrella
 Excess Liability
 Comprehensive General Liability

Cost of contract in New Jersey
 Number of units manufactured in New Jersey
 Receipts in New Jersey
 Number of children in New Jersey
 If "stand alone" policy, value of sales in New Jersey
 Amount of gate receipts in New Jersey
 Number of units of exposure in New Jersey
 Payroll in New Jersey
 Number of employees/members in New Jersey
 Number of events in New Jersey
 Number of named insureds in New Jersey
 Revenues generated in New Jersey
 Revenues generated in New Jersey
 Number of employees
 Headquartered in New Jersey
 Number of beds in New Jersey plus one additional bed for each 100 outpatient visits at locations in New Jersey
 Receipts from sales of alcoholic beverages in New Jersey
 Miles of track in New Jersey
 Number of aircraft principally hangared in New Jersey
 Number of motor vehicles principally garaged in New Jersey
 Classification of predominant coverage; except if underlying coverages are divisible, then use underlying classifications
 If directly over primary, use underlying classifications. If over umbrella, use method for "umbrella" coverage
 Composite Rated Exposure based allocated to New Jersey

(a)

DIVISION OF PROPERTY AND CASUALTY

Automobile Insurance

Reporting Financial Disclosure and Excess Profits, Profits Report; Standard Limiting Effect of Negative Excess Investment Income in the Computation of Excess Profits, Standard on the Investment of Policyholder-Supplied Funds

Proposed Amendments: N.J.A.C. 11:3-20.5 and 20A.1

Authorized By: Samuel F. Fortunato, Commissioner,
 Department of Insurance.
 Authority: N.J.S.A. 17:1C-6(e); 17:29A-1 et seq.; and 17:33B-1 et seq.
 Proposal Number: PRN 1993-266.

Submit comments by June 2, 1993 to:
 Verice M. Mason
 Assistant Commissioner
 Legislative and Regulatory Affairs
 New Jersey Department of Insurance
 CN 325
 Trenton, NJ 08625-0325

The agency proposal follows:

Summary

The Department of Insurance ("Department") is proposing two amendments to its rules regarding the filing of excess profits reports. The proposed amendment to N.J.A.C. 11:3-20.5 establishes procedures by which New Jersey personal private passenger automobile insurers ("insurers") may reflect in their excess profits reports amounts paid by insurers as their apportionment share of the Market Transition Facility of New Jersey ("MTF") operational expenses and losses.

In accordance with the Fair Automobile Insurance Reform Act of 1990 and the MTF Plan of Operation (the "plan"), the Commissioner of Insurance ("Commissioner") has notified insurers of their apportioned share of the operating losses of the MTF for the first year. Some insurers have already paid a part of their apportioned share of losses, while others will make such payments to the MTF in the future. The proposed

amendment to N.J.A.C. 11:3-20.5 clarifies the manner in which insurer's payments to the MTF are to be treated for purposes of reporting excess profits.

In accordance with N.J.S.A. 17:29A-5.7, insurers are required to annually file with the Commissioner on or before July 1 of each year, a profits report. Excess profits are to be determined in accordance with N.J.S.A. 17:29A-5.8 and N.J.A.C. 11:3-20.5 and are to be refunded or credited in accordance with N.J.S.A. 17:29A-5.12 and N.J.A.C. 11:3-20.8.

This proposed amendment permits an insurer to reflect, as an expense, the net amount that it has paid to the MTF during the previous year or the net amount that the insurer has been ordered to pay as its apportioned share of MTF operating losses (the "cash call"). The "net amount paid to the MTF" includes only the exact amounts paid to the MTF pursuant to N.J.S.A. 17:33B-11d or those amounts the insurer has been ordered to pay pursuant to a "cash call," less any amount recovered by the insurer from policyholders pursuant to N.J.A.C. 11:3-16.12. Insurers shall reflect the payment only once, either at the time they are ordered to make payment or at the time payment is actually made.

This proposed amendment incorporates changes in Exhibit Ten to the Appendix. The exhibit incorporates information reflecting net amounts paid to the MTF in the calculation of excess profits.

As currently drafted, the rules governing excess profits do not address payments made to the MTF. Payments which are to be made by insurers to the MTF pursuant to N.J.S.A. 17:33B-11d are only temporary in nature. The Commissioner has, therefore, determined that the simple and efficient method to report payments to the MTF which is set forth in this amendment is appropriate.

The proposed amendment to N.J.A.C. 11:3-20A.1, the standard limiting the effect of negative excess investment income in the computation of excess profits, reflects the recent decline in interest rates. The section requires insurers to use either the actual ratio calculated in Exhibit Eight, Part One-A, or a ratio prescribed by the Department to complete Item 7 of Exhibit Eight, Part One-A (see appendix to N.J.A.C. 11:3-20), whichever is higher, when calculating the ratio on the investment of policyholder-supplied funds. The ratio prescribed by the Department has been changed to .080 from .090 based on a review of Moody's seasoned AAA corporate bond rate over three years. This amendment reflects that an eight percent return on investment income can reasonably be expected for the three years ending December 31, 1992.

Social Impact

The proposed amendment to N.J.A.C. 11:3-20.5 establishes the process by which an insurer may report its apportioned share of MTF losses in its excess profits report. The amendment affects insurers and the Department. Insurers will be afforded the opportunity to report payments made to the MTF in a simple, efficient manner. The Department's review of such information will also be simplified.

The implementation of the decrease in the ratio limiting the effect on negative excess investment income in the computation of excess profits at N.J.A.C. 11:3-20A.1 improves the accuracy of excess profits reports by reflecting recent trends in interest rates.

Economic Impact

The proposed amendment to N.J.A.C. 11:3-20.5 will have an impact on personal private passenger automobile insurers and the Department. Insurers will incur minimal expenses as a result of incorporating the additional information required on amended Exhibit Ten to reflect net amounts paid to the MTF. Insurers will, however, realize an economic benefit from reporting this information and shall do so in a simple, efficient way.

The Department will be required to review the additional information submitted with the excess profit reports. Any effect will, however, be minimal as this data is a minor addition to the report presently required.

Policyholders will not be affected by these added procedures since insurers would be able to reflect these paid amounts in their excess profits reports by other means, if not as provided in these proposed rules.

The amendment to N.J.A.C. 11:3-20A.1 will properly reflect the recent decline in interest rates. The change in the ratio, therefore, reflects a decrease in the amount of investment income earned by insurers. Any resultant impact on policyholders is expected to be *de minimus* in nature.

Regulatory Flexibility Analysis

A few automobile insurers are considered "small businesses" as defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-17. These proposed amendments apply to all insurers regardless of size.

The proposed amendment to N.J.A.C. 11:3-20.5 establishes procedures by which an insurer may reflect as an expense amounts paid to the MTF in calculating its excess profits. It provides the form and procedure to be followed as a minor addition to an existing reporting requirement. The implementation of this amendment will ultimately inure to the benefit of the insurers by accurately reporting payments made to the MTF in excess profits reports.

The amendment to N.J.A.C. 11:3-20A.1 does not add any additional or new recordkeeping or reporting requirements. It is merely a change in a number in a formula which is currently in effect, necessary in order to reflect a decrease in insurers' investment income.

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

11:3-20.5 Profits report

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

(g) An insurer may reflect as an expense the net amounts paid to the MTF in calculating its excess profits. The expense shall be reported in the "BI Liability and Uninsured/Underinsured Motorists Coverages" of Exhibit Ten in the Appendix.

1. The net amounts paid to the MTF includes only payments actually made by the insurer to the MTF, which are to be credited as all or part of the insurer's apportionment share of MTF losses pursuant to N.J.S.A. 17:33B-11d and the MTF Plan of Operation, including any payment made on account of the insurer's liability

or in response to an Order of the Commissioner directing that payment be made, less any amount recovered by the insurer from policyholders pursuant to N.J.A.C. 11:3-16.12.

2. If an insurer makes a payment to the MTF pursuant to Article XIV, section 5 of the MTF Plan of Operation prior to the issuance of an Order of the Commissioner directing payment, the insurer may reflect the payment either in the year when paid or in the year when payment is due pursuant to the Order of the Commissioner.

APPENDIX

EXCESS PROFIT EXHIBITS—INSTRUCTIONS

... Exhibit Ten uses the data developed in Exhibits One through Nine to calculate excess profits.

The sources of data for Exhibit Ten follow.

Item 1: Direct Calendar Year Written Premium, Exhibit One, Item 12.

Item 2: Direct Calendar Year Earned Premium, Exhibit One, Item 12.

Item 2A: Exhibit Nine—Part Three, Col. (3).

Item 2B: AIRE Charges are the amounts the filer is assessed, according to N.J.S.A. 39:6A-22. The calendar/accident year in which an AIRE charge is assigned is the calendar year in which the filer is informed of the AIRE charge and not the calendar year in which the filer pays the AIRE charge, if different.

Item 2D: MTF Policyholder surcharge collected (to be reported only on the "BI Liability and Uninsured/Underinsured Motorists Coverages" and "Total" Exhibits.

Item 2E: Apportioned share of MTF operating loss paid (to be reported only on the "BI Liability and Uninsured/Underinsured Motorists Coverages" and "Total" Exhibits.

Item 3: For BI Liability and Uninsured/Underinsured Motorists and PIP, "Ultimate Incurred", per Exhibit Five—Part Three, Col. (3). For Property Damage Liability and Physical Damage, "Ultimate Incurred", per Exhibit Six—Part Three, Col. (3).

Item 5: Exhibit Seven—Part Two.

Item 7: Exhibit Seven—Part Two.

Item 9: Exhibit Seven—Part Two.

Item 11: Exhibit Seven—Part Two.

Item 13: Exhibit One—Item 12B.

Item 14: Exhibit One, Item 12A.

Item 18: Insurer's filed and approved allowance for profits and contingencies in the filer's approved rate filing, and expressed as a ratio, and multiplied by the earned premium stated in Item 2.

Item 19 = Item 17 - Item 18.

Item 20: Exhibit Five—Part Seven, Total, Col. (3), for BI Liability and Uninsured/Underinsured Motorists and PIP; Exhibit Six—Part Seven, Col. (3), for Property Damage Liability and Physical Damage.

Item 21 = Item 19 - Item 20.

Item 22: Exhibit Eight—Part Two, Item 5.

Item 24 = Item 21 + Item 22 - Item 23.

Item 25 is $.005 \times$ Item 2 for a filer that is a member of a holding company system, and 0 for all other filers.

Item 26 is Item 24 minus Item 25.

Exhibit Eleven must be completed for calendar years 1988, 1989 and 1990.

Item 1 states what PIP losses would have been without the portion that is assumed by the UCJF.

Items 2, 3, 4, and 5 are self-explanatory.

...

Exhibit Ten
Excess Profit Calculation

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

	1988	1989	1990	Three Year Total
Item 1: Direct Calendar Year Written Premium	_____	_____	_____	_____
Item 2: Direct Calendar Year Earned Premium	_____	_____	_____	_____
Item 2A: AIRE Compensation, Developed to Ultimate	_____	_____	_____	_____
Item 2B: AIRE Charges	_____	_____	_____	_____
Item 2C: Item 2A - Item 2B	_____	_____	_____	_____
Item 2D: MTF Policyholder Surcharge Collected	_____	_____	_____	_____
Item 2E: Apportioned Share of the MTF Operating Loss Paid	_____	_____	_____	_____
Item 2F: Item 2D - Item 2E	_____	_____	_____	_____
Item 3: Direct Calendar/Accident Year Losses and Loss Adjustment Expenses Incurred, Developed to Ultimate	_____	_____	_____	_____
Item 4: Item 3 as a Ratio to Item 2	_____	_____	_____	_____
Item 5: Direct Commission and Brokerage Fees Incurred	_____	_____	_____	_____
Item 6: Item 5 as a Ratio to Item 1	_____	_____	_____	_____
Item 7: Direct Other Acquisition, Field Supervision and Collection Expenses Incurred	_____	_____	_____	_____
Item 8: Item 7 as a Ratio to Item 1	_____	_____	_____	_____
Item 9: Direct General Expenses Incurred	_____	_____	_____	_____
Item 10: Item 9 as a Ratio to Item 2	_____	_____	_____	_____
Item 11: Direct Taxes, Licenses and Fees Incurred	_____	_____	_____	_____
Item 12: Item 11 as a Ratio to Item 1	_____	_____	_____	_____
Item 13: Direct Policyholder Dividends Other Than Excess Profits, Refunds or Credits Incurred	_____	_____	_____	_____
Item 14: Credit or Refund of Excess Profits	_____	_____	_____	_____
Item 15: Subtotal Item 13 + Item 14	_____	_____	_____	_____
Item 16: Item 15 as a Ratio to Item 2	_____	_____	_____	_____
Item 17: Underwriting Income = Item 2 + Item 2A + Item 2D - Item 2B - Item 2E - Item 3 - Item 5 - Item 7 - Item 9 - Item 11 - Item 15	_____	_____	_____	_____
Item 18: Allowance for Profit and Contingencies	_____	_____	_____	_____
Item 19: Actuarial Gain	_____	_____	_____	_____
Item 20: Total Development Adjustment	X	X	X	_____
Item 21: Total Actuarial Gain	X	X	X	_____
Item 22: Excess Investment Income	_____	_____	_____	_____
Item 23: Item Two times .025	_____	_____	_____	_____
Item 24: Excess Profit	X	X	X	_____
Item 25: Non-excessive Subsidization (.005 times Item 2)	X	X	X	_____
Item 26: Excessive Subsidization	X	X	X	_____

11:3-20A.1 Standard on the investment of policyholder-supplied funds

To complete Item 7 of Exhibit Eight, Part One-A (see N.J.A.C. 11:3-20 Appendix), an insurer filing an excess profits report, in accordance with N.J.A.C. 11:3-20, shall use a ratio of [.090] .080, or the actual ratio calculated in Exhibit Eight, Part One-A, whichever is higher.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Carnival-Amusement Rides

Proposed Readoption with Amendments: N.J.A.C. 12:195

Authorized By: Raymond L. Bramucci, Commissioner,
Department of Labor.

Authority: N.J.S.A. 5:3-31 et seq., specifically N.J.S.A. 5:3-36.

Proposal Number: PRN 1993-267.

Submit written comments by June 2, 1993 to:

Linda Flores
Special Assistant for External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The Carnival-Amusement Rides Safety Act, N.J.S.A. 5:3-31 et seq., mandates that the Department of Labor adopt rules for the safe installation, repair, maintenance, use, operation and inspection of all amusement rides for the protection of the public.

The chapter on Carnival-Amusement Rides, N.J.A.C. 12:195, was originally adopted in 1975. Pursuant to Executive Order No. 66(1978), the chapter is scheduled to expire on June 24, 1993. The Department of Labor has reviewed the rules proposed for readoption and determined them to be necessary, adequate, reasonable, efficient, understandable, and responsive to the purpose for which they were promulgated, namely, the safe operation of amusement rides for the protection of the public.

The rules were subsequently amended on August 1, 1978, May 1, 1979, June 16, 1986, July 16, 1988, and December 16, 1991 to reflect amendments to the Act, update references, improve organization of the requirements, and other concerns. The most recent amendment in December 1991 increased the inspection fee for the first time since the original adoption of the Act and the rules.

The chapter provides a set of standards for both the industry and the Division. The chapter codifies the purpose of the Act, and enables the Division of Workplace Standards to administer an effective, stable, viable and effective regulatory system for the safety of the public.

This chapter consists of six subchapters.

Subchapter 1, General Provisions, discusses the purpose and scope of the subchapter and sets forth the rules relating to the administration, maintenance and inspection of records, fees, reporting and insurance required in order to operate carnival and amusement rides.

Subchapter 2 sets forth the definition of words and terms used in the chapter.

Subchapter 3 addresses the design and construction standards necessary for the safe operation of amusement and carnival rides. It includes requirements regulating entry onto and discharge from each ride; access and egress from the amusement ride area; emergency brakes and other protective devices, parts and systems; testing; assembly and disassembly of rides; lighting and water quality; voice communication and amusement ride identification, including manufacturer's information; and fire prevention.

Subchapter 4 addresses the safety construction standards governing buildings and structures which are part of an amusement ride.

Subchapter 5 deals with the rules for the safe operation, use and inspection of rides.

Finally, subchapter 6 lists the standards and publications referred to in the chapter.

The Department has proposed only technical changes, that is, the updating of the citations to certain referenced consensus standards; the substance of the rules remains the same.

Social Impact

Carnival rides are a significant part of the New Jersey tourism industry, which caters to both the citizens of the State as well as visitors to the State.

The readoption of the rules will ensure a positive social impact by assuring the general public and the industry that operators of carnival and amusement rides provide rides which meet established safety standards. By requiring operators to adhere to safe and prudent procedures in the routine operation of each and all of the rides within the scope of these regulations, the general public will continue to patronize carnival and amusement rides.

Failure to readopt these rules will result in the citizens of the State, visitors and tourists being left unprotected against lapses in the safe operation of carnival rides and will ultimately harm the tourist industry in the State.

Economic Impact

The rules governing carnival-amusement rides have provided for effective procedures for the safe operation of amusement rides in the State, thereby encouraging the continued viability of the industry. The rules have maintained a Statewide uniformity of licensing and regulation. Failure to readopt rules providing for the annual licensing and certification of carnival rides would cause economic disruption to the industry and the local communities.

The rules proposed for readoption impact economically on the amusement ride industry by setting forth at N.J.A.C. 12:195-1.9 the application process for the individual ride permits, including the requisite fees for the inspection and permitting of each ride. Also, the requisite type of insurance, bond or other security required is addressed at N.J.A.C. 12:195-1.14. The current inspection fees were adopted in December 1991. The development of the rules containing the new fee schedule was accomplished in conjunction with the Advisory Board on Carnival-Amusement Ride Safety organized by statute pursuant to N.J.S.A. 5:3-33.

Regulatory Flexibility Analysis

The rules proposed for readoption impose compliance requirements on owners of carnival-amusement rides, the large majority of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. By definition, therefore, the rules are tailored to the capabilities of the small business. The reporting, recordkeeping and compliance requirements, although comprehensive, are the minimum necessary to insure the safety and protection of the public which may otherwise be at risk of serious injury if less stringent requirements are imposed. The proposed readoption of the rules do not add any additional reporting, recordkeeping or other requirements than those which have historically been deemed necessary. Moreover, the requirements impose no need for professional services to be employed in preparation of forms, recordkeeping or other similar requirements. The uniform fees are imposed in the interest of public safety, and fairly distribute costs among carnival and amusement ride owners, the vast majority of which are small businesses.

Full text of the proposed readoption appears in New Jersey Administrative Code at N.J.A.C. 12:195.

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

12:195-1.4 Documents referred to by reference

(a) (No change.)

(b) The standards listed below have been utilized in the development of this rule, when appropriate:

1. ASTM F698-[1983] **1988**, Physical Information to be provided for Amusement Rides and Devices;
2. ASTM F747-[1986] **1989**, Definitions of Terms Relating to Amusement Rides and Devices;
3. ASTM F770-[1982] **1988**, Practice for Operation Procedures for Amusement Rides and Devices;
4. ASTM F846-[1986] **1992**, Guide for Testing Performance of Amusement Rides and Devices;

- 5. ASTM F853-[1986] 1991, Practice for Maintenance Procedures for Amusement Rides and Devices; and
- 6. (No change.)

12:195-6.1 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter is as follows:

- 1. (No change.)
- 2. ASTM F698-[1983] 1988, Physical Information to be provided for Amusement Rides and Devices;
- 3. ASTM F747-[1986] 1989, Definitions of Terms Relating to Amusement Rides and Devices;
- 4. ASTM F770-[1982] 1988, Practice for Operation Procedures for Amusement Rides and Devices;
- 5. ASTM F846-[1986] 1992, Guide for Testing Performance of Amusement Rides and Devices;
- 6. ASTM F853-[1986] 1991, Practice for Maintenance Procedures for Amusement Rides and Devices;
- 7.-14. (No change.)

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF DENTISTRY

Patient Records

Proposed Repeal and New Rule: N.J.A.C. 13:30-8.7

Authorized By: State Board of Dentistry, Jerome M. Horowitz, D.D.S., President.

Authority: N.J.S.A. 45:6-3 and 45:6-19.4.

Proposal Number: PRN 1993-262.

Submit written comments by June 2, 1993 to:

Agnes Clarke, Executive Director
State Board of Dentistry
124 Halsey Street, 6th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

The State Board of Dentistry is proposing a new rule, N.J.A.C. 13:30-8.7, Patient records. The Board's prior rule concerning patient records will be repealed in its entirety and replaced with the new rule. The rule is intended to provide Board licensees with minimum requirements for the creation, maintenance and transfer of patient records and to create uniformity in the profession with regard to recordkeeping.

Subsection (a) sets forth in specific detail the information required to appear on treatment records and financial records as well as on radiographs and other diagnostic models. Pursuant to subsection (b), all patient records must be maintained for at least seven years from the date of the last entry. Provisions for the release of records to the patient or another designee are set forth in subsection (c). Such records must be provided within 14 days of a written request, and the licensee may charge a reasonable fee to recover the cost of copying. Subsection (d) sets forth the general rules that all patient records must be protected from unwarranted disclosure and details two exceptions to this general rule. The provisions of subsection (e) concern the licensee's obligations in regard to patient records when he or she ceases to engage in practice or anticipates remaining out of practice for more than six months. The final subsection of the rule provides that the general requirements in regard to patient records will not apply when professional services are rendered upon request of a third party for the purpose of examination and evaluation only or when consultation services of a dentist are requested by the Board.

Social Impact

The proposed new rule will benefit the dental patient in several respects. First, to the extent the patient's record may be reviewed by consultants, subsequent treating dentists or other evaluators, the record will be clear and complete. Furthermore, the provisions regarding timely release of records to the patient or another designated health care provider should ensure that the patient has ready access to his or her records. This is particularly important when the patient's continued care

is contingent upon receipt of the records. The rule also protects the patient against unwarranted disclosure of the contents of his or her records. Finally, the Board has noted that patients often have a great deal of difficulty obtaining their records when the treating dentist ceases to engage in practice or remains out of practice for a period of time. To alleviate this problem, the rule sets forth procedures for the care and handling of patient records under these circumstances.

The proposed new rule also will benefit licensees who will be clearly advised of the Board's requirements for the creation, maintenance and transfer of patient records. The Board of Dentistry will benefit from the proposed rule in that the Board will be better able to fulfill its statutory duty to protect the public health, safety and welfare by ensuring consistency and uniformity in the preparation and maintenance of complete and comprehensive patient records.

Economic Impact

The economic impact for licensees from the proposed new rule includes the expenditure of time required to include certain minimum information on all treatment records and financial forms. The Board anticipates that this recordkeeping will require only a small percentage of the dentist's time. The majority of the profession already prepare and maintain records according to the provisions set forth in this new rule. Therefore, the economic impact of the rule upon licensees should be minimal.

A licensee whose practice is unattended either because the licensee ceases to practice or remains out of the practice for more than six months will incur the expense of direct notification of patients and publishing a newspaper notice of the procedure for record retrieval. The notice must be published at least once each month for the first three months the practice is unattended.

The only expense the rule may create for the dental patient is a reasonable fee for the photocopying of the patient's record when it is requested. The Board does not expect any increase in dental costs because of the proposed rule.

Regulatory Flexibility Analysis

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

The proposed new rule will apply to approximately 10,000 licensees of the Board of Dentistry. Compliance requirements relate to the creation, maintenance, disclosure and transfer of patient records as well as the proper response to requests for information regarding a patient's medical history. Since the intent of the rule is to create uniformity in the profession with regard to recordkeeping and to ensure the preparation of clear and complete records for the benefit of the patient, the rule must be uniformly applicable to all licensees without differentiation as to size of practice. In any case, dentists always have been required to create and maintain clear and complete patient records. The proposed rule clarifies and specifies the requirements for maintaining patient records but requires no greater amount of recordkeeping. No additional services beyond those of the licensee's regular office staff will be needed in order to comply with the new rule.

Full text of the proposed repeal may be found at N.J.A.C. 13:30-8.7.

Full text of the proposed new rule follows:

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.

(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.

(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.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

**Speed Limits
Route U.S. 9 in Ocean County**

Proposed Amendment: N.J.A.C. 16:28-1.41

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 39:4-98.

Proposal Number: PRN 1993-244.

Submit comments by June 2, 1993 to:

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

The agency proposal follows:

Summary

The proposed amendment will establish revised "speed limit" zones along Route U.S. 9 in Berkeley Township and Pine Beach Borough, Ocean County for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local government, in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of the revised "speed limit" zones along Route U.S. 9 in Berkeley Township and Pine Beach Borough, Ocean County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.41 based upon the request from the local government, and the traffic investigation.

Social Impact

The proposed amendment will establish revised "speed limit" zones along Route U.S. 9 in Berkeley Township and Pine Beach Borough, Ocean County for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" 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 Violation 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 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]):

16:28-1.41 Route U.S. 9

(a) (No change.)

(b) The rate of speed designated for **the certain parts** of State highway Route U.S. 9[,] (and excluding Garden State Parkway Authority sections) described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1.-17. (No change.)

18. 35 miles per hour [to] **between Lakeside Drive and 800 feet north of Lacey Road, Lacey Township (approximate milepost 81.10 to [81.72] 83.94);** thence

[19. 45 miles per hour to Berkeley Township, southerly Pine Beach Borough Line (Avon Road), (milepost 88.76); thence

20. 35 miles per hour to northerly Pine Beach Borough-Beachwood Borough Line (Mizzen Avenue) to Route 166 in Beachwood Borough (milepost 89.60); thence]

19. 45 miles per hour between the Lacey Township-Berkeley Township line (Cedar Creek) and 350 feet south of John F. Kennedy Boulevard (approximate mileposts 83.94 to 88.63); thence

20. 35 miles per hour between 350 feet south of John F. Kennedy Boulevard and the Berkeley Township-Pine Beach Borough, Blackwood Borough line (Mizzen Avenue) (approximate mileposts 88.63 to 89.45); thence

21.-32. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Routes N.J. 57 in Warren County and N.J. 77 in Cumberland County

Proposed Amendments: N.J.A.C. 16:28A-1.36 and 1.41

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 1993-259.

Submit comments by June 2, 1993 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.36 to establish a "no stopping or standing" zone along Route N.J. 57 in the Borough of Washington, Warren County; and amend N.J.A.C. 16:28A-1.41 to establish revised "no stopping or standing" and "no parking bus stop" zones along Route N.J. 77 in the City of Bridgeton, Cumberland 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 requests of the Borough of Washington and the City of Bridgeton (by Resolution No. 67-92 adopted October 20, 1992), and as part of the Department's on-going review of current conditions. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of a "no stopping or standing" zone along Route N.J. 57 in the Borough of Washington, Warren County and revised "no stopping or standing" and "no parking bus stop" zones along Route N.J. 77 in the City of Bridgeton, Cumberland County were warranted.

N.J.A.C. 16:28A-1.36 was amended at subsection (c) to delete the "no stopping or standing during certain hours," because of the local government's request to extend the restriction to N.J. 31-57 Connector, including all ramps and connections thereto. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendments will establish parking restrictions along Routes N.J. 57 in Washington Borough, Warren County and N.J. 77 in the City of Bridgeton, Cumberland County to 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 government will bear the costs for the installation of the "no parking bus stop" zone signs, and the Department will bear the costs for "no stopping or standing" 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 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-1.36 Route 57

(a) The certain parts of State highway Route 57 described in this subsection are designated and established as "no stopping or standing" zones[:] **where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.**

1.-2. (No change.)

3. No stopping or standing in Washington Borough, Warren County:

i.-ii. (No change.)

iii. **Along the north side:**

(1) From the easterly curb line of Route N.J. 31 to the westerly curb line of the Boulevard (N.J. 31-57 Connector), including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act and N.J.A.C. 1:30.

4.-6. (No change.)

(b) (No change.)

[(c) The certain parts of State highway Route 57 described in this subsection are designated and established as "no stopping or standing during certain hours" zones where stopping or standing is prohibited as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs.

1. No stopping or standing during certain hours in Washington Borough, Warren County:

i. Along the north side:

(1) From the easterly curb line of Route 31 to the westerly curb line of the Boulevard between 7:00 A.M. to 10:00 A.M. and 3:00 P.M. to 6:00 P.M.]

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

16:28A-1.41 Route 77

(a) The certain parts of State highway Route 77 described in this subsection shall be designated and established as "no stopping or standing" zones.

1. No stopping or standing in Cumberland County:

i. In the City of Bridgeton:

(A)-(B) (No change.)

(C) Beginning at the southerly curb line of Highland Avenue to a point 149 feet south [of Bridgeton Avenue] **therefrom.**

(D) Beginning at the northerly curb line of American Avenue to a point [50] **115** feet north therefrom.

(E) Beginning at the northerly curb line of Monroe Street to a point [93] **71** feet north therefrom.

(F) Beginning at the northerly curb line of Penn Street to a point [71] **163** feet north therefrom.

(G)-(H) (No change.)

[(I)] Beginning at the northerly curbline of Myrtle Street to a point 60 feet north therefrom.

(J) Beginning at the southerly curbline of Myrtle Street to a point 50 feet south therefrom.]

[(K)](I) Beginning at a point 120 feet north of the northerly curb line of Irving Avenue to a point 130 feet south of the southerly curb line of Irving Avenue.

Recodify existing (L)-(N) as (J)-(L) (No change in text.)

[(O)] Beginning at the southerly curbline of East Commerce Street to Route N.J. 49.

(P) Monday through Friday—beginning at the southerly curbline of Morton Street to a point 100 feet south therefrom.]

(2) Northbound on the easterly side:

[(A)] From Route N.J. 49 to a point 100 feet north of the northerly curb line of E. Commerce Street.]

Recodify existing (B)-(C) as (A)-(B) (No change in text.)

[(D)](C) From a point 125 feet south of the southerly curb line of [Irvington] Irving Avenue to a point 70 feet north of the northerly curb line of [Irvington] Irving Avenue.

[(E)](D) (No change in text.)

[(F)] Beginning at the southerly curb line of Orchard Street to a point 100 feet south therefrom.]

Recodify existing (G)-(J) as (E)-(H) (No change in text.)

[(K)] From the northerly curbline of Cumberland Avenue to a point 150 feet north of the northerly curbline of Rosenhayn Avenue.

(L) From a point 90 feet south of the southerly prolongation of Mulford Drive to the Upper Deerfield Township line.]

2.-5. (No change.)

(b) The certain parts of State highway Route 77 described in this subsection shall be designated and established as "no parking 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 established bus stops:

1. In the City of Bridgeton, Cumberland County:

i. Along the southbound (westerly) side:

(1) Far side bus [stop] stops:

(A) (No change.)

(B) North Street—Beginning at the southerly curb line of North Street and extending 105 feet southerly therefrom.

(C) Irving Avenue—Beginning at the southerly curb line of Irving Avenue and extending 105 feet southerly therefrom.

(D) Commerce Street—Beginning at the southerly curb line of Commerce Street and extending 105 feet southerly therefrom.

(2) Near side bus stops:

(A) Mulford Drive—Beginning at the northerly curb line of Mulford Drive and extending 105 feet northerly therefrom.

(B) Highland Avenue—Beginning at the northerly curb line of Highland Avenue and extending 105 feet northerly therefrom.

(C) Cumberland Avenue—Beginning at the northerly curb line of Cumberland Avenue and extending 105 feet northerly therefrom.

(D) Monroe Street—Beginning at the northerly curb line of Monroe Street and extending 105 feet northerly therefrom.

(E) Penn Street—Beginning at the northerly curb line of Penn Street and extending 105 feet northerly therefrom.

(F) Morton Street—Beginning at the northerly curb line of Morton Street and extending 105 feet northerly therefrom.

[(ii)] Along (Pearl) northbound (easterly) side:

(1) Far side bus stop:

(A) Washington Street—Beginning at the northerly curb line of Washington Street and extending 100 feet northerly therefrom.

(2) Near side bus stop:

(A) Irving Avenue—Beginning at the southerly curb line of Irving Avenue and extending 105 feet southerly therefrom.

[(iii)] Along (Pearl) southbound (westerly) side:

(1) Near side bus stops:

(A) Irving Avenue—Beginning at the northerly curb line of Irving Avenue and extending 105 feet northerly therefrom.

(B) Washington Street—Beginning at the northerly curb line of Washington Street and extending 105 feet northerly therefrom.]

[(ii)] Along the northbound (easterly) side:

(1) Far side bus stops:

(A) Commerce Street—Beginning at the northerly curb line of Commerce Street and extending 105 feet northerly therefrom.

(B) Washington Street—Beginning at the northerly curb line of Washington Street and extending 105 feet northerly therefrom.

(C) Myrtle Street—Beginning at the northerly curb line of Myrtle Street and extending 105 feet northerly therefrom.

(D) Highland Avenue—Beginning at the northerly curb line of Highland Avenue and extending 105 feet northerly therefrom.

(E) Mulford Drive—Beginning at the northerly curb line of Mulford Drive and extending 105 feet northerly therefrom.

(2) Near side bus stops:

(A) Irving Avenue—Beginning at the southerly curb line of Irving Avenue and extending 105 feet southerly therefrom.

(B) Orchard Street—Beginning at the southerly curb line of Orchard Street and extending 105 feet southerly therefrom.

(C) Seibel Street—Beginning at the southerly curb line of Seibel Street and extending 105 feet southerly therefrom.

(D) Penn Street—Beginning at the southerly curb line of Penn Street and extending 105 feet southerly therefrom.

(E) Cumberland Avenue—Beginning at the southerly curb line of Cumberland Avenue and extending 105 feet southerly therefrom.

2.-4. (No change.)

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping

Routes N.J. 28 in Somerset County and N.J. 56 in Salem County

Proposed Amendments: N.J.A.C. 16:28A-1.19 and 1.98

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, 39:4-197.4, 39:4-197.5, 39:4-198 and 39:4-199.

Proposal Number: PRN 1993-249.

Submit comments by June 2, 1993 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.19 to establish "handicapped parking spaces," "time limit parking," "angle parking and time limit parking," "no parking certain hours,

trucks only" and "no parking certain hours" zones along Route N.J. 28 in the Borough of Somerville, Somerset County; and to amend N.J.A.C. 16:28A-1.98 to establish a "no stopping or standing" zone along Route N.J. 56 in Pittsgrove Township, Salem 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 requests of the local governments of the Borough of Somerville by Resolution No. 2, adopted November 11, 1992, and Pittsgrove Township by Resolution No. 92-60, adopted June 10, 1992, and as part of the Department's on-going review of current conditions. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of "handicapped parking spaces," "time limit parking," "angle parking and time limit parking," "no parking certain hours trucks only" and "no parking certain hours" zones along Route N.J. 28 in the Borough of Somerville, Somerset County and "no stopping or standing" zone along Route N.J. 56 in Pittsgrove Township, Salem County were warranted.

N.J.A.C. 16:28A-1.19 was recodified at subsection (e) to conform to the Department's format of rulemaking; subsection (f) is new and provides for angle parking with a one hour time limit; and subsection (g) adds no parking during certain hours for trucks only and also for motorists in general. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendments will establish parking restrictions along Routes N.J. 28 in Somerville Borough, Somerset County and N.J. 56 in Pittsgrove Township, Salem County to 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 the appropriate parking restriction 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 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-1.19 Route 28

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

(d) The certain parts of State highway Route 28 described in this [section] 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 spaces[.]:

i. (No change.)

ii. **Restricted parking in the Borough of Somerville, Somerset County:**

(1) **Handicapped parking (Main Street) on the north side beginning at a point 81 feet west of Maple Street to a point 22 feet westerly therefrom.**

(2) **Handicapped parking (Main Street) on the north side beginning at a point 278 feet west of Davenport Street to a point 22 feet westerly therefrom.**

(3) **Handicapped parking (Main Street) on the south side beginning at a point 298 feet east of Union Street to a point 22 feet easterly therefrom.**

(e) [In accordance with the provisions of N.J.S.A. 39:4-138.1, the] The certain parts of State highway Route 28 described in this

subsection shall be designated and established as "Time Limit Parking" zones where parking is prohibited at all times except in the areas designated below. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Time Limit Parking zones:

[1. One hour time limit parking in Roselle Park Borough, Union County:

i. (Westfield Avenue) westbound on the northerly side thereof at:

(1) Between Sheridan Avenue and Sherman Avenue;

(2) Between Camden Street and Dalton Street.

ii. One-hour time limit parking, between 9:00 A.M. and 5:00 P.M. Monday, Tuesday, Thursday, Friday and Saturday.

iii. One-hour time limit parking, between 11:00 A.M. and 5:00 P.M. Wednesday.

2. Eastbound on the southerly side thereof at:

i. Between Sherman Avenue and Sheridan Avenue.

ii. One-hour time limit parking, between 9:00 A.M. and 5:00 P.M. Monday, Tuesday, Wednesday, Friday and Saturday.

iii. One hour time limit parking, between 11:00 A.M. and 5:00 P.M. Thursday.]

1. **In Roselle Park Borough, Union County:**

i. (Westfield Avenue) westbound on the northerly side, between Sheridan Avenue and Sherman Avenue and between Camden Street and Dalton Street:

(1) **One hour time limit parking, between 9:00 A.M. and 5:00 P.M. Monday, Tuesday, Thursday, Friday and Saturday; and**

(2) **One hour time limit parking, between 11:00 A.M. and 5:00 P.M. Wednesday.**

ii. (Westfield Avenue) eastbound on the southerly side, between Sherman Avenue and Sheridan Avenue:

(1) **One hour time limit parking, between 9:00 A.M. and 5:00 P.M. Monday, Tuesday, Wednesday, Friday and Saturday; and**

(2) **One hour time limit parking, between 11:00 A.M. and 5:00 P.M. Thursday.**

2. **In the Borough of Somerville, Somerset County:**

i. **Along the north side:**

(1) **From North Bridge Street to the prolongation of the westerly curb line of Union Street:**

(A) **One hour time limit parking all hours;**

(2) **From Mechanic Street to Grove Street, and from the prolongation of the easterly curb line of Union Street to Doughty Avenue:**

(A) **Two hours time limit parking all hours Monday through Saturday;**

ii. **Along the south side:**

(1) **From Union Street to South Bridge Street:**

(A) **One hour time limit parking all hours Monday through Saturday.**

(2) **From Doughty Avenue to Union Street, and from Warren Street to Hamilton Street;**

(A) **Two hours time limit parking all hours, Monday through Saturday.**

(f) The certain parts of State highway Route 28 described in this subsection shall be designated and established as "angle parking space(s) and time limit parking" zones where parking is prohibited at all times except in the areas designated and at times specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following parking space(s):

1. **In the Borough of Somerville, Somerset County:**

i. **Angle parking:**

(1) **(Main Street) on the north side:**

(A) **From Grove Street to North Bridge Street.**

(2) **(Main Street) on the south side:**

(A) **From South Bridge Street to Warren Street.**

ii. **Time limit parking:**

(1) **From South Bridge Street to Warren Street on the south side:**

(A) **One hour time limit parking, during all hours Monday through Saturday including Sundays and Holidays.**

(2) **From Grove Street to North Bridge Street on the north side:**

(A) One hour time limit parking, during all hours Monday through Saturday including Sundays and Holidays.

(g) The certain parts of State highway Route 28 described in this subsection shall be designated and established as "no parking during certain hours" zones. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following "no parking during certain hours" zones:

1. In the Borough of Somerville, Somerset County:

i. Along both sides:

(1) Within the entire corporate limits from 9:00 P.M. to 6:00 A.M. every day all year, for trucks only; and

(2) Within the entire corporate limits from 2:00 A.M. to 6:00 A.M. for all other types of vehicles every day all year, excluding Sundays and Holidays.

16:28A-1.98 Route 56

(a) The certain parts of State highway Route 56 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1.-3. (No change.)

4. No stopping or standing in Pittsgrove Township, Salem County:

i. Along both sides for the entire length within the corporate limits, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedures Act and N.J.A.C. 1:30.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Weight Limits

Route N.J. 173 in Hunterdon County

Proposed Repeal and New Rule: N.J.A.C. 16:30-6.3

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 27:7-21.

Proposal Number: PRN 1993-248.

Submit comments by June 2, 1993 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:30-6.3 to establish weight limit restrictions for trucks along Route N.J. 173 in the Borough of Bloomsbury, Hunterdon County. The provisions of this amendment will improve the flow of traffic and enhance safety.

This amendment is being proposed at the request of local government and as part of the Department's on-going review of current conditions. On November 12, 1991, the Borough Council of Bloomsbury adopted Resolution No. 91-35, wherein the council requested that the Department establish a weight limit where vehicles over 10 tons registered gross weight would be restricted from the Warren County/Hunterdon County line to the intersection of Route N.J. 173 and Main Street (milepost 3.86). This restriction will bar trucks exiting Route 78 for a local truck stop from using a route through the Borough of Bloomsbury. Trucks will be able to use the direct access to the truck stop from Interstate Route 78. Trucks making local deliveries or pick-ups will still be permitted to travel on Route 173, through Bloomsbury. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of the weight limit restriction requested along Route N.J. 173 in the Borough of Bloomsbury, Hunterdon County was warranted.

Signs are required to notify the affected drivers of the restriction proposed herein.

Social Impact

The proposed amendment will establish a weight limit restrictions for trucks along Route N.J. 173 in Bloomsbury Borough, Hunterdon County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs advising truckers of the weight limitations. 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 drivers of trucks exceeding the weight limit imposed 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]):

16:30-6.3 Route 173

[(a) For the improvement in maintenance and repair of Route N.J. 173 eastbound between U turn facility at the junction of Route U.S. 22-I-78 westbound and Voorhees Road, in the township of Greenwich, Warren County, there is hereby established a weight limit of 10 tons gross weight for trucks except for the pick-up and delivery of materials.]

(a) Trucks traveling on the certain parts of State highway Route 173 described in this subsection shall be limited to a weight limit of 10 tons registered gross weight, except for the pick-up and delivery of materials.

1. In the Borough of Bloomsbury, Hunterdon County:

i. For the entire length:

(1) Eastbound—From the junction of Route N.J. 173 eastbound and the Route I-78-U.S. 22 Eastbound Ramp (milepost 0.0) to the intersection of Route N.J. 173 and Main Street (milepost 3.68).

(2) Westbound—From the intersection of Route N.J. 173 and Main Street (milepost 3.68) to a point 1,638 feet west of the westerly curb line of Voorhees Road.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Mid-Block Crosswalk

Route N.J. 28 in Somerset County

Proposed Amendment: N.J.A.C. 16:30-10.1

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 1993-246.

Submit comments by June 2, 1993 to:

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

The agency proposal follows:

Summary

The proposed amendment will establish a "mid-block crosswalk" along Route N.J. 28 between North Middaugh Street and Mountain Avenue in the Borough of Somerville, Somerset County, where persons may legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions, and upon request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of the "mid-block crosswalk" along Route N.J. 28 in Somerville Borough, Somerset County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:30-10.1 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish a "mid-block crosswalk" along Route N.J. 28 in Somerville Borough, Somerset County for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace and to provide a designated area for persons to legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the appropriate striping and installation of pedestrian crossing warning 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 Violation 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 and 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]):

**SUBCHAPTER 10. MID-BLOCK [CROSS WALK]
CROSSWALK**

16:30-10.1 Route 28

(a) [Under the provisions of N.J.S.A. 39:4-34, the] **The certain [part] parts** of Route 28 described in this subsection shall be designated as a mid-block crosswalk[.]:

[1. On Main Street in Somerville Borough, Somerset County:

i. From a point 252 feet east of the easterly curb line of Union Street to a point six feet easterly therefrom.]

1. In Somerville Borough, Somerset County:

i. Main Street—From a point 252 feet east of the easterly curb line of Union Street to a point six feet easterly therefrom; and
ii. Main Street—From a point 360 feet east of the easterly curb line of North Middaugh Street to a point six feet easterly therefrom.

TREASURY-GENERAL**(a)****STATE PLANNING COMMISSION****State Planning Rules****Proposed Amendments: N.J.A.C. 17:32-7**

Authorized By: State Planning Commission, Herbert Simmens,
Secretary and Principal Executive Officer.

Authority: N.J.S.A. 52:18A-203.

Proposal Number: PRN 1993-269.

Submit comments by June 2, 1993 to:

Herbert Simmens
Secretary and Principal Executive Officer
State Planning Commission
New Jersey Department of the Treasury
33 West State Street, CN 204
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), N.J.A.C. 17:32 was to expire on March 21, 1993. As required by the Executive Order, the State Planning Commission (Commission) reviewed those rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Commission readopted N.J.A.C. 17:32, notice of which is published elsewhere in this issue of the New Jersey Register.

The Commission received one comment regarding the readoption of N.J.A.C. 17:32. New Jersey Future submitted a comment regarding subchapter 7, in which they supported steps to clarify the concept of consistency and to simplify the administrative requirements for a consistency review. The Commission agreed with New Jersey Future and to that end has proposed several amendments to subchapter 7.

The proposed amendments to subchapter 7 better define the purpose and outcome of the consistency review process. As presently written, this subchapter establishes a process whereby a very narrow interpretation is made regarding the consistency or inconsistency of a given plan with the State Development and Redevelopment Plan (SDRP). Realizing that there will be some degree of diversity both in format and content among the plans to be reviewed, and that the true intent is to assist all levels of government in achieving consistency—not judging them, the Commission decided to "broaden" the consistency process into one that provides guidance to the municipal, county and State agencies that are attempting to implement the State Plan. This approach is considered more productive than one which attempts to "rate" a plan through a forced-fit review process.

Overall, the proposed amendments result in two major changes. First, the outcome of a consistency review would shift from a closed-ended determination of consistency or inconsistency to a more comprehensive report of findings and recommendations regarding the present and future efforts of the applicant to utilize the SDRP. Second, in an attempt to simplify the process and to put further emphasis on the "technical assistance" aspect of this process, the Commission removed itself from the review stream, leaving the Director of the Office of State Planning to provide the appropriate guidance to the petitioning agency. An appeal process has been retained, however.

A more minor change involves the addition of the planning board of the petitioning municipality or county to the list of agencies which must be notified of a petition for consistency review and the subsequent outcome of that petition. These boards were mistakenly omitted in the original rules.

Social Impact

N.J.A.C. 17:32 has had a beneficial social impact. These rules have provided for an orderly and open process (cross-acceptance) that has led to the completion and adoption of the State Development and Redevelopment Plan. In so doing, the State Planning Rules have laid the groundwork for the continuation of cooperative, coordinated planning among all levels of government in New Jersey. This in turn will promote the public health, safety, welfare, and convenience through well-planned, resource-efficient, and beneficial growth and development. The proposed amendments to subchapter 7, by simplifying and better defining

the consistency review process, will further the continuation of cooperative and coordinated planning.

The extent to which the Plan itself will have social impacts is beyond the scope of N.J.A.C. 17:32-7, which primarily establishes administrative procedures. However, the overall impact of the SDRP on the economy, environment, fiscal capacity of governments, community life and intergovernmental relations has been assessed by an independent contractor (Rutgers University, Center for Urban Policy Research). The overall finding of that assessment is found on page 7 of Volume III of their report, which states the following: "Implementation of the State Development and Redevelopment Plan will be beneficial to the State of New Jersey. It will bring benefits to the State and its citizens that traditional development will not."

Economic Impact

The proposed amendments will not increase or decrease the fiscal impact on municipalities or counties that choose to participate in the procedures established in N.J.A.C. 17:32-7. Petitioning for consistency reviews is totally voluntary. While participation may require the commitment of staff and/or consultant resources, the level of effort and expenditures will vary from county to county and from municipality to municipality. Variables such as size (county sizes range from 12 to 70 municipalities), basic interest in the overall planning process, available staff/expertise either in-house or consultant, and complexity of local issues as they relate to the State Plan will all affect the level of effort in a particular jurisdiction. However, it is expected that any fiscal impact experienced by counties and municipalities, as a result of their participation in the consistency review process, is warranted, in view of the positive fiscal consequences which will result from the coordination of local, county and State planning efforts.

The overall economic impact of the SDRP was assessed by the Rutgers/C.U.P.R. study which made the following finding (Volume III, page 7): "The SDRP will not drive people or businesses from the State of New Jersey. To the contrary, it will cause jobs and housing to be located where they are most needed in the State and where they can develop and be publicly serviced with more efficiency. As a result, it will provide an average annual operational cost savings of \$380 million to municipalities and school districts by the year 2010. Over the 1990-2010 twenty-year projection period this saving, which increases over time, amounts to \$3.8 billion cumulatively."

Regulatory Flexibility Statement

N.J.A.C. 17:32-7 and the proposed amendments thereto do not apply to small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This rule applies only to municipal, county and State government. Therefore, a regulatory flexibility analysis is not required.

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

SUBCHAPTER 7. VOLUNTARY SUBMISSION OF PLANS FOR CONSISTENCY REVIEW

17:32-7.1 Purpose

(a) The State Planning Act recommends but does not require that municipal and county plans be consistent with the State Development and Redevelopment Plan. During the cross-acceptance process, however, many government officials and citizens expressed concern, given the complexity of public plans and processes in general and of the State Plan in particular, about how agencies at each level of government would know whether their plans are consistent with the State Plan. [The purpose of this subchapter is to establish a process for the voluntary submission of plans for a determination of consistency as a service to governments and agencies at all levels.] **It is the intention of the State Planning Commission, through the Office of State Planning, to assist all levels of government in achieving the highest possible degree of consistency with the State Plan. To that end, this subchapter outlines a voluntary review process which will analyze local, county, regional and State agency plans and provide findings and recommendations regarding the subject plan's incorporation of the various provisions of the State Plan.**

(b) (No change.)

(c) No municipal, county, regional or State agency should delay any decision making process due to a pending review of their plans

by the [State Planning Commission] Office of State Planning for consistency with the SDRP.

(d) (No change.)

17:32-7.2 Eligibility

(a) Any municipal or county governing body, commissioner or secretary of a State department, regional or interstate agency may petition the [State Planning Commission] Office of State Planning for a review of the consistency between its plan and the State Development and Redevelopment Plan.

(b) The master plans of municipalities (including elements as defined in the Municipal Land Use Law), and counties (as defined in the County Planning Enabling Act), functional plans of State agencies, and the adopted comprehensive plans of regional and interstate agencies are eligible for review by the [State Planning Commission] Office of State Planning under these rules. Codes, ordinances, administrative rules, regulations and other instruments of plan implementation are not eligible for review. Nothing in these rules shall be interpreted to mean, however, that the staff of the Office of State Planning and Commission may not provide technical assistance and advice to agencies at any level of government on matters falling under the mandates of the Commission or Office, as set forth in the State Planning Act, N.J.S.A. 52:18A-196 et seq.

17:32-7.3 Notification of petition filing

(a) Municipalities shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the municipality, prior to their submission of a petition for consistency review. Notice shall also be sent to the **petitioning municipality's planning board**, to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities.

(b) Counties shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the county, prior to their submission of a petition for consistency review. Notice shall also be sent to the **petitioning county's planning board**, to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties.

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

17:32-7.4 Procedures

(a) Petitions for [determinations of] consistency review may be submitted to the Director of the Office of State Planning, [who is herewith authorized to act as agent for the State Planning Commission in the administration of these rules,] no sooner than 60 days after adoption of the State Development and Redevelopment Plan by the State Planning Commission.

(b) (No change.)

(c) In cases where the Director of the Office of State Planning finds that the petition is not submitted in accordance with these rules, the Director shall inform the petitioner in writing within 30 days after receipt of the petition of the deficiencies [of] in the petition. [and declare whether these deficiencies can be corrected. The petition shall then proceed as follows:] **If a corrected petition is resubmitted, the petition will be considered in accordance with (d) below. If a corrected petition is not resubmitted within 30 days after receipt of the Director's notice, or is resubmitted incorrectly, the petition will be considered withdrawn and the petitioner so notified. No further action by the Director will be taken.**

1. If the deficiencies can be corrected, the petitioner shall have 30 days after receipt of the Director's letter to resubmit a corrected petition. If a corrected petition is resubmitted, the petition will be considered in accordance with (d) and (g) below.

2. If a corrected petition is not resubmitted within the time period provided in (c)1 above, or is resubmitted incorrectly, the petition will be considered withdrawn and the petitioner so notified. No further action by the Director will be taken;

3. If the deficiencies cannot be corrected, the Director shall so inform the petitioner and the petition will be considered withdrawn.]

(d) In cases where the Director of the Office of State Planning finds that the petition is submitted in accordance with these rules, or is resubmitted correctly pursuant to (c) [1] above, he shall, within 90 days of such a finding, review said plan(s), make a preliminary

determination and proceed as indicated below:] and prepare findings and recommendations regarding the degree to which the subject plan is consistent with the provisions of the SDRP, how effectively that has been done, and what steps can be taken by the petitioner to move the plan, in whole or in part, toward further consistency with the SDRP. The Director shall forward his report to the petitioner and the State Planning Commission.

[1. In cases where the Director finds that said plan is consistent with the State Development and Redevelopment Plan, the Director shall process the petition in accordance with (e) through (g) below;

2. In cases where the Director finds that said plan is not consistent with the State Development and Redevelopment Plan, the Director shall identify the reasons therefore in writing to the petitioner and indicate the actions the Director considers necessary to bring the plan into consistency. In such cases the petitioner may:

(i) within 180 days after receipt of the Director's letter, amend said plan in a manner that satisfies the cited inconsistencies and request reconsideration of the petition, including with such request evidence of official action amending said plan; or

(ii) within 60 days after receipt of the Director's letter, request to appear before the State Planning Commission, or its duly authorized subcommittee if any, to appeal the findings, in whole or in part, of the Director;

3. If the petitioner does not act in accordance with either (d)2i or (d)2ii above, the petition will be considered withdrawn.

(e) Except for petitions withdrawn under (c) or (d) above, the Director of the Office of State Planning shall submit the final recommendations on petitions, or appeals filed pursuant to (d)2ii above, to the State Planning Commission or its duly authorized subcommittee(s).

(f) The State Planning Commission shall consider the recommendations of the Director of the Office of State Planning and any duly authorized subcommittee, and shall, at least in the case of (d)2ii above, provide opportunity for the petitioner to appear in behalf of its petition.]

[(g)](e) The petitioner may, within 60 days after receipt of the Director's report, request that the State Planning Commission, or its duly authorized subcommittee, review the Director's findings. Within 60 days after receipt of [a petition, or an appeal filed pursuant to (d)2ii above, from the Director of the Office of State Planning] such a request, the Commission does not act within 60 days, the Director's [determinations and actions] findings and recommendations regarding the petition [shall prevail] will stand.

(f) The State Planning Commission may, at its discretion, review the findings and recommendations of the Director of the Office of State Planning regarding any petition filed under this subchapter. The Commission shall declare its intention to review the Director's findings and recommendations within 30 days of its receipt of the Director's report pursuant to (d) above. Within 60 days after receipt of the Director's report, the Commission may act to revise or reverse those findings and recommendations. If the Commission does not declare its intention to review the Director's findings and recommendations within the 30 day period, or having declared its intention to review, does not act within the 60 day period, the Director's findings and recommendations will stand.

(g) The Director of the Office of State Planning shall, within 30 days after State Planning Commission action, or nonaction, as set forth in (e) or (f) above, notify the petitioner in writing of the Commission's findings and recommendations regarding the petition.

17:32-7.5 [Notification] Public notification of [disposition] Director's or Commission's review

(a) [The Director of the Office of State Planning shall, within 30 days after State Planning Commission action, or nonaction as set forth in N.J.A.C. 17:32-7.4(g), notify the petitioner in writing of the Commission's disposition of the petition.] Within 30 days of their receipt of the Director's notification pursuant to N.J.A.C. 17:32-7.4(d) or (g), the petitioner shall provide public notice in the following manner:

[(b)]1. Municipalities shall provide public notice [of the disposition of their petition under this subchapter,] in a newspaper of general circulation within the municipality[, within 30 days of their

receipt of the Director's notification pursuant to (a) above]. Notice shall also be sent to the petitioning municipality's planning board, to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities [within the same 30 day time period].

[(c)]2. Counties shall provide public notice [of the disposition of their petition under this subchapter,] in a newspaper of general circulation within the county[, within 30 days of their receipt of the Director's notification pursuant to (a) above]. Notice shall also be sent to the petitioning county's planning board, to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties [within the same 30 day time period].

[(d)]3. State agencies shall notify the 21 county planning boards [of the disposition of their petition under this subchapter, within 30 days of their receipt of the Director's notification pursuant to (a) above,] and shall further cause notice [of its disposition] to be published in the next available New Jersey Register.

[(e)]4. Regional and interstate agencies shall provide public notice [of the disposition of their petition under this subchapter,] in a newspaper of general circulation within the New Jersey portion of their jurisdiction[, within 30 days of their receipt of the Director's notification pursuant to (a) above]. Notice shall also be sent to the planning boards of all New Jersey municipalities and counties within the agency's jurisdiction [within the same 30 day time period].

[(f)](b) All notifications required under [(b), (c), (d) and (e)] (a) above shall contain, at a minimum, the following information:

1.-2. (No change.)

3. A [description and date of the State Planning Commission's disposition of the petition.] statement to the effect that the subject plan was reviewed by the Director of the Office of State Planning and/or the State Planning Commission and that copies of the subsequent findings and recommendations are available from the Office of State Planning and from the petitioner.

[(g)](c) Newspaper notices may be published as a standard legal advertisement.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Financial Business Corporation; Definition

Proposed Amendment: N.J.A.C. 18:7-1.16

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1993-254.

Submit comments by June 2, 1993 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646

The agency proposal follows:

Summary

This proposed amendment deletes a requirement from the definition of a financial business. In the context of leasing activities, the current rules provide that for certain leases to be considered qualifying activities the residual value of property under lease may not exceed 20 percent of the lessor's full investment.

Financial businesses are those businesses which are in substantial competition with national banks. The Competitive Equity Banking Act ("CEBA") P.L.100-86, 101 Stat. 579 (Aug. 10, 1987) section 108 added a new subsection to the National Banking Act (12 U.S.C.A. 24(10)). Subsequent formal amendments of the national banking regulations eliminated the residual value restriction on net leases transacted by

national banks under the authorization of section 108 of CEBA. See 12 C.F.R. Part 23, Subpart B, §23.7-23.9. As a result of these changes, the Division believes that the 20 percent residual value rule should also be eliminated for financial businesses which compete with national banks, and that this change will be in line with the underlying purpose of the statutory provisions relating to financial businesses.

Social Impact

The proposed amendment updates the New Jersey administrative rules relating to financial businesses in order that the rules reflect requirements that are similar to requirements and standards applicable to national banks. The amended rule could enable certain entities to qualify as financial businesses which otherwise could not do so even though they offer the same type of leases to the public as national banks offer.

Economic Impact

The proposed amendment will update State requirements in the area of financial businesses so that a current restriction is removed. As a result of this restriction being eliminated, it is possible that certain formerly nonqualifying businesses will now qualify as financial businesses and qualify for the favorable tax benefits related to the elimination of interest addback requirements. N.J.S.A. 54:10A-4(k)(2)(E)(iii). The amendment may also decrease the amount of time required by corporations and their tax preparers and administrators to address and analyze a technical problem related to the construction and meaning of certain Corporation Business Tax provisions.

Regulatory Flexibility Statement

The proposed amendment would 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., but would add a possible benefit. The amendment brings the rule relating to leasing provisions into harmony with changes that have occurred in Federal banking regulation which eliminated the 20 percent residual value rule for national banks, the competitors of the financial businesses affected by this amendment. The amendments could have a beneficial effect on any small businesses which qualify, depending upon the type of leases offered.

Full text of the proposal follows (deletion indicated in brackets [thus]):

- 18:7-1.16 Financial business corporation; definition
 - (a) (No change.)
 - (b) For purposes of this section:
 - 1. (No change.)
 - 2. "Residual value of the property" means the estimated value of the leased property at the end of the original lease as determined at the time the lease is executed. [Such value may not exceed 20 percent of the lessor's full investment.]
 - 3. (No change.)
 - (c)-(g) (No change.)

(a)

DIVISION OF TAXATION

**Corporation Business Tax
Claims for Refund**

Proposed Amendment: N.J.A.C. 18:7-13.8

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1993-255.

Submit comments by June 2, 1993 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment makes clear the Division's policy that compliance with the 90 day filing requirement set forth at N.J.S.A. 54:10A-13 is jurisdictional in nature and that refund claims made within the applicable refund period will be denied where this statutory notification requirement has not been met.

Social Impact

The proposed amendment will assist taxpayers and their advisors in complying with the requirements of the Corporation Business Tax Act. It incorporates a statutory requirement explicitly into the applicable administrative rules.

Economic Impact

No economic impact is anticipated from the proposed amendment. The denial of refund claims where the statutory notification requirement has been, and will continue as, Division policy, as is implicit in the current rule text. The proposed amendment may reduce the amount of time that taxpayers and their advisors must spend in analyzing applicable statutes since the rule explicitly sets forth the Division's position in a particular situation.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because this proposed amendment does not impose mandatory reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The filing of a refund claim is a voluntary procedure available to the taxpayer, and the notice requirement found at N.J.S.A. 54:10A-13 is not optional. The proposed amendment does not impose new, different, or additional burdens on taxpayers or their advisors. It merely makes explicit the Division's policy, which is implicit in the existing rule.

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

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)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Appeal Board Rules

Proposed Readoption with Amendment: N.J.A.C. 19:17

Authorized By: Public Employment Relations Commission,
James W. Mastriani, Chairman.

Authority: N.J.S.A. 34:13A-5.9.

Proposal Number: PRN 1993-268.

Submit comments by June 2, 1993 to:

James W. Mastriani, Chairman
Public Employment Relations Commission
CN 429
Trenton, NJ 08625-0429; and
William L. Noto, Chairman
Public Employment Relations Commission Appeal Board
CN 429
Trenton, NJ 08625-0429

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order 66(1978), the Public Employment Relations Commission proposes to readopt N.J.A.C. 19:17. These rules implement N.J.S.A. 34:13A-5.5 through 5.9, which allow a majority representative organization to negotiate for the right to receive from employees it represents, but who are not members of that organization, a representation fee in lieu of dues. The entire chapter will expire on June 8, 1993.

On June 15, 1987, the bulk of this chapter, N.J.A.C. 19:17-3.1 through 4.5, was first adopted. An amendment to N.J.A.C. 19:17-2.1 also took effect on that date. The new rules were adopted in response to the decisions of the United States Supreme Court in *Chicago Teach. Union v. Hudson*, 475 U.S. 292, 106 S. Ct. 1388, 121 LRRM 2793 (1986), and the New Jersey Supreme Court in *Boonton Bd. of Ed. of the Town of Boonton v. Judith M. Kramer*, 99 N.J. 523 (1985), cert. den. — U.S. —, 89 L. Ed. 2d. 613 (1986). See 19 N.J.R. 196(a), 19 N.J.R. 1105(a).

The Public Employment Relations Commission and the Public Employment Relations Commission Appeal Board have reviewed these rules and have determined them to be necessary and proper for the purposes for which they were originally adopted. The Commission proposes to readopt these rules without change. A summary of each section of N.J.A.C. 19:17 follows.

Subchapter 1. Description of Organization

N.J.A.C. 19:17-1.1, Description of the Appeal Board, identifies the Public Employment Relations Commission Appeal Board as the board established by N.J.S.A. 34:13A-5.6.

N.J.A.C. 19:17-1.2, Staff of the Appeal Board, provides that the staff of the Appeal Board shall consist of the personnel of the Division of Public Employment Relations (N.J.S.A. 34:13A-5.1).

N.J.A.C. 19:17-1.3, Delegation of authority to staff of the Division of Public Employment Relations, officers of the Appeal Board, provides that the personnel of the Division of Public Employment Relations while performing Appeal Board functions shall be deemed to be Appeal Board officers and shall have been delegated all the powers necessary to discharge their assigned duties.

Subchapter 2. Procedures

N.J.A.C. 19:17-2.1, Rules to be read in conjunction with the rules of the Office of Administrative Law, refers to the Uniform Administrative Procedure Rules of Practice (UAPRP), N.J.A.C. 1:1-1, and the rules of special applicability for hearings in Appeal Board cases, N.J.A.C. 1:20.

Subchapter 3. Amount of Representation Fee in Lieu of Dues

N.J.A.C. 19:17-3.1 Designation of fiscal year, requires each majority representative to adopt a fiscal year system of accounting.

N.J.A.C. 19:17-3.2 Designation of dues year, requires each majority representative to adopt a dues year starting no earlier than the start of the fiscal year.

N.J.A.C. 19:17-3.3, Annual notice to nonmembers; copy of demand and return system to public employer, requires a majority representative to provide each nonmember paying a representation fee with a notice containing an explanation of the majority representative's expenditures for prior fiscal year, a copy of the majority representative's demand and return system and instructions for using it, information about escrow accounts to hold disputed portions of representation fees and an explanation as to how the fee is calculated. A copy of the demand and return system must be furnished to the public employer. A technical correction is being proposed, to replace the word "nonmembers" with the word "members," in accordance with the text of N.J.S.A. 34:13A-5.5c.

N.J.A.C. 19:17-3.4, Amount of representation fee in lieu of dues; annual adjustment, sets the maximum representation fee in lieu of dues as the lower of 85 percent of the regular membership dues, fees and assessments or regular membership dues, fees and assessments, reduced by the percentage amount spent during the most recently completed

fiscal year on benefits available to or benefiting only its members and in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment. The fee shall be readjusted annually.

Subchapter 4. Review of Representation Fee in Lieu of Dues

N.J.A.C. 19:17-4.1, Period for filing of requests for review, allows nonmembers at least 30 days after the majority representative has provided the notice described in N.J.A.C. 19:17-3.3(a) to file a request for review of the fee. A timely filing will entitle the employee to a return of any non-chargeable amount.

N.J.A.C. 19:17-4.2, Fees of nonmembers filing requests for review; escrow of amounts reasonably in dispute, requires, prior to collection of fees, the establishment of an escrow account in which any amount reasonably in dispute shall be placed.

N.J.A.C. 19:17-4.3, Time for completion of demand and return system, provides 60 days for the majority representative and any of its affiliates to complete demand and return system proceedings and allows the filing of petitions with the Appeal Board after the 60 day period even if the demand and return proceedings are not complete. Any incomplete proceedings shall be continued unless all petitioners have withdrawn their appeals or have filed with the Appeal Board.

N.J.A.C. 19:17-4.4, Results of demand and return system, payment of interest on amounts returned, requires a written decision at the conclusion of demand and return system proceedings. The decision accompanied by any amount due shall be served on each nonmember. Amounts refunded which are equal to or less than the amount held in escrow shall bear the interest earned. Any refund which exceeds the amount held in escrow shall bear interest at the judgment rate as set by N.J. Court Rule 4:42-11.

N.J.A.C. 19:17-4.5, Time for filing petitions with Appeal Board, allows six months after payroll deductions begin to file an appeal with the Appeal Board.

Social Impact

Generally, the readoption of these rules will permit the continued prompt resolution of disputes involving representation fees. The majority of these disputes which reach the Appeal Board are settled amicably with the assistance of the staff of the Commission. The continued authorization for the Appeal Board to use the staff of the Commission will maintain the small number of cases which require hearings before Administrative Law Judges. Without the ability to use the Commission staff to seek settlements of petitions filed with the Appeal Board, all such cases would require formal hearings.

The readoption of the chapter will allow continued implementation of the mandates of the New Jersey and United States Supreme Courts that the majority representatives of collective negotiations units of public employees in New Jersey must adopt procedures to safeguard the constitutional rights of public employees who pay representation fees in lieu of dues to such majority representative organizations. The courts have held that the right of nonmembers not to contribute toward activities of the labor organizations which are of an ideological or political nature unrelated to collective negotiations requires that majority representatives provide such employees, prior to receiving their representation fees, with information concerning the expenditures of the majority representative and its affiliate sufficient to gauge the propriety of the majority representative's fee. The decisions also suggest that majority representatives establish escrow arrangements to avoid the temporary use of representation fees to finance such activities. The procedures adopted by the majority representatives to allow nonmembers to challenge the propriety of the representation fee in lieu of dues must also provide for a reasonably prompt determination before an impartial tribunal. The Public Employment Relations Commission Appeal Board is such a tribunal (See *Robinson v. N.J.*, 806 F.2d 442, 123 LRRM 3193 (3rd Cir. 1986), cert. den. 95 L.Ed.2d 872 (1987)) and is required by law to be the last step in every demand and return system. These rules require majority representatives to implement these mandates and their readoption will promote statewide uniformity.

Economic Impact

The continued authorization for the Appeal Board to use the staff of the Commission will maintain the small number of cases which require formal hearings before Administrative Law Judges appointed by the Office of Administrative Law. The costs associated with such quasi-judicial hearings are saved when cases are resolved by the settlement efforts of the Commission's staff. Absent such efforts, the number of

hearings would increase, as would costs for the Appeal Board, the Office of Administrative Law and the parties.

The rules require that a majority representative which receives requests for review of representation fees place any amounts reasonably in dispute into interest-bearing escrow accounts pending resolution of the disputes. The period of time such funds will remain in such accounts will vary with the amounts reasonably in dispute, the length of time needed for a determination by the majority representative, and whether there are appeals of that determination to the Appeal Board and the courts. Interest on such accounts will be payable to the majority representative and the nonmember employees who have requested review in the same percentage as the principal amounts to be refunded by the majority representative.

Regulatory Flexibility Statement

The proposed readoption of N.J.A.C. 19:17 does not impose reporting, recordkeeping or other compliance requirements on small businesses, since the rules apply to public employers, public employees and public employee organizations only. A regulatory flexibility analysis is, therefore, not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:17.

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

19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer

(a) Prior to the commencement of payroll deductions of the representation fee in lieu of dues for any dues year, the majority representative shall provide all persons subject to the fee with an adequate explanation of the basis of the fee, which shall include:

1. A statement, verified by an independent auditor or by some other suitable method of the expenditures of the majority representative for its most recently completed fiscal year. The statement shall set forth the major categories of expenditures and shall also identify expenditures of the majority representative and its affiliates which are in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of benefits only available to [nonmembers] members of the majority representative.

2.-4. (No change.)

(b) (No change.)

(a)

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Amendments to Comprehensive Plan, Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations and Administrative Manual—Rules of Practice and Procedure

Summary: Notice is hereby given that the Delaware River Basin Commission will hold public hearings to receive comments on proposed amendments to its Comprehensive Plan, Water Code and Water Quality Regulations relating to the control of nonpoint sources of pollution in the drainage area to classified Special Protection Waters. The proposed amendments involve a three-pronged approach: the first addresses new nonpoint sources on a project-by-project basis through the Commission's project review process under Section 3.8 of the Delaware River Basin Compact; through USEPA's NPDES stormwater permitting regulations; and on a discretionary basis when needed. The second prong addresses new and existing nonpoint sources on a priority watershed basis. For priority watersheds, watershed nonpoint source management plans would be developed and implemented. The third prong would encourage the development and implementation of watershed nonpoint source plans on a voluntary basis in watersheds which are not considered the highest priority of the Commission. A process to identify priority watersheds and develop watershed nonpoint source management plans is included in the proposal.

In addition, the Commission is proposing related revisions to its Administrative Manual—Rules of Practice and Procedure. These re-

visions would add two new categories to those now required to be submitted to the Commission for review and approval under Section 3.8 of the Compact: those projects required to obtain a permit under the USEPA's stormwater regulations and any other activity the Commission believes may generate increased nonpoint source pollution loads having potential substantial impact on Special Protection Waters.

Hearing Dates: The public hearings are scheduled as follows:

Wednesday, June 16, 1993 beginning at 1:30 P.M. and continuing until 4:30 P.M., as long as there are people present wishing to testify.

Tuesday, June 22, 1993 beginning at 2:00 P.M. and continuing until 5:00 P.M., as long as there are people present wishing to testify.

Tuesday, June 22, 1993 beginning at 7:00 P.M. and continuing until 9:30 P.M., as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be announced at the hearings.

Hearing Addresses: The June 16, 1993 hearing will be held in the New Castle Council Chambers, First Floor of the City/County Building, 800 French Street, Wilmington, Delaware.

The June 22, 1993 hearings will be held in the Ballroom of the Inn at Hunt's Landing, 900 Routes 6 and 209, Matamoras, Pennsylvania.

Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

For Further Information Contact: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. Telephone (609) 883-9500 X203.

Supplementary Information:

Background and Rationale

On December 9, 1992 the Delaware River Basin Commission amended its Comprehensive Plan, Water Code, Water Quality Regulations and Rules of Practice and Procedure to allow for special water quality protection measures to be applied to waters that the Commission classifies as Special Protection Waters. The Commission action also classified the Delaware River and those portions of tributaries within the Upper Delaware Scenic and Recreational River (UDSRR) corridor and the Delaware Water Gap National Recreation Area (DWGNRA) as Outstanding Basin Waters and the Delaware River from the southern boundary of the UDSRR to the northern boundary of the DWGNRA as a Significant Resource Waters, thus bringing them under the Special Protection Waters regulations.

However, Commission action on the Special Protection Waters regulations did not include nonpoint source regulations which were deferred for further consideration and development. Since that time, Commission staff has continued its work with the Commission's Water Quality Advisory Committee and nonpoint source experts from Pennsylvania, New Jersey and New York to develop nonpoint source regulations which (1) contribute to the overall goal of no measurable change in water quality in Special Protection Waters and (2) can be integrated with the NPDES stormwater permitting program as well as other emerging programs at the local, state and Federal levels.

The Commission is now proposing expanded nonpoint source regulations which will address new and increased nonpoint source loads impacting water quality. Planning and regulatory activities of other agencies are integrated with the Special Protection Waters program to the extent possible.

The Commission has prepared a "Basis and Background Document—Special Protection Waters—Proposed Nonpoint Source Regulations" describing the proposed amendments and their rationale in considerable detail. This document may be obtained by contacting Christopher M. Roberts at the Commission at X205.

Persons wishing to testify are requested to notify the Secretary in advance. Written comments on the proposed amendments should also be submitted to the Secretary.

The subjects of the hearing will be as follows:

Amendments to the Comprehensive Plan, Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations and Administrative Manual—Rules of Practice and Procedure Relating to Water Quality Standards and Policies.

Article 3 of the Water Code of the Delaware River Basin sets forth the water quality standards and guidelines for the Delaware River Basin. The Commission's Administrative Manual—Part III Water Quality Regulations, apply to all waste dischargers, public and private, using the waters of the Delaware River Basin. It is proposed to:

1. Amend Article 3 of the Administrative Manual—Part III Water Quality Regulations, the Comprehensive Plan and Article 3 of the Water Code of the Delaware River Basin as follows:

a. Subsection 3.10.3A.2.a.18). is revised to read as follows:

18). "Special Protection Waters Non-Point Source Project" is a project subject to Commission review under Section 3.8 of the Compact that is located in the drainage area of Special Protection Waters and has a potential for creating new or increased non-point source loads at the project site and in the service area of wastewater treatment and potable water supply projects. The following activities are added as Special Protection Waters Non-Point Source Projects subject to review under Section 3.8 of the Compact:

a) Any stormwater discharge that is required to obtain an individual, general or watershed-specific NPDES permit as mandated under Section 402(p) of the Federal Water Quality Act of 1987; and,

b) Any other project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

b. Subsections 3.10.3A.2.a.19). and 20). are added to read as follows:

19). "Watershed Non-Point Source Management Plan" is a plan prepared for a watershed that describes the basis for, and overall control strategy of, a plan for controlling, limiting, and abating all relevant non-point source loadings within the watershed. The plan will identify and assess important natural and anthropogenic features and influences on water quality; existing local, state and other non-point source control programs; potential non-point sources loads on Special Protection Waters; watershed-specific protection requirements; and the institutional needs and arrangements required to implement the plan.

20). "Watershed Control Point" is a location established within a watershed draining to Special Protection Waters Boundary Control Point where attainment of one or more intermediate objectives of a Watershed Non-Point Source Management Plan is measured.

c. Subsection 3.10.3A.2.e. is revised to read as follows:

e. Policies Concerning the Control of Non-Point Sources

1). All sponsors of Special Protection Waters Non-Point Source Projects are required to submit for approval a non-point source pollution control plan that controls the new or increased non-point source loads generated within the portion of the project's service area located in the drainage area of Special Protection Waters and by the project.

In approving the plan, the Commission will consider, but not require, tradeoffs between the reduction of potential new non-point source loads and (a) equivalent reductions in existing non-point source loads; (b) equivalent point source loads; and (c) equivalent non-point source loads from outside the affected service area. Applicants desiring Commission approval of tradeoff strategies must provide information concerning the amount of non-point source loads to be reduced through an equivalent tradeoff process and, where necessary, the enforceable mechanisms and/or agreements required to implement the tradeoffs.

The Commission may delegate review and approval responsibilities under this section to the appropriate state environmental agency for all stormwater discharges required to obtain an individual, general or watershed-specific NPDES permit as mandated under Section 402(p) of the Federal Water Quality Act of 1987 or subsequent acts;

Exceptions to this policy are:

(a) Public authorities, other special-purpose districts, and private corporations are exempt from this requirement where it can be demonstrated that such authorities or districts do not have the legal authority for implementing non-point source controls in their new or expanded service areas. Each municipality so served by this new project (or the portion of an existing project represented by the expansion) must develop and implement non-point source control programs in that municipality under these regulations before any new water supply or wastewater services can be provided in that municipality.

(b) The requirement for service area non-point source control plans is automatically satisfied if the project service area is part of a watershed non-point source control plan that has been adopted into the Commission's Comprehensive Plan and is being implemented.

(c) Projects located above major surface water impoundments where hydraulic and limnological factors preclude a direct impact on Special Protection Waters will be exempted.

2). Within two years after the classification of Special Protection Waters, the Commission shall, after consultation with local, county, state and Federal agencies, publish a report presenting its methodology for prioritizing watersheds in the Special Protection Waters drainage area

including alternatives, if any; a preliminary listing of priority watersheds in the drainage area; and a recommended plan of study for the development of watershed-specific management plans.

Watershed priorities will be determined from a comparative analysis of each watershed's location and potential future impact on existing water quality at designated Interstate Special Protection Waters and Boundary Control Points. In determining priorities, the Commission will consider;

(a) the physical characteristics of the watershed including slopes, soils, existing land use and land cover, drainage characteristics, and others;

(b) the status of existing water quality and trends, if any, of the watershed as measured at its Boundary Control Point;

(c) the anticipated sources of new non-point sources;

(d) the anticipated mass loadings of new non-point sources;

(e) the watershed management and planning priorities of applicable local, state and Federal agencies;

(f) the current status of local land use/non-point source controls in the watershed; and,

(g) other natural and anthropogenic factors.

3). Once the public has been given an opportunity to comment, the Commission will adopt a list of priority watersheds. This listing will be reviewed and modified as necessary on a two year basis after adoption.

4). Within five years after adopting a list of priority watersheds draining to Special Protection Waters, the Commission shall develop, or encourage the development of, watershed non-point source management plans for each priority watershed unless new circumstances result in deferring plan completion. Watershed non-point source management plans will focus on non-point source loadings, but will consider total loads including both point and non-point sources and their interrelationship where necessary.

During plan development, the Commission will seek technical assistance from the applicable state environmental agency and all other applicable Federal, state, county and local governmental units; and will consider direct delegation of plan development (with concurrence of the state environmental agency) to any county or other applicable governmental entity desiring to perform the watershed planning activities on behalf of, or instead of, the Commission. Where more than one political unit shares a watershed, joint plan development arrangements between the Commission and delegated agencies will be developed.

5). Watershed management plans developed by the Commission, or on behalf of the Commission through delegation, will be incorporated into the Commission's Comprehensive Plan in accordance with the *Rules of Practice and Procedure*.

6). The Commission shall encourage the voluntary development of watershed management plans for tributary watersheds entering Special Protection Waters and local non-point source regulatory programs that conform to the goals and objectives of the Special Protection Waters regulations as promulgated in Section 3.10.3A.2. Within the limits of its resources, the Commission will provide technical assistance, a clearinghouse for non-point sources information, regulatory authority, inter-agency coordination, and other services to local and other governmental units desiring to develop and implement stormwater and non-point source watershed plans and local regulatory programs.

7). The Commission shall encourage the submission of watershed management plans prepared voluntarily and independently from these regulations for inclusion into the Commission's Comprehensive Plan.

2. Amend the Administrative Manual—Rules of Practice and Procedure as follows:

a. Subsections 2-3.5(b)(18) and (19) are added to read as follows:

(18) Any stormwater discharge that is required to obtain an individual, general or watershed-specific NPDES permit as mandated under Section 402(p) of the Federal Water Quality Act of 1987; and

(19) Any other project that the Executive Director may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Fire Service Training and Certification

Proposed Amendments: N.J.A.C. 5:18C-4.2, 5.2, 5.3 and 5.4

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-25d, 52:27D-198 and 52:27D-219.

Proposal Number: PRN 1993-240.

Submit written comments by June 2, 1993 to:

Michael L. Tickin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

A firefighter who has either served as an active member of a fire department for at least 18 months prior to July 1, 1994 or completed an approved course of instruction prior to July 1, 1994, shall be eligible for firefighter I certification without having to pass the tests that would otherwise be required. July 1, 1996 (two years following July 1, 1994) replaces February 5, 1992 (two years following the effective date of N.J.A.C. 5:18C, which was February 5, 1990) as the end date for acceptability of substitutions for various courses that would otherwise be required and for eligibility for exemption from test requirements.

For those seeking Instructor Level 1 certification, the date by which the course "Instructional Techniques for Company Officers," developed by the National Fire Academy, must be taken, and the end date for either two years of service as a fire service instructor or three years of active firefighting experience, is changed from the effective date of the chapter to July 1, 1994.

For those seeking Instructor Level 2 certification, the end date for experience to be used in partial substitution for possession of an Instructor Level 1 certificate for at least two years is extended to July 1, 1996 and the period for having at least 20 contact hours of instruction is extended to July 1, 1994. July 1, 1994 is also established as the end date for firefighting experience which may be used in substitution for the examination until July 1, 1996. Until July 1, 1996, other specified certificates or courses can be substituted for the course "Instruction Techniques: Instructor Level 2." The National Fire Academy course entitled "Educational Methodology" will be acceptable if taken prior to July 1, 1994, while other courses taken before that date may be evaluated to determine if they are acceptable as substitutes.

Otherwise eligible applicants for special instructor certificates (Live Burn and SCBA/Smokehouse) will be able to be certified without having to take the examination if they apply on or before July 1, 1996.

Social Impact

As a result of these amendments, many firefighters and instructors who are currently in service will be able to continue to hold their positions without having to pass examinations. There will be a beneficial impact on volunteer fire companies, since the members will be able to obtain certification in an expedient manner.

Economic Impact

By recognizing existing training and experience in granting certifications, and thus reducing the number of firefighters needing additional training, the cost of administering the certification program will be reduced.

Regulatory Flexibility Statement

These rules affect individuals applying for certification as firefighter or fire instructor, and do not regulate small businesses, as the term is defined in 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 proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

5:18C-4.2 Firefighter I certification

(a) A certification for firefighter I shall be granted to an individual who is **at least 18 years of age and has met any one of the following requirements:**

1. **Shall have been an active member of a fire department for a period of not less than 18 months prior to July 1, 1994. Proof of active membership in a fire department shall be verified by a letter from the chief of the department on fire department letterhead;**

2. **Shall have completed, prior to July 1, 1994, a course of instruction approved in accordance with N.J.A.C. 5:18C-2.3(g); or**

3. **Has met all of the following requirements:**

[1. Is at least 18 years of age;

2.]i. **Has successfully completed all instructional modules listed in N.J.A.C. 5:18C-4.3;**

[3.]ii. **Has taken and passed a written examination as established by N.J.A.C. 5:18C-4.4(a); and**

[4.]iii. **Has successfully passed a skills test as established by N.J.A.C. 5:18C-4.4(b).**

5:18C-5.2 Instructor Level 1

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

(c) **The following standard applies to programs designed to satisfy the requirements for the course "Instruction Techniques: Instructor Level 1":**

1.-2. (No change.)

3. **The following certificates, courses, or experience will be accepted as substitutes for the course "Instruction Techniques: Instructor Level 1" [for a period of two years from the effective date of this chapter] until July 1, 1996:**

i.-ii. (No change.)

iii. **The course "Instructional Techniques for Company Officers" as developed by the National Fire Academy taken prior to [the effective date of these regulations] July 1, 1994;**

iv. (No change.)

v. **Two years of experience as a fire service instructor with at least 10 contact hours of instruction [during the two years prior to the effective date of this chapter] between February 5, 1988 and July 1, 1994 may be substituted for the "Instruction Techniques: Instructor Level 1" course.**

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

(f) **Applicants for the Instructor Level 1 certification shall demonstrate knowledge of the subject areas by successful completion of the Instructor Level 1 written examination administered through the Office of Training and Certification.**

1. **Three years of active firefighting experience prior to [the effective date of the regulations] July 1, 1994 may be substituted for the written examination [for a period of two years from the effective date of this chapter] until July 1, 1996.**

5:18C-5.3 Instructor Level 2

(a) (No change.)

(b) **To obtain a certification as Instructor Level 2, an individual must meet the following requirements:**

1. (No change.)

2. **Possess a certification as Instructor Level 1 for at least two years.**

i. **[For a period of two years from the effective date of these regulations] Until July 1, 1996, two years of experience as a fire service instructor with at least 20 contact hours of instruction [during the two years prior to the effective date of this chapter] between February 5, 1988 and July 1, 1994, plus satisfactory completion of the safety course specified in N.J.A.C. 5:18C-5.2(d) may be substituted for the above.**

3.-4. (No change.)

5. **Satisfactorily pass the written test specified in (e) below.**

i. **Five years of active firefighting experience prior to [the effective date of this chapter] July 1, 1994 may be substituted for the written examination [for a period of two years following the effective date of this chapter] until July 1, 1996.**

(c) The following standard applies to programs designed to satisfy the requirements for the course "Instruction Techniques: Instructor Level 2."

1.-3. (No change.)

4. [For two years following the effective date of this chapter] **Until July 1, 1996**, the following certificates or courses can be substituted for the course "Instruction Techniques: Instructor Level 2."

i.-ii. (No change.)

iii. The course "Educational Methodology" as developed by the National Fire Academy taken prior to [the effective date of this chapter] **July 1, 1994**;

iv. Any other course taken prior to [the effective date of this chapter] **July 1, 1994** can be submitted by the candidate to the Office of Training and Certification for evaluation as an equivalent. The office will maintain a list of reviewed and approved substitute courses; or

v. Two years of experience as a fire service instructor with 20 contact hours of instruction [during the two years prior to the effective date of this chapter] **between February 5, 1988 and July 1, 1994**.

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

5:18C-5.4 Special instructor certificates

(a) (No change.)

(b) The following relate to the live burn instructor certificate:

1. (No change.)

2. An individual seeking a live burn instructor certificate shall complete the following requirements:

i.-ii. (No change.)

iii. Successfully complete the live burn instructor written and skills examination administered through the Office of Training and Certification. **The examination shall not be required for individuals meeting all other requirements of this section and applying for certification on or before July 1, 1996.**

(c) The following apply to the SCBA/Smokehouse certificate:

1. An individual seeking a SCBA/Smokehouse certificate shall meet the following requirements:

i.-ii. (No change.)

iii. Successfully complete the SCBA/Smokehouse instructor written and skills examination administered through the Office of Training and Certification. **The examination shall not be required for individuals meeting all other requirements of this section and applying for certification on or before July 1, 1996.**

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Incentive Note Purchase Program

Proposed New Rules: N.J.A.C. 5:80-23

Authorized By: New Jersey Housing and Mortgage Finance

Agency, Christiana Foglio, Executive Director.

Authority: N.J.S.A. 55:14K-5s and 12a.

Proposal Number: PRN 1993-261.

Submit comments by June 2, 1993 to:

Anthony W. Tozzi

New Jersey Housing and Mortgage Finance Agency

3625 Quakerbridge Road

CN 18550

Trenton, New Jersey 08625-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing for the construction, rehabilitation or improvement of housing.

The Housing Incentive Note Purchase Program is proposed to enable the Agency to participate with banks and other lending institutions in

the financing of residential housing for owner occupancy. The Agency will enter into an Agreement with a lending institution to purchase a portion of the total construction loan (up to 30 percent). The Agency's obligation to purchase will be triggered upon a default on the loan by the developer/builder. Upon a default, the Agency will purchase up to 30 percent of the loan amount and thereby assume 30 percent of the risk of financing.

N.J.A.C. 5:80-23.1 through 23.3 set forth the authority for promulgating the rules, the purpose of the rules and the definitions of terms used throughout the rules. N.J.A.C. 5:80-23.4 and 23.5 establish the fund, initially at \$10 million, which the Agency will use to purchase the loans. Priorities are also established in the event that there is insufficient funding to meet all requests for participation in the program. N.J.A.C. 5:80-23.6 outlines the application procedure and identifies the supporting documentation required for submission of an application. N.J.A.C. 5:80-23.7 outlines the Agency's commitment procedure and identifies the contractual documents which will be entered into with the Agency. N.J.A.C. 5:80-23.8 sets forth the term of the agreement with the Agency and the percentage of participation in the loan amount by the Agency. N.J.A.C. 5:80-23.9 establishes the fees to be charged by the Agency in administering the program. N.J.A.C. 5:80-23.10 informs participants of their obligation to abide by non-discrimination laws.

Social Impact

The Housing Incentive Note Purchase Program is designed to encourage banks (and other lending institutions) to make construction financing available to builders/developers wishing to complete the construction of owner-occupied residential housing developments that are in the hands of regulators and lenders, or for those developer-owned, partially-constructed developments for which construction financing is no longer available. This will be done through the provision of a Note Purchase Fund. The purpose of this program is to promote the completion of stalled projects, generate new residential housing production and provide employment opportunities in the construction sector.

Economic Impact

The Housing Incentive Note Purchase Program will aid in the stimulation of the housing construction industry. The Agency has committed \$10 million to initiate the program. As the Agency will cover up to 30% of the construction loan amount, the program should result in \$100 million of construction financing from participating lending institutions. Applicants and participants in the program will pay the prescribed fees needed to defray the Agency's costs.

Regulatory Flexibility Analysis

The proposed new rules will impact upon lending institutions and developers/builders, some of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As to reporting, recordkeeping and compliance requirements, the rules require participants to file an application and supporting documents and, if eligible, require participants to enter into loan documents with the Agency. The Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed rules. Because the program is strictly voluntary, and is beneficial to the participants and due to the minimal nature of the compliance requirement, no differentiation in the compliance requirements based upon business size is proposed.

Full text of the proposed new rules follows:

SUBCHAPTER 23. HOUSING INCENTIVE NOTE PURCHASE PROGRAM

5:80-23.1 Authority

The rules in this subchapter are promulgated under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting P.L. 1983, c.530, N.J.S.A. 55:14K-1 et seq.; specifically N.J.S.A. 55:14K-12a and 14K-5(s).

5:80-23.2 Purpose

This subchapter is established to assist the Agency in helping to create incentives for lenders and developers to make available and continue to provide a base of affordable housing stock of owner occupied residential units in the State of New Jersey, as contemplated by N.J.S.A. 55:14K-12a and 14K-5(s).

5:80-23.3 Definitions

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

"Available note purchase commitment" means at the time of entering into any housing incentive note purchase agreement an amount equal to the product of x times y , where $x = 3$ and $y =$ the amount then on deposit to the credit of the Fund less all amounts then required as determined as of the end of the most recent calendar quarter by the Agency to be paid out of the Fund pursuant to properly made demands for purchase of undivided interests under existing Housing Incentive Note Purchase Agreements and less (but without duplication) the amount of any undivided interest already subject to purchase with respect to any residential project loan as to which there is an existing default for the payment of principal or interest which is over 90 days past due (whether or not a demand for purchase has been made).

"Eligible project" means any residential project which:

1. Is located entirely within the geographic boundaries of the State of New Jersey; and

2. Otherwise meets the requirements of the Agency which shall include the qualifications of the developer applying for a housing incentive note purchase agreement and the environmental and other characteristics of the real property comprising the residential project.

"Fund means the Housing Incentive Note Purchase Fund established pursuant to N.J.A.C. 5:80-23.4.

"Housing incentive note purchase agreement" or "HINPA" means any note purchase agreement entered into by the Agency pursuant to this subchapter in which the Agency agrees, subject to the terms and conditions set forth therein, to purchase an undivided interest.

"Person" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Qualified lender" means any person resident in, established under the laws of, or qualified to do business as a foreign corporation or other entity in, the State of New Jersey and which person is in the business of making real estate loans, has the corporate or other power to, and is authorized to conduct such business in, the State of New Jersey, and has a credit status satisfactory to the Agency.

"Purchase price" means the dollar amount, payable by the Agency to a qualified lender to acquire an undivided interest pursuant to and as adjusted by the terms of the relevant HINPA, as determined on the date of purchase.

"Residential project" means any development, the purpose of which is to create one or more residential structures for owner occupancy whether in the form of detached units or attached units for separate occupancy together with any land, infrastructure, roads, sewer, structures, facilities or other improvements, appurtenant or ancillary thereto. "Residential project" includes any partially or wholly completed development which would have constituted a "residential project" at inception and which has been abandoned or foreclosed or is subject to a foreclosure, bankruptcy, insolvency or like proceeding.

"Undivided interest" means the Agency's ratable share of any eligible project and the right, title and interest of the qualified lender in, to and under the related loan documents and collateral; such ratable share being equal to the percentage obtained by dividing the purchase price by the outstanding principal amount of such loan on the date of purchase thereof (excluding from the calculation of said principal any accrued or capitalized interest).

5:80-23.4 Housing Incentive Note Purchase Fund

(a) There is hereby established within the funds maintained by the Agency a fund to be known as the "Housing Incentive Note Purchase Fund."

(b) There shall, on the effective date of these rules, be deposited in the Fund the amount of \$10,000,000 from funds available to the Agency and previously designated for this purpose.

(c) There shall also be deposited in the Fund all income earned on the monies deposited therein and all other monies designated from time to time by the agency for deposit in the Fund.

(d) Monies on deposit in the Fund may be invested and reinvested by the Agency in the same manner in which other funds of the Agency may be invested.

(e) Monies on deposit in the Fund may be withdrawn:

1. To fund the payment of the purchase price of undivided interests pursuant to housing incentive note purchase agreements;

2. To cure, at the option of the Agency, payment defaults by developers as contemplated by the respective housing incentive note purchase agreements; and

3. To liquidate the Fund upon payment in full or the provision of payment in full of all existing and contingent obligations of the Agency under housing incentive note purchase agreements existing at the time of liquidation of the Fund.

5:80-23.5 Authority to enter into housing incentive note purchase agreements

(a) Each housing incentive note purchase agreement entered into pursuant to this subchapter shall be a limited recourse purchase obligation of the Agency payable solely from monies available in the Fund and from no other fund or source of monies and shall not be a general obligation of the Agency. In the event there are insufficient monies in the Fund to pay the aggregate purchase price of all undivided interests under outstanding housing incentive note purchase agreements, such purchases shall be made pro rata based upon the ratio which the purchase price under each HINPA bears to the aggregate purchase price of all undivided interests with respect to which a demand for purchase has been received by the Agency.

(b) The Agency may enter into a housing incentive note purchase agreement for any eligible project pursuant to which the Agency agrees to purchase an undivided interest for a purchase price not exceeding \$2,000,000 provided that the dollar amount of the purchase price to be paid by the Agency pursuant to such housing incentive note purchase agreement with respect to an eligible project, when added to the aggregate purchase price payable by the Agency pursuant to existing housing incentive note purchase agreements (whether or not a demand for purchase has been made), does not exceed the then available note purchase commitment. In determining whether the foregoing limits for a housing incentive note purchase agreement proposed to be entered into with respect to any eligible project are met, the Agency need not consider as an aggregate, separate eligible projects undertaken by the same person or such person's affiliates as one project, unless they are, in the judgment of the Agency, subdivisions of the same residential project, physically contiguous or located within the same municipality.

(c) In the event that the available note purchase commitment at any time is insufficient to meet the applications for financial support of the Agency in the form of requested housing incentive note purchase agreements, the Agency may prioritize requests for housing incentive note purchase agreements in its sole discretion, taking into consideration the goals of this program, together with the credit-worthiness of the respective residential project, the location of existing eligible projects and the location of the proposed residential project, the readiness of the developer to proceed, the experience of the developer, and the marketability of the residential project.

5:80-23.6 Applications

(a) An application for a housing incentive note purchase agreement for a residential project shall be made by the proposed developer in writing to the Agency.

(b) Such application shall set forth the amount of the requested commitment to purchase an undivided interest pursuant to a housing incentive note purchase agreement, the amount of the loan, the name of the lender and shall be accompanied by:

1. A description of the residential project (including the status thereof, for example, whether fully or partially completed, in foreclosure, ground not yet broken) together with an appraisal, not more than six months old, of the residential project by an American Institute of Architects (AIA) appraiser, a title report, not more than six months old, a site plan, a survey by a licensed surveyor, a copy of applicable zoning ordinances, and the status of utilities, roads and existing financing, if any, relating to the residential project;

2. A description of the developer, including a description of all real estate projects undertaken by the developer for the five years prior to the application, outstanding judgments against the developer and pending litigation involving the developer, if any, the type of person (for example, whether a corporation, limited or general partnership, or joint venture), list of all existing and proposed owners of equity in the developer and the residential project, and the most recent financial statements of the developer;

3. A description of the proposed financing for the residential project, including the name of the lender, any term sheets or commitment letters which have been provided to the developer and any draft documentation relating thereto;

4. If the lender is not a bank or other financial institution having one of the three highest investment grade ratings issued by Standard and Poor's Corporation or Moody's Investors Service, Inc., the application shall be accompanied by the most recent annual report of such lender;

5. An analysis of the cost to complete the residential project, together with a tabulation of the source and use of funds necessary to meet such costs; and

6. Including, without limitation, any other documents or information (such as, but without limitation, environmental audits) the Agency deems necessary or appropriate to determine whether the residential project is an eligible project.

5:80-23.7 Housing incentive note purchase commitment and requirements

(a) The Agency may issue to the developer of a residential project which is determined by the Agency to be an eligible project, a commitment to enter into a housing incentive note purchase agreement, only upon the approval of the Board of Agency after a review of the application delivered by the developer and such other information as the Agency may request from the developer and any qualified lender. Such commitment to enter into a housing incentive note purchase agreement shall contain such conditions precedent and other terms as the Agency shall deem appropriate. The Board of the Agency may delegate to any officer of the Agency the authority to execute and deliver a housing incentive note purchase agreement pursuant to a commitment upon a determination by such officer that all conditions precedent and other terms of such commitment have been satisfied.

(b) Each commitment to issue a housing incentive note purchase agreement shall require that:

1. All documents relating to an eligible project shall be in form and substance satisfactory to the Agency;

2. All mortgages of an eligible project securing repayment of the financing thereof shall identify and set release prices for the individual parcels comprising the eligible project and require the mortgagee to release each parcel upon its sale provided the release price has been paid;

3. The developer provide mortgagee title insurance, casualty and liability insurance and builders risk insurance, all by insurers and in such amounts as the Agency may require;

4. The mortgage in favor of the qualified lender financing the eligible project be the only encumbrance on the eligible project securing indebtedness for borrowed money; and

5. Loan documents and all security therefor expressly reflect the rights and benefits of the Agency arising from the undivided interest and providing for the recognition of the rights of the Agency as a lender pursuant to its acquisition of the undivided interest.

5:80-23.8 Housing incentive note purchase agreement requirements

(a) Each housing incentive note purchase agreement entered into by the Agency shall state that it expires at a date not later than the second anniversary of the date of entering into such housing incentive note purchase agreement.

(b) The amount of the undivided interest agreed to be purchased pursuant to each housing incentive note purchase agreement may not exceed 30 percent of the monies being loaned by a qualified lender with respect to such eligible project. The foregoing restriction is in addition to, and not in derogation of, any other limits contained within this subchapter.

(c) Each housing incentive note purchase agreement shall require that the developer pay all costs incurred by the Agency in connection with the preparation, execution and delivery of such housing incentive note purchase agreement, and in connection with any litigation arising out of such housing incentive note purchase agreement or any rights the Agency may have with respect thereto, including, in each case, and without limitation, all reasonable fees and disbursements of counsel to the Agency.

(d) Any request for an extension of the termination date of a housing incentive note purchase agreement shall be treated as an application for a new housing incentive note purchase agreement, and all of the provisions of this subchapter shall apply to such request as if it were an application for a new housing incentive note purchase agreement.

5:80-23.9 Fees

(a) No application for a housing incentive note purchase agreement shall be accepted unless it is accompanied by a nonrefundable application fee in an amount to be established from time to time by the Agency.

(b) No housing incentive note purchase agreement shall be entered into by the Agency unless on or before the date of entering into such agreement, there has been paid to the Agency a nonrefundable purchase fee in amount to be established from time to time by the Agency.

(c) The Agency may establish, from time to time, additional fees as it deems necessary to defray its reasonably estimated costs of administering the program contemplated hereby.

5:80-23.10 No discrimination

(a) Developers must comply with all applicable Federal, State or local fair housing and civil rights laws and regulations. Federal and State laws provide that developers may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap.

(b) Developers must also comply with requirements imposed in Agency statutes and rules.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF POLLUTION PREVENTION

Pollution Prevention Program Requirements

Proposed Amendments: N.J.A.C. 7:1K-1.5, 3.1, 3.4, 3.9, 3.10, 4.3, 4.5, 4.7, 5.1, 6.1, 7.2, 7.3, 9.2 through 9.5, and 9.7

Proposed Repeals: N.J.A.C. 7:1K-5.2, 6.2 and 12.7
Proposed New Rules: N.J.A.C. 7:1K-3.11, 9.2, 12.6, and 12.9

Proposed Repeal and New Rule: N.J.A.C. 7:1K-12.8

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

Authority: N.J.S.A. 13:1B-1 et seq.; 13:1D-9; 13:1D-35 et seq.; and 34:5A-1 et seq.

DEPE Docket Number: 30-93-04.

Proposal Number: PRN 1993-263.

A public hearing concerning this proposal will be held on:

Thursday, May 27, 1993, beginning at 11:00 A.M.

Public Hearing Room, 1st Floor East

Department of Environmental Protection and Energy

401 E. State Street

Trenton, New Jersey

An informal hearing will take place at the above location from 9:00 A.M. to 10:30 A.M. for those persons interested in discussing issues in this proposal with staff from the Office of Pollution Prevention. The formal hearing on this proposal will begin at 11:00 A.M. to afford

interested persons the opportunity to testify on the record, and will continue for as long as members of the public are present to testify.

Pre-registration for both the informal meeting and formal public hearing is strongly encouraged to enable the Department to determine how many people wish to discuss the proposal and/or formally testify on the proposal. Those persons wishing to testify at the public hearing will be required to sign in on the day of the hearing and will be provided at least five minutes in which to testify. More time may be provided for individual testimony depending on the number of persons wishing to testify. To pre-register, please call Deborah Milecofsky, Office of Pollution Prevention, at (609) 777-0518.

Submit written comments, identified by the docket number above, by June 18, 1993 to:

Janis E. Hoagland
Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

On February 1, 1993, the Department of Environmental Protection and Energy (Department) adopted a new chapter, N.J.A.C. 7:1K, in order to implement the Pollution Prevention Act (Act), P.L. 1991, c.235 (codified at N.J.S.A. 13:1D-35 et seq. and N.J.S.A. 34:5A-1 et seq.) This chapter took effect on March 1, 1993, and establishes a comprehensive framework for the pollution prevention planning and reporting program authorized by the Act. See 25 N.J.R. 930(a).

As a result of comments received during the rulemaking process, the Department now proposes a number of amendments to N.J.A.C. 7:1K. Most of these amendments were discussed in detail in the adoption notice, 25 N.J.R. 930(a), and were listed in the "Summary of Future Amendments" at 25 N.J.R. 966.

The Department's adoption of the final pollution prevention rules on the February 1, 1993 statutory deadline followed a rulemaking process that was unprecedented in its level of public participation. During the 18 months in which the Department developed the rules, it issued two preproposals, held four interactive public meetings and one public hearing, established two issue-specific task forces and held numerous meetings with interested parties. During the course of the rulemaking process, the Department expressed its desire to base the pollution prevention rules on the premise that mandatory pollution prevention planning coupled with the financial incentives of pollution prevention would be a sufficient impetus for industry to voluntarily adopt pollution prevention measures. Consistent with this philosophy, the adopted rules and the items included in this proposal establish a program of mandatory pollution prevention planning and voluntary implementation of pollution prevention measures.

Throughout the 18 month period during which these rules were developed, Department repeatedly stated that it would exercise discretion in implementing the enforcement powers granted by the Act in order to provide an incentive for industry to conduct aggressive and comprehensive pollution prevention planning. While the Department acknowledged that this was a somewhat unconventional approach to environmental regulation, it also announced its intention to spend the initial years of the program reviewing industrial pollution prevention progress and the impact of the pollution prevention rules on industrial planning and to report on this policy as part of its report to the Legislature in 1996. See N.J.S.A. 13:1D-45.

Most of the items contained in this proposal were listed and discussed in the adoption notice for N.J.A.C. 7:1K, and are necessary to make the program rules fully consistent with the Department's "good actor" approach to pollution prevention planning.

A summary of the significant proposed amendments to N.J.A.C. 7:1K follows:

N.J.A.C. 7:1K-1.5 Definitions

The Department is proposing to amend the definition of "intermediate product" at N.J.A.C. 7:1K-1.5 to remove the current exclusion of increases in quantities of intermediate products from counting towards use reduction or nonproduct output reduction goals. After further review of this issue, the Department has determined that intermediate products are essentially "internal" products at a facility, and as products, should not be subject to requirements for use or nonproduct output goal reductions. As "internal" products, it will not be possible for facilities

to quantify intermediate products as part of a facility-level materials accounting. By definition, intermediate products are the desired output product of one process, which are then input into another process. Since these are not facility-level inputs and outputs, it follows that intermediate products should not be reported under the classification of facility-level data elements.

Therefore, the Department has determined that it is necessary to delete the last sentence of the existing definition of "intermediate product," which states that increases in quantities of intermediate products do not count towards use reduction or nonproduct output reduction goals.

To maintain consistency with this proposed definition change, the Department is proposing to delete references to "intermediate product" at existing N.J.A.C. 7:1K-4.3(b)2ii(3), 4.3(c)1v (proposed 4.3(c)1iii), 4.3(c)1vi (proposed 4.3(c)1iv), 4.3(c)1viii (proposed 4.3(c)1vi), 4.3(c)2ii(3), 4.3(c)2ii(4), 4.3(c)2ii(6), 6.1(c)3ii(3), 6.1(c)4iii, 6.1(c)4iv, 6.1(c)4vi, 6.1(c)5ii(3), 6.1(c)5ii(4), and 6.1(c)5ii(6).

N.J.A.C. 7:1K-3.1 Preparation and submission of pollution prevention planning documents by priority industrial facilities

The Department is proposing to amend N.J.A.C. 7:1K-3.1, Preparation and submission of pollution prevention planning documents by priority industrial facilities, to incorporate two new subsections, N.J.A.C. 7:1K-3.1(d) and (e), setting forth reporting guidelines for facilities with fluctuating reporting obligations under 42 U.S.C. §11023. By definition, the class of "priority industrial facilities" required to conduct pollution prevention planning includes all facilities "required to submit a toxic chemical release form pursuant to 42 U.S.C. §11023." N.J.S.A. 13:1D-37. However, as noted by a commenter on the proposal, the Department neglected to address the pollution prevention planning status of facilities with fluctuating reporting status under 42 U.S.C. §11023 when it proposed the Pollution Prevention Planning Requirements, N.J.A.C. 7:1K. See 25 N.J.R. 964. Since the Act is designed to encourage the reduction of the use of hazardous substances, the Department believes it is appropriate to provide pollution prevention planning incentives if facilities no longer use hazardous substances (that is, are no longer subject to reporting under 42 U.S.C. §11023.) Conversely, facilities that begin to use hazardous substances (that is, become subject to reporting under 42 U.S.C. §11023) after the initial round of pollution prevention planning required by the Act should be required to conduct pollution prevention planning.

The proposed new subsections address a facility's obligation to conduct pollution prevention planning (1) when the facility is not currently covered by the Act but becomes covered because its use, manufacture or production of a covered hazardous substance exceeds the 42 U.S.C. §11023 threshold (proposed N.J.A.C. 7:1K-3.1(d)) and (2) when the facility is no longer covered by either 42 U.S.C. §11023 or the Act (proposed N.J.A.C. 7:1K-3.1(e)).

N.J.A.C. 7:1K-3.4 Scope of pollution prevention planning documents

1. The Department is proposing to amend N.J.A.C. 7:1K-3.4(b)1, which currently exempts the owner or operator of an industrial facility from including information on a research and development laboratory located at the facility in the facility's Pollution Prevention Plan, Plan Summary, or Plan Progress Report, to reference the procedure for obtaining a research and development exemption under the Worker and Community Right-to-know Act, N.J.S.A. 34:5A-1 et seq. The proposed amendment to N.J.A.C. 7:1K-3.4(b)1 cross-references the research and development exemption procedure at proposed N.J.A.C. 7:1G-3.2(a)2 (see the proposal in the April 19, 1993 New Jersey Register), and requires industrial facilities to obtain an exemption under N.J.A.C. 7:1G-3.2(a)2 in order to be exempt from including information on a research and development laboratory in a Pollution Prevention Plan, Plan Summary, or Plan Progress Report.

2. The Department is proposing to amend N.J.A.C. 7:1K-3.4(b)2, which currently exempts the owner or operator of an industrial facility from including information on a pilot facility in a Pollution Prevention Plan, Plan Summary or Plan Progress Report, to include a specific procedure for obtaining a pilot facility exemption. The Department believes that a specific exemption procedure is necessary to prevent the pilot facility exemption provided by the Act from becoming a significant loophole in the Act's pollution prevention planning requirements, and believes that the level of detail required to justify a facility's qualification for a pilot facility exemption will not be burdensome.

3. The Department is proposing to amend N.J.A.C. 7:1K-3.4(c) and 3.9(c) to exempt new processes from Part IB pollution prevention plan-

ning requirements in addition to the current exemption for Part II pollution prevention planning. The Act exempts an owner or operator of an industrial facility from including in a Pollution Prevention Plan, Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report "information pertaining to improvements in pollution prevention for a production process established after January 1, 1992 until the first five-year revision of the pollution prevention plan and pollution prevention plan summary prepared for the industrial facility at which the production process is carried out after the establishment of the production process, or until five years after the establishment of the production process, whichever occurs later." N.J.S.A. 13:1D-40(f) (emphasis added). The Department interprets this language to exempt facilities from compiling Part II information about specific pollution prevention methods before the first five-year Plan revision or five years after the new process is installed, whichever comes later. However, the Department does not think that this language was intended to exempt facilities from preparing the basic Part I process information for a new process, since this information should be readily available for a newly designed process.

Nonetheless, in response to comments received on this issue, the Department is proposing to further limit the information required to be collected for new processes by exempting new processes from Part IB and Part II pollution prevention planning, and requiring the completion of only Part IA of the Plan for new processes. Part IA of a Plan contains certifications and estimates of inventory and throughput data, generation of non-product output data and cost data, none of which concern pollution prevention improvements.

N.J.A.C. 7:1K-3.9 Pollution Prevention Plan and Pollution Prevention Plan Summary modifications

1. The Department is proposing to consolidate and simplify N.J.A.C. 7:1K-3.9(a) and (b), which require a facility to modify its pollution prevention planning documents to reflect certain significant process changes at the facility. Although the existing subsections already describe the range of situations under which it is necessary to update these documents, the Department believes that the format of the existing subsections has created unnecessary confusion since two separate subsections are tied to the three different reports (N.J.A.C. 7:1K-3.9(a) for Part IA of a Plan and N.J.A.C. 7:1K-3.9(b) for Plans, Plan Summaries and Plan Progress Reports). Therefore, the Department proposes to delete existing N.J.A.C. 7:1K-3.9(a) and (b) and to replace these subsections with revised language at N.J.A.C. 7:1K-3.9(a).

Under new N.J.A.C. 7:1K-3.9(a), facilities will be required to update a Plan, Plan Summary or Plan Progress Report, as appropriate, upon:

- Ceasing operation of a targeted production process or significantly expanding the operation of a targeted production process;
- Installing a new and different primary component in a targeted production process or removing a primary component from a targeted production process (unless the component was the result of pollution prevention changes);
- Using, releasing, or generating as nonproduct output a hazardous substance at a targeted production process which was not used, released or generated when the current Pollution Prevention Plan was completed;
- Reclassifying an existing nonproduct output as a product, intermediate product, or co-product;
- Modifying a grouping decision that affects a targeted process; or
- Modifying a targeting decision.

Under new N.J.A.C. 7:1K-3.9(a), the Department is also proposing to allow facilities one year to update their Plans and Plan Summaries, instead of the 90-day time period currently provided by N.J.A.C. 7:1K-3.9(a) and (b).

2. The Department is proposing a new subsection, N.J.A.C. 7:1K-3.9(b), in order to clarify that an industrial facility may voluntarily modify its Pollution Prevention Plan, Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report at any time in order to update the Pollution Prevention Plan, Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report.

3. The Department is proposing two new subsections, N.J.A.C. 7:1K-3.9(e) and (f), in order to allow facilities to send in substitute pages to modify their Pollution Prevention Plans, Plan Summaries and Plan Progress Reports in lieu of submitting new documents each time the facility makes production process changes that trigger the modification criteria at N.J.A.C. 7:1K-3.9(a).

As part of preparing Part IB of the Plan, which mirrors the Plan Progress Report and which must be annually updated, facilities must reassess their pollution prevention goals following any of the production

process changes listed at N.J.A.C. 7:1K-3.9(a). This reassessment will presumably involve determining if the goals are still appropriate. Depending on the result of this reassessment, a facility may wish to update its techniques, its implementation schedule, and/or its goals in the Plan. If the facility decides to do this, it must modify the Plan Summary when the next Progress Report is due in order to maintain consistency between the Plan and Plan Summary.

Under the existing rules, the only way for a facility to update the Plan or Plan Summary would be to prepare a new Plan or submit a new Plan Summary, even if only a small part of either document has changed. Under proposed N.J.A.C. 7:1K-3.9(f), facilities will be allowed to prepare Plan update pages or submit Plan Summary update pages in lieu of preparing or submitting a new Plan or Plan Summary to reflect the production process changes listed at N.J.A.C. 7:1K-3.9(a). If the superseded Plan Summary pages contains confidential information, the Department will return them to the facility.

Under the proposed scenario, Plan information must be updated annually for changes related to targeted processes to ensure accuracy of the process-level data originally collected about that process, or a change in the administration of the Plan that would alter the grouping, targeting, or "output" classification surrounding a targeted production process. Under the new procedure, information concerning non-targeted processes will not need to be updated until the five-year revision of the entire Plan.

N.J.A.C. 7:1K-3.10 Department review of Pollution Prevention Plans

The Department is proposing a number of amendments to N.J.A.C. 7:1K-3.10 in order to distinguish between enforceable and non-enforceable review of Pollution Prevention Plans and to consolidate the procedure for reviewing Plans, Plan Summaries and Plan Progress Reports into one section of the rules. Currently, N.J.A.C. 7:1K-3.10, 5.2 and 6.2 contain broad authority for the Department to require Pollution Prevention Plans, Plan Summaries and Plan Progress Reports to be submitted for review, and set forth procedures for Department review of Plans, Plan Summaries and Plan Progress Reports and the issuance of enforceable administrative orders to require facilities to correct Plan, Plan Summary and Plan Progress Report deficiencies.

In response to comments received on this issue, the Department is proposing to limit its authority to require Plan submittal and to move references to Plan submittal currently in this section to a new section at N.J.A.C. 7:1K-3.11. See discussion of Plan submittal, below.

The proposed amendments to N.J.A.C. 7:1K-3.10 are as follows:

1. The Department is proposing to change all references to "Plans" in this section to "Plans, Plan Summaries and Plan Progress Reports" in order to consolidate the review procedure for Plans, Plan Summaries and Plan Progress Reports currently set forth in this section and in N.J.A.C. 7:1K-5.2 and 6.2.

2. The Department is proposing to add the term "and review" to N.J.A.C. 7:1K-3.10(a) to specify that Pollution Prevention Plans, Plan Summaries, and Plan Progress Reports will be reviewed (not just inspected) on site at industrial facilities.

3. The Department is proposing to delete the broad Plan submittal authority at current N.J.A.C. 7:1K-3.10(b). The Department's authority to require Plan submittal will now be addressed at proposed N.J.A.C. 7:1K-3.11(a).

4. The Department is proposing to move current N.J.A.C. 7:1K-3.10(c), which addresses the assertion of confidentiality claims prior to Plan submittal, to a new section at N.J.A.C. 7:1K-3.11(b).

5. The Department is proposing to revise current N.J.A.C. 7:1K-3.10(d) (proposed N.J.A.C. 7:1K-3.10(c)), which lists criteria for reviewing Plans, to remove references to enforcement and to expand the list of review criteria. In addition to the existing Plan review criteria, the Department proposes at a minimum to look at the following aspects of Plans, Plan Summaries and Plan Progress Reports:

- How an owner or operator's grouping decision impacts various aspects of its Pollution Prevention Plan, including its targeting decision and its identification of available and viable pollution prevention options;
- How an owner or operator's targeting decision impacts the industrial facility's development of pollution prevention goals and source-specific information;
- The value of Total Cost Assessment methods to the industrial facility's financial analysis;
- The industrial facility's methods for incorporating pollution prevention into corporate policies and decision-making;

- The industrial facility's methods for obtaining process-level and source-level estimates of use and nonproduct output;
- The industrial facility's unit of product for tracking pollution prevention progress;
- How the identification of production and production processes affects pollution prevention planning and reporting at the industrial facility;
- Whether any current environmental rules or regulations are obstacles to implementing pollution prevention methods identified in the industrial facility's Pollution Prevention Plan; and
- If applicable, whether the industrial facility has met the requirements for a Raw Material Substitution Certification set forth in N.J.A.C. 7:1K-4.6.

6. The Department is proposing to move current N.J.A.C. 7:1K-3.10(e), which contains broad authority for requiring Plan modifications, to N.J.A.C. 7:1K-3.10(b). As discussed above, this subsection will now apply to Plans, Plan Summaries and Plan Progress Reports, consistent with existing N.J.A.C. 7:1K-5.2(c) and 6.2(c).

7. The Department is proposing to revise and consolidate current N.J.A.C. 7:1K-3.10(f) and (g) into proposed N.J.A.C. 7:1K-3.10(d) to specify a procedure for issuing administrative orders directing facilities to prepare or complete a Pollution Prevention Plan, Plan Summary, or Plan Progress Report. Under this new subsection, if the Department determines that a priority industrial facility has not prepared a Pollution Prevention Plan, Plan Summary or Plan Progress Report as required by N.J.A.C. 7:1K-3.1, 3.6 or 3.8, or that a Pollution Prevention Plan, Plan Summary or Plan Progress Report is administratively incomplete, it may issue an administrative order to the industrial facility under N.J.A.C. 7:1K-12.2. A facility's failure to comply with an administrative order issued under this subsection may trigger enforcement action under N.J.A.C. 7:1K-12.

8. The Department is proposing a new subsection, N.J.A.C. 7:1K-3.10(e), to establish a procedure for issuance of opinion letters containing suggested amendments to Pollution Prevention Plans, Plan Summaries and Plan Progress Reports once the Department has reviewed these documents under the review criteria at proposed N.J.A.C. 7:1K-3.10(c). The Department expects this informal procedure to provide a forum for the exchange of pollution prevention information with industrial facilities, particularly as pertains to the pollution prevention methods described in each facility's Plan.

This procedure will apply if the Department determines that it is possible for a priority industrial facility to strengthen the pollution prevention planning contained in its Pollution Prevention Plan. Consistent with proposed N.J.A.C. 7:1K-12.9, a facility's failure to implement the amendments suggested by the Department in an opinion letter issued under this subsection will not constitute non-compliance with N.J.A.C. 7:1K and will not trigger enforcement action or civil administrative penalties against the facility. See proposed N.J.A.C. 7:1K-3.10(e)5.

N.J.A.C. 7:1K-3.11 Submittal of Pollution Prevention Plans (New section)

The Department is proposing a new section, N.J.A.C. 7:1K-3.11, to govern submittal of Pollution Prevention Plans to the Department for review. This section is intended to supersede and replace references to Plan submittal in existing N.J.A.C. 7:1K-3.10, Department review of Pollution Prevention Plans.

Under new subsection N.J.A.C. 7:1K-3.11(a), the Department is proposing to limit its authority to require submittal of Pollution Prevention Plans to situations where a facility is requesting an out-of-process recycling exemption pursuant to N.J.A.C. 7:1K-4.7 or applying for a facility-wide permit pursuant to N.J.A.C. 7:1K-7. While the statutory authority for Plan submittal is clearly and broadly stated at N.J.S.A. 13:1B-43(a), and was originally codified at N.J.A.C. 7:1K-3.10(b), the Department is sympathetic to industry's concern that Plan submittal presents a potentially significant disincentive to the development of comprehensive and aggressive Pollution Prevention Plans.

As discussed during the rulemaking process for N.J.A.C. 7:1K, the Department has tried to develop the pollution prevention planning process in a manner that promotes Plan development and implementation as an integral component of corporate decision-making, so that facilities perceive their Plans as internal planning tools rather than documents prepared for compliance purposes. The Department has also tried to base the pollution prevention rules on a "good actor" philosophy (that is, on the assumption that industry will want to comply with the Act) in part because pollution prevention has been documented to be cost-effective to industry. In order to promote pollution prevention

planning that is consistent with both these philosophies, the Department is proposing to voluntarily limit its Plan submittal authority to the two situations (out-of-process recycling exemption requests and facility-wide permitting applications) where review of a Pollution Prevention Plan will be a crucial component of the Department's decision-making.

In 1966, the Department will make recommendations regarding Plan submittal as part of the report to the Legislature required by N.J.S.A. 13:1D-45. At that time, the Department may determine to expand the Plan submittal authority at N.J.A.C. 7:1K-3.10(b).

In addition, the Department is proposing language at new N.J.A.C. 7:1K-3.11(b) in order to specify that a facility can assert a confidentiality claim pursuant to N.J.A.C. 7:1K-8.2, if applicable, when it submits a Plan to the Department for review. This provision replaces current N.J.A.C. 7:1K-3.10(c), which requires the Department to provide 45 days notice prior to requiring a Plan to be submitted for review. The Department has determined that it is no longer necessary to specify a 45-day time period as part of the limited Plan submittal authority proposed at N.J.A.C. 7:1K-3.11(a), since an industrial facility will control the timing of an application for an out-of-process recycling exemption and since proposed N.J.A.C. 7:1K-7.3(a) now requires 45 days notice of the deadline for submitting a facility-wide permit application. Therefore, the Department has revised the language at former N.J.A.C. 7:1K-3.10(c) to specify that the industrial facility may assert a confidentiality claim concurrently with its application for an out-of-process recycling authorization or facility-wide permit.

N.J.A.C. 7:1K-4.3 Contents of Part I of a Pollution Prevention Plan

The Department is proposing several amendments to N.J.A.C. 7:1K-4.3(c)1, which requires facility-level information on pollution prevention reductions to be recorded in Part IB of a Pollution Prevention Plan, in order to make this paragraph consistent with N.J.A.C. 7:1K-6.1(c)4, which requires the same information to be reported as part of a Pollution Prevention Plan Progress Report. On adoption of N.J.A.C. 7:1K, the Department added an explanatory note to N.J.A.C. 7:1K-4.3(c)1 indicating that the information required by N.J.A.C. 7:1K-4.3(c)1 is the same information to be reported in the Plan Progress Report pursuant to N.J.A.C. 7:1K-6.1(c)4. However, through an oversight, the Department neglected to amend N.J.A.C. 7:1K-4.3(c)1 to reflect the changes made upon adoption of N.J.A.C. 7:1K-6.1(c)4, which removed references to "facility-wide unit of product" and measurement of nonproduct output on a unit of production basis. Therefore, the Department is now proposing amendments to N.J.A.C. 7:1K-4.3(c)1 to make these two paragraphs consistent.

N.J.A.C. 7:1K-4.5 Part II of a Pollution Prevention Plan

The Department is proposing to add the word "targeted" to N.J.A.C. 7:1K-4.5(a)2 to clarify that the inventory data required by this section is limited to targeted production processes only, and is not required for all production processes. Addition of the word "targeted" will make N.J.A.C. 7:1K-4.5(a)2 consistent with the rest of N.J.A.C. 7:1K-4.5, which contains reporting requirements for Part II of a Pollution Prevention Plan and which apply only to targeted production processes.

N.J.A.C. 7:1K-4.7 Out-of-process recycling authorization

1. The Department is proposing to reword existing N.J.A.C. 7:1K-4.7(b)1, which requires a facility to submit its most recent Pollution Prevention Plan as part of an application for an out-of-process recycling authorization, in order to specify that a complete copy of the Plan must be submitted and to clarify that as part of the application process the owner or operator may assert a confidentiality claim for part or all of the Plan in accordance with N.J.A.C. 7:1K-8 through 7:1K-11.

2. The Department is proposing a new subsection, N.J.A.C. 7:1K-4.7(d), to specify that an industrial facility's failure to submit its Pollution Prevention Plan as part of its request for an out-of-process recycling authorization will be grounds for denial of a request for an out-of-process recycling authorization. In order for the Department to determine whether an industrial facility has exhausted all of its pollution prevention options, therefore qualifying it for an out-of-process recycling authorization, the Department will have to review an industrial facility's Plan. If the facility refuses to submit its Plan, the Department will have no choice but to deny the request for an out-of-process recycling authorization.

N.J.A.C. 7:1K-5.1 Pollution Prevention Plan Summary reporting requirements

1. The Department is proposing to add a new Plan Summary reporting item at N.J.A.C. 7:1K-5.1(b)4iii in order to require facilities to identify and describe each product using a four digit SIC Code. This requirement is expected to enable the public to better understand the throughput information contained in Plan Summaries and Plan Progress Reports. Throughout the public participation process accompanying these rules, commenters have voiced concern that the only way to adequately describe a production process is to include an identification of the product. As stated in the Response to Comments that accompanied the adopted rule, the Department believes that a simple and relatively easy method of identifying products is to use four-digit SIC codes. The Department encourages comment on whether identification of products is valuable and whether four-digit SIC codes are an appropriate method of describing products.

2. The Department is proposing to amend N.J.A.C. 7:1K-5.1(b)5vi to add additional use reporting ranges as follows: 10,000 to 25,000 pounds; 25,000 to 50,000 pounds; and greater than 50,000 pounds. During the rulemaking process for N.J.A.C. 7:1K, the Department received a recommendation to expand the original set of reporting ranges as a means of evaluating the overall quality of an industrial facility's targeting decisions. The Department expects that requiring hazardous substance use in quantities between 10,000 and 50,000 pounds to be reported with more specificity will provide a broader description of each production process and of how it compares to other processes at the facility. Although a comprehensive evaluation of a facility's targeting decisions will require review of the complete Pollution Prevention Plan, the additional use ranges in proposed N.J.A.C. 7:1K-5.1(b)vi will facilitate this review.

Because the Act only requires industrial facilities to report hazardous substance use ranges for targeted processes (see N.J.S.A. 13:1D-41(h)5), and because there does not appear to be a need for facilities to report nonproduct output generation and release ranges, the Department has not proposed reporting ranges for nonproduct output generation and release information as originally suggested by the commenter.

3. The Department is proposing to add a reporting item to N.J.A.C. 7:1K-5.1(b)5viii to require a facility to indicate in its Plan Summary whether its targeting decision was based on total nonproduct output, use or release of hazardous substances at the facility. This requirement will enable the Department to check, through on-site review of the facility's Pollution Prevention Plan, whether the facility has met the targeting criteria found at N.J.A.C. 7:1K-4.4(b).

4. The Department is proposing to add a reporting item to N.J.A.C. 7:1K-5.1 to require a facility to report in the Plan Summary the name and business telephone number of a non-management employee representative at the industrial facility. N.J.S.A. 13:1D-41(a)2 requires this item to be reported in a Pollution Prevention Plan. During the rulemaking process, one commenter suggested that the Department add this reporting item to the Plan Summary, through which the information would be publicly available and would be likely to increase worker involvement in pollution prevention planning. The Department noted in the adoption notice for N.J.A.C. 7:1K that it intended to propose this change.

N.J.A.C. 7:1K-5.2 Department review of Pollution Prevention Plan Summaries

The Department is proposing to repeal N.J.A.C. 7:1K-5.2, Department review of Pollution Prevention Plan Summaries, which is to be replaced by the consolidated review procedure at proposed N.J.A.C. 7:1K-3.10.

N.J.A.C. 7:1K-6.1 Pollution Prevention Plan progress reporting requirements

1. The Department is proposing a new provision at N.J.A.C. 7:1K-6.1(a)2 to cross-reference the requirements for Pollution Prevention Plan Progress Report modification set forth at proposed N.J.A.C. 7:1K-3.9.

2. The Department is proposing to change references to the Department's former Form DEQ-114 to "Release and Pollution Prevention Report" at N.J.A.C. 7:1K-6.1(c)7. This will maintain consistency with the Department's separate proposal to amend the Worker and Community Right to Know rules, N.J.A.C. 7:1G, which proposes the use of the term "Release and Pollution Prevention Report" to refer to the report commonly known as Form DEQ-114. See the proposal in the April 19, 1993 New Jersey Register.

3. The Department is proposing a new subsection, N.J.A.C. 7:1K-6.1(c)8, to allow a facility to identify the criteria triggering Plan modifications during the year through use of a checkoff box in the Plan Progress Report. If a "yes" box is checked next to a criterion, a facility will need to update the **process-level information** and the **process-level inventory data** in Part IA of its plan (see N.J.A.C. 7:1K-4.3(b)3 and 4) for **targeted processes** that are affected by any of these changes. A facility will also be required to update the description of the targeted process that appears in its Plan Summary if any of the changes have affected that description.

N.J.A.C. 7:1K-6.2 Department review of Pollution Prevention Plan Progress Reports

The Department is proposing to repeal N.J.A.C. 7:1K-6.2, Department review of Pollution Prevention Plan Progress Reports, which is to be replaced by the consolidated review procedure at proposed N.J.A.C. 7:1K-3.10.

N.J.A.C. 7:1K-7.2 Designation of priority industrial facilities for participation in facility-wide permit program and**N.J.A.C. 7:1K-7.3 Procedures for issuing facility-wide permits**

1. The Department is proposing to amend N.J.A.C. 7:1K-7.2(b) and to promulgate a new subsection at N.J.A.C. 7:1K-7.3(f) to allow volunteer facilities to withdraw from the pilot facility-wide permit program up until 30 days following the receipt of a draft facility-wide permit and to give designated facilities a 30-day time period during which to withdraw from the pilot program.

During the rulemaking process, several commenters expressed concern over the Department's original proposal to require an owner's or operator's commitment to volunteer for the pilot facility-wide permitting program to be irrevocable. The Department had proposed this requirement because it anticipated that without an irrevocable commitment it would not know how many additional facilities to designate under N.J.A.C. 7:1K-7.2(d) in order to have 15 facilities in the program by February 1, 1994, as required by N.J.S.A. 13:1B-48(c).

Since the Department agreed with the commenters that requiring an irrevocable commitment to the pilot facility-wide permitting program would act as a significant disincentive for any voluntary participation in the pilot program, the Department removed the reference to an irrevocable commitment upon adoption of N.J.A.C. 7:1K-7.2. However, as adopted, neither N.J.A.C. 7:1K-7.2 or 7.3 addressed the questions of when and how a facility would be allowed to withdraw from the pilot facility-wide permit program.

Under the proposed amendment to N.J.A.C. 7:1K-7.2(b), a volunteer facility's commitment to participate in the facility-wide permitting program will remain in effect unless, as authorized by proposed N.J.A.C. 7:1K-7.3(f), the facility withdraws from the program before the 30th day following issuance of a draft facility-wide permit. Under the proposed subsection, the Department will also allow non-volunteer facilities participating in the pilot facility-wide permit program to withdraw from the pilot program during the 30-day period following issuance of the draft facility-wide permit. The Department has drawn this distinction between volunteer and non-volunteer facilities in part to provide incentive for facilities to volunteer for the pilot program, and in part to ensure that facilities designated for participation in the pilot program under the criteria at N.J.A.C. 7:1K-7.2(d) do not immediately withdraw from the pilot program to avoid participating in the program.

2. The Department is proposing a new subsection at N.J.A.C. 7:1K-7.3(a) and is revising existing N.J.A.C. 7:1K-7.3(a) (proposed N.J.A.C. 7:1K-7.3(b)) to clarify that the Department will send facilities participating in the pilot facility-wide permitting program at least 45 days written notice of the deadline by which a complete facility-wide permit application, including a copy of the facility's most recent Pollution Prevention Plan, must be submitted to the Department for review. Pursuant to the civil administrative penalty schedule at proposed N.J.A.C. 7:1K-12.8, a participating facility's failure to meet this deadline may subject it to enforcement action. The Department believes that these penalties are necessary to ensure that the pilot facility-wide permit program progresses in accordance with limited time frame established by the Act.

N.J.A.C.7:1K-9.2 Notice to claimant of request for confidentiality determination (New section)

The Department is proposing a new section at N.J.A.C. 7:1K-9.2 to require notice to a claimant facility when the Department receives a request for information for which a confidentiality claim has been asserted under this chapter.

N.J.A.C. 7:1K-12.6 Civil administrative penalties for frivolous confidentiality claims (New section)

In accordance with N.J.S.A. 13:1D-47, the Department is proposing a new section at N.J.A.C. 7:1K-12.6 outlining penalties for frivolous confidentiality claims. Pursuant to N.J.S.A. 13:1D-47(b), a confidentiality claim which the Department determines to be frivolous constitutes a violation of the Act. Although N.J.A.C. 7:1K-12.5 contains penalties for false information, through an oversight, the Department did not propose specific penalties for this class of violations as part of the original rulemaking proposal for N.J.A.C. 7:1K.

The Department has also added a new subsection, N.J.A.C. 7:1K-9.6(c), to cross-reference this authority as part of the procedure for making a final confidentiality determination.

N.J.A.C. 7:1K-12.8 Civil administrative penalties for violations of rules adopted pursuant to the Act (New section)

The Department is proposing to consolidate existing N.J.A.C. 7:1K-12.7, and 12.8, which currently set forth the civil administrative penalties for (1) failure to comply with a final administrative order issued pursuant to N.J.A.C. 7:1K-3.9, 5.2 or 6.2 requiring modification of a Pollution Prevention Plan, Plan Summary or Plan Progress Report, (2) failure to submit a Pollution Prevention Plan for review pursuant to N.J.A.C. 7:1K-3.9, or (3) untimely submission of a Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report, into a new section addressing civil administrative penalties for violations of rules adopted pursuant to the Act and specifically listed in this section. Consistent with proposed N.J.A.C. 7:1K-7.3(a), the Department has also proposed in this section a penalty for failure to submit a complete facility-wide permit application, including a complete copy of the most recent Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility, for review by the deadline established by the Department.

N.J.A.C. 7:1K-12.9 Exemptions from civil administrative penalties (New section)

The Department is proposing a new section, N.J.A.C. 7:1K-12.9, to specifically exclude from enforcement action a facility's failure to achieve its pollution prevention goals and a facility's failure to implement the Plan improvements suggested by the Department in an opinion letter issued pursuant to N.J.A.C. 7:1K-3.10(e). During the rulemaking process for N.J.A.C. 7:1K, the Department received comments from the regulated community that promulgating a specific exemption from enforcement would be one way of reiterating that pollution prevention goals are intended to guide industrial facilities and the public rather than serving as a basis for enforcement action.

Social Impact

In this proposal, the Department has proposed to amend and supplement the recently adopted Pollution Prevention Program Requirements, N.J.A.C. 7:1K, in order to clarify and provide consistency in pollution prevention planning procedures, and to implement several significant policy changes that were identified during the rulemaking process leading up to the adoption of N.J.A.C. 7:1K. As such, this proposal does not represent a significant rethinking of the pollution prevention planning program but, rather, is a vehicle to implement policies and procedures considered during the rulemaking process.

As noted during that process, the Department expects the general social impact of the pollution prevention planning program to be a positive one since reducing chemical use and releases should result in more efficient production processes, a cleaner environment, and reduced occupational exposure. The changes to the program contained in these proposed amendments and new rules are not expected to have any detrimental effect on the positive social impact associated with pollution prevention planning, and in fact, may improve the social impact of the program by making its requirements more user-friendly.

As discussed in the Social Impact analysis for the Department's original rule proposal for N.J.A.C. 7:1K (see 24 N.J.R. 3633), pollution prevention is a novel concept for many businesses and is by nature fundamentally different from historic pollution control philosophies. The

underlying premise of pollution prevention is that it is preferable for society to use and generate the least amount of hazardous substances as possible while still preserving and promoting prosperity and our standard of living. In its truest sense, the pollution prevention approach is based on the adage, "an ounce of prevention is worth a pound of cure." To this extent, the Act and the Pollution Prevention Program Requirements are based on the thesis that if industry is required to examine its potential opportunities for pollution prevention, the financial benefits of pollution prevention will be sufficient incentive to prompt business to voluntarily implement those pollution prevention options. As a result, the pollution prevention program requires mandatory pollution prevention planning and reporting, but does not require that companies implement their plans or meet any type of pollution prevention performance standard.

The proposed amendments are not expected to have an adverse impact on the industrial facilities covered by the Pollution Prevention Program Requirements, since they are intended to clarify or streamline the pollution prevention planning process. The most significant changes contained in this proposal pertain to the pollution prevention plan submittal and review process and the enforcement process. Under these amendments, Pollution Prevention Plans will be kept on site at the industrial facility under most circumstances and the primary test of whether an industrial facility has complied with the spirit and intent of the Act will be whether it has prepared a Plan that is administratively complete. Therefore, the Department expects the amended rules to afford industrial facilities significant flexibility in using plans as a strategic planning tool and focusing their time and resources on implementation of pollution prevention instead of paperwork.

Using pollution prevention as a tool for change, industry and government can move beyond their historic, often adversarial relationship, and society should benefit from the positive effects on both the environment and the economy. However, even those changes that are most significant in this proposal, plan submittal and enforcement procedures, were anticipated when the Department adopted N.J.A.C. 7:1K. As such, the social impact of these proposed amendments and new rules is expected to be consistent with the social impacts of the pollution prevention program considered and analyzed throughout the entire rulemaking process.

Economic Impact

As discussed during the rulemaking process under the Act, the Pollution Prevention Program Requirements, N.J.A.C. 7:1K, are expected to increase the costs of doing business for priority industrial facilities in the short term (during the next two years), but should decrease the costs of doing business for these same facilities in the long term (over the next five years and longer). The increased costs to industrial facilities will include the cost of preparing a Pollution Prevention Plan and Pollution Prevention Plan Summary and reporting annually on pollution prevention planning progress to the Department in a Pollution Prevention Plan Progress Report. However, these facilities are expected to accrue direct savings from implementing pollution prevention measures, and should indirectly benefit from the decreased costs to employees and society in general from reduced use of and exposure to hazardous substances.

Consistent with the Act, the pollution prevention planning program requires priority industrial facilities to conduct pollution prevention planning and reporting, but does not require businesses to implement the pollution prevention options identified in the planning process. A basic premise of the Act and the pollution prevention program is that the financial benefits of pollution prevention will be sufficient incentive for industry to implement the pollution prevention techniques uncovered as a result of the mandatory planning process. The Department anticipates that by identifying techniques to improve industrial efficiency, the pollution prevention planning program will result in long-term financial savings for the State's businesses in the form of reduced costs, including raw material purchases, liability, regulatory compliance, and waste management. In addition, the Department expects that by requiring industrial facilities to examine their pollution prevention options through a mandatory planning program, businesses will realize the financial savings available through pollution prevention techniques and will voluntarily implement those pollution prevention techniques.

The proposed amendments will fine tune the existing rules at N.J.A.C. 7:1K in order to fully develop the underlying thesis of the pollution prevention program. Many of the proposed changes were anticipated and identified during the rulemaking process leading up to the original adoption of N.J.A.C. 7:1K. Overall, the Department expects the proposed amendments to have a positive economic impact on industrial facilities

by reducing the cost of the pollution prevention planning and reporting process. Although many of the program changes described in this proposal are relatively minor in scope, they are expected to clarify and streamline reporting, thereby making compliance with N.J.A.C. 7:1K simpler and less costly. These changes include: clarifying the definition of intermediate product (N.J.A.C. 7:1K-1.5); revisions to the procedure for modifying Pollution Prevention Plans, Plan Summaries, and Plan Progress Reports (N.J.A.C. 7:1K-3.9); exempting facilities from Part IB planning requirements for new production processes (N.J.A.C. 7:1K-3.9(c)); and allowing participants in the facility-wide permit program to withdraw from program (N.J.A.C. 7:1K-7.2 and 7.3).

In addition, the Department is seeking comment on what, if any, economic impact will result from its proposals concerning the use of four-digit SIC codes to describe products (N.J.A.C. 7:1K-5.1(b)4iii) and the reporting of additional, more specific "use" ranges (N.J.A.C. 7:1K-5.1(b)5vi).

The most significant program change described in this proposal results from the Department's decision to limit its authority to require submittal of Pollution Prevention Plans for review, which will result in Plans remaining on site at an industrial facility under most circumstance. This policy change will result in direct savings to facilities by eliminating the need to file confidentiality claims with the Department prior to submitting a Plan for review. However, the Department expects this change to increase the expense of its Plan review process, since Department employees will be conducting Plan reviews "in the field," thereby incurring significant travel time and expense. Conducting Plan reviews on site at facilities may also require Department staff to expend additional review time in the event that reference materials or other staff need to be consulted during the plan review process. On balance, however, the Department has determined that this additional expense is justified because it will remove a potentially serious disincentive to comprehensive and aggressive pollution prevention planning.

The Department expects the overall economic impact of N.J.A.C. 7:1K as amended to be positive in that the cost of the planning and reporting program will be outweighed by the financial savings of pollution prevention. The changes contained in these proposed amendments and new rules are expected to enhance those savings by reducing the costs associated with compliance.

Environmental Impact

The pollution prevention program is based on the premise that "an ounce of pollution is worth a pound of cure," in that it is most protective to the environment and public health to use and generate the least amount of hazardous substances as is economically and technically feasible. Overall, the Department anticipates that the pollution prevention program will have a positive environmental impact throughout the State by reducing the potential risks associated with the use, generation and release of hazardous substances. Pollution prevention reduces these risks in a comprehensive manner by bringing about a reduced demand for hazardous substances per unit of product and a reduction in the generation of hazardous substances at their source. General environmental benefits resulting from this process include reduced risks to human health and the environment from reductions in the use and manufacture of hazardous substances (including reduced impacts on occupational health).

The program changes described in this proposal are not expected to have any positive or negative environmental impacts beyond those that were described when the Department originally adopted the Pollution Prevention Program Requirements, N.J.A.C. 7:1K. See 24 N.J.R. 3634. The proposed amendments do not present a significant departure from the fundamental policies of the pollution prevention program developed through the rulemaking process conducted under the Act. Rather, the proposed amendments implement a number of policy decisions outlined in the adoption document for N.J.A.C. 7:1K, and clarify procedures in the existing rules.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments are likely to reduce recordkeeping and compliance requirements for approximately 450 small businesses as defined by that Act.

As part of N.J.A.C. 7:1K, the proposed amendments will apply to all facilities that are required to report under the Federal Emergency Planning and Community Right to Know Act (EPCRA). Facilities are covered under EPCRA if they: (1) employ greater than or equal to 10 full-time employees; (2) have Standard Industrial Classification (SIC)

codes in group number 20 to 39; and (3) manufacture or process in excess of 25,000 pounds per year of a listed chemical or use in excess of 10,000 pounds of a listed chemical per year. It is estimated that of 800 facilities initially covered under the Pollution Prevention Act, approximately 450 are small businesses as defined by the New Jersey Regulatory Flexibility Act.

The program changes described in this proposal are expected to reduce compliance costs and simplify reporting obligations for small businesses and others covered under the Pollution Prevention Program Requirements, N.J.A.C. 7:1K. For example, measuring compliance with the Act through an administrative completeness criterion will allow industry to focus on pollution prevention results, not on whether every item in a pollution prevention plan meets the substantive requirements of the Act or N.J.A.C. 7:1K. This should allow priority industrial facilities, particularly small businesses, to better use their Pollution Prevention Plans to help them make business decisions on a day-to-day basis, and should reduce these facilities' burden of compliance by reducing their potential exposure to enforcement and penalties.

The more significant program changes outlined in this proposal, including plan submittal and enforcement procedures, are expected to assist facilities in identifying and realizing the financial benefits of pollution prevention measures. As such, the program provides maximum latitude for all covered businesses to use the planning process to their own advantage and to implement pollution prevention measures financially beneficial to the company on a schedule that fits within the company's needs and long-term planning.

During the rulemaking process leading up to the adoption of N.J.A.C. 7:1K, the Department announced its intention to assist companies, particularly small businesses, in identifying and adopting pollution prevention measures. To that end, if companies encounter regulatory obstacles to implementing pollution prevention measures, the Department intends to aggressively look to address such regulatory obstacles. The forum for this policy development will be an Incentives White Paper that the Department has committed itself to publishing in March 1994. The Paper will outline new policies, regulatory reforms, and other initiatives that are needed to improve the ability of companies to implement pollution prevention measures.

Even with the proposed amendment, preparing a Pollution Prevention Plan and complying with the reporting requirements for Pollution Prevention Plan Summaries and Plan Progress Reports will entail some degree of technical skill. However, the Department intends to rely to minimize the reporting, recordkeeping and compliance burdens on small businesses under the Act and under N.J.A.C. 7:1K as amended through the Technical Assistance Program (TAP) located at the New Jersey Institute of Technology and the Small Business Workgroup, comprised of owners and representatives of small businesses covered under the Act. Small businesses wishing assistance from the TAP of the Small Business Workgroup may contact the Office of Pollution Prevention at (609) 777-0518. See also 24 N.J.R. 3635.

In developing N.J.A.C. 7:1K and this proposal, the Department has sought to minimize the costs and burdens of compliance for all affected businesses, while meeting the requirements of the Pollution Prevention Act. The Act itself does not provide for exemptions or lesser requirements based upon business size. As discussed above, small businesses do have resources available to them to provide compliance assistance. In furtherance of the objective of the Act and these rules to prevent pollution, thus promoting the public health and welfare, no lesser requirements or exemptions have been provided for small businesses.

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

7:1K-1.5 Definitions

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

...
 "Intermediate product" means one or more desired result(s) of a production process that is made into a product in a subsequent production process at the same industrial facility, without the need for pollution treatment prior to its being made into a product. An intermediate product is not considered nonproduct output. [Increases in quantities of intermediate products do not count towards use reduction or nonproduct output reduction goals.]
 ...

7:1K-3.1 Preparation and submission of pollution prevention planning documents by priority industrial facilities

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

(d) The owner or operator of a priority industrial facility who was not required to prepare and submit pollution prevention planning documents pursuant to (a) or (b) above, but who subsequently becomes subject to the filing of a toxic chemical release form pursuant to 42 U.S.C. §11023 shall:

1. Prepare Parts IA and II of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(b) and 4.5 and submit a Pollution Prevention Plan Summary to the Department in accordance with N.J.A.C. 7:1K-5.1 within 18 months of becoming subject to the filing of a toxic chemical release form pursuant to 42 U.S.C. §11023;

2. Prepare Part IB of a Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-4.3(c) and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by July 1 of the year following the submittal of the industrial facility's first Pollution Prevention Plan Summary to the Department;

3. Update Part IB of the Pollution Prevention Plan in accordance with N.J.A.C. 7:1K-3.7 and submit a Pollution Prevention Plan Progress Report to the Department in accordance with N.J.A.C. 7:1K-6.1 by each July 1 thereafter; and

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6 and 3.8.

(e) The owner or operator of a priority industrial facility who is no longer required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023 is no longer subject to the pollution prevention planning requirements of this chapter, unless designated as a priority industrial facility pursuant to N.J.A.C. 7:1K-3.2.

7:1K-3.4 Scope of pollution prevention planning documents

(a) (No change.)

(b) The owner or operator of a priority industrial facility is not required to include in a Pollution Prevention Plan, Plan Summary or Plan Progress Report the following:

1. Information concerning a research and development laboratory, as defined at N.J.A.C. 7:1K-1.5, located at the industrial facility, for which the owner or operator has received a research and development laboratory exemption pursuant to the procedure at N.J.A.C. 7:1G-3.2(a)2;

2. Information concerning a pilot facility, as defined at N.J.A.C. 7:1K-1.5, for which the owner or operator has received a pilot facility exemption from the Department, which may be obtained in accordance with the following procedure:

i. The employer shall submit to the Department for evaluation and approval a completed pilot facility exemption application, on forms approved by the Department, containing the following information:

(1) The facility name, location and New Jersey Employer Identification Number;

(2) An 8½ × 11 inch map of the entire industrial facility indicating the designated area(s) of the industrial facility used for pilot-scale development of products or processes. The map shall indicate if pilot-scale development of products and processes is limited to specific locations within the facility or if the entire industrial facility is dedicated to pilot-scale development of products and processes;

(3) A brief description of the purpose of the pilot facility's activities (for example, confirming feasibility and optimizing processes, assessing processes, or providing design data for commercial-scale plants);

(4) A statement of the percentage of total work hours devoted to pilot-scale development of products and processes in the designated area(s);

(5) A statement of the number of product days per calendar year that the pilot facility or designated area(s) of the pilot facility are involved in commercial production operations. For the purposes of this calculation, a "product day" is defined as the manufacture of any one product in any calendar day. For example, the manufacture of three different products in one calendar day would constitute three product days;

(6) An analysis of how the pilot facility could incorporate pollution prevention activities into its research activities; and

(7) A signed certification that the information contained in the research and development laboratory exemption application is true, accurate and complete.

ii. The Department will render a decision on a pilot facility exemption application within 45 days of receipt of a complete pilot facility exemption application.

3. (No change.)

(c) The owner or operator of a priority industrial facility is not required to include in Part IB or Part II of a Pollution Prevention Plan or in a Pollution Prevention Plan Progress Report information pertaining to improvements in pollution prevention for production processes established after January 1, 1992, until the first five-year revision of the Pollution Prevention Plan and Pollution Prevention Plan Summary is prepared for the industrial facility at which the production process is carried out after the establishment of the production process, or until five years after the establishment of the production process, whichever is later. See N.J.A.C. 7:1K-3.9(c).

7:1K-3.9 Pollution Prevention Plan [and], Pollution Prevention Plan Summary and Pollution Prevention Plan Progress Report modifications

[(a) The owner or operator of a priority industrial facility is required to modify the information required to be recorded in Part IA of a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(b) within 90 days of:

1. A significant modification in the operation of the industrial facility, including the cessation or major expansion of a production process or the installation or removal of primary components of a production process; or

2. Using a hazardous substance, or generating or releasing a nonproduct output or hazardous waste which was not used, released, or generated when the industrial facility's current Pollution Prevention Plan was completed.]

(a) The owner or operator of a priority industrial facility is required to modify the information required to be recorded or reported in a Pollution Prevention Plan, Plan Summary, or Plan Progress Report if the industrial facility:

1. Ceases operation of a targeted production process or significantly expands the operation of a targeted production process;

2. Installs a new and different primary component in a targeted production process or removes a primary component from a targeted production process, unless the installation or removal of the component results from the implementation of pollution prevention techniques at the industrial facility;

3. Uses a hazardous substance, or generates or releases a non-product output or hazardous waste, at a targeted production process, in quantities above the threshold established for the hazardous substance under N.J.A.C. 7:1K-3.4, which was not used, released or generated when the industrial facility's current Pollution Prevention Plan was completed;

4. Reclassifies an existing nonproduct output as a product, intermediate product, or co-product;

5. Modifies a grouping decision that affects a targeted process; or

6. Modifies a targeting decision pursuant to N.J.A.C. 7:1K-4.4.

[(b) The owner or operator of a priority industrial facility shall modify the information required to be recorded or reported in a Pollution Prevention Plan or Pollution Prevention Plan Summary within 90 days, and shall submit Pollution Prevention Plan Progress Reports reflecting the modified Pollution Prevention Plan and Plan Summary on July 1 annually thereafter, if the owner or operator:

1. Reclassifies an existing nonproduct output to a product, co-product, or intermediate product;

2. Modifies the industrial facility's groupings of sources or production processes pursuant to N.J.A.C. 7:1K-4.2;

3. Receives a final Department directive to modify the industrial facility's Pollution Prevention Plan, Pollution Prevention Plan Summary, or Pollution Prevention Plan Progress Report pursuant to N.J.A.C. 7:1K-3.9(g), 5.2(e), or 6.2(e); or

4. Changes the industrial facility's targeting decision pursuant to N.J.A.C. 7:1K-4.4.]

(b) The owner or operator of a priority industrial facility may voluntarily modify the information required to be recorded or reported in a Pollution Prevention Plan, Plan Summary or Plan Progress Report, at any time in order to update the Pollution Prevention Plan, Plan Summary or Plan Progress Report.

(c) The owner or operator of a priority industrial facility is not required to include in Part IB or Part II of a Pollution Prevention Plan or in a Pollution Prevention Plan Progress Report information pertaining to improvements in pollution prevention for a production process established after January 1, 1992 until the first five-year revision of the Pollution Prevention Plan and Plan Summary is prepared for the industrial facility at which the production process is carried out after the establishment of the production process, or until five years after the establishment of the production process, whichever is later, subject to the following:

1.-3. (No change.)

(d) (No change.)

(e) If any of the changes described in (a) above occur at a priority industrial facility during the reporting year, the owner or operator of a priority industrial facility shall review the following sections of its current Pollution Prevention Plan and Plan Summary as they apply to targeted production processes:

1. Facility-level inventory data required in Part IA of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.3(b)2);

2. Process-level inventory data required in Part IA of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.3(b)3);

3. Facility-level and process-level pollution prevention reductions required to be recorded in Part IB of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.3(c)1) or reported in a Pollution Prevention Progress Report (see N.J.A.C. 7:1K-6.1(c)4);

4. Process-level pollution prevention reductions required to be recorded in Part IB of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.3(c)2) or reported in a Pollution Prevention Progress Report (see N.J.A.C. 7:1K-6.1(c)5);

5. Five-year pollution prevention goals required in Part II of a Pollution Prevention Plan and in a Pollution Prevention Plan Summary (see N.J.A.C. 7:1K-4.5(a)7 through 10 and N.J.A.C. 7:1K-5.1(b)3);

6. Description of targeted production processes required in Part II of a Pollution Prevention Plan and in a Pollution Prevention Plan Summary (see N.J.A.C. 7:1K-4.5(a)1 and N.J.A.C. 7:1K-5.1(b)4i);

7. Planned pollution prevention options required in Part II of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.5(a)6); and

8. Implementation schedules for pollution prevention options required in Part II of a Pollution Prevention Plan (see N.J.A.C. 7:1K-4.5(a)11).

(f) If any of the reporting items listed in (e) above change as a result of the process changes described in (a) above, the owner or operator of a priority industrial facility shall submit substitute pages containing the revised information for the Pollution Prevention Plan Summary at the same time it submits the industrial facility's annual Pollution Prevention Plan Progress Report for the year in which the changes took place. The owner or operator may also prepare substitute pages containing the revised information for inclusion in the industrial facility's Pollution Prevention Plan, and shall modify the industrial facility's pollution prevention goals as appropriate to reflect these changes as part of the Pollution Prevention Plan Progress Report for the reporting year in which the changes took place and each subsequent year.

7:1K-3.10 Department review of Pollution Prevention Plans, Plan Summaries and Plan Progress Reports

(a) The owner or operator of a priority industrial facility shall maintain a copy of the Pollution Prevention Plan, Plan Summary and Plan Progress Report for the industrial facility at the industrial facility, [where it] and these documents shall be available for inspection and review by the Department.

(b) [The Department may require the owner or operator of a priority industrial facility to submit a copy of the industrial facility's Pollution Prevention Plan to the Department for review.] The De-

partment may require the owner or operator of a priority industrial facility to make any revisions or modifications to a Pollution Prevention Plan, Plan Summary or Plan Progress Report necessary for compliance with the provisions of the Act or this chapter.

[(c) The Department shall provide the owner or operator of a priority industrial facility with at least 45 days advance notice by certified mail before requiring submission of its Pollution Prevention Plan for review, in order to enable the industrial facility to assert a confidentiality claim pursuant to N.J.A.C. 7:1K-8.2, if applicable.]

[(d)](c) The Department shall [use the following review criteria for determining the compliance of] conduct its review of Pollution Prevention Plans, Plan Summaries and Plan Progress Reports [with the provisions of this chapter] for the purpose of determining and evaluating, at a minimum, the following:

1. Whether the industrial facility has prepared a Pollution Prevention Plan, Plan Summary and/or Plan Progress Report as required by N.J.A.C. 7:1K-3.1, 3.6 or 3.8;

[1].2. [A determination of whether] Whether the Pollution Prevention Plan is administratively complete. Administrative completeness review shall consist of a review by the Department to determine whether the items identified in N.J.A.C. 7:1K-4.3 and 4.5 have been included in the Pollution Prevention Plan, the items identified in N.J.A.C. 7:1K-5.1 have been included in the Pollution Prevention Plan Summary, and the items identified in N.J.A.C. 7:1K-6.1 have been included in the Pollution Prevention Plan Progress Report;

[2].3. [A determination of whether] Whether the industrial facility's grouping decision includes a pollution treatment or control system or out-of-process recycling system as prohibited by N.J.A.C. 7:1K-4.2(d); [and]

[3].4. [A determination of whether] Whether the pollution prevention methods contained in the Pollution Prevention Plan, Plan Summary and Plan Progress Report are consistent with the definition of pollution prevention found at N.J.A.C. 7:1K-1.5. Pollution prevention methods include, but are not limited to:

i.-ii. (No change.)

iii. Pollution prevention activities that occurred prior to 1987 and which are recorded in a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(b)2v[.];

5. How an owner or operator's grouping decisions under N.J.A.C. 7:1K-4.2 and 4.3(b)3iii impacts:

i. The number of production processes at the industrial facility listed in the industrial facility's Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(b)3;

ii. The number of sources at the industrial facility listed in the industrial facility's Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.5(a)6;

iii. The unit of product for each grouped process, determined in accordance with N.J.A.C. 7:1K-4.3(b)3ii and iii;

iv. The industrial facility's targeting decision pursuant to N.J.A.C. 7:1K-4.4;

v. The identification of available and viable pollution prevention options at the industrial facility under N.J.A.C. 7:1K-4.5(a)4 and 6;

vi. The development of pollution prevention goals for the industrial facility pursuant to N.J.A.C. 7:1K-4.5(a)7 through 10; and

vii. The tracking of progress towards the industrial facility's pollution prevention goals;

6. How an owner or operator's targeting decision under N.J.A.C. 7:1K-4.4 impacts:

i. The development of pollution prevention goals for the industrial facility pursuant to N.J.A.C. 7:1K-4.5(a)7 through 10; and

ii. The development of source-specific information pursuant to N.J.A.C. 7:1K-4.5(a)2;

7. The value of Total Cost Assessment methods to the industrial facility's financial analysis under N.J.A.C. 7:1K-4.3(b)6 and 4.5(a)5ii;

8. The industrial facility's methods for incorporating pollution prevention into corporate policies and decision-making;

9. The industrial facility's methods for obtaining process-level and source-level estimates of use and nonproduct output;

10. The industrial facility's unit of product for tracking pollution prevention progress, determined in accordance with N.J.A.C. 7:1K-4.3(b)3ii;

11. How the identification of products and production processes under N.J.A.C. 7:1K-4.3(b)3ii affects pollution prevention planning and reporting at the industrial facility;

12. Whether any current environmental rules or regulations are obstacles to implementing pollution prevention methods identified in the industrial facility's Pollution Prevention Plan; and

13. If applicable, whether the industrial facility has met the requirements for a Raw Material Substitution Certification set forth in N.J.A.C. 7:1K-4.6.

[(e)] The Department may require the owner or operator of a priority industrial facility to make any revisions or modifications to a Pollution Prevention Plan necessary for compliance with the provisions of the Act or this chapter.]

[(f)](d) If the Department determines through its review under (c) above that [a Pollution Prevention Plan submitted by a priority industrial facility is deficient under criterion (d)1, 2 or 3, above] a priority industrial facility has not prepared a Pollution Prevention Plan, Plan Summary or Plan Progress as required by N.J.A.C. 7:1K-3.1 or that a Pollution Prevention Plan, Plan Summary or Plan Progress Report is administratively incomplete, it shall issue [a draft] an administrative order in accordance with N.J.A.C. 7:1K-12.2 directing the owner or operator to prepare a Pollution Prevention Plan, Plan Summary or Plan Progress Report or modify the industrial facility's Pollution Prevention Plan, Plan Summary or Plan Progress Report. [as follows:

1. The Department shall prepare a draft administrative order containing a written finding that, based on one or more of the criteria at (d) above, the industrial facility's Pollution Prevention Plan does not comply with the provisions of the Act or this chapter. The draft administrative order shall:

i. Identify the section(s) of the Act or this chapter under which the industrial facility's Pollution Prevention Plan is deficient;

ii. Concisely describe the deficiencies identified by the Department through its review of the industrial facility's Pollution Prevention Plan and the measures that must be taken to correct such deficiencies;

iii. Set forth a timetable for the industrial facility's modification of its Pollution Prevention Plan;

iv. Advise the industrial facility of its right to seek informal review of the findings in the draft administrative order or the financial impact of the administrative order pursuant to (g)1 below;

2. The draft administrative order shall be signed by the Director of the office of pollution prevention or his or her designee; and

3. The draft administrative order shall be mailed by the Department to the industrial facility by certified mail.

(g) The procedure for the issuance of a final administrative order directing the owner or operator of a priority industrial facility to modify the industrial facility's Pollution Prevention Plan is as follows:

1. If the owner or operator of an industrial facility directed to modify its Pollution Prevention Plan believes that the written findings contained in the draft administrative order are incomplete or inaccurate, otherwise disagrees with the Department's written findings, or believes that the ordered modifications will have an adverse economic impact on the industrial facility, he or she may informally appeal the draft directive in writing to the Assistant Commissioner within 30 calendar days following his or her receipt of the draft administrative order. Such appeal shall identify the specific written finding(s) the owner or operator believes to be inaccurate or with which the owner or operator disagrees, and shall include any documentation necessary to support the owner's or operator's claims. If the owner or operator is seeking informal review of the financial impact of the draft administrative order, he or she shall include all financial information necessary for the Department to evaluate the impact of the ordered modifications;

2. The Assistant Commissioner shall review all appeals of draft administrative orders under (g)1 above, and shall either withdraw the draft administrative order, modify and reissue the draft administrative order, or issue a final administrative order within 30 calendar days following receipt of the owner's or operator's appeal; and

3. If the owner or operator of an industrial facility does not appeal the issuance of a draft administrative order directing the industrial facility to modify its Pollution Prevention Plan, the draft administrative order becomes a final administrative order on the 30th day following receipt of the draft administrative order by the owner or operator.

(h) All appeals of final administrative orders issued under this section shall be taken in accordance with the procedures at N.J.A.C. 7:1K-12.3. An industrial facility's failure to comply with a final administrative order issued under this section requiring modification of its Pollution Prevention Plan is grounds for assessment of civil administrative penalties pursuant to N.J.A.C. 7:1K-12.2 and 12.7.]

(e) If the Department determines through its review under (c) above that it is possible for a priority industrial facility to improve its Pollution Prevention Plan, Plan Summary or Plan Progress Report, it may issue an opinion letter to the priority industrial facility in accordance with the following:

1. The Department may issue an opinion letter identifying sections of the Pollution Prevention Plan, Plan Summary or Plan Progress Report that could be amended to strengthen pollution prevention planning at the industrial facility, including improving the industrial facility's grouping or targeting decisions;

2. The Department's opinion letter shall include a description of suggested Pollution Prevention Plan, Plan Summary or Plan Progress Report amendments and a suggested time frame for implementing the amendments;

3. In lieu of implementing any of the amendments suggested by the Department in an opinion letter, the owner or operator of the industrial facility may submit a response letter supplementing or explaining information in the industrial facility's Pollution Prevention Plan, Plan Summary or Plan Progress Report;

4. After evaluating information submitted by the industrial facility in a response letter, the Department may reaffirm its original opinion letter, issue a revised opinion letter to the industrial facility, or withdraw its original opinion letter; and

5. The failure of an industrial facility to implement the amendments suggested in an opinion letter issued under this subsection shall not constitute non-compliance with this chapter and shall not be grounds for assessment of civil administrative penalties pursuant to N.J.A.C. 7:1K-12. See N.J.A.C. 7:1K-12.9.

7:1K-3.11 Submittal of Pollution Prevention Plans

(a) The Department may require the owner or operator of a priority industrial facility to submit a copy of the industrial facility's Pollution Prevention Plan to the Department for review if the industrial facility requests an out-of-process recycling exemption pursuant to N.J.A.C. 7:1K-4.7 or participates in the facility-wide permitting program pursuant to N.J.A.C. 7:1K-7.

(b) The Department shall provide the owner or operator of a priority industrial facility with at least 45 days advance notice by certified mail before requiring submission of its Pollution Prevention Plan for review under (a) above, in order to enable the industrial facility to assert a confidentiality claim pursuant to N.J.A.C. 7:1K-8.2, if applicable.

7:1K-4.3 Contents of Part I of a Pollution Prevention Plan

(a) (No change.)

(b) Part IA of a Pollution Prevention Plan shall be based on information covering the base year as defined in N.J.A.C. 7:1K-1.5 and shall contain, at a minimum, the following:

1. (No change.)

2. Facility-level information (Note: This is the same information to be reported in the Plan Progress Report pursuant to N.J.A.C. 7:1K-6.1(c)3. This information is the same as information previously submitted on [Form DEQ-114] the Release and Pollution Prevention Report pursuant to N.J.A.C. 7:1G.):

i. (No change.)

ii. Inventory data, in pounds, for the annual inputs, either in pure form or contained in a mixture, determined by direct measurement or by calculations and estimates using best engineering judgment, of each hazardous substance:

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

(3) Manufactured as a product, [coproduct] **co-product** or [intermediate product] **nonproduct output** at the facility; and

- (4) (No change.)
 iii.-viii. (No change.)
 3.-6. (No change.)

(c) Part IB of a Pollution Prevention Plan shall contain information on the reduction or **increase** in use of hazardous substances and the generation of hazardous substances as nonproduct output, including, but not limited to, the following:

1. Facility-level information on pollution prevention reductions (Note: This is the same information to be reported in the Plan Progress Report pursuant to N.J.A.C. 7:1K-6.1(c)4i through [vii]vi.):

[i. Calculations of the reduction or increase in use of each hazardous substance per facility-wide unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;]

[ii.]i. Calculations of the reduction or increase in use of each hazardous substance in comparison to the previous year;

[iii. Calculations of the reduction or increase in the generation of each hazardous substance as nonproduct output per facility-wide unit of product, as defined by N.J.A.C. 7:1K-1.5, in comparison to the previous year;]

[iv.]ii. Calculations of the reduction or increase in the generation of each hazardous substance as nonproduct output, in comparison to the previous year;

[v.]iii. Calculations of the reduction or increase in use [and use per unit of product, as defined in N.J.A.C. 7:1K-1.5,] attributed to the sale of co-products [or production of intermediate products] which are not the result of pollution prevention techniques, in comparison to the previous year;

[vi.]iv. Calculations of the reduction or increase in generation of nonproduct output [and nonproduct output per unit of product, as defined in N.J.A.C. 7:1K-1.5,] attributed to the sale of co-products [or production of intermediate products] which are not the result of pollution prevention techniques, in comparison to the previous year;

[vii.]v. Calculations of the reduction or increase in multimedia releases, by medium, after recycling and treatment, in comparison to the previous year; and

[viii.]vi. A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the facility-level give-year goals reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)3. Quantities of co-products sold [or intermediate products produced] by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving pollution prevention goals; and]

[ix. An identification of the pollution prevention techniques used to achieve each reduction reported under (c)1i through iv above.]

2. Information on Targeted Production Processes:

i. (No change.)

ii. Process-level information on pollution prevention reductions for each hazardous substance within each targeted production process, including, but not limited to (Note: This is the same information to be reported in the Plan Progress Report pursuant to N.J.A.C. 7:1K-6.1(c)5ii(1) through (7).):

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

(3) Calculations of the reduction or increase in use of each hazardous substance per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of co-products [or production of intermediate products] from each production process, which are not the result of pollution prevention techniques, in comparison to the previous year;

(4) Calculations of the reduction or increase in nonproduct output generation per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of co-products [or production of intermediate products] from each production process, which are not the result of pollution prevention techniques, in comparison to the previous year;

(5) (No change.)

(6) A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the process-level five-year goals for each targeted production process reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)5. Quantities of co-products sold [or intermediate products produced] by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving use reduction [of] or nonproduct output reduction goals; and

(7) (No change.)

3. (No change.)

7:1K-4.5 Part II of a Pollution Prevention Plan

(a) Part II of a Pollution Prevention Plan shall contain, at a minimum, the following information:

1. (No change.)

2. Inventory data, in pounds, for the annual quantities, either in pure form or contained in a mixture, determined by direct measurement or calculations and estimates using best engineering judgment, of each hazardous substance generated as nonproduct output at each source within each **targeted** production process;

3.-14. (No change.)

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

7:1K-4.7 Out-of-process recycling authorization

(a) (No change.)

(b) The owner or operator of a priority industrial facility seeking an out-of-process recycling authorization pursuant to this section shall submit the following information to the Department for review:

1. [The facility's most recent Pollution Prevention Plan] **A complete copy of the most recent Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility, subject to the confidentiality provisions of N.J.A.C. 7:1K-8 through 7:1K-11;**

2.-3. (No change.)

(c) (No change.)

(d) **An industrial facility's failure to submit a complete copy of the most recent Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility as part of its request for an out-of-process recycling authorization under (b) above shall constitute grounds for denial of the request.**

[(d)](e) (No change in text.)

7:1K-5.1 Pollution Prevention Plan Summary reporting requirements

(a) The owner or operator of a priority industrial facility is required to:

1. [prepare] **Prepare** and submit to the Department, on forms provided by the Department, by the deadline at N.J.A.C. 7:1K-3.1, a Pollution Prevention Plan Summary summarizing the **industrial facility's** Pollution Prevention Plan[.]; and

2. [must revise] **Revise, update** or modify the **industrial facility's** Pollution Prevention Plan Summary thereafter in accordance with N.J.A.C. 7:1K-3.6, [and] 3.8 **and 3.9.**

(b) A Pollution Prevention Plan Summary shall consist, at a minimum, of the following:

1. Administrative Information:

i.-ii. (No change.)

iii. The location of the industrial facility, using the industrial facility's centroid coordinate in New Jersey State Plane Feet; [and]

iv. (No change.)

v. **The name and business telephone number of the owner or operator of the industrial facility, and of the highest ranking corporate official at the industrial facility; and**

vi. **The name and business telephone number of a non-management employee representative at the industrial facility.**

2.-3. (No change.)

4. Process-level information (Note: This is the same information contained in Part IA of the Pollution Prevention Plan pursuant to 7:1K-4.3(b)3i and ii):

i.-ii. (No change.)

iii. [(Reserved)] **A description of each product using a four-digit SIC code. A list of applicable four-digit SIC codes is included in the Pollution Prevention Guidance Document, which is available from the Department; and**

iv. **(Reserved); and**

5. Information on targeted production processes:

i.-v. (No change.)

vi. An indication, for each hazardous substance used in a targeted production process, of whether the hazardous substance is used by the facility on an annual basis in a quantity of zero to 5,000 pounds, 5,000 pounds to 10,000 pounds, **10,000 to 25,000 pounds, 25,000 to 50,000 pounds,** or greater than [10,000] **50,000 pounds; [and]**

vii. If applicable: A Raw Material Substitution Certification for individual hazardous substances used in specific targeted production processes at the facility, completed in accordance with N.J.A.C. 7:1K-4.6[.]; **and**

viii. **An indication of whether the facility's targeting decision was based on 90 percent or more of the total use of hazardous substances at the industrial facility; 90 percent or more of the total nonproduct output generated at the industrial facility; or 90 percent or more of the total multi-media environmental releases at the industrial facility (in accordance with N.J.A.C. 7:1K-4.4).**

7:1K-5.2 Department review of Pollution Prevention Plan Summaries

(a) The owner or operator of a priority industrial facility shall submit a copy of the industrial facility's Pollution Prevention Plan Summary to the Department as required by N.J.A.C. 7:1K-3.1, 3.6 or 3.8, and shall maintain a copy of the current Pollution Prevention Plan Summary for the facility at the industrial facility, where it shall be available for inspection and by the Department.

(b) The Department shall use the following review criteria for determining the compliance of Pollution Prevention Plan Summaries with the provisions of this chapter:

1. A determination of whether the Pollution Prevention Plan Summary is administratively complete. Administrative completeness review shall consist of a review by the Department to determine whether the items identified in N.J.A.C. 7:1K-5.1 have been included in the Pollution Prevention Plan Summary; and

2. (Reserved.)

(c) The Department may require the owner or operator of a priority industrial facility to make any revisions to a Pollution Prevention Plan Summary necessary for compliance with the provisions of the act or this chapter.

(d) If the Department determines that a Pollution Prevention Plan Summary submitted by a priority industrial facility is deficient under criterion (b)1 above, it shall issue a draft administrative order directing the owner or operator to modify the industrial facility's Pollution Prevention Plan Summary as follows:

1. The Department shall prepare a draft administrative order containing a written finding that, based on one or more of the criteria at (b) above, the industrial facility's Pollution Prevention Plan Summary does not comply with the provisions of the Act or this chapter. The draft administrative order shall:

i. Identify the section(s) of the Act or this chapter under which the industrial facility's Pollution Prevention Plan Summary is deficient;

ii. Concisely describe the deficiencies identified by the Department through its review of the industrial facility's Pollution Prevention Plan Summary and the measures that must be taken to correct such deficiencies;

iii. Set forth a timetable for the industrial facility's modification of its Pollution Prevention Plan Summary; and

iv. Advise the industrial facility of its right to seek informal review of the findings in the draft administrative order or the financial impact of the administrative order pursuant to N.J.A.C. 7:1K-5.2(e)1;

2. The draft administrative order shall be signed by the Director of the Office of Pollution Prevention or his or her designee; and

3. The draft administrative order shall be mailed by the Department to the industrial facility by certified mail.

(e) The procedure for issuance of a final administrative order directing the owner or operator of a priority industrial facility to modify the industrial facility's Pollution Prevention Plan Summary is as follows:

1. If the owner or operator of an industrial facility directed to modify its Pollution Prevention Plan Summary believes that the written findings contained in the draft administrative order are incomplete or inaccurate, otherwise disagrees with the Department's written findings, or believes that the ordered modifications will have an adverse economic impact on the industrial facility, he or she may informally appeal the draft directive in writing to the Assistant Commissioner within 30 calendar days following his or her receipt of the draft administrative order. Such appeal shall identify the specific written finding(s) the owner or operator believes to be inaccurate or with which the owner or operator disagrees, and shall include any documentation necessary to support the owner's or operator's claims. If the owner or operator is seeking informal review of the financial impact of the draft administrative order, he or she shall include all financial information necessary for the Department to evaluate the impact of the ordered modifications;

2. The Assistant Commissioner shall review all appeals of draft administrative orders under (e)1 above, and shall either withdraw the draft administrative order, modify and reissue the draft administrative order, or issue a final administrative order within 30 calendar days following receipt of the owner's or operator's appeal; and

3. If the owner or operator of an industrial facility does not appeal the issuance of a draft administrative order directing the industrial facility to modify its Pollution Prevention Plan Summary, the draft administrative order becomes a final administrative order on the 30th day following receipt of the draft administrative order by the owner or operator.

(f) All appeals of final administrative orders issued under this section shall be taken in accordance with the procedures at N.J.A.C. 7:1K-12.3. An industrial facility's failure to comply with a final administrative order issued under this section requiring modification of its Pollution Prevention Plan Summary is grounds for assessment of civil administrative penalties pursuant to N.J.A.C. 7:1K-12.2 and 12.7.]

7:1K-6.1 Pollution Prevention Plan progress reporting requirements

(a) The owner or operator of a priority industrial facility is required to:

1. [prepare] **Prepare** and submit to the Department, on forms provided by the Department, by July 1 of each year after the completion of the facility's initial Pollution Prevention Plan, a Pollution Prevention Plan Progress Report that indicates the progress made in the previous year in achieving the use reduction and NPO reduction goals set forth in the facility's current Pollution Prevention Plan; **and**

2. **Modify the facility's Pollution Prevention Plan Progress Report thereafter as required by N.J.A.C. 7:1K-3.9.**

(b) (No change.)

(c) A Pollution Prevention Plan Progress Report shall consist, at a minimum, of the following:

1.-2. (No change.)

3. Facility-level inventory and release data (Note: This information replaces information that was previously submitted on Form DEQ-114 and is the same information to be included in **Part IA** of the Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(b)2.):

i. (No change.)

ii. Inventory data, in pounds, for the annual inputs, either in pure form or contained in a mixture, determined by direct measurement or by calculations and estimates using best engineering judgment, of each hazardous substance:

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

(3) Manufactured as a product, co-product or [intermediate product] **nonproduct output** at the industrial facility; and

(4) (No change.)

iv.-vi. (No change.)

4. Facility-level information on pollution prevention reductions:

i.-ii. (No change.)

iii. Calculations of the reduction or increase in use attributed to the sale of co-products [or production of intermediate products] which are not the result of pollution prevention techniques, in comparison to the previous year;

iv. Calculations of the reduction or increase in generation of nonproduct output [and nonproduct output per unit of product] attributed to the sale of co-products [or production of intermediate products] which are not the result of pollution prevention techniques, in comparison to the previous year;

v. (No change.)

vi. A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the facility-level five-year goals reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-1.5(b)3. Quantities of co-products sold [or intermediate products produced] by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving pollution prevention goals. (Note: The information to be reported in (c)4i through vi is the same information to be included in a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(c)1i through vi.)

5. Information on targeted production processes:

i. (No change.)

ii. Process-level information on pollution prevention reductions for each hazardous substance within each targeted production process, including, but not limited to:

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

(3) Calculations of the reduction or increase in use of each hazardous substance and use of each hazardous substance per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of co-products [or production of intermediate products] from each targeted production process, which are not the result of pollution prevention techniques, in comparison to the previous year;

(4) Calculations of the reduction or increase in nonproduct output generation per unit of product, as defined by N.J.A.C. 7:1K-1.5, attributed to the sale of co-products [or production of intermediate products] from each targeted production process, which are not the result of pollution prevention techniques, in comparison to the previous year;

(6) A numerical statement demonstrating the industrial facility's progress, if any, towards achieving each of the process-level five-year goals for each targeted production process reported in the industrial facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1(b)5. Quantities of co-products sold [or intermediate products produced] by the industrial facility which are not the result of pollution prevention techniques do not count as progress towards achieving use reduction or nonproduct output reduction goals;

(7) An identification of the pollution prevention techniques used to achieve each reduction reported under (c)5ii(1) through (5) above (Note: The information to be reported in (c)5ii(1) through (7) is the same information to be included in **Part IB** of a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(c)2ii(1) through (7).);

(8)-(9) (No change.)

6. Information on progress which is less than anticipated:

i. If applicable, an explanation of why the facility's annual progress was less than that anticipated in the use reduction and nonproduct output reduction goals and implementation schedule reported in the facility's current Pollution Prevention Plan Summary; [and]

7. [Community Right-to-Know] **Release and Pollution Prevention Reporting Elements:**

i. All information required by N.J.A.C. 7:1G to be reported to the Department on Form DEQ-114 (**the Release and Pollution Prevention Report**) that is not otherwise specifically listed at (c)1 through 6 above.; and

8. **Checkoff box for production process changes:**

i. **If applicable, a facility should indicate that a production process change that occurred at the industrial facility has triggered a modification of the industrial facility's Pollution Prevention Plan, Plan Summary or Plan Progress Report by checking off the box or boxes corresponding to the modification criterion or criteria at N.J.A.C. 7:1K-3.9(a).**

[7:1K-6.2 Department review of Pollution Prevention Plan Progress Reports

(a) The owner or operator of a priority industrial facility shall submit a copy of the industrial facility's Pollution Prevention Plan Progress Report to the Department as required by N.J.A.C. 7:1K-3.1, and shall maintain a copy of the current Pollution Prevention Plan Progress Report for the facility at the industrial facility, where it shall be available for inspection and by the Department.

(b) The Department shall use the following review criteria for determining the compliance of Pollution Prevention Plan Progress Reports with the provisions of this chapter:

1. A determination of whether the Pollution Prevention Plan Progress Report is administratively complete. Administrative completeness review shall consist of a review by the Department to determine whether the items identified in N.J.A.C. 7:1K-6.1 have been included in the Pollution Prevention Plan Progress Report; and

2. (Reserved.)

(c) The Department may require the owner or operator of a priority industrial facility to make any revisions to a Pollution Prevention Plan Progress Report necessary for compliance with the provisions of the Act or this chapter.

(d) If the Department determines that a Pollution Prevention Plan Progress Report submitted by a priority industrial facility is deficient under criterion (b)1 above, it shall issue a draft administrative order directing the owner or operator to modify the industrial facility's Pollution Prevention Plan Progress Report as follows:

1. The Department shall prepare a draft administrative order containing a written finding that, based on one or more of the criteria at (b) above, the industrial facility's Pollution Prevention Plan Progress Report does not comply with the provisions of the Act or this chapter. The draft administrative order shall:

i. Identify the section(s) of the Act or this chapter under which the industrial facility's Pollution Prevention Plan Progress Report is deficient;

ii. Concisely describe the deficiencies identified by the Department through its review of the industrial facility's Pollution Prevention Plan Progress Report and the measures that must be taken to correct such deficiencies;

iii. Set forth a timetable for the industrial facility's modification of its Pollution Prevention Plan Progress Report; and

iv. Advise the industrial facility of its right to seek informal review of the findings in the draft administrative order or the financial impact of the administrative order pursuant to N.J.A.C. 7:1K-6.2(e)1;

2. The draft administrative order shall be signed by the Director of the Office of Pollution Prevention or his or her designee; and

3. The draft administrative order shall be mailed by the Department to the industrial facility by certified mail.

(e) The procedure for issuance of a final administrative order directing the owner or operator of a priority industrial facility to modify the industrial facility's Pollution Prevention Plan Progress Report is as follows:

1. If the owner or operator of an industrial facility directed to modify its Pollution Prevention Plan Progress Report believes that the written findings contained in the draft administrative order are incomplete or inaccurate, otherwise disagrees with the Department's written findings, or believes that the ordered modifications will have an adverse economic impact on the industrial facility, he or she may informally appeal the draft directive in writing to the Assistant Commissioner within 30 calendar days following his or her receipt of the draft administrative order. Such appeal shall identify the specific written finding(s) the owner or operator believes to be inaccurate or with which the owner or operator disagrees, and shall include any documentation necessary to support the owner's or operator's claims. If the owner or operator is seeking informal review of the financial impact of the draft administrative order, he or she shall include all financial information necessary for the Department to evaluate the impact of the ordered modifications;

2. The Assistant Commissioner shall review all appeals of draft administrative orders under (e)1 above, and shall either withdraw the draft administrative order, modify and reissue the draft adminis-

trative order, or issue a final administrative order within 30 calendar days following receipt of the owner's or operator's appeal; and

3. If the owner or operator of an industrial facility does not appeal the issuance of a draft administrative order directing the industrial facility to modify its Pollution Prevention Plan Progress Report, the draft administrative order becomes a final administrative order on the 30th day following receipt of the draft administrative order by the owner or operator.

(f) All appeals of final administrative orders issued under this section shall be taken in accordance with the procedures at N.J.A.C. 7:1K-12.3. An industrial facility's failure to comply with a final administrative order issued under this section requiring modification of its Pollution Prevention Plan Progress Report is grounds for assessment of civil administrative penalties pursuant to N.J.A.C. 7:1K-12.2 and 12.7.]

7:1K-7.2 Designation of priority industrial facilities for participation in facility-wide permit program

(a) (No change.)

(b) The owner or operator of a priority industrial facility volunteering to participate in the pilot program for facility-wide permitting shall notify the Commissioner of the facility's commitment to volunteer by September 1, 1993. The facility's commitment to volunteer shall be submitted to the Commissioner in writing, [and] shall be signed by the highest corporate officer with direct operating responsibility for the facility and shall remain in effect unless withdrawn pursuant to N.J.A.C. 7:1K-7.3(f).

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

7:1K-7.3 Procedures for issuing facility-wide permits

(a) The owner or operator of a priority industrial facility designated to participate in the facility-wide permit program pursuant to N.J.A.C. 7:1K-7.2 shall submit a complete facility-wide permit application to the Department by the deadline established by the Department. The Department shall establish a deadline for submission of facility-wide permit applications by providing each industrial facility with at least 45 days advance notice by certified mail in order to enable the industrial facility to assert a confidentiality claim pursuant to N.J.A.C. 7:1K-8.2, if applicable.

[(a)](b) [The owner or operator of a priority industrial facility designated to participate in the facility-wide permit program pursuant to N.J.A.C. 7:1K-7.2 shall submit the following to the Department:] A complete facility-wide permit application shall consist of the following:

1.-2. (No change.)

Recodify existing (b) through (e) as (c) through (f) (No change in text.)

(g) An industrial facility that volunteered to participate in the pilot facility-wide permit program pursuant to N.J.A.C. 7:1K-7.2(b) and (c) may withdraw from the pilot facility-wide program at any time up until the 30th day following its receipt of the draft facility-wide permit by submitting its decision to withdraw to the Commissioner in writing, signed by the highest corporate officer with direct operating responsibility for the industrial facility. An industrial facility that was designated by the Department for participation in the pilot facility-wide permitting program pursuant to N.J.A.C. 7:1K-7.2(d) and (e) may only withdraw from the pilot facility-wide permit program during the 30-day period following its receipt of the draft facility-wide permit, by submitting its decision to withdraw to the Commissioner in writing, signed by the highest corporate officer with direct operating responsibility for the industrial facility.

Recodify existing (f) through (j) as (h) through (l). (No change in text.)

7:1K-9.2 Notice to claimant of request for confidentiality determination

Upon receipt of a request to inspect or copy records containing information which is the subject of a claim pursuant to N.J.A.C. 7:1K-9.1(a)1, the Department shall notify the industrial facility in writing of its receipt of the request within 15 working days of receiving the request.

7:1K-[9.2]9.3 Notice of initial confidentiality determination, and of requirement to submit substantiation of claim

(a) If the Department initially determines that any of the assertedly confidential information may be confidential information, the Department shall:

1. Notify each claimant who is known to have asserted a claim applicable to such information[, and who has not previously been furnished with notice with regard to the information in question,] of the following:

i. (No change.)

ii. That the claimant is required to substantiate the claim in accordance with N.J.A.C. 7:1K-[9.3]9.4;

iii. (No change.)

iv. The time allowed for submission of substantiation[,] pursuant to N.J.A.C. 7:1K-[9.4(a)]9.5(a);

v. The method for requesting a time extension under N.J.A.C. 7:1K-[9.4(b)]9.5(b); and

vi. That [a] the claimant's failure to furnish substantiation within the time allocated in N.J.A.C. 7:1K-[9.4]9.5 shall operate as a waiver of the claimant's claim.

2. (No change.)

(b) (No change.)

(c) If the Department is able to determine whether all of the assertedly confidential information is or is not confidential information, without the need for submission of substantiation under N.J.A.C. 7:1K-[9.3]9.4, such determination shall have the effect of a final confidentiality determination pursuant to N.J.A.C. 7:1K-[9.5]9.6. The Department shall provide such notices of the determination as are required by N.J.A.C. 7:1K-[9.5]9.6.

7:1K-[9.3]9.4 Substantiation of confidentiality claims

(a) If the Department has determined that any assertedly confidential information may be confidential information, and has notified the claimant pursuant to N.J.A.C. 7:1K-[9.2(a) and (b)]9.3(a) and (b), the claimant shall substantiate the confidentiality claim by submitting information to the Department in the following areas within the time allotted by N.J.A.C. 7:1K[9.4]9.5:

1.-7. (No change.)

(b) (No change.)

7:1K-[9.4]9.5 Time for submission of substantiation

(a) The claimant shall submit substantiation within 45 days after the date of the claimant's receipt of the written notice provided under N.J.A.C. 7:1K-[9.2(a)1]9.3(a)1.

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

7:1K-[9.5]9.6 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to N.J.A.C. 7:1K-[9.3]9.4, the Department determines that the assertedly confidential information is not confidential information, the Department shall take the following actions:

1.-2. (No change.)

(b) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:1K-[9.3]9.4, the Department determines that the assertedly confidential information is confidential information, the Department shall treat such information as confidential information in accordance with N.J.A.C. 7:1K-11. The Department shall send written notice of the determination to the claimant and to any requester with a pending request to inspect or copy the information which was the subject of the confidentiality claim. The notice shall state the basis for the determination and that it constitutes final agency action. The Department shall send the notice by certified mail, return receipt requested.

(c) If, after review of the substantiation submitted pursuant to N.J.A.C. 7:1K-9.3, the Department determines that the claimant has made a frivolous confidentiality claim, the Department may assess a civil administrative penalty pursuant to N.J.A.C. 7:1K-12.6. The Department shall determine that a confidentiality claim is frivolous if it meets one or more of the following criteria:

1. The confidentiality claim is without any reasonable basis in fact; or

2. The confidentiality claim is clearly and substantially inconsistent with the definition of "confidential information" at N.J.A.C.

7:1K-1.5, such that the claim can not be supported by a good faith argument for treatment of the assertedly confidential information as confidential information, regardless of whether all the criteria at N.J.A.C. 7:1K-1.5 have been satisfied; or

3. The confidentiality claim is submitted for the sole purpose of concealing non-confidential information required to be disclosed pursuant to this chapter.

Recodify existing N.J.A.C. 7:1K-9.6 as 9.7. (No change in text.)

7:1K-[9.7]9.8 Availability of information to the public after determination that information is not confidential

If the Department determines that assertedly confidential information is not confidential information pursuant to N.J.A.C. 7:1K-[9.5(a)]9.6(a), the Department may disclose such information to any person on the date which is 14 days after the claimant's receipt of the written notice of the confidentiality determination.

Recodify existing N.J.A.C. 7:1K-9.8 through 9.10 as N.J.A.C. 7:1K-9.9 and 9.11. (No change in text.)

7:1K-12.6 Civil administrative penalties for frivolous confidentiality claims

(a) The Department may assess a civil administrative penalty against each violator who submits a confidentiality claim pursuant to N.J.A.C. 7:1K-9 which is determined by the Department to be frivolous.

(b) The civil administrative penalty for offenses described in this section, per act or omission, shall be in the amount of \$1,000 for the first offense, \$2,500 for the second offense, and \$5,000 for the third and each subsequent offense.

Recodify existing N.J.A.C. 7:1K-12.6 as 12.7. (No change in text.)

[7:1K-12.7 Civil administrative penalties for failure to comply with final administrative order requiring modification of Pollution Prevention Plan, Plan Summary or Plan Progress Report

(a) The Department may assess a civil administrative penalty for failure to comply with a final administrative order, issued pursuant to N.J.A.C. 7:1K-3.9, 5.2, or 6.2, requiring modification of a Pollution Prevention Plan, Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report.

(b) The Department shall determine the amount of the civil administrative penalty for offenses described in this section as follows:

1. For failure to comply with a final administrative order requiring an industrial facility to modify its Pollution Prevention Plan, Plan Summary or Plan Progress Report for the purpose of correcting administrative deficiencies, the range of civil administrative penalties shall be \$500.00 to \$5,000 for the first offense, \$1,000 to \$10,000 for the second offense and \$5,000 to \$15,000 for the third and each subsequent offense, depending on the extent and seriousness of the violation.

7:1K-12.8 Civil administrative penalties for failure to submit Pollution Prevention Plan for review or untimely submission of Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report

(a) The Department may assess a civil administrative penalty for the following:

i. Failure to comply with the Department's notice under N.J.A.C. 7:1K-3.9 requiring submittal of a Pollution Prevention Plan for review; and

ii. Failure to meet the deadline at N.J.A.C. 7:1K-3.1, as applicable, for submitting a Pollution Prevention Plan Summary or Pollution Prevention Plan Progress Report to the Department.

(b) The amount of the civil administrative penalty offenses described in this section shall be \$500.00 for the first offense, \$2,500 for the second offense, and \$5,000 for the third and each subsequent offense.]

7:1K-12.8 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty for each violation of a rule promulgated pursuant to the Act and listed in (b) below.

(b) The violations of N.J.A.C. 7:1K, Pollution Prevention Program Requirements, and the civil administrative penalty amounts for each violation are as follows:

1. For failure to prepare a Pollution Prevention Plan, Plan Summary or Plan Progress Report as required by N.J.A.C. 7:1K-3.1, the civil administrative penalty shall be up to \$1,000 for the first offense, up to \$2,500 for the second offense, and up to \$5,000 for the third offense and each subsequent offense;

2. For failure to submit a complete facility-wide permit application, including a complete copy of the most recent Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility, for review by the deadline established by the Department under N.J.A.C. 7:1K-7.3(a), the civil administrative penalty shall be up to \$5,000;

3. For failure to comply with an administrative order issued pursuant to N.J.A.C. 7:1K-12.2, addressing administrative incompleteness of a Pollution Prevention Plan, Plan Summary, or Plan Progress Report, the civil administrative penalty shall be up to \$1,000 for the first offense, up to \$5,000 for the second offense, and up to \$10,000 for the third and each subsequent offense; and

4. For failure to comply with an administrative order issued pursuant to N.J.A.C. 7:1K-12.2, except for an administrative order addressing administrative incompleteness of a Plan, Plan Summary, or Plan Progress Report, the civil administrative penalty shall be up to \$5,000 for the first offense, up to \$10,000 for the second offense, and up to \$15,000 for the third and each subsequent offense.

7:1K-12.9 Exemptions from civil administrative penalties

(a) The civil administrative penalty requirements of this subchapter do not apply to:

1. Failure of an industrial facility to meet the pollution prevention goals required by N.J.A.C. 7:1K-5.1(b)3 and 5 to be developed for the facility; and

2. Failure of an industrial facility to implement the improvements outlined in an opinion letter issued pursuant to N.J.A.C. 7:1K-3.10.

Recodify existing N.J.A.C. 7:1K-12.9 and 12.10 as 12.10 and 12.11. (No change in text.)

(a)

ENVIRONMENTAL REGULATION

Notice of Extension of Public Comment Period Opportunity for Interested Party Review New Jersey Pollutant Discharge Elimination System

Take notice that the Department of Environmental Protection and Energy (Department) has extended the comment period on the Interested Party Review Document concerning the New Jersey Pollutant Discharge Elimination System Rules (DEPE Docket Number 01-93-01) (see February 1, 1993, New Jersey Register, 25 N.J.R. 411(a)). The Interested Party Review solicits public input and comments on the policies, technical issues, and administrative reforms related to implementation of changes in the permitting process under which discharges to surface waters are regulated. The Department held two public Round Tables to discuss the issues contained in the Interested Party Review on February 19 and March 26, 1993, in Trenton.

The Department has extended the comment period until June 5, 1993, because the public has requested additional time to review the document. The extended comment period will also allow interested parties to provide comments on specific regulatory language included in the preliminary draft rules, which may be obtained by contacting:

Victor Staniec

N.J. Department of Environmental Protection and Energy
Wastewater Facilities Regulation Program

CN 029

Trenton, New Jersey 08625

(609) 292-4543

Interested parties may submit written comments, identified by Docket Number 01-93-01, until June 5, 1993, to:

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

(a)

HAZARDOUS WASTE REGULATION PROGRAM**Satellite Accumulation Areas****Proposed Amendments: N.J.A.C. 7:26-1.4 and 9.3**

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

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

DEPE Docket Number: 26-93-03.

Proposal Number: PRN 1993-232.

Submit comments, identified by the Docket Number given above, by July 2, 1993 to:

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

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection and Energy (Department) is proposing to amend its hazardous waste management rules concerning the accumulation of hazardous wastes in satellite accumulation areas. The amendments will improve the regulatory language in order to more clearly convey the intent of the rules.

The proposed amendments at N.J.A.C. 7:26-1.4 and 9.3(d)1 will add a definition for the term "waste stream" and establish that only one waste stream may be accumulated at each satellite accumulation area. The Department has two reasons for proposing these amendments. First, the Department is concerned that the presence of a variety of wastes could increase the possibility of serious incidents and chain reactions (for example, fires, explosions). Since the generator documentary requirements of N.J.A.C. 7:26-9 (contingency plan, training plan, daily inspections and preparedness/prevention arrangements) are not applicable to satellite accumulation areas (see N.J.A.C. 7:26-9.1(c)16), prohibiting the accumulation of multiple waste streams in a satellite area should minimize the risk of fire or explosion. Second, since a satellite accumulation area containing only one type of waste is less prone to accidents of serious magnitude, the Department can allow the generator to accumulate filled and dated containers without placing a limit on the total number of containers awaiting removal from the satellite accumulation area, provided that containers are removed within three days of their being filled.

The proposed amendments at N.J.A.C. 7:26-9.3(d)2 will clarify that the total quantity of waste in a satellite accumulation area may exceed 55 gallons because of the temporary storage of filled and dated containers awaiting removal from the area. However, these amendments also make it clear that only one partially filled container at a time may be used to actively accumulate waste at a satellite accumulation area. The containers may be of any size up to 55 gallons for hazardous waste, or one quart for acutely hazardous waste. The Department's intent is to allow a generator to continue to actively accumulate waste at the satellite accumulation area while awaiting removal of any full containers from the area within three days of their being filled.

The proposed amendments at N.J.A.C. 7:26-9.3(d)4 will add a requirement that the generator post a sign at each satellite accumulation area that identifies and distinguishes the location of the satellite accumulation area from other central accumulation or storage areas at the facility. This requirement will aid in effective enforcement of the rules.

The proposed amendments will also correct the heading of N.J.A.C. 7:26-9.3 by deleting the phrase "for 90 days or less," since a generator may accumulate waste for more than 90 days in satellite accumulation areas, in accordance with N.J.A.C. 7:26-9.3(d).

Social Impact

These proposed amendments will have a positive social impact by clarifying certain existing provisions of the satellite accumulation requirements. These amendments will help the regulated community comply with the rule by clarifying that only one waste stream may be accumulated in each satellite accumulation area at any one time. They will also clarify that only one partially filled container (55 gallons for hazardous waste, one quart for acutely hazardous waste) may be used at a time to actively accumulate waste at a satellite accumulation area. The requirement for generators to post a sign identifying each satellite accumulation area as such will help enforcement personnel identify satellite accumulation areas as separate from less than 90 day storage areas thus facilitating compliance inspections.

Economic Impact

The Department anticipates that there will be a small negative economic impact on those members of the regulated community who chose to accumulate their hazardous waste in satellite accumulation areas due to the requirement for these generators to purchase and post a sign identifying each satellite accumulation area.

The Department anticipates no significant economic impacts from the remaining amendments since they are clarifications of existing requirements. Generators are not expected to require professional services (for example, engineers or consultants) to comply with these amendments.

Regulatory Flexibility Analysis

These proposed amendments would apply to large quantity generators of hazardous waste who accumulate their waste in satellite accumulation areas in accordance with N.J.A.C. 7:26-9.3(d). It is estimated that few businesses, if any, impacted by this amendment are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses tend to be small quantity generators of hazardous waste and therefore N.J.A.C. 7:26-9.3(d) does not apply. In order to comply with these amendments, affected small businesses will have to comply with the requirements set forth in the Summary above. Compliance costs attributable to the proposed amendments are discussed under the Economic Impact above. It is not anticipated that professional services (for example, engineers, consultants) will be needed to comply. The Department believes that exempting small businesses from the requirement to post a sign would undermine the effective enforcement of the rules and be a detriment to the environment. No exemption from the requirement to post a sign, therefore, is provided.

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

7:26-1.4 Definitions

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

...

"Waste stream" means a waste material generated as a result of a distinct and limited process, procedure or activity.

...

7:26-9.3 Accumulation of hazardous waste [for 90 days or less]

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

(d) A generator may accumulate hazardous waste on-site in containers, at a satellite accumulation area, without a permit and without complying with (a) above, provided that:

1. No more than one waste stream is accumulated in each satellite accumulation area at any one time;

[1.]2. The quantity of waste in each satellite accumulation area is [less] not greater than 55 gallons of hazardous waste or [less] not greater than one quart of acutely hazardous waste listed in N.J.A.C. 7:26-8.15(e), except for filled containers of wastes managed in accordance with (d)6 and (d)7 below. Only one partially filled container of 55 gallons capacity or less may be used at any one time for active waste accumulation at each satellite accumulation area;

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

[3.]4. The satellite accumulation area is located at or near any point of generation where [wastes] a waste stream initially

PROPOSALS

Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION

accumulates in a process[, which] and the satellite accumulation area is under the control of the operator of the process generating the waste. To identify the location of each satellite accumulation area, the generator shall post a sign marked with the legend, "Hazardous Waste Satellite Accumulation Area," visible from the most common approach to the area;

[4.]5. (No change in text.)

[5.]6. The generator marks [the] each container with the date that the [quantity of waste reaches the volume indicated in (d)1 above] container becomes filled; and

[6.]7. Within three days after [the quantity of waste reaches the volume identified in (d)1 above] a container of waste becomes filled, the generator complies with one of the following:

i.-iii. (No change.)

RULE ADOPTIONS

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Creation of Farmland Preservation Programs Creation of Municipally Approved Farmland Preservation Programs

Adopted Amendments: N.J.A.C. 2:76-3.12 and 4.11

Proposed: January 19, 1993 at 25 N.J.R. 222(a).

Adopted: March 31, 1993 by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairperson.

Filed: April 2, 1993 as R.1993 d.181, **without change**.

Authority: N.J.S.A. 4:1C-5F.

Effective Date: May 3, 1993.

Expiration Date: July 31, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The Atlantic County Agriculture Development Board felt that the proposed rules were not needed since the Board was not aware of any abuses under the current system.

RESPONSE: While it is true that the SADC is not aware of any abuses of the existing agricultural labor housing rules, it is not viewed as an adequate reason not to amend the rule. Only a few farmers have requested the SADC's approval to construct agricultural labor housing. Therefore there has been no real opportunity to abuse the current rule. The deed restrictions which are placed on the land are permanent and the SADC has an obligation to evaluate any potential future abuses of the restrictions.

COMMENT: The New Jersey Farm Bureau commented that the labor housing unit question involving family members can become complicated, especially in view of residual dwelling site opportunities.

RESPONSE: The SADC agrees that the issue is a complicated one and any amendments to the agricultural labor housing rule must be evaluated in context of the entire deed restrictions. For example, under current rules, the grantor may construct a residence on the premises if one does not already exist. Moreover, exceptions to the applicant's land which do not adversely affect the agricultural operation are permitted. This provides an opportunity for housing for family members regardless of whether they are involved in the agricultural operation.

COMMENT: In written and oral comment the Salem County Agriculture Development Board stated that unlimited agricultural housing should be maintained as long as it is dormitory-style housing. Single family labor housing should be limited to one house per deed restricted farm which should not be deducted from any RDSO allocation. If the single family labor house is vacated then the house should be able to be rented to provide a source of farm income, just as any farm building may be rented.

RESPONSE: The SADC disagrees that the current rule provides for unlimited agricultural labor housing. Under the existing deed restriction all new agricultural labor housing must receive the approval of both the county agriculture development board and the SADC prior to construction. Moreover, any farm building, including agricultural labor housing, may not be rented for or converted for non-agricultural uses under current law. This would be a direct violation of existing deed restrictions and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., which provide that the premises must be retained in agricultural use and production.

COMMENT: The Middlesex County Agriculture Development Board felt that the definition of farm labor housing should be the same as that used by the New Jersey Department of Labor. It felt that it would be inappropriate for labor housing to consist of single family dwellings and should be multiple units conforming to New Jersey Department of Labor standards.

RESPONSE: The SADC acknowledges that the construction of single family labor housing may lead to abuses. However the SADC does not want to totally ban such housing because New Jersey's diverse agriculture may require it in some instances. Therefore, the SADC intends to continue to permit all types of agricultural labor housing proposals to

be presented to the county and the SADC. The SADC and the county will carefully review all applications for agricultural labor housing, including single family housing, on a case by case basis.

COMMENT: The Burlington County Agriculture Development Board did not endorse the proposed amendment and felt that the exclusion of the grantor's children was prejudicial and arbitrary. The Burlington CADB felt that the rule should be amended to permit the grantor to house his descendants in agricultural labor housing as long as the descendant is employed on the premises year round, on a full-time basis. A similar concern was expressed by the Hunterdon County Agriculture Development Board which stated that family members who live and work on the farm should be treated the same as non-family members who also live and work on the farm. The Board felt that off-farm housing was difficult and expensive to procure. It also proposed that if the principal occupant of the agricultural labor housing ceased to receive his or her primary income from the farm the housing would have to be vacated. At the public hearing, representatives of the Cumberland County Agriculture Development Board, the Mercer County Agriculture Development Board and Ocean County Agriculture Development Board commented that family members who work on the farm should be permitted to live in agricultural labor housing.

RESPONSE: The current rule and the proposed amendments do not limit the landowner or his or her descendants, if they are employed on the farm, from residing in agricultural labor housing existing at the time of enrollment in the eight year program. The amendment extends the current rule to prohibit the grantor (landowner) and certain relatives of the landowner from living in any agricultural labor units constructed after the sale of the development easement. The SADC does not feel that the proposed amendment is arbitrary, discriminatory or prejudicial. The Agriculture Retention and Development Program is an entirely voluntary program. The landowner is fully aware of the restrictions imposed on the land prior to enrollment in the eight-year program and is adequately compensated for the loss of any rights resulting from the imposition of the deed restrictions. The SADC feels that there exists other adequate opportunities by which the landowner can provide housing for relatives employed on the farm.

COMMENT: The Somerset County Agriculture Development Board was opposed to changing current procedures regarding agricultural labor housing. It felt that, at times, extended family members qualify as agricultural labor under Federal standards. However, it understood the SADC's intent and felt the issue should be handled on a case by case basis.

RESPONSE: Although Federal guidelines may or may not permit extended family members to reside in agricultural labor housing, the Agriculture Retention and Development Program is a separate and independent program with a different focus and goal. The prohibition of certain relatives from residing in agricultural labor housing (for which the landowner has been adequately compensated) is consistent with the State program's statutory goals.

COMMENT: The Warren County Agriculture Development Board felt that the proposed amendments to N.J.A.C. 2:76-3.12 and 4.11 did not enhance the likelihood that the land would remain actively devoted to agriculture. It felt that the rule would force the current landowner to subdivide prior to enrollment in an eight-year program in anticipation of children living on the farm. Farmers with family members now living on the farm would be discouraged from entering into the program. The Board felt that any action that limits the farmers' ability to use any resource, limits their competitiveness. It also felt that the amendments would lead to monitoring problems since the landowner could withdraw from an eight-year program because of financial hardship.

RESPONSE: As previously stated the proposed amendments do not prohibit the Grantor or certain relatives from living in agricultural labor housing constructed prior to enrollment in the eight-year program. Therefore it should not affect any existing family farm units. Moreover, the monitoring issue is separate and apart from the statutory reasons for withdrawal. If the land is currently in an eight-year program and has not been withdrawn it must be monitored for compliance with the eight-year deed restrictions.

Full text of the adoption follows.

2:76-3.12 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board and the landowner(s) when a farmland preservation program is adopted and shall run with the land:

"Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

"1. through "12. (No change.)

"13. Grantor may construct any new buildings for agricultural purposes. The construction of any new building which shall serve as a residential use, regardless of its purpose, shall be prohibited except as follows:

i.-iii. (No change.)

iv. The above exceptions shall not be permitted unless jointly approved in writing by the Grantee and the Committee. Approval for such exceptions shall only be granted upon the determination that the proposed construction would have a positive impact on the continued use of the Premises for agricultural production. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural.

"14. through "21." (No change.)

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

2:76-4.11 Deed restrictions

(a) The following deed restrictions shall be agreed to by the board, the municipal governing body and the landowner(s) when a municipally approved farmland preservation program is adopted and shall run with the land:

"Grantor promises that the Premises shall at all times for the term of the agreement be owned, used and conveyed subject to:

"1. through "12. (No change.)

"13. Grantor may construct any new buildings for agricultural purposes. The construction of any new building which shall serve as a residential use, regardless of its purpose, shall be prohibited except as follows:

i.-iii. (No change.)

iv. The above exceptions shall not be permitted unless jointly approved in writing by the Grantee and the Committee. Approval for such exceptions shall only be granted upon the determination that the proposed construction would have a positive impact on the continued use of the Premises for agricultural production. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural.

"14. through "21." (No change.)

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

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Acquisition of Development Easements

Adopted Amendment: N.J.A.C. 2:76-6.15

Proposed: January 19, 1993 at 25 N.J.R. 223(a).

Adopted: March 31, 1993, by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairperson.

Filed: April 2, 1993 as R.1993 d.182, **without change.**

Authority: N.J.S.A. 4:1C-5f.

Effective Date: May 3, 1993.

Expiration Date: July 31, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The Atlantic County Agriculture Development Board felt that the proposed amendment was not needed since the board was not aware of any abuses under the current system.

RESPONSE: While it is true that the SADC is not aware of any abuses of the existing agricultural labor housing rules, it is not viewed as an

adequate reason not to amend the rule. Only a few farmers have requested the SADC's approval to construct agricultural labor housing. Therefore there has been no real opportunity to abuse the current rule. The deed restrictions which are placed on the land are permanent and the SADC has an obligation to evaluate any potential future abuses of the restrictions.

COMMENT: The New Jersey Farm Bureau commented that the labor housing unit question involving family members can become complicated, especially in view of residual dwelling site opportunities.

RESPONSE: The SADC agrees that the issue is a complicated one and any amendments to the agricultural labor housing rule must be evaluated in context of the entire deed restrictions. For example under current rules residual dwelling site opportunities (RDSO) may be allocated to the premises which may provide for housing for family members who are involved in the agricultural operation. Moreover, exceptions to the applicant's land which do not adversely affect the agricultural operation are permitted. This provides an opportunity for housing for family members regardless of whether they are involved in the agricultural operation.

COMMENT: In written and oral comment the Salem County Agriculture Development Board stated that unlimited agricultural housing should be maintained as long as it is dormitory-style housing. Single family labor housing should be limited to one house per deed restricted farm which should not be deducted from any RDSO allocation. If the single family labor house is vacated then the house should be able to be rented to provide a source of farm income, just as any farm building may be rented.

RESPONSE: The SADC disagrees that the current rule provides for unlimited agricultural labor housing. Under the existing deed restriction all new agricultural labor housing must receive the approval of both the county agriculture development board and the SADC prior to construction. Moreover, any farm building, including agricultural labor housing, may not be rented for or converted for non-agricultural uses under current law. This would be a direct violation of existing deed restrictions and the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., which provide that the "any development of the premises for nonagricultural purposes is expressly prohibited."

COMMENT: The Middlesex County Agriculture Development Board felt that the definition of farm labor housing should be the same as that used by New Jersey Department of Labor. It felt that it would be inappropriate for labor housing to consist of single family dwellings and should be multiple units conforming to New Jersey Department of Labor standards.

RESPONSE: The SADC acknowledges that the construction of single family labor housing may lead to abuses. However the SADC does not want to totally ban such housing because New Jersey's diverse agriculture may require it in some instances. Therefore the SADC intends to continue to permit all types of agricultural labor housing proposals to be presented to the county and the SADC. The SADC and the county will carefully review all applications for agricultural labor housing, including single family housing, on a case by case basis.

COMMENT: The Burlington County Agriculture Development Board did not endorse the proposed amendment and felt that the exclusion of the Grantor's children was prejudicial and arbitrary. The Burlington CADB felt that the rule should be amended to permit the grantor to house his descendants in agricultural labor housing as long as the descendant is employed on the premises year round, on a full-time basis. A similar concern was expressed by the Hunterdon County Agriculture Development Board which stated that family members who live and work on the farm should be treated the same as non-family members who also live and work on the farm. The Board felt that off-farm housing was difficult and expensive to procure. It also proposed that if the principal occupant of the agricultural labor housing ceased to receive his or her primary income from the farm the housing would have to be vacated. At the public hearing, representatives of the Cumberland County Agriculture Development Board, the Mercer County Agriculture Development Board and Ocean County Agriculture Development Board commented that family members who work on the farm should be permitted to live in agricultural labor housing.

RESPONSE: The current rule and the proposed amendments do not limit the landowner or his or her descendants, if they are employed on the farm, from residing in agricultural labor housing existing at the time the development easement was purchased. The amendment extending the current rule prohibits certain relatives of the landowner from living in any agricultural labor units constructed after the sale of the develop-

ment easement. The SADC does not feel that the proposed amendment is arbitrary, discriminatory or prejudicial. The Agriculture Retention and Development Program is an entirely voluntary program. The landowner is fully aware of the restrictions imposed on the land prior to the sale of the development easement and is adequately compensated for the loss of any rights resulting from the imposition of the deed restrictions. The SADC feels that there exists other adequate opportunities by which the landowner can provide housing for relatives employed on the farm.

COMMENT: The Somerset County Agriculture Development Board was opposed to changing current procedures regarding agricultural labor housing. It felt that, at times, extended family members qualify as agricultural labor under Federal standards. However it understood the SADC's intent and felt the issue should be handled on a case by case basis.

RESPONSE: Although Federal guidelines may or may not permit extended family members to reside in agricultural labor housing, the Agriculture Retention and Development Program is a separate and independent program with a different focus and goal. The prohibition of certain relatives from residing in agricultural labor housing (for which the landowner has been adequately compensated) is consistent with the State program's statutory goals.

Full text of the adoption follows.

2:76-6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land: "Grantor promises that the Premises shall be owned, used and conveyed subject to:

"1. through "13. (No change.)

"14. Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee. If Grantee and the Committee grant approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural; and

ii. To construct a single family residential building anywhere on the Premises in order to replace any single family residential building in existence at the time of conveyance of this Deed of Easement but only with the approval of the Grantee and Committee.

"16. through "22." (No change.)

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

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Adopted Amendments: N.J.A.C. 5:18-1.5, 2.4, 2.5, 2.7, 2.20, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.13, 3.17, 3.20, 3.30, Appendix 3-A, 4.7, 4.9, 4.11, 4.12, 4.17 and 4.19

Proposed: February 1, 1993 at 25 N.J.R. 393(a).

Adopted: April 12, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.

Filed: April 12, 1993 as R.1993 d.197, with substantive and technical changes not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-198.

Effective Date: May 3, 1993.

Expiration Date: January 4, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from the following persons and organizations:

James G. Bruno—Asbury Park Fire Department

Andy Cattano—New Jersey Builders Association
John A. Fearheller, Jr.—Walker, Previti, Holmes & Assoc.
Charles B. Gosling—Essex County Fire Prevention and Protection Association

Jeffrey A. Horn—NAIOP, The Association for Commercial Real Estate

Pat J. Intindola—Nutley Construction Official
Gary Lewis—New Jersey Fire Prevention and Protection Association

John McDonald—Spotswood Fire Official

Eugene J. McPartland—Princeton University

Rodman A. Meyer—Gloucester Township Fire District No. 4 Fire Official

John J. Murphy, Jr.—Leonia Fire Official

Terence P. Ryan—New Jersey Hotel/Motel Assn.

COMMENT: Several commenters were concerned that the prohibition on portable heat producing devices was overly broad, since all electrical devices produce some heat.

RESPONSE: The rule has been amended to make it clear that only cooking and food-warming devices are meant to be covered.

COMMENT: The prohibition on smoking is unenforceable in college dormitories.

RESPONSE: The prohibition on smoking, like the prohibition on cooking and food-warming devices, applies only to rooming and boarding houses. College dormitories are excluded by statute from the definitions of those facilities.

COMMENT: The second means of egress requirement for dwelling units below grade imposes an unreasonable burden with regard to some existing dormitory rooms.

RESPONSE: This requirement is taken from a rule that was previously included in the Regulations for the Maintenance of Hotels and Multiple Dwellings (N.J.A.C. 5:10) enforced by the Bureau of Housing Inspection and is, therefore, not new.

COMMENT: Several of the officials who commented recommended that language be added concerning elevator recall operations and emergency devices in elevators with attendants.

RESPONSE: Elevator recall operations in elevators with attendants are already covered by a referenced standard. However, for purposes of clarity, these requirements are being added to the text of N.J.A.C. 5:18-4.17.

COMMENT: A construction official points out that the BOCA National Building Code allows grade floor windows used for egress to have a minimum size of five, rather than 5.7, square feet. He also recommends that it should be made clear that the stated minimum dimension of 20 inches refers to the width of the window, and that the window would have to have a minimum clear opening of at least 24 inches in height.

RESPONSE: The Department agrees that this reduction in the window size requirement is appropriate and that this clarification should be made.

COMMENT: Several commenters question the addition of a permit fee for cooking operations, particularly in light of the fact that many municipalities already have local permit fee requirements.

RESPONSE: The purpose of the permit is to assure that cooking operations that require suppression systems are inspected by the local enforcing agencies in all municipalities. N.J.A.C. 5:18-2.7 has been amended on adoption to avoid requiring an additional fee where a local periodic inspection requirement already exists.

COMMENT: A fire official recommends that all cooking operations be defined as life hazard uses.

RESPONSE: A 1991 proposal to make eating establishments with fewer than 50 occupants a life hazard use elicited numerous objections from business owners and fire officials alike. The Department, in consultation with the Codes Advisory Council of the Fire Safety Commission, has reviewed the matter and has concluded that a permit requirement will be adequate to protect public safety.

COMMENT: Owner-occupied one- and two-family dwellings are exempt from jurisdiction under the Uniform Fire Safety Act and they should not be subject to permit requirements for cooking operations.

RESPONSE: The rule only applies to cases in which a suppression system is required under N.J.A.C. 5:18-4.7(g). Buildings in Use Groups R-2 and R-3 are excluded from this requirement. Even if they were not, the statutory exemption for owner-occupied one- and two-family dwellings is not subject to change by rule.

COMMENT: A commenter asks whether N.J.A.C. 5:18-4.17(e)1 is intended to apply only to high-rise structures.

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RESPONSE: Yes. This is clear from the language in the section heading and in subsection (e).

COMMENT: An industry representative objects to the possible cost of adding exits to places of assembly with a capacity of over 100.

RESPONSE: Under N.J.A.C. 5:18-4.11(g), most places of assembly with an occupancy of under 300 and two remote three-foot exit doors will need no additional exits, while those with an occupancy of 300 or more will usually require the addition of a single exit door. The Department does not agree that the cost of making such improvements as may be required to comply with this rule is likely to be "prohibitive."

COMMENT: The New Jersey Builders Association states that the proposed N.J.A.C. 5:18-4.11(a)3 should be changed because it is more restrictive than section 809.3 of the BOCA National Building Code/1990, which allows there to be only one exit in buildings having not more than one level below the level of exit discharge if certain other requirements are met and that it should otherwise be made consistent with section 809.4 of the said building code, which deals with emergency escape.

RESPONSE: N.J.A.C. 5:18-4.11(a)3 is consistent with BOCA section 809.4, which requires a window that can be used for exit purposes from each sleeping room. N.J.A.C. 5:18-4.11(a)3 refers to dwelling units, rather than sleeping rooms, but there is invariably at least one room used for sleeping purposes in each dwelling unit. The Department agrees that the exception set forth in section 809.4 for fully sprinklered buildings should be made applicable.

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

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. Where a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

...

"Floor area, gross" means the floor area within the perimeter of the outside walls of the building or use under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns or other features.

"Floor area, net", for purposes of determining occupant load, means the actual occupied floor area and shall not include unoccupied accessory areas or thickness of walls.

...

"Lumber" means boards, dimension lumber, timber, plywood, pressure treated wood, fencing and fence posts, and other similar wood products.

...

5:18-2.4 Life hazard uses defined

(a) The buildings, uses, and premises listed in N.J.A.C. 5:18-2.4A through 2.4D, other than those that are incidental or auxiliary to the agricultural use of a farm property, constitute life hazard uses which are subject to the registration and periodic inspection requirements established by this subchapter.

(b) Where two or more life hazard uses exist at the same building or premises, each one shall be considered as separate and distinct for the purposes of this Code and shall be registered pursuant to N.J.A.C. 5:18-2.8.

5:18-2.5 Required inspections

(a) All life hazard uses shall be inspected for compliance with the provisions of this Code periodically but not less often than specified herein:

1.-2. (No change.)

3. Type Ca through Ci life hazard uses: once every three months.

4. Type Da through Dc life hazard uses: once every three months.

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

5:18-2.7 Permits required

(a) (No change.)

(b) Permits shall be required, and shall be obtained from the fire official, for any of the activities specified in this section except where

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they are an integral part of a process by reason of which a use is required to be registered and regulated as a life hazard use. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1.-2. (No change.)

3. Type 1 permit:

i.-xi. (No change.)

xii. Any permanent cooking operation that requires a suppression system in accordance with N.J.A.C. 5:18-4.7(g) and is not defined as a life hazard use in accordance with N.J.A.C. 5:18-2.4.

4.-7. (No change.)

(c)-(i) (No change.)

(j) A permit shall not be issued until the designated fees have been paid.

1. There shall be no fee for a permit required by this subchapter if a municipality has by ordinance established a periodic inspection and fee schedule for a use substantially similar to the permit requirement.

(k) (No change.)

5:18-2.20 Certificate of smoke detector compliance

(a) Before any Use Group R-3 structure is sold, leased, or otherwise made subject to a change of occupancy for residential purposes, the owner shall obtain a certificate of smoke detector compliance (CSDC), evidencing compliance with N.J.A.C. 5:18-4.19, from the appropriate enforcing agency.

1. (No change.)

2. Where no municipal inspection or approval requirement exists, the agency responsible for enforcement of the Uniform Fire Safety Act shall be responsible for the issuance of the CSDC.

i. The Department, where it serves as the enforcing agency, may, upon application by a local fire department, delegate to that fire department the responsibility and authority for issuance of the CSDC within the municipality, or portion of a municipality, served by that fire department.

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

5:18-3.1 Purpose and scope

(a) (No change.)

(b) This subchapter shall be applicable to:

1. All buildings, structures, and premises within this State, with the exception of owner-occupied one and two-family dwellings used exclusively for dwelling purposes within this State; and

2. (No change.)

5:18-3.2 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. Where a term is not defined then the definition of that term found in this code at N.J.A.C. 5:18-1.5 or within the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern:

...

"Building code in effect at the time of first occupancy" means the building code regulations in effect at the time the specific occupancy use, or operation, was legally established.

...

5:18-3.3 General precautions against fire

(a) (No change.)

(b) The following apply to bonfires and outdoor fires:

1. Burning of rubbish shall be prohibited except in approved incinerators.

2. The burning of herbaceous or infested plant life, the burning of orchard prunings and cuttings, prescribed burnings and the clearing of agricultural land by burning are prohibited by this subchapter, unless in accordance with a permit issued under the provisions of N.J.A.C. 7:27-2, administered by the State Forest Fire Service in the New Jersey Department of Environmental Protection and Energy (NJDEPE).

Recodify existing 2.-7. as 3.-8. (No change in text.)

(c)-(h) (No change.)

(i) The following apply to chimneys and heating appliances:

1. All existing chimneys, smokestacks or similar devices for conveying smoke or hot gases to the outer air and all stoves, ovens, furnaces, incinerators, boilers or any other heat producing devices or appliances shall be constructed in accordance with the building and mechanical codes in effect at the time of first occupancy and maintained in accordance with NFPA 54 and 211 listed in Appendix 3-A, incorporated herein by reference, where the provisions of this section do not specifically cover conditions and operations, and in such a manner as not to create a fire hazard.

i. Every chimney, flue, vent and smokestack shall be inspected, cleaned and maintained as often as necessary to ensure adequate draft, structural integrity and freedom from combustible deposits and obstructions.

ii. All fixed heat producing appliances shall be inspected, cleaned and serviced as often as necessary to maintain the appliance in a safe operating condition.

iii. Connector pipes between appliances and chimneys shall be inspected, cleaned or replaced as often as necessary to ensure safe operation of the appliance. All joints shall be gas tight and mechanically fastened with connections made with the pipe installed inside of the following section to ensure conveyance of products of combustion to the exterior.

iv. Appliances which do not vent their flue gases properly to the exterior of the building shall be immediately removed from service in accordance with (i)2 below.

v. Appliances shall only be fired with the fuel for which the appliance is designed and approved.

2.-3. (No change.)

(j)-(v) (No change.)

(w) The following apply to rooming and boarding houses:

1. Every rooming and boarding house shall have rules prohibiting the activities listed in (w)1i and ii below*,* which shall be accepted in writing by every resident as a condition of residency.

i. The use of cooking*[.]* *and* food warming and portable heat producing device*s*, other than microwave ovens, is prohibited in rooming units.

ii. Smoking is prohibited in rooming units.

5:18-3.4 Fire protection systems

(a) (No change.)

(b) The following apply to protection maintenance:

1.-4. (No change.)

5. Vacant or unoccupied buildings or portions thereof shall maintain all required sprinkler and standpipe systems and all component parts in a workable condition at all times. Fire alarm systems shall be maintained in operating condition at all times, except in accordance with (b)5i below, and the system shall be tested in the presence of the fire official upon restoration to use.

i. Exception: In vacant or unoccupied buildings, where the fire official determines the type of construction, fire separation and security of the building is such as not to create a fire hazard, the fire official may permit the fire protection and/or detection systems to be taken out of service in such a manner and for such a time as the official specifically prescribes.

6.-8. (No change.)

(c) The following apply to periodic inspections and tests:

1.-9. (No change.)

10. Elevators shall be tested annually in accordance with (c)10i and ii below. The fire official may accept a current Certificate of Compliance issued in accordance with the Uniform Construction Code as evidence of compliance with this section.

i.-ii. (No change.)

11.-17. (No change.)

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

5:18-3.5 Means of egress

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

(d) The following apply to emergency escape windows:

1. (No change.)

2. Existing bars, grills, grates or similar devices may be permitted in required emergency escape windows provided such devices are approved by the fire official, in accordance with N.J.A.C. 5:18A-2.1

and 3.3, and are equipped with approved release mechanisms which are openable from the inside without the use of a key or special knowledge or excessive force. Installation of new devices shall be in accordance with the New Jersey Uniform Construction Code.

(e)-(f) (No change.)

5:18-3.7 Application of flammable finishes

(a) The following are general provisions applicable to this section:

1. The locations or areas where the following activities are intended to be conducted or are done shall comply with the provisions of this section.

i. The application of flammable or combustible paint, varnish, lacquer, stain or other flammable or combustible liquid applied as a spray by whatever means, in continuous or intermittent process; and

ii. (No change.)

2. This section does not cover the outdoor spray application of buildings, tanks or other similar structures, nor does it cover small portable spraying apparatus not used repeatedly in the same location; provided, however, that the herein described fundamental safeguards pertaining to cleanliness, care of flammable liquids, dangerous vapor-air mixtures and sources of ignition shall be applicable.

(b) (No change.)

(c) The following apply to spray finishing:

1.-8. (No change.)

9. All spraying areas shall be provided with portable fire extinguishers suitable for flammable liquid fires as specified for extra hazardous occupancies in NFPA 10 listed in Appendix 3-A and incorporated herein by reference.

10.-11. (No change.)

(d) The following apply to dip tanks:

1.-7. (No change.)

8. Areas in the vicinity of dip tanks shall be provided with portable fire extinguishers suitable for flammable liquid fires as specified for extra-hazardous occupancies in NFPA 10 listed in Appendix 3-A, incorporated herein by reference.

9. (No change.)

10. Hardening and tempering tanks shall conform to (d)4 and 7 above, as well as (d)10i through iv below.

i.-iii. (No change.)

iv. Air under pressure shall not be used to fill or to agitate oil in tanks.

11.-12. (No change.)

(e)-(f) (No change.)

5:18-3.13 Lumber yards, exterior storage or processing of forest products and woodworking plants

(a) Lumber yards, exterior storage or processing of forest products and woodworking plants shall comply with the applicable requirements of this Code and the provisions of this section.

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

5:18-3.17 Tents and air-supported and other temporary structures

(a) General provisions concerning tents and air-supported and other temporary structures are as follows:

1. The provisions of this section shall apply to air-supported, air-inflated, membrane-covered cable and membrane-covered frame structures, collectively known as membrane structures, erected for a period of less than 90 days.

i. Membrane structures erected for more than 90 days shall comply with the building code in effect at the time of first occupancy.

ii. This section shall not apply to membrane structures that do not require a permit under N.J.A.C. 5:18-2.7(b)3iii.

2. (No change.)

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

(d) Fire safety requirements are as follows:

1.-2. (No change.)

3. Spot or effect lighting shall be by electricity only; all combustible construction within six feet of such equipment shall be protected with approved noncombustible insulation.

4.-6. (No change.)

ADOPTIONS

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- 5:18-3.20 Welding or cutting, calcium carbide and acetylene generators
 - (a)-(d) (No change.)
 - (f) Electric arc welding and cutting requirements are as follows:
 - 1.-2. (No change.)
 - 3. When electric arc welding or cutting is to be discontinued for any period of time of one hour or more, all electrodes shall be removed from the holders, the holders shall be carefully located so that accidental contact cannot occur, and the machines shall be disconnected from the power source.
 - (g)-(i) (No change.)

- 5:18-3.30 Liquefied petroleum gases
 - (a)-(g) (No change.)
 - (h) Container and site requirements are as follows:
 - 1.-4. (No change.)
 - 5. Whenever there is a fire or explosion or accident involving serious injury or loss of life as a result of an incident involving an LP-Gas installation, the responsible party as required in (h)4 above shall promptly notify the fire official of its occurrence.

APPENDIX 3-A

The following is a list of standards referenced in this Code, the effective date of the standard, the promulgating agency of the standard and the section(s) of this Code that refer to the standard.

ANSI American National Standards Institute, Inc.
1430 Broadway
New York, New York 10018

Standard reference number	Title	*Referenced in code Section number
...		
UL 217	Single and Multiple Station Smoke Detectors.....	4.19(c)
...		
NFPA	National Fire Protection Association Batterymarch Park Quincy, Massachusetts 02269	
...		
74-84	Household Fire Warning Equipment— Standard for the Installation, Maintenance, and Use of.....	4.19(b)
...		

- 5:18-4.7 Fire suppression systems
 - (a)-(d) (No change.)
 - (e) All buildings of Use Group H or portions thereof when separated in accordance with (k) below shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.
 - 1. All spraying operations as defined by N.J.A.C. 5:18-3.7(a) shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.
 - 2. Dipping operations as defined by N.J.A.C. 5:18-3.7(d)1 and as outlined in (e)2i through iii below shall be equipped with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.
 - i. Dip tanks of over 150 gallons capacity or 10 square feet liquid surface area;
 - ii. Dip tanks containing a liquid with a flash point below 110 degrees F., when used in such manner that the liquid temperature may equal or be greater than its flash point from artificial or natural

causes when having both a capacity of more than 10 gallons and a liquid surface area of more than four square feet; and
iii. Hardening and tempering tanks of over 500 gallons capacity or 25 square feet liquid surface area.

- 5:18-4.9 Automatic fire alarms
 - (a) An automatic fire alarm system shall be installed as required below in accordance with the New Jersey Uniform Construction Code.
 - 1.-3. (No change.)
 - 4. In all buildings of Use Group E up to and including the 12th grade, the system shall consist of:
 - i.-iii. (No change.)
 - iv. Existing fire detection systems, installed and maintained in accordance with the manufacturer's recommendations, and meeting the intent of current standards for automatic fire alarms, shall be acceptable, provided:
 - (1) The existing system is tested, in accordance with the provisions of N.J.A.C. 5:18-3.4(c)6, by an approved service agency competent in the manufactured system, in the presence of the fire official or his designated representative. The fire official may accept a written report of test results in lieu of witnessing the test.
 - (2) (No change.)
 - (b)-(c) (No change.)

- 5:18-4.11 Means of egress
 - (a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.
 - 1.-2. (No change.)
 - 3. In dwelling units in basements or stories below grade in buildings of Use Group R-2 ***that are not equipped throughout with an automatic fire sprinkler system***, there shall be at least two exits from each dwelling unit.
 - i. An approved window providing a clear opening of at least ***[5.7]* *five* square feet in area, a minimum *[dimension]* *net clear opening* of *[20 inches]* *24 inches in height and 20 inches in width***, and a sill height of not more than 44 inches above the finished floor, shall be acceptable as one of the required exits.
 - (b)-(e) (No change.)
 - (f) The capacity of means of egress in each story shall be sufficient for the occupant load thereof.
 - 1. The capacity per unit of egress width shall be computed in accordance with Table 5:18-4.11(f)1 for the specified use groups.

Table 5:18-4.11(f)1
(No change.)

- 2. (No change.)
- 3. The maximum permitted occupant load of a given space shall be determined by dividing the floor area for a given use by the occupant load factor in Table 5:18-4.11(f)3.
 - i. With the exception of Use Group A occupancies, the occupant load may be increased to the total number of occupants for which exit capacity is provided as determined by (f)1 above provided the resulting total occupant load shall not exceed one occupant per five square feet of net floor area over the entire use.

Table 5:18-4.11(f)3
Floor Area Per Occupant

Use	Occupant Load Factor in square feet per occupant
Assembly	
Fixed seating	Note 1
Tables and chairs	15 net
Chairs only	7 net
Dance floors	7 net
Standing space	5 net
Waiting space (Note 2)	3 net
Bowling centers	
Lanes	5 persons per assembly above
Other areas	
Business	100 gross
Educational	
Fixed seating	Note 1
Classrooms	20 net
Shops and vocational areas	50 net
Industrial	100 gross
Institutional	
Inpatient treatment	240 gross
Outpatient	100 gross
Sleeping rooms	120 gross
Library	
Reading room	50 net
Stack area	100 gross
Mercantile	
Grade floor or basement	30 gross
All other floors	60 gross
Storage, stock, shipping	300 gross
Parking garages	200 gross
Residential	200 gross
Storage areas, mechanical equipment room	300 gross

Note 1. The occupant load for that portion of an assembly area having fixed seats shall be determined by the number of fixed seats installed. Capacity of seats without dividing arms is one person per 18 inches. For booths, one seat equals 24 inches. One person is allowed for each fixed seat with dividing arms or fixed stand alone stool.

Note 2. Waiting space means that space in an assembly occupancy where persons are admitted to the building at times when seats are not available to them and are allowed to wait in a lobby or similar space until seats are available. Such use of the lobby or similar space shall not encroach upon the required clear width of exits.

(g) All buildings of Use Group A with an occupant load of 100 or more shall be provided with a main entrance capable of serving as the main exit with an egress capacity for at least one-half the total occupant load. The remaining exits shall be capable of providing two-thirds of the total required exit capacity.

(h)-(o) (No change.)

5:18-4.12 Interior finish

(a) The interior finish of walls and ceilings shall have a flame spread rating not greater than the class prescribed by Table 5:18-4.12(a).

1. (No change.)

Table 5:18-4.12(a)
Interior Finish Requirements

Use Group	Exit Enclosures	Exit Access Enclosures	Rooms or Spaces
A†, E, I, R-1	I	II	III
All Other Use Groups	I	II	No Minimum

†See N.J.A.C. 5:18-4.16(a)2 for amusement buildings.

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

5:18-4.17 High rise buildings

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

(e) Elevators in high rise structures shall be equipped with the following emergency control devices:

1. All automatic (non-designated attendant) elevators having a travel of 25 feet or more above or below the designated level shall be equipped with Phase 1 Emergency Recall Operation as required by ASME A17.1 Rules 211.3a and 211.3b listed in Appendix 3-A to N.J.A.C. 5:18-3; *[and]*

2. Access to all floors shall be provided by at least one elevator equipped with Phase II Emergency In-Car Operation, as required by ASME A17.1, Rule 211.3c listed in Appendix 3-A to N.J.A.C. 5:18-3*[.]*; and*

3. All designated attendant elevators having a travel of 25 feet or more above or below the designated level shall be equipped with emergency controls, as required by ASME A17.1 Rule 211.4 listed in Appendix 3-A to N.J.A.C. 5:18-3.

(f) (No change.)

5:18-4.19 Smoke detectors for one and two-family dwellings

(a) (No change.)

(b) The smoke detectors required in (a) above shall be located in accordance with NFPA 74 listed in N.J.A.C. 5:18—Appendix 3A, incorporated herein by reference, and maintained in working order.

1. (No change.)

(c) Smoke detectors may be battery powered and shall be listed in accordance with ANSI/UL 217 listed in N.J.A.C. 5:18—Appendix 3A, incorporated herein by reference.

1. (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code
Penalties

Adopted Amendments: N.J.A.C. 5:18-2.9, 2.12, 2.14
and 2.17

Adopted Repeal and New Rule: N.J.A.C. 5:18-2.16

Proposed: February 1, 1993 at 25 N.J.R. 397(a).

Adopted: April 12, 1993 by Stephanie R. Bush, Commissioner,
Department of Community Affairs.

Filed: April 12, 1993 as R.1993 d.195, with substantive and
technical changes not requiring additional public notice or
comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-198.5.

Effective Date: May 3, 1993.

Expiration Date: January 4, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from Terence P. Ryan, Executive Vice President of the New Jersey Hotel/Motel Association; Jeffrey N. Stoller, Assistant Vice President of the New Jersey Business and Industry Association; Kurt Van Anglen, President of the Building Owners and Managers Association—NJ; and Joshua Lazarus, Fire Official of the Borough of Closter.

COMMENT: Mr. Ryan contends that the new penalties are potentially prohibitive and the trust fund arrangement could influence local decisions on the amounts to be assessed.

RESPONSE: These penalties were established by statute. The rule is intended to establish standards for the assessment of these penalties and thereby to ensure that the power granted to enforcing agencies is exercised in a reasonable manner.

COMMENT: Mr. Stoller requests a clarification as to whether the new penalties are taken from the statute or were initiated by the Department. The Business and Industry Association regards the \$150,000 compensatory penalty that may be charged regardless of actual cost of suppressing a fire as particularly severe.

RESPONSE: The penalties were created by statute (P.L. 1991, c.489) and therefore cannot be changed by rule. The Department, however,

can set reasonable standards for assessment of the statutory penalties, which it is doing in this rule.

COMMENT: Mr. Van Anglen proposes that language concerning appeals be added.

RESPONSE: An appeals procedure applicable to these penalties already exists. See N.J.A.C. 5:18-2.11 and N.J.S.A. 52:27D-206. No language concerning appeals of penalties need therefore be added.

COMMENT: Mr. Lazarus objects to having the fire official made the "collection agent" for the local fire department and would like this proposal to be withdrawn until its effects on all parties involved can be properly understood and accepted.

RESPONSE: These penalties, and the purposes for which the funds are to be used, are established by statute and therefore cannot be changed by rule. The Bureau of Fire Safety is developing a complete guide for local fire officials on the implementation of these provisions which should be of help. Also, the Division of Local Government Services of DCA is working with the Bureau to assure that penalty accounts are properly established. Indeed, the changes upon adoption to N.J.A.C. 5:18-2.17(c) regarding fire districts, including the addition of paragraph (c)1, are being made upon the recommendation of the Division of Local Government Services in order to make clear the manner in which the revenues from the new penalties are to be handled where the enforcing agency is a fire district.

COMMENT: Mr. Lazarus also objects to the requirement that the fire official give notice of imminent hazards to the construction official. He also asks for a clarification of the meaning of "day" as used in reference to time limits for abatement and recommends that more time be allowed for submission of extension requests.

RESPONSE: The Department believes that the requirement that the fire official notify the construction official of any imminent hazard does not place any undue burden on the fire official and is necessary in the interest of public safety, since code violations within the jurisdiction of the construction official are likely to exist in any such situation. "Day" means a calendar day, unless otherwise specified. Since the time frames that are set forth in the rule are minimums, the fire official is at liberty to accept extensions filed at a later time should he or she consider it appropriate to do so.

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

5:18-2.9 Enforcement procedures

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

(d) Whenever the fire official, or the authorized representative of the fire official, observes an apparent or actual violation of a provision of this Code or other code or ordinance under the fire official's jurisdiction, the fire official shall prepare a written notice of violation describing the condition deemed unsafe, including the appropriate Code section, and specifying time limits for the required repairs or improvements to be made to render the building structure or premises safe and secure.

1. Time limits for abatement of violations other than imminent hazards shall be as set forth in N.J.A.C. 5:18-2.16.

2. Violations constituting an imminent hazard shall be abated immediately or the premises shall be either vacated and closed or used only subject to such conditions as the fire official may establish.

(e)-(h) (No change.)

5:18-2.12 Penalties

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

(f) If an owner has been given notice of the existence of a violation of this chapter, or any other violation of the Act, and fails to abate the violation, he or she shall, in addition to being liable to the penalties set forth in (e) above, be liable to dedicated and compensatory penalties in accordance with N.J.A.C. 5:18-2.17(a).

(g) The enforcing agency shall have the right to compromise or settle any claim arising out of the assessment of a penalty provided such compromise or settlement shall be likely to bring about compliance.

1. No claim shall be finally compromised or settled so long as the violation which caused its assessment remains in existence.

2. If a penalty assessed pursuant to (e) above is compromised, any dedicated or compensatory penalty assessed pursuant to N.J.A.C.

5:18-2.17(a), other than a penalty in the amount of the actual cost of suppressing the fire and other actual expenses, shall be compromised to the same extent.

5:18-2.14 Imminent hazards

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

(c) The following violations, by their nature, constitute imminent hazards to the health, safety or welfare of the occupants or intended occupants of a building, structure or premises, of firefighters, or of the general public:

1. Unsafe structural conditions;
2. Locking or blocking of any means of egress;
3. Presence of explosives, explosive fumes or vapor in violation of this Code;
4. Presence of toxic fumes, gases or materials, or flammable or combustible liquids in violation of this Code; and
5. Inadequacy of any required fire protection system.

(d) When, in the opinion of the fire official, there is actual and/or potential danger to the occupants or those in proximity to any building, structure or premises because of any condition constituting an imminent hazard in accordance with (c) above, the fire official may order the immediate evacuation of said building, structure or premises.

1. All occupants so notified shall immediately leave the building, structure or premises and no person shall enter or re-enter until authorized to do so by the fire official.

2. Any person who shall refuse to leave, or who shall interfere with the evacuation of other occupants or continue any operation after having been given an evacuation order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be deemed to have violated this Code, and may be subject to arrest as provided in N.J.A.C. 5:18-2.9(f).

3. Upon determination of the existence of an imminent hazard in accordance with this section, the fire official shall immediately notify the construction code official of his or her findings.

5:18-2.16 Time limits for abatement of violations

(a) Time periods allowed for abatement of violations of this Code shall be as follows:

1. For any violation of N.J.A.C. 5:18-3, the fire official shall allow a minimum of 15 days.

i. The fire official may specify a time period of not less than three days where there is a dangerous condition that is liable to cause or contribute to the spread of fire or endanger the occupants.

2. For any violation of N.J.A.C. 5:18-4, the fire official shall allow a minimum of 30 days for abatement or the submission of a request for an extension, in accordance with N.J.A.C. 5:18-2.9(e).

(b) These time limits shall not apply to violations constituting an imminent hazard in accordance with N.J.A.C. 5:18-2.14 or to the revocation of permits in accordance with N.J.A.C. 5:18-2.7(g).

5:18-2.17 Dedicated and compensatory penalties

(a) When an owner has been given notice of the existence of a violation and has not abated the violation, he or she shall, in addition to being liable to the penalty provided for by N.J.A.C. 5:18-2.12, be liable to a dedicated penalty assessed pursuant to this subsection.

1. Whenever any penalty is assessed pursuant to N.J.A.C. 5:18-2.12, then a dedicated penalty in like amount shall be assessed pursuant to this section.

2. The amount of any dedicated penalty assessed pursuant to this subsection shall be in accordance with the standards set forth in N.J.A.C. 5:18-2.12(e), except that a dedicated penalty of up to \$50,000 for each violation may be assessed where there is a serious injury or loss of human life directly or indirectly resulting from any unabated violation.

3. Dedicated penalties assessed pursuant to the requirements of this subsection shall be assessed only once and shall not be assessed each day, as may be done in the case of penalties assessed pursuant to N.J.A.C. 5:18-2.12.

(b) A compensatory penalty, in an amount not exceeding \$150,000 or the expense of suppression, whichever is greater, may be imposed as compensation to the fire department or fire district for suppress-

ing any fire directly or indirectly resulting from the unabated violation and for any other actual expenses, including attorney fees, incurred by the municipality for the collection of the penalty.

1. If a compensatory penalty in excess of \$150,000 is sought, the cost of suppression shall be documented and certified to the local enforcing agency by the chief of the department or company involved. The local enforcing agency shall assess a compensatory penalty in at least the amount certified and collect it in the same manner as other penalties.

(c) All monies collected pursuant to this section shall be placed in a special municipal *[or fire district]* trust fund to be applied to the cost to the municipality *[or fire district]* of firefighter training and*/or* new *firefighting* equipment.

1. In the case where a fire district is the local enforcing agency, the funds shall be placed in the general treasury of the district subject to separate accounting and annual certification to the Department from the district chief financial officer.

[1.]*2. In any case in which the enforcing agency is the Department, a county fire marshal, or an intermunicipal agency, all revenue from dedicated and compensatory penalties shall be paid into the fund maintained*, in accordance with this section,* by the municipality or fire district in which the building, structure or premises at which the violation occurred is located.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Fire Code Enforcement

Revocation of Certifications and Alternative Sanctions

Adopted Amendment: N.J.A.C. 5:18A-4.6

Proposed: February 1, 1993 at 25 N.J.R. 399(a).

Adopted: April 12, 1993 by Stephanie R. Bush, Commissioner,
Department of Community Affairs.

Filed: April 12, 1993 as R.1993 d.196, **without change.**

Authority: N.J.S.A. 52:27D-203.

Effective Date: May 3, 1993.

Expiration Date: January 4, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from Terence P. Ryan, Executive Vice President of the New Jersey Hotel/Motel Association and from Gary Lewis, First Vice President of the New Jersey Fire Prevention and Protection Association.

COMMENT: Mr. Ryan recommends that the review committee which is proposed to be limited in its membership to fire officials, also include businessmen and others.

RESPONSE: The purpose of the review committee is to give the Department the benefit of the perspective of persons actually engaged in local code enforcement before it takes any action against anyone. The addition of persons other than fire officials is not consistent with this purpose. The review committee, like those existing under the Uniform Construction Code rules, will be an advisory body whose recommendations will not bind the Department.

COMMENT: Mr. Lewis objects to having the Fire Safety Commission, rather than the New Jersey Fire Prevention and Protection Association, designated as the group authorized to comment on prospective members of the review committee. He contrasts this to the review authority given to the various inspectors' associations under the Uniform Construction Code review committees rule.

RESPONSE: At its meeting of July 15, 1992, the Fire Safety Commission, which is the body mandated by statute to advise the Commissioner on fire safety matters and which is broadly representative of the fire service and its many organizations, sent this proposal to the Codes Advisory Council, with the recommendation that it—the Commission—be designated as the body with authority to advise as to the suitability of proposed nominees to the review committee. The Council concurred and, at its September 30, 1992 meeting, the Commission unanimously approved this recommendation. Joining in this unanimous vote was the representative of the New Jersey Fire Prevention and Protection Association.

Full text of the adoption follows.

5:18A-4.6 Revocation of certifications and alternative sanctions

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

(c) The Commissioner shall appoint a review committee to advise the Department concerning the appropriateness of sanctions that the Department proposes to take against persons holding certifications who are alleged to have done any act or omission proscribed by (a) above. The Department shall provide necessary staff for the review committee.

1. The review committee shall consist of three persons certified and currently employed by municipalities as fire officials, at least one of whom shall not be employed by any one enforcing agency for a total of more than 20 hours per week.

2. Members of the review committee shall be appointed by the Commissioner and shall serve for terms of three years; except that, of those members first appointed, one shall serve for one year, one shall serve for two years, and one shall serve for three years. No person may be a member of the review committee for more than two consecutive terms. The Commissioner shall also appoint two alternate members of the committee, who shall be persons certified and currently employed by municipalities as fire officials, at least one of whom shall not be employed by any one enforcing agency for a total of more than 20 hours per week. Alternates shall serve for two years, except that, of the alternates first appointed to each review committee, one shall serve for two years and one shall serve for one year.

i. The Commissioner shall give the Fire Safety Commission an opportunity to comment on persons proposed to serve as members of the review committee prior to their appointment.

3. The review committee shall not hear any case or issue any recommendations without three members, who may be either regular or alternate members, being present.

4. In any case in which the Department makes a preliminary finding that a person holding certification has done any act or omission proscribed under (a) above, it shall have the case reviewed by the review committee prior to the issuance of any order revoking or suspending the certification or assessing a civil penalty.

5. The Department shall present whatever evidence it may have to the review committee. The person holding certification shall be given notice of the meeting of the review committee and may appear before the review committee to present his or her position, but there shall be no cross-examination of either the person holding certification or any representative of the Department. Nothing said by the person holding certification or by any person at the meeting of the review committee shall be used in any way, nor shall any member of the review committee be required to testify concerning proceedings before the review committee, in any subsequent proceeding.

6. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the Assistant Director, Fire Safety within 20 business days following the meeting. No sanctions shall then be imposed without the express approval of the Assistant Director, Fire Safety. Failure of the review committee to submit a timely recommendation shall be deemed to be in concurrent with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the person holding certification.

7. A meeting of the review committee shall not be deemed to be a hearing or an adversarial proceeding and the findings of the review committee shall be deemed to be only a recommendation that is not binding on the Department.

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

(f) Any person aggrieved by any action of the Department pursuant to this chapter shall be entitled to a hearing before the Office of Administrative Law in accordance with the Administrative Procedure Act, as provided in N.J.A.C. 5:18A-4.2.

1. A person holding certification shall be entitled to contest any order imposing sanctions in an administrative hearing, regardless of whether he or she has exercised the option of appearing before the review committee.

(a)

DIVISION OF HOUSING AND DEVELOPMENT**Uniform Construction Code****Municipal Enforcing Agency Fees****Mechanical Inspectors****Adopted New Rule: N.J.A.C. 5:23-5.19A****Adopted Amendments: N.J.A.C. 5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.22, 5.23 and 5.25**

Proposed: February 16, 1993 at 25 N.J.R. 624(a).

Adopted: April 1, 1993 by Stephanie R. Bush, Commissioner,
Department of Community Affairs.Filed: April 7, 1993 as R.1993 d.187, **without change.**

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

Effective Date: May 3, 1993.

Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:

Comments were received from Judith A. Thornton, Executive Director of the New Jersey Manufactured Housing Association (NJMHA) and from Steven Walko, a building and electrical inspector employed by the Township of Evesham.

COMMENT: NJMHA supports this code change and believes that it will significantly reduce costs, particularly with regard to furnace conversions.

COMMENT: Mr. Walko believes that the jurisdiction of the mechanical inspector should not be limited to use groups R-3 and R-4, but should apply to all equipment of specified types regardless of building use group.

RESPONSE: The Department thought it appropriate to introduce the concept of the mechanical inspector gradually, starting with the least complex buildings. The jurisdiction of the mechanical inspector may be broadened in the future.

COMMENT: Mr. Walko is concerned that the use of a mechanical inspector is not mandatory and that municipalities might refuse to use the option in order to keep fees high.

RESPONSE: The Department believes that the decision whether or not to use this option is best made at the local level. Local situations vary and having a mechanical inspector might not be cost effective in all cases. There is no financial benefit to a municipality in incurring higher costs than are necessary.

COMMENT: Mr. Walko believes that having an additional inspector for mechanical inspections will increase fees for new construction.

RESPONSE: The Department disagrees. Work that is done by the mechanical inspector cannot be included in fees payable under the other subcodes.

COMMENT: Mr. Walko believes that electrical inspection requirements should be within jurisdiction of the mechanical inspector, as originally proposed on October 5, 1992.

RESPONSE: The original proposal required successful completion of test module 2A Electrical One- and Two-Family and a good working knowledge of the National Electrical Code. It became apparent to the Department that this would not be practical, and the Department clearly could not allow mechanical inspectors to inspect electrical work without proof of competency to do so. Requiring the electrical test would have had the effect of so limiting the number of mechanical inspectors as to make it unlikely that most municipalities could avail themselves of the option to have a mechanical inspector.

Full text of the adoption follows.

5:23-3.4 Responsibility

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

(j) A mechanical inspector employed by the Department or by a municipality, and so assigned by the construction official, shall have responsibility for enforcement of all provisions of the code, except electrical, relating to the installation of mechanical equipment, such as refrigeration, air conditioning or ventilating apparatus, gas piping or heating systems, in Use Group R-3 or R-4 structures.

5:23-4.4 Municipal enforcing agencies—organization

(a) The municipality shall organize its enforcing agency in accordance with the ordinance adopted pursuant to N.J.A.C. 5:23-4.3 and to meet the following additional requirements:

1.-7. (No change.)

8. A municipality may, in its discretion, employ a mechanical inspector to perform plan review and mechanical inspections, with oversight by a designated subcode official, for Use Group R-3 or R-4 structures.

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

5:23-4.18 Standards for municipal fees

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

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building or, in the case of alterations, the estimated construction cost, and the number and type of plumbing, electrical and fire protection fixtures or devices as herein provided.

1.-4. (No change.)

5. The municipality shall set a flat fee for a mechanical inspection in a Use Group R-3 or R-4 structure by a mechanical inspector. No separate fee shall be charged for gas, fuel oil, or water piping connections associated with the mechanical equipment inspected.

5:23-4.20 Departmental fees

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

(c) Departmental (enforcing agency) fees shall be as follows:

1.-8. (No change.)

9. The fee for a mechanical inspection in a Use Group R-3 or R-4 structure by a mechanical inspector shall be \$43.00 for the first device and \$10.00 for each additional device. No separate fee shall be charged for gas, fuel oil, or water piping connections associated with the mechanical equipment inspected.

5:23-5.3 Types of licenses

(a) (No change.)

(b) Rules concerning classification of code enforcement officials are:

1. Technical licenses: Subject to the requirements of this subchapter, persons may apply for, and may be licensed in, the following specialties:

i.-vi. (No change.)

vii. Mechanical inspector: Mechanical inspectors are authorized to carry out field inspection and plan review work for all work under the mechanical subcode in Use Group R-3 or R-4 structures. Only a person already holding a valid inspector's license may apply for a mechanical inspector's license.

2. (No change.)

5:23-5.5 General license requirements

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

(d) Special provisions:

1. (No change.)

2. An applicant licensed as an inspector may apply for a mechanical inspector's license to perform mechanical inspections of Use Group R-3 or R-4 structures.

5:23-5.19A Mechanical inspector requirements

(a) A person validly licensed as an inspector in any subcode may apply for a mechanical inspector's license qualifying such person to perform mechanical inspections of Use Group R-3 or R-4 structures, if that person successfully completes the examinations required by N.J.A.C. 5:23-5.23.

(b) Notwithstanding the three-year time limit set forth in N.J.A.C. 5:23-5.5(b)4, results from any of the examinations already successfully completed and currently used for licensure may be submitted at the time of application and, in such case, examinations need not be re-taken.

5:23-5.21 Renewal of license

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

(d) Continuing education requirements are as follows:

1.-3. (No change.)

4. To maintain a mechanical inspector's license, 1.0 CEU (technical) shall be completed, as required by this section, in addition to any other CEU requirements for other licenses held.

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a fee as specified herein.

1. A non-refundable application fee of \$43.00 shall be charged in each of the following instances:

i. Application for any one given technical license specialty, or for the Inplant Inspector or Mechanical Inspector license.

ii.-iii. (No change.)

2.-6. (No change.)

5:23-5.23 Examination requirements

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

(d) Requirements for specific licenses are as follows:

1.-11. (No change.)

12. Examination requirements for mechanical licensure are:

i. Successful completion of the National Certification Test, 4A Mechanical, 1 and 2 family; and

ii. Successful completion of the National Certification Test, 4B Mechanical General.

(e)-(f) (No change.)

5:23-5.25 Revocation of licenses and alternative sanctions

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

(d) If a mechanical inspector loses any licensure, through any circumstances, mechanical licensure shall be terminated at the same time, whether or not the loss of the other licensure is in any way related to the performance of mechanical inspection duties.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF POLLUTION PREVENTION

Notice of Administrative Correction

Pollution Prevention Program Requirements

Designation of Priority Industrial Facilities for

Participation in Facility-Wide Permit Program

N.J.A.C. 7:1K-7.2

Take notice that the Department of Environmental Protection and Energy has discovered an error in the text of N.J.A.C. 7:1K-7.2(b). The text of this subsection as published in March 1, 1993 New Jersey Register (see 25 N.J.R. 930(a), 981) contained a typographic error by which the proposed text "within six months of the effective date of this subchapter" was replaced upon adoption with "September 1, 1994" rather than "September 1, 1993." The correct date "September 1, 1993" appears in the notice of adoption document (see R.1993 d.108). Pursuant to N.J.A.C. 1:30-2.7, this error is corrected through this notice.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

7:1K-7.2 Designation of priority industrial facilities for participation in facility-wide permit program

(a) (No change.)

(b) The owner or operator of a priority industrial facility volunteering to participate in the pilot program for facility-wide permitting shall notify the Commissioner of the facility's commitment to volunteer by September 1, [1994] **1993**. The facility's commitment to volunteer shall be submitted to the Commissioner in writing, and shall be signed by the highest corporate officer with direct operating responsibility for the facility.

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

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

Horseshoe Crab

Adopted New Rule: N.J.A.C. 7:25-18.16

Proposed: September 8, 1992 at 24 N.J.R. 2978(a).

Adopted: April 5, 1993 by Scott A. Weiner, Commissioner,

Department of Environmental Protection and Energy.

Filed: April 7, 1993 as R.1993 d.185, **without change**.

Authority: N.J.S.A. 23:2A-5 and 23:2B-6.

DEPE Docket Number: 34-92-08.

Effective Date: May 3, 1993.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (Department) is adopting new rule N.J.A.C. 7:25-18.16. The rule was proposed on September 8, 1992 at 24 N.J.R. 2978(a). The comment period closed on October 8, 1992. Two individuals submitted written comments. Commenters consisted of a college professor and a private citizen.

The following is a list of those persons and organizations that submitted written comments directly related to the proposal.

Individual

Mark L. Botton

C. Scott Eves

Organization

Fordham University

The following is a summary of comments received on the Department's proposal and the Department's responses to the comments.

General

1. COMMENT: There are no restrictions placed on the number of horseshoe crabs that may be collected, nor does the proposed rule limit collection of horseshoe crabs during a significant portion of their spawning season which continues until early July.

RESPONSE: The primary intent of the new rule is to minimize the disturbance of migratory shorebirds while they are feeding on Delaware Bay beaches. Presently, it is not the Department's intent to restrict the number of horseshoe crabs that may be collected. The Department does intend to monitor the harvest of horseshoe crabs through the required free permit and mandatory reporting forms. Before restricting horseshoe crab harvesting, the Department must determine an accurate estimate of horseshoe crab mortality resulting from harvesting. Any future management decisions on horseshoe crabs will be formulated only after assessing current harvesting levels and determining the impact of harvesting on the resource's population structure.

The new rule does, however, restrict times when horseshoe crab harvesting may take place along the Delaware Bay shoreline. Limiting harvesters to non-daylight hours only during the period from May 1 through June 7, three nights per week may reduce the harvest of horseshoe crabs from current levels. The Department anticipates that harvesting effort will be redirected to non-daylight hours on three nights per week from May 1 through June 7, but if the redirected effort of the harvesters is not 100 percent then a reduction in the horseshoe crab harvest will be realized.

2. COMMENT: No limitation is placed on collection of horseshoe crabs by out-of-State persons. There is no reason why the commercial harvesting of horseshoe crabs should be permitted for non-residents of New Jersey.

RESPONSE: The Department's new rule was not designed to restrict out-of-State persons from participating in the horseshoe crab fishery. Non-residents of New Jersey have a legal right to participate in the fishery as long as they abide by all the provisions of the new rule.

3. COMMENT: The collecting of horseshoe crabs by the biomedical industry (that is, "bleeding" of crabs to obtain LAL, or Limulus amoebocyte lysate) should be exempt from the rule. This industry is already regulated by the FDA. Studies have shown that mortality of horseshoe crabs due to "bleeding" is minimal whereas all crabs collected for bait are killed.

RESPONSE: The Department's goal for the development of this rule was to reduce disturbance to the feeding activity of migratory shorebirds along the Delaware Bay shoreline and to collect harvest estimates of

ADOPTIONS

horseshoe crabs. The FDA may regulate the biomedical industry but their responsibility does not address how, when and where horseshoe crabs may be collected. This activity is the responsibility of the New Jersey Department of Environmental Protection and Energy. The exemption of any group of harvesters would reduce the effectiveness of the rule. Furthermore, the Department believes that the times and areas allowed for the continued collection of horseshoe crabs should be sufficient in providing the low levels of horseshoe crabs currently being used by the biomedical industry. As indicated in response to Comment 1, it is not the Department's intent at this time to restrict the number of horseshoe crabs harvested. Future management decisions will be based upon an assessment of horseshoe crab harvest and population structure.

4. COMMENT: Restrictions on the collecting of horseshoe crabs should include Raritan Bay and Sandy Hook Bay in northern New Jersey.

RESPONSE: The horseshoe crab spawning season/migratory shorebird feeding phenomenon may well exist on other beaches throughout New Jersey but the Delaware Bay occurrence is by far the most extraordinary. Raritan Bay and Sandy Hook Bay accommodate migratory shorebirds, but few in comparison to both the numbers of species and the total number of shorebirds utilizing Delaware Bay beaches from May 1 through June 7 each year. The disturbance of the feeding migratory shorebirds by horseshoe crab harvesters has been an acute problem on Delaware Bay beaches for the past several years. Disturbance of the shorebirds elsewhere in the State has not been a major problem. Harvesting restrictions in other areas would, therefore, not be warranted at this time.

N.J.A.C. 7:25-18.16(b)

5. COMMENT: Since there are migratory shorebirds present on the shores of the Delaware Bay prior to May 1, the residents of New Jersey would be better served if the start of the restriction period would be April 1.

RESPONSE: While some migratory shorebirds may arrive on New Jersey beaches prior to May 1, the Department has determined that the main concentration of migratory shorebirds arrives after this date. Thus, the Department structured its restrictions on horseshoe crab harvesting from May 1 through June 7 for the protection of the main concentration of migratory shorebirds, while allowing for the traditional harvest of horseshoe crabs at other periods. The Department believes that moving the closure period back to April 1 would be overly restrictive on horseshoe crab harvesters and is not necessary for protection of migratory shorebirds.

Full text of the adoption follows.

7:25-18.16 Horseshoe crab (*Limulus polyphemus*)

(a) An individual shall not catch, take, or attempt to catch or take horseshoe crabs except by hand collection or while using other gear allowed under this chapter and/or N.J.S.A. Titles 23 and 50 from any beach or shoreline or from the marine waters of this State unless such individual has in his or her possession a valid permit to take horseshoe crabs issued by the Commissioner of Environmental Protection and Energy. Any individual who wishes to harvest horseshoe crabs may obtain a permit by completing an application available from the: Division of Fish, Game and Wildlife, Bureau of Marine Fisheries, CN 400, Trenton, NJ 08625. The following persons, in the following circumstances, are not subject to this prohibition:

1. Property owners, tenants or agents of property owners may, at any time, remove dead horseshoe crabs from their property for purposes of disposal. No sale, trade, or barter of horseshoe crabs is permitted under this paragraph.

2. Persons collecting horseshoe crabs for strictly scientific purposes only and operating under the terms and conditions specified by a required scientific collecting permit issued pursuant to N.J.S.A. 23:4-52 by the Administrator of the Marine Fisheries Administration within the Division of Fish, Game and Wildlife.

(b) The season for taking horseshoe crabs shall be January 1 through December 31, except:

1. A person shall not harvest horseshoe crabs from the beaches and shoreline of that portion of Delaware Bay and its tributaries and the adjacent waters and uplands within 1,000 feet of the mean high water line extending from the Cape May Canal in Cape May County to Stow Creek in Cumberland County from May 1 through

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June 7, except Monday, Wednesday and Friday commencing from one hour after sunset until one hour before sunrise the following day, prevailing time.

2. Possession of horseshoe crabs within the prohibited area, at a prohibited time, during the prohibited season shall be prima facie evidence of violation of this section.

(c) Any person harvesting horseshoe crabs by any method permitted by the Commissioner shall provide monthly reports within five working days following the end of the reported month to the Department on forms supplied to the permit holder. The monthly report shall include the number of horseshoe crabs harvested, the area of collection, the gear utilized and any other information as the Department may deem necessary for management of the horseshoe crab resource.

(d) Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 except that violations of (c) above, failure to provide monthly reports, shall subject the violator to a penalty of \$20.00 for each offense.

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Notice of Administrative Correction

Workers' Compensation Self-Insurance

N.J.A.C. 11:2-33.3 and 33.4

Take notice that the Department of Insurance has discovered that the addition of new subsections and paragraphs upon adoption to adopted new rules N.J.A.C. 11:2-33 (see 25 N.J.R. 1526(a)) necessitates the revision of cross-references at N.J.A.C. 11:2-33.3(b)4 and 33.4(a)6, (b) and (b)1. Pursuant to N.J.A.C. 1:30-2.7, these corrections are made through this notice.

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

11:2-33.3 Exemption from insuring compensation liability; filing requirements

(a) (No change.)

(b) Upon the Commissioner's review and acceptance of the information submitted pursuant to (a) above, the applicant shall submit the following information to the Commissioner:

1.-3. (No change.)

4. The application filing fee as set forth in N.J.A.C. 11:1-32.4(b)[12]13.

(c)-(h) (No change.)

11:2-33.4 Renewals

(a) Any certificate holder which applies for renewal shall submit the following so that it is received by the Commissioner not later than 60 days prior to the expiration of its current certificate:

1.-5. (No change.)

6. The renewal fee as set forth in N.J.A.C. 11:1-32.4(b)[12]13.

7. (No change.)

(b) In addition to the renewal fee set forth in (a)[5]6 above, upon the initial renewal of its certificate the certificate holder shall be assessed and shall pay upon demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the certificate holder from a rating agency as determined by the Commissioner.

1. The requirement in (b) above shall not apply to any certificate holder that was required to submit a risk assessment report as part of the initial application pursuant to N.J.A.C. 11:2-33.3[(c)](f).

2. (No change.)

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

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION**Insurance Producer and Limited Insurance Representative Standards of Conduct: Marketing; Activities for Which a Person Must be Licensed as an Insurance Producer or Registered as a Limited Insurance Representative****Adopted Amendments: N.J.A.C. 11:17A-1.2, 1.3, 1.4 and 1.5; 11:17A-4.6**

Proposed: February 1, 1993 at 25 N.J.R. 446(a).

Adopted: April 12, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: April 13, 1993 as R.1993 d.199, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e) and 17:22A-1 et seq.

Effective Date: May 3, 1993.

Expiration Date: January 2, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from:

Alliance of American Insurers
 Allstate Insurance Company
 American Insurance Association
 Blue Cross and Blue Shield of New Jersey
 Independent Insurance Agents of New Jersey
 Liberty Mutual Insurance Company
 New Jersey Land Title Association
 New Jersey Manufacturers Insurance Company
 State Farm Insurance Companies

COMMENT: The definitions of "solicit," "negotiate" and "effectuate" should be revised to clearly indicate that only persons dealing directly with the public should require licensing. Insurers who deal with independent agents have given the authority to "solicit," "negotiate" and "effectuate" to their agents. Their personnel will review applications submitted by the agent (who has already solicited, negotiated and effectuated the coverage) and determine if the underwriting criteria of the company has been met. They may also accompany an agent on a visit to the client premises or to a meeting with the client, but they do not directly solicit, negotiate or effect coverage since that authority has been granted to the agent. To clarify the intent that these personnel are not required to be licensed, the phrase "holding oneself out to the public so as to engage in" should be inserted after the word "means" in each definition. While we realize that "directly with the public" is used in other sections of the proposed regulations, we believe it is important to be consistent in each area of the regulation so as to avoid future conflict.

RESPONSE: The Department is opposed to a blanket exemption from the licensing requirements for officers and employees who solicit, negotiate or effect insurance contracts merely because of the presence of a licensed producer. The Department believes that such an exemption would lead to abuses in the insurance marketplace and would, in particular, tend to render application of these requirements to officers and employees of insurance producers meaningless. The Department notes, however, that officers, or employees who may accompany a licensed producer would not need to be licensed if their participation is incidental as their other duties, as provided in N.J.A.C. 11:17A-1.4(e).

COMMENT: Consistent with the intention of the Legislature when the New Jersey Insurance Producer Licensing Act was enacted, we believe that the definition of "solicit" or "solicitation" does not apply to routine contract renewals, implementation of new rates or amending contracts to include global riders required by government action.

RESPONSE: The Department does not disagree but sees no reason to further amend the applicable definitions or rules to specifically cover these activities.

COMMENT: Although the words "solicit," "negotiate" and "effectuate" have been further defined to exclude clerical activities or loss prevention and claims activities with respect to existing insurance contracts, activities related to prospective insureds are still within the scope of these definitions. These definitions should be further amended to

clarify that clerical activities, claims and loss prevention activities, as they relate to prospective insureds, also fall within the exclusion.

RESPONSE: The Department is persuaded that any further changes to the definitions of "solicit," "negotiate" and "effectuate" are unnecessary. The reference at N.J.A.C. 11:17A-1.5 to clerical activities for which licensure is not required is not limited to existing insureds. Nor is the listing of such activities (now appearing as part of a new definition of "clerical duties") exclusive. In fact, the listing specifically includes at paragraph 15 "[c]ommunicating with a prospective or existing insured for the purpose of . . . providing loss control on underwriting verifications and inspections." (Emphasis added.) The Department does not intend to cover every contingency in the definitions of "solicit," "negotiate" and "effectuate" or, indeed, in the new definition of "clerical duties." Not only is it unnecessary to do so, it would be impossible.

COMMENT: The inclusion at N.J.A.C. 11:17A-1.3(e) of the words "by communicating directly with the public" and "and whose compensation is not dependent upon sales" accomplishes little with regard to clarifying application of the licensing rules to officers and employees of insurers. The first inclusion creates a distinction without a difference. The second inclusion is somewhat ambiguous and could lead to a possible misinterpretation that would render disastrous results—namely, that the compensation of every employee of an insurer might be considered dependent upon sales. In the midst of this ambiguity, it has been further suggested that it is "sales volume," not "sales," that is the more appropriate reference with respect to this issue of compensation. It has also been suggested that the word "primarily" be inserted before "dependent" to make it clear that the exemption would apply to those whose income is primarily salary-based. This would preserve an insurer's ability to compensate through an incidental bonus, for example.

RESPONSE: While the Department views this comment to be somewhat exaggerated, it agrees that additional clarification would be helpful. Therefore, N.J.A.C. 11:17A-1.3(e) has been amended upon adoption to provide ". . . and whose compensation is not directly related to sales."

COMMENT: The reference to "solicitation, negotiation and effectuation" in the last sentence of N.J.A.C. 11:17A-1.3(e) should be disjunctive to ensure the broadest application of the exemption provided. Read literally in its present form, the exemption would not apply to the officer or employee unless he or she engages in all three activities on an incidental basis. We do not believe that such a narrow scope is intended, and so we urge the replacement of the word "and" with the word "or."

RESPONSE: The Department agrees and the change has been made accordingly.

COMMENT: The last sentence at N.J.A.C. 11:17A-1.3(e) beginning with "This requirement shall not apply . . ." is ambiguous in that it is uncertain as to whether the reference to "this requirement" applies simply to the previous sentence—namely, the requirement of licenses before May 1, 1993—or whether it extends to the entire requirements of licensure. Furthermore, is the exemption also intended to reach the requirement of registration of limited insurance representatives? The exemption should extend to the entire regulation.

RESPONSE: The first part of the last sentence at N.J.A.C. 11:17A-1.3(e) has been rewritten to remove the ambiguity by clearly stating the Department's intent that the last sentence applies to the requirements of subsection (e) which includes the requirement of registration of limited insurance representatives.

COMMENT: The exception to the licensing requirement at N.J.A.C. 11:17A-1.3(e) applies to insurer officers and employees whose participation in the solicitation, negotiation and effectuation of insurance contracts is incidental to their employment duties and whose compensation is not dependent upon sales. In order to rely on this exception, two issues require clarification. Both issues were raised in prior comments on the regulations, but the Department did not address them adequately. First, the word "incidental" is not defined by statute or regulation. It would be helpful to know the threshold for defining incidental activity, for example, the percentage of time engaged in the activity. Second, the exception for incidental activity in the regulation appears to conflict with N.J.S.A. 17:22A-3, which provides, in relevant part, that "[e]ngaging in a single act or transaction of the business of an insurance producer . . . shall be sufficient proof of engaging in the business of an insurance producer." Unless the Department clarifies these issues, it is arguable that claims and loss prevention personnel who participate in solicitation of prospective insureds, even incidentally, risk violating the insurance producer licensing requirement.

RESPONSE: The word "incidental", as it appears in the last sentence of N.J.A.C. 11:17A-1.3(e), is to be accorded meaning consistent with common usage. Any dictionary definition should suffice. The Department rejects the suggestion that it should define this word by reference to an exact percentage or by any other means. Because the facts may vary considerably, what is "incidental" in one case may not be "incidental" in another. The statutory reference to "engaging in a single act or transaction of the business of an insurance producer" establishes a standard of proof for regulatory purposes which will only be applied in instances where the activity is determined to be more than "incidental."

COMMENT: Two commenters stated that the proposed licensing requirements would impose undue hardship upon direct writers without any practical benefit. One stated that even if they were able to segregate their phone lines in such a manner that unlicensed customer service representatives answered calls which initially concerned activities for which licensure was not required (N.J.A.C. 11:17A-1.5), in the vast majority of such instances a question or request would be posed by the policyholder or applicant requiring a transfer to a licensed representative. Such a process would be costly, time consuming, inefficient and result in consumer frustration.

RESPONSE: The underlying statute at N.J.S.A. 17:22A-3 has been interpreted to require that some company personnel may have to be licensed. The purpose of these amendments to the rules implementing the statute is to further define the persons who meet these requirements. The more exposure an employee has with the public in dealing with insurance matters, the more likely it is that licensing will be required. Employees functioning as policyholder or customer service representatives who provide advice or counsel in connection with the marketing of the insurer's products will be required to be licensed.

The Department is well aware of the costs that must be incurred to obtain licensing for certain officers and employees who regularly engage in activities involving the solicitation, negotiation and effectuation of insurance contracts. The Department believes that in these instances, the costs will be more than offset by the benefits which will accrue to the insured public.

COMMENT: We agree in general with the concepts and examples given with regard to those clerical duties that do not require licensing. However, we believe that paragraph 12 (in the definition of "clerical duties") needs further clarification and should be rewritten so as to be consistent with the definitions of "solicit," "negotiate" and "effect" proposed at N.J.A.C. 11:17A-1.2 as follows:

12. [Taking factual information relative to a claim] **Procedures relating to the processing, adjusting, investigating, or settling of a claim on an existing insurance contract;**

RESPONSE: The Department is opposed to the suggested change. These claim activities are not really "clerical" and, furthermore, are sufficiently addressed in the definitions of "solicit," "negotiate" and "effectuate."

COMMENT: The Department's proposed amendments appear to clarify clerical activities for which licensure is not required with one exception: the full-time office underwriter not compensated based on sales reviewing the applications submitted by a licensed producer, reviewing materials requested by the underwriter from third parties, requesting and reviewing the results of any loss inspection or physical, issuing a policy and mailing the policy directly to the policyholder or to the agent for delivery to the policyholder. Our company is concerned that these activities may be construed as "effectuating" an insurance policy under the regulations and requiring a license even though these are normal underwriting activities done by the underwriter under the supervision of a licensed insurer. N.J.S.A. 17:22A-3 states that the producer licensing requirement "... shall not apply to the clerical duties of office employees ..." The activities of a full-time office underwriter in reviewing the application, requesting and reviewing other relevant information, deciding whether to issue a policy, and mailing that policy to the policyholder or agent would constitute "clerical duties of office employees" that are exempt from the producer licensing requirement. These are the normal activities of underwriters generally. The Legislature certainly did not intend to extend the producer licensing requirements to just about all underwriters, and the statute should not be so construed. To clarify the regulations to exclude normal underwriting activities by office employees, a new paragraph 18 should be added (to the definition of "clerical duties") as follows:

18. **Reviewing an application submitted by a licensed producer, requesting and reviewing information under paragraph 15 above, requesting and reviewing the results of a physical examination of a prospective**

insured named in a submitted application, requesting and reviewing information from persons other than the applicant, making a decision to issue a policy and/or mailing the policy to the policyholder or the producer.

Example: An unlicensed full-time salaried underwriter not compensated based on sales receives a non-bound life insurance application from a licensed producer. The underwriter requests that the applicant take a physical examination. Pursuant to authorizations in the application, the underwriter requests medical records from the applicant's physicians. The underwriter reviews the application, results of the physical examination and the medical records, and decides to issue the life insurance policy applied for. The underwriter mails the policy with a printed explanatory brochure to the applicant. All of these activities are permissible activities for the unlicensed underwriter."

RESPONSE: The Department agrees generally with the commenter's suggestion, and has added the language with minor changes as new paragraph 18 under the definition of "clerical duties" at N.J.A.C. 11:17A-1.2, which the Department further notes includes the underwriting as well as administrative tasks necessary to produce the insurance contract in accordance with normal procedures and systems. The Department believes that the minor changes clarify the intent of the rule and improve its consistency with other provisions.

Summary of Agency-Initiated Changes:

The Department has added a definition of "clerical duties" to N.J.A.C. 11:17A-1.2, the substance of which was derived from the listing of "activities for which licensure not required" in N.J.A.C. 11:17A-1.5, from which the listing is deleted. The Department notes that the listing of these duties was an attempt to define the phrase "clerical duties of office employees" in N.J.S.A. 17:22A-3, and believes that the change provides a clearer statement of that intent. In doing so, however, the Department emphasizes that the substance of the listing has not otherwise changed from the proposal, except as noted in response to the public comments.

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

11:17A-1.2 Definitions

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

...

*"Clerical duties" means the administrative and underwriting tasks accomplished in the office and under the supervision of the insurer or licensed producer that are necessary to produce the insurance contract in accordance with the insurer's or producer's normal procedures and systems, including, but not limited to, the following:

1. **Receiving requests for coverage for transmittal to a licensed insurance producer or for processing through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer;**
2. **Mailing billings;**
3. **Scheduling appointments with insurance producers;**
4. **Office filing;**
5. **Marketing research or prospecting so long as no attempt is made to solicit or to discuss a specific insurance product or to encourage replacement of an existing policy;**
6. **Receiving and recording information from an applicant or policyholder and preparing for an insurance producer's review and signature all binders, certificates, endorsements, identification cards or policies pursuant to instructions from the insurance producer;**
7. **Receiving and recording information from an applicant or policyholder and preparing an application for insurance pursuant to instructions from and for the review of an insurance producer;**
8. **Receiving and recording information from a policyholder or prospective policyholder to give to an insurance producer for his or her response, or transmitting information to a policyholder or prospective policyholder under the supervision of an insurance producer;**
9. **Receiving and recording an insured's request concerning any additions or deletions to an existing policy and preparing the appropriate endorsements or processing the appropriate changes**

through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer and notifying the insurance producer of the endorsements or changes;

Example: An unlicensed person may receive and process a request from an insured to delete an automobile on an existing policy and to add a replacement automobile, or may receive and process a request to delete physical damage coverage on a particular automobile, or receive and process a request for similar routine policy changes initiated by an insured. An unlicensed person may not, however, initiate a change by, for example, telephoning a life insurance policyholder and suggesting that the insured increase the face amount of the policy.

10. Opening mail;

11. Receiving premiums at the recorded place of business where the payment is being made on a binder, endorsement or existing policy;

12. Taking factual information relative to a claim;

13. Communicating with the policyholder or prospective policyholder in order to obtain factual information necessary for an insurance producer to complete a review;

Example: An unlicensed person may call an applicant to request the submission of additional documents.

14. Informing the insured as to his or her coverages as indicated in policy records;

15. Communicating with a prospective or existing insured for the purpose of auditing records or providing loss control on underwriting verifications and inspections;

16. Disseminating buyer's guides, applications for coverage, coverage selection forms or other similar forms in response to a request from prospective or current policyholders;

Example: An unlicensed person may receive a request for an application and respond by mailing or giving an application for insurance and other related literature. The unlicensed person may not, however, initiate the conversation.

17. Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates;

Example: An unlicensed person may respond to a specific request for the cost of a specific coverage from a rate manual published in print or in an electronic format. However, an unlicensed person may not provide advice or suggestions concerning the benefits or drawbacks of a particular coverage, deductible, limit, etc., in the course of disseminating this information.

18. As an underwriter employed by an insurer, upon receipt of an application submitted by a licensed producer, requesting and reviewing information under paragraph 15 above, requesting and reviewing the results of a physical examination of a prospective insured named in a submitted application, requesting and reviewing information from persons other than the applicant, making a determination that the applicant meets the insurer's underwriting criteria, and mailing the policy to the policyholder or the producer.

Example: An unlicensed full-time salaried underwriter not compensated based on sales receives a non-bound life insurance application from a licensed producer. The underwriter requests that the applicant take a physical examination. Pursuant to authorizations in the application, the underwriter requests medical records from the applicant's physicians. The underwriter reviews the application, results of the physical examination and the medical records, and decides to issue the life insurance policy applied for. The underwriter mails the policy with a printed explanatory brochure to the applicant. All of these activities are permissible activities for the unlicensed underwriter.*

... "Effectuate" or "effectuation" means the act of binding or making operable and effective an insurance contract or any change thereto, including all binders and endorsements, but does not include clerical *[activities of the kind set forth at N.J.A.C. 11:17A-1.5]* *duties* carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control,

inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.

... "Insurance contract" means a contract, policy, application, binder or commitment, where applicable, of life insurance, health insurance, indemnity, property and casualty, fidelity, surety, guaranty, title insurance, a commitment for title insurance or an annuity.

... "Insurer" means any company that underwrites or issues an insurance policy or contract including fraternal benefit societies as defined at N.J.S.A. 17:44A-1 et seq., risk retention groups and purchasing groups as defined at 15 U.S.C. 3901 and limited assignment distribution (LAD) carriers as defined at N.J.A.C. 11:3-2.2.

... "Negotiate" or "negotiation" means the act of conferring directly with, or offering advice to, a prospective purchaser of a contract of insurance concerning any of the substantive benefits, terms of, proposed changes to, or the premium to be charged for, the contract, but does not include clerical *[activities of the kind set forth at N.J.A.C. 11:17A-1.5]* *duties* carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on *[a]* *an* existing insurance contract.

... "Solicit" or "solicitation" means any activities which are designed to result in the purchase of a contract of insurance, or a change to an existing contract of insurance, but does not include clerical *[activities of the kind set forth at N.J.A.C. 11:17A-1.5]* *duties* carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.

11:17A-1.3 Who must be licensed; exceptions

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

(e) Officers or employees of insurers authorized to do business in this State and officers or employees of licensed insurance producers, who solicit, negotiate or effectuate insurance by communicating directly with the public whether in person or by mail, fax, computer or telephone, in the name of and on behalf of the insurer or the licensed insurance producer, for compensation of any type, shall be licensed as an insurance producer, or registered as a limited insurance representative, as appropriate. With respect to officers or employees of insurers, licensure shall be secured on or before May 1, 1993. *[This requirement]* *The requirements of this subsection* shall not apply to *[insurer]* officers or employees whose participation in the solicitation, negotiation *[and]* *or* effectuation of insurance contracts is incidental to their employment duties and whose compensation is not *[dependent upon]* *directly related to* sales.

11:17A-1.4 Solicitation, negotiation, effectuation of an insurance contract

(a) (No change.)

(b) Solicitation, negotiation and effectuation of an insurance contract includes, but is not limited to, the following activities:

1.-6. (No change.)

7. Disseminating information as to coverages in general or for any particular policy, except that this shall not prohibit the dissemination of buyer's guides or applications for coverage in response to requests from prospective policyholders;

8. (No change.)

9. Initiating an inquiry as to the terms of existing coverage, except as described at N.J.A.C. 11:17A-1.5(a)5;

10. Discussing or describing the coverages or terms of a proposed contract of insurance with a prospective policyholder, including counseling as to which coverages to buy;

Example: If an insured or prospective insured requests advice in any communication with an unlicensed employee, the response must be made by a licensed producer.

11.-12. (No change.)

ADOPTIONS

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13. Authorizing the issuance or delivery of certificates of insurance, endorsements, binders or insurance policies or insurance identification cards; and

14. Responding to a policyholder's request for advice or counsel regarding policy provisions or coverage.

Example: In the course of requesting an application form or a change to an existing policy, if a policyholder or prospective policyholder, while speaking to an unlicensed person, requests an opinion about the terms of the proposed insurance contract or the proposed change to the existing contract, the response must be made by a licensed producer.

(c) (No change.)

11:17A-1.5 Activities for which licensure not required

(a) Office employees who perform strictly clerical duties under the supervision and control of an insurer or licensed producer shall not be required to be licensed as an insurance producer. *[Such duties shall include, but are not limited to, the following activities:

1. Receiving requests for coverage for transmittal to a licensed insurance producer or for processing through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer;

2.-5. (No change.)

6. Receiving and recording information from an applicant or policyholder and preparing for an insurance producer's review and signature all binders, certificates, endorsements, identification cards or policies pursuant to instructions from the insurance producer;

7. Receiving and recording information from an applicant or policyholder and preparing an application for insurance pursuant to instructions from and for the review of an insurance producer;

8. Receiving and recording information from a policyholder or prospective policyholder to give to an insurance producer for his or her response, or transmitting information to a policyholder or prospective policyholder under the supervision of an insurance producer;

9. Receiving and recording an insured's request concerning any additions or deletions to an existing policy and preparing the appropriate endorsements or processing the appropriate changes through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer and notifying the insurance producer of the endorsements or changes;

Example: An unlicensed person may receive and process a request from an insured to delete an automobile on an existing policy and to add a replacement automobile, or may receive and process a request to delete physical damage coverage on a particular automobile, or receive and process a request for similar routine policy changes initiated by an insured. An unlicensed person may not, however, initiate a change by, for example, telephoning a life insurance policyholder and suggesting that the insured increase the face amount of the policy;

10-12. (No change.)

13. Communicating with the policyholder or prospective policyholder in order to obtain factual information necessary for an insurance producer to complete a review;

Example: An unlicensed person may call an applicant to request the submission of additional documents.

14. Informing the insured as to his or her coverages as indicated in policy records;

15. Communicating with a prospective or existing insured for the purpose of auditing records or providing loss control on underwriting verifications and inspections;

16. Disseminating buyer's guides, applications for coverage, coverage selection forms or other similar forms in response to a request from prospective or current policyholders; and

Example: An unlicensed person may receive a request for an application and respond by mailing or giving an application for insurance and other related literature. The unlicensed person may not, however, initiate the conversation.

17. Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates.

Example: An unlicensed person may respond to a specific request for the cost of a specific coverage from a rate manual published in print or in an electronic format. However, an unlicensed person may not provide advice or suggestions concerning the benefits or drawbacks of a particular coverage, deductible, limit, etc., in the course of disseminating this information.]*

11:17A-4.6 Delivery of policies

Policies, certificates, or other evidence of insurance which are received by an insurance producer or limited insurance representative from an insurer for delivery to an insured shall be delivered or mailed to the insured by the insurance producer or limited insurance representative within 10 calendar days of their receipt by the insurance producer or limited insurance representative, unless the insured agrees in writing that the insurance producer or limited insurance representative may retain them for a longer period of time. With respect to title insurance only, in all cases where the insurance producer prepares the policies of insurance, those policies shall be delivered to the insured or to the applicant within 30 days following the receipt by the insurance producer of the necessary proofs showing that all requirements or exceptions to title as set forth in the title commitment, and which customarily do not appear in the policy, have been satisfactorily disposed of.

LABOR

(a)

**OFFICE OF WAGE AND HOUR COMPLIANCE
WAGE AND HOUR**

**Apprentice and Student Learner in Cooperative
Vocational Education Program; Student Learner;
Individualized Training Plan**

Adopted Amendment: N.J.A.C. 12:58-1.2

Proposed: March 1, 1993 at 25 N.J.R. 889(a).

Adopted: April 2, 1993 by Raymond L. Bramucci, Commissioner,
Department of Labor.

Filed: April 2, 1993 as R.1993 d.183, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:2-21 et seq.

Effective Date: May 3, 1993.

Expiration Date: September 26, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:58-1.2 Apprentice and student learner in cooperative vocational education program

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

(d) "Student learner" means a person:

1. (No change.)

2. Between the ages of 16 years and 18 years of age;

3. Employed under a written agreement which provides that:

i. Work in a particularly hazardous occupation is incidental to the minor's training;

ii. Work is intermittent and of short duration, and under the direct and close supervision of a qualified and experienced person; and

iii. Safety instruction is given by the school and correlated by the employer with on-the-job training.

4. For whom an individualized training plan of organized and progressive training to be "performed on-the-job" and related school instruction has been developed. Each training plan will contain:

i. Tasks to be performed by the student learner on the job;

ii. A progression of in-school learning experiences that relate to the on-the-job training; and

iii. An outline that identifies safety instruction and occupational competencies to be learned at the training site and in school;

5. For whom training site supervision must be conducted by the school coordinator at intervals not to exceed once every two weeks, to ensure that the student learner is free from exploitation and that a safe training environment is maintained;

6. Who may perform certain permitted hazardous occupations only at those sites registered with the Department of Education/Vocational Division prior to the placement of student learners and on whose employment certificate will be placed the registration number of the site to identify the student as a cooperative education student learner; and

7. For whom training site experiences may not exceed five hours on any day that school is in session nor may the combination of school and work exceed eight hours on any day that school is in session.

(a)

DIVISION OF WORKPLACE STANDARDS**Safety and Health Standards for Public Employees Employer Defined; Process Safety Management of Highly Hazardous Chemicals****Adopted Amendments: N.J.A.C. 12:100-4.1 and 4.2**

Proposed: March 1, 1993 at 25 N.J.R. 890(a).

Adopted: April 2, 1993 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: April 2, 1993 as R.1993 d.184, **without change**.

Authority: N.J.S.A. 34:1-20, 31:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30.

Effective Date: May 3, 1993.

Operative Date: August 1, 1993.

Expiration Date: September 22, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

(Agency Note: By amendment effective April 19, 1993, the reference date in N.J.A.C. 12:100-4.2(a) was changed to May 27, 1992. That date is retained in the rule as published below, with the Federal Standards adopted herein effective February 24, 1992 included therein.)

12:100-4.1 Scope of subchapter; "employer" defined

(a) This subchapter shall apply to general industry safety and health standards adopted by reference.

(b) As used in this subchapter, the term employer shall mean public employer and shall not include any private employer performing under this subchapter on behalf of, or with the knowledge and ratification of, a public employer.

12:100-4.2 Adoption by reference

(a) The standard contained in 29 CFR Part 1910, General Industry Standards with all amendments published in the Federal Register through May 27, 1992 are proposed as occupational safety and health standards for the protection of public employees engaged in general operations and shall include:

1.-19. (No change.)

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

PUBLIC UTILITIES

(b)

BOARD OF REGULATORY COMMISSIONERS**Telecommunications****Access to Adult-Oriented Information****Adopted New Rules: N.J.A.C. 14:10-7**

Proposed: April 6, 1992 at 24 N.J.R. 1238(a).

Adopted: March 31, 1993 by the Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, and Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Filed: April 1, 1993 as R.1993 d.180, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 48:17-22.

BRC Docket Number: TX91111686.

Effective Date: May 3, 1993.

Expiration Date: September 6, 1996.

Summary of Public Comments and Agency Responses:

The Board received comments from George Finkelstein, Esq., representing AT&T Communications of New Jersey, Inc. (AT&T), Paul M. Griffen, Esq., representing New Jersey Bell Telephone Company (NJB), and Emma N. Byrne, Director, Division of Consumer Affairs, New Jersey Department of Law and Public Safety.

COMMENT: NJB suggests that the underlined be added to 14:10-7.1(a) for clarification:

This subchapter applies only to telephone companies electing to provide a **subscriber** access to adult-oriented information-access telephone service in the State.

NJB's concern is that the term "access" could be interpreted as both subscriber "access" to its network as well as Interexchange Carrier (IXC) "access" to its network. NJB further points out that the enabling legislation, N.J.S.A. 48:17-22 provides, in pertinent part, that:

No telephone company that principal business of which is the provision of telephone service within the State shall provide a subscriber access to adult-oriented information-access telephone service originating in the State without written authorization from the subscriber.

RESPONSE: The Board agrees with the proffered clarification and adopts same since the originally proposed wording can be interpreted in more than one way and the proposed clarifying term is specifically set out in the subject statute.

COMMENT: AT&T has submitted two comments. First, AT&T suggests that the word "knowingly" be added to the text of N.J.A.C. 14:10-7.3(a), so that subsection would state that, "[n]o telephone company operating in the State shall **knowingly** provide a subscriber access to adult-oriented information-access telephone service in the State without written authorization from the subscriber."

Second, AT&T proposes that a notification provision be added to the proposed rules that would require "... Information Providers to provide notification to common carriers of telecommunications services, such as AT&T, prior to offering 'adult-oriented information-access telephone service' over the common carrier's network that the Information Provider has obtained, and will obtain, the necessary written authorization and proof of age required by the Board's proposed rules from all New Jersey customers who subscribe to the 'adult-oriented information-access telephone service.'" The text of a suggested notification provision follows:

All Information Providers must advise a telecommunications common carrier of the Information Provider's intent to provide "adult-oriented information-access telephone service" to New Jersey customers over the common carrier's network prior to instituting such a service. Each such Information Provider is further required to provide to the telecommunications common carrier a written statement that it has obtained, and will obtain, written authorization and proof of age (as specified in these rules) from all New Jersey customers who subscribe to the service.

RESPONSE: It is the opinion of the Board that the language of N.J.S.A. 48:17-22 is clear and unambiguous; that is, "[n]o telephone company ... shall provide a subscriber access to adult-oriented information-access telephone service originating in the State without written authorization from the subscriber." The Legislature left to the Board

the responsibility to develop those methods necessary to effectuate this intent. Acceptance of AT&T's suggestion that the word "knowingly" be added to the text of 14:10-7.3(a) could dilute the proposed rules by creating an ambiguity as to the responsible party. The suggestion of AT&T would, in the Board's opinion, compromise the effectiveness of the proposed rules and, thereby, fail to carry out the intentions inherent in the enactment of the legislation. The Board recognizes that as a common carrier, the telephone company may not know the content of the telephone traffic carried over its system. However, the legislation imposes an obligation on the telephone company and the Board believes a telephone company may take reasonable precautions without violating its common carrier obligations. Accordingly, AT&T's first proposal is rejected.

The Board is of the further opinion that AT&T's second proposal, that information providers be required to notify telephone companies prior to offering adult-oriented information-access telephone service over the telephone company's network that the information provider has obtained written authorization for access and proof of age, could shift the burden of compliance with the proposed rules from the telephone company to the information provider. The Board believes that the proposed rules, as written, are consistent with the letter as well as with the spirit of the statute which provides that telephone companies are to be responsible for the restriction of access to adult-oriented information-access service from a subscriber's line. Furthermore, the proposed rules specifically state that telephone companies "may require as a condition of service" that information providers desiring to provide adult-oriented information-access service over their networks also provide the required restrictions on access. N.J.A.C. 14:10-7.3(d)1. But the responsibility for compliance with the rules remains undividedly with the telephone company. In this manner, the telephone company may, at its option, discharge its statutory responsibility by ensuring that in its business relationships and contracts with information providers, compliance with the proposed rules is a condition of use of its "976," "900," "700" or similar services. Based upon the foregoing, the Board rejects this recommendation.

COMMENT: AT&T notes, in the introduction to its two specific comments, that it is possible for a sponsor to lease AT&T's MultiQuest 900 service from the tariff without using AT&T's non-tariffed billing service. AT&T goes on to suggest that it must fulfill its common carrier obligation to transport the 900 calls on its network but lacks a legal basis to perform compliance checks of programs or advertising for which it does not provide billing service.

RESPONSE: In considering this argument, the Board notes that billing systems are irrelevant to both the statute and the proposed rules. The purpose of the subject legislation is to limit access to adult services to those persons over 18 years of age who take affirmative action to obtain such access. In the case of a sponsor, such as a distributor or service bureau, purchasing the access capability and essentially re-selling such capability to its own customers for which it or another agent provides billing, the telephone company providing the access will remain the party responsible for compliance with these rules or may, as a condition of service to such sponsor, require that sponsor to comply with the requirements restricting access to adult services. This, in turn, will encourage the sponsor, in protecting its own business interests, to require such compliance of its own customers through its own contractual and other business relationships.

However, AT&T's discussion provides insight into the evolution of the information-access service industry and has led the Board to re-examine the wording of the definition of "adult-oriented information-access telephone service" contained in the proposed rules. The statute defines this service as a class of telephone service where for a charge, in addition to the basic exchange charge, sexually explicit messages are furnished.

In an attempt to make the Legislature's intent more explicit, the Board, in N.J.A.C. 14:10-7.2, proposed to define "adult-oriented information-access telephone service" as:

a class of telephone service where local exchange telephone companies or interexchange carrier telephone companies collect from subscribers an identifiable charge for sexually explicit messages that the local exchange telephone companies or interexchange carrier telephone companies remit in whole or part to the information providers of such sexually explicit messages.

In retrospect, the Board believes that the language set out in the legislation is more appropriate to the rapidly developing information-

access industry. The more specific language initially proposed by the Board, therefore, is withdrawn in order to eliminate the ambiguity noted by AT&T.

COMMENT: The Division of Consumer Affairs has expressed its belief that the proposed rules constitute an important addition to New Jersey's effort to protect consumers, particularly underaged young adults, from incurring excessive telephone charges from information-access services. The Division further believes that the proposed rules, coupled with the State's "900" law, will help to alleviate the 900 number solicitation and promotion abuses which have proven to be of harm to everyone—from youngsters calling their favorite cartoon characters to seniors calling to take advantage of "free" prizes or vacations.

In closing, the Division encourages the Board "... to use whatever authority it has to induce telephone companies to assist in enforcement efforts by screening—for fraudulent or deceptive practices—the offerings of information service providers who lease their facilities."

RESPONSE: The Board welcomes the support of the Division and anticipates a cooperative effort in the oversight of this industry. The Board notes, however, that neither the legislation upon which the proposed rules are based nor any other statutory authority provides this Board with jurisdiction over the advertising practices of non-regulated information-providers. In addition, the Board further notes that the intent of the subject legislation is specifically directed towards the provision by telephone companies of adult-oriented information-access services rather than the broader issues of consumer fraud or deceptive practices. Accordingly, the Board will work closely with the Division and other State agencies in an effort to strengthen information-access consumer protections.

Summary of Agency-Initiated Changes:

For purposes of clarification, the Board has amended the definitions of "LEC" and "IXC" set out in N.J.A.C. 14:10-7.2 by including therein the small number of competitive access providers or other providers of local or toll service which are authorized to provide access arrangements similar to a LEC or those who provide services similar to an IXC. The Statute, as well as the rules proposed and indicated in the Summary to the proposal, are intended to cover all providers of such services.

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 7. ACCESS TO ADULT-ORIENTED INFORMATION-ACCESS TELEPHONE SERVICE

14:10-7.1 Scope

(a) This subchapter applies only to telephone companies electing to provide ***a subscriber*** access to adult-oriented information-access telephone service in the State.

(b) For purposes of this subchapter, telephone companies include local exchange telephone companies (LEC) and interexchange carrier telephone companies (IXC) operating in the State. IXC includes both facilities based carriers and resellers.

(c) The provisions of this subchapter shall apply to both "976" services accessed by a seven digit telephone number of the form NXX-XXXX and "900" or "700" services accessed by a 10 digit telephone number of the form 900-NXX-XXXX or 700-NXX-XXXX as well as any future access arrangement.

14:10-7.2 Definitions

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

"Adult-oriented information-access telephone service" means a class of telephone service where *[local exchange telephone companies or interexchange carrier telephone companies collect from subscribers an identifiable charge for sexually explicit messages that the local exchange telephone companies or interexchange carrier telephone companies remit in whole or in part to the information providers of such sexually explicit messages]* ***for a charge, in addition to the basic exchange charge, sexually explicit messages are furnished***.

"IXC" means interexchange carrier telephone companies ***or other such providers***, both facilities based and resellers.

"Information providers" means those entities who utilize LEC or IXC adult-oriented information-access telephone services to provide sexually explicit messages.

"LEC" means local exchange telephone companies*, including competitive access providers or other providers of local or toll services*.

"Subscriber" means a telephone customer of an LEC or IXC.

14:10-7.3 Restrictions on access

(a) No telephone company operating in the State shall provide a subscriber access to adult-oriented information-access telephone service in the State without written authorization from the subscriber.

(b) LECs offering seven digit adult-oriented information-access telephone service shall assign all lines providing such service to a specific Central Office code, or codes (NXX), and arrange all lines in the code or codes, to be normally blocked. Unblocked access shall be pursuant to N.J.A.C. 14:10-7.4(a).

(c) LECs and IXCs offering 10 digit adult-oriented information-access telephone service shall assign all lines accessing such service to a specific 900-NXX or 700-NXX code or codes and arrange all lines in the code to be normally blocked. Unblocked access shall be pursuant to N.J.A.C. 14:10-7.4(a).

(d) Alternatively, LECs and IXCs may:

1. Require as a condition of service that information providers utilizing the LEC or IXC intrastate adult-oriented information-access telephone service restrict access to the service as indicated in N.J.A.C. 14:10-7.4(a). Such LECs or IXCs shall be responsible for assurance that information providers restrict access in accordance with this rule; or

2. Require as a condition of service that the information provider offering intrastate adult-oriented information-access service scramble its transmissions and supply audio descramblers to ensure that inadvertent or unauthorized access will not result in intelligent transmission. Descrambler provision shall be pursuant to N.J.A.C. 14:10-7.4(a).

(e) No telephone company operating in the State and offering adult-oriented information-access telephone service originating in the State shall permit access of such service from telephone operators or pay telephones.

(f) Subscribers to local telephone service in the State shall be advised of these rules through inclusion in the informational consumer guide pages in the front of local telephone directories.

14:10-7.4 Subscriber requests for service; charges

(a) Telephone companies or information providers offering intrastate adult-oriented information-access telephone service shall permit access to the service only upon receipt of a written and signed subscriber request.

1. The subscriber request shall include an appropriate means of proof (such as a photocopy of a birth certificate or a valid State driver's license), in the same name as the telephone account of record, that the requesting subscriber is over 18 years of age.

2. The telephone company or information provider offering the adult-oriented information-access telephone service shall maintain the hard copy signed subscriber request with proof of age for the duration that access to the service is unblocked.

(b) The initial subscriber request to unblock access at a given location shall be free of charge to the subscriber.

(c) If an LEC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line.

(d) If an IXC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line charged by the LEC providing the subscriber basic telephone service.

(e) In the event that the serving LEC does not have a tariffed service order charge for adding service to an existing line and for central office work for an existing line, the tariffed charge from the LEC serving the largest number of telephone lines in the State having such a tariffed charge shall be used.

STATE

(a)

DIVISION OF COMMERCIAL RECORDING

Commercial Recording Filing and Expedited Service Rules

Readoption with Amendments: N.J.A.C. 15:2

Proposed: March 1, 1993 at 25 N.J.R. 901(a).

Adopted: April 6, 1993, by Daniel J. Dalton, Secretary of State.

Filed: April 12, 1993 as R.1993 d.193, **without change**.

Authority: P.L. 1992, c.124 and P.L. 1988, c.94, N.J.S.A. 52:16A-11.

Effective Date: April 12, 1993, Readoption;
May 3, 1993, Amendments.

Expiration Date: April 12, 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. 15:2.

Full text of the adopted amendments follows.

15:2-1.4 Fees for expedited service

(a) Fees for over the counter corporation service shall be as follows:

1. Filing of document:
 - i. Without certified copy; statutory fee plus \$10.00;
 - ii. With copy to be certified: statutory filing fee, certification fee of \$25.00 plus \$10.00;
2. Request for copy of annual report requested at the same time:
 - i. One report—\$2.00 plus \$10.00;
 - ii. Two reports—\$4.00 plus \$10.00;
 - iii. Three reports—\$6.00 plus \$10.00;
 - iv. Four reports—\$8.00 plus \$15.00;
 - v. Five reports—\$10.00 plus \$15.00;
 - vi. Six reports—\$12.00 plus \$15.00;
 - vii. Seven reports—\$14.00 plus \$20.00;
 - viii. Eight reports—\$16.00 plus \$20.00;
 - ix. Nine reports—\$18.00 plus \$20.00;
 - x. Ten reports—\$20.00 plus \$25.00.
3. Certificate of standing;
 - i. Short form standing certificate which includes registered agent and registered office: \$25.00 plus \$10.00;
 - ii. Long form standing certificate which includes registered agent, registered office, incorporators, officers, directors, and number of authorized shares: \$25.00 plus \$10.00;
4. Status report(s) which includes name availability, the name and address of the registered agent, corporation or limited partnership name, whether the corporation charter is still valid, and whether the corporation or limited partnership has filed a fictitious/alternate name. Fees for report(s) requested, at the same time are as follows:
 - i. One report—\$5.00 plus \$10.00;
 - ii. Two reports—\$10.00 plus \$10.00;
 - iii. Three reports—\$15.00 plus \$10.00;
 - iv. Four reports—\$20.00 plus \$15.00;
 - v. Five reports—\$25.00 plus \$15.00;
 - vi. Six reports—\$30.00 plus \$15.00;
 - vii. Seven reports—\$35.00 plus \$20.00;
 - viii. Eight reports—\$40.00 plus \$20.00;
 - ix. Nine reports—\$45.00 plus \$20.00;
 - x. Ten reports—\$50.00 plus \$25.00.
5. Certificate of name availability one to three names: \$25.00 plus \$10.00.
6. For each page photocopied: \$1.00 per page.
7. For each request for an uncertified copy of a document filed with this office, other than the annual report, the fee is \$10.00 plus \$1.00 per page photocopies.

8. There shall be an additional charge of \$25.00 to certify any document.

(b) Fees for over the counter U.C.C. service shall be as follows:

1. Filing of a U.C.C. 1, a U.C.C. 1 with assignment, U.C.C. 3 or a separate assignment: \$25.00 plus \$10.00;
2. Search request: \$25.00 plus \$10.00;
3. Search request and photocopies: \$25.00 plus \$10.00 plus \$1.00 per page photostated;
4. Request for copy(ies): \$10.00 plus \$1.00 per page photocopied;
5. Filing U.C.C. 1 and search request to reflect filing: \$50.00 plus \$10.00.

(c) Expedited telephone service shall be provided for:

1. (No change.)
2. The fees for status report(s) requested at the same time are as follows:
 - i. One report—\$5.00 plus \$10.00;
 - ii. Two reports—\$10.00 plus \$10.00;
 - iii. Three reports—\$15.00 plus \$10.00;
 - iv. Four reports—\$20.00 plus \$15.00;
 - v. Five reports—\$25.00 plus \$15.00;
 - vi. Six reports—\$30.00 plus \$15.00;
 - vii. Seven reports—\$35.00 plus \$20.00;
 - viii. Eight reports—\$40.00 plus \$20.00;
 - ix. Nine reports—\$45.00 plus \$20.00;
 - x. Ten reports—\$50.00 plus \$25.00.

TRANSPORTATION

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

Autobus Dimensions

Adopted Amendment: N.J.A.C. 16:53-3.2

Proposed: February 1, 1993 at 25 N.J.R. 459(a).

Adopted: March 4, 1993, by Kathy A. Stanwick, Deputy Commissioner.

Filed: April 7, 1993 as R.1993 d.190, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:4-2.1(a) and 39:4-198.

Effective Date: May 3, 1993.

Expiration Date: July 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:53-3.2 Dimensions of autobuses

(a) The overall length, for a single unit bus, shall not exceed 45 feet, 0 inches, excluding bumpers, except that an articulated bus shall not exceed 61 feet, 0 inches, excluding bumpers.

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

(d) The inside height of autobuses transporting passengers shall not be less than six feet, three inches measured vertically from the floor level in the center of the aisle to the ceiling.

(e) The overall height of an autobus shall not exceed 13 feet, six inches.

(b)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

Specifications for Special Autobus Type Recreational Vehicles

Window Openings, Platforms and Curtains

Adopted New Rules: N.J.A.C. 16:53-7.25, 7.26 and 7.27

Proposed: December 21, 1992 at 24 N.J.R. 4500(a).

Adopted: February 22, 1993 by Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Filed: April 7, 1993 as R.1993 d.191, **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. 27:1A-5, 27:1A-6 and 52:14D-1 et seq.

Effective Date: May 3, 1993.

Expiration Date: July 17, 1994.

Summary of Public Comments and Agency Responses:

The Department received comments from Mr. Richard S. Adelizzi, President, Five Mile Beach Electric Railway Company, North Cape May, New Jersey 08204 and the following riders of the system: Louise Danielson, Ronald Hinkle, Mike Scalzo, Howard T. Hornnock (2), Rev. H. Stoddard, Virginia Haverstick, Darlene Mullen, Dorothy E. Sheehan, Anna Waters, Jean Scialabba, Fred H. Lotz, Jr., Marion Sheehan, Luis Soto, Michael Rose, Rita Krimmel, Jean Lupinelli, Mary Brennan, Dolores Medieros, Lorraine Hettenback, Marget Gray, Rose Pilosi, Rita Cummings, Rose Corbi, Teresa Cipollano, Anna M. Holmes, Rose Gianini, M. Mondelli, Jo Ann Murphy, Sophia Rowe, Lawrence J. Carbine, Lillian Yates, Joe Birch, Mildred Maiolo, Kay Gardler, Matilda Mackline, Jane Taylor, Stephen L. Siegel, Mrs. Rebbeckin, and Susie Batzenhart.

COMMENT: The proposed new specifications will totally negate the use of open-air trolleys in the State of New Jersey. It has been found impossible to provide daily service in all seasons without lowering curtains during inclement weather. Additionally, the proposed changes will result in significant financial damage and curtailed ridership should the use of curtains be curtailed.

RESPONSE: The Department has revised N.J.A.C. 16:53-7.27 upon adoption to permit the use of curtains while a vehicle is in operation, during time of inclement weather only, provided State and Federal regulations pertaining to emergency egress as defined in FMVSS 217 are met. It was never the intent of the Department to preclude the use of curtains entirely, especially during inclement weather, but to preclude the inappropriate use of curtains wherein passengers' emergency egress is precluded.

COMMENT: I am against the new DOT specifications eliminating use of curtains during inclement weather. Trolleys cannot be ridden in the rain and wind experienced at the shore without the protection of curtains.

RESPONSE: The Department has revised N.J.A.C. 16:53-7.27 upon adoption to permit the use of curtains while a vehicle is in operation, during time of inclement weather only, provided State and Federal regulations pertaining to emergency egress as defined in FMVSS 217 are met. It was never the intent of the Department to preclude the use of curtains entirely, especially during inclement weather, but to preclude curtains, wherein passengers' emergency egress is precluded.

Full text of the adoption follows.

16:53-7.25 Window openings

(a) Window opening shall be restricted to a maximum of six inches.

(b) Open-air special autobus type recreational vehicles shall meet the following requirements:

1. The vertical distance between a seat-bottom and any opening shall be a minimum of 16 inches. Vehicles not meeting this requirement shall have protective bars extending from the front to the rear

of the opening. Bars shall be spaced no more than six inches apart, and the distance from the seat-bottom to the top of the highest bar shall be a minimum of 16 inches.

16:53-7.26 Platforms

(a) Special autobus type recreational vehicles designed and/or constructed with platforms attached to the rear of the vehicle shall meet the following requirements:

1. No person shall be permitted to stand or ride on the platform.
2. Any door leading to the platform from the interior of the vehicle shall display a sign, with a minimum of three inch letters, stating "Emergency Exit Only" and shall conform to Federal Motor Vehicle Safety Standard (FMVSS) 217, as applicable.
3. The door shall not be locked while the vehicle is in operation.

16:53-7.27 Curtains

[Curtains are not permitted to be used while a vehicle is in operation, with or without passengers.] **Curtains are permitted to be used while a vehicle is in operation, during time of inclement weather only, provided all State and Federal regulations pertaining to emergency egress as defined in FMVSS 217 are met.**

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

Repurchase Agreements; Permissible Investments

Adopted Amendment: N.J.A.C. 17:16-33.1

Proposed: March 1, 1993 at 25 N.J.R. 909(a).
 Adopted: April 5, 1993 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
 Filed: April 7, 1993 as R.1993 d.188, **without change**.
 Authority: N.J.S.A. 52:18A-91.
 Effective Date: May 3, 1993.
 Expiration Date: May 2, 1996.

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

Full text of the adoption follows.

17:16-33.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest moneys of any fund, including the State of New Jersey Cash Management Fund in repurchase agreements of any bank or securities broker, provided that:

1. The seller is a bank or trust company or a wholly-owned subsidiary of such bank or trust company which:
 - i. Is headquartered in the United States; and
 - ii. Is not controlled by a foreign entity; or
2. The seller is a securities broker which:
 - i. Is headquartered in the United States;
 - ii. Is not controlled by a foreign entity; and
 - iii. Is currently on the "Approved List of Issuers of Commercial Paper" as permitted under N.J.A.C. 17:16-31.
3. (No change in text.)
4. The security sold by the bank or securities broker and subject to repurchase is an obligation of the United States Government or an obligation of the following United States Government agencies:
 - i.-iv. (No change.)

(b)

STATE INVESTMENT COUNCIL

Common Stocks and Convertible Securities (Trust Funds); Permissible Investments

Adopted Amendment: N.J.A.C. 17:16-42.2

Proposed: March 1, 1993 at 25 N.J.R. 909(b).
 Adopted: April 5, 1993 by the State Investment Council, Roland M. Machold, Director, Division of Investment.
 Filed: April 7, 1993 as R.1993 d.189, **without change**.
 Authority: N.J.S.A. 52:18A-91.
 Effective Date: May 3, 1993.
 Expiration Date: May 2, 1996.

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

Full text of the adoption follows.

17:16-42.2 Permissible investments

- (a) (No change.)
- (b) The convertible preferred stocks and bonds must meet the following requirements:
 - 1.-3. (No change.)
 - Recodify existing (d)-(f) as (c)-(e) (No change in text.)

(c)

STATE PLANNING COMMISSION

State Planning Rules

Readoption: N.J.A.C. 17:32

Proposed: February 1, 1993 at 25 N.J.R. 461(a).
 Adopted: March 19, 1993 by State Planning Commission, James G. Gilbert, Chairman.
 Filed: March 19, 1993 as R.1993 d.165, **without change**.
 Authority: N.J.S.A. 52:18A-203.
 Effective Date: March 19, 1993.
 Expiration Date: March 19, 1998.

Summary of Public Comments and Agency Responses:

Notice of the proposed readoption of the State Planning Rules was published in the New Jersey Register on February 1, 1993. Notice of the proposed readoption was also sent to the 2,209 people on the State Planning Commission distribution list. The notice invited written comments to be submitted on or before March 3, 1993. An opportunity for public comment was also provided at the State Planning Commission meeting on February 26, 1993.

Only one comment was received. New Jersey Future submitted a written comment favoring the readoption of the State Planning Rules. In addition, New Jersey Future supports steps to clarify the concept of consistency (subchapter 7) and to simplify the administrative requirements for a consistency review. The State Planning Commission agrees with New Jersey Future and has proposed amendments to subchapter 7. Those amendments, however, are considered too substantive to be included in this adoption and are therefore published elsewhere in this issue of the New Jersey Register as a proposal.

The above-cited comment is available for inspection at the offices of the State Planning Commission, 33 West State Street, Trenton, N.J. 08625.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:32.

OTHER AGENCIES**(a)****HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION****District Zoning Regulations****Readoption: N.J.A.C. 19:3, 19:3B, 19:4 and 19:4A**

Proposed: December 21, 1992 at 24 N.J.R. 4503(a).

Adopted: March 25, 1993 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

Filed: March 29, 1993 as R.1993 d.176, **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: March 29, 1993.

Expiration Date: March 29, 1998.

Summary of Public Comments and Agency Responses:

No comments received. No recommendations were made by the hearing officer for the January 6, 1993 public hearing. The hearing record may be reviewed by contacting Ileana Kafrouni, Acting Deputy Chief Engineer, Hackensack Meadowlands Development Commission, One DeKorte Park Plaza, Lyndhurst, NJ 07071.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:3, 19:3B, 19:4 and 19:4A.

(b)**CASINO CONTROL COMMISSION****Pai Gow Poker****Rules of the Games****Gaming Equipment****Adopted New Rule: N.J.A.C. 19:47-11.8A****Adopted Amendments: N.J.A.C. 19:46-1.18 and 1.19;****19:47-11.2, 11.5, 11.6, 11.7, 11.8, 11.10 and 11.11**

Proposed: November 16, 1992 at 24 N.J.R. 4247(a).

Adopted: April 7, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: April 12, 1993 as R.1993 d.192, **without change**.

Authority: N.J.S.A. 5:12 69(e), 70(f), 99 and 100(m).

Effective Date: May 3, 1993.

Expiration Date: April 15, 1998, N.J.A.C. 19:46;

April 15, 1996, N.J.A.C. 19:47.

Summary of Public Comment and Agency Responses:

COMMENT: The Division of Gaming Enforcement supports the proposed amendments.

RESPONSE: Accepted.

Full text of the adoption follows.

19:46-1.18 Cards; receipt storage, inspections and removal from use
(a)-(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. Cards opened for use on a baccarat table shall be changed at least once during the gaming day;

2. Cards opened for use on a pai gow poker table and dealt from a dealing shoe 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.

(h)-(p) (No change.)

19:46-1.19 Dealing shoes

(a) (No change.)

(b) Cards used to game at blackjack, pai gow poker, minibaccarat, and red dog shall be dealt from a dealing shoe which shall be secured to the gaming table when the table is open for gaming activity and secured in a locked compartment when the table is not open for gaming activity. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment during non-gaming hours. Notwithstanding the foregoing, cards used to game at pai gow poker may be dealt from the dealer's hand in accordance with N.J.A.C. 19:47-11.8A.

(c)-(g) (No change.)

19:47-11.2 Cards; number of decks; dealing shoe

(a) Pai gow poker shall be played with one deck of cards with backs of the same color and design, one additional solid yellow or green cutting card and one additional solid yellow or green cover card to be used in accordance with the procedures set forth in N.J.A.C. 19:47-11.6. The deck of cards used to play pai gow poker shall meet the requirements of N.J.A.C. 19:46-1.17 and shall include one joker. Nothing in this section shall prohibit a casino licensee from using decks which are manufactured with two jokers provided that only one joker is used for gaming at pai gow poker.

(b) All cards to be used in pai gow poker shall **either** be dealt from a dealing shoe which shall meet the requirements of N.J.A.C. 19:46-1.19 and shall be located on the table to the left of the dealer or dealt from the dealer's hand in accordance with the procedures set forth in this subchapter.

19:47-11.5 Opening of the table for gaming

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

(d) All cards opened for use on a pai gow poker table and dealt from a dealing shoe shall be changed at least every eight hours. All cards opened for use on a pai gow poker table and dealt from the hand shall be changed at least every four hours. Procedures for compliance with this subsection must be submitted to the Commission for approval.

19:47-11.6 Shuffle and cut of the cards

(a) (No change.)

(b) After the cards have been shuffled, the dealer shall place the stack of cards on top of the cover card. Thereafter, the dealer shall offer the stack of cards to be cut, with the backs facing up and faces facing the layout, to the player determined pursuant to (c) below. If no player accepts the cut, the dealer shall cut the cards.

(c) (No change.)

(d) The player or dealer making the cut shall place the cutting card in the stack at least 10 cards from either end. Once the cutting card has been inserted, the dealer shall take the cutting card and all the cards on top of the cutting card and place them on the bottom of the stack. The dealer shall then remove the cover card and place it on the bottom of the stack. Thereafter, the dealer shall remove the cutting card and, at the discretion of the casino licensee, either place it in the discard rack or use it as an additional cutting card to be inserted four cards from the bottom of the deck.

1. If the cards are to be dealt from a dealing shoe pursuant to N.J.A.C. 19:47-11.8, the cards shall then be inserted into the dealing shoe for commencement of play.

2. If the cards are to be dealt from the dealer's hand pursuant to N.J.A.C. 19:47-11.8A, the cards may be held by the dealer in either hand. Once the dealer has chosen the hand in which he or she will hold the cards, the dealer must use that hand whenever holding the cards. The cards held by the dealer shall at all times be kept in front of the dealer and over the table inventory container.

(e) If there is no gaming activity at the pai gow poker table, the cards 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 a player arrives at the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in N.J.A.C. 19:47-11.5(c) shall be completed.

19:47-11.7 Wagers

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

(c) All wagers at pai gow poker shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing

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procedures set forth in N.J.A.C. 19:47-11.8 or 11.8A. No wager at pai gow poker shall be made, increased or withdrawn after the dealer has announced "No more bets."

19:47-11.8 Procedures for dealing the cards from a dealing shoe

(a) Unless a casino licensee chooses to have the cards dealt from the dealer's hand in accordance with the procedures set forth in this subchapter, once the dealer has completed shuffling the cards and the cards have been placed in the shoe, the dealer shall announce "No more bets" prior to shaking the pai gow poker shaker. The dealer shall then shake the pai gow poker shaker at least three times so as to cause a random mixture of the dice.

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

19:47-11.8A Procedures for dealing the cards from the hand

(a) Notwithstanding any other provision of N.J.A.C. 19:46 or this chapter, a casino licensee may, in its discretion, permit a dealer to deal the cards used to play pai gow poker from his or her hand.

(b) When dealing the cards from the hand, once the shuffle and cut of the cards have been completed, the dealer shall announce "No more bets" prior to dealing seven stacks of seven cards each to the area in front of the table inventory container. The dealer shall deal each card by holding the deck of cards in one of his or her hands and with the other hand shall remove the top card of the deck and place it face down on the appropriate area of the layout.

(c) The dealer shall deal the first seven cards moving from left to right and the second seven cards moving from right to left and shall continue alternating in this manner until there are seven stacks of seven cards.

(d) After seven stacks of seven cards have been dealt, the dealer shall determine that exactly four cards are left by spreading them face down on the layout. The cards shall not be exposed to anyone at the table and shall then be placed in the discard rack. If more or less than four cards remain the dealer shall determine if the cards were misdealt. If the cards were misdealt and a stack has more or less than seven cards, the round of play shall be void and the cards reshuffled. If the cards have not been misdealt, the round of play shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18.

(e) Once the dealer has completed dealing the seven stacks and placed the four remaining cards in the discard rack, the dealer shall then shake the pai gow poker shaker at least three times so as to cause a random mixture of the dice.

(f) The dealer shall then remove the lid covering the pai gow poker shaker, total the dice and announce the total. The total of the dice shall determine which player receives the first of the seven stacks. The stack farthest to the left of the dealer shall be considered the first stack and the stack farthest to the right of the dealer shall be considered the seventh stack.

(g) To determine the starting position for delivering the seven stacks, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one and continuing around the table with each betting position counted in order, regardless of whether there is a wager at the position, until the count matches the total of the three dice. A casino licensee may, in its discretion, mark the first position to which a stack will be dealt by use of an additional cut card or similar object. Examples are as follows:

1. If the dice total eight, the dealer would receive the first stack; or

2. If the dice total 14, the sixth wagering position would receive the first stack.

(h) The dealer shall deliver the first stack to the starting position as determined in (g) above and, moving clockwise around the table, deliver the remaining stacks in order to all other positions including the dealer position, regardless of whether there is a wager at the position. The dealer shall deliver all stacks face down.

(i) After the seven stacks have been delivered to each position and the dealer, the dealer shall collect any stacks dealt to a position where there is no wager and place them in the discard rack without exposing the cards.

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(j) Once the seven stacks have been delivered to each position and the dealer and any stacks dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow poker shaker and shake the shaker once. The pai gow poker shaker shall then be placed to the right of the dealer.

19:47-11.10 Player bank; co-banking; selection of bank; procedures for dealing

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

(h) If the cards are to be dealt from a dealing shoe in accordance with N.J.A.C. 19:47-11.8, the following procedures shall apply:

Recodify existing (h) and (i) as 1. and 2. ((No change in text.)

3. Each card shall be removed from the dealing shoe with the left hand of the dealer, and placed face down on the appropriate area of the layout with the right hand of the dealer. The dealer shall deal the first card to the starting position as determined in (h)2 above and, moving clockwise around the table, deal all other positions including the dealer a card, regardless of whether there is a wager at the position. The dealer shall then return to the starting position and deal a second card in a clockwise rotation and shall continue dealing until each position including the dealer has seven cards.

Recodify existing (k) and (l) as 4. and 5. (No change in text.)

(i) If the cards are to be dealt from the hand in accordance with N.J.A.C. 19:47-11.8A, the following procedures shall apply:

1. Once the dealer has completed dealing the seven stacks and placed the four remaining cards in the discard rack pursuant to N.J.A.C. 19:47-11.8A, the bank shall select the first stack to be delivered by the dealer. This stack shall be designated as the first stack by the dealer moving it toward the players.

2. Once the first stack has been selected in accordance with (i)1 above, the bank shall shake the pai gow poker shaker. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow poker shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow poker shaker, the dealer shall remove the lid covering the pai gow poker shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow poker shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow poker shaker to be covered and reshaken by the bank.

3. To determine the starting position for delivering the seven stacks, the dealer shall count counterclockwise around the table, with the position of the bank considered number one and continuing around the table with each betting position including the dealer, counted in order, regardless of whether there is a wager at the position, until the count matches the total of the three dice.

4. The dealer shall deliver the first stack as determined in (i)1 above to the starting position as determined in (i)3 above. Thereafter, the dealer shall deliver the remaining stacks in a clockwise rotation beginning with the stack closest to the right of the first stack and proceeding until all stacks to the right of the first stack have been dealt and then moving to the stack farthest to the left of the dealer and proceeding left to right. If there are no stacks to the right of the first stack, the dealer will begin with the stack farthest to the left and proceed to the right. The dealer shall deal all stacks face down to each position including the dealer, regardless of whether there is a wager at the position.

5. After the seven stacks have been delivered to each position and the dealer, the dealer shall collect any stacks dealt to a position where there is no wager and place them in the discard rack without exposing the cards.

6. Once the seven stacks have been delivered to each position and the dealer and any stacks dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow poker shaker and shake the shaker once. The pai gow poker shaker shall then be placed to the right of the dealer.

Recodify existing (m)-(q) as (j)-(n) (No change in text.)

19:47-11.11 Irregularities; invalid roll of dice

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

(c) If the dealer incorrectly totals the dice and deals the first card or delivers the first stack to the wrong position, all hands shall be called dead and the dealer shall reshuffle the cards.

(d)-(j) (No change.)

(k) If a card is exposed while the dealer is dealing the seven stacks in accordance with N.J.A.C. 19:47-11.8A, the cards shall be reshuffled.

(l) If cards are being dealt from the hand and the dealer fails to deal the seven stacks in accordance with N.J.A.C. 19:47-11.8A(c), the cards shall be reshuffled.

(a)

CASINO CONTROL COMMISSION

Notice of Temporary Adoption of Amendments

Gaming Equipment; Rules of the Games Progressive 21 Wager in Blackjack

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, which would give casino licensees the option of offering the progressive 21 wager in the game of blackjack, 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 this test would permit any casino licensee which wishes to participate in the experiment to offer the progressive 21 wager at specified, and specially equipped, blackjack tables. The wager should permit a patron to win a multi-casino progressive annuity payout, as well as smaller cash progressive payouts in casinos which elect to offer them, and other cash payouts. The test would be subject to the terms and conditions of the experiment established by the Commission. The test will begin on or after May 10, 1993, on a specific date to be determined by the Commission, which date will be posted in each casino participating in the experiment and which will also be available from the Commission upon request. This experiment would continue for the maximum period of time permissible under N.J.S.A. 5:12-69(e), unless otherwise terminated by the Commission or any of the participating licensees prior to that time, pursuant to the terms and conditions of the experiment.

Should the temporary amendments prove successful, in the judgment of the Commission, the Commission will propose them for permanent adoption in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Educational Programs for Pupils in State Facilities

Adopted New Rules: N.J.A.C. 6:9

Adopted Amendments: N.J.A.C. 6:28-8.1, 8.3 and 8.4

Adopted Repeals: N.J.A.C. 6:28-8.2, 8.5 and 8.6

Proposed: February 1, 1993 at 25 N.J.R. 400(a).

Adopted: April 7, 1991 by State Board of Education, Mary Lee Fitzgerald, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: April 12, 1993 as R.1993 d.194, 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. 18A:7B-1 et seq.

Effective Date: May 3, 1993.

Expiration Date: N.J.A.C. 6:9, May 3, 1998; N.J.A.C. 6:28, April 10, 1994.

Summary of Public Comments and Agency Responses:

Three individuals, Therese Matthews, Juvenile Services of the Department of Corrections; Patricia Holliday, Ed.D. Director, Office of Education, Department of Human Services, and Anthony J. Sarlo, Office of

Educational Services, Department of Corrections, spoke at the January 20, 1993 public testimony session provided by the State Board of Education. Five letters with comments were received from Ciro A. Scalera and Cecilia Zalkind, Association for Children of New Jersey; Patricia Holliday, Ed.D., Department of Human Services; Sarah W. Mitchell, Director of the Public Advocate Division of Advocacy for the Developmentally Disabled; Jean Paashas; and Bernice Marshall, Office of the Attorney General.

COMMENT: Four commenters supported the proposed regulations. It was stated that the newly proposed regulations recognize the diversity of students placed in State facilities and provide a better framework for meeting their individualized needs.

RESPONSE: The Department agrees.

COMMENT: Three commenters recommended that N.J.A.C. 6:9-2.1(b) be revised to clarify that the actual number of student contact days should be determined by their individualized plans.

RESPONSE: The Department agrees that additional language would further clarify that, although the educational programs in State facilities must be provided for 220 days, the number of days a student must attend these educational programs is determined by their individualized plans.

Thus, the rule at N.J.A.C. 6:9-2.1(b) has been revised upon adoption to clarify how the actual number of student contact days will be determined. N.J.A.C. 6:9-2.1(b) now specifies that student contact days shall be in accordance with N.J.A.C. 6:8-7.1(d)ii and N.J.A.C. 6:28-3.6.

COMMENT: One commenter expressed concern that additional funds should be provided if programs are to operate 220 days each year.

RESPONSE: The Department disagrees. Funding for State facility programs is already based on the operation of programs for 12 months.

COMMENT: One commenter requested clarification regarding the administrative mechanism through which the Department of Education will assure that the Departments of Corrections and Human Service's educational personnel possess the appropriate certification endorsements.

RESPONSE: The Department does not agree that further clarification is required in the proposed rules. The Department verifies appropriate certification through the annual monitoring process of the office of education and by approving the copies of certifications submitted to the county offices of education, pursuant to N.J.A.C. 6:9-2.3(c).

COMMENT: Three commenters recommended that N.J.A.C. 6:9-2.3(d) be revised to allow for the flexibility to exceed the required maximum class size of 12 for nonhandicapped pupils.

RESPONSE: The Department disagrees. N.J.A.C. 6:9-2.3(d) does allow the Departments of Corrections and Human Services to request exceptions to the class size requirement as part of the annual approval process. Therefore, no revision is necessary.

COMMENT: Three commenters recommended changing the deadline for submission of the education program plan and budget.

It was suggested that there is not sufficient time between when the Departments of Corrections and Human Services receive their entitlement notification from the Department of Education and the deadline for submission of the education program plan and budget, thus preventing approval prior to the spending plan implementation.

RESPONSE: The Department disagrees. N.J.S.A. 18A:14-2 et seq. requires the Commissioner of Education to notify school districts of their State aid allocations within one week of the Governor's Budget Message. This adjustment will allow the Department to notify the Departments of Corrections and Human Services of their entitlement sooner, thus allowing adequate time for plan preparation and submission by April 15. Therefore, no revision is necessary.

COMMENT: Two commenters objected to N.J.A.C. 6:9-3.1(d) which requires the Commissioners of the respective agencies to sign off on any budget revisions exceeding 10 percent, since the Office of Education is a component of the Commissioner's office and, therefore, two signatures are a needless redundancy. The commenters suggested that only certification by the Office of Education, as the Commissioner's designee, should be required.

RESPONSE: The Department disagrees. This new provision is included based on the Department's experience with program audits. The Office of Compliance recommended that the signatures of the Commissioners of Corrections and Human Services as chief executive officers of their respective departments are necessary to certify revisions to the approved program plan and budget.

COMMENT: One commenter requested clarification regarding the specific content and format of time and activity reports required pursuant to N.J.A.C. 6:9-3.1(a)li.

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RESPONSE: The Department agrees and will provide, through the approval guide, sample formats for content of time and activity reports.

COMMENT: One commenter recommended that N.J.A.C. 6:9-3.2(a) be amended to reflect allowable uses of funds.

RESPONSE: The Department disagrees. N.J.A.C. 6:9-3.2(a)iii refers only to records retained for audit. The commenter's question concerning the determination of allowable uses of funds is a separate issue governed by N.J.A.C. 6:9-3.1(e), which states that the entitlement shall be used to support education programs pursuant to N.J.S.A. 18A:7B-4 which clearly defines allowable expenditures.

COMMENT: One commenter expressed concern that the proposed rules do not adequately provide procedural safeguards for nondisabled pupils.

RESPONSE: The Department disagrees because N.J.A.C. 6:9-2.1(e) requires State facilities to comply with the provisions of N.J.S.A. 18A:37-1 and 37-2 (Discipline of Students) as well as develop procedures to insure continuation of educational programs for pupils whose behavior is disruptive to the ongoing educational process.

COMMENT: One commenter pointed out that it is not feasible for State facility programs to meet the unique credit requirements of each district. These programs should only be required to meet the minimum credit year requirements and high school graduation requirements mandated by the State. The commenter also indicated that local districts do not always grant credit for work completed in State facility programs.

RESPONSE: The Department agrees; however, since the adoption of N.J.A.C. 6:8-7.1(c)2iii, all districts are now required to meet the Statewide core course proficiencies. Therefore, the new provision contained in N.J.A.C. 6:9-4.1 requires that State facility programs meet the same credit year requirements that satisfy the State high school graduation requirement contained in N.J.A.C. 6:8-7.1(c).

Additionally, N.J.A.C. 6:9-5.1(c) maintains the requirement that all educational records shall be transmitted to the responsible board of education in order to assure credit for work completed.

COMMENT: One commenter recommended a 10 day timeline for forwarding pupil records as in the case of public schools.

RESPONSE: The Department has revised N.J.A.C. 6:9-5.1(c) to extend, to 10 days, the time frame for State facilities to transfer educational records of exiting pupils to their responsible district board of education. This change appropriately affords State facilities the same timelines as New Jersey public schools for transferring pupil records and at the same time brings these rules into conformity with N.J.A.C. 6:3-2.5(c)9iii. The text of N.J.A.C. 6:9-5.1(c) has been further revised to more closely reflect the language of N.J.A.C. 6:3-2.5(c)9iii.

COMMENT: One commenter recommended that students in county facilities be included in these regulations.

RESPONSE: While the Department agrees that this issue is a long-standing problem, these regulations are developed pursuant to N.J.S.A. 18A:7B-1 et seq., the State Facilities Education Act, which does not account for county facilities. However, this issue is under discussion with the Governor's Cabinet Action Group on Juvenile Justice and may be addressed at a later time.

COMMENT: One commenter recommended that in addition to the program objectives identified in N.J.A.C. 6:9-1.3, each department should compile a list of its own specific educational objectives.

RESPONSE: The Department disagrees. This recommendation is already met by N.J.A.C. 6:9-3.1(f) which requires each department to submit a detailed education program plan and budget on a form prescribed by the Commissioner of Education. This form requires each department to identify specific educational objectives for individual State facilities.

COMMENT: One commenter questioned the validity of the October 16 student count due to the variables that affect the State facility student population.

RESPONSE: The October 16 cutoff date is necessary to establish funding allocations on an annual basis, and is consistent with the date used for school district funding purposes.

COMMENT: One commenter recommended that the Departments of Corrections and Human Services receive 100 percent of their entitlement on July 1.

RESPONSE: The Department disagrees. N.J.S.A. 18A:7B-5 requires the Department of Education to review the operation of State Facility Education Act (SFEA) programs, order corrective actions if needed and withhold entitlements if corrective actions are insufficient. If 100 percent

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of the SFEA entitlements are forwarded on July 1, the Department would have no mechanism to fulfill its program compliance responsibilities.

COMMENT: One commenter expressed concern regarding the adequacy of the monitoring system.

RESPONSE: The Department disagrees. Pursuant to N.J.S.A. 18A:7B-5 and N.J.A.C. 6:9-3.2(b) the Department is required to review all State facility programs. The Department accomplishes this mandate through the review and approval of the annual educational program plan and budget submitted by the Departments of Corrections and Human Services pursuant to N.J.A.C. 6:9-3.1(f), the monitoring of teacher certification at the county offices of education pursuant to N.J.A.C. 6:9-2.3(c) and the completion of site visits at the facilities level.

COMMENT: One commenter requested clarification concerning whether N.J.A.C. 6:9-2.1(d) allows for a pupil to be excused from attending an educational program for personal counseling.

RESPONSE: N.J.A.C. 6:9-2.1(d) allows pupils to be excused from attending educational programs for several reasons one of which is "compelling personal circumstances." The determination for whether personal counseling is a compelling personal circumstance is situation specific and would be made based on professional judgment of individual student needs.

COMMENT: One commenter expressed concern as to whether the educational progress report required for each pupil leaving a State facility provides for a smooth transition to the pupil's home district.

RESPONSE: The Department disagrees. N.J.A.C. 6:9-2.5 was revised to include additional information necessary to formulate an appropriate educational program which will assure a successful transition for every student.

COMMENT: One commenter expressed concern that the proposed regulations may not provide the same benefits to non-handicapped pupils as they were afforded under N.J.A.C. 6:28-8 of the Special Education rules.

RESPONSE: The Department disagrees. The proposed revisions continue the same protections and assure that a thorough and efficient education is provided to all students in State facilities.

COMMENT: One commenter pointed out that deleting the condition that requires the pupil to be capable of participating in a district board of education program will remove one obstacle to placement of pupils in more inclusive programs. However, concern was expressed that no provision exists for reviewing the appropriateness of a local district's refusal to provide educational services to a child placed at a State facility.

RESPONSE: The Department agrees that removing the condition that pupils be capable of participating in a district program will remove an obstacle to placement in less restrictive settings. However, the Department cannot mandate that districts accept State facility residents, because all placements of pupils with educational disabilities must be made on an individual basis as determined by their individualized education program (IEP). Placement in a local district's program would not be appropriate unless the special education and related services as determined by the IEP could be provided.

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

CHAPTER 9 EDUCATIONAL PROGRAMS FOR PUPILS IN STATE FACILITIES

SUBCHAPTER 1. PURPOSE, SCOPE AND OBJECTIVES

6:9-1.1 Purpose

The purpose of this chapter is to ensure that pupils in State facilities are provided with a thorough and efficient education pursuant to N.J.S.A. 18A:7B-1 et seq. (The State Facilities Education Act of 1979) and to identify general program requirements and establish procedures for the operation, administration and approval of educational programs in State facilities.

6:9-1.2 Scope

(a) The requirements of this chapter shall apply to all educational programs provided in accordance with N.J.S.A. 18A:7B-1 et seq. by the Departments of Corrections and Human Services.

(b) Educational programs and services shall be provided for all pupils between the ages of five and 20. Programs and services shall

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be provided for pupils ages three through 21 with educational disabilities who do not hold a high school diploma or who are not enrolled in a Graduate Equivalent Degree, adult education or college degree program.

6:9-1.3 Educational program objectives

(a) The educational programs provided for under N.J.S.A. 18A:7B-1 et seq. shall be developed to complement the primary mission of the implementing agencies and provide educational opportunities that meet the identified needs of pupils in State facilities. These programs shall be delivered through traditional or alternative education strategies. Alternative education programs, which allow high school credit to be awarded through alternative learning experiences, shall be provided in accordance with the program completion option authorized in N.J.A.C. 6:8-7.1(d)ii.

(b) The following program objectives shall serve as guidelines for achieving the legislative goal and as the framework for developing educational experiences which meet the specialized needs of all pupils in State facilities. The educational programs provided for under the State Facilities Education Act shall:

1. Continue the development of the required skills and competencies and assist pupils in working toward fulfilling the high school graduation requirements contained in N.J.A.C. 6:8-7.1(c);
2. Provide relevant job training and enhance occupational competencies through vocational education programs where appropriate;
3. Promote interpersonal and social skill development and enhance appreciation of self; and
4. Provide special support and assistance needed to promote the development of responsible patterns of behavior.

SUBCHAPTER 2. GENERAL PROGRAM REQUIREMENTS

6:9-2.1 Attendance and provision of programs

(a) Attendance is compulsory for all pupils, except for a pupil age 16 or above who may explicitly waive this right. Such a waiver may be revoked at any time by the pupil. For a pupil below the age of 18, a waiver is not effective unless accompanied by consent from a pupil's parent(s) and/or guardian(s).

(b) All education programs, with the exception of home instruction, shall be provided for at least four hours per day, five days a week, 220 days each year. ***The actual number of student contact days shall be determined by the individualized program plan under the program completion option pursuant to N.J.A.C. 6:8-7.1(d)ii and the individualized education program for pupils with educational disabilities in accordance with N.J.A.C. 6:28-3.6***

(c) Home instruction shall be provided according to N.J.A.C. 6:28-4.5.

(d) Activities shall not be scheduled that conflict with educational programs. Pupils shall not be excused from attending educational programs except for reasons of illness, religious observance, court appearance or other compelling personal circumstances.

(e) Pupils in State facilities shall comply with all rules established by the facility pursuant to N.J.S.A. 18A:37-1 and 37-2. Procedures shall be established by the Office of Education in the Departments of Corrections and Human Services for continued education in a different setting in cases where a pupil is guilty of ongoing defiance of the rules, and the pupil's continued participation in the program is disruptive to the ongoing educational process.

6:9-2.2 Pupils with educational disabilities

(a) All pupils with educational disabilities in State facilities shall have available to them a free and appropriate public education as set forth under the Individuals with Disabilities Education Act (P.L. 101-476, as amended by P.L. 102-119) and receive special education and/or related services in accordance with the rules and regulations governing special education at N.J.A.C. 6:28.

(b) The size of special education programs serving children with educational disabilities shall be in accordance with N.J.A.C. 6:28-4.3 and 4.4.

6:9-2.3 Staffing and class size

(a) The Departments of Corrections and Human Services, independently or through contractual agreements, shall employ the

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educational personnel required to ensure the provision of programs and services pursuant to this chapter.

(b) The Offices of Education in the Departments of Corrections and Human Services shall, with the approval of the Department of Education, assure that all educational personnel possess the appropriate certification endorsement issued by the State Board of Examiners for the positions they hold.

(c) The certification for all educational staff shall be on file in the respective Department's education office and in the appropriate county office of the Department of Education.

(d) Class size for nonhandicapped programs shall not exceed 12 pupils. The Departments of Corrections and Human Services may request exceptions to this requirement as part of the annual approval process required by N.J.A.C. 6:9-3.1(f). The Department's granting of exceptions will be made on a case-by-case basis using the following criteria:

1. The requested exception justifies the need for an alternate program structure;
2. The requested exception demonstrates that the specialized needs of the pupils served will continue to be met; and
3. The requested exception insures the necessary supervision, security, and safety of the pupils served.

6:9-2.4 Facilities

Facilities used for educational programs shall comply with the provisions of N.J.A.C. 6:22 where applicable. All educational programs shall be provided in locations separate from sleeping areas, except where appropriate for instructional or medical reasons.

6:9-2.5 Reports

(a) An educational progress report shall be developed for each pupil leaving a Department of Corrections or Human Services program. Minimally, the report shall include a designated contact person and the following information necessary to formulate an appropriate educational program and assure that credit for work completed is recorded:

1. Assessment information and diagnostic findings;
2. Credit earned towards high school graduation requirements contained in N.J.A.C. 6:8-7.1(c);
3. Required skills and competency level;
4. Grade level equivalent;
5. Vocational training experience;
6. Individualized Program Plan (IPP); and
7. Individualized Education Program (IEP) for educationally handicapped pupils pursuant to N.J.A.C. 6:28-3.6(g), (h) and (i).

(b) Annually the responsible board of education shall be notified of the pupil's progress toward meeting local and State high school graduation requirements according to N.J.A.C. 6:8-7.

SUBCHAPTER 3. FUNDING, PROGRAM APPROVAL AND MONITORING

6:9-3.1 Funding and program approval

(a) The funding of educational programs will be in accordance with N.J.S.A. 18A:7B-2 of the State Facilities Education Act of 1979.

(b) The Departments of Corrections and Human Services shall submit, annually to the Department of Education, the resident enrollment of pupils in their State education programs on the last school day prior to October 16 of the pre-budget year.

(c) The Commissioner of Education shall notify the Commissioners of the Departments of Corrections and Human Services of the entitlement for the following fiscal year prior to March 1 of the pre-budget year.

(d) The entitlement shall be forwarded to the Departments of Corrections and Human Services in two payments, 90 percent on July 1, and 10 percent on April 1. This payment schedule may be modified by written agreement(s) between the Commissioner of Education and the Commissioners of Corrections and Human Services. These payments may be withheld pursuant to N.J.S.A. 18A:7B-5.

(e) The entitlement shall be used by the Departments of Human Services and Corrections to support their educational programs in

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accordance with the provisions of N.J.S.A. 18A:7B-4 and requirements established in N.J.A.C. 6:9-3.2.

(f) By April 15 of each year, the Departments of Corrections and Human Services shall submit a detailed education program plan and budget to the Department of Education for approval for all programs and services under its jurisdiction on a form prescribed and provided by the Commissioner of Education. The plan must include at a minimum a program description, staffing patterns and facility level budget information.

(g) Any revision to the education program plan and budget shall be submitted to the Commissioner of Education. For revisions greater than 10 percent of any line item, prior approval from the Department of Education is required. Each revision shall be fully documented and contain a certification from the Office of Education and the Commissioner of Corrections or Human Services that the revision is essential to the education program.

6:9-3.2 Monitoring

(a) The expenditure of funds shall be available for audit by the Department of Education and fully documented in the following manner:

1. All expenditures incurred will be fully documented.

i. Salary expenditures shall be supported by time and activity reports for each budgeted position, supplemented with a current job description;

ii. All expenditures other than salary shall be supported by a vendor's invoice, a signed receiving document and evidence that the service or supply is utilized at the program level; and

iii. All documentation will be retained for audit for a minimum of five years after the completion of the fiscal year. If an audit has been started or notice received of an audit to be started, all supporting documentation will be retained until the audit process is concluded.

(b) The Department of Education shall review all educational programs provided by the Departments of Corrections and Human Services for compliance with the rules established in this chapter and adherence to the approved education program plan and budget.

SUBCHAPTER 4. GRADUATION REQUIREMENTS AND DIPLOMAS

6:9-4.1 Graduation requirements and credit

All educational programs provided for under N.J.S.A. 18A:7B-1 et seq. must meet the credit year curriculum requirements and satisfy the State high school graduation requirements contained in N.J.A.C. 6:8-7.1(c). These requirements may be met through the traditional course credit process, N.J.A.C. 6:8-7.1(d), or the program completion option authorized in N.J.A.C. 6:8-7.1(d)1ii which allows academic credit to be awarded through alternative learning experiences.

6:9-4.2 Issuance of diplomas

For pupils in State facilities who have an identifiable district of residence as defined by N.J.S.A. 18A:7B-12, the district board of education shall grant State-endorsed diplomas in accordance with

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N.J.A.C. 6:8-7 and 6:28-4.8(a). For pupils who do not have identifiable districts of residence as defined by N.J.S.A. 18A:7B-12, a diploma shall be issued by the Commissioner of Education upon certification by the Departments of Human Services and Corrections that a pupil has successfully completed all graduation requirements contained in N.J.A.C. 6:8-7.1(c).

SUBCHAPTER 5. PUPIL RECORDS

6:9-5.1 Pupil records

(a) Pupil records shall be maintained in accordance with N.J.A.C. 6:3-2. In addition, all educational records shall be kept in files separate from juvenile justice and other non-educational records required to be safeguarded from public inspection by N.J.S.A. 2A:4-65.

(b) In the case of pupils with no identifiable district board of education, records shall be maintained by the Departments of Corrections or Human Services according to N.J.A.C. 6:28-2.9.

(c) ***[Prior to a pupil]* *For all pupils* exiting a State facility, *all* educational records shall be *transmitted* *transferred within 10 days* to the responsible district board of education*[,] as *indicated* *defined* in N.J.S.A. 18A:7B-12, in order to assure credit for work completed *by the pupil*.**

6:28-8.1 General requirements

(a) Special education programs provided in State facilities shall be operated in accordance with N.J.A.C. 6:9 and the requirements of this chapter.

(b) (No change.)

(c) The length of the school day for all special education programs under this subchapter with the exception of home instruction shall be at least as long as that established for general education pupils. Educational programs shall operate at least 220 days each year.

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

6:28-8.2 Procedural safeguards

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

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

6:28-8.3 Provision of programs

(a) A residential State facility may recommend placement of a pupil with an educational disability in a local school district. Documentation of attempts to place the pupil in the least restrictive environment according to N.J.A.C. 6:28-2.10 shall be stated in the pupil's individualized educational program. Tuition shall be paid by the State facility to the district board of education where the pupil is placed.

(b) All personnel providing special education programs according to N.J.A.C. 6:28-4.3 or 4.1, related services according to N.J.A.C. 6:28-3.8 or child study team services according to N.J.A.C. 6:28-3.1(a) shall hold the appropriate educational certificate for the position in which they function.

Recodify existing (e) through (g) as (c) through (e) (No change in text.)

Recodify existing (i) and (j) as (f) and (g) (No change in text.)

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Notice of Availability of Approved Budget and List of Fees for Fiscal Year 1994, and Most Recent Annual Audit

Take notice that, pursuant to N.J.A.C. 7:60-1.4(f), the approved budget and list of fees calculated in accordance with N.J.A.C. 7:60-1.6 and the results of the most recent annual audit are available from the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board (Board). On January 7, 1993, the Board held its meeting to approve the budget for Fiscal Year 1994, July 1, 1993 through June 30, 1994. A copy of the approved budget, the list of fees and the results of the most recent annual audit may be obtained from the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board, CN 410, Trenton, N.J. 08625-0410, or call (609) 777-4247.

(b)

AIR QUALITY REGULATION PROGRAM

Notice of Action on Petition for Rulemaking Standards for the Emission of Particles

N.J.A.C. 7:27-6.2(a)

Authority: N.J.S.A. 26:2C-1 et seq., 13:1B-3, and 13:1D-9.

Petitioners: Exxon Company, U.S.A. and Tosco Corporation.

Take notice that on March 2, 1993, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking requesting an amendment to the Department's rule at N.J.A.C. 7:27-6.2(a) which governs the emission of particulate matter into the atmosphere from certain manufacturing processes. Petitioner Exxon Company, U.S.A. (Exxon) is a petroleum refiner and operates the Bayway Refinery located in Linden, New Jersey, which is subject to the particulate rule. Petitioner Tosco Corporation (Tosco), an independent refiner, has entered into an agreement to purchase the Bayway refinery. The Department filed a notice of receipt of the petition with the Office of Administrative Law on March 5, 1993, which was published in the April 5, 1993 New Jersey Register at 25 N.J.R. 1577(c).

N.J.A.C. 7:27-6.1 through 6.7 establish requirements for the control and prohibition of the emission of particles from manufacturing processes into the atmosphere. N.J.A.C. 7:27-6.2(a), the specific provision for which amendment is requested, provides the method for determining the allowable emission rate of particles from a manufacturing process. The allowable emission rate in N.J.A.C. 7:27-6.2(a) forms an upper limit for particulate emissions, which may be adjusted downward on a case-by-case basis as part of each air pollution control permit review. The allowable emission rate set forth in N.J.A.C. 7:27-6.2(a) is the higher of the following: one percent of the potential particulate emission rate from the unit; or 0.02 grains of particulate per standard cubic foot (SCF) of source gas emitted from the unit, up to a "cap" of 30 pounds of particulates per hour per unit.

Petitioners request that the cap of 30 pounds of particulates per hour be lifted so that all units, regardless of size, could emit particulates at the rate of 0.02 grains per SCF. Petitioners state that the 30 pound cap unfairly limits the operation of large facilities and places severe economic constraints on the Bayway refinery.

The Department has reviewed the information supplied by the petitioners, as well as applicable Federal and State statutes, rules and regulations, and environmental considerations. The Department concurs that proposal of an amendment to the rule is appropriate, because the limitations in the rule were set 20 years ago on the basis of technology and air quality conditions which have changed significantly since the rule was adopted. The Department expects to propose an amendment by

October 1, 1993. While the Department intends to propose an amendment which will raise the 30 pound cap, the proposed amendment will impose certain requirements in order to protect air quality and comply with Federal law.

To ensure protection of air quality, the Department intends to continue the current requirement that all increases in allowable particulate emissions be reviewed by the Department through the air pollution control permitting program. During the permitting process, applicants are required to perform air quality simulation modelling and to demonstrate that increases in ambient concentrations of air contaminants will be below certain levels.

The proposed amendment will also include requirements to ensure compliance with Federal law. The particulate rule involved here is subject to a general savings clause in the Federal Clean Air Act at 42 U.S.C. 7515. The general savings clause prohibits modification of rules unless the modification will achieve equivalent or greater emission reductions of particulates in areas of the State which are designated nonattainment for particulates. 42 U.S.C. 7515. Therefore, the Department will propose an amendment which will raise the 30 pound cap in both nonattainment and attainment areas, but which will require equivalent or greater emission reductions for units which exceed 30 pounds per hour in particulate nonattainment areas. Such emission reductions could be achieved through offsets or other mechanisms.

The Bayway refinery is located in a currently designated nonattainment area for total suspended particulates (TSP). The area is also unclassifiable for fine particulates, referred to as PM-10, which stands for particulate matter which is less than 10 microns in diameter. However, existing data for both TSP and PM-10 indicate that, because the area has met the ambient air quality standards for TSP for several years, it is eligible for redesignation to attainment status. Therefore, in addition to the rulemaking requested by petitioners, the Department will also request that EPA redesignate the area as attainment for TSP.

As required under N.J.A.C. 1:30-3.6, the Department has mailed the notice of action on the petition to the petitioners.

(c)

OFFICE OF LEGAL AFFAIRS

Notice of Action on Petition for Rulemaking concerning Requirements for Hazardous Waste Facilities

Delay of Closure Period for Hazardous Waste Management Facilities

N.J.A.C. 7:26-9.4, 9.8 and 9.10

Petitioner: Exxon, Inc.

Authority: N.J.S.A. 13:1E-6(a)2; N.J.S.A. 52:14B-4(f).

Take notice that on October 1, 1992, the Department of Environmental Protection and Energy ("Department") received a petition from Exxon, Inc. requesting that the Department amend three sections contained in subchapter 9, Requirements for Hazardous Waste Facilities, of N.J.A.C. 7:26, in accordance with petitioner's suggested rule amendment. The sections proposed for amendment are: N.J.A.C. 7:26-9.4, General facility standards; 9.8, General closure requirements; and 9.10, Financial requirements for facility closure.

A notice of acknowledging receipt of the petition was filed with the Office of Administrative Law on October 15, 1992 and appeared in the November 16, 1992 New Jersey Register at 24 N.J.R. 4285(a).

Specifically, the petitioner has suggested that the above rules be amended to conform with provisions adopted on August 14, 1989 by the United States Environmental Protection Agency (USEPA). The Federal regulations were adopted pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq. See 54 FR 33376, "Delay of Closure Period for Hazardous Waste Management Facilities"; 40 CFR Parts 264, 265 and 270.

In its petition, the petitioner cites the following language from the preamble to the Federal regulation:

The Environmental Protection Agency (EPA) is today amending portions of the closure requirements under subtitle C of the Resource

Conservation and Recovery Act (RCRA) applicable to owners and operators of certain types of hazardous waste facilities. Today's final rule allows, under limited circumstances, a landfill, surface impoundment, or land treatment unit to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit. This final rule details the circumstances under which a unit may remain open to receive non-hazardous wastes and describes the conditions applicable to such units.

Today the Agency is promulgating requirements amending 40 CFR 264.113 and 265.113, that will allow certain landfills, surface impoundments and land treatment units to be eligible to delay closure to receive only non-hazardous waste after the final receipt of hazardous waste. The Agency believed that these units, including surface impoundments that do not meet the part 264 liner and leachate collection system elements of the minimum technological requirements (MTR) specified by RCRA section 3004(o), but from which hazardous wastes have been removed, can operate in an environmentally protective manner by meeting the requirements set forth in this rule. . . . See 54 FR 33376 and 33377.

The petitioner is requesting that the Department amend its rules so that they contain provisions that parallel the Federal regulations, thus enabling the petitioner and other similarly situated parties to delay closure of hazardous waste management units and receive only non-hazardous wastes in accordance with the amendments.

The petitioner asserts that it operates the Bayway petroleum refinery situated in Linden, Union County, New Jersey, and that unless the relief sought in this petition is granted, it will be placed at a severe and unjustified economic disadvantage.

According to the petitioner, under RCRA, a waste is considered hazardous if it is a listed waste (for example, API Separator Solids, Primary Sludge) or if it exhibits certain characteristics (for example, toxicity, corrosivity, reactivity). The regulations governing characteristics of a waste which would be considered toxic were originally promulgated in 1980. Revisions to the toxicity characteristic (TC) were promulgated in March, 1990.

The 1990 revisions added 25 organics, including Benzene. Based on these revisions, effective September, 1990, wastewater containing \geq 0.5 ppm Benzene is considered to be a hazardous waste. In order to comply with revised RCRA regulations, the petitioner filed an amendment to the Bayway refinery, Part A RCRA permit, indicating that the BIOX Lagoons were accepting hazardous wastes, including Benzene. The petitioner asserts that the BIOX Lagoons are aeration basins for the activated sludge portion of the refinery's wastewater treatment plant and lagoons are considered surface impoundments. The petitioner asserts that activated sludge is a proven form of biological treatment, highly suited for treatment of refinery wastewaters.

The petitioner asserts that RCRA regulations also require that facilities receiving hazardous wastes submit a Part B permit application. The Part B for the BIOX Lagoons was submitted in September, 1991. The submitted Part B indicated the closure of the existing BIOX lagoons by March 1994 since the current facilities cannot be operated in compliance with RCRA requirements. It indicated that the facilities must be upgraded to meet Minimum Technology Requirements (MTR) or no longer receive a hazardous waste. Upgrading would require lining the existing lagoons or replacing them with above ground tanks.

The petitioner asserts that in order to comply with Benzene waste NESHAP requirements, a benzene stripper is scheduled to be built on site to handle wastewater streams containing benzene. As a result, the influent to the BIOX Lagoons will be less than the 0.5 ppm limit and the unit will no longer be receiving a hazardous waste.

The petitioner further asserts that Federal RCRA requirements allow for delay of closure if certain conditions can be met, and asserts that the key conditions are:

- The facility must cease accepting hazardous wastes prior to the required closure date.
- The facility must not be causing an impact to groundwater.

Therefore, the petitioner asserts that if the Department were to adopt the requested delay of closure regulations, and the other conditions required were satisfied, the refinery could continue to operate its wastewater treatment plant without the economically burdensome and environmentally unnecessary measures described above.

After evaluating the petitioner's contentions and suggested language for rule amendments, the Department decided to deliberate further upon the petition. See the Notice of Action on Petition published at 24 N.J.R.

4587(b), December 21, 1992. The petitioner submitted draft amendments which require evaluation not only by the Department's hazardous waste management personnel, but also by the Division of Solid Waste Management and the New Jersey Pollutant Discharge Elimination System ("NJPDDES") programs. This extensive review was necessary because the Federal regulation addresses both hazardous waste and solid waste issues. Additionally, NJPDDES issues must be evaluated because of possible wastewater treatment impacts and the potential necessity for a new permit. Moreover, the Department has been drafting its own delay of closure regulations which are based upon the Federal provisions, and must compare and evaluate the petitioner's suggested amendments in light of Federal and Departmental requirements. Finally, as an authorized state, New Jersey is required to modify its regulations to reflect changes in the Federal regulatory program only when USEPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal regulations. Because the Federal delay of closure regulations are a relaxation of current requirements, adoption of these regulations by the state is optional. Nevertheless, such state regulatory changes must undergo USEPA review and are required to have USEPA approval.

The Department has evaluated the above issues, and has completed its deliberations.

As part of its deliberative process, the Department compared the petitioner's draft rule with the Federal regulation and with existing State hazardous waste requirements and found that the petitioner's draft rule is not equivalent to the Federal rule and is inconsistent with current State regulations. For example, petitioner's draft rule does not contain a separate section which addresses permit modifications, as does the Federal rule at 40 CFR 270.42, nor does the petitioner's draft rule address permit modifications throughout the text, as is the case with the Federal rule. Moreover, the petitioner's draft rule does not address interim status facilities, while the Federal regulations contain specific provisions concerning interim status facilities throughout the text. While the petitioner's regulation at N.J.A.C. 7:26-9.8(k) refers to eligible facilities as hazardous waste management units, the Federal rule specifically mentions landfills, land treatment units, and surface impoundments. Additionally, the petitioner does not include the appeal provisions at 40 CFR 264.113(e)7(v) and 40 CFR 265.113(e)7(v). Petitioner's draft rule has its own codification and editorial format. Additionally, it repositions and recodifies subsections of the existing State hazardous waste rules, and contains cross-references to them. The petitioner's cross-references, format, and editorial changes are not consistent with current State regulations, and are therefore potentially confusing and inaccurate. These changes may also affect USEPA review and approval of both State delay of closure and other regulations.

For the reasons set forth above, the petitioner's request that the Department adopt its draft delay of closure rule is denied. The Department is moving forward with its own delay of closure rule which is currently being afforded review by USEPA. It is expected that the proposed rule should be published in the June 21, 1993 issue of the New Jersey Register.

A copy of this notice of action has been mailed to the petitioner, as required by N.J.A.C. 7:1-1.2.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BUREAU OF SECURITIES

Notice of Solicitation of Public Comments concerning whether the U.S. Securities and Exchange Commission's Small Business Initiatives Should Be Adopted in New Jersey

Take notice that A. Jared Silverman, Chief of the Bureau of Securities, pursuant to the Uniform Securities Law, N.J.S.A. 49:3-47 et seq., announces that the Bureau will be soliciting public comments on whether the U.S. Securities and Exchange Commission's ("SEC") Small Business Initiatives ("SBI") (SEC Regulation A, 17 C.F.R. 230.251 et seq.; SEC Rule 504, 17 C.F.R. 230.504 and miscellaneous amendments to C.F.R. parts 200, 228, 229, 239, 240, 249 and 260) should be adopted in New Jersey in whole or part or be rejected.

The SBI provides under Rule 504 (Regulation D) that certain businesses are permitted to make a public offering of up to \$1 million of securities within a 12 month period without registering the offering with the SEC. The Bureau seeks comment as to whether these public offerings should be registered in New Jersey. Current law requires these offerings to be registered by qualification (N.J.S.A. 49:3-61) in New Jersey, unless otherwise exempted.

SBI provides under Regulation A that an issuer making public offerings of securities in amounts up to \$5 million within a 12 month period can use a simplified disclosure form, Form 1-A, to register the offering with the SEC. Prior to adoption of the SBI, Regulation A offerings were limited to \$1.5 million. The Bureau seeks comment as to whether Regulation A offerings should continue to be registered by qualification in New Jersey, or whether the Bureau should register the offerings using Form 1-A or Form U-7, or exempt them from registration entirely.

With the higher ceiling for Regulation A offerings at the federal level, adoption of SBI and use of Form 1-A or Form U-7 in New Jersey would result in a significantly higher number of securities offerings being able to register using the more simplified disclosure provided by Form 1-A or Form U-7.

SBI allows an issuer to "test the waters" by soliciting interest in the securities prior to the Regulation A offering, if true and complete copies of all forms and statements are filed with the SEC. Adoption of SBI in New Jersey would allow testing the waters if all of the forms and statements filed with the SEC are filed with the Bureau, as well. Currently, testing the waters is prohibited in New Jersey with respect to public offerings, N.J.A.C. 13:47A-10.3(g) and N.J.A.C. 13:47A-10.4(f), except for securities offerings registered by coordination, N.J.A.C. 13:47A-10.2(g). Since Regulation A offerings are currently registered by qualification in New Jersey, testing the waters is currently prohibited for Regulation A offerings.

After the close of the public comment period, the Bureau of Securities intends to draft and publish proposed rules concerning the SBI, in light of the level of public interest and the comments received. The draft rules will then be proposed for adoption in the usual administrative manner.

The Official Text of the SBI is available as published as Release No. FR-38, SEC Release No. 33-6950, 34-30969, 39-2288, at 57 FR 36502 (July 30, 1992) or 51 SEC Docket 2673; Release No. FR-39, SEC Release No. 33-6949, 34-30968, 39-2287 at 57 FR 36442 (July 30, 1992) or 51 SEC Docket 2613; and SEC Release No. 33-6961, 34-31306 and 39-2293 at 57 FR 47408 (October 16, 1992) or 52 SEC Docket 2830. Copies may be obtained from the address set forth below:

Bureau of Securities
P.O. Box 47029
Newark, New Jersey 07101

For further information on the SBI itself, contact: The Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Interested parties are invited to review and comment on the Small Business Initiative and whether it should be adopted in whole or part

in New Jersey. All comments on the SBI should be submitted to the Bureau at the address listed above by July 7, 1993.

TRANSPORTATION

(a)

THE COMMISSIONER DIVISION OF REGIONAL OPERATIONS—REGION V BUREAU OF OUTDOOR ADVERTISING

Notice of Receipt of Petition for Rulemaking On-Premises Advertising Signs in the City of Atlantic City

N.J.A.C. 16:41C

Authority: N.J.S.A. 27:5-1 et seq.

Petitioner: Boardwalk Regency Corporation, d/b/a/ Caesars
Atlantic City Hotel Casino ("Caesars").

Take notice that on March 1, 1993, the Commissioner, Department of Transportation (the Department), received a petition for rulemaking concerning N.J.A.C. 16:41C, concerning on-premises advertising signs in the City of Atlantic City.

Petitioner requests that the Department promulgate rules specifying that the provisions contained in N.J.A.C. 16:41C, concerning on-premises advertising signs, be amended to clarify that said provisions are not applicable to on-premises signs located within the City of Atlantic City as provided under N.J.S.A. 27:5-18b(3) and (5) and N.J.S.A. 5:12-1 et seq., ("The Casino Control Act"). The rulemaking requested would be entirely consistent with the legislative findings set forth in both the Sign Act and the Casino Control Act, because the City of Atlantic City is unique, is the only location in the State in which casino gaming is permitted, and is to be restored as "the Playground of the World and the major hospitality center of the Eastern United States," it is reasonable to allow signage appropriate to the City's status and function, but which might be inappropriate in other areas of the State. The City of Atlantic City has by ordinance amended its zoning code so as to specifically permit the sign in question, and other signs of similar nature, to be erected and maintained within the City.

The Department has requested guidance from the Attorney General's Office as to the legal issues involved in the requested rulemaking.

The petitioner will be informed of the results of the legal review and a summary of any action taken by the Department will be published in the New Jersey Register in accordance with the provisions of N.J.S.A. 1:30-3.6 and N.J.S.A. 52:14B-4(f).

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 March 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 FEBRUARY 16, 1993

NEXT UPDATE: SUPPLEMENT MARCH 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. 1659 and 1840	May 4, 1992	24 N.J.R. 4145 and 4306	November 16, 1992
24 N.J.R. 1841 and 1932	May 18, 1992	24 N.J.R. 4307 and 4454	December 7, 1992
24 N.J.R. 1933 and 2102	June 1, 1992	24 N.J.R. 4455 and 4606	December 21, 1992
24 N.J.R. 2103 and 2314	June 15, 1992	25 N.J.R. 1 and 218	January 4, 1993
24 N.J.R. 2315 and 2486	July 6, 1992	25 N.J.R. 219 and 388	January 19, 1993
24 N.J.R. 2487 and 2650	July 20, 1992	25 N.J.R. 389 and 616	February 1, 1993
24 N.J.R. 2651 and 2752	August 3, 1992	25 N.J.R. 619 and 736	February 16, 1993
24 N.J.R. 2753 and 2970	August 17, 1992	25 N.J.R. 737 and 1030	March 1, 1993
24 N.J.R. 2971 and 3202	September 8, 1992	25 N.J.R. 1031 and 1308	March 15, 1993
24 N.J.R. 3203 and 3454	September 21, 1992	25 N.J.R. 1309 and 1620	April 5, 1993
24 N.J.R. 3455 and 3578	October 5, 1992	25 N.J.R. 1621 and 1796	April 19, 1993
24 N.J.R. 3579 and 3784	October 19, 1992	25 N.J.R. 1797 and 1912	May 3, 1993
24 N.J.R. 3785 and 4144	November 2, 1992		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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ADMINISTRATIVE LAW—TITLE 1

1:13A-1.2, 18.1, 18.2 Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)
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Most recent update to Title 1: TRANSMITTAL 1992-5 (supplement November 16, 1992)

AGRICULTURE—TITLE 2

2:1-4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(a)		
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:6	Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes	24 N.J.R. 3981(a)		
2:23	Gypsy moth suppression program	25 N.J.R. 1627(a)		
2:34-2.1, 2.2	Equine Advisory Board rules	25 N.J.R. 740(a)		
2:76-2.1, 2.2, 2.3, 2.4	Recommendation of agricultural management practices	25 N.J.R. 622(a)		
2:76-3.12, 4.11	Farmland preservation programs: deed restrictions on enrolled lands	25 N.J.R. 222(a)	R.1993 d.181	25 N.J.R. 1866(a)
2:76-6.15	Agriculture Retention and Development Program: lands permanently deed restricted	25 N.J.R. 223(a)	R.1993 d.182	25 N.J.R. 1867(a)

Most recent update to Title 2: TRANSMITTAL 1993-2 (supplement February 16, 1993)

BANKING—TITLE 3

3:1-2.3, 2.5, 2.21	Depository charter applications and branch applications	25 N.J.R. 1033(a)		
3:1-14.5	Revolving credit equity loans	25 N.J.R. 1033(b)		
3:2-1.4	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:3-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(b)		
3:18-3.2, 5.1, 5.3, 8.1	Secondary mortgage loans	25 N.J.R. 1033(b)		
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)		
3:42	Pinelands Development Credit Bank	25 N.J.R. 223(b)	R.1993 d.151	25 N.J.R. 1511(a)

Most recent update to Title 3: TRANSMITTAL 1993-2 (supplement February 16, 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)		
4A:4	Selection and appointment	25 N.J.R. 1085(b)		
4A:4-6.4, 6.6	Selection and placement appeals	24 N.J.R. 4467(a)	R.1993 d.162	25 N.J.R. 1511(b)

Most recent update to Title 4A: TRANSMITTAL 1993-2 (supplement February 16, 1993)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1315(a)		
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)	Expired	
5:18-1.5, 2.4, 2.5, 2.7, 3.1-3.5, 3.7, 3.13, 3.17, 3.20, 3.30, App. 3A, 4.7, 4.9, 4.11, 4.12, 4.19	Uniform Fire Code	25 N.J.R. 393(a)	R.1993 d.197	25 N.J.R. 1868(a)
5:18-2.9, 2.12, 2.14, 2.16, 2.17	Uniform Fire Code: enforcement and penalties for violations	25 N.J.R. 397(a)	R.1993 d.195	25 N.J.R. 1872(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-4.6	Fire Code enforcement: review of proposed action against certified fire official	25 N.J.R. 399(a)	R.1993 d.196	25 N.J.R. 1874(a)
5:23	Uniform Construction Code	24 N.J.R. 1420(b)	R.1993 d.106	25 N.J.R. 920(a)
5:23	Uniform Construction Code: effective date of Model Codes	_____	_____	25 N.J.R. 1512(a)
5:23-1.6, 2.15, 4.18	Uniform Construction Code: prototype plan review	25 N.J.R. 1629(a)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.19A, 5.21, 5.22, 5.23, 5.25	Uniform Construction Code: mechanical inspector license and mechanical inspections	25 N.J.R. 624(a)	R.1993 d.187	25 N.J.R. 1875(a)
5:23-5.4, 5.5	Uniform Construction Code: licensure of elevator subcode officials and inspectors	24 N.J.R. 4309(a)	R.1993 d.105	25 N.J.R. 920(b)
5:23-9.7	Uniform Construction Code: manufacturing, production and process equipment exemption	24 N.J.R. 3458(a)	R.1993 d.132	25 N.J.R. 1512(b)
5:25-1.3	Definition of State New Home Warranty Security Plan: administrative change	_____	_____	25 N.J.R. 1755(a)
5:27-3.5	Rooming and boarding houses: conformity with Fair Housing Act amendments	24 N.J.R. 4310(a)	R.1993 d.104	25 N.J.R. 920(c)
5:30	Local Finance Board rules	25 N.J.R. 1630(a)		
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:91-14	Council on Affordable Housing: interim procedures	25 N.J.R. 1118(a)		
5:92-1.1	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
5:93	Council on Affordable Housin: substantive rules	25 N.J.R. 1118(a)		
Most recent update to Title 5: TRANSMITTAL 1993-2 (supplement February 16, 1993)				
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)		
Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)				
EDUCATION—TITLE 6				
6:3	School districts	25 N.J.R. 1095(a)		
6:5-2.3, 2.4, App.	Organization of Department	Exempt	R.1993 d.107	25 N.J.R. 921(a)
6:8-9.4, 9.8	Educational improvement plans in special needs districts: fiscal, strategy and program requirements	24 N.J.R. 4467(b)	R.1993 d.112	25 N.J.R. 922(a)
6:9	Educational programs for pupils in State facilities	25 N.J.R. 400(a)	R.1993 d.194	25 N.J.R. 1889(b)
6:11-3.2	Professional licensure and standards: fees	25 N.J.R. 1111(a)		
6:21-12	Use of school buses	25 N.J.R. 1095(a)		
6:28-1.1, 1.3, 2.3, 2.6, 2.7, 3.2, 3.7, 4.1-4.4, 7.5, 8.4, 9.2, 10.1, 10.2, 11.2, 11.4, 11.9	Special education	25 N.J.R. 1318(a)		
6:28-8.1, 8.3, 8.4	Educational programs for pupils in State facilities	25 N.J.R. 400(a)	R.1993 d.194	25 N.J.R. 1889(b)
6:29-1.7, 9, 10	Eye protection in schools; reporting of child abuse allegations; safe and drug free schools	25 N.J.R. 1095(a)		
6:30	Adult education programs	25 N.J.R. 1112(a)		
Most recent update to Title 6: TRANSMITTAL 1993-2 (supplement February 16, 1993)				
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:1G-1-5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)		
7:1G-1.2, 6.1-6.11, 6.13-6.16	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)		
7:1I	Processing of damage claims under Sanitary Landfill Facility Contingency Fund Act	25 N.J.R. 741(a)		
7:1K	Pollution Prevention Program	24 N.J.R. 3609(a)	R.1993 d.108	25 N.J.R. 930(a)
7:1K-6.1	Pollution Prevention Plan progress reporting: administrative correction	_____	_____	25 N.J.R. 1549(a)
7:1K-7.2	Priority industrial facilities and facility-wide permitting: administrative correction	_____	_____	25 N.J.R. 1876(a)
7:3	Bureau of Forestry rules	25 N.J.R. 1348(a)		
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:5A	Natural Areas System	25 N.J.R. 1350(a)		
7:5B	Open lands management	25 N.J.R. 1354(a)		
7:6-1.45	Seven Presidents Park, Long Branch: boating restrictions within jetty areas	25 N.J.R. 57(a)	R.1993 d.158	25 N.J.R. 1516(a)
7:7-1.7	Coastal Permit Program fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:7A-1.4, 2.7	Freshwater Wetlands Protection Act rules: definition of project	25 N.J.R. 1642(a)		
7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)	R.1993 d.159	25 N.J.R. 1755(b)
7:7A-16.1	Freshwater wetlands permit fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)	R.1993 d.140	25 N.J.R. 1549(a)
7:8	Stormwater management	24 N.J.R. 4469(a)	R.1993 d.113	25 N.J.R. 990(a)
7:8	Stormwater runoff and nonpoint source pollution control: public meeting and request for comment	24 N.J.R. 4470(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(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)		
7:9-4.5, 4.14, 4.15	Surface water quality standards	25 N.J.R. 405(a)		
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		
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)		
7:9-6.4, 6.8, Table 1	Ground water quality standards: administrative corrections	_____	_____	25 N.J.R. 1552(a)
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2-12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)		
7:11	New Jersey Water Supply Authority: policies and procedures	25 N.J.R. 1036(a)		
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: rates for sale of water	24 N.J.R. 4472(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: rates for sale of water	24 N.J.R. 4474(a)		
7:13-7.1	Flood plain redelineation of Green Brook in Scotch Plains and Watchung	24 N.J.R. 4475(a)	R.1993 d.160	25 N.J.R. 1556(a)
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A-1.8	NJPDES Program fees	25 N.J.R. 1358(a)		
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-4.7	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:22-3.4, 3.7, 3.8, 3.9, 3.11, 3.17, 3.20, 3.26, 3.27, 3.32, 3.34, 3.37, 4.4, 4.7, 4.8, 4.9, 4.11, 4.13, 4.17, 4.20, 4.26, 4.29, 4.32, 4.34, 4.37, 4.46, 5.4, 5.11, 5.12, 6.17, 6.27, 10.2, 10.3, 10.8, 10.9, 10.11, 10.12	Financial assistance programs for wastewater treatment facilities	24 N.J.R. 4310(b)		
7:22-9.1, 9.2, 9.4, 9.11-9.15, 10.1, 10.2, 10.4, 10.5, 10.6	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)		
7:22A-1.4, 1.5, 1.7, 1.12, 1.15, 1.16, 2.4, 2.5, 2.6, 2.8, 3.4, 4.2, 4.5, 4.8, 4.11, 6.1-6.9, 6.11, 6.12, 6.14, 6.15, 7	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)		
7:25-6.13	1993-94 Fish Code: harvest of largemouth and smallmouth bass	25 N.J.R. 224(a)	R.1993 d.139	25 N.J.R. 1556(b)
7:25-7.13, 14.1, 14.2, 14.4, 14.6, 14.7, 14.8, 14.11, 14.12, 14.13	Crab management	25 N.J.R. 1371(a)		
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-16.1	Freshwater fishing line for Rahway River in Union County	24 N.J.R. 2977(a)	R.1993 d.116	25 N.J.R. 1231(a)
7:25-18.16	Taking of horseshoe crabs	24 N.J.R. 2978(a)	R.1993 d.185	25 N.J.R. 1876(b)
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)		
7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)	R.1993 d.98	25 N.J.R. 990(b)
7:26-4.3	Thermal destruction facilities: extension of comment period regarding compliance monitoring fees	24 N.J.R. 2687(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	24 N.J.R. 3291(a)	R.1993 d.109	25 N.J.R. 991(a)
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-7.6	Hazardous waste facility operator responsibilities: administrative correction	_____	_____	25 N.J.R. 1556(c)
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-8.13, 8.16, 8.19	Hazardous waste listings: F024 and F025	25 N.J.R. 755(a)		
7:26-8.20	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9	Environmental Cleanup Responsibility Act rules	25 N.J.R. 100(a)	R.1993 d.137	25 N.J.R. 1557(a)
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-1.4, 1.6-1.30, 8.4, 8.14-8.24, 16.9, 21	Air contaminant emission statements from stationary sources	24 N.J.R. 2979(a)	R.1993 d.128	25 N.J.R. 1254(a)
7:27-1.4, 1.36, 1.37, 1.38, 8.1, 8.3, 8.4, 8.24, 18	Control and prohibition of air pollution from new or altered sources: emission offsets	24 N.J.R. 3459(a)	R.1993 d.129	25 N.J.R. 1231(b)
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
7:27A-3.10	Civil administrative penalties for violations of emission statement requirements	24 N.J.R. 2979(a)	R.1993 d.128	25 N.J.R. 1254(a)
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations; extension of comment period	25 N.J.R. 1039(a)		
7:29-1.1, 1.2, 2	Determination of noise from stationary sources: extension of comment period	25 N.J.R. 1425(a)		
7:29-1.1, 1.5, 2	Determination of noise from stationary sources	25 N.J.R. 1040(a)		
7:31	Toxic Catastrophe Prevention Act Program	25 N.J.R. 1425(b)		
7:32	Energy conservation in State buildings	25 N.J.R. 1655(a)		
7:36	Green Acres Program: opportunity to review draft rule revisions	25 N.J.R. 1473(a)		
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)		
7:50-4.1, 4.70	Pinelands Comprehensive Management Plan: expiration of development approvals and waivers	25 N.J.R. 225(a)		
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)		
7:61-3	Board of Commissioners of Pilotage: Drug Free Workplace Program	25 N.J.R. 625(a)		

Most recent update to Title 7: TRANSMITTAL 1993-2 (supplement February 16, 1993)

HEALTH—TITLE 8

8:2	Creation of birth record	24 N.J.R. 4325(a)		
8:2	Creation of birth record: reopening of comment period	25 N.J.R. 660(a)		
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:24	Retail food establishments and food and beverage vending machines	25 N.J.R. 662(a)		
8:25	Youth Camp Safety Act standards	25 N.J.R. 756(a)		
8:31B-2, 3.70	Hospital reimbursement: bill-patient data submissions; revenue cap monitoring	25 N.J.R. 1660(a)		
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)		
8:35A-1.2, 3.4, 3.6, 4.1, 5.3	Maternal and child health consortia: fiscal management and staffing	25 N.J.R. 1116(a)		
8:39	Long-term care facilities: licensing standards	25 N.J.R. 1474(a)		
8:39-13.4, 27.1, 27.8, 29.4, 33.2, 45, 46	Long-term care facilities: use of restraints and psychoactive drugs; pharmacy supplies; Alzheimer's and dementia care services	24 N.J.R. 4228(a)		
8:41	Mobile intensive care programs	24 N.J.R. 3255(b)		
8:43	Licensure of residential health care facilities	25 N.J.R. 25(a)		
8:43	Licensure of residential health care facilities: public hearing	25 N.J.R. 757(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43A	Licensure of ambulatory care facilities	25 N.J.R. 757(b)		
8:42B	Drug treatment facilities: standards for licensure	25 N.J.R. 1476(a)		
8:43G-5.10	Acute care hospital participation in New Jersey Poison Control Information and Education System	25 N.J.R. 792(a)		
8:43G-5.10	Hospital payments to maternal and child health consortia	Emergency (expires 5-1-93)	R.1993 d.138	25 N.J.R. 1295(a)
8:43G-5.10, 19.1, 19.20	Hospital licensing standards: funding for regionalized services; obstetric services structural organization	25 N.J.R. 1117(a)		
8:44-2.2, 3	Limited purpose laboratories	25 N.J.R. 668(a)		
8:59-1, 2, 5, 6, 9, 11, 12	Worker and Community Right to Know Act rules	25 N.J.R. 864(a)		
8:59-3.1, 3.2, 3.3, 3.5-3.9, 3.11, 3.13-3.17	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(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 (24 N.J.R. 2559(a))	24 N.J.R. 1673(a)		

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8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b))	24 N.J.R. 1674(a)	R.1993 d.65	25 N.J.R. 582(a)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a))	24 N.J.R. 2414(b)	R.1993 d.67	25 N.J.R. 583(a)
8:71	Interchangeable drug products (24 N.J.R. 4261(a))	24 N.J.R. 2997(a)	R.1993 d.66	25 N.J.R. 582(b)
8:71	Interchangeable drug products	24 N.J.R. 4009(a)	R.1993 d.64	25 N.J.R. 580(b)
8:71	Interchangeable drug products	25 N.J.R. 55(a)	R.1993 d.124	25 N.J.R. 1221(a)
8:71	Interchangeable drug products	25 N.J.R. 875(a)		
8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		

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9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)		
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:4-1.12	County college construction projects	25 N.J.R. 668(b)		
9:4-3.12	Noncredit courses at county colleges	25 N.J.R. 227(a)	R.1993 d.172	25 N.J.R. 1763(a)
9:6A	State college personnel system	24 N.J.R. 3052(a)	R.1993 d.118	25 N.J.R. 1221(b)
9:7-1.2, 2.11, 4.2	Student Assistance Programs: administrative corrections			25 N.J.R. 1513(a)
9:11-1.1, 1.2, 1.4, 1.6, 1.10, 1.22, 1.23	Educational Opportunity Fund: student eligibility for undergraduate grants	25 N.J.R. 1663(a)		

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10:1-2	Public comments and petitions regarding Department rules (recodify as 10:1A)	25 N.J.R. 1042(a)		
10:4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(b)		
10:14	Statewide Respite Care Program Manual	25 N.J.R. 876(a)		
10:15-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:15A-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:15B-1.2, 2.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:15C-1.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(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)		
10:37-5.46-5.50, 12	Community mental health services: children's partial care programs	25 N.J.R. 669(a)		
10:38A	Pre-Placement Program for patients at State psychiatric facilities	24 N.J.R. 4326(a)		
10:41-2.3, 2.8, 2.9	Division of Developmental Disabilities: access to client records and record confidentiality	25 N.J.R. 432(a)		
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:51-1.1	Hospital services reimbursement methodology	Emergency (expires 5-10-93)	R.1993 d.154	25 N.J.R. 1582(a)
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)		
10:52-1.17	Out-of-state inpatient hospital services: administrative correction			25 N.J.R. 1513(b)
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:52-5, 6, 7, 8, 9	Hospital services reimbursement methodology	Emergency (expires 5-10-93)	R.1993 d.154	25 N.J.R. 1582(a)
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:63-3.3, 3.8	Long-term care services: elimination of salary regions	25 N.J.R. 433(a)		
10:69	Hearing Aid Assistance to the Aged and Disabled Eligibility Manual	25 N.J.R. 228(a)		
10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13	HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery	24 N.J.R. 4329(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual	24 N.J.R. 4479(a)	R.1993 d.175	25 N.J.R. 1764(a)
10:69A-2.1, 4.1-4.4, 5.3, 5.5	PAAD prescription copayment	24 N.J.R. 4328(a)	R.1993 d.155	25 N.J.R. 1514(a)
10:72-1.1, 4.1, 4.5	New Jersey Care—Special Medicaid Manual: specified low-income Medicare beneficiaries	25 N.J.R. 1042(b)		

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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)		
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)		
10:81-14.18A	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:82-5.3	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:83-1.11	Supplemental Security Income (SSI) payment levels	25 N.J.R. 434(a)	R.1993 d.166	25 N.J.R. 1764(b)
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)		
10:85-1.1, 3.1, 3.2, 4.2, 7.2	Eligibility for employable GA recipients	25 N.J.R. 1714(a)		
10:86-10.2, 10.6	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:89-2.3, 3.1, 3.4, 3.6, 4.1	Home Energy Assistance	24 N.J.R. 4593(a)	R.1993 d.97	25 N.J.R. 997(a)
10:122C-2.5	Approval of foster homes: administrative correction	_____	_____	25 N.J.R. 1514(b)
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	24 N.J.R. 3088(a)		
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses: annual adjustment	25 N.J.R. 229(a)	R.1993 d.152	25 N.J.R. 1515(a)
10:124-5.1	Children's shelter facilities and homes: local government physical facility requirements	24 N.J.R. 4482(a)	R.1993 d.156	25 N.J.R. 1515(b)
10:127	Residential child care facilities: manual of requirements	25 N.J.R. 1716(a)		
10:133A-1.1	DYFS initial response: administrative correction	_____	_____	25 N.J.R. 1514(b)
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:1-2.2	"Division of Operations", "indigent inmate" defined	25 N.J.R. 1043(a)		
10A:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(b)		
10A:3-3.7	Use of chemical agents	25 N.J.R. 1044(a)		
10A:71-3.2, 3.21	State Parole Board: calculation of parole eligibility terms	25 N.J.R. 1665(a)		
10A:71-3.47	Inmate parole hearings: victim testimony process	24 N.J.R. 4483(a)		
10A:71-6.4, 7.3	State Parole Board: conditions of parole	25 N.J.R. 435(a)		

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11:1-7	New Jersey Property-Liability Insurance Guaranty Association: plan of operation	25 N.J.R. 1045(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)	R.1992 d.371	24 N.J.R. 3414(a)
11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(a)	R.1993 d.157	25 N.J.R. 1526(a)
11:1-32.4	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:1-33	Public Advocate reimbursement disputes	24 N.J.R. 2706(a)	R.1993 d.179	25 N.J.R. 1764(c)
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)	R.1993 d.157	25 N.J.R. 1526(a)
11:2-33	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:2-33.3, 33.4	Workers' compensation self-insurance: administrative corrections	_____	_____	25 N.J.R. 1877(a)
11:3-2.8, 33.2, 34.4, 44	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	Emergency (expires 4-30-93)	R.1993 d.135	25 N.J.R. 1290(a)
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-16.12	Automobile insurance: filings reflecting paid, apportioned MTF expenses and losses	24 N.J.R. 4486(a)	R.1993 d.148	25 N.J.R. 1543(a)
11:3-16.12	Automobile insurance: public hearing and extension of comment period regarding filings reflecting paid, apportioned MTF expenses and losses	25 N.J.R. 56(a)		
11:3-19.3, 34.3	Automobile insurance eligibility rating plans: incorporation of merit rating surcharge	24 N.J.R. 2332(a)		
11:3-28.8	Reimbursement of excess medical expense benefits paid by insurers	24 N.J.R. 3215(a)	R.1993 d.178	25 N.J.R. 1769(a)

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11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-33.2	Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 2128(b)		
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)	Expired	
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.23	Real Estate Commission: transmittal by licensees of written offers on property	24 N.J.R. 3486(a)		
11:5-1.36	Real Estate Guaranty Fund assessment	25 N.J.R. 56(b)	R.1993 d.153	25 N.J.R. 1548(a)
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:6-2	Workers' compensation managed care organizations	25 N.J.R. 1330(a)		
11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:13-8	Commercial lines: prospective loss costs filing procedures	25 N.J.R. 1047(a)		
11:15-3	Joint insurance funds for local government units providing group health and term life benefits	25 N.J.R. 436(a)		
11:17	Producer licensing	25 N.J.R. 883(a)		
11:17-1.2, 2.3-2.15, 5.1-5.6	Insurance producer licensing	24 N.J.R. 3216(a)		
11:17A-1.2, 1.3, 1.4, 1.5, 4.6	Insurance producers and limited insurance representatives: licensure and registration	25 N.J.R. 446(a)	R.1993 d.199	25 N.J.R. 1878(a)
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: failure to act timely on written application for coverage; premium quotation	24 N.J.R. 2128(b)		
11:17A-1.2, 1.7	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	Emergency (expires 4-30-93)	R.1993 d.135	25 N.J.R. 1290(a)
11:19-3	Financial Examination Monitoring System: data submission by surplus lines producers and insurers	24 N.J.R. 3003(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)		
12:18	Temporary Disability Benefits Program	25 N.J.R. 262(a)	R.1993 d.141	25 N.J.R. 1515(e)
12:18-1.1, 2.4, 2.27, 2.40, 2.43, 2.48, 3.1, 3.2, 3.3	Temporary Disability Benefits Program: extension of comment period	25 N.J.R. 1335(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)		
12:58-1.2	Child labor: student learner in cooperative vocational education program	25 N.J.R. 889(a)	R.1993 d.183	25 N.J.R. 1881(a)
12:60	Prevailing wages for public works	25 N.J.R. 453(a)	R.1993 d.164	25 N.J.R. 1771(a)
12:60-3.2, 4.2	Prevailing wages on public works contracts: telecommunications worker	24 N.J.R. 2689(a)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: extension of comment period	24 N.J.R. 3015(b)		
12:60-3.2, 4.2	Prevailing wages for public works: extension of comment period	24 N.J.R. 3607(a)		
12:100-4.1, 4.2	Public employee safety and health: Process Safety Management of Highly Hazardous Chemicals; employer defined	25 N.J.R. 890(a)	R.1993 d.184	25 N.J.R. 1882(a)
12:100-4.2	Public employee safety and health: occupational exposure to bloodborne pathogens	24 N.J.R. 3607(b)		

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12:100-4.2	Public employee safety and health: exposure to formaldehyde	25 N.J.R. 455(a)	R.1993 d.171	25 N.J.R. 1771(b)
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12A:9	Development of small businesses and women and minority businesses: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 1335(c)		
12A:9	Development of small businesses and women and minority businesses	25 N.J.R. 1752(a)		
12A:11	Certification of women-owned and minority-owned businesses	25 N.J.R. 1056(a)		
12A:11	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 1753(a)		
12A:31-1.4	New Jersey Development Authority: interest rate on direct loans	25 N.J.R. 891(a)		
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13:1	Police Training Commission rules	25 N.J.R. 1336(a)		
13:1C	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1338(a)		
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13:19-1.1, 1.7	Driver Control Service: administrative hearings applicability	25 N.J.R. 893(a)		
13:28	Board of Cosmetology and Hairstyling rules	25 N.J.R. 893(b)		
13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:20-38	Dimensional standards for automobile transporters	25 N.J.R. 1342(a)		
13:21-19.9	Motor Vehicle Franchise Committee: administrative hearing costs	24 N.J.R. 3015(c)	R.1993 d.103	25 N.J.R. 998(a)
13:24-4.1, 4.2	Amber light permit for rural route letter carrier vehicles	24 N.J.R. 4236(a)	R.1993 d.115	25 N.J.R. 1222(a)
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13:27-2.2 through 13:45A-26.4	Division of Consumer Affairs: administrative changes to various licensing board and committee rules	_____	_____	25 N.J.R. 1516(b)
13:29-1.13	Board of Accountancy: biennial renewal fee for inactive or retired licensees	25 N.J.R. 1665(b)		
13:30-8.5	Board of Dentistry: complaint review procedures	24 N.J.R. 2800(a)		
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13:30-8.18	Continuing dental education	25 N.J.R. 1344(a)		
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.J.R. 4010(a)		
13:33-1.41, 1.43	Licensed ophthalmic dispensers: continuing education	25 N.J.R. 57(b)	R.1993 d.173	25 N.J.R. 1771(c)
13:35-6.13, 9	Acupuncture Examining Board: practice of acupuncture	24 N.J.R. 4013(a)		
13:35-6.13, 10.9	Board of Medical Examiners: fee schedule; athletic trainer registration fee	25 N.J.R. 1058(a)		
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10	Practice of athletic trainers	25 N.J.R. 265(a)		
13:37	Certification of homemaker-home health aides: open public forum	24 N.J.R. 1861(a)		
13:37	Board of Nursing rules	25 N.J.R. 455(b)		
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13:39-1.3	Board of Pharmacy: fee schedule	25 N.J.R. 1666(a)		
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		
13:39-7.14	Board of Pharmacy: patient profile record system and patient counseling by pharmacist	25 N.J.R. 266(a)		
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13:40A-6.1, 7	Board of Real Estate Appraisers: apprentice program	25 N.J.R. 267(a)	R.1993 d.177	25 N.J.R. 1773(a)
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